STUDY ON THE “CONFORMITY CHECKING OF THE TRANSPOSITION BY MEMBER STATES OF 10 EC DIRECTIVES IN THE SECTOR OF ASYLUM AND IMMIGRATION” DONE FOR DG JLS OF THE EUROPEAN COMMISSION END 2007 (CONTRACT JLS/B4/2006/03)

A Network coordinated by the Institute for European Studies
Un Réseau coordonné par l'Institut d'Etudes européennes
of the / de l’Université Libre de Bruxelles

and composed of academics of the following institutions / et
composé de membres du corps académique des institutions suivantes:
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QUESTIONNAIRE FOR THE NATIONAL REPORT
ON THE IMPLEMENTATION OF THE DIRECTIVE
FAMILY REUNIFICATION OF 22 SEPTEMBRE 2003

AUSTRIA

by

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15 May 2007
last amended
18 November 2007

The person in the team of thematic coordination in charge of this directive that you can contact if you have a question or need help when completing this questionnaire is: Yves Pascouau, + 33 5 59 57 41 20, yves.pascouau@univ-pau.fr

COMMENTARIES

1. Council directive 2003/86 on the right to family reunification faced hard negotiations requiring the presentation of revised proposals from the Commission before final adoption in 2003. The European Court of Justice rejected in June 2007 an action for annulment introduced by the European Parliament against the Council directive (C-540/03).

2. Transposition of the directive must be assessed regarding the nature of the provision concerned. So as to help you, those provisions are coloured within the questionnaire as follows: obligatory provision (Q.XX), optional provision (Q.YY), provision which set up a derogation (Q.ZZ)

3. The Court of justice has defined the margins of discretion awarded to the member States even in situations where the directive allows the member States to depart from the directive. The Court states:

"Article 4(1) of the Directive imposes precise positive obligations, with corresponding clearly defined individual rights, on the Member States, since it requires them, in the cases determined by the Directive, to authorise family reunification of certain members of the sponsor’s family, without being left a margin of appreciation" (cons. 60).

"Note should also be taken of Article 17 of the Directive which requires Member States to 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 country of origin. As is apparent from paragraph 56 of the present judgment, such criteria correspond to those taken into consideration by the European Court of Human Rights when it reviews whether a State which has refused an application for family reunification has correctly weighed the competing interests” (cons. 64)

The fact that the concept of integration is not defined cannot be interpreted as authorising the Member States to employ that concept in a manner contrary to general principles of Community law, in particular to fundamental rights. The Member States which wish to make use of the derogation cannot employ an unspecified concept of integration, but must apply the condition for integration provided for by their legislation existing on the date of implementation of the Directive in order to examine
the specific situation of a child over 12 years of age arriving independently from the rest of his or her family" (cons. 70).

4. The main difficulty according to the transposition of the directive relies on the systematic opportunities offered to member States to depart from the provisions of the directive when applying it.

5. Article 19 indicates which themes the most sensitive during the negotiations of the Directive (art. 3, 4, 7, 8 and 13).

FIRST PART

1. NORMS OF TRANSPOSITION AND JURISPRUDENCE

**Q.1.A.** Identify the **MAIN** (because of its content) norm(s) of transposition and indicate its legal nature

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)
- About legal nature in the table below: legislative refers to a norm adopted in principle by the Parliament; regulation refers to a norm complementing the law and adopted in principle by the executive power; circular or instructions refer to practical rules about implementation of laws and regulations and adopted in principle by the administrative authorities

*Please duplicate the table below if there is more than one MAIN norm of transposition*

<table>
<thead>
<tr>
<th>This table is about:</th>
<th>❌ a text already adopted</th>
<th>☑️ a text which is still a project to be adopted</th>
</tr>
</thead>
<tbody>
<tr>
<td>TITLE: Settlement and Residence Act, SRA (Niederlassungs- und Aufenthalts gesetz, NAG)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>DATE: 16 August 2005</td>
<td></td>
<td></td>
</tr>
<tr>
<td>NUMBER:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>DATE OF ENTRY INTO FORCE: 1 January 2006</td>
<td></td>
<td></td>
</tr>
<tr>
<td>PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive):</td>
<td>Sect. 2 § 1 No. 9, 10; Sect. 8 § 1 No. 2; Sect. 8 § 4; Sect. 11; Sect. 12 § 4, 7; Sect. 13 § 2 No. 3; Sect. 14; Sect. 21 § 1; Sect. 27; Sect. 28; Sect. 29; Sect. 30; Sect. 37 § 4; Sect. 46; Sect. 50.</td>
<td></td>
</tr>
<tr>
<td>LEGAL NATURE (indicate a cross in the correct box):</td>
<td>❌ LEGISLATIVE:</td>
<td>☑️ REGULATION:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>☑️ CIRCULAR or INSTRUCTIONS:</td>
</tr>
</tbody>
</table>

¹ These amendments do not relate to provisions concerning Directive 2003/86/EC.
<table>
<thead>
<tr>
<th>Table</th>
<th>Title</th>
<th>Date</th>
<th>Number</th>
<th>Date of Entry Into Force</th>
<th>Provisions Concerned</th>
<th>References of Publication in the Official Journal</th>
<th>Legal Nature</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Aliens Police Act, APA (Fremdenpolizeigesetz, FPG)</td>
<td>16 August 2005</td>
<td></td>
<td>1 January 2006</td>
<td>Sect. 2 § 4 No. 12; Sect. 54 § 5 No. 1; Sect. 55 § 3 No. 1; Sect. 56 § 2 No. 1; Sect. 60 § 2 No. 9, 10; Sect. 66; Sect. 109; Sect. 110; Sect. 117; Sect. 118.</td>
<td>Federal Law Gazette I 100/2005. Amended by Federal Law Gazette I 157/2005 and Federal Law Gazette I 99/2006.</td>
<td>LEGISLATIVE</td>
</tr>
<tr>
<td>2</td>
<td>Asylum Act 2005, AA (Asylgesetz 2005, AsylG)</td>
<td>16 August 2006</td>
<td></td>
<td>1 January 2006</td>
<td>Sect. 2 § 1 No. 22; Sect. 34; Sect. 35.</td>
<td>Federal Law Gazette I 100/2005.</td>
<td>LEGISLATIVE</td>
</tr>
<tr>
<td>3</td>
<td>Amendment of the Employment of Aliens Act, EAA (Ausländerbeschäftigungsgesetz, AuslBG).</td>
<td>16 August 2005</td>
<td></td>
<td>1 January 2006</td>
<td>Sect. 4 § 6 No. 4a; Sect. 4 § 8; Sect. 14a § 1 No 2; Sect. 14e § 1; Sect. 15 § 1 No. 4 ; Sect. 15a.</td>
<td>Federal Law Gazette I 100/2005 amending Federal Law Gazette 218/1975.</td>
<td>LEGISLATIVE</td>
</tr>
</tbody>
</table>

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2 These amendments do not relate to provisions concerning Directive 2003/86/EC.
Q.1.B. List the others norms of transposition by order of importance of their legal nature (first laws, secondly regulations; thirdly circulars or instructions):

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)

Please use one table per norm and duplicate as much as necessary

| TITLE: Amendment of the Civil status Act (Personenstandsgesetz). |
| DATE: 16 December 2005 |
| NUMBER: |
| DATE OF ENTRY INTO FORCE: 1 January 2006 |
| PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive): Sect. 38 § 2. |
| REFERENCES OF PUBLICATION |
| LEGAL NATURE (indicate a cross in the right box): |
| ☒ LEGISLATIVE |
| ☐ REGULATION |
| ☐ CIRCULAR OR INSTRUCTIONS |

| TITLE: Regulation on the implementation of the Settlement and Residence Act, Reg. SRA (Niederlassungs- und Aufenthaltsgeetz-Durchführungsverordnung, NAG-DV). |
| DATE: 27 December 2005 |
| NUMBER: |
| DATE OF ENTRY INTO FORCE: 1 January 2006 |
| PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive): |
| REFERENCES OF PUBLICATION |
| LEGAL NATURE (indicate a cross in the right box): |
| ☐ LEGISLATIVE |
| ☒ REGULATION |
| ☐ CIRCULAR OR INSTRUCTIONS |

| TITLE: Regulation on the integration agreement, RIA (Integrationsvereinbarungs-Verordnung, IV-V). |
| DATE: 27 December 2005 |
| NUMBER: |
| DATE OF ENTRY INTO FORCE: 1 January 2006 |
| PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive): |
| REFERENCES OF PUBLICATION |
Q.2.  THIS QUESTION IS IN PRINCIPLE ONLY FOR FEDERAL OR ASSIMILATED MEMBER STATES LIKE AUSTRIA, BELGIUM, GERMANY, ITALY, SPAIN

Q.2.A.  Explain which level of government is competent to adopt the norms of transposition.

Please include your answer in the tables below

<table>
<thead>
<tr>
<th>LEGISLATIVE RULES</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</td>
</tr>
<tr>
<td>COMPETENCES OF THE COMPONENTS:</td>
</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
</tr>
</tbody>
</table>
REGULATIONS
COMPETENCES OF THE FEDERAL/CENTRAL LEVEL: According to Art. 10 § 1 No. 3 of the Federal Constitutional Act the adoption of regulations concerning aliens law belongs to the competences of the federal level.

COMPETENCES OF THE COMPONENTS: The only competence of the Austrian countries (Bundesländer) is a certain right to a say in connection with the Regulation on settlement which has to be adopted every year to fix quotas for new residence permits that may be granted. According to Sect. 13 § 3 Settlement and Residence Act the countries must be given an opportunity to make proposals on the quotas to be adopted.

EXPLANATIONS IF NECESSARY:

CIRCULAR OR INSTRUCTIONS
COMPETENCES OF THE FEDERAL/CENTRAL LEVEL: As the federal level of government is also competent for the enforcement of the whole aliens law, the adoption of circulars and instructions falls into its competence.

COMPETENCES OF THE COMPONENTS: The Austrian countries do not have any competence to issue circulars or instructions concerning norms on family reunification.

EXPLANATIONS IF NECESSARY:

Q.2.B. In case, explain if the federal structure and the distribution of competences between the different levels pose any problem or difficulty regarding the transposition and/or the implementation of the directive. As the transposition and the implementation of the Directive belong exclusively to the competences of the federal level of legislation or administration respectively, no special problems arise from the distribution of competences.

Q.3. Explain which authorities are competent for the practical implementation of the norm of transposition by taking the decisions in individual cases.

Please use one table per competence concerned and duplicate it if necessary

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>granting and renewal of residence permits</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Ministry of the Interior</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>Section III (law), department III/4 (residence and citizenship)</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td>governor of the countries (Landeshauptmann); district authorities (Bezirksverwaltungsbehörden) or municipal authorities (Magistrat)</td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
<td>Decisions on applications for residence permits for the purpose of family reunification are taken by the governors. In practice the governors authorized the district authorities (Bezirksverwaltungsbehörden) or municipal authorities (Magistrat) respectively (in towns with an own statute) to decide on this applications in their name (Sect. 3 § 1 Settlement and Residence Act). This is not a case of a delegation of the competence, but a sheer mandate that does not change the stages of appeal. When deciding on applications for residence permits, the governors or district authorities are bound by instructions of the Ministry of the Interior.</td>
</tr>
<tr>
<td>COMPETENCE CONCERNED:</td>
<td>decisions on family reunification of convention refugees</td>
</tr>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Ministry of the Interior</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>Section III (law), department III/5 (asylum)</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td>Federal Asylum Office (<em>Bundesasylamt</em>), Federal Independent Asylum Senate (<em>Unabhängiger Bundesasylsenat</em>)</td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister):</td>
<td>In opposition to the Federal Asylum Office, which as the authority of first instance is bound by instructions of the Ministry of the Interior, the Federal Independent Asylum Senate as the authority competent to decide upon appeals is an independent tribunal.</td>
</tr>
</tbody>
</table>

| COMPETENCE CONCERNED: | granting of employment permits (*Beschäftigungsbewilligung*), work permits (*Arbeitserlaubnis*) and exemption certificates (*Befreiungsschein*). |
| CENTRAL MINISTRY OF: | Ministry of economy and labour |
| DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY: | Department II/7 |
| OTHER LEVEL OF ADMINISTRATION: | Regional Office (*regionale Geschäftsstelle*) of the Labour Market Service (*Arbeitsmarktservice*); Country Office (*Landesgeschäftsstelle*) of the Labour Market Service |
| IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister): | Applications for employment permits, work permits and exemption certificates are decided upon in first instance by the Regional Office of the Labour Market Service. An appeal against the decisions of this authority may be filed to the Country Office of the Labour Market Service. Both authorities are bound by instructions of the Ministry of economy and labour. |

| COMPETENCE CONCERNED: | investigations of marriages and adoptions of convenience |
| CENTRAL MINISTRY OF: | Ministry of the Interior |
| DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY: | Section II (public security), department II/3 (aliens police and border control) |
| OTHER LEVEL OF ADMINISTRATION: | Aliens police authorities: Security offices, District authorities, Federal Police offices (in towns with an own statute) |
The agendas of the aliens police are exercised by the security authorities. They are bound by instructions of the Ministry of the Interior.

<table>
<thead>
<tr>
<th>Q.4. A.</th>
<th>Has the main regulation foreseen explicitly by the main norm of transposition already been adopted or not:</th>
</tr>
</thead>
<tbody>
<tr>
<td>☒ YES</td>
<td></td>
</tr>
<tr>
<td>☐ NO</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Q.4.B.</th>
<th>If the main norm(s) of transposition foresees the adoption of one or several regulations, indicate if they have all been adopted:</th>
</tr>
</thead>
<tbody>
<tr>
<td>☒ YES</td>
<td></td>
</tr>
<tr>
<td>☐ NO</td>
<td></td>
</tr>
</tbody>
</table>

If NO, please indicate the missing text(s) in the table below

*Please use one line per missing text and duplicate it if necessary*

<table>
<thead>
<tr>
<th>MISSING TEXTS</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>INDICATE HERE THE MISSING TEXTS</em></td>
</tr>
</tbody>
</table>

Add if necessary some explanations (specify in particular if the missing texts are at least under preparation or foreseen in the very near future):
AIM (ARTICLE 1)

The purpose of the Directive is to determine the conditions for the exercise of the right to family reunification. In case C-540/03, the Court of justice recognizes that, in some cases, member States do not have any margin of appreciation to grant the right to family reunification.

Q.5 – Is family reunification considered as a right in your Member State?

☑ OUI
☐ NON

Please explain

According to Sect. 46 § 4 Settlement and Residence Act a settlement permit has to be granted to family members of third country nationals if the following conditions are met: the applicant complies with the general requirements mentioned in Sect. 11 Settlement and Residence Act; the maximum yearly quota for new settlement permits has not been exceeded yet and the sponsor holds a settlement permit “permanent residence EC” (Daueraufenthalt – EG) or “settlement permit – unlimited” (Niederlassungsbewilligung – unbeschränkt) or any other settlement permit granting access to employment if the sponsor has already fulfilled the so called “integration agreement”. The same goes in cases where the sponsor has been granted asylum in Austria but his family members may not be recognised as refugees under Sect. 34 Asylum Act because family life may be realised in another country. (According to Sect. 34 Asylum Act family members of a convention refugee are granted the same status as their sponsor if family life is not possible in another country. For detailed information on family reunification regarding refugees see below Q.61 – Q.68)

Q.5. A – Are there any figures available relating to the exercise of the right to family reunification between 2002 and 2006? If yes, what are the trends, including nationality assessment?

Between 2002 and 2006 the following numbers of new residence permits entitling to permanent settlement in Austria have been granted for the purpose of family reunification:

<table>
<thead>
<tr>
<th>Year</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td>4,777</td>
</tr>
<tr>
<td>2003</td>
<td>6,928 (+627)*</td>
</tr>
<tr>
<td>2004</td>
<td>4,325 (+667)*</td>
</tr>
<tr>
<td>2005</td>
<td>5,719</td>
</tr>
<tr>
<td>2006</td>
<td>3,129</td>
</tr>
</tbody>
</table>

* The numbers in brackets refer to settlement permits issued on humanitarian grounds. These cases concern persons who could not be granted a settlement permit for family reunification because the yearly fixed maximum quota had already been exhausted but were eligible for family reunification due to the right for respect for family life as guaranteed by Art. 8 ECHR. These numbers are disclosed only in the official statistics for the years 2003 and 2004.
These figures are taken from the website of the Austrian Ministry of the Interior: http://www.bmi.gv.at/publikationen.

These numbers do not include family reunification of refugees. Family reunification of sponsors recognised as refugees falls under the asylum system and there is no statistical information available on the number of persons granted family reunification with a sponsor who has been recognised as a convention refugee.

There are no figures available on the nationality of the persons accepted for family reunification. A letter of inquiry to the Ministry of the Interior that is responsible for the execution of the migration law and for these statistics has remained without response. Before the new migration law entered into force on 1 January 2006 family reunification was the only possibility to migrate to Austria for persons who were not highly qualified and therefore welcomed on the Austrian labour market. The legislator strived to restrict family reunification and the instrument used for this purpose was a yearly quota of maximum settlement permits issued for the purpose of family reunification. These quotas were mostly lower than the number of applications and family members therefore had to wait before they were accepted for family reunification for considerable periods of time. The waiting period could be rather long as there were long waiting lists and so the quota for a new year could be exhausted very soon because of the consideration of applications filed in one of the preceding years. Due to this system the numbers of family members accepted for family reunification are primarily expression of the quotas that result from political decisions. It is still too soon to make conclusions on the trends since transposition of the Directive as the new legislation entered into force on 1 January 2006.

**DEFINITIONS (ARTICLE 2)**

**SCOPE (ARTICLE 3)**

The scope of the Directive is defined by article 3. We recall that:
- § 1 "reasonable prospect..." aims at excluding persons residing on a temporary basis (stagiaires, etc...)
- European citizens are excluded (§ 3)
- Comparison with existing legislation is of importance so as to assess the added value of the harmonization process (§ 5)

Q.6. Period of validity of the sponsor’s residence permit:

Q.6. A. Is the period of validity of the sponsor’s residence permit of one year or more according to article 3 § 1 of the Directive?

☑ OUI

☐ NON

Q.2.B. Quote precisely the period enshrined in national law:

Family reunification depends on the type of settlement permit held by the sponsor. According to Sect. 46 § 4 Settlement and Residence Act family reunification has to be granted if the sponsor is holding a settlement permit

---

3 In 2005 94,6 % of the settlement permits available were issued in Austria and in four of the nine countries 100 % of the quota was reached.
“permanent residence – EC” (Daueraufenthalt – EG), a “settlement permit – unlimited” (Niederlassungsbesetzung – unbeschränkt) or any other settlement permit if he/she has already fulfilled the so called “integration agreement”. The settlement permit “permanent residence – EC” is issued for a period of validity of five years, the duration of a “settlement permit – unlimited” and all other settlement permits is limited to twelve months (Sect. 20 § 1 Residence and settlement Act). A shorter period of validity is foreseen only in case that the validity of the settlement permit otherwise would exceed the period of validity of the applicants travel document.

Q.6.C. How does your Member State translate in national law the requirement for the sponsor to have "reasonable prospects of obtaining the right of permanent residence” (a 3 § 1)?

A sponsor is deemed to have reasonable prospects of obtaining the right to permanent residence in Austria for the purpose of Art. 3 § 1 Directive 2003/86/EC, if he/she has either been granted a settlement permit “permanent residence – EC” (Daueraufenthalt – EG) or “settlement permit – unlimited” (Niederlassungsbesetzung – unbeschränkt) or if he holds another settlement permit granting access to employment and has already fulfilled the so called “integration agreement” (see below, Q.56). In these cases the sponsor is regarded as integrated and the refusal of a renewed settlement permit is possible only under restricted preconditions. The residence permits “permanent residence – EC” and “settlement permit – unlimited” are granted only after five years of legal settlement in Austria. These residence permits are issued without temporary limitation and grant access to the labour market without the requirement of another permit. If the sponsor holds one of these residence permits, his/her family members are entitled to a settlement permit according to Sect. 46 § 4 Settlement and Residence Act – the central provision regulating family reunification with sponsors who are third country nationals. If the sponsor holds another, less favourable residence permit, family reunification depends on the fulfilment of the “integration agreement”.

As the Settlement and Residence Act is not applicable to persons who are entitled to stay in Austria due to the Asylum Act (Sect. 1 § 2 No. 1 Settlement and Residence Act), there is a limitation in regard of asylum seekers and persons accepted for subsidiary protection who marry a third country national resident in Austria. These persons are excluded from family reunification as they may not rely on the relevant provisions of the Settlement and Residence Act. While this problem may easily be circumvented by asylum seekers who loose their right to stay in Austria when they leave the Austrian territory, persons accepted for subsidiary protection cannot relinquish their right to sojourn in Austria and therefore have got no possibility to obtain a settlement permit for the purpose of family reunification as long as they are under the subsidiary protection regime. Although the person concerned is entitled to stay in Austria as long as subsidiary protection applies, the refusal of a settlement permit means a significant prejudice that seems not only discriminatory but also problematic under the Directive.

Q.7. – Members of the family concerned:

Q7. A. Are they third country nationals as required by article 3 § 1 of the Directive?
Q.7.B. How has your Member State translated in national law the wording of "whatever status" included in article 3 § 1 of the Directive?

The Austrian legislation has not transposed the formulation “whatever status” in Art. 3 § 1 of the Directive explicitly. The relevant provisions regarding family reunification refer to the definition of “family member” contained in Sect. 2 § 1 No. 9 Settlement and Residence Act or Sect. 2 § 1 No. 22 Asylum Act respectively. Neither these definitions nor the provisions determining the right to family reunification make any distinction regarding the status of the family members.

Q.8 – Did the transposition of the Directive in your Member state breached provisions of international law more favourable to individuals (a 3 § 4)?

☐ OUI

☒ NON

Q.9 – If yes, are those provisions based on:

Q.9.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?

☐ OUI

☒ NON

Specify which provisions

Q.9.B - The European Social Charter of 18 October 1961 (a 3 § 4)?

☐ OUI

☒ NON

Specify which provisions

Q.9.C. The amended European Social Charter of 3 May 1987 (a 3 § 4)?

☐ OUI

☒ NON

Specify which provisions

☐ OUI
☐ NON

Specify which provisions

Q.10 – Does the transposition of the Directive affect national provisions more favourable to individuals (a 3 § 5)?

☐ OUI
☒ NON

If yes, please specify which provisions

**Beneficiaries (Article 4)**

- Article 4 of the Directive contains numerous "may clauses". It is therefore important to pay attention on the way Member States use them and on the legal modalities adopted thereof.

- Article 4 § 1 a) and b) enacts a right to family reunification for some members of the sponsor's family. The Member State does not have any margin of discretion regarding those persons.

- Article 4 § 1 last indent foresee one derogation regarding child over 12 years on the basis of an integration criterion. This is one of the most sensitive questions encompassed by the directive beside the issue of the limit of age in § 6.

- Regarding article 4 § 6, the Court states "It does not matter that the final sentence of the contested provision provides that the Member States which decide to apply the derogation are to authorise the entry and residence of children in respect of whom an application is submitted after they have reached 15 years of age 'on grounds other than family reunification'. The term ‘family reunification’ must be interpreted in the context of the Directive as referring to family reunification in the cases where family reunification is required by the Directive. It cannot be interpreted as prohibiting a Member State which has applied the derogation from authorising the entry and residence of a child in order to enable the child to join his or her parents". (cons. 86) The Court adds " Article 4(6) of the Directive must, moreover, be read in the light of the principles set out in Article 5(5) thereof, which requires the Member States to have due regard to the best interests of minor children, and in Article 17, which requires them to take account of a number of factors, one of which is the person’s family relationships" (cons. 87)

Q.11 – Does your national law recognize the right to family reunification to:

Q.11. A – The sponsor's spouse (a. 4 § 1 a)?
Q.11. B - Minor children of the sponsor and of his/her spouse (a. 4 § 1 b)?

☐ OUI
☐ NON

Q.11.C. Minor children adopted of the sponsor and of his/her spouse (a. 4 § 1 b)?

☐ OUI
☐ NON

Q.11.D. Minor children of the sponsor (a. 4 § 1 c)?

☐ OUI
☐ NON

Q.11. E. If yes, does your national law foresee that the sponsor shall have children custody and children are dependant on him or her?

☐ OUI
☐ NON

Specify if necessary the proofs required

Q.11 F. Minor children adopted of the sponsor (a 4 §1.c) ?

☐ OUI
☐ NON

Q.11. G. If yes:
h. does your national law foresee that the sponsor shall have children custody and children are dependant on him or her?

☐ OUI
☐ NON

Specify if necessary the proofs required

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4 The Settlement and Residence Act does not contain a provision regulating this matter but in practice the authorities require that the sponsor has got children custody.
5 The Settlement and Residence Act does not contain a provision regulating this matter but in practice the authorities require that the sponsor has got children custody.
g.g. Does national law provide that those children shall be 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'?

☐ OUI
☒ NON

Specify if necessary the proofs required

Q.11. H. Minor children of the spouse (a 4 §1.d.)?

☒ OUI
☐ NON

Q.11. I. If yes, does your national law foresee that the spouse shall have children custody and children are dependant on him or her?

☑ OUI
☒ NON

Specify if necessary the proofs required

Q.11. J. Minor children adopted of the spouse (a 4 §1.d )?

☒ OUI
☐ NON

Q.11. K. If yes, does your national law foresee that the spouse shall have children custody and children are dependant on him or her?

☐ OUI
☒ NON

Specify if necessary the proofs required

k.k. Does national law provide that those children shall be 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"?

☐ OUI
☒ NON
Specify if necessary the proofs required

The Settlement and Residence Act does not contain any provisions on the form of adoption. It only states that adoptions that are relied on in the context of residence or settlement permits have to be assessed only on the basis of the provisions of Austrian law (Sect. 2 § 4 No. 2 SRA). The Austrian law (Sect. 179 – Sect. 185 of the General Civil Rights Law and Sect. 86 – Sect. 91 Non-Contentious Proceedings Act) does not contain any provisions on the assessment of adoptions concluded abroad, but as Austria is bound by the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption concluded at The Hague on 29 May 1993, an adoption falling into the scope of this convention has to be assessed on the basis of this convention.

Q.12 – Has your Member State transposed the option opened by article 4 § 1 c:

Q.12.A. To authorise reunification of minor children of the sponsor – including also adopted children – of whom custody is shared (a 4 §1.c)?

☑ OUI
☐ NON

Specify if necessary

The Settlement and Residence Act does not regulate this aspect explicitly. Sect. 2 § 1 No. 9 Settlement and Residence Act defines the following persons as family members for the purpose of family reunification: the spouse and unmarried minor children, including adopted children and stepchildren. As there are no further provisions on the question whether children of the sponsor or the sponsor’s spouse of whom custody is shared are entitled to family reunification, these children have to be regarded as included by the definition of family members entitled to family reunification.

Q.12.B. If yes, has your legislation transposed the condition that the other party sharing custody has given his or her agreement (a 4 §1. c)?

☐ OUI
☑ NON

Specify if necessary

As mentioned above, there are no provisions on this issue in Austrian law. In practice the authorities ask for a letter of agreement of the other partner sharing custody.

Q.13 – Has your Member State transposed the option opened by article 4 § 1 d):

Q.13.A. to authorise reunification of minor children of the spouse – including also adopted children – of whom custody is shared (a 4.1.d. in fine)?
The Settlement and Residence Act does not contain any provision on this issue. The definition of family members entitled to family reunification (Sect. 2 § 1 No. 9) does not mention children of whom custody is shared explicitly. As the definition includes stepchildren of the sponsor without making reference to the matter of custody, the natural and the adopted children of the sponsor’s spouse are entitled to family reunification irrespective of the shared custody.

**Q.13 B.** If yes, has your legislation transposed the condition that the other party sharing custody has given his or her agreement (a 4. 1.d) ?

- OUI
- NON

Specify if necessary

The requirement of the agreement of the other parent is not explicitly foreseen in Austrian law but according to information provided by NGOs the organisations supporting aliens in family reunification proceedings in general try to obtain a written agreement of the other parent.

**Q.14** – In any case referred to in questions 7 to 9, is the age of the minor children below the age of majority set up by the law of your Member State (a.4 §1, second indent)?

- OUI
- NON

If yes, indicate the age required

**Q.15** – In any case referred to in questions 7 to 9, has the prohibition of marriage of minor children been transposed (a.4 §1, second indent)?

- OUI
- NON

If not, explain Si non, expliquez

**Q.16** – Is the derogation set up in article 4 § 1 last indent relating to the conditions for integration of children over 12 years arrived independently from the rest of the family used by your Member State?

- OUI
- NON
How the criterion "arrives independently from the rest of his/her family" has been transposed in your national legislation?

**Q.17** – If yes, did this integration condition already exist in your national legislation before the date of transposition of the Directive?

- [ ] OUI
- [ ] NON

**Q.18** – Describe briefly the content of this condition, the date of its creation and the conditions of its examination

**Q.19** – Are the children of refugees required to an integration test by your Member State (in contradiction with article 10 § 1)?

- [ ] OUI
- [ ] NON

If yes, explain

**Q.20** – Does your Member State authorise:

**Q.20 A** – Reunification of first-degree relatives in the direct ascending line of the sponsor (a 4§2 a)?

- [ ] OUI
- [ ] NON

**Q.20 B** – If yes, shall they be dependant and not enjoy proper family support in the country of origin?

- [ ] OUI
- [ ] NON

How each of those criterions is transposed and checked?

**Q.20.C.** Reunification of first-degree relatives in the direct ascending line of the spouse (a 4§2 a)?

- [ ] OUI
- [ ] NON

**Q.20.D.** If yes, shall they be dependant and not enjoy proper family support in the country of origin?

- [ ] OUI
How each of those criterions is transposed and checked?

Q.20.E. Reunification of adult unmarried children of the sponsor? (a 4§2 b)?

☐ OUI
☒ NON

If necessary, explain how this procedure is organised

Q.20.F. If yes, does the national legislation impose that those adult unmarried children of the sponsor are objectively unable to provide for their own needs on account of their state of health (a 4 §2 b)?

☐ OUI
☒ NON

If necessary, specify how each of those criterions ("objectively" and "unable to provide for their own needs") is transposed and checked?

Q.20. G. Does your Member State authorise reunification of adult unmarried children of the spouse (a 4§2 b)?

☐ OUI
☒ NON

If necessary, specify how this condition is assessed

Q.20. H. If yes, does the national legislation impose that those adult unmarried children of the sponsor are objectively unable to provide for their own needs on account of their state of health (a 4 §2 b)?

☐ OUI
☒ NON

If necessary, specify how each of those criterions ("objectively" and "unable to provide for their own needs") is transposed and checked?

Q.20. I. Did your Member state use the by law or regulation norms to implement article 4 § 2 a et b?

☐ OUI
☒ NON
Q.21 – Does your Member State authorise reunification of the unmarried partner of the sponsor, being a third country national (a 4 §3)?

☐ OUI
☒ NON

Q.22 – If yes:

Q.22 A – This partnership shall be based on a duly attested stable long term relationship?

☐ OUI
☐ NON

If yes, specify how your Member State assess this situation

Q.22 B – This partnership shall be registered?

☐ OUI
☐ NON

Q.23 – Does your national law consider the registered partner as the husband/spouse (a 4 §3 alinéa 2)?

☐ OUI
☒ NON

Q.24 – Does your Member State authorise:

Q.24. A – Reunification of minor children of the partner, including adopted children (a 4§3)?

☐ OUI
☒ NON

Q. 24. B – Reunification of adult unmarried children of the partner, including adopted children (a 4§3)?

☐ OUI
☒ NON

Q.25 – Does your Member State allow reunification of adult unmarried children who are objectively unable to provide for their own needs on account of their state of health (a 4§3)?

☐ OUI
If yes, specify how the conditions, and more particularly the "objectivity", are assessed.

Q.26 – Did your Member state use the by law or regulation norms to implement article 4 § 3?

Q.27 – Is the prohibition of polygamous marriage enshrined in your national legislation (a. 4§4)?

☐ OUI
☐ NON

Q.28 – Does your Member State limit family reunification of minor children of a further spouse and the sponsor (article 4§4 dernier alinéa,)?

☐ OUI
☐ NON

Q.29 – Does your Member State use the option set up by article 4 § 5 requiring the sponsor and his/her spouse to be of a minimum age of 21 years old before reunification?

☐ OUI
☐ NON

Q.30 – If yes,

Q.30 A – What is the age required?

According to Sect. 2 § 1 No. 9 Settlement and Residence Act spouses have to be at least 18 years of age to be entitled to family reunification. There is no minimum age required of the sponsor.

Q.30 B – Is the derogation founded on integration criteria and/or prevention of forced marriage?

According to the explanatory report to the Settlement and Residence Act, this provision is aimed at the prevention of forced marriages of minor persons.

Q.31 – Does your Member State use the derogation of article 4 § 6 by requesting that the applications concerning family reunification of minor children have to be submitted before the age of 15?

☐ OUI
☐ NON
Explain

Austrian law does not provide any special rules concerning children aged over 15 years. As the law does not make a distinction between children under the age of 15 years on the one hand and children aged between 15 and 18 years, all minor children are treated the same way.

With regard to children aged over 15 years, the Austrian Aliens Act in force until 31 December 2005 (Fremdengesetz 1997) made a distinction between sponsors who where residing in Austria before 1 January 1998 and aliens who entered Austria after that date. In respect of sponsors who came to Austria before 1998, family reunification was limited to their spouse and to children who filed an application for family reunification before they reached the age of 15 (Sect. 21 § 3 Aliens Act). As Austrian law therefore provided that an application for family reunification of minor children had to be filed before the child reached the age of 15 years only in respect of sponsors who took residence in Austria before 1998, Austria would have been allowed to make use of the exception provided for in Art. 4 § 6 of the Directive only in this narrow field of application, that meanwhile has lost its practical importance.

Q.32 – If yes, was it provided by existing legislation on the date of implementation of the directive?

Q.33 – If the application is not introduced before the age of 15, do Member States authorise entry and residence on grounds other than family reunification?

☐ OUI
☒ NON

Which grounds and which conditions?

As mentioned above, also children aged over 15 years may apply for family reunification.

PROCEDURE (ARTICLE 5)

We draw attention on the major importance given by the Court of justice regarding § 5 relating to the best interest of minor children.

Q.34 – Did your Member State institute a procedure regarding family reunification (a 5 §1)?

☒ OUI
☐ NON

Q.35 – If yes,

Q.35. A – Which authorities are in charge of this issue?

The decision on applications for family reunification falls into the competences of the authorities generally in charge with the execution of the aliens law. Therefore the competent authority is the governor (Landeshauptmann) of the
country (*Bundesland*) where the person concerned resides or is willing to reside (Sect. 3 and Sect. 4 Settlement and Residence Act). The governors may authorize the district authorities (*Bezirksverwaltungsbehörden*) or municipal authorities (*Magistrat*) respectively (in towns with an own statute) to decide on this applications in their name (Sect. 3 § 1 Settlement and Residence Act). This is not a case of a delegation of the competence, but a sheer mandate that does not change the stages of appeal. In practise, the governors of all nine Austrian countries made use of this possibility. Therefore the district authorities decide on applications for settlement permits.

First applications for family reunification in general have to be filed at the Austrian consulate or embassy in the country of origin. This does not alter the competence to decide on the merits, as the consulate has to forward the application to the competent authority in Austria as long as it does not reject it because it apparently does not comply with the formal requirements (Sect. 22 Settlement and Residence Act).

Against a negative decision of first instance, an appeal may be filed to the Ministry of the Interior (Sect. 3 § 2 Settlement and Residence Act). The Ministry of the Interior has got full jurisdiction. There is no ordinary appeal against the decision of the Ministry of Interior, but only the possibility of a complaint to the Administrative Court or the Constitutional Court.

**Q.35. B** – Are NGO's associated to this procedure?

- [ ] OUI
- [x] NON

If yes, describe the procedure

**Q.35. C** – Is the application submitted by the sponsor or by family members?

The application has to be filed by the family member willing to join the sponsor in Austria. The sponsor is not a party of these proceedings. Minor children are represented by their parents or legal guardians in the proceedings.

**Q.35. D** – Is this procedure exclusive from other possibilities to grant family reunification?

- [ ] OUI
- [x] NON

If other procedural possibilities exist, please describe them

In principle the procedure described above is the only procedure available. There are only some deviations in exceptional circumstances. According to Sect. 73 SRA a settlement permit may be granted even if not all the usual requirements are fulfilled if there are humanitarian reasons calling for such an exception. For the same reasons it is possible to allow the submission of the application and the awaiting of the outcome of the proceedings in Austria (Sect. 74 SRA). In general such exceptions may be granted only ex officio but in respect of family reunification there is a right to apply for settlement permits on
humanitarian reasons. In practice this proceedings are a way to solve cases where the requirements for family reunification are not fulfilled but the reunification is required by Art. 8 ECHR.

Q. 35. E – Was this procedure existing before the adoption of Directive 2003/86?

☑ OUI
☐ NON

Q.36 – Which documentary evidence are required to prove (a 5 §2):
Sect. 7 of the Regulation on Settlement and Residence provides which documents have to be submitted to the authority to prove that the preconditions for the granting of a residence or settlement permit are fulfilled.

Q.36. A – Family relationships according to article 4?
According to Sect. 7 § 1 No. 2 and No. 4 Regulation on Settlement and Residence, family relationships have to be proven by a birth certificate, certificate of marriage (if relevant certificate of divorce), certificate of adoption or – if relevant – further documents proving other family relationships.

Q.36. B – Accommodation conditions laid down in article 7?
Sect. 7 § 1 No. 5 Regulation on Settlement and Residence requires documentary evidence on a legal title to an accommodation regarded as normal for a comparable family in the same region in form of a contract of tenancy or a property title. If the aliens authority has got doubts whether the accommodation may be regarded as normal for a comparable family in the same region (especially regarding size and number of rooms), the authority may inspect the apartment to ascertain whether the conditions are met.

Q.36. C – Sickness insurance conditions?
The existence of a sickness insurance covering all risks in Austria may be proven especially by submitting an insurance policy or – in case that the family member will be included in the compulsory health insurance of the sponsor – a certification of this inclusion issued by the competent health insurance authority.

Q.36. D – Certified copies of family member(s)’ travel documents?
Although not mentioned explicitly in Sect. 7 of the Regulation on Settlement and Residence, the authorities demand that applications for family reunification are supported not only by a copy of the applicant’s own travel document, but also of the family members’ travel documents. According to Sect. 6 of the Regulation on Settlement and Residence, certified translations of all documents not formulated in German language have to be submitted.

Q.37 – Is the possibility foreseen to proceed to:

Interviews:

☑ OUI
☐ NON
Investigations:

☐ YES
☐ NO

If yes, describe them briefly

The General Administrative Procedures Act (Allgemeines Verwaltungsverfahrensgesetz) that is also applicable in proceedings concerning family reunification is determined by the principle of substantive truth and the principle of ex officio proceedings. According to these principles generally governing administrative procedures the authority has to take all required steps to establish the facts underlying its decision. In principle the authority is free in determining which evidence should be taken (Sect. 46 General Administrative Procedures Act). Aside from interviewing the applicant the authority usually also interviews the sponsor and other family members whose position might be relevant for the decision. Another important form of evidence are documents on identity and family relations (e.g. certificate of marriage or adoption). Sometimes the authority also inspects the accommodation to convince itself of the fulfilment of the accommodation requirement. Aside of these general principles on investigations Sect. 29 Settlement and Residence Act provides for DNA-tests to prove family relations. These tests must not be ordered by the authority but are only thought as a possibility for the applicant to prove a family relationship that may not be proved by reliable documents.

Q.38 – When examining an application concerning the unmarried partner of the sponsor, which evidences are taken into account by Member States on the basis of national law to prove family relationship (article 5§2 dernier alinea) ?

Austrian law does not provide for family reunification regarding unmarried partners but limits it to the married spouse. Therefore there is no reason for the authorities to examine whether a real family relationship exists with an unmarried partner.

Q.38. A – Existence of family ties and other elements such as a common child?

☐ YES
☐ NO

Specify

Q.38. B - Previous cohabitation?

☐ YES
☐ NO

Q.38. C - Registration of a partnership
Q.38. D - Any other reliable means of proof foreseen in national law?

☐ OUI
☐ NON

If yes, specify which ones:

Q.39 – Are family members obliged to reside outside the territory of the Member State while the application is being examined (a5 §3) ?

☒ OUI

According to Sect. 21 § 1 Settlement and Residence Act, family members in general have to apply for a settlement permit before entering Austria. The application has to be submitted to the competent Austrian authority in the country of origin, i.e. the consulate or embassy (consular office). The entry into Austrian territory is only allowed after the settlement permit has been granted, the family member concerned therefore has to await the decision in his/her country of residence.

☐ NON

Is this obligation sanctioned and how?

The application has to be submitted at the Austrian consulate in the country of origin (Sect. 21 § 1 Settlement and Residence Act). According to Sect. 19 § 1 Settlement and Residence Act the applicant has to appear before the consulate personally to submit her/his application and the decision is only delivered to the applicants address in her/his country of origin. The consulates do not accept applications not submitted personally. According to Sect. 19 § 7 Settlement and Residence Act the proceedings may be discontinued if a delivery of the decision to the applicant repeatedly fails.

Q.40 – If the answer is yes, is a derogation organised according to article 5 § 3 second indent?

☒ OUI

☐ NON

Please specify

According to Sect. 21 § 2 Settlement and Residence Act the following groups of aliens may file their application and await the outcome of the proceedings in Austria:

- aliens who have been entitled to reside in Austria (irrespective of whether they needed a settlement permit under the Austrian aliens law or not)
• aliens who have been Austrian citizens or citizens of a member state of the EEC but have lost their citizenship
• newborn children under the age of six months
• aliens who may enter Austria without a visa, but only during their authorized sojourn
• aliens who apply for the special settlement permit reserved to scientists (Art. 67 Settlement and Residence Act)

All these groups comprise aliens who are already staying lawfully in Austria and who can therefore not be obliged to leave Austria while their application for family reunification is pending. In practice this exception is relevant for people who did not need a settlement permit in Austria so far or who want to change the type of settlement permit granted.

Another exception is provided for in Art. 74 Settlement and Residence Act: in exceptional circumstances the competent authority may accept an application filed in Austria, if there are humanitarian reasons justifying the further sojourn in Austria. According to the case-law of the Constitutional Court and the Administrative Court this is especially the case when a right to family reunification can be derived from Art. 8 ECHR (Constitutional Court G 119, 120/03, 8 October 2003).

Q.41 – Does your national legislation include a maximum period of 9 month to answer to the application by way of written notification (a5 §4)?

☒ OUI

☐ NON

If necessary, please specify

In administrative proceedings decision generally have to be taken within six months from the application. If the competent authority does not comply with this requirement, the applicant may request the delegation of the case to the superior authority (Sect. 73 General Administrative Procedures Act – Allgemeines Verwaltungsverfahrensgesetz, AVG). If the upper authority is dilatory too, an application to the Administrative Court is admissible (Sect. 27 Administrative Court Act – Verwaltungsgerichtshofgesetz, VwGG).

In respect of applications for family reunification, there are special rules regarding the time limits for the decisions. These exceptions are necessary, because family reunification in most cases depends on a yearly maximum quota of settlement permits granted. If all requirements are met by an applicant but the settlement permit cannot be granted because the quota has already been exhausted, the application may not be rejected but the authority has to postpone the decision until a place in the quota is available in one of the subsequent years. According to Sect. 12 § 7 Settlement and Residence Act the general provisions on the time limits mentioned above (Sect. 73 General Administrative Procedures Act, Sect. 27 Administrative Court Act) are not applicable in this case. If the decision on the application is postponed, the applicant has to be notified about this postponement in form of a formal decision that also informs the applicant about his ranking on the waiting list. This decision has to be taken within six months according to the general rules applying in administrative procedures (see above).
Q.42 – This time limit can be extended (a 5 §4 alinea 2) ?

☐ OUI
☒ NON For explanation see above (Q. 41).

Q.43 – If yes,

Q.43. A – Because of the complexity of the examination of the application?

☐ OUI
☐ NON

If yes, please specify

Q.43. B – What is the length of the extension?

Q.44 – If no decision is taken by the end of the 9 months period provided, what are the consequences for the applicant?

See above (Q. 41).

Q.45 – Is the decision rejecting the application notified? Does this written notification contain the reasons of rejection?

☒ OUI
☐ NON

Specify if only one condition is not required

If the application for family reunification may not be accepted only because the maximum quota of new residence permits fixed annually has already been exceeded, the authority may not reject the application but has to postpone the decision until a place in the quota is available in one of the subsequent years. In these cases the applicant has to be notified formally about his/her place on the waiting list (Sect. 12 § 7 Settlement and Residence Act).

Q.46 – How is the best interest of minor children taken into account by your Member State’s legislation and authorities during examination of the application (article 5§5) ?

Austrian legislation does not explicitly provide that the best interest of minor children has to be taken into account during examination of an application for family reunification. According to information provided by NGOs active in the legal support of migrants the best interests of the child are often not regarded in a sufficient way by the authorities.

Austria has ratified the New York Convention on the Rights of the Child but as this convention has not been awarded direct applicability, parties of family reunification proceedings are not able to rely on it. Therefore the mere ratification of the New York Convention cannot be regarded as sufficient transposition of Art. 5 § 5 of the Directive.
CONDITIONS REQUIRED (ARTICLES 6 AND OTHERS)

- Questions relating to accommodation and resources will be carefully examined to assess if Member States use them, either as a migration tool or as an integration tool.

- The same assessment applies regarding the option to set up a period of lawfully residence not exceeding two years before applying for family reunification.

- According to article 8, the Court of justice states: "That provision does not therefore have the effect of precluding any family reunification, but preserves a limited margin of appreciation for the Member States by permitting them to make sure that family reunification will take place in favourable conditions, after the sponsor has been residing in the host State for a period sufficiently long for it to be assumed that the family members will settle down well and display a certain level of integration. Accordingly, the fact that a Member State takes those factors into account and the power to defer family reunification for two or, as the case may be, three years do not run counter to the right to respect for family rights set out in particular in Article 8 of the ECHR as interpreted by the European Court of Human Rights.

- "It should, however, be remembered that, as is apparent from Article 17 of the Directive, duration of residence in the Member State is only one of the factors which must be taken into account by the Member State when considering an application and that a waiting period cannot be imposed without taking into account, in specific cases, all the relevant factors" (cons. 99). "The same is true of the criterion of the Member State’s reception capacity, which may be one of the factors taken into account when considering an application, but cannot be interpreted as authorising any quota system or a three-year waiting period imposed without regard to the particular circumstances of specific cases. Analysis of all the factors, as prescribed in Article 17 of the Directive, does not allow just this one factor to be taken into account and requires genuine examination of reception capacity at the time of the application" (cons. 100).

Q.47 – Can public policy, public security or public health grounds be taken into account to (a 6 §§1 et 2):

Q.47. A – Reject an application for family reunification?

☑ OUI

☐ NON

If yes, which ones?

Sect. 11 Settlement and Residence Act provides for general requirements that have to be fulfilled by any alien who applies for a settlement permit irrespective of whether the person concerned applies for family reunification or any other settlement permit. According to Sect. 11 § 2 No. 1 Settlement and Residence Act a settlement permit may only be granted if the applicant’s sojourn in Austria does not conflict public interests. Sect. 11 § 4 Settlement and Residence Act specifies under which circumstances this is the case. According to this provision, the sojourn is contrary to public interest, when it
either threatens public order or public health or if the person concerned has a terrorist background. The latter exclusion clause is defined as close connections to extremist or terrorist groups (if with regard to their structures or future prospects extremist or terrorist activities cannot be ruled out). As the explanatory report states, the sojourn of an alien constitutes a threat to public order or security when there are reasons to assume that the person concerned is opposed to the fundamental values common to democratic states and their societies and will try to convince other people of these opinions.\(^6\)

In respect of public health, Austrian immigration law provides that a person applying for a settlement permit has to submit a medical certificate stating that the applicant does not suffer from certain heavy diseases mentioned in Sect. 23 Aliens Police Act if the applicant has been in a country where a high risk of these diseases exists within the last six months. The countries concerned have to be listed in a regulation by the Ministry of health. Up to now, no such regulation has been set into force.

Q.47. B – Withdraw an application for family reunification?

☑️ OUI
☐ NON

If necessary, please specify

According to Sect. 60 Aliens Police Act a residence ban may by imposed if there are facts justifying the assumption that the further sojourn of the alien concerned would endanger public order or public security or conflict other public interests mentioned in Art. 8 § 2 ECHR.

Q.47. C – Refuse to renew a family member's residence permit?

☑️ OUI
☐ NON

If necessary, please specify

The general requirements for the granting of a settlement permit provided for by Sect. 11 Settlement and Residence Act also must be fulfilled in case of an application for a renewal of a settlement permit issued for the purpose of family reunification. Therefore public policy and public security grounds are taken into account in regard of a renewal of a settlement permit in the same way as in regard of the first application. The requirement of providing a health certificate does not apply in case of a renewal because the person concerned has already entered Austria and therefore bears no risk of bringing in infectious deceases to Austria.

Q.48 – Does national legislation take into account:

Q.48. A – The severity or type of offence against public policy or public security?

\(^6\) Explanatory report to the draft for the Settlement and Residence Act (see annex), Art. 11 § 4.
Q.48. B – The solidity of family relationships regarding article 17 of the Directive?

☑ OUI
☐ NON

If necessary, please specify

According to Sect. 11 § 3 Settlement and Residence Act, a settlement permit may also be issued or renewed despite the non-compliance with the general requirements mentioned in Sect. 11 § 2 No. 1 to No. 6 if this is necessary for the maintenance of private or family life for the purpose of Art. 8 ECHR. Therefore a settlement permit must not be withdrawn or has to be renewed respectively if otherwise there would be an unjustified interference with private or family life of the persons concerned. In connection with the proceedings on applications for a renewal Sect. 24 § 3 Settlement and Residence Act expressly states that the renewal must not be refused if an expulsion would be impermissible.

Sect. 66 Aliens Police Act contains a general provision on respect for private and family life. Therefore an expulsion constituting an interference with private or family life of the persons concerned is admissible only as long as it is justified under Art. 8 § 2 ECHR. As Sect. 60 Aliens Police Act refers to Sect. 66 Aliens Police Act, the same goes for residence bans. Therefore a settlement permit has to be renewed or must not be withdrawn if the duty of the person concerned to leave Austria would be incompatible with his/her rights under Art. 8 ECHR.

These provisions on respect for private and family life have already existed before Directive 2003/86/EC came into force. They are conditioned rather by Art. 8 ECHR. It seems that the Austrian legislator did not see an instigation to a particular implementation of Art. 17 Directive 2003/86/EC as this provision does not contain any stricter requirements than Art. 8 ECHR.

Q.49 – Does your Member State withdraw the residence permit or remove the third country national on the sole ground of illness or disability suffered after the issue of the residence permit (a 6 §3)?

☐ OUI
☑ NON

Q.50 – Are accommodation conditions required from the applicant (a7 §1a)?

☑ OUI
☐ NON

Q.51 – If yes:
**Q.51. A** – What are those conditions?

According to Sect. 11 § 2 No. 2 Settlement and Residence Act the applicant has to submit evidence that he or she has a legal title to accommodation regarded as normal for a comparable family in the same region (e.g. contract of tenancy, property title). Therefore there is no fixed minimum surface determined in square meters. Whether an accommodation can be regarded as sufficient for the family depends on what is usual in the region concerned. What is decisive is the standard of living of families comparable in size in the part of town or the village where the accommodation is located. This may vary significantly within Austria and the authorities do not apply a uniform practice.

Aliens who want to bring their family members to Austria are confronted with a practical problem. They are required to submit evidence of a legal title to an accommodation suitable for the whole family already with the application for family reunification, although the family members often are allowed to enter Austria only after a considerable waiting period. That means the applicant has to enter into a tenancy agreement for a bigger (and therefore more expensive) flat months before the accommodation is in fact needed for the family.

**Q.51. B** – How are they assessed?

There is no uniform practice in regard of the assessment of the required accommodation. While some authorities tend to request a fixed size in square meters others take into account the number of rooms available. As the accommodation has to be regarded as normal for a comparable family in the same region, the authority has to take into account the circumstances of the individual case and especially the usual standards of accommodation of Austrian families in the neighbourhood of the applicant’s accommodation.

The authorities request prove for the accommodation in form of the appropriate documents (e.g. contract of tenancy, property title). Some authorities also take evidence in form of inspections of the accommodation.

**Q.51 C** – Are they comparable to the conditions required to a normal family living in the same region?

☑ OUI
☐ NON

If not, please specify the differences

**Q.52** – Is a sickness insurance required from the applicant (a. 7 §1b) ?

☑ OUI
☐ NON

**Q.53** – Are stable resources required (a7 §1c) ?

☑ OUI
☐ NON
Specify their nature and content

According to Sect. 11 § 2 No. 4 Settlement and Residence Act a settlement permit may only be granted if the sojourn of the person concerned will not result in a financial burden for a territorial authority in Austria. Sect. 11 § 5 Settlement and Residence Act contains a more precise definition of the income requirement. Accordingly a financial burden for Austria may not be expected when the alien has “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” and which correspond to the amount mentioned in Sect. 293 General Social Insurance Act (Allgemeines Sozialversicherungsgesetz, ASVG).

Q.54 – How is the condition “sufficient” assessed by your Member State? Is it in comparison with national wages?

The condition “sufficient” is not assessed in comparison with national wages but in comparison to the income limits that must not be reached for the purpose of social assistance. Sect. 11 § 5 Settlement and Residence Act refers to Sect. 293 General Social Insurance Act. This provision provides for a maximum amount of retirement pension that entitles to social welfare allowance. According to Sect. 293 General Social Insurance Act, the net monthly income has to amount to at least EUR 1055,90 for a married couple plus EUR 72,33 for each minor child. If the couple is not married, the income must reach the amount of EUR 690,- per person. The costs of accommodation have to be added to this minimum income, but under deduction of a flat sum of EUR 231,45. If for example a married couple has to pay a monthly rent of EUR 500,- for accommodation, a monthly net income of EUR 1,324,45 is required (1,055,90 plus 500,- for rent minus the flat sum of 231,45). If the couple has got one minor child, the amount increases to EUR 1,396,78. This sum of additional EUR 72,33 per child is also applicable with regard to major children who are not yet economically independent from their parents. Social assistance payments cannot be regarded as income.

Q.55 – Are integration criterions required to allow family reunification (a 7 §2)?

☑ OUI
☐ NON

Q.56 – If yes:

Q.56. A – What are those criterions?

According to Sect. 11 § 2 No. 6 Settlement and Residence Act a settlement permit may only be extended when the person concerned has fulfilled integration measures provided for in Sect. 14 Settlement and Residence Act. Also family members have to fulfil the so called “integration agreement” after their entry into Austria. The “integration agreement” consists of two modules:

- Module 1 serves to learn to read and write. This alphabetisation course comprises 75 units (a 45 minutes). Module 1 has to be completed within
twelve months from the entry into Austria. Completing this course is a precondition for taking part in module 2.

- Module 2 serves the learning of the German language and contains also elements of political education. The course provided for comprises 300 units and ends with a written examination. This module has to be completed within five years.

  Details concerning the “integration agreement” are laid down in a separate regulation (Integrationsvereinbarungs-Verordnung, Federal Law Gazette 2005, No. 449).

**Q.56. B** – Do they apply indistinctly to all potential beneficiaries of reunification? (Spouse, dependant people, etc.)

The provisions on the “integration agreement” apply to all family members accepted for family reunification. The only persons excepted are children under the age of nine years in the moment of their entry into Austria as well as elderly people or sick people, who may not be demanded to fulfil the agreement are not obliged to fulfil the “integration agreement” (Sect. 14 § 4 Settlement and Residence Act).

**Q.56. C** – How are they evaluated by your Member State?

In general the “integration agreement” is fulfilled by getting through the courses offered, but it may also be fulfilled by providing evidence for the knowledge and skills required. Therefore module 1 may be regarded as fulfilled when the person concerned proves that he/she can read and write (e.g. in form of school reports). The accomplishment of module 2 can also be established by proving the knowledge of the German language through other evidence such as school reports showing a sufficient knowledge of German (Sect. 14 § 5 Settlement and Residence Act). This provision aims at people who visited school at least in part in Austria or who learned German in school in their home country.

**Q.56. D** – Are refugees and their family members required to fulfil them (a 7 §2, second indent)?

☐ OUI
☒ NON

**Q.57** – Is a minimal period of lawful reside is required before reunification (a 8 §1)?

☐ OUI
☒ NON

**Q. 58** – Does this period exceed two years?

Please specify
Q.59 – Does your Member State apply the derogation set up by article 8 § 2 allowing Member States to impose a waiting period of maximum three years due to reception capacities between the submission of the application and the issuance of a residence permit?

☑️ OUI

☐ NON

Please specify

Austrian legislation does not explicitly provide for a waiting period before an application for family reunification can be filed or before family reunification can be accepted, but nevertheless applicants in practice have to wait for substantial periods before family reunification is granted because only a limited number of settlement permits may be issued every year. The number of new settlement permits that may be granted in each of the Austrian countries (Bundesländer) and in sum is fixed by the government each year. (The regulation for 2007 provides for a total of 6,500 permits, 4,540 of these are dedicated for family reunification within the meaning of Sect. 46 § 4 Settlement and Residence Act.). If this maximum has already been reached at the time of the application or in the moment of the decision, the authority must not dismiss the application, but has to suspend the proceedings until the quota for one of the subsequent years allows a positive decision. That means the alien concerned has to await a decision until the settlement permit may be granted due to a new contingent in one of the following years. As the quota usually is lower than the number of applications, the persons concerned may have to wait for several years. This system has been subject to harsh criticism by human rights groups. In 2003 the Constitutional Court decided that the application of the system of fixed quotas in the field of family reunification was unconstitutional because it did not allow any exceptions if family reunification was indicated by Art. 8 ECHR (VfGH G 119, 120/03, 8 October 2003). In reply to this judgement and the Directive the legislation in force since 1 January 2006 provides for a maximum waiting period of three years. According to Sect. 12 § 7 last sentence Settlement and Residence Act three years after the application was filed, a settlement permit for the purpose of family reunification has to be granted regardless of the quota.

Q.60 – If yes, did this derogation exist in national law before the 22nd of September 2003?

☑️ OUI

☐ NON

FAMILY REUNIFICATION OF REFUGEES

The legal regime applicable to refugees derogates from the one applicable to family reunification. The scope of those derogations (minimal lawful residence, members of the family, accommodation requirements) shall be assessed on the basis of national law.
Preliminary remark:
The Austrian Asylum Act provides for a particular system of family reunification concerning Convention refugees and persons granted subsidiary protection. The applicable provisions differ significantly from the usual system regulated in the Settlement and Residence Act. In opposition to the general definition of family relationship for the purpose of family reunification in Sect. 2 § 1 No. 9 Settlement and Residence Act, the definition of family members of convention refugees and persons granted temporary protection entitled to family reunification in Sect. 2 § 1 No. 22 Asylum Act comprises also parents of minor children. According to Sect. 34 Asylum Act family members of Convention refugees and persons granted subsidiary protection are granted the same status of international protection if the continuation of family life for the purpose of Art. 8 ECHR is not possible in any other country. If there is a possibility to continue family life in another country and Sect. 34 Asylum Act therefore is not applicable, the general system of family reunification provided for in Sect. 46 Settlement and Residence Act may apply. In this case the general preconditions have to be met.

Q.61 – Does your Member State allow family reunification of refugees on the basis of Directive 2003/86 (a 9 §1) ?

☑️ OUI
☐ NON

Q.62 – Is this right limited to family relationships predating the entry on the territory (a 9 §2)?

☑️ OUI
☐ NON

Q.63 – Does your Member State allow family reunification of family Members not quoted in article 4 of the Directive (a 10 §2) ?

☐ OUI
☒ NON

Which members of the family and under which conditions?

Q.64 – According to the specific case of unaccompanied minor refugees, does your Member State authorise family reunification of first degree relatives in the direct ascending line without applying the conditions laid down in article 4 § 2 (a10 §3 a) ?

☑️ OUI
☐ NON

What conditions are required?

According to Sect. 34 § 2 Asylum Act, the parents of an unaccompanied minor who has been recognised as a convention refugee will be granted the same status as their child. The conditions laid down in Art. 4 § 2 of the Directive don’t have to be met as according to Sect. 34 § 2 Asylum Act the only
preconditions for family reunification of persons granted refugee status under the Geneva Convention are the family relationship defined in Sect. 2 § 22 Asylum Act and the impossibility to continue family life in another country.

**Q. 65** – Does your Member State authorise entry and residence of the legal guardian or any member of the family where the unaccompanied minor refugee has no relatives in the direct ascending line or such relatives cannot be traced (a10 §3 b) ?

☐ OUI
☒ NON

If yes, please specify who the member of the family targeted is and which proofs are required to prove family ties?

**Q. 66** – Does your Member State take into account other evidence of family relationship where the refugee cannot provide official evidence (a 11 §2) ?

☒ OUI
☐ NON

Which ones?
If the family relationship cannot be proven by reliable documents, the authority has to give the applicant the opportunity to prove the relationship by a DNA-test. According to Sect. 29 Settlement and Residence Act, the authority has to inform the applicant about the opportunity, but the applicant has to pay the necessary test. If the applicant refuses to undergo such a DNA-test, this refusal must not be taken as evidence against the existence of the family relationship. As the parliamentary explanations state, DNA-tests must not be used to control the existence of a proved family relationship.

**Q. 67** – Does the examination of the refugee application take into account their specific situation:

**Q.67. A** – Are proofs regarding accommodation conditions, sickness insurance or resources required (a 12 §1)?

☐ OUI
☒ NON

If yes, are those requirements comparable to those imposed to other third country nationals?

**Q.67. B** – If one of the person concerned (sponsor or family member) has special links with a third country within which reunification is possible, does your member state require those proofs according to article 12 § 1 second indent.

☒ OUI
If necessary specify

If there is a possibility to continue family life in a third country, the family members of a sponsor who has been recognised as a Convention refugee are not granted international protection, but according to Sect. 46 § 4 No. 4 lit. d Settlement and Residence Act may apply for family reunification under the general regime of the Settlement and Residence Act. In this case, the general preconditions regarding accommodation, health insurance and income have to be met.

Q.67. C – If a refugee has introduced its application after a period of three months, does your Member State require the refugee to meet the conditions or one of them (accommodation, sickness insurance, resources (a 12 §1 alinea 3)?

☐ OUI
☐ NON

If yes, which ones?

Q.68 – Does your Member State apply the prohibition to impose a residence condition before reunification (a 12 §2)?

☒ OUI
☐ NON

If not, what is the length of this period? Is it different from the one normally applied?

Exercise of the Right to Family Reunification

The granting of an autonomous residence permit is one of the most sensitive issues of this part of the Directive.

Q.69 – Is entry and residence facilitated by your Member State, as soon as the application for family reunification has been accepted, including the issue of obtaining visas (a13 §1)?

☒ OUI
☐ NON

If yes, how?

As soon as an application for family reunification filed in the country of origin has been accepted, the authority has to notify the decision to the applicant via the consulate. According to Sect. 23 § 1 Settlement and Residence Act the authority has to order the consulate to issue the required visa. However, this does not mean that the visa is issued automatically. The consulate has to advice the family member on the requirement to apply for a “visa – D” (Sect. 20 § 1 No. 4 Aliens Police Act). This type of visa entitles the holder to a single entry
to Austria. The family member has to apply for the visa within three months of the notification; otherwise the proceedings will be discontinued.

As there are no special provisions with regard to the granting of this visa to persons accepted for family reunification, the family member has to fulfil the general requirements (Sect. 21 Aliens Police Act) and the usual fees (€ 43,-) are to be paid. After the entry into Austria the applicant is required to pick up the settlement permit personally at the issuing authority (i.e. the district authority of the place where she/he will take residence). If the applicant fails to pick up the residence permit within six months from the notification it becomes invalid and the proceedings are discontinued.

As this system of issuing visa to family members accepted for family reunification corresponds exactly to the general procedure, Austria does in fact not grant the family member any facility for obtaining the requisite visas.

In practice this system gives rise to problems for the persons concerned as they are required to appear at the consulate at least two times and therefore have to bear travel costs to reach the consulates that are sometimes rather far away from their place of residence. Furthermore, the complexity of these proceedings lead to unreasonable duration of the proceedings in many cases.

Q.70 – Is a residence permit of at least one year's duration granted to the family members (a 13 §2)?

☑ OUI
☐ NON

What is the duration of the residence permit?

According to the general provision on the validity of settlement permits in Sect. 20 § 1 Settlement and Residence Act residence permits are issued for a duration of twelve months.

Q.71 – Is this residence permit renewable?

☑ OUI
☐ NON

Q.72 – Is the duration of the residence permit aligned with the duration of sponsor’s residence permit (a 13 §3)?

☐ OUI
☑ NON

If no, please specify

The family member receives a settlement permit with a period of validity of one year even if the sponsor’s settlement permit expires earlier. After one year the family member has to apply for a renewal of the settlement permit that will only be granted if the general requirements are fulfilled (except of the yearly quota that is relevant only at the first application). After five years a settlement permit of unlimited duration may be applied for.
Q.73 – Are the rights awarded to family members' equivalent to those granted to the sponsor (a14 §1):

Q.73. A – Regarding access to education?

☒ OUI
☐ NON

If no, please specify

Q.73. B - Regarding access to employment?

☒ OUI
☐ NON

Please specify the content of this access

Access to employment in general depends on the type of settlement permit issued. This general approach also goes for family members accepted for family reunification. While some types of settlement permits grant access to employment without requiring any further permit, other settlement permits grant limited access dependent on a permit under the Employment of Aliens Act. A third category of settlement permits excludes employment and an alien holding a settlement permit of this type has to obtain another type of settlement permit before being able to apply for an employment permit.

As the type of residence permit issued for family members depends on the type of residence permit held by the sponsor, also their access to employment depends on the status of the sponsor. Access to employment is regulated in the Employment of Aliens Act (Ausländerbeschäftigungsgesetz). The provisions of this act do not apply to self-employed activity.

If the sponsor holds a settlement permit not entitling her/him to access to employment (“settlement permit – except employment” / Niederlassungsbewilligung – ausgenommen Erwerbstätigkeit) also the family member accepted for family reunification is granted only this type of settlement permit that does not allow any employment. Only after five years a settlement permit of the type “permanent residence – EC” (Daueraufenthalt – EG) may be granted, entitling its holder to take up an employment. If the sponsor has been granted a “settlement permit – limited” (Niederlassungsbewilligung – beschränkt), she/he may take up an employment only if a permission under the Employment of Aliens Act is granted. If the sponsor holds this type of settlement permit also the family members are granted a “settlement permit – limited”. Family reunification with regard to sponsors holding a “settlement permit – limited” is only possible if the sponsor has already fulfilled his “integration agreement”. The family members need a permit under the Employment of Aliens Act if they want to engage in an employment. The granting of the required permit under the Employment of Aliens Act depends on the employment status of the sponsor. If the sponsor has...
been granted an employment permit *(Beschäftigungsbewilligung)*\(^7\), also the family member may be granted such a permit. In such cases the permission may also be issued if the relevant number of permissions to be granted in each year has already been exhausted (Sect. 4 § 6 No. 4a Employment of Aliens Act). After twelve months the granting of an employment permit may no longer be refused because of the situation on the labour market (Sect. 4 § 8 Employment of Aliens Act). If the sponsor is holding a work permit *(Arbeitserlaubnis)*\(^8\), the family member may be granted a work permit as well (Sect. 14a § 1 Employment of Aliens Act) if she/he has already been residing in Austria for at least twelve months. If the sponsor has been granted an exemption certificate *(Befreiungsschein)*\(^9\) also the family members are entitled to such a certificate after twelve months of legal settlement in Austria (Sect. 15 § 1 No. 4 Employment of Aliens Act).

If the sponsor is granted a “settlement permit – unlimited” or “permanent settlement – EC” after the family reunification has been accepted, the family members are entitled to a “settlement permit – unlimited” after their settlement has lasted twelve months (Sect. 46 § 5 Settlement and Residence Act). The “settlement permit – unlimited” entitles to employment without a further permission under the Employment of Aliens Act. The same goes for family members of a sponsor recognised as a Convention refugee in cases where Art. 34 § 2 Asylum Act is not applicable and the family members therefore are not granted protection under the Asylum Act.

Family members of sponsors holding a “settlement permit – key qualification” are granted a “settlement permit – limited” entitling them to employment if they get a permit under the Employment of Aliens Act. After twelve months the permission may not be refused because of the situation on the labour market. After 18 months the family member may be granted a “settlement permit – unlimited” entitling to employment without a permission under the Employment of Aliens Act.

If the sponsor holds a “settlement permit – unlimited” or “permanent residence – EC” he/she is entitled to employment or self-employment without a further permission under the Employment of Aliens Act. In such cases, the family members are granted a “settlement permit – limited” and their access to the labour market therefore depends on a permission under the Employment of Aliens Act. After a period of twelve months, they are entitled to a “settlement permit – unlimited” that grants access to employment without a further permission (Sect. 46 § 5 Settlement and Residence Act).

**Q.73. C** – Regarding access to vocational guidance, initial and further training and retraining?

[ ] OUI

[ ] NON

If no, please specify

\(^7\) An employment permit *(Beschäftigungsbewilligung)* is granted only in respect of a specified employer. The permit has to be applied for by the employer, the alien concerned is not able to change the job without obtaining a new permit.

\(^8\) A work permit *(Arbeitserlaubnis)* allows any employment in the county it is issued for. Other than employment permits, the work permit is not limited to a specified employer.

\(^9\) The so called exemption certificate *(Befreiungsschein)* allows employment in the whole territory of Austria. It is issued for a period of five years.
Q.74 – Does your Member State grant specific rights in social matters to reunified family members?

☐ OUI
☒ NON

If yes, please describe them and specify if a time limit is established to take advantage from them

Q.75 – Has Member State set up conditions regarding specific access to employment for family members (a 14 §2)?

☒ OUI
☐ NON

If yes, how?
In general there is a time limit of twelve months before family members accepted for family reunification are granted access to employment without an examination of the situation of the Austrian labour market. The conditions for access to employment are discussed in detail above in the answer to Q.73.

Q.76 – If yes, do those conditions exceed 12 months (a 14 §2)?

☐ OUI
☒ NON

Which ones?

Q.77 – Is access to employment limited in your Member State

Q.77.A – Regarding first-degree relatives in the direct ascending line?

☒ OUI
☐ NON

If yes, how?
First-degree relatives in the direct ascending line are not encompassed by the definition of family members entitled to family reunification. Therefore there are no special provisions regarding their access to employment. If first-degree relatives in the direct ascending line are granted a settlement permit for another reason than family reunification, the general regime of the Employment of Aliens Act applies.

Q.77. B – Regarding adult unmarried children objectively unable to provide for their own needs on account of their state of health (a 14 §3)?
Adult unmarried children objectively unable to provide for their own needs on account of their state of health are not encompassed by the definition of family members entitled to family reunification. Therefore there are no special provisions regarding their access to employment. If adult children are granted a settlement permit for another reason than family reunification, the general regime of the Employment of Aliens Act applies.

Q.78 – Are spouses, unmarried partners and child who has reached majority entitled to an autonomous residence permit at least five years after lawful residence on the basis of the residence permit issued for family reunification (a15 §1)?

☑ OUI

☐ NON

If yes, please specify when and how for each category

According to Sect. 27 § 1 Settlement and Residence Act family members (as defined in Sect. 2 § 1 No. 9 that does not enshrine unmarried partners) have got a right to an autonomous residence after a period of five years of lawful residence for the purpose of family reunification. Within five years from the first issue of a residence permit the spouse’s and children’s rights to stay in Austria depends on the residence of the sponsor. Therefore the residence permit of the family members will in general not be renewed if the family relationship comes to an end (e.g. through the death of the sponsor, a divorce of the spouses or the reaching of the age of majority or marriage of the child) or the sponsor loses his settlement permit. After five years spouses and children are entitled to an autonomous settlement permit if they meet the general requirements provided for in Sect. 11 Settlement and Residence Act and if they have fulfilled the so called integration agreement. This means in particular that the family member concerned has to provide evidence on sufficient income, sickness insurance and accommodation. If these requirements are met, the alien is granted a settlement permit called “permanent residence – EC” (‘Daueraufenthalt – EG’). This residence permit is temporarily unlimited and entitles to employment in Austria. The issue of this settlement permit is not dependent on the yearly quota limiting the number of settlement permits, because this quota fixed annually by the legislator in an own regulation (Regulation on Settlement – Niederlassungsverordnung) only applies in regard to the first issue of a settlement permit for an alien entering Austria.

Q.79 – Does your Member State limit the granting of the autonomous residence in cases of breakdown of the family relationship (a 15 §1 alinea 2)?

☐ OUI

☒ NON

Please explain
Austria did not make use of the possibility provided for in Art. 15 § 1 alinea 2 of the Directive. Therefore it does not make any difference in regard of the granting of an autonomous settlement permit whether the requirements for family reunification ceased to exist due to a breakdown of the relationship or due to a loss of the sponsor’s settlement permit.

Q.80 – Does your Member State grant autonomous residence permit:

Q.80. A – To first-degree relatives in the direct ascending line (a15 §2)

☑ OUI
☐ NON

If necessary specify
First degree relatives in the direct ascending line are not covered by the definition of family members contained in Sect. 2 § 1 No. 9 Settlement and Residence Act and therefore not entitled to family reunification.

Q.80. B – To adult unmarried children objectively unable to provide for their own needs on account of their state of health (a15 §2)

☐ OUI
☒ NON

If necessary specify
Adult unmarried children are not covered by the definition of family members contained in Sect. 2 § 1 No. 9 Settlement and Residence Act and therefore not entitled to family reunification.

Q.81 – Does your member State grant autonomous residence permit in the event of widowhood, divorce, separation or death of first first-degree relatives in the direct ascending or descending line (a 15 §3)

☒ OUI
☐ NON

If necessary specify
Sect. 27 § 3 Settlement and Residence Act provides for exceptions from the general dependence of family members on the sponsor’s settlement permit. According to this provision the settlement permit of a family member will be renewed irrespective of the loss of family relationship in the case of the spouse’s or the parent’s death, divorce on the sponsor’s fault or other special circumstances.

Q.82 – Has your Member State adopted rules granting autonomous residence permit "in the event of particularly difficult circumstances" (a 15 §3)?

☒ OUI
If yes, how is this provision defined and transposed?

According to Sect. 27 § 3 Settlement and Residence Act the settlement permit of a family member will be renewed irrespective of the loss of family relationship under special circumstances. Such special circumstances are enumerated in Sect. 27 § 4 Settlement and Residence Act. Therefore special circumstances entitling to an autonomous residence permit exist for instance when the person concerned is a victim of violence exerted by the sponsor and the sponsor was expelled from the family’s accommodation by the police due to his violent behaviour or when the sponsor has lost his settlement permit due to a conviction for an intentionally committed offence. This enumeration is not final but only lists examples for “special circumstances” within the meaning of Sect. 27 § 3 Settlement and Residence Act.

**PENALTIES AND REDRESS**

*Those provisions must be read in parallel with those relating to the conditions to be fulfilled to obtain family reunification (articles 6, 7, 8)*

*Questions relating fraud, false or falsified documents are of importance to assess their impact.*

Q.83 – What are the legal grounds to reject, withdraw or refuse to renew a family member's residence permit (a16 §1 et 2):

- **Q.83. A** – Conditions required by the directive not satisfied?
  - OUI
  - NON

- **Q.83. B** – Absence of real martial or family relationship?
  - OUI
  - NON

If yes, how is this hypothesis assessed?

According to Sect. 54 § 5 No. 1 Aliens Police Act a person who has been granted a settlement permit for the purpose of family reunification may be expelled from Austria, if one of the requirements for the issue of the settlement permits ceases to be met within five years. This is the case in particular when the person concerned does no longer live in a real marital or family relationship with the sponsor.

- **Q.83. C** – Stable long term relationship with another person?
  - OUI
  - NON
If yes, how is this hypothesis assessed?

According to Sect. 30 Settlement and Residence Act spouses may not rely on the marriage for the purpose of an application for the granting of renewal of a settlement permit if they in fact don’t live in a family relationship within the meaning of Art. 8 ECHR. As a stable long term relationship with a third person will in general justify the conclusion that the person concerned does not live in a real conjugal relationship with his/her spouse, the renewal of his/her settlement permit may be refused.

Q.83. D – False or falsified documents?

☑ OUI
☐ NON

Q.83. E – Marriage, partnership or adoption contracted for the sole purpose of enabling reunification?

☑ OUI
☐ NON

Q.83. F – If yes, how is this hypothesis assessed?

According to Sect. 117 Aliens Police Act, an Austrian citizen as well as an alien entitled to reside in Austria is to be fined by court if he/she marries an alien without wanting to conduct family live in the meaning of Art. 8 ECHR and if he/she knows that the alien wants to refer to this marriage for the purpose of obtaining or renewing a settlement permit, for the prevention of expulsion or for the acquisition of Austrian nationality. Sect. 118 Aliens Police Act contains corresponding provisions on adoptions of convenience. According to this provision, Austrian citizens or aliens entitled to reside in Austria have to be fined by the courts if they apply to court for the allowance of the adoption of an alien, although there is no family life between them and the adopted person if they know that the person adopted will refer to this adoption for the purpose of obtaining or renewing a settlement permit, for the prevention of expulsion or for the acquisition of Austrian nationality. The fines amount to a maximum of 360 daily rates, the amount of the rates depends on the offender’s income. If the sponsor takes money for the marriage or adoption of convenience, also a prison sentence of up to one year may be imposed (Sect. 117 § 2; Sect. 118 § 2 Aliens Police Act). If a person is engaged in arranging such marriages or adoptions of convenience with the aim of obtaining a regular income, a prison sentence of up to three years may be imposed (Sect. 117 § 3, § 118 § 3 Aliens Police Act). The alien who relies on a marriage of adoption of convenience when applying for family reunification is not fined (Sect. 117 § 4, Sect. 118 § 4 Aliens Police Act). The criminal prosecution of these offences falls within the competence of the ordinary prosecution authorities and the ordinary criminal courts. The regular rules regulating criminal procedures apply.

To enforce the provisions aimed at the prevention of marriages and adoptions of convenience, Austrian legislation contains a number of provisions providing that authorities have to inform the aliens police authority on
suspicions regarding marriages and adoptions of convenience. If the authority competent for settlement permits has the suspicion that there is a marriage or adoption of convenience this authority has to inform the aliens police authority (Sect. 37 § 4 Settlement and Residence Act). The same goes for any other court of administrative authority (Sect. 109 Aliens Police Act). The aliens police authority has to investigate the suspicion and disclose the results of their investigation to the authority that submitted the suspicion within three months. If there is no notification within this time limit, the court or authority may assume that there is no case of a marriage or adoption of convenience. The registry offices have to submit information on every marriage engaging a third country national to the aliens police authority irrespective of any actual suspicion (Sect. 38 Personenstandsgesetz). The competent courts have to inform the aliens police authority on every application for the allowance of an adoption of an alien (Sect. 105 § 5 Aliens Police Act).

Q.83. G – When the sponsor's residence comes to an end and the family member does not yet enjoy an autonomous right of residence (a 16 §3) ?

☑ OUI

☐ NON

Q.83. H – What type of control are organised thereof?

The cessation of the sponsor’s settlement permit does not lead to an automatic cessation of the settlement permits of the family members. The consequence of an end of the family relationship before an autonomous right of residence has been acquired is that the family member is no longer able to obtain a renewal of his/her settlement permit. A settlement permit issued before the sponsor’s settlement permit came to an end does not loose its validity but remains in force until its period of validity expires. Therefore no special controls are organised to check the validity of the sponsor’s residence permit as the family member has to provide evidence for the persistence of the sponsor’s settlement permit when applying for a renewal of the settlement permit.

Q.84 – Are resources of the family taken into account when renewing residence permit where the sponsor does not have sufficient resources without recourse to the social assistance system of the member state?

☑ OUI

☐ NON

If yes, under which modalities?

The income requirement is defined in Sect. 11 § 5 Settlement and Residence Act as fixed and regular income of the persons applying for a settlement permit. This requirement may be fulfilled by income from own employment or by claims to maintenance. Therefore in the case of an application for a renewal the income requirement may be met either by own income of the applicant or by maintenance payments by his/her spouse or parents. The required resources are calculated with regard to the whole family (see above, Q.53 and Q.54).

Q.85 – Does your Member State's legislation take into consideration (a. 17) :
Q.85. A – The nature and solidity of the person's family relationships and the
duration of his residence in the Member State?

[X] OUI

[ ] NON

If yes, please specify how and on the basis of which norm (legislation,
regulation, jurisprudence, …)

According to Sect. 11 § 3 Settlement and Residence Act, a settlement permit
may also be issued or renewed despite the non-compliance with the general
requirements mentioned in Sect. 11 § 2 No. 1 to No. 6 if this is necessary for
the maintenance of private or family life for the purpose of Art. 8 ECHR.
Therefore a settlement permit must not be withdrawn or has to be renewed
respectively if otherwise there would be an unjustified interference with
private or family life of the persons concerned. In connection with the
proceedings on applications for a renewal Sect. 24 § 3 Settlement and
Residence Act expressly states that the renewal must not be refused if an
expulsion would be impermissible.

Sect. 66 Aliens Police Act contains a general provision on respect for
private and family life. Therefore an expulsion constituting an interference
with private or family life of the persons concerned is admissible only as long
as it is justified under Art. 8 § 2 ECHR. As Sect. 60 Aliens Police Act refers to
Sect. 66 Aliens Police Act, the same goes for residence bans. Therefore a
settlement permit has to be renewed or must not be withdrawn if the duty of
the person concerned to leave Austria would be incompatible with his/her
rights under Art. 8 ECHR.

These provisions on respect for private and family life have already
existed before Directive 2003/86/EC came into force. They are conditioned
rather by Art. 8 ECHR. It seems that the Austrian legislator did not see an
instigation to a particular implementation of Art. 17 Directive 2003/86/EC as
this provision does not contain any stricter requirements than Art. 8 ECHR.

Q.85. B - 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?

[X] OUI

[ ] NON

If yes, please specify how and on the basis of which norm (legislation,
regulation, jurisprudence, …)

See above Q. 85. A

Q.86 – Do the sponsor and/or members if his/her family have the right to mount a
legal challenge where an application for family reunification is rejected (a18 §1)?

[X] OUI
As the sponsor is not a party of the proceedings on applications for family reunification of her/his family members he may not challenge the decision in these proceedings. The application has to be filed by the family member concerned who may appeal against a negative decision. Therefore Art. 18 of the Directive has been transposed only in regard of the family members but not in regard of the sponsor.

Q.87 – Is this right to legal challenge considered as a right to a judicial review according to jurisprudence C-540/03 (a18 §1) ?

☑ OUI

☐ NON
XX. IMPACT OF THE DIRECTIVE ON NATIONAL LAW

Q.88 A  Did the transposition of the directive made the rules related to the best interest of minor children (a. 5 § 5) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

<table>
<thead>
<tr>
<th>OBJECT</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Due regard to the best interest of minor children during examination of the application a. 5 § 5</td>
<td>Explain the situation after transposition Art. 5 § 5 of the Directive has not been transposed explicitly. There is no provision in the Settlement and Residence Act providing that the best interest of minor children has to be taken into account.</td>
<td>• Status quo • Less favourable than the directive</td>
</tr>
</tbody>
</table>

Q.88 B  Did the transposition of the directive made the rules related to the beneficiaries of the right to family reunification become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

<table>
<thead>
<tr>
<th>OBJECT</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Definition of the beneficiaries of the right to family reunification a. 4 § 4</td>
<td>Explain the situation after transposition According to Sect. 2 § 1 No. 9 Settlement</td>
<td>• Less favourable than previous national • In line with the directive</td>
</tr>
</tbody>
</table>
was no limitation regarding further spouses in case of polygamous marriages and Residence Act, further spouses of the sponsor are not regarded as family members entitled to family reunification if there is already one spouse living in Austria with the sponsor. This provision has adopted Art. 4 § 4 of the Directive literally.

Q.88 C Did the transposition of the directive made the rules related to reunification of minor children between 12 (a. 4 § 1) and 15 (a. 4 § 6) years old become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

<table>
<thead>
<tr>
<th>OBJECT</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Limitation of reunification of minor children of 12 years of age (a. 4 § 1)</td>
<td>Explain the situation after transposition Austria did not make use of the possibility provided for in Art. 4 § 1 last sentence of the Directive. Children aged over 12 years are seen as minors without any special rules applicable. All children between the age of 12 and 18 years are treated the same way. There is therefore no limitation of family reunification in respect of children aged over 12 years.</td>
<td>• Status quo</td>
</tr>
</tbody>
</table>

Please use one box per object and duplicate it if necessary

• More favourable than the directive
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</tr>
</thead>
<tbody>
<tr>
<td>Limitation of reunification of minor children of 15 years of age (a. 4 § 6)</td>
<td>Explain the situation before transposition: With regard to children aged over 15 years the Austrian Aliens Act in force until 31 December 2005 made a distinction between sponsors who where residing in Austria before 1 January 1998 and aliens who entered Austria after that date. In respect of sponsors who came to Austria before 1998, family reunification was limited to their spouse and to children who filed an application for family reunification before they reached the age of 15 (Art. 21 § 3 Aliens Act). As Austrian law therefore provided that an application for family reunification of minor children had to be filed before the child reached the age of 15 years only in respect of sponsors who took residence in Austria before 1998, Austria was allowed to make use of the exception provided for in Art. 4 § 6 of the Directive. Children aged over 15 years are seen as minors without any special rules applicable. All children under the age of 18 years are treated the same way. There is therefore no limitation of family reunification in respect of children aged over 15 years.</td>
<td>• Status quo</td>
</tr>
<tr>
<td></td>
<td>Explain the situation after transposition Austria did not make use of the possibilities provided for in Art. 4 § 6 of the Directive. Children aged over 15 years are seen as minors without any special rules applicable. All children under the age of 18 years are treated the same way. There is therefore no limitation of family reunification in respect of children aged over 15 years.</td>
<td>• More favourable than the directive</td>
</tr>
</tbody>
</table>
Q.88 D Did the transposition of the directive made the rules related to requirements to the exercise of family reunification (article 7) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

Please use one box per object and duplicate it if necessary

<table>
<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>Requirements for the exercise of family reunification (a. 7)</td>
<td>Explain the situation after transposition. The requirements for the exercise of family reunification were not changed in substance following transposition of the Directive. Family reunification still depends on a yearly quota and the requirements of travel documents, accommodation, stable recourses, sickness insurance, health certificate and evidence on the criminal record remained unchanged. The only improvement consist in the new maximum waiting period of three years. According to Sect. 12 § 7 last sentence Settlement and Residence Act three years after the application was filed, a settlement permit for the purpose of family reunification has to be granted regardless of the quota.</td>
<td>• Status quo$^{10}$</td>
</tr>
</tbody>
</table>

$^{10}$ The only element that means an improvement in comparison with the situation before transposition is the introduction of a maximum waiting period of three years between the application for family reunification and the granting of the settlement permit for that purpose.
Did the transposition of the directive made the rules related to margins of manoeuvre awarded to Member States (a. 5 § 5, C-540/03) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below.

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</tr>
</thead>
<tbody>
<tr>
<td>Limitation of margins of manoeuvre (a. 17, a.5 §5, C-540/03)</td>
<td>Explain the situation after transposition: Art. 17 of the Directive was not transposed in Austrian law, but the migration law contains provisions on the respect of private and family life that remained unchanged following transposition of the Directive. They are conditioned rather by Art. 8 ECHR. It seems that the Austrian legislator did not see an instigation to a particular implementation of Art. 17 Directive 2003/86/EC as this provision does not contain any stricter requirements than Art. 8 ECHR. According to Sect. 11 § 3 Settlement and Residence Act, a settlement permit may also be issued or renewed despite the non-compliance with the general requirements</td>
<td>• Status quo</td>
</tr>
</tbody>
</table>

Please use one box per object and duplicate it if necessary.
mentioned in Sect. 11 § 2 No. 1 to No. 6 if this is necessary for the maintenance of private or family life for the purpose of Art. 8 ECHR. Therefore a settlement permit must not be withdrawn or has to be renewed respectively if otherwise there would be an unjustified interference with private or family life of the persons concerned. In connection with the proceedings on applications for a renewal Sect. 24 § 3 Settlement and Residence Act expressly states that the renewal must not be refused if an expulsion would be impermissible. Sect. 66 Aliens Police Act contains a general provision on respect for private and family life. Therefore an expulsion constituting an interference with private or family life of the persons concerned is admissible only as long as it is justified under Art. 8 § 2 ECHR. As Sect. 60 Aliens Police Act refers to Sect. 66 Aliens Police Act, the same goes for residence bans.
Therefore a settlement permit has to be renewed or must not be withdrawn if the duty of the person concerned to leave Austria would be incompatible with his/her rights under Art. 8 ECHR.

Q.88 F Did the transposition of the directive made the rules related to integration objectives and criterions more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

Please use one box per object and duplicate it if necessary

<table>
<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>Explain the situation before transposition: The so called “integration agreement” requiring aliens settling in Austria to pass language courses and courses on Austrian history, politics and society has been introduced on 1 January 2003. The fulfilment of the “integration agreement” was a precondition for the renewal of a settlement permit also in regard of persons accepted for family reunification.</td>
<td>Explain the situation after transposition According to Art. 11 § 2 No. 6 Settlement and Residence Act a settlement permit may only be extended when the person concerned has fulfilled integration measures provided for in Art. 14 Settlement and Residence Act. Also family members have to fulfil the so called “integration agreement” after their entry into Austria. For details see above Q.56. Austria did not make use of the option provided for by Art. 4 § 1 last sentence regarding integration conditions of children over the age of 12 years.</td>
<td>• Status quo • In line with the directive</td>
</tr>
</tbody>
</table>
Q.89 From your point of view, did the transposition of the directive imply other interesting changes for the third national country regarding other elements than the ones mentioned in the previous question. Make also a comparison with the standard of the directive in the last column of the table below

If they want to do so, the thematic coordinators should complete this question by indicating the number of examples that they ask the national reporter to give.

Please use one box per object and duplicate it if necessary

<table>
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</thead>
<tbody>
<tr>
<td>Required income (a. 7 § 1 (c))</td>
<td>Explain the situation after transposition: The new legislation in force since 1 January 2006 requires a net monthly income of at least EUR 1055.90 for a married couple plus EUR 72.33 for each minor child. The costs for accommodation have to be added to this amount. The required income was increased following transposition of the Directive and bears grave problems for many applicants and their sponsors respectively.</td>
<td>• Less favourable than previous national rules • In line with the directive</td>
</tr>
</tbody>
</table>

Explain the situation before transposition:
Before transposition of the Directive there were no provisions in the migration law concerning the level of income required in case of an application for family reunification. In practice the authorities had regard to the maximum income for the purpose of social benefits. These differed between the single Austrian countries but were in general much lower than the income required under the new legislation.

Q.89. A. Mention if there is a general tendency to just copy the provisions of the directive into national legislation without redrafting or adaptation them to national circumstances.

☑ NO

☐ YES

Q.89.B. If yes, please indicate if this general tendency may or not create problems (for example difficulties of implementation, risk that a provision remain unapplied).
Q.89.C. If yes, give some of examples:

Q.89.D. If only some provisions of the directive have been copied and if this may create any problem, please quote them and explain the problem.

Q.90. Quote interesting decisions of jurisprudence related to the directive, its transposition or implementation (so this question concerns in principle decisions later that the directive, but previous ones might be quoted if relevant). Quote in particular decisions of supreme Courts; limit yourself to the appeal Courts and ignore the first resort if there are too many decisions at this level, unless there is a certain jurisprudence made of a group of decisions.

Please use one box per decision and duplicate it if necessary

<table>
<thead>
<tr>
<th>DECISION OF SUPREME COURTS:</th>
<th>DATE: 8 October 2003</th>
<th>REFERENCE OF PUBLICATIONS: G 119, 120/03* ÖIM-Menschenrechte 2003, 275</th>
</tr>
</thead>
<tbody>
<tr>
<td>Constitutional Court</td>
<td></td>
<td><strong>SUMMARY OF CONTENT:</strong> According to the law in force until 31 December 2005 family reunification depended (and still depends) on a quota fixing the maximum of persons accepted for family reunification each year. As these quotas usually were far too low compared to the number of applications, family members usually had to wait for several years before they could settle with their sponsor in Austria. In this judgement the Constitutional Court stated that the quota may not be taken into consideration when family reunification is required by Art. 8 ECHR. According to the Constitutional Court family reunification had to be granted in these cases irrespective of the quota.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>DECISION OF SUPREME COURTS:</th>
<th>DATE: 13 March 2007</th>
<th>REFERENCE OF PUBLICATIONS: 2005/18/0701*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administrative Court</td>
<td></td>
<td><strong>SUMMARY OF CONTENT:</strong> The complainant in this case challenged a residence ban and referred to Art. 17 of the Directive in this context. The Administrative Court stated that Art. 17 of the Directive did not hinder the residence ban as the complainant had committed serious crimes and the authority had taken due regard to the interests of the alien concerned mentioned in Art. 17 of the Directive. This balance of interests was based on Sect. 37 Aliens Act as in force until 31 December 2005.</td>
</tr>
<tr>
<td>DECISION OF SUPREME COURTS: Administrative Court</td>
<td>DATE: 13 September 2006</td>
<td>REFERENCE OF PUBLICATIONS: 2006/18/0089*</td>
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<tr>
<td>DECISION OF SUPREME COURTS: Administrative Court</td>
<td>DATE: 27 July 2006</td>
<td>REFERENCE OF PUBLICATIONS: 2006/18/0158*</td>
</tr>
<tr>
<td>DECISION OF SUPREME COURTS: Administrative Court</td>
<td>DATE: 28 June 2006</td>
<td>REFERENCE OF PUBLICATIONS: 2002/21/0028*</td>
</tr>
</tbody>
</table>

* The judgments can be found on the website of the Austrian Law Information System (Rechtsinformationssystem, RIS): http://www.ris.bka.gv.at

ANY SUPPLEMENTARY COMMENT ABOUT THE TREND OF THE JURISPRUDENCE:

Q.91 Specify if there are or not problems with the translation of the text of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated.

☑ There are no problems with the translation of the directive

☐ There are some problems with the translation of (indicate the number of the articles concerned) of the directive.

Explain the difficulties that this could create:

Q. 92 ANY OTHER INTERESTING ELEMENT

Q.92 A. Following your personal point of view, mention from the point of view of third country nationals and/or from the Member State any interesting or innovative practice in your Member State

Please use one table per practice and duplicate it if necessary

| OBJECT OF THE PRACTICE | EXPLANATIONS |
Please add here any other interesting element in your Member State which you did not had the occasion to mention in your previous answers

Remarks on certain provisions of the Directives:
According to NGOs the definition of the beneficiaries of family reunification is too narrow. Especially minor orphans are denied family reunification with their brothers and sisters living in Austria. This practice seems to be compatible with Art. 4 of the Directive but gives rise to grave concerns under the point of view of Art. 8 ECHR. This problem for example may lead to the following situation: If orphaned children are living with the spouse of their elder brother or sister and the spouse is accepted for family reunification, the children would have to remain in the country of origin without any other relatives taking care of them. This seems incompatible with Art. 8 ECHR. In most cases a reunification of orphaned minor children with elder siblings would be in the best interest of the children. Also UNHCR recommends reunification of unaccompanied minor children with their siblings.

General remarks on implementation of the Directive:
The Directive has not been implemented in Austria by the adoption of a particular act, but in course of an extensive reform of the whole asylum and migration law. Therefore it cannot be determined with absolute certainty in every case which amendments were motivated by the Directive. In general the reform that entered into force on 1 January 2006 is determined by further restrictions for migration to Austria. As family reunification was in practice the only possibility for third country nationals to obtain a residence permit in Austria in the last years, the Austrian legislator seemed to be endeavoured to restrict family reunification. This has to be seen before the background of a policy that is rather hostile to foreigners. The latest reform was marked by an approach that seems to understand migration as a threat for public security and economic wealth rather than as a chance for society and an opportunity that should not be lost.

The Directive has led to some improvements. The major impact can be seen in the field of access to employment. The general access to employment after a period of one year must be seen as an important improvement for third country nationals accepted for family reunification.

Although the Directive itself contains only minimum standards that do not go far beyond the standard that had already been reached in Austria before the latest reform, it should be kept in mind, that also this standard is not undisputed in Austria. The legislator seems to try to restrict family reunification by implementing new conditions in fields not covered by the Directive (especially regarding aliens not covered by the Directive due to a lack of reasonable prospects of obtaining the right of permanent residence) or by restricting conditions also foreseen by the Directive (e.g. increasing the income requirement). Therefore the Directive may also be regarded as valuable if it helps to avoid a further deterioration of the rights to family reunification. The impact of the Directive therefore must not be underestimated.

With regard to the quality of the legislation it should be noted that the legislator laid great emphasis on the speedy conduct of the reform of the asylum and migration law rather than on the legal quality. The time limits for comments on the drafts were very short and it seems that the concerns submitted by legal authors as well as by NGOs was not really taken into consideration. Also the editorial quality is rather low. Part of the legislation are regulated far more complex than required by the subject. There are also a number of unclear formulations and references to other provisions. There are also some referrals to provisions that were contained in the draft set up by the government but were in fact not set into force.

Another practical problem resulted from the fact that the new asylum and migration acts entered into force without provisional regulations providing for time limits to end pending
proceedings on base of the legislation in force until 31 December 2005. As there were also major changes in the competences of the different authorities, pending procedures had to be continued by other authorities which led to delays. It seems that by the date of the entry into force of the new legislation not all authorities were instructed and prepared sufficiently. Soon after the new legislation entered into force it became clear that numerous provisions in the Settlement and Residence Act and the Aliens Police Act are unclear and lead to unreasonable consequences. It seems that some of the new provisions were not really well considered. It may be assumed that the Constitutional Court will not only clarify some of the unclear provisions but also abrogate some provisions because they are not sufficiently determined and therefore not in conformity with the constitution.

At the moment political debate is underway on different issues of the Austrian asylum and migration law.
Le coordinateur thématique en charge de cette directive que vous pouvez contacter si vous avez des questions ou besoin d'aide au cours du "remplissage" du questionnaire est : Yves PASCOUAU, 00 335 59 57 41 20; yves.pascouau@univ-pau.fr

COMMENTAIRES

1. La directive 2003/86 relative au droit au regroupement familial a fait l'objet d'une élaboration particulièrement difficile nécessitant une nouvelle proposition de la Commission avant d'aboutir en 2003. Elle vient de faire l'objet d'un arrêt de la Cour de justice, le 27 juin 2006, dans l'affaire Parlement contre Conseil, rejetant le recours en annulation déposé par le Parlement (C-540/03).

2. La transposition de la directive doit être évaluée au regard de la nature de la disposition en cause. Afin de guider le rapporteur, celle-ci vous est indiquée par un code couleur : disposition obligatoire (Q.XX), disposition optionnelle (Q.YY), disposition dérogatoire (Q.ZZ).

3. La Cour a strictement délimité la marge d'appréciation des États membres, y compris lorsque la directive leur offre des possibilités de dérogation. Elle déclare ainsi :

"l'article 4, paragraphe 1, de la directive impose aux États membres des obligations positives précises, auxquelles correspondent des droits subjectifs clairement définis, puisqu'il leur impose, dans les hypothèses déterminées par la directive, d'autoriser le regroupement familial de certains membres de la famille du regroupant sans pouvoir exercer leur marge d'appréciation" (cons. 60).

"Il convient en outre de tenir compte de l’article 17 de la directive qui impose aux États membres de prendre dûment en considération la nature et la solidité des liens familiaux de la personne et sa durée de résidence dans l’État membre ainsi que l’existence d’attaches familiales, culturelles ou sociales avec son pays d’origine. Ainsi qu’il ressort du point 56 du présent arrêt, de tels critères correspondent à ceux pris en considération par la Cour européenne des droits de l’homme lorsqu’elle vérifie si un État, qui a refusé une demande de regroupement familial, a correctement mis en balance les intérêts en présence" (cons.65)

"L’absence de définition de la notion d’intégration ne saurait être interprétée comme une autorisation conférée aux États membres d’utiliser cette notion d’une manière contraire aux principes généraux du droit communautaire et, plus particulièrement,
aux droits fondamentaux. En effet, les États membres qui souhaitent faire usage de la dérogation ne peuvent utiliser une notion indéterminée d’intégration, mais doivent appliquer le critère d’intégration prévu par leur législation existant à la date de la mise en œuvre de la directive pour examiner la situation particulière d’un enfant de plus de 12 ans arrivant indépendamment du reste de sa famille” (cons.70)

4. La clause de rendez-vous de l'article19 indique quels ont été les thèmes les plus sensibles de la négociation (3, 4, 7, 8 et 13).
## PREMIERE PARTIE

### 1. NORMES DE TRANSPOSITION ET JURISPRUDENCE

#### Q.1.A.

Identifiez la ou les PRINCIPALE(S) norme(s) de transposition (en raison de leur contenu) et indiquez leur nature juridique

- Cette question inclue aussi les normes adoptées avant l’adoption de la directive mais assurant sa transposition (ce qui est qualifié de "pre-existing norm" dans la table de correspondance).
- Citez la norme de transposition et pas seulement la disposition modifiée par celle-ci (cela vaut également dans le cas où il existe un code des étrangers)
- Au sujet de la nature juridique dans la table ci-après : legislative se réfère à une norme adoptée en principe par le parlement ; regulation correspond à une norme complétant la loi et adoptée en principe par le pouvoir exécutif ; circular or instructions correspond à des règles pratiques d’application de la loi et aux réglementations adoptées en principes par les autorités administratives

### Dupliquez la table ci-dessous s’il existe plus d’une norme principale de transposition

<table>
<thead>
<tr>
<th>Cette table concerne :</th>
<th>[ ] un texte déjà adopté</th>
<th>[ ] un texte qui est un projet à adopter</th>
</tr>
</thead>
<tbody>
<tr>
<td>- <strong>TITRE</strong> :</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>DATE :</strong></td>
<td>15 septembre 2006</td>
<td></td>
</tr>
<tr>
<td><strong>NUMBER :</strong></td>
<td>/</td>
<td></td>
</tr>
<tr>
<td><strong>DATE D’ENTRÉE EN VIGUEUR :</strong></td>
<td>1er juin 2007</td>
<td></td>
</tr>
<tr>
<td><strong>DISPOSITIONS CONCERNEES (par exemple si la norme ne concerne pas uniquement la transposition de la directive) :</strong></td>
<td>articles 10 à 12 BIS</td>
<td></td>
</tr>
<tr>
<td><strong>REFERENCES DE PUBLICATION AU JOURNAL OFFICIEL :</strong></td>
<td>M.B., 6 octobre 2006</td>
<td></td>
</tr>
<tr>
<td><strong>NATURE JURIDIQUE</strong></td>
<td>(cochez la case correspondante) :</td>
<td></td>
</tr>
<tr>
<td></td>
<td>[X] LEGISLATIVE :</td>
<td></td>
</tr>
<tr>
<td></td>
<td>[ ] REGULATION :</td>
<td></td>
</tr>
<tr>
<td></td>
<td>[ ] CIRCULAR or INSTRUCTIONS :</td>
<td></td>
</tr>
</tbody>
</table>


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11
Q.1.B. Listez les autres normes de transposition par ordre d'importance juridique (en premier lieu les lois, ensuite les règlements, et enfin les circulaires et instructions):

- Cette question inclut aussi les normes adoptées avant l'adoption de la directive mais assurant sa transposition (ce qui est qualifié de "pre-existing norm" dans la table de correspondance).
- Citez la norme de transposition et pas seulement la disposition modifiée par celle-ci (cela vaut également dans le cas où il existe un code des étrangers)

Utilisez une table par norme et reproduisez la table autant de fois que nécessaire

<p>| TITRE: | Arrêté royal fixant la date d'entrée en vigueur de la loi du 15 septembre 2006 modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers et fixant la date visée à l'article 231 de la loi du 15 septembre 2006 réformant le Conseil d'Etat et créant un Conseil du Contentieux des Etrangers |
| DATE: | 27 avril 2007 |
| NUMBER: | |
| DATE D'ENTRÉE EN VIGUEUR: | |
| DISPOSITIONS CONCERNEES (par exemple si la norme ne concerne pas uniquement la transposition de la directive) | |
| REFERENCES DE PUBLICATION AU JOURNAL OFFICIEL: | M.B., 21 mai 2007 |
| NATURE JURIDIQUE (cochez la case correspondante): | | |
| ☑ LEGISLATIVE | | |
| × REGULATION | | |
| ☐ CIRCULAR OR INSTRUCTIONS | | |</p>
<table>
<thead>
<tr>
<th>TITRE: 27 AVRIL 2007. - Arrêté royal modifiant l'arrêté royal du 8 octobre 1981 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers</th>
</tr>
</thead>
<tbody>
<tr>
<td>DATE: 27 avril 2007</td>
</tr>
<tr>
<td>NUMBER:</td>
</tr>
<tr>
<td>DATE D'ENTREE EN VIGUEUR: immédiat</td>
</tr>
<tr>
<td>DISPOSITIONS CONCERNEES (par exemple si la norme ne concerne pas uniquement la transposition de la directive)</td>
</tr>
<tr>
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</tr>
<tr>
<td>NATURE JURIDIQUE (cochez la case correspondante):</td>
</tr>
<tr>
<td>[ ] LEGISLATIVE</td>
</tr>
<tr>
<td>x [ ] REGULATION</td>
</tr>
<tr>
<td>[ ] CIRCULAR OR INSTRUCTIONS</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>TITRE: Arrêté royal fixant des modalités d'exécution de la loi du 15 septembre 2006 modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers</th>
</tr>
</thead>
<tbody>
<tr>
<td>DATE: 17 MAI 2007</td>
</tr>
<tr>
<td>NUMBER:</td>
</tr>
<tr>
<td>DATE D'ENTREE EN VIGUEUR: 1er juin 2007</td>
</tr>
<tr>
<td>DISPOSITIONS CONCERNEES (par exemple si la norme ne concerne pas uniquement la transposition de la directive)</td>
</tr>
<tr>
<td>REFERENCES DE PUBLICATION AU JOURNAL OFFICIEL: M.B., 1er juin 2007</td>
</tr>
<tr>
<td>NATURE JURIDIQUE (cochez la case correspondante):</td>
</tr>
<tr>
<td>[ ] LEGISLATIVE</td>
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<tr>
<td>x [ ] REGULATION</td>
</tr>
<tr>
<td>[ ] CIRCULAR OR INSTRUCTIONS</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>TITRE: Circulaire relative aux modifications intervenues dans la réglementation en matière de séjour des étrangers suite à l’entrée en vigueur de la loi du 15 septembre 2006</th>
</tr>
</thead>
<tbody>
<tr>
<td>DATE: 21 JUIN 2007</td>
</tr>
<tr>
<td>NUMBER:</td>
</tr>
<tr>
<td>DATE D'ENTREE EN VIGUEUR: IMMEDIAT</td>
</tr>
<tr>
<td>DISPOSITIONS CONCERNEES (par exemple si la norme ne concerne pas uniquement la transposition de la directive)</td>
</tr>
<tr>
<td>REFERENCES DE PUBLICATION AU JOURNAL OFFICIEL: M.B., JUILLET 2007</td>
</tr>
<tr>
<td>NATURE JURIDIQUE (cochez la case correspondante):</td>
</tr>
<tr>
<td>[ ] LEGISLATIVE</td>
</tr>
<tr>
<td>[ ] REGULATION</td>
</tr>
<tr>
<td>x [ ] CIRCULAR OR INSTRUCTIONS</td>
</tr>
</tbody>
</table>
Q.2. CETTE QUESTION NE CONCERNE EN PRINCIPE QUE LES ETATS FEDERAUX OU ASSIMILES TELS QUE L'AUTRICHE, LA BELGIQUE, L'ALLEMAGNE, L'ITALIE ET L'Espagne

En Belgique, la matière de l’accès au territoire, du séjour, de l’établissement et de l’éloignement des étrangers est une compétence fédérale de sorte qu’il n’y a pas de législations des entités fédérées.

Q.2.A. Expliquez quel niveau de gouvernement est compétent pour adopter les normes de transposition.

*Insérez vos réponses dans le tableau ci-dessous*

<table>
<thead>
<tr>
<th>LEGISLATIVE RULES</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</td>
</tr>
<tr>
<td>COMPETENCES OF THE COMPONENTS:</td>
</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>REGULATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</td>
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<tr>
<td>COMPETENCES OF THE COMPONENTS:</td>
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<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CIRCULAR OR INSTRUCTIONS</th>
</tr>
</thead>
<tbody>
<tr>
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</tr>
<tr>
<td>COMPETENCES OF THE COMPONENTS:</td>
</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
</tr>
</tbody>
</table>

Q.2.B. In case, explain if the federal structure and the distribution of competences between the different levels pose any problem or difficulty regarding the transposition and/or the implementation of the directive.

Non

Q.3. Expliquez quelles autorités sont compétentes pour l'application pratique des normes de transposition par l'adoption de décisions individuelles

*Please use one table per competence concerned and duplicate it if necessary*

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNEE:</th>
<th>Toute la matière</th>
</tr>
</thead>
<tbody>
<tr>
<td>MINISTERE DE :</td>
<td>Intérieur</td>
</tr>
<tr>
<td>DIRECTION OU SERVICE DANS L'ADMINISTRATION PRECITEE:</td>
<td>Office des étrangers</td>
</tr>
<tr>
<td>AUTRES NIVEAUX D'ADMINISTRATION:</td>
<td>Communes, pour notifier certaines décisions et délivrer les documents de séjour</td>
</tr>
<tr>
<td>----------------------------------</td>
<td>--------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>SI NECESSAIRE, PORTEZ UN COMMENTAIRE SUR LA NATURE DE L'AUTORITE CONCERNEE (par exemple si elle est indépendante du ministère compétent)</td>
<td>La matière de l'accès au territoire, du séjour, de l'établissement et de l'éloignement des étrangers, entrant originellement dans les compétences du ministre de la Justice, a été transférée par la loi du 8 juillet 1992(^{12}) et les arrêtés royaux du 13 juillet 1992(^{13}) au ministre de l'Intérieur. L'arrêté ministériel du 18 mai 1993(^{14}) énumère les autorités auxquelles sont délégués les pouvoirs du ministre en matière d'accès, de séjour, d'établissement et d'éloignement des étrangers. La principale d'entre elles est l'Office des étrangers (ci-après l'O.E.) qui est compétent pour autoriser l'entrée sur le territoire, le séjour, l'établissement et prendre les décisions de refoulement et d'éloignement. L'Office des étrangers traite les demandes de visa, d'autorisations de séjour introduites à l'étranger ou sur le territoire, les demandes formées sur la base du regroupement familial, etc. L'Office des étrangers travaille donc sous l'autorité du Ministre de l’Intérieur et n’est pas une administration indépendante.</td>
</tr>
</tbody>
</table>

Q.4. A. Est ce que la principale règle d'exécution prévue par la norme principale de transposition a été adoptée ou non (autrement dit le décret d'application principal prévu par la loi a-t-il été adopté)

- OUI
- NON

Même s’il manque encore des textes, notamment sur la définition du partenariat assimilé au mariage, etc.

Q.4.B. Si la ou les principale(s) norme(s) de transposition prévoient l'adoption d'une ou plusieurs réglementation (au sens de regulation), indiquez si elles ont toutes été adoptées:

- OUI
- NON

Si non, indiquez les textes manquant dans la table ci dessous.


\(^{14}\) *M.B.*, 21 mai 1993.
Ajoutez si nécessaire des explications (spécifiez en particulier si les textes manquant sont en cours de préparation ou prévus dans un futur proche):

Certaines seront peut-être encore réglées par arrêté royal, sans que ce ne soit certain, comme la vérification de la couverture mutuelle ou le déroulement des enquêtes ou des tests génétiques ou sanguins….
SECONDE PARTIE

**But (article 1)**

L'objectif de la directive est de fixer les modalités d'exercice du droit au regroupement familial. Dans son arrêt C-540/03, la Cour reconnaît que, dans certains cas, les États membres n'ont pas de marge d'appréciation pour accorder le droit au regroupement familial.

**Q.5 – Le regroupement familial est-il un droit dans l'État membre ?**

[X] OUI

[ ] NON

Expliquez ou illustrez

L’article 10 de la loi du 15 décembre 1980, tel que modifié par la loi du 16 septembre 2006, présente le droit pour les familles de se regrouper, moyennant le respect de certaines conditions, comme un droit.

Il commence par ces termes « § 1er. Sous réserve des dispositions des articles 9 et 12, sont de plein droit admis à séjourner plus de trois mois dans le Royaume :

[...]

4° les membres de la famille suivants d'un étranger admis ou autorisé à séjourner dans le Royaume pour une durée illimitée, ou autorisé à s'y établir : [... sur les conditions précises, voyez infra] »

**Q.5. A – L'exercice du droit au regroupement familial dans votre État membre entre 2002 et 2006 donne-t-il matière à évaluation chiffrée et laquelle, y compris par nationalité ?**

Oui voir annexe papier
DEFINITIONS (ARTICLE 2)

CHAMP D'APPLICATION (ARTICLE 3)

La détermination du champ d'application du texte est fixée par l'article 3. On signalera que :
- le §1 "perspective fondée..." a pour fonction d'écarter les personnes séjournant temporairement (stagiaire, etc...)
- les citoyens de l’Union sont exclus (§3)
- la comparaison avec l'état du droit national existant est importante afin de déterminer la valeur ajoutée ou non de l'harmonisation (§5)

Q.6. La durée de validité du titre de séjour du regroupant :

Q.6. A. La durée de validité du titre de séjour dont le regroupant doit être titulaire est-elle supérieure ou égale à un an conformément à l’article 3.1 ?

☑ OUI

☒ NON

Q.6.B. Indiquez précisément la durée prévue par votre législation nationale :

Voir ci-dessous Q6C

Q.6.C. Comment votre État a-t-il traduit-il dans son droit interne l'exigence pour le regroupant d’avoir « une perspective fondée d'obtenir un droit de séjour permanent" (a3 §1) ?

La nouvelle loi prévoit deux formes de regroupement familial, la première au profit des étrangers ayant un permis de séjour à durée illimitée, la seconde bénéficiant aux membres de la famille d’un étranger séjournant temporairement.

- article 10 de la loi du 15 décembre 1980, tel que modifié

La loi conditionne le regroupement familial sur la base de l’article 10 au fait que l’étranger présent en Belgique soit autorisé au séjour de manière illimitée ou soit établi. Les étrangers en séjour précaire (candidats réfugiés, étrangers possédant un permis de séjour d’un an, etc.) ne peuvent dès lors pas bénéficier du droit d’être rejoint par leur famille. Cela ne signifie pas qu’une demande ne peut être introduite, mais elle doit alors l’être sur pied de l’article 9 de la loi et le Ministre jouit du pouvoir discrétionnaire de répondre positivement ou non.

Le paragraphe 4 de l’article 10 le précise en indiquant que « Le § 1er, alinéa 1er, 1°, 4°, 5° et 6°15, n’est pas applicable aux membres de la famille de l’étranger autorisé à séjourner en Belgique pour y faire des études ou admis ou autorisé à y séjourner pour une durée limitée, fixée par la présente loi ou en raison de circonstances particulières propres à l’intéressé ou en rapport avec la nature ou de la durée de ses activités en Belgique ».

15 Le point 7° n’est pas mentionné puisque, par définition, le réfugié reconnu jouit d’un permis de séjour à durée illimitée.
Le nouvel article 10 bis étend à d’autres catégories d’étrangers la possibilité d’obtenir un permis de séjour pour rejoindre un étranger qui ne possède pas un permis de résidence à durée illimitée en Belgique.

L’article 10 bis ne s’appliquait qu’au séjour des membres de la famille d’un étudiant. Ce principe est repris par la nouvelle version de cette disposition, en étant adapté à la nouvelle définition de la famille figurant à l’article 10. L’étudiant peut être rejoint par son conjoint et leurs enfants, par son partenaire et par son descendant handicapé majeur16.

Le § 2 de l’article 10 bis autorise le droit au regroupement familial aux membres de la famille d’un étranger autorisé au séjour limité la même possibilité qu’à l’étudiant. Il s’agit d’une nouveauté. Ce droit était auparavant consacré par l’article 10, 4°, qui prévoyait que l’étranger autorisé au séjour ou à l’établissement pouvait être rejoint par les membres de sa famille. Il n’était pas exigé que l’autorisation de séjourner soit à durée illimitée ; elle devait être de plus de trois mois.

Désormais, lorsque l’étranger résidant en Belgique ne possède pas un permis de séjour à durée illimitée mais bien un permis de séjour à durée limitée, souvent d’un an, des conditions supplémentaires doivent être remplies. Cela concerne des étrangers dont le permis de séjour est octroyé « pour une durée limitée, fixée par la présente loi ou en raison de circonstances particulières propres à l’intéressé ou en rapport avec la nature ou la durée de ses activités en Belgique ». Les hypothèses visées sont le plus souvent celles des étrangers dont l’autorisation de séjour est limitée à l’exercice d’une activité professionnelle, salariée ou indépendante, à la cohabitation avec l’enfant mineur de nationalité belge, ou dont le renouvellement est conditionné par le fait d’avoir trouvé un emploi, etc. Il s’agit également de la situation de l’étranger bénéficiant de la protection subsidiaire puisque le permis de séjour octroyé dans ce cadre est d’un an renouvelable. Ces étrangers pourront être rejoint par les mêmes membres de la famille que l’étudiant, en respectant des conditions identiques. Ils seront mis en possession d’un permis de séjour ayant la même échéance que celui du membre de leur famille qu’ils viennent rejoindre. Il s’agit d’un droit dès lors que les conditions prévues par l’article 10 bis sont remplies.

16 L’article 10 bis renvoie à l’article 10, § 1er, 4°, 5° et 6°.
Q.7. – Les membres de la famille concernés :

Q7. A. Sont-ils des ressortissants de pays tiers conformément à l’article 3 §1 ?

☐ OUI
☐ NON

Expliquez si non

Q.7.B. Comment votre Etat a-t-il traduit dans son droit interne la mention « indépendamment de leur statut juridique" qui figure à l’article 3.1 ?

Cela ne l’a pas été explicitement. Toutefois, implicitement, le double système décrit ci-dessus (Q 6) le garantit.

Q.8 – La transposition de la directive porte-t-elle atteinte à des dispositions internationales plus favorables pour les individus (a.3 §4)?

☐ OUI
☐ NON

Q.9 – Si oui, ces dispositions sont-elles issues de :

Q.9.A - des accords bilatéraux et multilatéraux entre la Communauté ou la Communauté et ses États membres, d'une part, et des pays tiers ?

☐ OUI
☐ NON

Précisez lesquelles

L'article 10, 1°, de la loi du 15 décembre 1980 mentionne parmi les étrangers autorisés de plein droit au séjour les étrangers dont le droit de séjour est reconnu par un traité international. Ces termes visent les conventions bilatérales\textsuperscript{17} signées entre la Belgique et plusieurs pays dont étaient originaires les travailleurs migrants dans les années cinquante et soixante, à savoir le Maroc\textsuperscript{18}, la Turquie\textsuperscript{19}, la Tunisie\textsuperscript{20}, l’Algérie\textsuperscript{21} et la Yougoslavie\textsuperscript{22}.

\textsuperscript{17} Toutes ces conventions ont été approuvées par la loi du 13 décembre 1976 (\textit{M.B.}, 17 juin 1977).

\textsuperscript{18} Convention entre la Belgique et le Maroc relative à l’occupation de travailleurs marocains en Belgique, et annexes, signée à Bruxelles le 17 février 1964.

\textsuperscript{19} Accord entre la Belgique et la Turquie, relatif à l’occupation des travailleurs turcs en Belgique, protocole et annexes, signé à Bruxelles le 16 juillet 1964.

\textsuperscript{20} Convention entre la Belgique et la Tunisie relative à l’emploi et au séjour en Belgique des travailleurs Tunisiens, et annexes, signée à Tunis le 7 août 1969.
Ces conventions contiennent des dispositions plus ou moins identiques en matière de regroupement familial, différentes sur quelques points des règles applicables au regroupement familial en vertu de la loi organique :

- Le ressortissant de l'un de ces pays qui est établi et occupé en Belgique peut être rejoint par son conjoint et ses enfants mineurs selon leur loi nationale 21, qui sont à sa charge.
- L'étranger vivant en Belgique doit établir qu'il travaille légalement depuis au moins trois mois et qu'il dispose d'un logement lui permettant d'accueillir sa famille.
- La Convention avec la Turquie permet également au Turc résidant en Belgique d'être rejoint par ses ascendants à charge.

Les ressortissants de ces pays ne sont donc pas soumis à l’article 10, 4°.

Q.9.B - de la Charte sociale européenne du 18 octobre 1961 (a.3 §4)?

☐ OUI
☒ NON

Précisez lesquelles

Q.9.C. De la Charte sociale européenne modifiée du 3 mai 1987 (a.3 §4)?

☐ OUI
☒ NON

Précisez lesquelles

Q.9.D. De la Convention européenne relative au statut juridique du travailleur migrant du 24 novembre 1977 (a.3 §4)?

☐ OUI
☒ NON

Précisez lesquelles

21 Convention entre le Royaume de Belgique et la République algérienne démocratique et Populaire relative à l'emploi et au séjour en Belgique des travailleurs algériens et de leurs familles, et annexes, signées à Alger le 8 janvier 1970.

22 Accord entre le Royaume de Belgique et la République socialiste fédérale de Yougoslavie relatif à l'emploi et au séjour en Belgique des travailleurs Yougoslaves, et annexes, signées à Belgrade le 23 juillet 1970.

Depuis la partition de la Yougoslavie, sont concernées la Slovénie, la Croatie, la Macédoine, la Bosnie Herzégovine et la République fédérale de Yougoslavie (Serbie et Monténégro).

23 L’âge de la majorité dans ces pays est fixé à 18 ans, sauf en Algérie (19 ans) et au Maroc et en Tunisie (20 ans).
Q.10 – La transposition de la directive met-elle fin à des dispositions nationales plus favorables pour les individus (a.3 §5) ?

☐ OUI

☐ NON

Si oui, précisez lesquelles

Le législateur a fait le choix d’insérer dans la loi des conditions dont la directive permettait l’insertion comme :

- celle de conditionner le regroupement à l’existence d’un logement suffisant, d’une couverture mutuelle
- et à la disposition de moyens de subsistance suffisants.

Ces conditions n’étaient pas imposées auparavant.

De plus, il est désormais prévu que le droit de séjour obtenu sur la base du regroupement familial est temporaire pendant trois ans au cours desquels des contrôles peuvent intervenir, alors qu’il était auparavant définitif après maximum quinze mois.

En outre, la nouvelle loi augmente la condition d’âge pour les conjoints à 21 ans (18 ans avant) et introduit une période d’attente de deux ans pour les ménages non mariés.
BENEFICIAIRES (ARTICLE 4)

- L'article 4 ne présente pas de difficultés particulières si ce n'est les nombreuses facultés (les États "peuvent"…) offertes aux États membres. Il convient donc de bien s'assurer de l'utilisation ou non de ces facultés par les États et des modalités juridiques de cette utilisation.

- L'article 4 §1 a) à d) formule un droit au regroupement familial pour une série de membres de la famille destinataires de ce droit. L'Etat ne dispose d'aucune marge d'appréciation à leur égard.

- L'article 4 §1 dernier alinéa formule une dérogation concernant les enfants de 12 ans sur la base d'un critère d'intégration. Il s'agit de l'une des questions les plus sensibles tout comme celle de l'âge limite de quinze ans du §6.

- En ce qui concerne l'article 4 §6, la Cour de justice indique : "il importe peu que la dernière phrase de la disposition attaquée prévoie que les États membres qui décident de faire usage de la dérogation autorisent l'entrée et le séjour des enfants au sujet desquels la demande est introduite après qu'ils ont atteint l'âge de 15 ans «pour d'autres motifs que le regroupement familial». L'expression «regroupement familial» doit en effet être interprétée dans le contexte de la directive comme visant le regroupement familial dans les hypothèses où il est imposé par cette directive. Elle ne saurait être interprétée comme interdisant à un État membre, qui a fait usage de la dérogation, d'autoriser l'entrée et le séjour d'un enfant afin de lui permettre de rejoindre ses parents" (cons.86). Elle ajoute : "l'article 4, paragraphe 6, de la directive doit en outre être lu à la lumière des principes figurant aux articles 5, paragraphe 5, de la même directive, qui impose aux États membres de prendre dûment en considération l'intérêt supérieur de l'enfant mineur, et 17 de cette directive, qui leur impose de prendre en considération un ensemble d'éléments parmi lesquels figurent les liens familiaux de la personne" (cons.87).

Q.11 – Le droit national reconnaît-il le droit au regroupement familial pour :

Q.11. A - Le conjoint du regroupant (a.4 §1,a) ?

☐ OUI
☐ NON

Q.11. B - Les enfants mineurs du regroupant et de son conjoint (a.4 §1 b) ?

☐ OUI
☐ NON

Q.11.C. Les enfants mineurs adoptés du regroupant et de son conjoint (a 4 §1 b) ?
Les enfants mineurs du regroupant (a 4 §1.c.) ?

X OUI

Q.11.E. Si oui, votre législation nationale prévoit-elle bien que le regroupant doit avoir la garde et la charge de ces enfants ?

X OUI

Q.11.F. Les enfants mineurs adoptés du regroupant (a 4 §1.c.) ?

X OUI

Q.11.G. Si oui :

h. Votre législation nationale prévoit-elle que le regroupant doit avoir la garde et la charge de ces enfants ?

X OUI

Précisez éventuellement quelles preuves sont exigées du demandeur

L'article 10.4°. indique : « si le parent vivant en Belgique ou celui qui le rejoint a le droit de garde de cet enfant et sa charge, et, en cas de garde partagée, à la condition que l'autre titulaire du droit de garde ait donné son accord ».

Ce n’est pas précisé dans la loi. Cela le sera peut-être dans les arrêtés royaux, non encore adoptés. Ce n’est pas certain puisque la loi ne renvoie pas à un arrêté royal pour préciser le concept de « garde ».

Idem Q11E

La législation de votre État prévoit-elle que ces enfants sont adoptés "conformément à une décision prise par l'autorité compétente de l'État membre concerné ou à une décision exécutoire de plein droit en vertu d'obligations internationales dudit État membre ou qui doit être reconnue conformément à des obligations internationales"?
Précisez éventuellement quelles preuves sont exigées du demandeur

La loi ne précise rien de spécifique en ce qui concerne les enfants adoptés. Ils sont englobés dans la notion d’« enfants ». Il faut bien évidemment que l’adoption ait soit été réalisée en Belgique, soit soit reconnue comme adoption internationale valable.

**Q.11. H.** Les enfants mineurs du conjoint du regroupant (a 4 §1.d.) ?

- [ ] OUI
- [x] NON

**Q.11. I.** Si oui, votre législation nationale prévoit-elle bien que le conjoint doit avoir la garde et la charge de ces enfants ?

- [ ] OUI
- [ ] NON

Précisez éventuellement quelles preuves sont exigées du demandeur

Oui voir Q11E

**Q.11. J.** Les enfants mineurs adoptés du conjoint (a 4 §1.d.) ?

- [x] OUI
- [ ] NON

**Q.11. K.** Si oui

k Votre législation nationale prévoit-elle bien que le conjoint doit avoir la garde et la charge de ces enfants ?

- [x] OUI
- [ ] NON

Précisez éventuellement quelles preuves sont exigées du demandeur

Voir Q11E

**k.k.** La législation de votre Etat prévoit-elle que ces enfants sont adoptés "conformément à une décision prise par l'autorité compétente de l'État membre concerné ou à une décision exécutoire de plein droit en vertu d'obligations internationales dudit État membre ou qui doit être reconnue conformément à des obligations internationales"?
OUI

NON

Précisez quelles preuves sont exigées du demandeur

Voir Q11G

Q.12 – L'Etat membre a-t-il transposé la faculté offerte par l'article 4 §1 c :

Q.12A. d’autoriser le regroupement des enfants mineurs du regroupant - y compris les enfants adoptés - quand le droit de garde est partagé (a 4 §1.c) ?

NON

OUI

Préciser si nécessaire

Q.12B. Si oui, la législation de votre Etat a-t-elle transposé la condition que l’autre titulaire du droit de garde ait donné son accord (a 4 §1. c) ?

NON

OUI

Préciser si nécessaire

Q.13 – L'Etat membre a-t-il transposé la faculté offerte par l'article 4 §1 d) :

Q.13A. d’autoriser le regroupement des enfants mineurs du conjoint - y compris les enfants adoptés- quand le droit de garde est partagé (a 4.1.d. in fine) ?

OUI

NON

Préciser si nécessaire

Q.13B. Si oui, la législation de votre Etat a-t-elle transposé la condition que l’autre titulaire du droit de garde ait donné son accord (a 4. 1.d) ?

NON

OUI

Préciser si nécessaire
Q.14 – Dans tous les cas visés aux Q 7 à Q 9, l'âge de minorité des enfants est-il inférieur à la majorité légale dans l'État membre (a.4 §1 alinea 2) ?

[X] OUI
[ ] NON

Si oui, indiquez quel est l'âge requis
18 ans

Q.15 – Dans tous les cas visés aux Q 7 à Q 9, l'interdiction de mariage des enfants mineurs est-elle transposée (a.4 §1 alinea 2) ?

[X] OUI
[ ] NON

Si non, expliquez

Q.16 – La dérogation de l'article 4§1 dernier alinéa relative à la satisfaction d'un critère d'intégration des enfants de plus de 12 ans arrivés indépendamment du reste de la famille est-elle utilisée par l'État membre ?

[ ] OUI
[X] NON

Comment le critère de l'arrivée "indépendamment du reste de la famille" est-il transposé ?

Q.17 – Si oui, ce critère d'intégration existait-il en droit interne à la date de la transposition de la directive ?

[ ] OUI
[ ] NON

Q.18 – Décrivez brièvement en quoi consiste ce critère, sa date de création et ses modalités d'examen

Q.19 – Les enfants de réfugiés sont-ils soumis à un test d'intégration par l'État membre (en contradiction avec l'article 10§1) ?

[ ] OUI
[X] NON

Si oui, expliquez
Q.20 – L’État membre autorise-t-il :

Q.20 A - le regroupement des ascendants en ligne directe au premier degré du regroupant (a 4§2 a) ?

☐ OUI

☐ NON

Uniquement dans l’hypothèse de l’ascendant du mineur réfugié reconnu. L’on ne peut donc pas dire que la Belgique autorise le regroupement familial des ascendants au sens large puisque cette possibilité ne concerne que le cas bien spécifique des parents d’un mineur reconnu réfugié.

- Il s’agit du père et de la mère d’un étranger reconnu réfugié (article 10, 6°)24 :
  - qui viennent vivre avec lui ;
  - si celui-ci est âgé de moins de dix-huit ans ;
  - s’il est entré dans le Royaume sans être accompagné d’un étranger majeur responsable de lui par la loi et n’a pas été effectivement pris en charge par une telle personne par la suite, ou a été laissé seul après être entré dans le Royaume.

Lorsque le réfugié mineur n’a plus ni père, ni mère, le Ministre pourrait décider d’autoriser au séjour sur la base de l’article 9 son tuteur légal ou tout autre membre de la famille proche25.

Le législateur n’a pas fait usage de la possibilité que laissait l’article 4, 2, de la directive d’autoriser au séjour « les ascendants en ligne directe au premier degré du regroupant ou de son conjoint, lorsqu’ils sont à sa charge et qu’ils sont privés du soutien familial nécessaire dans le pays d’origine ». Une demande à la leur sujet pourra être introduire sur la base de l’article 9 et soumise au pouvoir discrétionnaire du Ministre.

Q.20 B - Si oui, doivent-ils être à charge et dépourvu du soutien familial nécessaire dans le pays d'origine ?

☐ OUI

☐ NON

Comment chacun de ces deux critères est-il transposé et vérifié ?

Q. 20.C. Le regroupement des ascendants en ligne directe au premier degré du conjoint du regroupant (a 4§2 a) ?

☐ OUI

☐ NON

24 L’insertion de cette nouvelle catégorie pose question dans la mesure où le même droit n’est pas reconnu à l’enfant belge souhaitant être « rejoint » par ses parents.

Oui, voir 20 A

**Q.20.D.** Si oui, doivent-ils être à charge et dépourvu du soutien familial nécessaire dans le pays d'origine ?

☐ OUI  
☒ NON

Comment chacun de ces deux critères est-il transposé et vérifié ?

**Q.20.E.** autorise-t-il le regroupement des enfants majeurs célibataires du regroupant (a 4§2 b) ?

☒ OUI  
☐ NON

Si nécessaire, précisez comment chacun de ces deux critères est-il transposé et vérifié ?

Cette possibilité vise l'enfant handicapé d'un étranger autorisé au séjour pour une durée illimitée, de son conjoint ou de son partenaire (article 10, 5°) :
- célibataire ;
- âgé de plus de dix-huit ans ;
- qui produit une attestation émanant d'un médecin agréé par le poste diplomatique ou consulaire belge indiquant qu'il se trouve, en raison de son handicap, dans l'incapacité de subvenir à ses propres besoins.

L'enfant handicapé est le seul descendant majeur à bénéficier du droit de séjour. Les autres descendants majeurs pourraient y être autorisés par le Ministre sur la base d'une autorisation individuelle, « lorsqu'il le considère nécessaire »26.

**Q.20.F.** Si oui, la législation nationale de votre Etat impose-t-elle que ces enfants majeurs célibataires du regroupant soient objectivement dans l'incapacité de subvenir à leurs propres besoins en raison de leur état de santé (a 4 §2 b) ?

☒ OUI  
☐ NON

Si nécessaire, précisez comment chacun de ces deux critères ("objectivement" et incapacité de subvenir à leurs besoins…) est-il transposé et vérifié ?

La loi précise qu'il doit produire « une attestation émanant d'un médecin agréé par le poste diplomatique ou consulaire belge indiquant qu'il se trouve, en raison de son handicap, dans l'incapacité de subvenir à ses propres besoins ».

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Q.20. G. L'État membre autorise-t-il le regroupement des enfants majeurs célibataires du conjoint du regroupant (a 4§2 b) ?

☐ OUI

☒ NON

Si nécessaire, précisez comment cette condition est appréciée

Oui, uniquement pour les enfants handicapés majeurs, voir Q20E, mêmes conditions

Q.20.H. Si oui, la législation nationale de votre État impose-t-elle que ces enfants majeurs célibataires du conjoint du regroupant soient objectivement dans l'incapacité de subvenir à leurs propres besoins en raison de leur état de santé (a 4 §2 b) ?

☒ OUI

☐ NON

Si nécessaire, précisez comment chacun de ces deux critères ("objectivement" et incapacité de subvenir à leurs besoins…) est-il transposé et vérifié ?

Oui, voir Q20F, mêmes conditions

Q.20. I. L’État membre a-t-il utilisé la voie législative ou réglementaire pour mettre en œuvre l’article 4 §2 a et b ?

☒ OUI

☐ NON
Q.21 – L’État membre autorise-t-il le regroupement du partenaire ressortissant d’un État tiers non marié du regroupant (a 4 §3)?

[X] OUI

[] NON

Q.22 – Si oui :

Q.22 A - Ce partenariat doit-il fondé sur une relation durable et stable dûment prouvé ?

[X] OUI

[] NON

Si oui, précisez comment l’État apprécie cette situation

Le droit au regroupement familial est reconnu :

- au partenaire s’il s’agit d’un partenariat enregistré considéré comme équivalent à un mariage en Belgique (article 10, 4°):

  - qui vient vivre avec lui,
  - si les deux personnes concernées soient âgées de plus de vingt et un ans.

  Et à leurs enfants (voir ci-dessus).

La loi précise qu’un arrêté royal délibéré en conseil des ministres fixera les cas où un tel partenariat est considéré comme équivalent à un mariage.

L’exposé des motifs précise que cette possibilité vise des institutions telle que le partenariat scandinave (Exposé des motifs (2478/001), p. 40).

L’article 12 de l’arrêté royal du 17 mai 2007 énonce la liste des partenariats enregistrés pris en considération à ce titre :

1° Danemark;

2° Allemagne;

3° Finlande;

4° Islande;

5° Norvège;

6° Royaume-Uni;

7° Suède.
- au partenaire (enregistré) dans le cadre d'un partenariat non équivalent à mariage si (article 10, 5°):
  - la relation est durable et stable d'au moins un an dûment établie. L'exposé des motifs précise qu’il sera tenu compte de toute preuve fiable et « en tout cas d’éléments tels un enfant commun »27 ;
  - il vient vivre avec son partenaire ;
  - s’ils sont tous deux âgés de plus de vingt et un ans ;
L’âge minimum des deux partenaires est ramené à dix-huit ans lorsqu'ils peuvent apporter la preuve d'une cohabitation d'au moins un an avant l'arrivée de l'étranger rejoint dans le Royaume ;
  - s’ils sont tous deux célibataires et n’ont pas une relation durable avec une autre personne.

La loi précise qu’un arrêté royal délibéré en conseil des ministres fixera :
  - les cas où un tel partenariat est considéré comme équivalent à un mariage ;
  - les critères permettant d’évaluer le caractère stable de la relation entre les partenaires.

Cet arrêté royal (17 mai 2007, article 11) précise que le caractère stable de la relation peut être démontré de deux manières :

- **Si les partenaires cohabitent déjà** : ils doivent avoir cohabité de manière légale en Belgique ou dans un autre pays et ininterrompue pendant au moins un an avant la demande et la personne qui crée un droit au regroupement familial doit avoir signé un engagement de prise en charge vis-à-vis de son ou sa partenaire, dans lequel il s'engage pendant une période de trois ans vis-à-vis de l'Etat belge et du Centre public d’action sociale au paiement de tous les frais de séjour, de soins de santé et de rapatriement.

- **Si les partenaires ne cohabitent pas encore** : Ils doivent :
  
  - **i.** Prouver qu'ils se connaissent depuis au moins deux ans et
  - **ii.** Prouver qu'ils ont entretenu des contacts réguliers par téléphone, par courrier ordinaire ou électronique, qu'ils se sont rencontrés trois fois durant les deux années précédant la demande et que ces rencontres comportent au total 45 jours ou davantage et
  - **iii.** que la personne qui crée un droit au regroupement familial a signé un engagement de prise en charge dans lequel il s'engage pendant une période de trois ans vis-à-vis de l'Etat belge et du CPAS à payer tous les frais de séjour, de soins de santé et de rapatriement.

Cette catégorie insère dans la loi le prescrit de la circulaire du 30 septembre 1997 relative à l’octroi d’une autorisation de séjour sur la base de la cohabitation dans le cadre d’une relation durable28.

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27 *Exposé des motifs* (2478/001), p. 44.
Q.22 B - Ce partenariat doit-il être enregistré ?

☐ OUI

☐ NON

Q.23 – Le droit de l'Etat membre assimile-t-il le partenaire enregistré au conjoint (a 4 §3 alinéa 2) ?

☐ OUI

☐ NON
Q.24 – L'Etat membre autorise-t-il :

Q.24. A – Le regroupement des enfants mineurs du partenaire, y compris les enfants adoptés (a 4§3)?

☐ OUI
☐ NON

Oui, les enfants de ce partenaires (article 10, 5°):
- qui viennent vivre avec eux ;
- avant d'avoir atteint l'âge de dix-huit ans ;
- qui sont célibataires ;
- pour autant qu'il en ait le droit de garde et la charge et, en cas de garde partagée, à la condition que l'autre titulaire du droit de garde ait donné son accord.

Q. 24. B – Le regroupement des enfants majeurs non mariés du partenaire, y compris les enfants adoptés (a 4§3)

☐ OUI
☒ NON

Q.25 – L'Etat membre autorise-t-il le regroupement des enfants majeurs célibataires du partenaire qui sont objectivement dans l'incapacité de subvenir à leurs propres besoins en raison de leur état de santé (a 4§3)?

☐ OUI
☒ NON

Si oui, précisez notamment la condition "objective"

Q.26 – L'Etat membre a-t-utilisé la voie législative ou réglementaire pour mettre en œuvre l'article 4 §3) ? législative
Q.27 – L’interdiction du regroupement polygame est-elle formulée par le droit interne de l’Etat membre (a. 4§4)?

[X] OUI

[] NON

L’article 10, 4°, précise que les dispositions relatives au regroupement familial ne sont pas applicables aux unions polygames tant en ce qui concerne le conjoint que les enfants qui en sont issus. Une seule épouse est autorisée à séjourner en Belgique, ainsi que les enfants de cette union-là.

La portée de cette exclusion est limitée par le fait que ce sont les conventions bilatérales et non l’article 10 qui régissent le regroupement familial des familles originaires du Maroc, de la Tunisie ou de l’Algérie29. Toutefois, dans la pratique de l’Office des étrangers, même lorsque les Conventions s’appliquent, le reconstitution de famille polygamiques n’est pas autorisée. L’exposé des motifs précise qu’il n’est pas exclu que le Ministre autorise les enfants de ces unions polygames au séjour, mais alors sur la base de l’article 9 (pouvoir discrétionnaire du Ministre) et non de l’article 10. Ces situations devraient être examinées au cas par cas. L’exemple d’un enfant orphelin de mère qui serait autorisé à rejoindre son père polygame est donné30.

Q.28 – L’Etat membre impose-t-il des restrictions concernant le regroupement familial des enfants mineurs d’un autre conjoint auprès du regroupant (article 4§4 dernier alinéa.)?

[X] OUI

[] NON

Voir la situation du mariage polygame Voir Q27

Q.29 – L’Etat membre utilise-t-il l’option de l’article 4§5 relative à un âge minimal de 21 ans concernant le regroupement du conjoint?

[X] OUI

[] NON

Cet âge minimum est ramené à dix-huit ans lorsque le lien conjugal ou ce partenariat enregistré est préexistant à l’arrivée de l’étranger rejoint en Belgique.

29 En application de l’article 10, 1°.
30 Exposé des motifs (2478/001), p. 42.
Q.30 – Si oui

Q.30 A - Quel âge est retenu ?

21 ans

Q.30 B - La dérogation est-elle fondée sur le critère d'intégration et/ou la prévention des mariages forcés ?

L’exposé des motifs indique que l’ « insertion de cette condition d’âge garantit le fait que les époux ont une certaine maturité et ne sont pas contraints au mariage suite à leur situation de dépendance vis-à-vis de leurs parents ou de leur famille »\textsuperscript{31}. Il est également précisé qu’il n’est pas exclu que le Ministre autorise un conjoint au séjour avant l’âge de 21 ans sur la base alors de l’article 9, « en l’absence d’abus », qui pourrait se déduire de l’existence d’un enfant commun\textsuperscript{32}.

Q.31 – L’Etat membre fait-il usage de la dérogation de l’article 4§6 en demandant que la demande de regroupement d’un enfant mineur soit introduite avant l’âge de 15 ans ?

☐ OUI

☒ NON

Expliquez

Q.32 – Si oui, la législation nationale en vigueur le prévoyait-elle à la date de la transposition et de quelle manière ?

Q.33 – Si la demande n’est pas introduite avant l’âge de 15 ans, les États membres autorisent-ils l’entrée et le séjour pour d’autres motifs que le regroupement ?

☐ OUI

☐ NON

Lesquels et à quelles conditions ?

\textsuperscript{31} Exposé des motifs (2478/001), p. 39.

\textsuperscript{32} Exposé des motifs (2478/001), p. 39.
PROCEDURE (ARTICLE 5)

On attire l'attention sur l'importance du §5 relatif à l'intérêt supérieur de l'enfant dont l'arrêt C-540/03 souligne le caractère déterminant

Q.34 – L'Etat membre a-t-il institué une procédure relative au regroupement familial (a 5 §1) ?

X OUI
□ NON

Q.35 – Si oui,

Q.35. A – Quelles autorités de l'Etat en traitent ?
L’Office des étrangers (Ministère de l’Intérieur)

Q.35. B – Les ONG sont-elles associées à cette procédure ?
□ OUI
X NON

Si oui, décrivez la procédure

Q.35. C – La demande est-elle à l'initiative du regroupant ou/et des membres de la famille ?

Des membres de la famille

Q.35. D – Cette procédure est-elle exclusive de toute autre possibilité de regroupement familial ?

□ OUI
X NON

S'il existe d'autres possibilités procédurales de regroupement familial, décrivez-les

Un étranger qui ne remplit les conditions prévues par les dispositions relatives au regroupement familial peut toujours demander au Ministre de l’Intérieur de faire usage de son pouvoir discrétionnaire d’autoriser au séjour un étranger. Une telle demande se fonde sur l’article 9 de la loi du 15 décembre 1980.

L’article 9 est la première disposition du troisième chapitre du titre premier de la loi organique. Ce chapitre est consacré aux étrangers qui souhaitent séjourner en Belgique plus de trois mois, soit pour une durée limitée, soit à durée indéterminée. Il traite, d'une part,- articles 10 à 13 - de la situation des étrangers autorisés à séjourner de plein droit sur le territoire et, d'autre part, -
article 9 – de celle des étrangers qui doivent demander au ministre de l'intérieur l'autorisation de séjourner en Belgique, celui-ci disposant à ce niveau d'un pouvoir discrétionnaire. La loi du 15 décembre 1980 ayant été adoptée suite à l"arrêt de l'immigration" décrété en 1973, peu d'étrangers bénéficient d'un droit de séjour en Belgique. Il s'agit essentiellement des ressortissants européens et assimilés, des membres de la famille d'un Belge ou d'un étranger ou des réfugiés reconnus. Les étrangers qui souhaitent obtenir un permis de séjour en Belgique parce qu'ils y ont vécu pendant plusieurs années sous un statut temporaire ou précaire, etc., en tant que travailleurs salariés ou indépendants, pour des motifs humanitaires, sont soumis au régime de l'article 9. Ils sont invités à former une demande auprès du ministre de l'intérieur, en principe à partir de leur pays d'origine. Ce n'est que s'ils rapportent la preuve de l'existence de circonstances exceptionnelles qu'ils peuvent introduire la demande en Belgique. L'article 9.3. traitait de cette dernière hypothèse.

Les travaux préparatoires renvoient d'ailleurs à plusieurs reprises à l'article 9., précisant qu'un étranger en principe exclu du regroupement familial mais se trouvant dans un cas « limite » peut toujours former sa demande sur la base de cette disposition.

Q. 35. E – Cette procédure existait-elle avant la directive 2003/86 ?

[X] OUI

[] NON

Mais un peu différente
Q.36 – Quelles pièces justificatives (a 5 §2) sont exigées pour prouver :

Q.36. A – Les liens familiaux de l'article 4 ?

Que la procédure soit introduite en Belgique ou à l’étranger, la preuve de l’existence de liens familiaux doit être rapportée par la production d’actes de l’état civil dûment légalisés. Une certaine souplesse est autorisée en ce qui concerne la famille des réfugiés.

En outre, il est prévu que lorsque l’étranger ne peut produire ces documents, « le ministre ou son délégué peut procéder ou faire procéder à des entretiens avec celui-ci et l’étranger rejoint ou à toute enquête jugée nécessaire, et proposer, le cas échéant, toute analyse complémentaire ». Il peut notamment recourir, comme cela se fait déjà dans certains consulats et ambassades à l’étranger ou en Belgique, à une expertise sanguine ou génétique.

Rien de plus précis n’est déterminé à ce stade ; attente arrêté royal.

Q.36. B – Le respect des conditions de logement de l'article 7 ?

Une attestation émanant de l’administration communale de laquelle il apparaît que le logement où il réside satisfera, pour lui et pour les membres de sa famille, aux exigences de sécurité, de santé et de salubrité qui sont en vigueur dans la région concernée.

La circulaire explicative de l’entrée en vigueur de la nouvelle loi précise que la vérification se fera différemment selon que la demande de séjour est uniquement fondée sur le regroupement familial ou aussi sur le travail.

Dans le premier cas, la preuve de l’existence du logement suffisant doit être effective alors qu’elle peut se fonder sur une présomption dans le second :

« 6. L’attestation de logement suffisant (conforme au modèle figurant à l’annexe 7 de la présente) qui doit être produite, est un document qui doit être établi par l’administration communale. L’administration communale doit délivrer un accusé de réception (conforme au modèle figurant à l’annexe 6 de la présente) à l’étranger qui demande une telle attestation et en transmettre une copie à l’Office des étrangers - Bureau Regroupement familial, Section article 10. L’administration communale doit ensuite dans un délai de six mois à dater de cet accusé de réception informer l’étranger si une telle attestation peut être octroyée ou non. Une copie de cette décision doit être transmise à l’Office des étrangers - Bureau Regroupement familial - Section article 10. Si au terme des 6 mois, aucune information n’a été donnée par l’administration communale concernant le logement, il sera considéré comme suffisant. Dans le cas précis d’une demande de visa en vue d’un regroupement familial introduite simultanément à une demande d’autorisation de séjour provisoire (travail), la preuve du logement suffisant peut être faite par un contrat de bail (descriptif du logement), la lettre d’engagement (mise à la disposition d’un logement par l’employeur) ou tout autre document digne de foi attestant que l’étranger qui ouvre le droit au séjour disposera d’un logement suffisant pour accueillir sa famille. L’attestation de logement suffisant établie par l’administration communale pourra être demandée lors du renouvellement du titre de séjour ». 

Q.36. C – Le respect de la condition d'assurance maladie ?

Pas encore déterminé ; attente arrêté royal ?
Q.36. D – La copie certifiée des documents de voyage ?
Pas encore déterminé ; attente arrêté royal ?

Q.37 - Existe-t-il une possibilité :

D’entretien :

[X] OUI

[ ] NON

D’enquête :

[X] OUI

[ ] NON

Si oui, décrivez-les sommairement
Rien de précis encore ; attente autre arrêté royal ?

Q.38 – Lors de l'examen de la demande du partenaire non marié, quels éléments d'appréciation sont pris en compte sur la base du droit de l'Etat membre afin d'établir les liens familiaux (article 5§2 dernier alinea) ?

Q.38. A - L'existence de liens familiaux et d'éléments tels qu'un enfant commun ?

[X] OUI

[ ] NON

Précisez

L’exposé des motifs précise qu’il sera tenu compte de toute preuve fiable et « en tout cas d’éléments tels un enfant commun »33 ;

Q.38. B - une cohabitation préalable ?

[X] OUI

[ ] NON

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33 Doc. parl., Chambre, sess. ord. 2005-2006, n° 2478/001, Exposé des motifs, p. 44.
Q.38. C - l'enregistrement du partenariat ?

[X] OUI

[ ] NON

Q.38. D - D’autres éléments sont-ils prévus par votre droit national ?

[X] OUI

[ ] NON

Si oui, précisez lesquels :

La loi soumet le partenaire dans le cadre d’un partenariat enregistré considéré comme équivalent à un mariage en Belgique aux mêmes conditions que le marié. Ils doivent vivre ensemble.

S’il s’agit d’un partenariat non équivalent à mariage, il faut :

- une relation durable et stable depuis au moins un an, dûment établie. (il ne doit pas nécessairement s’agir d’une cohabitation préalable d’un an, mais bien de la preuve de l’existence de la relation, preuve pouvant être rapportée par toutes voies de droit)

La loi précise qu’un arrêté royal délibéré en conseil des ministres fixera les critères permettant d’évaluer le caractère stable de la relation entre les partenaires.

- il vient vivre avec son partenaire ;

- ils soient tous deux âgés de plus de vingt et un ans ;

L’âge minimum des deux partenaires est ramené à dix-huit ans lorsqu’ils peuvent apporter la preuve d’une cohabitation d’au moins un an avant l’arrivée de l’étranger rejoint dans le Royaume ;

- s’ils sont tous deux célibataires et n’ont pas une relation durable avec une autre personne.

Q.39 - Les membres de la famille sont-ils tenus de résider à l’extérieur durant l’instruction de la demande (a5 §3) ?

[X] OUI

[ ] NON

Cette obligation est-elle sanctionnée et comment ?

Oui, en principe, mais il y a des exceptions :
Q.40 – Si la réponse est oui, existe-t-il néanmoins une dérogation à cette situation et laquelle (a 5 §3 alinea 2)?

☐ OUI

☐ NON

Précisez

L’article 12 bis prévoit qu’à titre exceptionnel et si certaines conditions sont réunies, la demande peut être introduite auprès de l’administration communale du lieu de résidence en Belgique.

Cette possibilité est ouverte aux étrangers :

1. qui sont déjà autorisés au séjour de plus de trois mois et présentent le titre en attestant ; tel est par exemple le cas des étudiants 34 ;

2. qui sont autorisés au séjour de moins de trois mois et qui présentent l’ensemble des éléments exigés avant l’expiration de la validité de leur autorisation de séjour ; tel serait le cas d’un étranger dispensé de visa et qui est en Belgique depuis moins de trois mois ou d’un étranger titulaire d’un via de court séjour 35 ;

3. qui établissent l’existence de circonstances exceptionnelles les empêchant de rentrer dans leur pays d’origine, qui remplissent toutes les conditions requises et prouvent leur identité.

Le législateur met en œuvre un arrêt de la Cour d’Arbitrage du 19 juillet 2005 36 qui a jugé discriminatoire le fait que l’article 12 bis ne permette pas de faire valoir des circonstances exceptionnelles pour introduire une demande d’autorisation de séjour en Belgique comme le faisait l’article 9, alinéa 3, anciennement.

Les circonstances exceptionnelles sont définies par la jurisprudence comme étant celles qui "rendant impossible ou particulièrement difficile le retour de l’étranger dans son pays d’origine" 37. Le Conseil d’Etat souligne que la notion de "circonstances exceptionnelles" ne se confond pas avec celle de "force

34 Exposé des motifs (2478/001), p. 64.
35 Exposé des motifs (2478/001), p. 64.
36 Cour Arb., n° 133/2005, 19 juillet 2005 :
   « Les articles 9 et 12bis de la loi du 15 décembre 1980 sur l’accès au territoire, le séjour, l’établissement et l’éloignement des étrangers, lus en combinaison avec l’article 26, § 2, de l’arrêté royal du 8 octobre 1981 sur l’accès au territoire, le séjour, l’établissement et l’éloignement des étrangers, violent les articles 10 et 11 de la Constitution en ce qu’ils priven l’étranger qui se trouve dans un des cas prévus à l’article 10, 4°, de la loi du 15 décembre 1980 précitée de la faculté de demander l’autorisation de pouvoir séjourner dans le Royaume, plus longtemps que le délai fixé à l’article 6, auprès du bourgmestre de la localité où il réside lorsqu’il se trouve dans des circonstances exceptionnelles d’ordre médical qui l’empêchent de retourner dans son pays pour demander les documents requis pour son entrée auprès du poste diplomatique ou consulaire belge compétent ».
37 Voyez notamment C.E., arrêt n° 88.076 du 20 juin 2000.
Il rappelle que les travaux préparatoires renseignent que l'article 9, alinéa 3, a été voulu par le législateur pour rencontrer des "situations alarmantes qui requièrent d'être traitées avec humanité".

Par ailleurs, le Conseil d'Etat soumet l'examen des circonstances exceptionnelles au principe de proportionnalité: "une règle d’administration prudente exige que l’autorité apprécie la proportionnalité entre, d’une part, le but et les effets de la démarche administrative prescrite par l’alinéa 2 de la disposition [en l’occurrence l’article 9], et d’autre part, son accomplissement plus ou moins aisé dans les cas individuels et les inconvénients inhérents à son accomplissement, tout spécialement les risques auxquels la sécurité des requérants et l’intégrité de leur vie familiale seraient exposées s’ils s’y soumettraient«.

Selon la jurisprudence, les difficultés ou l'impossibilité de retour peuvent être liées aux attaches en Belgique (scolarité des enfants, suivi d'une formation, liens familiaux), à la situation dans le pays d'origine (absence d'un poste diplomatique belge dans le pays d'origine, insécurité, impossibilité de voyager, situation de danger même si la personne concernée n'a pas été reconnue réfugiée), à d’autres facteurs liés à la situation particulière de l’étranger (qualité d’apatride de l’étranger, état de santé, etc.).

L’exposé des motifs répond à l’observation du Conseil d'Etat selon laquelle le projet de loi ne permettait pas de répondre à l’insécurité juridique qui découle de ce qu’aucun critère ne figure dans la loi et que ceux-ci pourraient être inscrits ultérieurement dans des circulaires. Le Ministre répond qu’"il sera prévu dans l’arrêté royal du 8 octobre 1981 que la demande d’autorisation de séjour de nature «technique», c’est à dire celle à l’égard de laquelle le pouvoir discrétionnaire du ministre ou de son délégué est formellement circonscrit (étudiant, travailleur sous permis de travail ou carte professionnelle, travailleur indépendant PECO), peut être introduite sur le territoire belge, sur la base de l’article 9, alinéa 2, de la loi, pour autant que le demandeur soit en séjour régulier en Belgique et que les conditions d’obtention de l’autorisation de séjour soient réunies «.

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38 Voyez notamment C.E., arrêt n° 88.076 du 20 juin 2000.
42 Voyez notamment C.E., arrêts n° 100.587; 88.076 du 20 juin 2000.
43 C.E., arrêt n° 84.571 du 6 janvier 2000.
Dans les deux premiers cas, si l’étranger se présente à l’administration communale en possession de toutes les pièces requises, il est inscrit au registre des étrangers. Il est mis en possession d’un document attestation du dépôt de la demande. La demande est transmises à l’Office de s étrangers qui dispose de neuf mois pour prendre une décision. Ce délai peut être prolongé à deux reprises de trois mois. Au terme de ce délai, l’étranger est admis à séjourner.

Dans le troisième cas – l’étranger invoquant des circonstances exceptionnelles -, la commune d’assure « sans délai » de la recevabilité de la demande auprès de l’Office des étrangers. Si l’Office des étrangers estime que l’étranger fait valoir ces circonstances exceptionnelles, il est inscrit au registre des étrangers. Lorsque ces circonstances sont liées à l’état de santé de l’étranger, un expert médecin rend un en décidant, le cas échéant, d’examiner l’étranger ou de recueillir l’avis d’un expert suivant la procédure définie à l’article 9 ter. La procédure est ensuite identique à celle présentée dans le paragraphe précédent.

Q.41 – Le droit national prévoit-il une durée maximale de neuf mois pour répondre après la demande précédant la notification écrite (a5 §4)?

[X] OUI

[ ] NON

Précisez si nécessaire

L’article 10 ter fixe un délai maximal de prise de décision et détermine la prise de départ de ce délai. Il commence à courir lorsque le dossier est complet, c'est à dire lorsque tous les documents établissant le respect des conditions prévues ont été fournis. La décision doit alors être prise et notifiée dans les plus brefs délais et au plus tard au terme de neuf mois.

Q.42 – Le délai initial peut-il être prorogé (a 5 §4 alinea 2) ?

[X] OUI

[ ] NON

Q.43 – Si oui :

Q.43. A - Ces possibilités sont-elles liées à la complexité de l’examen de la demande ?

[X] OUI

[ ] NON

Si oui, précisez

Une prolongation ne peut intervenir que « dans des cas exceptionnels liés à la complexité de l’examen de la demande ». 
Q.43. B - Quelle est la durée de la prorogation ?

Deux fois trois mois

Q.44 – En cas d’absence de décision à l’expiration du délai initialement prévu, quelle conséquence en résulte pour le demandeur ?

Au terme ce délai, à défaut de prise de décision, celle-ci est considérée comme étant positive. Si la décision est positive, l’étranger se verra délivrer un visa D regroupement familial.

Le même délai est d’application lorsque la demande est introduite en Belgique.

Q.45 – La décision de rejet est-elle notifiée par écrit et est-elle motivée ?

[ ] OUI
[ ] NON

Précisez si une seule de ces conditions n’est pas exigée

Q.46 – Comment l’intérêt supérieur de l’enfant est-il pris en compte par la législation de l’État membre et ses autorités durant l’examen de la demande (article 5§5) ?

La loi fait désormais référence expressément à l’intérêt supérieur de l’enfant.

L’article 10 ter se réfère à l’ « intérêt supérieur de l’enfant » dont il est indiqué qu’il faut tenir compte. Cette expression est inspirée de l’article 3 de la Convention internationale relative aux droits de l’enfant qui dispose que « dans toutes les décisions qui concernent les enfants, qu’elles soient le fait des institutions publiques ou privées de protection sociale, des tribunaux, des autorités administratives ou des organes législatifs, l’intérêt supérieur de l’enfant doit être une considération primordiale ». Ce principe de primauté de l’intérêt de l’enfant découle directement du droit international et est applicable même à défaut d’insertion dans le texte de la loi. Son influence sur les décisions de l’administration dont la compétence est liée puisque l’autorisation de séjour doit être délivrée si toutes les conditions sont remplies est difficile à évaluer. Elle doit en tout état de cause conduire à ce que le délai d’octroi des autorisations de séjour soit le plus bref possible.

Comme l’article 10 ter, l’article 12 bis se réfère à l’ « intérêt supérieur de l’enfant ». 
CONDITIONS REQUISES (ARTICLES 6 ET SUIVANTS)

• Les questions relatives au logement et aux ressources seront attentivement examinées afin de permettre d’en cerner l’utilisation par les autorités de l’État membre, soit à des fins de meilleure insertion soit à des fins de régulation des flux migratoires.

• Il en va de même à propos de la faculté de fixer une durée de séjour minimal nécessaire préalable au dépôt d’une demande de regroupement.

• La Cour de justice indique à propos de l’article 8 : “Cette disposition n’a donc pas pour effet d’empêcher tout regroupement familial, mais maintient au profit des États membres une marge d’appréciation limitée en leur permettant de s’assurer que le regroupement familial aura lieu dans de bonnes conditions, après que le regroupant a séjourné dans l’État d’accueil pendant une période suffisamment longue pour présumer une installation stable et un certain niveau d’intégration. Dès lors, le fait, pour un État membre, de prendre ces éléments en considération et la faculté de différer le regroupement familial de deux ans ou, selon le cas, de trois ans ne vont pas à l’encontre du droit au respect de la vie familiale exprimé notamment à l’article 8 de la CEDH tel qu’interprété par la Cour européenne des droits de l’homme” (cons. 98).

• “Il convient cependant de rappeler que, ainsi qu’il résulte de l’article 17 de la directive, la durée de résidence dans l’État membre n’est que l’un des éléments qui doivent être pris en compte par ce dernier lors de l’examen d’une demande et qu’un délai d’attente ne peut être imposé sans prendre en considération, dans des cas spécifiques, l’ensemble des éléments pertinents” (cons.99). “Il en est de même du critère de la capacité d’accueil de l’État membre, qui peut être l’un des éléments pris en considération lors de l’examen d’une demande, mais ne saurait être interprété comme autorisant un quelconque système de quotas ou un délai d’attente de trois ans imposé sans égard aux circonstances particulières des cas spécifiques. En effet, l’analyse de l’ensemble des éléments telle que prévue à l’article 17 de la directive ne permet pas de ne prendre que ce seul élément en considération et impose de procéder à un examen réel de la capacité d’accueil au moment de la demande” (cons.100). “Lors de cette analyse, les États membres doivent en outre, ainsi qu’il est rappelé au point 63 du présent arrêt, veiller à prendre dûment en considération l’intérêt supérieur de l’enfant mineur” (cons.101).

Q.47 – Des motifs d’ordre public, sécurité ou de santé publique peuvent-il fonder (a 6 §§1 et 2) :

Q.47. A – Le rejet de la demande de regroupement ?

[X] OUI

[ ] NON

Si oui, lesquels ?

Tous les étrangers invoquant le droit au regroupement familial doivent prouver qu’ils ne souffrent pas d’une des maladies graves visées dans l’annexe de la loi 46.

46 Article 10, § 2, alinéa 6.
Le nouvel article 11 définit de manière plus précise et plus complète les causes de refus d’octroi d’un permis de séjour sur la base du regroupement familial et les causes de perte de celui-ci. L’ancienne version ne prévoyait que le refus d’octroi de l’autorisation de séjour.

L’article 11 énumère les causes de refus d’octroi d’une autorisation de séjour demandée sur la base de l’article 10, dans le cadre du regroupement familial ou de l’une des autres catégories prévues par cette disposition.

Le séjour peut notamment être refusé si l’étranger est signalé aux fins de non-admission dans les États membres de l’« Espace Schengen », est considéré comme pouvant compromettre les relations internationales de la Belgique, l’ordre public, la sécurité nationale ou a renvoyé ou expulsé du territoire depuis moins de dix ans 47.

L’article 11 renvoie sur ce point à l’article 3 qui concerne les motifs de refus d’accès au territoire:

« 5° s’il est signalé aux fins de non-admission dans les États parties à la Convention d’application de l’Accord de Schengen, signée le 19 juin 1990, soit pour le motif que sa présence constitue un danger pour l’ordre public ou la sécurité nationale, soit pour le motif qu’il a fait l’objet d’une mesure d’éloignement non rapportée ni suspendue, comportant une interdiction d’entrée, fondée sur le non-respect des réglementations nationales relatives à l’entrée ou au séjour des étrangers;
6° s’il est considéré par le Ministre, après avis conforme de la Commission consultative des étrangers, comme pouvant compromettre les relations internationales de la Belgique ou d’un État partie à une convention internationale relative au franchissement des frontières extérieures, liant la Belgique.
7° s’il est considéré par le Ministre ou son délégué comme pouvant compromettre la tranquillité publique, l’ordre public ou la sécurité nationale ;
8° s’il a été renvoyé ou expulsé du Royaume depuis moins de dix ans, lorsque la mesure n’a pas été suspendue ou rapportée. »

La décision doit être motivée et préciser la cause invoquée par le Ministre de l’Intérieur pour refuser l’autorisation de séjour.

Q.47. B - le retrait de la demande de regroupement ?

[X] OUI

[ ] NON

Précisez si nécessaire

L’article 11, § 2, détermine les causes de perte de l’autorisation de séjour. Elles sont identiques à celles de refus d’octroi en ce qui concerne le non-respect des conditions visées à l’article 10, le caractère non effectif de la relation conjugale ou la fraude.

47 L’article 10 bis renvoie à certaines des causes de refus d’accès au territoire énumérées à l’article 3, § 1er, 5° à 8° de la loi du 15 décembre 1980.
Q.47. C - le refus de renouvellement du titre de séjour du membre de la famille ?

☐ OUI

☐ NON

Précisez si nécessaire

Idem Q47B

Q.48 – Le droit de l'Etat membre prend-il en compte :

Q.48. A – La gravité de l'atteinte à l'ordre public ?

☐ OUI

☐ NON

En principe, oui. L'exposé des motifs précise que « la notion d'ordre public peut couvrir la condamnation pour infraction grave et cette notion ainsi que celle de sécurité nationale peut également couvrir les cas dans lesquels un étranger appartient à une association qui soutient le terrorisme ou a des idées extrémistes » 48.

Q.48. B – L'importance des liens familiaux visés à l'article 17 ?

☐ OUI

☐ NON

Précisez si nécessaire

Pas dans le texte. La jurisprudence le fera sans doute sur la base de la jurisprudence de la Cour européenne des droits de l'homme (article 8 Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales)

48 Exposé des motifs (2478/001), p. 57.
Q.49 – La survenance de maladie ou d'infirmité après l'octroi de l'autorisation peut-elle à elle seule justifier un retrait ou un éloignement (a 6 §3)?

☐ OUI
☒ NON

Q.50 – Des conditions de logement sont-elles exigées du demandeur (a7 §1a)?

☒ OUI
☐ NON

Ces conditions ne sont pas applicables aux conjoint et enfants, aux partenaire et enfants, aux parents d’un réfugié reconnu si les liens de parenté sont antérieurs à l’entrée en Belgique du réfugié reconnu. Cet assouplissement est toutefois conditionné par le fait que la demande de regroupement familial ait été formulée dans l’année civile qui suit la décision de reconnaissance de la qualité de réfugié. Le Ministre peut cependant décider d’exiger le respect de ces conditions si le regroupement familial est possible dans un État tiers. Il pourrait le faire si le membre de la famille demandeur a lui-même été reconnu réfugié ou est autorisé au séjour à un autre titre dans un autre membre de l’Union européenne ou dans un État tiers. Il faudra toutefois tenir compte des conditions fixées par le regroupement familial dans cet autre État et des circonstances de fait dans lesquelles il pourrait avoir lieu.

Q.51 – Si oui :

Q.51. A - Quelles sont ces conditions ?

Les étrangers invoquant le droit au regroupement familial doivent prouver que l’étranger rejoint dispose d’un logement suffisant pour les accueillir.

Q.51. B - Comment sont-elles évaluées ?

L’arrêté royal du 10 octobre 1981, tel que modifié par l’arrêté royal du 27 avril 2007, définit ce que signifie un « logement suffisant ». Un nouvel article 26/3, dispose que

« L’étranger est considéré comme disposant d’un logement suffisant au sens des articles 10 et 10bis de la loi, s’il peut présenter une attestation délivrée par les autorités communales de laquelle il apparaît que le logement où il réside satisfera, pour lui et pour les membres de sa famille, aux exigences de sécurité, de santé et de salubrité qui sont en vigueur dans la région concernée. Le bourgmestre ou son délégué délivre un accusé de réception à l’étranger qui demande une telle attestation et transmet une copie au ministre ou à son délégué. Dans un délai de 6 mois, à compter de la délivrance de l’accusé de réception, le... »

49 Article 10, § 2, alinéa 4.

50 Article 10, § 2, alinéa 5.


52 Article 10, § 2, alinéa 2.
bourgmestre ou son délégué informe l'étranger si l'attestation peut être délivrée ou pas. Une copie de la décision sera transmise au ministre ou à son délégué. Lorsque 6 mois après la date de l'accusé de réception aucune décision n'a été prise par le bourgmestre ou son délégué concernant l'attribution de l'attestation ou pas, l'étranger sera considéré comme ayant rempli les conditions stipulées à l'alinéa 1er dans la commune concernée.

Cette condition est déjà problématique en raison de la discrimination qu'elle crée entre les étrangers selon leurs moyens financiers. Les délais prévus accroissent les difficultés que rencontreront les étrangers. Non seulement, la procédure de regroupement familial peut durer plusieurs mois, mais en plus le délai laissé à la commune est de six mois.

Cela signifie qu'un étranger qui veut être rejoint par ses proches pourrait attendre :
- 6 mois l'attestation du bourgmestre et ensuite
- 9 mois, le cas échéant prorogés deux fois de 3 mois.

Soit en tout 21 mois, près de deux ans, pour obtenir une réponse.

Il est difficile, voire impossible, d'exiger d'une personne qu'elle dispose d'un logement suffisamment grand pour accueillir les membres de sa famille près de deux ans avant leur arrivée.

L'exposé des motifs précise que la condition de disposer d'un logement suffisant ne revient pas à « exiger des étrangers de respecter des normes que ne sont pas exigées en pratique à l'égard de la population belge, mais de s'assurer que l'étranger rejoint n'accueillera pas sa famille dans un logement manifestement impropre à l'habitation et dangereux pour les personnes qui y vivent. Appliquée de manière raisonnable, cette condition permet d'éviter que les familles concernées ne tombent dans la précarité et de lutter contre les pratiques des «marchands de sommeil» ».

Q.51 C - Sont-elles comparables à celles d'une famille normale habitant dans la même région de l'Etat membre ?
- [X] OUI
- [□] NON

Si non, précisez en quoi elles sont différentes

Q.52 – Une assurance maladie est-elle exigée du demandeur (a. 7 §1b) ?
- [X] OUI
- [□] NON

4. Les étrangers invoquant le droit au regroupement familial doivent prouver que l'étranger rejoint dispose d'une assurance maladie couvrant les risques pour lui et les membres de sa famille en Belgique.

54  Article 10, § 2, alinéa 2.
L’étranger présent en Belgique devra produire une « attestation de la mutuelle à laquelle l’étranger rejoint est affilié, confirmant la possibilité de l’affiliation du ou des membres de la famille dès leur arrivée sur le territoire belge, sera suffisante »55.

Q.53 – Des conditions de ressources "stables" sont-elles fixées (a7 §1c) ?

- [X] OUI
- [ ] NON

Expliquez leur nature et leur montant

Oui, mais pas dans tous les cas.

Le parent de l’enfant handicapé majeur doit, en plus du logement et de la mutuelle, établir qu’il possède des moyens de subsistance suffisants pour que ni lui ni les membres de sa famille ne deviennent une charge pour les pouvoirs publics56.

L’étudiant étranger doit aussi établir qu’il possède des moyens de subsistance stables, réguliers et suffisants pour subvenir à ses propres besoins et à ceux des membres de sa famille. La preuve de ces moyens peut émaner d’un des membres de la famille et ne doit pas nécessairement être fournie par l’étranger lui-même.

Q.54 – Comment leur caractère "suffisant" est-il évalué par l'Etat membre, est ce par comparaison avec le niveau national ?

Probablement ; rien n’est encore précisé. Il faut attendre les arrêtés royaux. Toutefois, il n’est pas certain qu’ils le prévoient. Cela se fera peut-être par circulaire.

Q.55 – Des critères d'intégration sont-ils fixés pour permettre le regroupement familial (a 7 §2) ?

- [ ] OUI
- [X] NON

Q.56 – Si oui :

Q.56. A – Quels sont ces critères ?

Q.56. B – S'appliquent-ils indifféremment à tous les bénéficiaires potentiels du regroupement (conjoint, personnes dépendantes, etc…) ?

Q.56. C – Comment sont-ils évalués par l'Etat membre ?

55 Ibidem.
56 Article 10, § 2, alinéa 3.
Q. 56 – Les réfugiés et leur famille y sont-ils soumis (a 7 §2 alinea 2) ?

☐ OUI
☒ NON

Q. 57 – Un délai de séjour minimal est-il opposable avant de procéder au regroupement (a 8 §1)?

☒ OUI
☐ NON

Uniquement dans un cas bien particulier :

L’invocation du droit au regroupement familial en qualité de conjoint ou de partenaire par un étranger ayant obtenu son droit au séjour sur la base d’un mariage ou d’un partenariat précédent doit prouver un séjour régulier de deux ans en Belgique. Avant l’écoulement de ce délai de deux ans, le regroupement familial n’est pas un droit mais il n’est pas exclu que l’étranger puisse l’obtenir sur la base d’une demande adressée au Ministre sur la base de l’article 9.

Q. 58 – Cette durée est-elle supérieure à deux ans ?

Non, égale à deux ans avant la demande de séjour sur la base du regroupement familial

Q. 59 – L’Etat membre fait-il usage de la dérogation de l'article 8 §2 autorisant un délai de trois ans au maximum entre le dépôt de la demande de regroupement familial et la délivrance d'un titre de séjour aux membres de la famille en raison de sa "capacité d'accueil" ?

☐ OUI
☒ NON

Expliquez

Q. 60 – Si oui, cette possibilité existait-elle avant le 22 septembre 2003 ?

☐ OUI
☐ NON

57 Article 10, § 3.
Le régime applicable aux réfugiés est un régime dérogatoire au droit commun du regroupement familial. L’étendue de ces dérogations (séjour minimal, membres de la famille, conditions de logement et autres) doit être vérifiée dans le droit de l’État membre.

Q.61 – L’État membre autorise-t-il le regroupement familial des réfugiés sur la base de la directive 2003/86 (a 9 §1) ?

[ ] OUI
[ ] NON

Q.62 – Ce droit est-il restreint aux liens familiaux antérieurs à l’entrée sur le territoire (a 9 §2) ?

[ ] OUI
[ ] NON

Q.63 – L’État membre autorise-t-il le regroupement de membres de la famille non visés à l’article 4 de la directive (a 10 §2) ?

[ ] OUI
[ ] NON

Lesquels et quelles conditions sont requises ?

Ascendants du mineur (voir Q65)

Rien n’est prévu pour d’autres membres de la famille ; ils ne pourraient obtenir un permis de séjour que sur la base de l’article 9 bis (séjour autorisé pour raisons « humanitaires » - pouvoir discrétionnaire du ministre) de la loi du 15 décembre 1980.

Q.64 – L’État membre autorise-t-il le regroupement familial des ascendants directs au premier degré d’un mineur réfugié non accompagné sans que les conditions fixées à l’article 4§2 a soient exigées (a10 §3 a) ?

[ ] OUI
[ ] NON

Quelles conditions sont requises ?

Le père et la mère d’un étranger reconnu réfugié (article 10, 6°) sont autorisés au séjour :
- s’ils viennent vivre avec lui ;
- si celui-ci est âgé de moins de dix-huit ans ;
- s’il est entré dans le Royaume sans être accompagné d’un étranger majeur responsable de lui par la loi et n’a pas été effectivement pris en charge par une telle personne par la suite, ou a été laissé seul après être entré dans le Royaume.

Q. 65 – L’État membre autorise-t-il l’entrée et le séjour du tuteur légal ou de tout autre membre de la famille lorsque le réfugié mineur non accompagné n’a pas d’ascendants directs ou que ceux-ci ne peuvent être retrouvés (a10 §3 b) ?

☐ OUI
☒ NON

Si oui, précisez de qui il s’agit et précisez quelles sont les preuves requises pour justifier du lien de parenté

Non, mais lorsque le réfugié mineur n’a plus ni père, ni mère, le Ministre pourrait décider d’autoriser au séjour sur la base de l’article 9 son tuteur légal ou tout autre membre de la famille proche.⁵⁹

Q.66 – L’État membre prend-il en compte d’autres preuves de l’existence de liens familiaux lorsque le réfugié ne peut fournir de pièces justificatives (a 11 §2) ?

☒ OUI
☐ NON

Lesquelles ?

Il est précisé qu’en ce qui concerne la famille d’un réfugié, préexistante à son arrivée dans le pays de refuge, une décision de refus ne pourrait reposer sur le seul motif que des documents officiels prouvant le lien familial ne peuvent être produits. Il est en effet souvent difficile de disposer de ces documents dans un contexte de fuite.

Les liens familiaux peuvent alors être établis par toutes voies de droit⁶⁰, la description que le réfugié a faite de sa famille à son arrivée étant un élément important. Il peut être recouru à des entretiens avec les membres de la famille et à des enquêtes ou analyses complémentaires.⁶¹

Article 12 bis

§ 5. Lorsque le ou les membres de la famille d’un étranger reconnu réfugié dont les liens de parenté ou d’alliance sont antérieurs à l’entrée de celui-ci dans le Royaume, ne peuvent fournir les documents officiels qui prouvent qu’ils remplissent les conditions relatives au lien de parenté ou d’alliance, visées à l’article 10, il est tenu compte d’autres preuves valables produites au


⁶⁰ Voyez le prescrit de l’article 12 bis, § 5, sur cette question.

⁶¹ Article 12 bis, § 6.
sujet de ce lien. A défaut, les dispositions prévues au § 6 peuvent être appliquées.

§ 6. Lorsqu'il est constaté que l'étranger ne peut apporter la preuve des liens de parenté ou d'alliance invoqués, par des documents officiels conformes à l'article 30 de la loi du 16 juillet 2004 portant le Code de droit international privé ou aux conventions internationales portant sur la même matière, le ministre ou son délégué peut procéder ou faire procéder à des entretiens avec celui-ci et l'étranger rejoint ou à toute enquête jugée nécessaire, et proposer, le cas échéant, toute analyse complémentaire.

**Q.67** – L'examen de la demande du réfugié tient-elle compte de la particularité de sa situation :

**Q.67. A** – Exige-t-on qu'il fournisse les preuves relatives au logement, à l'assurance, aux ressources (a 12 §1) ?

[ ] OUI

[ ] NON

Ces conditions ne sont pas applicables aux conjoint et enfants, aux partenaire et enfants, aux parents d’un réfugié reconnu si les liens de parenté sont antérieurs à l’entrée en Belgique du réfugié reconnu. Cet assouplissement est toutefois conditionné par le fait que la demande de regroupement familial ait été formée dans l’année civile qui suit la décision de reconnaissance de la qualité de réfugié ⁶².

Le Ministre peut cependant décider d’exiger le respect de ces conditions si le regroupement familial est possible dans un Etat tiers ⁶³. Il pourrait le faire si le membre de la famille demandeur a lui-même été reconnu réfugié ou est autorisé au séjour à un autre titre dans un autre membre de l’Union européenne ou dans un Etat tiers. Il faudra toutefois tenir compte des conditions fixées par le regroupement familial dans cet autre État et des circonstances de fait dans lesquelles il pourrait avoir lieu ⁶⁴.

Si oui, les conditions requises sont-elles comparables à celles demandées aux autres ressortissants de pays tiers

**Q.67. B** - Si l'une des personnes concernées (regroupant ou membre de la famille) a des liens particuliers avec un Etat tiers avec lequel le regroupement familial est possible, l'État membre exige-t-il ces preuves ?

[ ] OUI, en tout cas il peut (voir Q67A)

[ ] NON

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⁶² Article 10, § 2, alinéa 4.

⁶³ Article 10, § 2, alinéa 5.

Précisez si nécessaire

**Q.67. C** - Si le réfugié a introduit sa demande plus de trois mois après l'octroi du statut de réfugié, l'Etat membre exige-t-il la satisfaction de ces trois conditions ou d'une de ses trois conditions (logement, assurance, ressources) (a 12 §1 alinea 3) ?

- [ ] OUI
- [X] NON

Si oui, lesquelles ?

Le délai est d’un an.

**Q.68** – L'Etat membre respecte-t-il l'interdiction d'imposer une condition de séjour préalable aux réfugiés (a 12 §2)?

- [X] OUI
- [ ] NON

Si non quelle est cette durée ? Diffère-t-elle de la durée normalement exigée ?
**EXERCICE DU DROIT AU REGROUPEMENT**

L'autonomie du droit de séjour découlant du regroupement familial est la question la plus délicate de cette partie de la directive.

**Q.69** – L'entrée et le séjour des membres de la famille sont-ils facilités par l'État membre après acceptation de la demande, y compris en matière de visa (a13 §1) ?

- [ ] OUI
- [x] NON

Si oui, comment ?

**Q.70** – Un titre de séjour minimal d'un an est-il délivré aux membres de la famille (a 13 §2) ?

- [x] OUI
- [ ] NON

Quelle en est la durée ?

5. L’admission au séjour sur la base de l’article 10 est limitée à des titres de séjour consécutifs d’un an pendant la période de trois ans suivant la délivrance du permis de séjour ou du document attestant que la demande a été introduite si elle l’est directement en Belgique.

6. Lorsque l’étranger ouvrant le droit de séjour des membres de sa famille (le "regroupant") est autorisé au séjour à durée limitée, ces derniers reçoivent un titre de séjour dont l’échéance est identique à la validité de son permis de séjour.

**Q.71** – Ce titre de séjour est-il renouvelable ?

- [x] OUI
- [ ] NON

**Q.72** – La durée du titre de séjour est-elle alignée le titre de séjour du regroupant (a 13 §3) ?

- [x] OUI
- [ ] NON

Si non, précisez

**Q.73** – Les droits des membres de la famille sont-ils équivalents à ceux du regroupant (a14 §1) :
Q.73. A - En matière d'accès à l'éducation ?

☐ OUI

☐ NON

Si non, précisez

Rien n’est prévu dans la loi.

En principe, les enfants de moins de 18 ans ont accès gratuitement à l’enseignement maternel, primaire et secondaire. (mêmes conditions que les nationaux).

Pour les adultes, lorsqu’ils sont en séjour régulier, ils peuvent suivre diverses formations, notamment professionnelles (dès lors qu’ils sont autorisés au travail, cfr Q73 B).

Q.73. B - En matière d'accès à l'emploi ?

☐ OUI

☒ NON

Précisez le contenu de cet accès

La loi relative au travail des ressortissants étrangers devrait être modifiée dans les mois qui viennent. Cela n’est pas encore fait.

Dans l’état actuel des textes (Loi du 30 avril 1999 relative à l’occupation des travailleurs étrangers et Arrêté royal du 9 juin 1999) :

- la famille d’un étranger autorisé au séjour à durée illimitée sera dispensée d’un permis de travail après trois ans, c'est à dire une fois que son séjour sera à durée illimitée (article 2 de l’arrêté royal visant les ressortissants étrangers autorisés ou admis au séjour illimité en application de la loi du 15/12/1980 ;

- pendant ces trois ans, un permis de travail C pourra être obtenu (valable un an, pour l’exercice de toute profession)

- la famille d’un étranger autorisé au séjour limité aura accès à un permis de travail B (un an sur demande d’un employeur) sans examen du marché de l’emploi et sans qu’il faille que l’intéressé vienne d’un pays qui a signé un accord de main d’œuvre avec la Belgique).

Q.73. C – En matière d'accès à l'orientation à la formation, au perfectionnement et au recyclage professionnel ?

☒ OUI
Si non, précisez

Oui dès lors qu’il y a accès au marché de l’emploi.

Q.74 – Le droit de l’État membre reconnaît-il des droits spécifiques en matière sociale aux membres de la famille regroupée ?

☐ OUI

☒ NON

Si oui, décrivez et précisez si une condition de délai est fixée pour en profiter.

Q.75 – Le droit de l’État membre réglemente-t-il spécifiquement les conditions d'accès des membres de la famille au marché du travail national (a 14 §2) ?

☒ OUI

☐ NON

Si oui, comment ?

Voyez Q73 B

Q.76 – Si oui, les restrictions excèdent-elles douze mois (a 14 §2) ?

☐ OUI

☒ NON

Les quelles ?

Q.77 – L’accès à l’emploi est-il restreint dans l'État membre

Q.77.A - Pour ce qui concerne les ascendants en ligne directe et du premier degré ?

☐ OUI

☒ NON

Si oui, comment ?

Q.77. B - Pour ce qui concerne les enfants majeurs célibataires objectivement dans l'incapacité de subvenir à leurs propres besoins en raison de leur état de santé (a 14 §3) ?

☐ OUI
NON

Si oui, comment ?

Q.78 – Les conjoints, le partenaire non marié et l’enfant devenu majeur ont-ils droit à un titre de séjour autonome au plus tard passé cinq ans de résidence régulière sur la base d'un titre de séjour pour regroupement familial (a15 §1)?

OUI, après trois ans

NON

Si oui, précisez quand et comment pour chaque catégorie

En réalité, ils ne peuvent plus perdre leur permis de séjour après ce délai. Le permis de séjour est devenu définitif et il ne peut plus être retiré (sauf ordre public).

Q.79 – L’État membre prévoit-il l’hypothèse de la rupture du lien familial pour le conjoint ou le partenaire non marié (a 15 §1 alinea 2)?

OUI

NON

Expliquez

Les causes de refus d’octroi

L’article 11 énumère les causes de refus d’octroi d’une autorisation de séjour demandée sur la base de l’article 10, dans le cadre du regroupement familial ou de l’une des autres catégories prévues par cette disposition.

Le séjour peut être refusé si :

7. la vie conjugale ou la vie familiale ne sont pas ou plus effective ;

- le mariage, le partenariat ou l’adoption sont des liens « blancs » en ce qu’ils ont été conclu « uniquement pour permettre d’entrer ou de séjourner dans le Royaume ».

Les causes de retrait de l’autorisation de séjour

L’article 11, § 2, détermine les causes de perte de l’autorisation de séjour. Elles sont identiques à celles de refus d’octroi en ce qui concerne le non-respect des conditions visées à l’article 10, le caractère non effectif de la relation conjugale ou la fraude.

S’y ajoutent le fait que le partenaire ouvrant le droit au séjour ou un bénéficiaire se marie ou noue une autre relation durable.

Ce paragraphe ne s’applique qu’aux étrangers admis au séjour après l’entrée en vigueur de la nouvelle loi, à l’exception du point consacré à la fraude.
Certaines de ces causes ne peuvent fonder une décision de retrait du permis de séjour que si elles interviennent au cours de la période au cours de laquelle l’étranger n’a qu’un permis de séjour temporaire, soit durant les trois premières années.

- Durant les deux premières de ces trois années, l’étranger admis au séjour peut perdre son permis de séjour :
  8. si les conditions ne sont plus remplies ;
  9. si la vie familiale n’est plus effective, par exemple parce qu’il y aurait une séparation de fait ;
  10. si l’un des partenaires est entré en relation avec une tierce personne.

- Au cours de la troisième de ces trois années, ce motif ne suffira plus, il faudra y ajouter des éléments indiquant une situation de complaisance.

Cela signifie qu’un étranger qui aurait bénéficié du séjour sur la base de son mariage et qui aurait divorcé après deux ans de séjour ne perdra son permis de séjour que s’il apparaît que le mariage était une union de complaisance. Il pourra par contre perdre son permis de séjour si le divorce intervient moins de deux ans après son admission au séjour. Il en va de même en l’absence de divorce en cas de défaut de cohabitation puisque l’article 10 prévoit que les membres de la famille doivent vivre ensemble.

- En cas de fraude, le permis de séjour peut être retiré à tout moment.

L’article 11 précise que le Ministre peut faire procéder à des contrôles en vue de la prolongation ou du renouvellement du titre. Ces contrôles interviennent au cours des trois premières années, puisqu’un permis de séjour à durée illimité est ensuite accordé.

Il est également précisé que la situation des personnes victimes de violence de leur famille, qui ont quitté celle-ci et nécessitent d’une protection est prise en considération. Le Ministre peut décider dans ces cas de ne pas mettre fin au séjour. Dans ce cas, leur séjour devient autonome. Cette disposition est curieusement formulée puisqu’elle indique, d’une part, que le Ministre « prend particulièrement en considération » ces situations ce qui lui laisse un large pouvoir d’appréciation et, d’autre part, qu’il « informera la personne concernée de sa décision de ne pas mettre fin […] au séjour », ce qui est formulé comme un automatisme.

**La délivrance d’un ordre de quitter le territoire**

L’article 13, § 3, fixe les conditions dans lesquelles un ordre de quitter le territoire peut être délivré à un étranger autorisé au séjour à durée limitée.

L’ordre de quitter le territoire doit être motivé et indiquer quelle disposition de l’article 13 le fonde. Des contrôles « généralistes » et « spécifiques » en cas de présomption de lien familial simulé peuvent être organisés dans le premier cas au moment des renouvellements et dans le second cas à tout moment.

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65 Le point de départ du délai est soit la délivrance du permis de séjour temporaire lorsque l’étranger a introduit sa demande à partir de l’étranger, soit de la délivrance du document attestant de l’introduction de la demande si celle-ci est formée à l’étranger (article 12 bis, §§ 3 et 4).

66 Article 13, § 6.

67 Article 13, § 6.
L’étranger autorisé au séjour sur la base du séjour limité (article 10 bis, §§ 1 et 2) peut se voir délivrer un ordre de quitter le territoire si :

11. Il est mis fin au permis de séjour de l’étranger rejoint ou celui-ci ne respecte plus les conditions mises à son séjour ;
12. La vie familiale n’est plus effective ou un des deux partenaires s’est marié ou entretient une relation durable avec un tiers ;
13. Il a utilisé des informations fausses ou trompeuses ou des faux documents ou il a recouru à la fraude ou si le lien conjugal ou familial invoqué a été noué uniquement pour permettre le séjour en Belgique.

Le paragraphe 5 prévoit que le permis de séjour peut être retiré, même s’il est devenu illimité, au cours des dix ans suivant sa délivrance en cas de fraude. Un ordre de quitter le territoire sera notifié si l’autorisation de séjour a été obtenue sur la base de « faits présentés de manière altérée ou qu’il a dissimulés, de fausses déclarations ou de documents faux ou falsifiés ». Il faut que ces éléments aient été « déterminants dans l’octroi de l’autorisation ». 

Q.80 – L'Etat membre prévoit-il un titre de séjour autonome :

Q.80. A - Pour les ascendants en ligne directe et du premier degré (a15 §2)

☐ OUI

☒ NON

Précisez si nécessaire

Pas avant 3 ans

Q.80. B – Pour les enfants majeurs célibataires objectivement dans l'incapacité de subvenir à leurs propres besoins en raison de leur état de santé (a15 §2) ?

☐ OUI

☒ NON

Précisez si nécessaire

Pas avant 3 ans
Q.81 – L'État membre prévoit-il un titre de séjour autonome pour les situations de veuvage, de divorce, de séparation ou de décès d'ascendants ou de descendants directs au premier degré (a 15 §3) ?

☐ OUI

☒ NON

Précisez si nécessaire

Pas avant 3 ans et voyez supra Q79

Q.82 – L'État membre a-t-il arrêté des dispositions garantissant un titre de séjour autonome "en cas de situation particulièrement difficile" (a 15 §3) ?

☒ OUI

☐ NON

Si oui, comment cette disposition est-elle définie et transposée ?

Il est également précisé dans la loi que la situation des personnes victimes de violence de leur famille, qui ont quitté celle-ci et nécessitent d’une protection est prise en considération. Le Ministre peut décider dans ces cas de ne pas mettre fin au séjour. Dans ce cas, leur séjour devient autonome. Cette disposition est curieusement formulée puisqu’elle indique, d’une part, que le Ministre « prend particulièrement en considération » ces situations ce qui lui laisse un large pouvoir d’appréciation et, d’autre part, qu’il « informera la personne concernée de sa décision de ne pas mettre fin […] au séjour », ce qui est formulé comme un automatisme.

SANCTIONS ET VOIES DE RECOURS

Ces dispositions sont à lire en parallèle de celles relatives aux conditions à remplir pour obtenir le droit au regroupement (articles 6, 7, 8)

Les questions relatives aux fraudes et autres moyens illicites sont importantes à traiter afin d'en délimiter la portée.

Q.83 – Quels sont les motifs légaux de rejet, de retrait ou de refus de renouvellement d'une autorisation de regroupement familial (a16 §1 et 2) ?

Q.83. A – L’absence de conditions requises par la directive ?

☒ OUI

☐ NON

Q.83. B – l'absence de vie familiale ou conjugale effective ?

☒ OUI
Si oui, comment cette hypothèse est-elle appréciée ?

La loi ne le précise pas. La cohabitation sera sans doute déterminante. L’on peut supposer aussi que l’Office des étrangers fera procéder à des enquêtes domiciliaires par agent de quartier au moment des renouvellements.

Il faut également préciser que le procureur du Roi (parquet) procède parfois à des enquêtes quand il y a soupçon du mariage blanc. Il arrive que le consulat belge à l’étranger et l’Office des étrangers sollicite une enquête du Procureur du Roi avant ou après la célébration du mariage pour débusquer les mariages simulés. Cette enquête peut être menée en Belgique (entrevues avec le conjoint habitant en Belgique, des membres de sa famille, de l’entourage, sur le parcours familial passé, ....). Cette analyse de la réalité du mariage précède souvent la délivrance du visa.

Q.83. C – Des relations durables avec un autre partenaire ?

[ ] OUI

[ ] NON

Si ou, comment cette hypothèse est-elle appréciée ?

La loi ne le précise pas. Les enquêtes domiciliaires que l’Office des étrangers fera diligenter seront sans doute à la base de cette appréciation.

Q.83. D – Des falsifications de pièces ?

[X] OUI

[ ] NON

Q.83. E – La conclusion d'une union aux seules fins du regroupement ?

[X] OUI

[ ] NON

Q.83. F – Si oui, comment cette hypothèse est-elle appréciée ?

La conviction que l’union est simulée peut être à l’origine d’une décision négative lors de l’octroi du permis de séjour, lors de son renouvellement, ou d’une décision d’éloignement du territoire.

Au niveau du refus d’octroi

La loi prévoit que le séjour peut être refusé si :
14. Le mariage, le partenariat ou l’adoption sont des liens « blancs » en ce qu’ils ont été conclu « uniquement pour permettre d’entrer ou de séjourner dans le Royaume ».

15. L’expression est inspirée de l’article 146 bis du Code civil qui indique qu’« il n’y a pas de mariage lorsqu’bien que les consentements formels aient été donnés en vue de celui-ci, il ressort d’une combinaison de circonstances que l’intention de l’un au moins des époux n’est manifestement pas la création d’une communauté de vie durable, mais vise uniquement l’obtention d’un avantage en matière de séjour, lié au statut d’époux ».

16. L’adverbe « uniquement » signifie que l’obtention d’un avantage en matière de séjour est condition nécessaire mais non suffisante pour que l’on considère qu’il y a fraude.

**Au niveau du retrait de l’autorisation de séjour**

- Au cours de la troisième des années temporaires, l’ineffectivité de la vie conjugale devra être couplée à des éléments indiquant une situation de complaisance pour que le séjour soit retiré. L’exposé des motifs donne comme exemple une poursuite par le parquet en vue de requérir l’annulation du mariage, la constatation par un juge pénal du fait qu’il s’agissant d’un mariage de complaisance ou des éléments établissant que l’étranger rejoint, son conjoint ou son partenaire ont maintenu, pendant la vie conjugale, une relation avec une tierce personne68.

- En cas de fraude, le permis de séjour peut être retiré à tout moment.

- Les contrôles visés à l’article 11 interviennent en principe au moment de la prolongation ou du renouvellement du titre. Ces contrôles interviennent donc uniquement au cours des trois premières années, puisqu’un permis de séjour à durée illimitée est ensuite accordé. Toutefois, la loi prévoit expressément qu’ils peuvent être effectués à tout moment « lorsqu’il existe des présomptions fondées de fraude ou que le mariage, le partenariat ou l’adoption a été conclu pour permettre à la personne concernée d’entrer ou de séjourner dans le Royaume ». Il s’agit alors de contrôles plus spécifiques. L’exposé des motifs indique que ces contrôles ne seront exercés que lorsque cela paraîtra « indiqué » et pas de manière systématique69. Ils sont effectués par un agent de police, en général l’agent de quartier.

**La délivrance d’un ordre de quitter le territoire**

L’étranger autorisé au séjour sur la base du séjour limité (article 10 bis, §§ 1 et 2) peut se voir délivrer un ordre de quitter le territoire notamment si le lien conjugal ou familial invoqué a été noué uniquement pour permettre le séjour en Belgique.

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68 Exposé des motifs (2478/001), p. 59.
69 Exposé des motifs (2478/001), p. 60.
Q.83. G – Le terme du séjour du regroupant en cas d’absence de titre de séjour autonome (a 16 §3) ?

☐ OUI

☐ NON

Q.83. H – Quels types de contrôle sont-ils opérés ?

Cfr Q 83 F : contrôles de police, agents de quartier, respect des conditions légales comme par exemple le logement (administration communale).

Les situations visées à l’article 15, § 3, de la directive ne sont pas explicitement prises en compte, même si la loi dit que le Ministre « peut » retirer le titre de séjour, ce qui suppose l’exercice d’un pouvoir d’appréciation.

Q.84 – Les ressources du ménage sont-elles prises en compte à l’occasion d’un renouvellement du titre de séjour si le regroupant ne dispose pas de ressources suffisantes sans recourir au système d’aide sociale de l’État membre ?

☐ OUI

☐ NON

Si oui selon quelles modalités

Oui, lorsque la condition de ressources suffisantes est imposée (descendant majeur handicapé ou alors étudiant étranger).
Q.85 – Le droit de l'Etat membre prend-il en considération (a. 17) :

Q.85. A - la nature et la solidité des liens familiaux de la personne et sa durée de résidence dans l'État membre ?

☐ OUI
☐ NON

Si oui précisez comment et par quel type de norme (textuelle, jurisprudentielle…) :

Le texte ne le prévoit pas. Toutefois, l’exposé des motifs indique que les motifs de retrait devront être utilisés « de manière raisonnable, eu égard notamment à la nature et à la solidité des liens familiaux de la personne » .

Q.85. B - l'existence d'attaches familiales, culturelles ou sociales avec son pays d'origine, dans les cas de rejet d'une demande, de retrait ou de non-renouvellement du titre de séjour, ainsi qu'en cas d'adoption d'une mesure d'éloignement du regroupant ou des membres de sa famille ?

☐ OUI
☐ NON

Si oui, précisez comment et par quel type de norme (textuelle, jurisprudentielle…) :


Q.86 – Le regroupant et les membres de la famille ont-ils un droit de recours contre la décision négative les concernant (a18 §1)?

☐ OUI
☐ NON

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70 Exposé des motifs (2478/001), p. 57.
71 Exposé des motifs (2478/001), p. 57.
Q.87 – Ce droit de recours est-il un recours en justice, conformément à la jurisprudence C-540/03 (a18 §1) ?

[X] OUI

[ ] NON
**TROISIEME PARTIE**

**Impact de la directive sur le droit national**

Q.88 A Est ce que la transposition de la directive au sujet de la garantie de l'intérêt supérieur des enfants (a.5 §5) a rendu l'évolution du droit national plus ou moins favorable du point de vue du ressortissant de pays tiers. Comparez également avec les standards de la directive dans la dernière colonne de la table ci-dessous.

<table>
<thead>
<tr>
<th>OBJET</th>
<th>EVALUATION DE L'ÉVOLUTION DU DROIT NATIONAL</th>
<th>EVALUATION EN COMPARAISON DES STANDARDS DE LA DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prise en considération de l'intérêt supérieur des enfants dans l'examen de la demande (a.5§5)</td>
<td>Rien de concret ne change, si ce n’est : - la référence expresse que la loi fait à l’intérêt supérieur de l’enfant ; - le regroupement familial au profit des parents du mineurs reconnus réfugiés et arrivé non accompagnés.</td>
<td>Complétez cette case en conservant l'appréciation correcte et en supprimant les deux autres: - <strong>(un peu) Plus favorable que les règles nationales antérieures</strong></td>
</tr>
</tbody>
</table>
Q.88 B. Est-ce que la transposition de la directive au sujet de la définition des bénéficiaires du droit au regroupement familial a rendu l'évolution du droit national plus ou moins favorable du point de vue du ressortissant de pays tiers. Comparez également avec les standards de la directive dans la dernière colonne de la table ci-dessous.

<table>
<thead>
<tr>
<th>OBJET</th>
<th>EVALUATION DE L'ÉVOLUTION DU DROIT NATIONAL</th>
<th>EVALUATION EN COMPARAISON DES STANDARDS DE LA DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Délimitation des bénéficiaires du droit au regroupement familial (a. 4)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| - conjoint | - conjoint ou partenaire (enregistré // mariage en Belgique) | Complétez cette case en conservant l'appréciation correcte et en supprimant les deux autres:
| | - leurs enfants qui viennent vivre avec eux avant d'avoir atteint l'âge de dix-huit ans et qui sont célibataires; | • **Sur certains points, plus favorable que les règles nationales antérieures** |
| | - les enfants qui ne sont pas ceux du couple qui viennent vivre avec eux, avant d'avoir atteint l'âge de dix-huit ans, qui sont célibataires, et dont le parent a la garde; | • **Sur d'autres points, moins favorable que les règles nationales antérieures** |
| | - partenaire (enregistré, non équiv au mariage) si la relation est durable…. Et ses enfants (aux mêmes conditions); | | |
| | - l'enfant handicapé d'un étranger autorisé au séjour pour une durée illimitée, de son conjoint ou de son partenaire; | Complétez cette case en conservant l'appréciation correcte et en supprimant l'autre:
| | - le père et la mère d'un étranger reconnu | • **Conforme à la directive** |

Complétez cette case en conservant l'appréciation correcte et en supprimant l'autre:

- conditionner le regroupement à l'existence d'un logement suffisant et à la disposition de moyens de subsistance suffisants.

- caractère temporaire du droit au regroupement familial pendant 3 ans et contrôles pendant ces 3 années alors qu’il était auparavant définitif après maximum quinze mois.
- les membres de la famille de tout étranger en séjour limité.

<table>
<thead>
<tr>
<th>réfugié ;</th>
</tr>
</thead>
<tbody>
<tr>
<td>- les membres de la famille de l'étudiant ;</td>
</tr>
<tr>
<td>- les membres de la famille d’un étranger autorisé au séjour limité.</td>
</tr>
</tbody>
</table>
Est ce que la transposition de la directive en matière de regroupement des enfants de 12 (a. 4§1) et 15 ans (a. 4§6) a rendu l'évolution du droit national plus ou moins favorable du point de vue du ressortissant de pays tiers. Comparez également avec les standards de la directive dans la dernière colonne de la table ci-dessous.

<table>
<thead>
<tr>
<th>OBJET</th>
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<th>EVALUATION EN COMPARAISON DES STANDARDS DE LA DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Limitations du regroupement des enfants de 12 et de 15 ans</td>
<td>Complétez cette case en conservant l'appréciation correcte et en supprimant les deux autres: • Status quo</td>
<td>Complétez cette case en conservant l'appréciation correcte et en supprimant l'autre: • Plus favorable que la directive • Conforme à la directive</td>
</tr>
</tbody>
</table>
Q.88 D  Est ce que la transposition de la directive au sujet des conditions matérielles mises au regroupement (a. 7) a rendu l'évolution du droit national plus ou moins favorable du point de vue du ressortissant de pays tiers. Comparez également avec les standards de la directive dans la dernière colonne de la table ci – dessous.

<table>
<thead>
<tr>
<th>OBJET</th>
<th>EVALUATION DE L'EVOLUTION DU DROIT NATIONAL</th>
<th>EVALUATION EN COMPARAISON DES STANDARDS DE LA DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conditions d'exercice du droit au regroupement (a. 7)</td>
<td>Complétez cette case en conservant l'appréciation correcte et en supprimant les deux autres:</td>
<td>Complétez cette case en conservant l'appréciation correcte et en supprimant l'autre:</td>
</tr>
<tr>
<td>Pas de conditions de ce type</td>
<td>• Conditions : - de logement suffisant - De couverture mutuelle</td>
<td>• <strong>Moins favorable que les règles nationales antérieures</strong></td>
</tr>
<tr>
<td></td>
<td></td>
<td>• <strong>Conforme à la directive</strong></td>
</tr>
</tbody>
</table>
**Q.88 E**  
Est ce que la transposition de la directive au sujet de la marge d'appréciation des Etats membres (a. 5 §5, a. 17, C-540/03) a rendu l'évolution du droit national plus ou moins favorable du point de vue du ressortissant de pays tiers. Comparez également avec les standards de la directive dans la dernière colonne de la table ci – dessous.

<table>
<thead>
<tr>
<th>OBJET</th>
<th>EVALUATION DE L'EVOLUTION DU DROIT NATIONAL</th>
<th>EVALUATION EN COMPARAISON DES STANDARDS DE LA DIRECTIVE</th>
</tr>
</thead>
</table>
| Rien dans la loi | Toujours rien dans la loi, même si l’on pourra se référer à la directive et à l’exposé des motifs qui s’y réfère dans la pratique | Complétez cette case en conservant l'appréciation correcte et en supprimant les deux autres:  
• **Statu quo** | Complétez cette case en conservant l'appréciation correcte et en supprimant l'autre:  
• **Conforme à la directive** |
Q.88 F  Est ce que la transposition de la directive au sujet des objectifs et des critères d'intégration poursuivis par la directive a rendu l'évolution du droit national plus ou moins favorable du point de vue du ressortissant de pays tiers. Comparez également avec les standards de la directive dans la dernière colonne de la table ci – dessous.

<table>
<thead>
<tr>
<th>OBJET</th>
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<th>EVALUATION EN COMPARAISON DES STANDARDS DE LA DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prise en considération de l'objectif d'intégration (considérant 15) et des critères d'intégration (a.4 §1 dernier alinéa, a. 7 §2)</td>
<td>• Statu quo</td>
<td>• Conforme à la directive</td>
</tr>
<tr>
<td>Pas de condition d’intégration</td>
<td>Pas davantage de condition d’intégration</td>
<td></td>
</tr>
</tbody>
</table>

Q.89  Est ce que la transposition de la directive au sujet de (partie à compléter précisément par les coordinateurs thématiques pour chaque question jugée importante) a rendu l'évolution du droit national plus ou moins favorable du point de vue du ressortissant de pays tiers. Comparez également avec les standards de la directive dans la dernière colonne de la table ci – dessous.

Q.89 A.  Indiquez si le droit national démontre une tendance générale à simplement copier les dispositions de la directive sans rechercher à reformuler ou les adapter aux circonstances nationales.

☑ NO
☐ YES

Q.89 B.  Si oui, indiquez si cette tendance générale peut créer des problèmes (par exemple des difficultés d'exécution, des risques que la disposition demeure inappliquée).

☑ NO
☐ YES

Q.89 C.  Si oui, donnez quelques exemples :

Q.89 D.  Si seulement quelques dispositions de la directive ont été copiées, et si cela doit créer des problèmes, citez les et expliquez le problème.
Q. 90. Citez des décisions de jurisprudence intéressantes relatives à la directive, sa transposition ou son application (Cette question concerne en principe les décisions ultérieures à l'adoption de la directive. Des décisions antérieures peuvent être citées si elle sont pertinentes). Citez en particulier les décisions des cours suprêmes. Limitez vous au sujet des décisions de cours d'appel et ignorez les jugement en première instance s'il existe trop de jugement à ce niveau à moins qu'une jurisprudence ne se dessine au regard d'un groupe de jugements.

Il n'y en a pas encore…

Utilisez une case par decision et dupliquez si nécessaire

<table>
<thead>
<tr>
<th>DECISION OF SUPREME COURTS</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>RESUME:</th>
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<table>
<thead>
<tr>
<th>DECISION OF APPEAL COURTS</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>RESUME:</th>
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<table>
<thead>
<tr>
<th>DECISION(S) IN FIRST RESORT</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>RESUME:</th>
</tr>
</thead>
<tbody>
<tr>
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</tbody>
</table>

AJOUTEZ TOUT COMMENTAIRE SUPPLEMENTAIRE AU SUJET DE LA TENDANCE JURISPRUDENTIELLE:

Q. 91. Expliquez s'il existe des problèmes de traduction de la directive dans la langue officielle de votre Etat membre et donnez si besoin une liste des exemples les plus significatifs de mauvaise traduction.

[X] Il n'y a pas de problème de traduction de la directive

[ ] Il y a quelques problèmes de traduction de (indiquez l'article concerné) de la directive.

Expliquez les difficultés que ces problèmes de traduction peuvent créer:
92. AUTRES ELEMENTS INTERESSANTS

Q. 92 A. A votre avis, mentionnez du point de vue du ressortissant de pays tiers et / ou de l'Etat membre toutes pratiques nationales intéressante ou innovante

Utilisez une table par pratique et dupliquez si nécessaire

<table>
<thead>
<tr>
<th>OBJET DE LA PRATIQUE</th>
<th>EXPLICATIONS</th>
</tr>
</thead>
</table>

Q.92 B. Ajoutez tout autre élément intéressant que vous n'avez pas eu l'occasion de mentionner dans les questions précédentes.

Pas assez de pratique encore au sujet de l’application de la loi.

Des recours ont été introduits contre la loi devant la Cour constitutionnelle et pourraient conduire à l’annulation de certaines dispositions dans les prochains mois.

Des recours ont été introduits auprès du Conseil d'Etat contre les arrêtés royaux, notamment pour contester le mode de vérification de la condition de logement suffisant. Ces recours ont été introduits par différentes ONG et ils soulignent que l’arrêté royal ajoute à la loi en permettant laissant notamment aux communes 6 mois pour attester du caractère suffisant du logement, ce qui allonge le délai d’attente. Le fait qu’il soit renvoyé à des critères régionaux de caractère salubre du logement est également contesté puisque cela crée une différence de traitement en fonction du lieu où le regroupant vit.
FIRST PART

1. NORMS OF TRANPOSITION AND JURISPRUDENCE

Q.1A Identify the MAIN (because of its content) norm(s) of transposition and indicate its legal nature

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)
- About legal nature in the table below: legislative refers to a norm adopted in principle by the Parliament; regulation refers to a norm complementing the law and adopted in principle by the executive power; circular or instructions refer to practical rules about implementation of laws and regulations and adopted in principle by the administrative authorities

Transposition in the sense of issuing new regulations with a view of transposing Council Directive 2003/86/ EC of September 2003 on the right to family reunification (henceforth: the directive) has not taken place. Transposition in the sense of correspondence between the goals and the principles of the directive and the norms of domestic law aimed at achieving them exists. The main sources of law on the right to family reunification state in new additional provisions, that they implement the Directive. In general, transposition would rarely take the form of a single norm transposing the directive into Bulgarian law. Usually the main elements of a directive would become incorporated into the relevant law, decree, ordinance after amendment. In that sense the two acts below are the main norms that transpose the directive. Being said that the main sources of law on the right to family reunification are:

Law on asylum and refugees

and

**Law for the foreigners in the republic of Bulgaria**


Remarks: - amendment do not necessary relate to the right to family reunification
- promulgation date always refer to the date on which the given law appear in the State Gazette (Official Journal)
- links to the main norms in English (not completely updated with following amendments) :

Please duplicate the table below if there is more than one MAIN norm of transposition

<table>
<thead>
<tr>
<th>This table is about:</th>
<th>x a text already adopted</th>
<th>☐ a text which is still a project to be adopted</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>TITLE:</strong></td>
<td>Law on asylum and refugees</td>
<td></td>
</tr>
<tr>
<td><strong>DATE:</strong></td>
<td>31 May 2002 State Gazette N 54, Amended SG. 52/29 June 2007</td>
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<tr>
<td><strong>NUMBER:</strong></td>
<td></td>
<td></td>
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<tr>
<td><strong>DATE OF ENTRY INTO FORCE:</strong></td>
<td>1 December 2002</td>
<td></td>
</tr>
<tr>
<td><strong>PROVISIONS CONCERNED</strong> (for example if the norm is not devoted only to the transposition of the concerned directive):</td>
<td>article 6a, article 22, article 34, article 48, § 1a,</td>
<td></td>
</tr>
<tr>
<td><strong>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>LEGAL NATURE</strong> (indicate a cross in the correct box):</td>
<td>x LEGISLATIVE:</td>
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<tr>
<td></td>
<td>REGULATION:</td>
<td></td>
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<tr>
<td></td>
<td>CIRCULAR or INSTRUCTIONS:</td>
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</thead>
<tbody>
<tr>
<td><strong>TITLE:</strong></td>
<td>Law for the foreigners in the republic of Bulgaria</td>
<td></td>
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<tr>
<td><strong>DATE:</strong></td>
<td>23 December 1998 State Gazette 153, Amended SG 29 / 6 April 2007</td>
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<tr>
<td><strong>NUMBER:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>DATE OF ENTRY INTO FORCE:</strong></td>
<td>26 December 1998</td>
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</table>
PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive): article, 10, 11, article 23 al.3, 24, al.1, int.13 and 14, 26, 33 g, 33j, 33z, §1 p.1 and §40 from Additional provisions to the law

REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:

LEGAL NATURE (indicate a cross in the correct box):
- [ ] LEGISLATIVE:
- [ ] REGULATION:
- [ ] CIRCULAR or INSTRUCTIONS:

Q.1.B.

List the others norms of transposition by order of importance of their legal nature (first laws, secondly regulations; thirdly circulars or instructions):

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)

Please use one table per norm and duplicate as much as necessary

<table>
<thead>
<tr>
<th>TITLE</th>
<th>Law for Bulgarian ID</th>
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<tbody>
<tr>
<td>DATE</td>
<td>1993</td>
</tr>
<tr>
<td>NUMBER</td>
<td>93 State Gazette</td>
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<td>PROVISIONS CONCERNED</td>
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<tr>
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<td>[ ] REGULATION</td>
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<td>[ ] CIRCULAR OR INSTRUCTIONS</td>
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<tr>
<td>Amended SG</td>
<td>49/ 19 June 2007</td>
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<td>NUMBER</td>
<td>Council of Ministers decree N 87 from 19 May 2000</td>
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<td>PROVISIONS CONCERNED</td>
<td>articles 12, 13, 18a, 20, 23, 25 27, 28, 35, 37a, 38, 39, 40a, 40 b, 54 regarding procedures for</td>
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<tr>
<td>REFERENCES OF PUBLICATION</td>
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<td>[ ] REGULATION</td>
<td></td>
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<tr>
<td>[ ] CIRCULAR OR INSTRUCTIONS</td>
<td></td>
</tr>
</tbody>
</table>
Q.2. THIS QUESTION IS IN PRINCIPLE ONLY FOR FEDERAL OR ASSIMILATED MEMBER STATES LIKE AUSTRIA, BELGIUM, GERMANY, ITALY, SPAIN

Bulgaria is a unitary state. The competence to regulate matters affecting individual rights of natural persons primarily rests with the Parliament which adopts Laws. Laws may empower the government (Council of Ministers) to adopt Decrees or Ordinances, implementing the Laws. The Government (Council of Ministers) in turn may entitle Ministers to adopt decrees, ordinances, instructions and orders implementing the Decrees of the Government (CM).

Q.2.A. Explain which level of government is competent to adopt the norms of transposition.
Q.2.B. In case, explain if the federal structure and the distribution of competences between the different levels pose any problem or difficulty regarding the transposition and/or the implementation of the directive.

Q.3. Explain which authorities are competent for the practical implementation of the norm of transposition by taking the decisions in individual cases.

In the context of the right to family reunification for refugees the competent body to implement in practice the norm of transposition is the State Agency for Refugees. According to article 48 of the Law, it entitles the chairman to decide applications for family reunification for refugees, those with humanitarian status or those who have temporary protection. The law as it is in force now stipulates explicitly the right to family reunification only to recognized refugees. Although this administrative body is formally subordinated to the Council of Ministers, in practice it is under the executive power of the Interior Ministry. In the context of the right to family reunification for others, but refugees the competent to implement norms of transposition is the Minister for the Interior.

Please use one table per competence concerned and duplicate it if necessary

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Decide on application for family reunification for refugees, persons with humanitarian status and persons who benefit temporary protection</th>
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</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Council of Ministers</td>
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<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td></td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td>State Agency for Refugees</td>
</tr>
</tbody>
</table>
Although the Agency is with the Council of Ministers and in theory should have had a Ministry status, it has not. In practice the Agency’s budget is subordinate to the Ministry of Interior as well as decisions on policy and practice regarding refugee and asylum are taken in coordination with the Minister of Interior.

**COMPETENCE CONCERNED:** Decide on application for stay to a member of the family of a third country citizen with a long-term permission to stay

**CENTRAL MINISTRY OF:** Interior

**DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:** Direction “Migration” with the Ministry of Interior

**OTHER LEVEL OF ADMINISTRATION:** Territorial departments of the Direction

**COMPETENCE CONCERNED:** Decide on application for an entry to a member of the family of a third country citizen with a long-term permission to stay

**CENTRAL MINISTRY OF:** Foreign Ministry in cooperation/after consideration with the Ministry of Interior

**DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:** Diplomatic and Consular Missions in cooperation with the Direction “Migration” by the Ministry of Interior

**OTHER LEVEL OF ADMINISTRATION:** Territorial departments of the Direction

**Q.4. A.** Has the main regulation foreseen explicitly by the main norm of transposition already been adopted or not:

- [ ] YES
- [x] NO
Q.4.B. If the main norm(s) of transposition foresees the adoption of one or several regulations, indicate if they have all been adopted:

☐ YES

☐ NO

If NO, please indicate the missing text(s) in the table below

*Please use one line per missing text and duplicate it if necessary*

<table>
<thead>
<tr>
<th>MISSING TEXTS</th>
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<tbody>
<tr>
<td>INDICATE HERE THE MISSING TEXTS</td>
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</tbody>
</table>

Add if necessary some explanations (specify in particular if the missing texts are at least under preparation or foreseen in the very near future):
Q.5 – Is family reunification considered as a right in your Member State?

☐ OUI

☐ NON

The right to family reunification is recognized in Bulgaria. Previous to the obligation to transpose the Directive, the right was enacted and regulated by the same acts which today regulate it. However, although the amendments of LAR and LFRB should transpose the Directive, it should be noted that regarding the right to family reunification the two amended acts keep to a large extend the old formulations, procedures and status quo. If this is due to the fact that the Bulgarian legislator had thought that the right anyway is already respected and there is not much to be transposed, or for other reason, but some of the core provisions, principles and ideas behind the Directive is seem to had not been taken into account. The result of this “extra trust” in the old legislation had led to a situation like the following: The main provision, enacting the right to family reunification for third country nationals as before, as now says that “residence permit can receive members of the family of …” The provision, which regulates the right to family reunification for refugees says “A refugee CAN apply for family reunification”. By making a language and a systematic interpretation of these two provisions, in the context of the whole norm leaves the impression that even in the case where all the conditions for family reunification are fulfilled and obstacles to permission lacks, such can be refused. Certain confusion about the legislators intention comes also from the fact that the newly amended LFRB and the amended LAR do contain hypotheses where the right to family reunification is formulated otherwise. The two categories of 1) persons with temporary protection and 2) third country nationals who do have a long term residence permit in other MS, and had established a family in the other EU MS, for them the law says that they HAVE the right to reunite with their family. In other words, in these hypothesis the authorities had no more margin of discretion then the one defined by the conditions in the law itself.
Q.5. A – Are there any figures available relating to the exercise of the right to family reunification between 2002 and 2006? If yes, what are the trends, including nationality assessment?

Official statistic is not accessible. According to information from UNHCR – Sofia, for the period 2002 - 2006, the office has been ask to assist in 4 cases of family reunification.

DEFINITIONS (ARTICLE 2)

SCOPE (ARTICLE 3)

Q.6. Period of validity of the sponsor’s residence permit:

Q.6. A. Is the period of validity of the sponsor’s residence permit of one year or more according to article 3 § 1 of the Directive?

☐ OUI
☐ NON

Q.2.B. Quote precisely the period enshrined in national law:

Article 23(1) LFRB – Foreigners can reside in BG on long and short term bases. According to 23(3) the long-term residence is 1. continuous – permission to stay up to one year and 2. permanent – unlimited in time permission to stay.

Q.6.C. How does your Member State translate in national law the requirement for the sponsor to have "reasonable prospects of obtaining the right of permanent residence" (a 3 § 1)?

The national law does not require fulfilment of such criteria.

Q.7. – Members of the family concerned:

Q7. A. Are they third country nationals as required by article 3 § 1 of the Directive?

☐ OUI
☐ NON

Q.7.B. How has your Member State translated in national law the wording of "whatever status” included in article 3 § 1 of the Directive?

It is not translated.

Q.8 – Did the transposition of the Directive in your Member state breached provisions of international law more favourable to individuals (a 3 § 4)?

☐ OUI
Q.9 – If yes, are those provisions based on:

Q.9.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?

☐ OUI

☒ NON

Specify which provisions

Q.9.B - The European Social Charter of 18 October 1961 (a 3 § 4)?

☐ OUI

☒ NON\(^{72}\)

Specify which provisions

Q.9.C. The amended European Social Charter of 3 May 1987 (a 3 § 4)?

☐ OUI

☒ NON

Specify which provisions


☐ OUI

☒ NON\(^{73}\)

Specify which provisions

Q.10 – Does the transposition of the Directive affect national provisions more favourable to individuals (a 3 § 5)?

☐ OUI

☒ NON

If yes, please specify which provisions

---

\(^{72}\) Bulgaria is not a party

\(^{73}\) Bulgaria is not a party
Q.11 – Does your national law recognize the right to family reunification to:

Q.11. A – The sponsor's spouse (a. 4 § 1 a)?
  - OUI
  - NON

Q.11. B - Minor children of the sponsor and of his/her spouse (a. 4 § 1 b)?
  - OUI
  - NON

Q.11.C. Minor children adopted of the sponsor and of his/her spouse (a. 4 § 1 b)?
  - OUI
  - NON

Q.11.D. Minor children of the sponsor (a. 4 § 1 c)?
  - OUI
  - NON

Q.11. E. If yes, does your national law foresee that the sponsor shall have children custody and children are dependant on him or her?
  - OUI
  - NON

Specify if necessary the proofs required

Q.11 F. Minor children adopted of the sponsor (a 4 §1.c) ?
  - OUI
  - NON

---

74 Although the norm in question does not specify this explicitly, it will be recognized if the adoption is recognized as such under the national law. Then the child will in practice have the status of a biological child.

75 § 1 from the additional provisions in LFRB defines family as « the spouses and their unmarried children, who had not reached majority » As long as « their » is not explicitly limited to children common for the two parents, the author of this report understands the definition as applicable to the category in question.

76 However, the newly amended RILFRB (june 2007) sets a requirement that in the cases of family reunification of a third country national who posses a long term residence permit in another EU MS, the later should certify costudy for teh children when reunification with them is soght.
Q.11. G. If yes:

h. does your national law foresee that the sponsor shall have children custody and children are dependant on him or her?

☐ OUI

☒ NON\(^{77}\)

Specify if necessary the proofs required

\(\text{g.g.} \) Does national law provide that those children shall be 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'\)

☒ OUI\(^{78}\)

☐ NON

Specify if necessary the proofs required

Q.11. H. Minor children of the spouse (a 4 §1.d.)?

☒ OUI

☐ NON

Q.11. I. If yes, does your national law foresee that the spouse shall have children custody and children are dependant on him or her?

☐ OUI

☒ NON\(^{79}\)

Specify if necessary the proofs required

Q.11. J. Minor children adopted of the spouse (a 4 §1.d )?

☒ OUI

☐ NON

\(^{77}\) See f.n. 5

\(^{78}\) LFRB itself does not contain such requirement, but it is found in the Family code.

\(^{79}\) See f.n. 6
Q.11. K. If yes, k. Does your national law foresee that the spouse shall have children custody and children are dependant on him or her?

☐ OUI

☒ NON\textsuperscript{80}

Specify if necessary the proofs required

k.k. Does national law provide that those children shall be 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'"?

☒ OUI\textsuperscript{81}

☐ NON

Specify if necessary the proofs required

Q.12 – Has your Member State transposed the option opened by article 4 § 1 c:

Q.12A. To authorise reunification of minor children of the sponsor – including also adopted children – of whom custody is shared (a 4 §1.c)?

☐ OUI

☒ NON

Specify if necessary

Q.12.B. If yes, has your legislation transposed the condition that the other party sharing custody has given his or her agreement (a 4 §1. c)?

☐ OUI

☐ NON

Specify if necessary

Q.13 – Has your Member State transposed the option opened by article 4 § 1 d):

\textsuperscript{80} See f.n. 8

\textsuperscript{81} LFRB itself does not contain such requirement, but it is found in the Family code.
Q.13 A. to authorise reunification of minor children of the spouse – including also adopted children – of whom custody is shared (a 4.1.d. in fine)?

☐ OUI
☒ NON

Specify if necessary

Q.13 B. If yes, has your legislation transposed the condition that the other party sharing custody has given his or her agreement (a 4.1.d) ?

☐ OUI
☐ NON

Specify if necessary

Q.14 – In any case referred to in questions 7 to 9, is the age of the minor children below the age of majority set up by the law of your Member State (a.4 §1, second indent)?

☐ OUI
☒ NON

If yes, indicate the age required

Q.15 – In any case referred to in questions 7 to 9, has the prohibition of marriage of minor children been transposed (a.4 §1, second indent)?

☒ OUI
☐ NON

If not, explain Si non, expliquez

Q.16 – Is the derogation set up in article 4 § 1 last indent relating to the conditions for integration of children over 12 years arrived independently from the rest of the family used by your Member State?

☐ OUI
☒ NON

How the criterion "arrives independently from the rest of his/her family" has been transposed in your national legislation?

Such criteria is not transposed.
Q.17 – If yes, did this integration condition already exist in your national legislation before the date of transposition of the Directive?

☐ OUI
☐ NON

Q.18 – Describe briefly the content of this condition, the date of its creation and the conditions of its examination

Q.19 – Are the children of refugees required to an integration test by your Member State (in contradiction with article 10 § 1)?

☐ OUI
☒ NON

If yes, explain

Q.20 – Does your Member State authorise:

Q.20 A – Reunification of first-degree relatives in the direct ascending line of the sponsor (a 4§2 a)?

☐ OUI
☒ NON

First degree relatives are entitled to family reunification only in case where a sponsor with a long term residence permit is a member of a foreign diplomatic or consular unit, as well as he/she is a representative of an intergovernmental organisation. In such case the relatives in direct ascending line will be authorised entry and residence only, if they have financial means. Refugees and persons with humanitarian status are authorised to reunite with first degree relatives when the later had lived together with the refugee previous to his/her flee, are in a bad health condition or can not take care of themselves and are dependent on the refugee/the one with humanitarian status. However, in comparison, persons who enjoy temporary protection may be allowed to reunite with a larger and not precisely defined in LAR circle of “close relatives”, who have been dependent on the temporary protected persons and had lived in one household with him/her, previous to the events that had led to a need or temporary protection

Q.20 B – If yes, shall they be dependant and not enjoy proper family support in the country of origin?

☒ OUI
☐ NON

How each of those criterions is transposed and checked?

82 Yes in the case of refugees and persons with humanitarian status.
Q. 20.C. Reunification of first-degree relatives in the direct ascending line of the spouse (a 4§2 a)?

☐ OUI

☒ NON\textsuperscript{83}

Q.20.D. If yes, shall they be dependant and not enjoy proper family support in the country of origin?

☒ OUI

☐ NON

How each of those criterions is transposed and checked?

Q.20.E. Reunification of adult unmarried children of the sponsor? (a 4§2 b) ?

☐ OUI

☒ NON\textsuperscript{84}

If necessary, explain how this procedure is organised

Q.20.F. If yes, does the national legislation impose that those adult unmarried children of the sponsor are objectively unable to provide for their own needs on account of their state of health (a 4 §2 b) ?

☒ OUI\textsuperscript{85}

☐ NON

If necessary, specify how each of those criterions ("objectively" and "unable to provide for their own needs") is transposed and checked?

LAR does not specify how these criterias will be assessed. Since there is no Regulation to implement this law, it is thinkable that the criterias will be checked in each and every case and that the authorities have broad margin for discretion in deciding on them.

\textsuperscript{83} Yes for refugees and persons with humanitarian/ temporary protection
\textsuperscript{84} Refugees can. In addition the newly amended RILFRB sets a requirement in cases of family reunification of a third country national who poseses a long residence permit in another EU MS, that he or she should certify custody over children who are younger then 21 years. This can be interpreted as that only this category of persons will be exceptionally to all the others be allowed reunification with children who had reached maturity.
\textsuperscript{85} Yes, having in mind that this is only the category of refugees, persons with temporary and humanitarian status who are allowed to seek reunification with this category of children.
Q.20. G. Does your Member State authorise reunification of adult unmarried children of the spouse (a 4§2 b)?

☑️ OUI

☒ NON

If necessary, specify how this condition is assessed

Q.20.H. If yes, does the national legislation impose that those adult unmarried children of the sponsor are objectively unable to provide for their own needs on account of their state of health (a 4 §2 b) ?

☑️ OUI

☒ NON

If necessary, specify how each of those criterions ("objectively" and "unable to provide for their own needs") is transposed and checked?

Q.20. I. Did your Member state use the by law or regulation norms to implement article 4 § 2 a et b?

☑️ OUI

☒ NON

Q.21 – Does your Member State authorise reunification of the unmarried partner of the sponsor, being a third country national (a 4 §3)?

☑️ OUI

☒ NON

The positive answer is conditioned. In principle a partnership does not reason family reunification. With two exceptions. In case of refugees, persons with humanitarian status and when the sponsor is a member of a foreign diplomatic or consular unit, as well as representative of intergovernmental organisation.

Q.22 – If yes:

Q.22 A – This partnership shall be based on a duly attested stable long term relationship?

☒ OUI

☐ NON

If yes, specify how your Member State assess this situation
Such formulated is the rule only for refugees. The provision is new (adopted in June 2007) and has no practice yet.

**Q.22 B** – This partnership shall be registered?

☐ OUI

☒ NON

**Q.23** – Does your national law consider the registered partner as the husband/spouse (a 4 §3 alinéa 2)?

☐ OUI

☒ NON

**Q.24** – Does your Member State authorise:

**Q.24. A** – Reunification of minor children of the partner, including adopted children (a 4§3)?

☐ OUI

☒ NON

**Q. 24. B** – Reunification of adult unmarried children of the partner, including adopted children (a 4§3)?

☐ OUI

☒ NON

**Q.25** – Does your Member State allow reunification of adult unmarried children who are objectively unable to provide for their own needs on account of their state of health (a 4§3)?

☐ OUI

☒ NON

If yes, specify how the conditions, and more particularly the "objectivity", are assessed.

**Q.26** – Did your Member state use the by law or regulation norms to implement article 4 § 3? No
Q.27 – Is the prohibition of polygamous marriage enshrined in your national legislation (a. 4§4)?

☐ OUI
☐ NON

Q.28 – Does your Member State limit family reunification of minor children of a further spouse and the sponsor (article 4§4 dernier alinéa,)?

☐ OUI
☒ NON

It is not completely clear from the text of LFRB. Explicit provision that prohibits or allows it lacks. Also information on the practical implementation of the definition of family members is limited. On the other hand, as mentioned previously, the definition of family members is the two spouses and “their” children. If the legislator wished to limit the children entitled to entry and stay only to those common for the sponsor and the spouse could have set down “their children from the marriage”. Such thing is not done. As long as a child of a further marriage to the sponsor is still his/her child, by lack of explicit limitation, author’s understanding is that in theory it should be possible for this child to be reunited with the parent in Bulgaria.

Q.29 – Does your Member State use the option set up by article 4 § 5 requiring the sponsor and his/her spouse to be of a minimum age of 21 years old before reunification?

☐ OUI
☒ NON

Q.30 – If yes,

Q.30 A – What is the age required?

Q.30 B – Is the derogation founded on integration criteria and/or prevention of forced marriage?

Q.31 – Does your Member State use the derogation of article 4 § 6 by requesting that the applications concerning family reunification of minor children have to be submitted before the age of 15?

☐ OUI
☒ NON

Explain

86 As already explained the bulgarian legislator had transposed this rule only in the respect to third country nationals who posses long term residence permit in another EU MS.
Q.32 – If yes, was it provided by existing legislation on the date of implementation of the directive?

Q.33 – If the application is not introduced before the age of 15, do Member States authorise entry and residence on grounds other than family reunification?

☐ OUI
☐ NON

Which grounds and which conditions?

PROCEDURE (ARTICLE 5)

We draw attention on the major importance given by the Court of justice regarding § 5 relating to the best interest of minor children.

Q.34 – Did your Member State institute a procedure regarding family reunification (a 5 §1) ?

☒ OUI

Apart from a new chapter instituting a procedure for family reunification of third country nationals, who already do have a long term residence in another MS, the procedure for family reunification is the same as the as the one being in force before the transposition of the Directive.

☐ NON

Q.35 – If yes,

Q.35. A – Which authorities are in charge of this issue?

The territorial units for immigration control established within the Direction “Migration” with the Ministry of Interior in all cases, but applications from refugees, persons with temporary or subsidiary (humanitarian) protection. For the last 3 categories the Chairperson of the State Agency for Refugees is in charge.

Q.35. B – Are NGO's associated to this procedure?

☐ OUI

☒ NON

Not for the « ordinary » third country national. The draft for amended LAR, has a special provision referring to cases of family reunification of refugees, persons with a humanitarian and temporary protection. There UNHCR, the Bulgarian Red Cross and other NGOs can be sought for assistance.

If yes, describe the procedure
Q.35. C – Is the application submitted by the sponsor or by family members?

In case of a long term resident- by the family members, in rest of the cases.-by the refugee or the person with humanitarian or temporary procedure.

Q.35. D – Is this procedure exclusive from other possibilities to grant family reunification?

☐ OUI

☒ NON!!!!

If other procedural possibilities exist, please describe them

Q. 35. E – Was this procedure existing before the adoption of Directive 2003/86?

☒ OUI

☐ NON

Q.36 – Which documentary evidence are required to prove (a 5 §2):

Q.36. A – Family relationships according to article 4?
Certificates for marital status/ birth/ certified copies of it. If a reunification with a child is sought and the parent/s/ are long term residents of another EU MS, the law requires documents certifying the custody over the child.

Q.36. B – Accommodation conditions laid down in article 7?
Not specified what kind of conditions should be. It is enough with the address registration/ address of the sponsor.

Q.36. C – Sickness insurance conditions?
Sickness insurance which covers the period of permitted residence is sought.

Q.36. D – Certified copies of family member(s)’ travel documents?
Yes

Q.37 – Is the possibility foreseen to proceed to:

Interviews:

☒ OUI

☐ NON
Investigations:

☐ OUI
☐ NON

Interviews and investigations are not explicitly mentioned in the main norms, but the instituted opportunity to investigate a false marriage, as well as the fact that the visas for entry and stay are issued by the embassies and the consulars, where normally an interview would have been conducted, give a reasonable ground to conclude that in practice, interviews and investigations will be performed in some, if not all the cases.

Q.38 – When examining an application concerning the unmarried partner of the sponsor, which evidences are taken into account by Member States on the basis of national law to prove family relationship (article 5§2 dernier alinea) ?

The answer given to Q 38B is only for the cases where as explained the sponsor is an employee in an diplomatic/consular stationary.

Q.38. A – Existence of family ties and other elements such as a common child?

☐ OUI
☐ NON

Specify

The applicant should submit information about the address, where the two have been living together last. The provision also says that “in some cases MFA might be asked to certify the conditions for factual concubine”. Interesting solution having in mind that in practice this obliges the Ministry of Foreign Affairs in Bulgaria to certify that a person with a diplomatic status lives in a concubine. The amended in June LAR allows reunification of a refugee with a partner with whom the refugee had previously lived in concubinat. The provision is new and there is nor practice, neither elaborate further provisions setting criterais for assessing it.

Q.38. B - Previous cohabitation?

☒ OUI
☐ NON

Q.38. C - Registration of a partnership

☐ OUI
☒ NON
Q.38. D - Any other reliable means of proof foreseen in national law?

☐ OUI

☒ NON

If yes, specify which ones:

Q.39 – Are family members obliged to reside outside the territory of the Member State while the application is being examined (a5 §3)?

☒ OUI

☐ NON

In principle yes. However if the sponsor and the spouse had gotten married in Bulgaria, the authorities may tolerate a residence while the application for permission to stay as a family is proceeded.

Q.40 – If the answer is yes, is a derogation organised according to article 5 § 3 second indent?

☒ OUI

☐ NON

RILFRB allows a permission to stay on humanitarian reasons or for family reunification when the initial entry has not been in accordance with the law.

Q.41 – Does your national legislation include a maximum period of 9 month to answer to the application by way of written notification (a5 §4)?

☐ OUI

☒ NON

The time periods should be set by RILFRB. The newlyamended regulation for implementation of LFRB and LFRB itself forseesa timeperioforansweringonly when the application is from a long er resident of another EU MS. For the rest of the cases there is no time limit for taking a decision for renewing a residence permit. However the 7 days period is from the category “recommended time periods”. This means that the authorities are not obliged to keep it.. There is no time limit for the Chairperson of the Agency for Refugees to decide on an application for family reunification submitted from a refugee/person with a humanitarian protection/temporary protection.
Q.42 – This time limit can be extended (a 5 §4 alinea 2) ?

☐ OUI

☐ NON

Q.43 – If yes,

Q.43. A – Because of the complexity of the examination of the application?

☐ OUI

☐ NON

If yes, please specify

Q.43. B – What is the length of the extension?

Q.44 – If no decision is taken by the end of the 9 months period provided, what are the consequences for the applicant?

The lack of explicit time limit in the law can be in principle overcome by the general rules for administrative procedure, which do set a procedure for complain of the so called “silent refusal” 87.

Q.45 – Is the decision rejecting the application notified? Does this written notification contain the reasons of rejection?

☐ OUI

☐ NON

Specify if only one condition is not required

LFRB does not contain an explicit requirement for reasoning a rejection. Instead of this refers to the general rules for adm.procedure, which on another hand do require such reasoning. LAR does.

Q.46 – How is the best interest of minor children taken into account by your Member State’s legislation and authorities during examination of the application (article 5§5) ?

It is announced as principle only in LAR, but not in LFRB. However, both LAR and LFRB contain provisions pronouncing that all unaccompanied minors are entitled to stay with a foster family, stay with a relative, stay in a specialized institution, have a legal guardian, while their legal status is figured out and further. LFRB refers to the procedures under the Law for protection of the child.

87 « Silent refusal » is in place when a relevant administrative authorities had not decided in perscribed time on an application for claimed right.
Q.47 – Can public policy, public security or public health grounds be taken into account to (a 6 §§1 et 2):

Q.47. A – Reject an application for family reunification?

☑ OUI
☐ NON

If yes, which ones?

All three. There are two categories of reasons to reject an application. In case that the first group of reasons is present, the authorities shall reject. In case that the second group of reasons is present, the authorities may reject an application. All together there are 26 grounds for rejecting an application, in addition to the situations, when it is concluded that the entry and stay of the family member will “ burden they national social system”, when the marriage has been disclosed as a false one, or some of the conditions for allowing reunification is missing (i.e. documents, relationship, finances etc.). The last amendment of LFRB introduces as a ground to reject an application, the not paying of the fee for proceeding.

Q.47. B – Withdraw an application for family reunification?

☑ OUI
☐ NON

All three grounds – public security, order, health policy. They are divided in two categories of reasons to withdraw a residence. In case of the first group of reasons the authorities shall withdraw. In case that the second group reasons are present, the authorities may withdraw a residence. All together there are 26 reasons for withdrawing an application, outside of the situations, when the marriage had ceased to exist before 5 years had been passed from the first time permission, in case of usage of false documents to prove relationship, false marriage or if some of the conditions for first allowing the reunification is not any more present, or if the member of the family has been outside of the country more then 6 months +1 day.

Q.47. C – Refuse to renew a family member's residence permit?

☑ OUI
☐ NON

All three grounds – public security and order, health, policy. They are divided in two categories of reasons to refuse an application for renewal. In case of the
first group of reasons the authorities shall reject. In case of the second group reasons present the authorities may refuse renewal. All together there are 26 reasons for refusal an application, outside of the situations, when it has been a false marriage or some of the conditions for first allowing is not any more present, or if the member of the family has been outside of the country more then 6 months +1 day. The last amendment of LFRB introduces as a ground to reject a renewal of an application, the not paying of the fee for proceeding.

Q.48 – Does national legislation take into account:

Q.48. A – The severity or type of offence against public policy or public security?

☐ OUI
☐ NON

Q.48. B – The solidity of family relationships regarding article 17 of the Directive?

☐ OUI
☐ NON

Q.49 – Does your Member State withdraw the residence permit or remove the third country national on the sole ground of illness or disability suffered after the issue of the residence permit (a 6 §3)?

☐ OUI
☐ NON

Q.50 – Are accommodation conditions required from the applicant (a7 §1a) ?

☐ OUI
☐ NON

Q.51 – If yes: It is required that the applicant proves he/she has accommodation for the family to be reunited, but there is no requirement for specific conditions.

Q.51. A – What are those conditions? Not specified

Q.51. B – How are they assessed? No assessment
Q.51 C – Are they comparable to the conditions required to a normal family living in the same region?

☐ OUI

☐ NON

If not, please specify the differences.

Q.52 – Is a sickness insurance required from the applicant (a. 7 §1b)?

☐ OUI

☐ NON

Q.53 – Are stable resources required (a7 §1c)?

☐ OUI

☐ NON

LFRB requires consequent and sufficient means for the period of stay. Since only those foreigners, who have regular income have in practice right to family reunification it will be their income and means that determine the means of living for the members.

Q.54 – How is the condition "sufficient" assessed by your Member State? Is it in comparison with national wages?

They will be decided with a regulation.

Q.55 – Are integration criterions required to allow family reunification (a 7 §2)?

☐ OUI

☐ NON

Q.56 – If yes:

Q.56. A – What are those criterions?

Q.56. B – Do they apply indistinctly to all potential beneficiaries of reunification? (Spouse, dependant people, etc.)

Q.56. C – How are they evaluated by your Member State?

Q.56. D – Are refugees and their family members required to fulfil them (a 7 §2, second indent)?

☐ OUI

☐ NON
Q.57 – Is a minimal period of lawful reside is required before reunification (a 8 §1)?

☐ OUI

☒ NON

Q. 58 – Does this period exceed two years?

Please specify

Q.59 – Does your Member State apply the derogation set up by article 8 § 2 allowing Member States to impose a waiting period of maximum three years due to reception capacities between the submission of the application and the issuance of a residence permit?

☐ OUI

☒ NON

Please specify

Q.60 – If yes, did this derogation exist in national law before the 22nd of September 2003?

☐ OUI

☐ NON

FAMILY REUNIFICATION OF REFUGEES

Q.61 – Does your Member State allow family reunification of refugees on the basis of Directive 2003/86 (a 9 §1) ?

☒ OUI

☐ NON

Q.62 – Is this right limited to family relationships predating the entry on the territory (a 9 §2)?

☐ OUI

☒ NON
Q.63 – Does your Member State allow family reunification of family Members not quoted in article 4 of the Directive (a 10 §2) ?

☐ OUI  
✘ NON

Which members of the family and under which conditions?

Q.64 – According to the specific case of unaccompanied minor refugees, does your Member State authorise family reunification of first degree relatives in the direct ascending line without applying the conditions laid down in article 4 § 2 (a10 §3 a) ?

✘ OUI  
☐ NON

Q. 65 – Does your Member State authorise entry and residence of the legal guardian or any member of the family where the unaccompanied minor refugee has no relatives in the direct ascending line or such relatives cannot be traced (a10 §3 b) ?

✘ OUI  
☐ NON

If yes, please specify who the member of the family targeted is and which proofs are required to prove family ties?

Q.66 – Does your Member State take into account other evidence of family relationship where the refugee cannot provide official evidence (a 11 §2) ?

✘ OUI  
☐ NON

Refugees who seek reunification can sign a self declaration with the facts concerned that can substitute an original document proving the stated family relationship. According to information from UNHCR – Sofia, the applicant is held liable for the accuracy of such a declaration under Art.313 of the Criminal Code. The authorities may afterwards issue documents for certification purposes, with which the refugee can exercise right to marry.

Q.67 – Does the examination of the refugee application take into account their specific situation:

88 « Close relatives, who are dependent on the protected in Bulgaria » is a category entitled to reunification only when the sponsor has temporary protection in Bulgaria
Q.67. A – Are proofs regarding accommodation conditions, sickness insurance or resources required (a 12 §1)?

☐ OUI
☒ NON

If yes, are those requirements comparable to those imposed to other third country nationals?

Q.67. B – If one of the person concerned (sponsor or family member) has special links with a third country within which reunification is possible, does your member state require those proofs according to article 12 § 1 second indent.

☐ OUI
☒ NON

If necessary specify

Q.67. C – If a refugee has introduced its application after a period of three months, does your Member State require the refugee to meet the conditions or one of them (accommodation, sickness insurance, resources (a 12 §1 alinea 3) ?

☐ OUI
☒ NON

If yes, which ones?

Q.68 – Does your Member State apply the prohibition to impose a residence condition before reunification (a 12 §2)?

☐ OUI
☒ NON

If not, what is the length of this period? Is it different from the one normally applied?

EXERCISE OF THE RIGHT TO FAMILY REUNIFICATION

Q.69 – Is entry and residence facilitated by your Member State, as soon as the application for family reunification has been accepted, including the issue of obtaining visas (a13 §1)?

☒ OUI
☐ NON
If yes, how? LAR states that family members of a refugee will be facilitated in obtaining visas. And in their entry. It does not specify how. There is no information how in practice they are facilitated.

Q.70 – Is a residence permit of at least one year's duration granted to the family members (a 13 §2)?

☐ OUI

☐ NON

What is the duration of the residence permit?
It will depend on the duration of sponsor’s residence permit.

Q.71 – Is this residence permit renewable?

☐ OUI

☐ NON

Q.72 – Is the duration of the residence permit aligned with the duration of sponsor's residence permit (a 13 §3) ?

☐ OUI

☐ NON

If no, please specify

Q.73 – Are the rights awarded to family members' equivalent to those granted to the sponsor (a14 §1):

Q.73. A – Regarding access to education?

☐ OUI

☐ NON

If no, please specify

Q.73. B - Regarding access to employment?

☐ OUI

☐ NON

Please specify the content of this access

---

89 One year is actually the maximum period, not the minimum that is obtained.
Q.73. C – Regarding access to vocational guidance, initial and further training and retraining?

☐ OUI

☐ NON

If no, please specify

Q.74 – Does your Member State grant specific rights in social matters to reunified family members?

☐ OUI

☐ NON

If yes, please describe them and specify if a time limit is established to take advantage from them

Q.75 – Has Member State set up conditions regarding specific access to employment for family members (a 14 §2)?

☐ OUI

☐ NON

If yes, how?

Q.76 – If yes, do those conditions exceed 12 months (a 14 §2)?

☐ OUI

☐ NON

Which ones?

Q.77 – Is access to employment limited in your Member State

Formally no, but the established procedure to get a work permit for all, but refugees is so heavy conditioned, long and beaurocratic that in practice can function as an actual limitation.

---

90 It is yes and no – refugees, those with humanitarian protection (otherwise theose with humanitarian status have the rights of permanent residents) do have an exclusive right to be financially supported in up to 6 months in the rent of a flat. In addition the Red Cross can support them in paying the rent up till 6 months more.

91 Not more specific then for the sponsor him/her self. However a refugee has the right to be economically supported in paying an accommodation rent the first 6 months after granted status. Red cross can support the refugee in another 6 months after the first ones.
Q.77.A – Regarding first-degree relatives in the direct ascending line?

☐ OUI
☒ NON

If yes, how?

Q.77. B – Regarding adult unmarried children objectively unable to provide for their own needs on account of their state of health (a 14 §3)?

☐ OUI
☒ NON

If yes, how?

Q.78 – Are spouses, unmarried partners and child who has reached majority entitled to an autonomous residence permit at least five years after lawful residence on the basis of the residence permit issued for family reunification (a15 §1)?

☐ OUI
☒ NON

If yes, please specify when and how for each category

Q.79 – Does your Member State limit the granting of the autonomous residence in cases of breakdown of the family relationship (a 15 §1 alinea 2)?

☐ OUI
☒ NON

Please explain

Q.80 – Does your Member State grant autonomous residence permit:

Q.80. A – To first-degree relatives in the direct ascending line (a15 §2)

☐ OUI
☒ NON

If necessary specify

Q.80. B – To adult unmarried children objectively unable to provide for their own needs on account of their state of health (a15 §2)?

☐ OUI
☒ NON
If necessary specify

**Q.81** – Does your member State grant autonomous residence permit in the event of widowhood, divorce, separation or death of first first-degree relatives in the direct ascending or descending line (a 15 §3)?

☐ OUI  
☒ NON

If necessary specify

**Q.82** – Has your Member State adopted rules granting autonomous residence permit "in the event of particularly difficult circumstances" (a 15 §3)?

☐ OUI  
☒ NON

If yes, how is this provision defined and transposed?

**PENALTIES AND REDRESS**

**Q.83** – What are the legal grounds to reject, withdraw or refuse to renew a family member's residence permit (a16 §1 et 2):

**Q.83. A** – Conditions required by the directive not satisfied?

☒ OUI

☐ NON

Refugees can be refused reunification on also another reason - refusal of family reunification in case of presence of some of the exclusion criteria under article 1 F from the Geneva Convention.

**Q.83. B** – Absence of real martial or family relationship?

☒ OUI

☐ NON

If yes, how is this hypothesis assessed?

---

92 See also Q 47 A, B.
Q.83. C – Stable long term relationship with another person?

☐ OUI

☒ NON

If yes, how is this hypothesis assessed?

Q.83. D – False or falsified documents?

☒ OUI

☐ NON

Q.83. E – Marriage, partnership or adoption contracted for the sole purpose of enabling reunification?

☒ OUI

☐ NON

Q.83. F – If yes, how is this hypothesis assessed?

A permission to stay with a ground on a so called “false marriage” is withdrawn when found out that the partners got married only for the purpose to receive residence.

Q.83. G – When the sponsor’s residence comes to an end and the family member does not yet enjoy an autonomous right of residence (a 16 §3) ?

☒ OUI

☐ NON

Q.83. H – What type of control are organised thereof?

It is not specified but it says that if the control body receives “information”, it can start a procedure. This in practice will mean that if the neighbours of the couple reports or lodges a signal that the couple does not live together, that authorities will start a procedure to check. It also means that the control authorities can also initiate own investigations and collect information for the couples on regular basis.

Q.84 – Are resources of the family taken into account when renewing residence permit where the sponsor does not have sufficient resources without recourse to the social assistance system of the member state?

☒ OUI

☐ NON

If yes, under which modalities?
For every renewal will be looked into the financial modalities that have been valid at first – place to live, insurances, income. If they are not at place by the time for renewal the sponsor can loose his/her residence ergo the members as well.

Q.85 – Does your Member State’s legislation take into consideration (a. 17) :

Q.85. A – The nature and solidity of the person's family relationships and the duration of his residence in the Member State?

☐ OUI
☐ NON

If yes, please specify how and on the basis of which norm (legislation, regulation, jurisprudence, …)

A new article 54 in RILFRB says that in case of rejection or redwal of a residence permit the authorities will take into account the duration of stay and the family relationships.

Q.85. B - 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?

☐ OUI
☐ NON

If yes, please specify how and on the basis of which norm (legislation, regulation, jurisprudence, …)

The draft LAR stipulates accordingly withdrawal of residence permit may not be done if age, health condition, family situation, social integration, link to the country, lack of link to CO are at place.

Q.86 – Do the sponsor and/or members if his/her family have the right to mount a legal challenge where an application for family reunification is rejected (a18 §1)?

☐ OUI
☐ NON

Q.87 – Is this right to legal challenge considered as a right to a judicial review according to jurisprudence C-540/03 (a18 §1)?

☐ OUI
☐ NON
XX. IMPACT OF THE DIRECTIVE ON NATIONAL LAW

Q.88 A Did the transposition of the directive made the rules related to the best interest of minor children (a. 5 § 5) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

Please use one box per object and duplicate it if necessary

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Due regard to the best interest of minor children during examination of the application a. 5 § 5</td>
<td>The situation described as&quot; before&quot; is not changed with the transposition of the Directive substantially. LFRB remains silent about the case of reunification of an unaccompanied third country national while LAR introduces a new provision which explicitly pronounces that the unaccompanied minor refugees can seek reunification with a parent or a legally responsible person.</td>
<td>• Statu quo regarding the third country national • …regarding a refugee</td>
</tr>
</tbody>
</table>

Less favourable

Q.88 B Did the transposition of the directive made the rules related to the beneficiaries of the right to family reunification become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

Please use one box per object and duplicate it if necessary
LFRB limits those members of family, eligible to reunite only to the nuclear family – spouses and their children. Only persons with diplomatic status are eligible to reunite with a first descending parent or a partner. LAR allowed in addition reunification with parents who are dependent on the applicant. No change after the transposition of the Directive regarding a third country national. Change in the categories a refugee can reunite. The new ones are - a partner from a long and stable relationship; children over 18 who can not take care of themselves.

**Q.88 C** Did the transposition of the directive made the rules related to reunification of minor children between 12 (a. 4 § 1) and 15 (a. 4 § 6) years old become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

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<tbody>
<tr>
<td>Limitation of reunification of minor children of 12 and 15 years of age (a. 4 § 1 and 4 § 6)</td>
<td>Neither before, neither now the limitation has been or is present in the legislation.</td>
<td></td>
</tr>
</tbody>
</table>

**Q.88 D** Did the transposition of the directive made the rules related to requirements to the exercise of family reunification (article 7) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

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<tr>
<td>Definition of the beneficiaries of the right to family reunification a. 4 § 4</td>
<td>No change after the transposition of the Directive regarding a third country national. Change in the categories a refugee can reunite. The new ones are - a partner from a long and stable relationship; children over 18 who can not take care of themselves.</td>
<td></td>
</tr>
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</table>

Please use one box per object and duplicate it if necessary
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<tbody>
<tr>
<td>Requirements for the exercise of family reunification (a. 7)</td>
<td></td>
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</tr>
<tr>
<td>LFRB required accommodation, sickness insurance and resources, but without specifying some of these components in the way they are specified in the Directive. This will say that it was enough with an accommodation, no matter what kind, a general sickness insurance and resources that last as long as the time period for the residence requires. At the same time the more problematic part is the existence of more then 26 grounds for refusal of entry and stay, refusal of renewal of residence withdrawal.</td>
<td>The conditions for exercise of family reunification like available accommodation, insurance and resources are the same, but the reasons for refusal of entry, renewal of stay or withdraw are “enriched” with new ones.</td>
<td>• Statu quo</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Less favourable than the directive</td>
</tr>
</tbody>
</table>

Q.88 E Did the transposition of the directive made the rules related to margins of manoeuvre awarded to Member States (a. 5 § 5, 17, C-540/03) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

Please use one box per object and duplicate it if necessary

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<tbody>
<tr>
<td>Limitation of margins of manoeuvre (a. 17, a.5 §5, C-540/03)</td>
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</tbody>
</table>
In the Bulgarian context this is difficult to assess because the transposition actually had not happened in a proper matter. The principle that the third country national initially has the right to family reunification and that from this point the state has certain discretion and margin to manoeuvre is not present. This principle is transposed only regarding third country nationals with long term residence permits in other MS. The rest, even the refugees do not have the right per se, they MAY be allowed and they MAY be allowed even after the conditions are fulfilled.

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</thead>
<tbody>
<tr>
<td>Attention draw upon integration objectives (considérant 15) and criterions of integration (a.4 §1 dernier alinéa, a. 7 §2)</td>
<td>No Change</td>
<td>• Statu quo</td>
</tr>
<tr>
<td>Integration criteria were and are not at all a matter of discussion in the law.</td>
<td></td>
<td>• More favourable than the directive</td>
</tr>
</tbody>
</table>

Apart from the category of third country nationals with long-term residence in other MS – less favourable, even in contradiction with the Directive.

**Q.88 F** Did the transposition of the directive made the rules related to integration objectives and criterions more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

*Please use one box per object and duplicate it if necessary*
Q.89 From your point of view, did the transposition of the directive imply other interesting changes for the third national country regarding other elements than the ones mentioned in the previous question. Make also a comparison with the standard of the directive in the last column of the table below.

If they want to do so, the thematic coordinators should complete this question by indicating the number of examples that they ask the national reporter to give.

*Please use one box per object and duplicate it if necessary*

<table>
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<tr>
<th>OBJECT (to be precisely indicated by the national rapporteur)</th>
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<tbody>
<tr>
<td>Explain the situation before transposition</td>
<td>Explain the situation after transposition (to evaluate the impact of the directive, take also into consideration national norms which have been adopted before the deadline for transposition or even before the adoption of the directive in cases of Member States having amended their national legislation in advance in view of the directive. Indicate the precise date of adoption of the change)</td>
<td>Complete this box by keeping the right appreciation and deleting the two others:</td>
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<td></td>
<td>• Statu quo</td>
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<tr>
<td></td>
<td></td>
<td>• More favourable than previous national rules</td>
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<tr>
<td></td>
<td></td>
<td>• Less favourable than previous national rules</td>
</tr>
</tbody>
</table>

Complete this box by keeping the right appreciation and deleting the other one:

• More favourable than the directive
• In line with the directive

Q.89. A. Mention if there is a general tendency to just copy the provisions of the directive into national legislation without redrafting or adaptation them to national circumstances.

[ ] NO

[ ] YES

Q.89.B. If yes, please indicate if this general tendency may or not create problems (for example difficulties of implementation, risk that a provision remain unapplied).

[ ] NO

[ ] YES
Q.89.C. If yes, give some of examples:

Q.89.D. If only some provisions of the directive have been copied and if this may create any problem, please quote them and explain the problem.

Q.90. Quote interesting decisions of jurisprudence related to the directive, its transposition or implementation (so this question concerns in principle decisions later that the directive, but previous ones might be quoted if relevant). Quote in particular decisions of supreme Courts; limit yourself to the appeal Courts and ignore the first resort if there are too many decisions at this level, unless there is a certain jurisprudence made of a group of decisions.

Please use one box per decision and duplicate it if necessary

<table>
<thead>
<tr>
<th>DECISION OF SUPREME COURTS</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
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<table>
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<tr>
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<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
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<tr>
<th>DECISION(S) IN FIRST RESORT</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
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ANY SUPPLEMENTARY COMMENT ABOUT THE TREND OF THE JURISPRUDENCE:

Q.91 Specify if there are or not problems with the translation of the text of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated.

☐ There are no problems with the translation of the directive

☐ There are some problems with the translation of (indicate the number of the articles concerned) of the directive.

At present this Directive is still not translated.

Explain the difficulties that this could create:

Q.92 ANY OTHER INTERESTING ELEMENT

Q.92 A. Following your personal point of view, mention from the point of view of third country nationals and/or from the Member State any interesting or innovative practice in your Member State
Q.92 B. Please add here any other interesting element in your Member State which you did not had the occasion to mention in your previous answers

On the author’s of this report opinion the rather strange manner of transposition of the Directive is due to complex reasons. 1) Previously the country has not been an attractive destination for work migration or for asylum. This is still the case. For the migrants, Bulgaria has been mainly playing role of a temporary stop, a transit country on the way to other, more attractive countries. Therefore the relevant norms stipulate the right and have a procedure which mirrors exactly such reality. It can easily mislead the legislator that the laws from the past guarantee adequately the right to family reunification and that there is no need of some substantial changes that will transpose the Directive. 2) A second reason on the author’s opinion is that there is insufficient experience and knowledge about how to apply the Community legislation, lacks understanding of the principles for transposition, type of clauses, margins for manoeuvre. This had led to a peculiar mixture of provisions in the main norms, which had not used the opportunities for manoeuvre that the Directive gives the States and at the same time had not transposed correctly the provisions where such margin lacks.
The person in the team of thematic coordination in charge of this directive that you can contact if you have a question or need help when completing this questionnaire is: Yves Pascouau, +33 5 59 57 41 20, yves.pascouau@univ-pau.fr

COMMENTARIES

1. Council directive 2003/86 on the right to family reunification faced hard negotiations requiring the presentation of revised proposals from the Commission before final adoption in 2003. The European Court of Justice rejected in June 2007 an action for annulment introduced by the European Parliament against the Council directive (C-540/03).

2. Transposition of the directive must be assessed regarding the nature of the provision concerned. So as to help you, those provisions are coloured within the questionnaire as follows: obligatory provision (Q.XX), optional provision (Q.YY), provision which set up a derogation (Q.ZZ).

3. The Court of justice has defined the margins of discretion awarded to the member States even in situations where the directive allows the member States to depart from the directive. The Court states:

"Article 4(1) of the Directive imposes precise positive obligations, with corresponding clearly defined individual rights, on the Member States, since it requires them, in the cases determined by the Directive, to authorise family reunification of certain members of the sponsor’s family, without being left a margin of appreciation” (cons. 60).

"Note should also be taken of Article 17 of the Directive which requires Member States to 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 country of origin. As is apparent from paragraph 56 of the present judgment, such criteria correspond to those taken into consideration by the European Court of Human Rights when it reviews whether a State which has refused an application for family reunification has correctly weighed the competing interests” (cons. 64)

The fact that the concept of integration is not defined cannot be interpreted as authorising the Member States to employ that concept in a manner contrary to general principles of Community law, in particular to fundamental rights. The Member States which wish to make use of the derogation cannot employ an unspecified concept of integration, but must apply the condition for integration provided for by their legislation existing on the date of implementation of the Directive in order to examine the specific situation of a child over 12 years of age arriving independently from the rest of his or her family” (cons. 70).
4. The main difficulty according to the transposition of the directive relies on the systematic opportunities offered to member States to depart from the provisions of the directive when applying it.

5. Article 19 indicates which themes where the most sensitive during the negotiations of the Directive (art. 3, 4, 7, 8 and 13).

**FIRST PART**

1. **NORMS OF TRANSPOSITION AND JURISPRUDENCE**

Q.1.A. Identify the MAIN (because of its content) norm(s) of transposition and indicate its legal nature

The main norm of transposition is the Migration Law as amended in 2007. It is a statutory instrument (legislative), N 8 (I)/2007.

Please duplicate the table below if there is more than one MAIN norm of transposition

<table>
<thead>
<tr>
<th>This table is about:</th>
<th>☒ a text already adopted</th>
<th>☐ a text which is still a project to be adopted</th>
</tr>
</thead>
<tbody>
<tr>
<td>TITLE: MIGRATION LAW as amended in 2007</td>
<td></td>
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<tr>
<td>DATE:</td>
<td></td>
<td></td>
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<tr>
<td>NUMBER: 8(I)/2007</td>
<td></td>
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</tr>
<tr>
<td>DATE OF ENTRY INTO FORCE: 14/2/07</td>
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<tr>
<td>PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive):</td>
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</tbody>
</table>

The main body of the Migration Act (in addition to the specific amendment mentioned above as 8 (I)/2007 which covers the relevant directive) covers also matters affecting Removal by Air, Long Term, Illegal employment of Migrants, White Marriages, Carriers Liability)

| REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: |
| LEGISLATIVE: ☒ |
| REGULATION: |
| CIRCULAR or INSTRUCTIONS: |

Q.1.B. List the others norms of transposition by order of importance of their legal nature (first laws, secondly regulations; thirdly circulars or instructions):

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)
There are no other norms of transposition

*Please use one table per norm and duplicate as much as necessary*

<table>
<thead>
<tr>
<th>TITLE:</th>
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<tbody>
<tr>
<td>DATE:</td>
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<td>DATE OF ENTRY INTO FORCE:</td>
<td></td>
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<tr>
<td>PROVISIONS CONCERNED:</td>
<td>(for example if the norm is not devoted only to the transposition of the concerned directive)</td>
</tr>
<tr>
<td>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:</td>
<td></td>
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<tr>
<td><strong>LEGAL NATURE</strong> (indicate a cross in the right box):</td>
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<tr>
<td>LEGISLATIVE</td>
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<td>REGULATION</td>
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<tr>
<td>CIRCULAR OR INSTRUCTIONS</td>
<td></td>
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</tbody>
</table>

**Q.2.** This question is in principle only for Federal or assimilated Member States like Austria, Belgium, Germany, Italy, Spain

**Q.2.A.** Explain which level of government is competent to adopt the norms of transposition.

*Please include your answer in the tables below*

**LEGISLATIVE RULES**

| COMPETENCES OF THE FEDERAL/CENTRAL LEVEL: |  |
| COMPETENCES OF THE COMPONENTS: |  |
| EXPLANATIONS IF NECESSARY: |  |

**REGULATIONS**

| COMPETENCES OF THE FEDERAL/CENTRAL LEVEL: |  |
| COMPETENCES OF THE COMPONENTS: |  |
| EXPLANATIONS IF NECESSARY: |  |

**CIRCULAR OR INSTRUCTIONS**

| COMPETENCES OF THE FEDERAL/CENTRAL LEVEL: |  |
| COMPETENCES OF THE COMPONENTS: |  |
| EXPLANATIONS IF NECESSARY: |  |

**Q.2.B.** In case, explain if the federal structure and the distribution of competences between the different levels pose any problem or difficulty regarding the transposition and/or the implementation of the directive.

**Q.3.** Explain which authorities are competent for the practical implementation of the norm of transposition by taking the decisions in individual cases.
Please use one table per competence concerned and duplicate it if necessary

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>MINISTRY OF INTERIOR</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>MIGRATION DEPARTMENT</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td></td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
<td>The migration department is integral part of Ministry of Interior.</td>
</tr>
</tbody>
</table>

Q.4. A. Has the main regulation foreseen explicitly by the main norm of transposition already been adopted or not:

No other norms of transposition

- YES
- NO

Q.4.B. If the main norm(s) of transposition foresees the adoption of one or several regulations, indicate if they have all been adopted:

No other norms of transposition

- YES
- NO

If NO, please indicate the missing text(s) in the table below

Please use one line per missing text and duplicate it if necessary

<table>
<thead>
<tr>
<th>MISSING TEXTS</th>
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<tbody>
<tr>
<td>INDICATE HERE THE MISSING TEXTS</td>
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</tbody>
</table>

Add if necessary some explanations (specify in particular if the missing texts are at least under preparation or foreseen in the very near future):
AIM (ARTICLE 1)

The purpose of the Directive is to determine the conditions for the exercise of the right to family reunification. In case C-540/03, the Court of justice recognizes that, in some cases, member States do not have any margin of appreciation to grant the right to family reunification.

Q.5 – Is family reunification considered as a right in your Member State?

X OUI

☐ NON

Please explain

It is a statutory right provided in:

<table>
<thead>
<tr>
<th>TITLE:</th>
<th>MIGRATION LAW as amended in 2007</th>
</tr>
</thead>
<tbody>
<tr>
<td>NUMBER:</td>
<td>8(I)/2007</td>
</tr>
<tr>
<td>DATE OF ENTRY INTO FORCE:</td>
<td>14/2/07</td>
</tr>
</tbody>
</table>

Q.5. A – Are there any figures available relating to the exercise of the right to family reunification between 2002 and 2006? If yes, what are the trends, including nationality assessment?

This right is a new one in Cyprus Law. It has been enacted in 14/2/07 and therefore there are no available figures.

DEFINITIONS (ARTICLE 2)

SCOPE (ARTICLE 3)

The scope of the Directive is defined by article 3. We recall that:
- § 1 "reasonable prospect…” aims at excluding persons residing on a temporary basis (stagiaires, etc…)
- European citizens are excluded (§ 3)
- Comparison with existing legislation is of importance so as to assess the added value of the harmonization process (§ 5)

Q.6. Period of validity of the sponsor’s residence permit:

Q.6. A. Is the period of validity of the sponsor’s residence permit of one year or more according to article 3 § 1 of the Directive?

X OUI Section 18 KI (1)

☐ NON
Q.2.B. Quote precisely the period enshrined in national law:

Period is 1 years (section 18 KI (1))

Q.6.C. How does your Member State translate in national law the requirement for the sponsor to have "reasonable prospects of obtaining the right of permanent residence" (a 3 § 1)?

Section 18 KI (1) ‘’reasonable prospects of obtaining the right of permanent residence’’ (exact translation of the directive)

Q.7. – Members of the family concerned:

Q7. A. Are they third country nationals as required by article 3 § 1 of the Directive?

☐ OUI

☐ NON

If not, explain

Q.7.B. How has your Member State translated in national law the wording of "whatever status” included in article 3 § 1 of the Directive?

Section 18 KI (1) ‘’independent from his status ‘’

Q.8 – Did the transposition of the Directive in your Member state breached provisions of international law more favourable to individuals (a 3 § 4)?

☐ OUI

☒ NON

Q.9 – If yes, are those provisions based on:

Q.9.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?

☐ OUI

☐ NON

Specify which provisions

Q.9.B - The European Social Charter of 18 October 1961 (a 3 § 4)?

☐ OUI

☐ NON

Specify which provisions
Q.9.C. The amended European Social Charter of 3 May 1987 (a 3 § 4)?

☐ OUI
☐ NON

Specify which provisions


☐ OUI
☐ NON

Specify which provisions

Q.10 – Does the transposition of the Directive affect national provisions more favourable to individuals (a 3 § 5)?

☐ OUI
☒ NON

If yes, please specify which provisions

Note however that before the transposition of the directive the right of family reunification was exercised on an unofficial basis especially for employees/directors of off shore companies or other multinational companies located in Cyprus. There were no requirements to submit all the documents required by this directive (e.g prove of accommodation, insurance coverage etc). It was enough to prove that they have the means to support their family by producing work permit and pay slip.

**Beneficiaries (Article 4)**

- Article 4 of the Directive contains numerous “may clauses”. It is therefore important to pay attention on the way Member States use them and on the legal modalities adopted thereof.

- Article 4 § 1 a) and b) enacts a right to family reunification for some members of the sponsor’s family. The Member State does not have any margin of discretion regarding those persons.

- Article 4 § 1 last indent foresee one derogation regarding child over 12 years on the basis of an integration criterion. This is one of the most sensitive questions encompassed by the directive beside the issue of the limit of age in § 6.

- Regarding article 4 § 6, the Court states “It does not matter that the final sentence of the contested provision provides that the Member States which decide to apply the derogation are to authorise the entry and residence of children in respect of whom an
application is submitted after they have reached 15 years of age ‘on grounds other than family reunification’. The term ‘family reunification’ must be interpreted in the context of the Directive as referring to family reunification in the cases where family reunification is required by the Directive. It cannot be interpreted as prohibiting a Member State which has applied the derogation from authorising the entry and residence of a child in order to enable the child to join his or her parents”. (cons. 86) The Court adds " Article 4(6) of the Directive must, moreover, be read in the light of the principles set out in Article 5(5) thereof, which requires the Member States to have due regard to the best interests of minor children, and in Article 17, which requires them to take account of a number of factors, one of which is the person’s family relationships" (cons. 87)

Q.11 – Does your national law recognize the right to family reunification to:

Q.11. A – The sponsor's spouse (a. 4 § 1 a)?

☒ OUI Section 18 Λ
☐ NON

The marriage must have taken place at least 1 year before the application is submitted.

Q.11. B - Minor children of the sponsor and of his/her spouse (a. 4 § 1 b)?

☒ OUI
☐ NON

Q.11.C. Minor children adopted of the sponsor and of his/her spouse (a. 4 § 1 b)?

☒ OUI
☐ NON

Q.11.D. Minor children of the sponsor (a. 4 § 1 c)?

☒ OUI
☐ NON

Q.11. E. If yes, does your national law foresee that the sponsor shall have children custody and children are dependant on him or her?

☒ OUI
☐ NON Section 18 ΛΑ(2) ΣΤ This is necessary only for adopted children.
Specify if necessary the proofs required (Non applicable)

Q.11 F. Minor children adopted of the sponsor (a 4 §1.c)?

☐ OUI
☐ NON

Q.11. G. If yes:
  h. does your national law foresee that the sponsor shall have children custody and children are dependant on him or her?

☐ OUI Section 18 ΛΑ(2) ΣΤ This is necessary only for adopted children.
☐ NON

Specify if necessary the proofs required (Non applicable)

g.g. Does national law provide that those children shall be 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'?

☐ OUI Section 18 ΛΑ(2) E
☐ NON

Specify if necessary the proofs required

Adoption Certificate is needed

Q.11. H. Minor children of the spouse (a 4 §1.d.)?

☐ OUI
☐ NON

Q.11. I. If yes, does your national law foresee that the spouse shall have children custody and children are dependant on him or her?

☐ OUI
☒ NON

Specify if necessary the proofs required

Q.11. J. Minor children adopted of the spouse (a 4 §1.d.)?

☐ OUI
☐ NON
Q.11. K. If yes,
k. Does your national law foresee that the spouse shall have children custody and children are dependant on him or her?

☑ OUI  Section 18 (1)(d) This is necessary only for adopted children.
☐ NON

Specify if necessary the proofs required (Non applicable)

k.k. Does national law provide that those children shall be 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"?

☑ OUI
☐ NON

Specify if necessary the proofs required

Adoption certificated is needed

Q.12 – Has your Member State transposed the option opened by article 4 § 1 c:

Q.12.A. To authorise reunification of minor children of the sponsor – including also adopted children – of whom custody is shared (a 4 §1.c)?

☐ OUI
☒ NON

Specify if necessary

Q.12.B. If yes, has your legislation transposed the condition that the other party sharing custody has given his or her agreement (a 4 §1. c)?

☐ OUI
☒ NON

Specify if necessary

Q.13 – Has your Member State transposed the option opened by article 4 § 1 d):

Q.13.A. to authorise reunification of minor children of the spouse – including also adopted children – of whom custody is shared (a 4.1.d. in fine)?
Q.13 B. If yes, has your legislation transposed the condition that the other party sharing custody has given his or her agreement (a 4.1.d) ?

☐ OUI
☐ NON

Specify if necessary

Q.14 – In any case referred to in questions 7 to 9, is the age of the minor children below the age of majority set up by the law of your Member State (a.4 §1, second indent)?

☒ OUI Section 18 L
☐ NON

If yes, indicate the age required
Eighteen years old

Q.15 – In any case referred to in questions 7 to 9, has the prohibition of marriage of minor children been transposed (a.4 §1, second indent)?

☒ OUI Section 18 Λ
☐ NON

If not, explain Si non, expliquez

Q.16 – Is the derogation set up in article 4 § 1 last indent relating to the conditions for integration of children over 12 years arrived independently from the rest of the family used by your Member State?

☒ OUI
☐ NON

However note that the age is 15 and not 12 (Section 18 Λ (3) )

How the criterion "arrives independently from the rest of his/her family" has been transposed in your national legislation?

Section 18 K Θ translates the term as follows “minor under 18 who arrives in the territory without being accompanied by an adult who is responsible in law for the minor in question”
Q.17 – If yes, did this integration condition already exist in your national legislation before the date of transposition of the Directive?

☐ OUI
☒ NON

Q.18 – Describe briefly the content of this condition, the date of its creation and the conditions of its examination

Entry into force: 14/2/07

Q.19 – Are the children of refugees required to an integration test by your Member State (in contradiction with article 10 § 1)?

☐ OUI
☒ NON

If yes, explain

Q.20 – Does your Member State authorise:

Q.20 A – Reunification of first-degree relatives in the direct ascending line of the sponsor (a 4§2 a)?

☐ OUI
☒ NON

Q.20 B – If yes, shall they be dependant and not enjoy proper family support in the country of origin?

☐ OUI
☐ NON

How each of those criterions is transposed and checked?

Q.20.C. Reunification of first-degree relatives in the direct ascending line of the spouse (a 4§2 a)?

☐ OUI
☒ NON

Q.20.D. If yes, shall they be dependant and not enjoy proper family support in the country of origin?

☐ OUI
☐ NON
How each of those criterions is transposed and checked?

Q.20.E. Reunification of adult unmarried children of the sponsor? (a 4§2 b)?

☐ OUI
☒ NON

If necessary, explain how this procedure is organised.

Q.20.F. If yes, does the national legislation impose that those adult unmarried children of the sponsor are objectively unable to provide for their own needs on account of their state of health (a 4 §2 b)?

☐ OUI
☒ NON

If necessary, specify how each of those criterions ("objectively" and "unable to provide for their own needs") is transposed and checked?

Q.20.G. Does your Member State authorise reunification of adult unmarried children of the spouse (a 4§2 b)?

☐ OUI
☒ NON

If necessary, specify how this condition is assessed.

Q.20.H. If yes, does the national legislation impose that those adult unmarried children of the sponsor are objectively unable to provide for their own needs on account of their state of health (a 4 §2 b)?

☐ OUI
☒ NON

If necessary, specify how each of those criterions ("objectively" and "unable to provide for their own needs") is transposed and checked?

Q.20.I. Did your Member State use the by law or regulation norms to implement article 4 § 2 a et b?

☐ OUI
☒ NON
Q.21 – Does your Member State authorise reunification of the unmarried partner of the sponsor, being a third country national (a 4 §3)?

☐ OUI
☒ NON

Q.22 – If yes:

Q.22 A – This partnership shall be based on a duly attested stable long term relationship?

☐ OUI
☐ NON

If yes, specify how your Member State assess this situation

Q.22 B – This partnership shall be registered?

☐ OUI
☐ NON

Q.23 – Does your national law consider the registered partner as the husband/spouse (a 4 §3 alinéa 2)?

☐ OUI
☒ NON

Q.24 – Does your Member State authorise:

Q.24. A – Reunification of minor children of the partner, including adopted children (a 4§3)?

☐ OUI
☒ NON

Q. 24. B – Reunification of adult unmarried children of the partner, including adopted children (a 4§3)?

☐ OUI
☒ NON
Q.25 – Does your Member State allow reunification of adult unmarried children who are objectively unable to provide for their own needs on account of their state of health (a 4§3)?

☐ OUI
☒ NON

If yes, specify how the conditions, and more particularly the "objectivity", are assessed.

Q.26 – Did your Member state use the by law or regulation norms to implement article 4 § 3?

Q.27 – Is the prohibition of polygamous marriage enshrined in your national legislation (a. 4§4)?

☒ OUI
☐ NON

Q.28 – Does your Member State limit family reunification of minor children of a further spouse and the sponsor (article 4§4 dernier alinéa,)?

☒ OUI
☐ NON

Q.29 – Does your Member State use the option set up by article 4 § 5 requiring the sponsor and his/her spouse to be of a minimum age of 21 years old before reunification?

☒ OUI Section 18 Α (5)
☐ NON

Q.30 – If yes,

Q.30 A – What is the age required?

The age required is 21 years old (Section 18 Α (5)

Q.30 B – Is the derogation founded on integration criteria and/or prevention of forced marriage?

There is no such indication in the national law.
Q.31 – Does your Member State use the derogation of article 4 § 6 by requesting that the applications concerning family reunification of minor children have to be submitted before the age of 15?

☐ OUI

☒ NON

18 Λ (3)

Explain: The application can be submitted even after the age of 15 (up to 18) but the minor must not live independently from the sponsor. If the minor who is above 15 lives independently from the sponsor then the entry and stay is allowed on other grounds other than family reunification.

Q.32 – If yes, was it provided by existing legislation on the date of implementation of the directive?

No provision in existing legislation before the implementation of the directive.

Q.33 – If the application is not introduced before the age of 15, do Member States authorise entry and residence on grounds other than family reunification?

☒ OUI

☐ NON

Which grounds and which conditions?

No specific provision in national law.

PROCEDURE (ARTICLE 5)

We draw attention on the major importance given by the Court of justice regarding § 5 relating to the best interest of minor children.

Q.34 – Did your Member State institute a procedure regarding family reunification (a 5 §1)?

☒ OUI

☐ NON

Q.35 – If yes,

Q.35. A – Which authorities are in charge of this issue?

Migration Department (Ministry of Interior)

Note that this procedure which is clearly provided in the law has not been implemented yet in practice because the necessary application documents for family reunification have not been issued by the migration department.
Q.35. B – Are NGO’s associated to this procedure?

☐ OUI

☒ NON

If yes, describe the procedure

Q.35. C – Is the application submitted by the sponsor or by family members?

The application is submitted by the sponsor.

Q.35. D – Is this procedure exclusive from other possibilities to grant family reunification?

☒ OUI

☐ NON

If other procedural possibilities exist, please describe them

Q.35. E – Was this procedure existing before the adoption of Directive 2003/86?

☐ OUI

☒ NON

Q.36 – Which documentary evidence are required to prove (a 5 §2):

Q.36. A – Family relationships according to article 4?

The following documentary evidence is needed which must be issued by official authorities:

Marriage Certificate to verify the husband-wife relationship
Birth Certificate to verify child-parent relationship
Adoption Certificate to verify child-parent relationship
Custody Certificate to verify child-parent relationship

Q.36. B – Accommodation conditions laid down in article 7?

Visits will be made if necessary. No other evidence is officially required by law.

Q.36. C – Sickness insurance conditions?

Only a valid insurance for health. Nothing else is officially required.
Q.36. D – Certified copies of family member(s)’ travel documents?

Certified Copy of a Valid Passport with validity period of at least two years

Q.37 – Is the possibility foreseen to proceed to:

Interviews:

☒ OUI Section 18 ΑΑ (4)
☐ NON

Investigations:

☒ OUI Section 18 ΑΑ (4)
☐ NON

If yes, describe them briefly

The law provides that the Director is authorised to carry interviews if he/she considers necessary.

Q.38 – When examining an application concerning the unmarried partner of the sponsor, which evidences are taken into account by Member States on the basis of national law to prove family relationship (article 5§2 dernier alinea) ?

Non Applicable

Q.38. A – Existence of family ties and other elements such as a common child?

☐ OUI
☐ NON

Specify

Q.38. B - Previous cohabitation?

☐ OUI
☐ NON

Q.38. C - Registration of a partnership

☐ OUI
☐ NON

Q.38. D - Any other reliable means of proof foreseen in national law?

☐ OUI
☐ NON
If yes, specify which ones:

**Q.39** – Are family members obliged to reside outside the territory of the Member State while the application is being examined (a5 §3)?

- [x] OUI  Section 18 AA (1)
- [ ] NON

Is this obligation sanctioned and how?

No it is not

**Q.40** – If the answer is yes, is a derogation organised according to article 5 § 3 second indent?

- [ ] OUI
- [x] NON

Please specify

**Q.41** – Does your national legislation include a maximum period of 9 month to answer to the application by way of written notification (a5 §4)?

- [x] OUI
- [ ] NON

If necessary, please specify

**Q.42** – This time limit can be extended (a 5 §4 alinea 2) ?

- [x] OUI
- [ ] NON

Section 18 AA (5)

**Q.43** – If yes,

**Q.43. A** – Because of the complexity of the examination of the application?

- [x] OUI
- [ ] NON

If yes, please specify
Q.43. B – What is the length of the extension?

The extension is for three months. Section 19 ΛΑ (6)

Q.44 – If no decision is taken by the end of the 9 months period provided, what are the consequences for the applicant?

The national Law does not provide for any consequences

Q.45 – Is the decision rejecting the application notified? Does this written notification contain the reasons of rejection?

☐ OUI
☐ NON

Section 18 ΛΑ (5)

Specify if only one condition is not required

Q.46 – How is the best interest of minor children taken into account by your Member State’s legislation and authorities during examination of the application (article 5§5)?

Section 18 ΛΑ (7) provided that the best interest of the minor are taken into account but there is no explanation of interpretation of the term in the law.

CONDITIONS REQUIRED (ARTICLES 6 AND OTHERS)

- Questions relating to accommodation and resources will be carefully examined to assess if Member States use them, either as a migration tool or as an integration tool.

- The same assessment applies regarding the option to set up a period of lawfully residence not exceeding two years before applying for family reunification.

- According to article 8, the Court of justice states: "That provision does not therefore have the effect of precluding any family reunification, but preserves a limited margin of appreciation for the Member States by permitting them to make sure that family reunification will take place in favourable conditions, after the sponsor has been residing in the host State for a period sufficiently long for it to be assumed that the family members will settle down well and display a certain level of integration. Accordingly, the fact that a Member State takes those factors into account and the power to defer family reunification for two or, as the case may be, three years do not run counter to the right to respect for family rights set out in particular in Article 8 of the ECHR as interpreted by the European Court of Human Rights"

- "It should, however, be remembered that, as is apparent from Article 17 of the Directive, duration of residence in the Member State is only one of the factors which
must be taken into account by the Member State when considering an application and that a waiting period cannot be imposed without taking into account, in specific cases, all the relevant factors” (cons. 99). "The same is true of the criterion of the Member State’s reception capacity, which may be one of the factors taken into account when considering an application, but cannot be interpreted as authorising any quota system or a three-year waiting period imposed without regard to the particular circumstances of specific cases. Analysis of all the factors, as prescribed in Article 17 of the Directive, does not allow just this one factor to be taken into account and requires genuine examination of reception capacity at the time of the application" (cons. 100) "When carrying out that analysis, the Member States must, as is pointed out in paragraph 63 of the present judgment, also have due regard to the best interests of minor children” (cons. 101).

**Q.47** – Can public policy, public security or public health grounds be taken into account to (a 6 §§1 et 2):

- **Q.47. A** – Reject an application for family reunification?
  - [x] OUI
  - [ ] NON
  If yes, which ones?
  All of them : Public security, public policy and public health.

- **Q.47. B** – Withdraw an application for family reunification?
  - [x] OUI
  - [ ] NON
  If necessary, please specify

- **Q.47. C** – Refuse to renew a family member's residence permit?
  - [x] OUI
  - [ ] NON
  If necessary, please specify

Note however that in order to refuse to renew the application on grounds of public security the seriousness of the offence is examined and the danger that follows. Further in the event that health problem **appears after the residence permit is issued the permit will be renewed.**
Q.48 – Does national legislation take into account:

Q.48. A – The severity or type of offence against public policy or public security?

☑ OUI  Section 18 ΑΖ (2)
☐ NON

Q.48. B – The solidity of family relationships regarding article 17 of the Directive?

☑ OUI
☐ NON

If necessary, please specify
Section 18 Α ΣΙ (4) - The director of Migration in the event he/she will issues a negative decision (revocation refusal to renew the license or expulsion ) takes into account – among other things- the solidity of family relationships. The law however does not define this term.

Q.49 – Does your Member State withdraw the residence permit or remove the third country national on the sole ground of illness or disability suffered after the issue of the residence permit (a 6 §3)?

☐ OUI
☒ NON  Section ΑΖ (3)

Q.50 – Are accommodation conditions required from the applicant (a7 §1a) ?

☑ OUI
☐ NON

Q.51 – If yes:

Q.51. A – What are those conditions?

Ownership title or tenancy lease must be provided by the sponsor

Q.51. B – How are they assessed?  Section 18 ΑΒ (b)

The housing must fulfill certain requirements such as to be similar to other houses in the same area, to be safe and to guarantee descent living. The Director of Migration may carry on investigations if necessary
Q.51 C – Are they comparable to the conditions required to a normal family living in the same region?

☐ OUI Section 18 ΑΒ (b)
☐ NON

If not, please specify the differences

Q.52 – Is a sickness insurance required from the applicant (a. 7 §1b) ?

☐ OUI Section 18 ΑΒ
☐ NON

Q.53 – Are stable resources required (a7 §1c) ?

☐ OUI Section 18 ΑΑ
☐ NON

Specify their nature and content

Contract of employment is needed valid for at least 18 months, contributions to the social security system and tax authorities.

Q.54 – How is the condition “sufficient” assessed by your Member State? Is it in comparison with national wages?

There is no specific provision in the law as to the term “sufficient”. However there is a provision in the law that the sponsor must be able to support his family without any support from the state (section 18 ΑΒ (δ) )

Q.55 – Are integration criterions required to allow family reunification (a 7 §2)?

☐ OUI
☐ NON

Q.56 – If yes:

Q.56. A – What are those criterions?

Q.56. B – Do they apply indistinctly to all potential beneficiaries of reunification? (Spouse, dependant people, etc.)

Q.56. C – How are they evaluated by your Member State?
Q.56. D – Are refugees and their family members required to fulfil them (a 7 §2, second indent)?

☐ OUI
☐ NON

The law is silent.

Q.57 – Is a minimal period of lawful reside is required before reunification (a 8 §1)?

☒ OUI Section 18 AB
☐ NON

Q. 58 – Does this period exceed two years?

Please specify
The time limit is two years before an application is submitted.

Q.59 – Does your Member State apply the derogation set up by article 8 § 2 allowing Member States to impose a waiting period of maximum three years due to reception capacities between the submission of the application and the issuance of a residence permit?

☐ OUI
☒ NON

Please specify

Q.60 – If yes, did this derogation exist in national law before the 22nd of September 2003?

☐ OUI
☐ NON

FAMILY REUNIFICATION OF REFUGEES

The legal regime applicable to refugees derogates from the one applicable to family reunification. The scope of those derogations (minimal lawful residence, members of the family, accommodation requirements) shall be assessed on the basis of national law.

Q.61 – Does your Member State allow family reunification of refugees on the basis of Directive 2003/86 (a 9 §1)?

☒ OUI Section 18 KI (d)
☐ NON
Q.62 – Is this right limited to family relationships predating the entry on the territory (a 9 §2)?

☐ OUI

☒ NON

Q.63 – Does your Member State allow family reunification of family Members not quoted in article 4 of the Directive (a 10 §2)?

☒ OUI

☐ NON

Which members of the family and under which conditions?

The same conditions as other applicants. No special treatment for refugees.

Q.64 – According to the specific case of unaccompanied minor refugees, does your Member State authorise family reunification of first degree relatives in the direct ascending line without applying the conditions laid down in article 4 § 2 (a10 §3 a)?

☐ OUI

☒ NON

What conditions are required?

Q.65 – Does your Member State authorise entry and residence of the legal guardian or any member of the family where the unaccompanied minor refugee has no relatives in the direct ascending line or such relatives cannot be traced (a10 §3 b)?

☐ OUI

☒ NON

If yes, please specify who the member of the family targeted is and which proofs are required to prove family ties?

Q.66 – Does your Member State take into account other evidence of family relationship where the refugee cannot provide official evidence (a 11 §2)?

☐ OUI

☒ NON

Which ones?

Q.67 – Does the examination of the refugee application take into account their specific situation:
Q.67. A – Are proofs regarding accommodation conditions, sickness insurance or resources required (a 12 §1)?

☐ OUI
☐ NON

If yes, are those requirements comparable to those imposed to other third country nationals?

Exactly the same

Q.67. B – If one of the person concerned (sponsor or family member) has special links with a third country within which reunification is possible, does your member state require those proofs according to article 12 §1 second indent.

☐ OUI
☐ NON

If necessary specify

Q.67. C – If a refugee has introduced its application after a period of three months, does your Member State require the refugee to meet the conditions or one of them (accommodation, sickness insurance, resources (a 12 §1 alinea 3) ?

☐ OUI
☐ NON

If yes, which ones?

Q.68 – Does your Member State apply the prohibition to impose a residence condition before reunification (a 12 §2)?

☐ OUI
☐ NON

If not, what is the length of this period? Is it different from the one normally applied?
EXERCISE OF THE RIGHT TO FAMILY REUNIFICATION

The granting of an autonomous residence permit is one of the most sensitive issues of this part of the Directive.

**Q.69** – Is entry and residence facilitated by your Member State, as soon as the application for family reunification has been accepted, including the issue of obtaining visas (a13 §1)?

- OUI  Section 18 ΛΓ (1)
- NON

If yes, how?

**Q.70** – Is a residence permit of at least one year's duration granted to the family members (a 13 §2)?

- OUI  Section 18 ΛΓ (2)
- NON

What is the duration of the residence permit?

**Q.71** – Is this residence permit renewable?

- OUI
- NON

**Q.72** – Is the duration of the residence permit aligned with the duration of sponsor's residence permit (a 13 §3)?

- OUI  Section 18 ΛΔ (1)
- NON

If no, please specify.

**Q.73** – Are the rights awarded to family members' equivalent to those granted to the sponsor (a14 §1):

  **Q.73. A** – Regarding access to education?

- OUI
- NON
If no, please specify

**Q.73. B - Regarding access to employment?**

☑️ OUI  Section 18  (2)

☐ NON

Please specify the content of this access

They have the right to work as self-employed or as employees and they have the same rights as the sponsor. This right however can only be exercised after the passing of a year from the granting of the residence permit.

**Q.73. C – Regarding access to vocational guidance, initial and further training and retraining?**

☑️ OUI

☐ NON  

Section 18 (1)

If no, please specify

**Q.74 – Does your Member State grant specific rights in social matters to reunified family members?**

☐ OUI

☒ NON

If yes, please describe them and specify if a time limit is established to take advantage from them

**Q.75 – Has Member State set up conditions regarding specific access to employment for family members (a 14 §2)?**

☐ OUI

☒ NON

If yes, how?

They have the right to work as self-employed or as employees and they have the same rights as the sponsor. This right however can only be exercised after the passing of a year from the granting of the residence permit.
Q.76 – If yes, do those conditions exceed 12 months (a 14 §2)?

☐ OUI

☒ NON Section 18 ΛΓ (3)

Which ones?

Q.77 – Is access to employment limited in your Member State

Q.77.A – Regarding first-degree relatives in the direct ascending line?

☐ OUI

☒ NON

If yes, how?

Q.77. B – Regarding adult unmarried children objectively unable to provide for their own needs on account of their state of health (a 14 §3)?

☐ OUI

☒ NON

If yes, how?

Q.78 – Are spouses, unmarried partners and child who has reached majority entitled to an autonomous residence permit at least five years after lawful residence on the basis of the residence permit issued for family reunification (a15 §1)?

☒ OUI Section 18 ΛΕ (spouses and children)

☐ NON

If yes, please specify when and how for each category

Spouses are entitled to an autonomous residence permit 5 years after lawful residence on the basis of the residence permit issued for family reunification. The spouse must apply individually. In the event of divorce the director of migration may give such an independent permit only to the spouse.

Children who reached the age of majority are entitled to an autonomous residence permit 5 years after lawful residence on the basis of the residence permit issued for family reunification. The children must apply individually.
Such an independent permit may also be issued where the sponsor dies or where there is a situation of domestic violence, sexual harassment or other similar situations.

Q.79 – Does your Member State limit the granting of the autonomous residence in cases of breakdown of the family relationship (a 15 §1 alinea 2)?

☐ OUI

☒ NON  Section 18 A E

Please explain: This right is extended also in the case of death of the sponsor, in cases of domestic violence, sexual harassment

Q.80 – Does your Member State grant autonomous residence permit:

Q.80. A – To first-degree relatives in the direct ascending line (a15 §2)

☐ OUI

☒ NON

If necessary specify

Q.80. B – To adult unmarried children objectively unable to provide for their own needs on account of their state of health (a15 §2)?

☐ OUI

☒ NON

If necessary specify

The adult children can apply for an autonomous resident permit but there is no need to “be unable to provide for their needs on account of their state of health. They must be in Cyprus however for 5 years.

Q.81 – Does your member State grant autonomous residence permit in the event of widowhood, divorce, separation or death of first first-degree relatives in the direct ascending or descending line (a 15 §3)?

☒ OUI

☐ NON

☐ If necessary specify:

Section 18 AE (3) does provide for autonomous permit in the event of death but does not limit this to first degree relatives. Spouses may also be entitled to this kind of permit. Section 18 AE (2) provides that in the event
of divorce the director of migration may issue such a permit to the source only.

Q.82 – Has your Member State adopted rules granting autonomous residence permit "in the event of particularly difficult circumstances" (a 15 §3)?

☐ OUI

☐ NON

If yes, how is this provision defined and transposed?

Section 18 AE (3)

Such an independent permit may also be issued in the event of particularly difficult circumstances such as: where the sponsor dies or where there is a situation of domestic violence, sexual harassment of minors and human trafficking.

PENALTIES AND REDRESS

Those provisions must be read in parallel with those relating to the conditions to be fulfilled to obtain family reunification (articles 6, 7, 8)

Questions relating fraud, false or falsified documents are of importance to assess their impact.

Q.83 – What are the legal grounds to reject, withdraw or refuse to renew a family member's residence permit (a16 §1 et 2):

Q.83. A – Conditions required by the directive not satisfied?

☒ OUI

☐ NON

Q.83. B – Absence of real martial or family relationship?

☒ OUI

☐ NON

If yes, how is this hypothesis assessed?

A number of Certificates must be submitted together with the application. If there is a suspicion that the marriage is not real the Director of Migration is statutory authorised to carry out a number of investigation in order to verify the absence of real family relationship.
Q.83. C – Stable long term relationship with another person?

☐ OUI  Section 18 ΣΤ

☐ NON

If yes, how is this hypothesis assessed?

The Director of Migration is statutory authorised to carry out a number of investigation in order to verify the absence of real family relationship.

Q.83. D – False or falsified documents?

☐ OUI

☐ NON

Q.83. E – Marriage, partnership or adoption contracted for the sole purpose of enabling reunification?

☐ OUI

☐ NON

Q.83. F – If yes, how is this hypothesis assessed?

The Director of Migration is statutory authorised to carry out a number of investigation in order to verify the absence of real family relationship.

Q.83. G – When the sponsor's residence comes to an end and the family member does not yet enjoy an autonomous right of residence (a 16 §3) ?

☐ OUI

☐ NON

Q.83. H – What type of control are organised thereof?

Q.84 – Are resources of the family taken into account when renewing residence permit where the sponsor does not have sufficient resources without recourse to the social assistance system of the member state?

☐ OUI section 18 ΣΤ 1 (α)

☐ NON
If yes, under which modalities? The law only provides that ‘when renewing the residence permit and the sponsor does not have sufficient resources without recourse to the social assistance system of the member state, contributions of the family are taken into account’.

Q.85 – Does your Member State's legislation take into consideration (a. 17):

Q.85. A – The nature and solidity of the person's family relationships and the duration of his residence in the Member State?

☒ OUI
☐ NON

If yes, please specify how and on the basis of which norm (legislation, regulation, jurisprudence, …)

Legislation (Migration Act as amended in 2007, section 18 Λ ΣΤ (4)). The law does not define ‘solidity of the person's family relationships and the duration of his residence in the Member State’ but it states that these are taken into account.

Q.85. B - 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?

☒ OUI
☐ NON

If yes, please specify how and on the basis of which norm (legislation, regulation, jurisprudence, …)

Legislation (Migration Act as amended in 2007, section 18 Λ ΣΤ (4)). The law does not define ‘the existence of family, cultural and social ties with his/her country of origin’ but it states that these are taken into account.

Q.86 – Do the sponsor and/or members if his/her family have the right to mount a legal challenge where an application for family reunification is rejected (a18 §1)?

☒ OUI
☐ NON

Q.87 – Is this right to legal challenge considered as a right to a judicial review according to jurisprudence C-540/03 (a18 §1)?

☒ OUI
☐ NON
XX. IMPACT OF THE DIRECTIVE ON NATIONAL LAW

Q.88 A  Did the transposition of the directive made the rules related to the best interest of minor children (a. 5 § 5) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below.

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Due regard to the best interest of minor children during examination of the application a. 5 § 5</td>
<td>Family reunification for minor children (including adopted minor children) of the sponsor and spouse provided that they have the sole custody. They minor children must be under 18 and single. Complete this box by keeping the right appreciation and deleting the two others: • More favourable than previous national rules</td>
<td>Complete this box by keeping the right appreciation and deleting the other one: • In line with the directive</td>
</tr>
</tbody>
</table>

Q.88 B  Did the transposition of the directive made the rules related to the beneficiaries of the right to family reunification become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below.

<table>
<thead>
<tr>
<th>OBJECT</th>
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</thead>
<tbody>
<tr>
<td>Definition of the beneficiaries of the right to family reunification a. 4 § 4</td>
<td>The national ‘rules’ are in line with the definition of beneficiaries as stated in the directive. For the issue of custody, national law requires that the minor children must be in the exclusive custody of</td>
<td>Complete this box by keeping the right appreciation and deleting the two others:</td>
</tr>
</tbody>
</table>
the sponsor or spouse. Further the spouse must be above 21 and they must be married for at least one year.

- More favourable than previous national rules
- In line with the directive

Q.88 C Did the transposition of the directive made the rules related to reunification of minor children between 12 (a. 4 § 1) and 15 (a. 4 § 6) years old become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

<table>
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<tr>
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</thead>
<tbody>
<tr>
<td>Limitation of reunification of minor children of 12 and 15 years of age (a. 4 § 1 and 4 § 6)</td>
<td>No laws or regulation before the transposition</td>
<td>A. The national law does not require a child who is aged over 12 years and arrives independently from the rest of his/her to meet a conditions for integration. B. If the application is submitted after the age of 15, Cyprus applies the derogation of 4.6 and authorises the entry and residence of such children on grounds other than family reunification.</td>
</tr>
</tbody>
</table>

Q.88 D Did the transposition of the directive made the rules related to requirements to the exercice of family reunification (article 7) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

<table>
<thead>
<tr>
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<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Requirements for the exercice of family reunification (a. 7)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
When the application for family reunification is submitted, national law requires 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
(b) sickness insurance in respect of all risks normally covered for its own nationals
(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

No integration measures are needed.

More favourable than previous national rules

In line with the directive

Q.88 E   Did the transposition of the directive made the rules related to margins of manoeuvre awarded to Member States (a. 5 § 5, 17, C-540/03) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

<table>
<thead>
<tr>
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<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Limitation of margins of manoeuvre (a. 17, a.5 §5, C-540/03)</td>
<td>When examining an application, the competent authorities must have due regard to the best interests of minor children. ( there is no definition or guidelines as to the meaning of the ‘‘best interest’’)</td>
<td>More favourable than previous national rules</td>
</tr>
</tbody>
</table>

Q.88 F   Did the transposition of the directive made the rules related to integration objectives and criterions more favourable or less favourable regarding the
evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

<table>
<thead>
<tr>
<th>OBJECT</th>
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<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>No laws or regulations before transposition</td>
<td>Criterion in 4.1 (no integration conditions are required by national laws for children above 12)</td>
<td>• More favourable than previous national rules</td>
</tr>
<tr>
<td></td>
<td>Criterion 7.2 (no integration measures are needed)</td>
<td>• In line with the directive</td>
</tr>
</tbody>
</table>

**Q.89**

From your point of view, did the transposition of the directive imply other interesting changes for the third national country regarding other elements than the ones mentioned in the previous question. Make also a comparison with the standard of the directive in the last column of the table below

If they want to do so, the thematic coordinators should complete this question by indicating the number of examples that they ask the national reporter to give.

<table>
<thead>
<tr>
<th>OBJECT</th>
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<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>No laws or regulations before transposition</td>
<td>Non applicable</td>
<td>Non applicable</td>
</tr>
</tbody>
</table>

**Q.89. A.**

Mention if there is a general tendency to just copy the provisions of the directive into national legislation without redrafting or adaptation them to national circumstances.

- [ ] NO
- [x] YES
Q.89.B. If yes, please indicate if this general tendency may or not create problems (for example difficulties of implementation, risk that a provision remain unapplied).

☐ NO

☐ YES

Q.89.C. If yes, give some of examples:

Q.89.D. If only some provisions of the directive have been copied and if this may create any problem, please quote them and explain the problem.

Q.90. Quote interesting decisions of jurisprudence related to the directive, its transposition or implementation (so this question concerns in principle decisions later that the directive, but previous ones might be quoted if relevant). Quote in particular decisions of supreme Courts; limit yourself to the appeal Courts and ignore the first resort if there are too many decisions at this level, unless there is a certain jurisprudence made of a group of decisions.

NON APPLICABLE: no cases have been presented before Cyprus Courts with reference to this directive because it has been enacted in March 2007 and its implementation did not start yet due to the fact that the necessary application documents have not been prepared by the authorities yet.

Please use one box per decision and duplicate it if necessary

<table>
<thead>
<tr>
<th>DECISION OF SUPREME COURTS</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
</tr>
</thead>
<tbody>
<tr>
<td>DECISION OF APPEAL COURTS</td>
<td>DATE:</td>
<td>REFERENCE OF PUBLICATIONS:</td>
<td>SUMMARY OF CONTENT:</td>
</tr>
<tr>
<td>DECISION(S) IN FIRST RESORT</td>
<td>DATE:</td>
<td>REFERENCE OF PUBLICATIONS:</td>
<td>SUMMARY OF CONTENT:</td>
</tr>
</tbody>
</table>

ANY SUPPLEMENTARY COMMENT ABOUT THE TREND OF THE JURISPRUDENCE:
Q.91 Specify if there are or not problems with the translation of the text of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated.

☑ There are no problems with the translation of the directive

☐ There are some problems with the translation of (indicate the number of the articles concerned) of the directive.

Explain the difficulties that this could create:

Q. 92 ANY OTHER INTERESTING ELEMENT

Q.92 A. Following your personal point of view, mention from the point of view of third country nationals and/or from the Member State any interesting or innovative practice in your Member State

Please use one table per practice and duplicate it if necessary

<table>
<thead>
<tr>
<th>OBJECT OF THE PRACTICE</th>
<th>EXPLANATIONS</th>
</tr>
</thead>
</table>

Q.92 B. Please add here any other interesting element in your Member State which you did not had the occasion to mention in your previous answers
QUESTIONNAIRE FOR THE NATIONAL REPORT
ON THE IMPLEMENTATION OF THE DIRECTIVE
FAMILY REUNIFICATION OF 22 SEPTEMBRE 2003

CZECH REPUBLIC
by
Exnerova Julie
Research Assistant
julie.exnerova@gmail.com
11 November 2007

The person in the team of thematic coordination in charge of this directive that you can
contact if you have a question or need help when completing this questionnaire is: Yves
Pascouau, +33 5 59 57 41 20, yves.pascouau@univ-pau.fr

COMMENTARIES

1. Council directive 2003/86 on the right to family reunification faced hard negotiations
requiring the presentation of revised proposals from the Commission before final adoption in
2003. The European Court of Justice rejected in June 2007 an action for annulment introduced by the European Parliament against the Council directive (C-540/03).

2. Transposition of the directive must be assessed regarding the nature of the provision
concerned. So as to help you, those provisions are coloured within the questionnaire as
follows: obligatory provision (Q.XX), optional provision (Q.YY), provision which set up a
derogation (Q.ZZ)

3. The Court of justice has defined the margins of discretion awarded to the member States
even in situations where the directive allows the member States to depart from the directive.
The Court states:

“Article 4(1) of the Directive imposes precise positive obligations, with corresponding
clearly defined individual rights, on the Member States, since it requires them, in the
cases determined by the Directive, to authorise family reunification of certain members
of the sponsor’s family, without being left a margin of appreciation” (cons. 60).

“Note should also be taken of Article 17 of the Directive which requires Member States
to 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 country of origin. As is apparent from paragraph 56 of the
present judgment, such criteria correspond to those taken into consideration by the
European Court of Human Rights when it reviews whether a State which has refused an
application for family reunification has correctly weighed the competing interests”
(cons. 64)

The fact that the concept of integration is not defined cannot be interpreted as
authorising the Member States to employ that concept in a manner contrary to general
principles of Community law, in particular to fundamental rights. The Member States
which wish to make use of the derogation cannot employ an unspecified concept of
integration, but must apply the condition for integration provided for by their
legislation existing on the date of implementation of the Directive in order to examine
the specific situation of a child over 12 years of age arriving independently from the
rest of his or her family” (cons. 70).
4. The main difficulty according to the transposition of the directive relies on the systematic opportunities offered to member States to depart from the provisions of the directive when applying it.

5. Article 19 indicates which themes where the most sensitive during the negotiations of the Directive (art. 3, 4, 7, 8 and 13).

FIRST PART

1. NORMS OF TRANSPOSITION AND JURISPRUDENCE

Q.1.A. Identify the MAIN (because of its content) norm(s) of transposition and indicate its legal nature

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)
- About legal nature in the table below: legislative refers to a norm adopted in principle by the Parliament; regulation refers to a norm complementing the law and adopted in principle by the executive power; circular or instructions refer to practical rules about implementation of laws and regulations and adopted in principle by the administrative authorities

Please duplicate the table below if there is more than one MAIN norm of transposition

<table>
<thead>
<tr>
<th>This table is about:</th>
<th>❌ a text already adopted</th>
<th>✓ a text which is still a project to be adopted</th>
</tr>
</thead>
<tbody>
<tr>
<td>TITLE</td>
<td>Act No. 428/2005 Coll., amending Act No. 326/1999 Coll., Alien’s Act, and amending other laws</td>
<td></td>
</tr>
<tr>
<td>DATE</td>
<td>September 23, 2005</td>
<td></td>
</tr>
<tr>
<td>NUMBER</td>
<td>Act No. 428/2005 Coll.</td>
<td></td>
</tr>
<tr>
<td>DATE OF ENTRY INTO FORCE</td>
<td>November 24, 2005</td>
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</tr>
<tr>
<td>PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive):</td>
<td></td>
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</tr>
<tr>
<td>Part 1 Art. 1 subsection 3 /Sec. 6/7 AA/</td>
<td></td>
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<tr>
<td>Part 1 Art. 1 subsection 8 /Sec. 9/3 AA/</td>
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<tr>
<td>Part 1 Art. 1 subs. 46 /Sec. 42a, Sec. 42b AA/</td>
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<td>Part 1 Art. 1 subs. 50 /Sec. 44/4-7 AA/</td>
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<td>Part 1 Art. 1 subs. 54 and 55 /Sec. 46/1 AA/</td>
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<td>Part 1 Art. 1 subs. 86 /Sec. 78/1/b AA/</td>
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<tr>
<td>Part 1 Art. 1 subs. 121 /Sec. 119/3 AA/</td>
<td></td>
<td></td>
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<tr>
<td>Part 1 Art. 1 subs. 144 /163n) AA/</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Q.1.B. List the others norms of transposition by order of importance of their legal nature (first laws, secondly regulations; thirdly circulars or instructions):

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)

Please use one table per norm and duplicate as much as necessary

---

**TITLE**: Act No. 222/2003 Coll., amending Act No. 326/1999 Coll., Alien’s Act, and amending other laws

**DATE**: June 26, 2003

**NUMBER**: Act No. 222/2003 Coll.

**DATE OF ENTRY INTO FORCE**: January 1, 2004

**PROVISIONS CONCERNED**:

- Part 1 Art. 1 subsection 39 /Sec. 42 Alien’s Act /AA/, 46/2 AA/ (for example if the norm is not devoted only to the transposition of the concerned directive)

**REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL**: Issue No. 79/2002 of the Collection of Laws of the Czech Republic (pp. 4104-4117) promulgated on July 31, 2003

**LEGAL NATURE** (indicate a cross in the right box):

- [ ] LEGISLATIVE
- [ ] REGULATION
- [ ] CIRCULAR OR INSTRUCTIONS
| TITLE: Act No. 326/1999 Coll., Alien’s Act, as amended |
| DATE: November 30, 1999 |
| NUMBER: Act No. 326/1999 Coll. |
| DATE OF ENTRY INTO FORCE: January 1, 2000 |
| PROVISIONS CONCERNED: esp. Sec. 2, Sec. 30, Sec. 31, Sec. 32, Sec. 65, Sec. 66 and Sec. 70 |
| (for example if the norm is not devoted only to the transposition of the concerned directive) |
| REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: Issue No. 106/1999 of the Collection of Laws of the Czech Republic (pp. 7406-7447) promulgated on December 23, 1999 |
| LEGAL NATURE (indicate a cross in the right box): |
| [X] LEGISLATIVE |
| [ ] REGULATION |
| [ ] CIRCULAR OR INSTRUCTIONS |

| TITLE: Act No. 325/1999 Coll., Asylum Act, as amended |
| DATE: November 11, 1999 |
| NUMBER: Act No. 325/1999 Coll. |
| DATE OF ENTRY INTO FORCE: January 1, 2000 |
| PROVISIONS CONCERNED: Sec. 13 |
| REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: Issue No. 106/1999 of the Collection of Laws of the Czech Republic (pp. 7385-7405) promulgated on December 23, 1999 |
| LEGAL NATURE (indicate a cross in the correct box): |
| [X] LEGISLATIVE: |
| [ ] REGULATION: |
| [ ] CIRCULAR or INSTRUCTIONS: |

<p>| This table is about: [X] a text already adopted [ ] a text which is still a project to be adopted |
| TITLE: Act No. 435/2004 Coll., on Employment, as amended |
| DATE: May 13, 2004 |
| DATE OF ENTRY INTO FORCE: October 1, 2004 |
| PROVISIONS CONCERNED: Sec. 4, Secs. 85 – 100 /esp. Sec. 98/ |
| REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: Issue No. 143/2004 of the Collection of Laws of the Czech Republic (pp. 8270-8316) promulgated on July 23, 2004 |
| LEGAL NATURE (indicate a cross in the right box): |
| [X] LEGISLATIVE |
| [ ] REGULATION |
| [ ] CIRCULAR OR INSTRUCTIONS |</p>
<table>
<thead>
<tr>
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<th>✓ a text already adopted</th>
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</tr>
</thead>
<tbody>
<tr>
<td><strong>TITLE:</strong></td>
<td>Act No. 500/2004 Coll., Administrative Proceedings Act, as amended</td>
<td></td>
</tr>
<tr>
<td><strong>DATE:</strong></td>
<td>June 24, 2004</td>
<td></td>
</tr>
<tr>
<td><strong>NUMBER:</strong></td>
<td>Act No. 500/2004 Coll.</td>
<td></td>
</tr>
<tr>
<td><strong>DATE OF ENTRY INTO FORCE:</strong></td>
<td>January 1, 2006</td>
<td></td>
</tr>
<tr>
<td><strong>PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive):</strong></td>
<td>Sec. 4, Sec. 68, Sec. 72, Sec. 80, Sec. 81</td>
<td></td>
</tr>
<tr>
<td><strong>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:</strong></td>
<td>Issue No. 174/2004 of the Collection of Laws of the Czech Republic (pp. 9782 -9827) promulgated on September 24, 2004</td>
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<td><strong>LEGAL NATURE (indicate a cross in the right box):</strong></td>
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<tbody>
<tr>
<td><strong>TITLE:</strong></td>
<td>Act No. 150/2002 Coll., Code of Administrative Justice</td>
<td></td>
</tr>
<tr>
<td><strong>DATE:</strong></td>
<td>March 21, 2002</td>
<td></td>
</tr>
<tr>
<td><strong>NUMBER:</strong></td>
<td>Act No. 150/2002 Coll.</td>
<td></td>
</tr>
<tr>
<td><strong>DATE OF ENTRY INTO FORCE:</strong></td>
<td>January 1, 2003</td>
<td></td>
</tr>
<tr>
<td><strong>PROVISIONS CONCERNED : (for example if the norm is not devoted only to the transposition of the concerned directive):</strong></td>
<td>esp. Sec. 35, Sec. 65</td>
<td></td>
</tr>
<tr>
<td><strong>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:</strong></td>
<td>Issue No. 61/2002 of the Collection of Laws of the Czech Republic (pp. 3306 - 3330) promulgated on April 17, 2002</td>
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</tr>
<tr>
<td><strong>LEGAL NATURE (indicate a cross in the right box):</strong></td>
<td>✓ LEGISLATIVE</td>
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<tbody>
<tr>
<td><strong>TITLE:</strong></td>
<td>Act No. 161/2006 Coll., amending Act No. 326/1999 Coll., Aliens Act, and amending other laws</td>
<td></td>
</tr>
<tr>
<td><strong>DATE:</strong></td>
<td>March 16, 2006</td>
<td></td>
</tr>
<tr>
<td><strong>NUMBER:</strong></td>
<td>Act. No. 161/2006 Coll.</td>
<td></td>
</tr>
<tr>
<td><strong>DATE OF ENTRY INTO FORCE:</strong></td>
<td>April 27, 2006</td>
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</tr>
<tr>
<td><strong>PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive):</strong></td>
<td>Part 1 Art. I subs. 44 (Sec. 44a ALA), Part 1 Art. I subs. 64 (esp. Secs. 66ALA), Part 1 Art. I subs. 134 (Sec. 178a ALA),</td>
<td></td>
</tr>
</tbody>
</table>
| **REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:** | Issue No. 55/2006 of the Collection of Laws of the Czech Republic (pp. 1953-
<table>
<thead>
<tr>
<th>Title</th>
<th>Act No. 561/2004 Coll., on Pre-elementary, Elementary, Secondary, Higher Vocational and Other Education (Act on Education)</th>
</tr>
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<tbody>
<tr>
<td>Date</td>
<td>September 24, 2004</td>
</tr>
<tr>
<td>Number</td>
<td>Act No. 561/2004 Coll.</td>
</tr>
<tr>
<td>Date of Entry into Force</td>
<td>January 1, 2005</td>
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This table is about: [x] a text already adopted [ ] a text which is still a project to be adopted

<table>
<thead>
<tr>
<th>Title</th>
<th>Act No. 40/1964 Coll., Civil Code</th>
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</thead>
<tbody>
<tr>
<td>Date</td>
<td>February 28, 1964</td>
</tr>
<tr>
<td>Number</td>
<td>Act No. 40/1964 Coll.</td>
</tr>
<tr>
<td>Date of Entry into Force</td>
<td>April 1, 1964</td>
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<table>
<thead>
<tr>
<th>Title</th>
<th>Act No. 99/1963 Coll., Civil Proceedings Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date</td>
<td>December 4, 1963</td>
</tr>
<tr>
<td>Number</td>
<td>Act No. 99/1963 Coll.</td>
</tr>
<tr>
<td>Date of Entry into Force</td>
<td>April 1, 1964</td>
</tr>
</tbody>
</table>

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(for example if the norm is not devoted only to the transposition of the concerned directive)

REFERENCES OF PUBLICATION

**LEGAL NATURE** (indicate a cross in the right box):

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- [ ] CIRCULAR OR INSTRUCTIONS

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<th>[ ] a text which is still a project to be adopted</th>
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</thead>
<tbody>
<tr>
<td><strong>TITLE</strong>:</td>
<td>Act No. 359/1999 Coll., on Social and Legal Protection of Children</td>
<td></td>
</tr>
<tr>
<td><strong>DATE</strong>:</td>
<td>December 9, 1999</td>
<td></td>
</tr>
<tr>
<td><strong>NUMBER</strong>:</td>
<td>Act No. 359/1999 Coll.</td>
<td></td>
</tr>
<tr>
<td><strong>DATE OF ENTRY INTO FORCE</strong>:</td>
<td>April 1, 2000</td>
<td></td>
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<tr>
<td><strong>PROVISIONS CONCERNED</strong>: (for example if the norm is not devoted only to the transposition of the concerned directive)</td>
<td>esp. Sec. 5</td>
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<tr>
<td><strong>REFERENCES OF PUBLICATION</strong></td>
<td>IN THE OFFICIAL JOURNAL: Issue No. 111/1999 of the Collection of Laws of the Czech Republic (pp. 7662-7682) promulgated on December 30, 1999</td>
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<td>[ ] REGULATION</td>
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<tbody>
<tr>
<td><strong>TITLE</strong>:</td>
<td>Act No. 94/1963 Coll., Family Act</td>
<td></td>
</tr>
<tr>
<td><strong>DATE</strong>:</td>
<td>December 4, 1963</td>
<td></td>
</tr>
<tr>
<td><strong>NUMBER</strong>:</td>
<td>Act No. 94/1963 Coll.</td>
<td></td>
</tr>
<tr>
<td><strong>DATE OF ENTRY INTO FORCE</strong>:</td>
<td>April 1, 1964</td>
<td></td>
</tr>
<tr>
<td><strong>PROVISIONS CONCERNED</strong>: (for example if the norm is not devoted only to the transposition of the concerned directive)</td>
<td>esp. Sec. 26 par. 4, Sec. 27 par. 4, Sec. 45 par. 1, Sec. 62 par. 1</td>
<td></td>
</tr>
<tr>
<td><strong>REFERENCES OF PUBLICATION</strong></td>
<td>IN THE OFFICIAL JOURNAL: Issue No. 53/1963 of the Collection of Laws of the Czech Republic (pp. pp. 0339-0351) promulgated on December 13, 1963</td>
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<td><strong>LEGAL NATURE</strong> (indicate a cross in the right box):</td>
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<td>[ ] REGULATION</td>
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</tr>
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<td>[ ] CIRCULAR OR INSTRUCTIONS</td>
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</tr>
</tbody>
</table>
This table is about: □ a text already adopted  ❋ a text which is still a project to be adopted

**TITLE:** Government Bill amending Act No. 326/1999 Coll., the Aliens Act and amending other Acts  
**DATE:** April 11, 2007  
**NUMBER:**  
**DATE OF ENTRY INTO FORCE:**  
**PROVISIONS CONCERNED:**  
- Part 1 Art. 1 subs. 55 (Sec. 45 par. 2 ALA).  
- Part 1 Art. 1 subs. 59 (Sec. 46a par. 2 lett. j) ALA).  
- Part 1 Art. 1 subs. 213 (Sec. 180f ALA).  
(for example if the norm is not devoted only to the transposition of the concerned directive)

**REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:**  

**LEGAL NATURE** (indicate a cross in the right box):  
- ❋ LEGISLATIVE  
- □ REGULATION  
- □ CIRCULAR OR INSTRUCTIONS

**Q.2.**  
THIS QUESTION IS IN PRINCIPLE ONLY FOR FEDERAL OR ASSIMILATED MEMBER STATES LIKE AUSTRIA, BELGIUM, GERMANY, ITALY, SPAIN

**Q.2.A.**  
Explain which level of government is competent to adopt the norms of transposition.  

*Please include your answer in the tables below*

<table>
<thead>
<tr>
<th>LEGISLATIVE RULES</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</td>
</tr>
<tr>
<td>COMPETENCES OF THE COMPONENTS:</td>
</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>REGULATIONS</th>
</tr>
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<tbody>
<tr>
<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</td>
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<tr>
<td>COMPETENCES OF THE COMPONENTS:</td>
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<td>EXPLANATIONS IF NECESSARY:</td>
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<tr>
<th>CIRCULAR OR INSTRUCTIONS</th>
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<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</td>
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<tr>
<td>COMPETENCES OF THE COMPONENTS:</td>
</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
</tr>
</tbody>
</table>

**Q.2.B.**  
In case, explain if the federal structure and the distribution of competences between the different levels pose any problem or difficulty regarding the transposition and/or the implementation of the directive.
Q.3. Explain which authorities are competent for the **practical implementation** of the norm of transposition by taking the decisions in individual cases.

*Please use one table per competence concerned and duplicate it if necessary*

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Submission and examination of the application for family reunification of family members of third country nationals</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Ministry of Interior</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>Regional Directorate of Alien’s and Border Police</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td></td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister):</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Entry of family members whose application for family reunification has been accepted /if not lodged within the territory of CR – in which case visa may be required/</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Ministry of Foreign Affairs</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>Embassy</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td>Consular Department of Ministry of Foreign Affairs</td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister):</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Access to employment, vocational guidance</th>
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</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Ministry of Labour and Social Affairs</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN</td>
<td>Local Labour Offices</td>
</tr>
<tr>
<td>THE ABOVE MINISTRY:</td>
<td>ACCESS TO SELF-EMPLOYED ACTIVITIES</td>
</tr>
<tr>
<td>---------------------</td>
<td>-----------------------------------</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td>MINISTRY OF INDUSTRY AND TRADE</td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister):</td>
<td>LOCAL TRADES LICENSING OFFICES</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>EDUCATION AND VOCATIONAL TRAINING</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>MINISTRY OF EDUCATION, YOUTH AND SPORTS</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>LOCAL SCHOOLS</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
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</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister):</td>
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</tr>
<tr>
<td>COMPETENCE CONCERNED:</td>
<td>Administrative review of decisions on applications for family reunification</td>
</tr>
<tr>
<td>----------------------</td>
<td>--------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Ministry of Interior</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>Directorate of Alien’s and Border Police</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td></td>
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<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister):</td>
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<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Judicial review of administrative decisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Ministry of Justice</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>Regional courts</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td></td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister):</td>
<td></td>
</tr>
</tbody>
</table>

**Q.4.A.** Has the main regulation foreseen explicitly by the main norm of transposition already been adopted or not:

- [ ] YES
- [ ] NO

**Q.4.B.** If the main norm(s) of transposition foresees the adoption of one or several regulations, indicate if they have all been adopted:

- [ ] YES
- [ ] NO
If NO, please indicate the missing text(s) in the table below

*Please use one line per missing text and duplicate it if necessary*

<table>
<thead>
<tr>
<th>MISSING TEXTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>INDICATE HERE THE MISSING TEXTS</td>
</tr>
</tbody>
</table>

Add if necessary some explanations (specify in particular if the missing texts are at least under preparation or foreseen in the very near future):
AIM (ARTICLE 1)

The purpose of the Directive is to determine the conditions for the exercise of the right to family reunification. In case C-540/03, the Court of justice recognizes that, in some cases, member States do not have any margin of appreciation to grant the right to family reunification.

Q.5 – Is family reunification considered as a right in your Member State?

[ ] OUI

[ ] NON

Please explain

The law stipulates that a residence permit will be issued to the third country national (if he/she satisfies the relevant conditions of the law). There is no margin of appreciation of the authorities (Sec. 42a par. 5 Aliens Act). The conditions of the residence permit are stipulated in Secs. 42a, 42b and 44 Aliens Act.

The law also enhances the family reunification of the holders of a permanent residence permit (national status which is connected to the long-term residence status) and the family reunification of recognized refugees (pursuant to the provisions of Asylum Act). Note that it is not the family reunification stricto sensu according to the respective Directive. There is also a margin of appreciation in the proceedings according to the Asylum Act.

Q.5. A – Are there any figures available relating to the exercise of the right to family reunification between 2002 and 2006? If yes, what are the trends, including nationality assessment?

The explicit provisions in legislation exist since the end of 2005. The residence permit for the purpose of family reunification was issued to 3821 persons in 2006.

DEFINITIONS (ARTICLE 2)

SCOPE (ARTICLE 3)

The scope of the Directive is defined by article 3. We recall that:

- § 1 “reasonable prospect…” aims at excluding persons residing on a temporary basis (stagiaires, etc…)
- European citizens are excluded (§ 3)
- Comparison with existing legislation is of importance so as to assess the added value of the harmonization process (§ 5)
Q.6. Period of validity of the sponsor’s residence permit:

Q.6. A. Is the period of validity of the sponsor’s residence permit of one year or more according to article 3 § 1 of the Directive?

☐ OUI

☐ NON

Q.2.B. Quote precisely the period enshrined in national law:

The sponsor can obtain the long term residence permit (the national status which the sponsor must possess to have the right of family reunification) after one year of stay on the territory of the Czech Republic (on long term visa). The long term residence permit will be issued only if the purpose of the stay on the territory of the Czech Republic remains the same as it was before. The right to family reunification as such is connected to the long term residence permit (national temporary status) or higher status (national permanent residence status) of the sponsor only (recognized refugee is counted as a person with the relevant residence status). The law stipulates the period necessary for exercise of the right of family reunification of 15 months of stay in the country.

The law does not stipulate the precise term of the long term residence permit as such. The long term residence permit is issued for the period which is necessary for its purpose (Sec. 44 Aliens Act). The term is usually 2 years. The right to exercise the family reunification comes after 15 months of stay.

Q.6.C. How does your Member State translate in national law the requirement for the sponsor to have "reasonable prospects of obtaining the right of permanent residence" (a 3 § 1)?

There is a prerequisite of previous residence of the sponsor on the territory of the Czech Republic for a certain period of time stipulated in the law. The sponsor can obtain the long term residence permit (the national status which the sponsor must possess to have the right of family reunification) after one year of stay on the territory of the Czech Republic (on long term visa, another national status). The long term residence permit will be issued only if the purpose of the stay on the territory of the Czech Republic remains the same as it was before (Sec. 42 Aliens Act). The right to family reunification as such is connected to the sponsor with the long term residence permit only, so it will be issued only to a person whose sponsor has already reside in Czech Republic and has been given a higher status then visa (the lowest long term status possible). The words “reasonable prospects of obtaining the right of permanent residence” are not explicitly mentioned in the national law, but the context of the above explained provisions is the same.

Q.7. – Members of the family concerned:

93 The Czech law differs between the temporary stay and permanent stay. The third country national can stay in the country temporarily *inter alia* without visa, on short term visa, long term visa, long term residence permit etc. Then the third country national can stay in the country permanently on the basis of the permanent residence permit. The statuses are connected, the third country national must be granted the visa at first, then the long term residence permit can be issued (after one year of stay on a visa) and at last the permanent residence permit can be issued (after five years of continuous stay etc.). There are exceptions, e.g. the long term residence permit for the third country national family members can be given directly without previous stay in the country on the visa etc.
Q7. A. Are they third country nationals as required by article 3 § 1 of the Directive?

☑ OUI
☐ NON

If not, explain

Yes, the part of the law which is devoted to the family reunification of third country nationals requires that the family members are third country national.

The law contains provisions on the entry, stay and departure of the third country and also of the EU nationals and their family members. The part of the law, which is focused on the family reunification of the third country nationals, contains provisions on this issue and the family members concerned in this part are third country nationals. If they were EU nationals, they would be in the different legal regime (as also the respective Directive stipulates in Art. 3 (3).

Q7.B. How has your Member State translated in national law the wording of "whatever status" included in article 3 § 1 of the Directive?

These words are not translated.
The third country nationals are not required to have a status in the Czech Republic, but the third country nationals are expected to present their passports when asking for the family reunification, therefore certain legal status in the country of origin is required.
The law also defines the categories of persons who can apply for family reunification (e.g. spouse of the sponsor, minor child etc.).

Q.8 – Did the transposition of the Directive in your Member state breached provisions of international law more favourable to individuals (a 3 § 4)?

☐ OUI
☑ NON

Q.9 – If yes, are those provisions based on:

Q.9.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?

☐ OUI
☑ NON

Specify which provisions
Q.9.B - The European Social Charter of 18 October 1961 (a 3 § 4)?
☐ OUI
☒ NON
Specify which provisions

Q.9.C. The amended European Social Charter of 3 May 1987 (a 3 § 4)?
☐ OUI
☒ NON
Specify which provisions

☐ OUI
☒ NON
Specify which provisions

Q.10 – Does the transposition of the Directive affect national provisions more favourable to individuals (a 3 § 5)?
☐ OUI
☒ NON
If yes, please specify which provisions

BENEFICIARIES (ARTICLE 4)

- Article 4 of the Directive contains numerous “may clauses”. It is therefore important to pay attention on the way Member States use them and on the legal modalities adopted thereof.

- Article 4 § 1 a) and b) enacts a right to family reunification for some members of the sponsor's family. The Member State does not have any margin of discretion regarding those persons.

- Article 4 § 1 last indent foresee one derogation regarding child over 12 years on the basis of an integration criterion. This is one of the most sensitive questions encompassed by the directive beside the issue of the limit of age in § 6.
Regarding article 4 § 6, the Court states "It does not matter that the final sentence of the contested provision provides that the Member States which decide to apply the derogation are to authorise the entry and residence of children in respect of whom an application is submitted after they have reached 15 years of age 'on grounds other than family reunification’. The term 'family reunification' must be interpreted in the context of the Directive as referring to family reunification in the cases where family reunification is required by the Directive. It cannot be interpreted as prohibiting a Member State which has applied the derogation from authorising the entry and residence of a child in order to enable the child to join his or her parents". (cons. 86)

The Court adds " Article 4(6) of the Directive must, moreover, be read in the light of the principles set out in Article 5(5) thereof, which requires the Member States to have due regard to the best interests of minor children, and in Article 17, which requires them to take account of a number of factors, one of which is the person’s family relationships" (cons. 87)

Q.11 – Does your national law recognize the right to family reunification to:

Q.11. A – The sponsor's spouse (a. 4 § 1 a)?

☐ OUI
☐ NON

The spouse of the sponsor can ask for the residence permit for the reason of family reunification pursuant to the Sec. 42a par. 1 lett. a) Aliens Act. The right to the family reunification is stipulated for the families where the sponsor is a holder of a long term or permanent residence permit (national residence statuses) and at the same time already resides on the territory at least for 15 months (Sec. 42a par. 5 lett. a) Aliens Act). There is also age requirement of 20 years of age of both spouses.

The proceeding according to the general rules of the Administrative Proceedings Act is held.

Q.11. B - Minor children of the sponsor and of his/her spouse (a. 4 § 1 b)?

☐ OUI
☐ NON

The minor children of the sponsor can ask for the residence permit for the reason of family reunification pursuant to the Sec. 42a par. 1 lett. b) Aliens Act. The minor children of the spouse of the sponsor can ask for the residence permit for the reason of family reunification pursuant to the Sec. 42a par. 1 lett. c) Aliens Act. The law allows for submitting the application from minors and also adult children, but adults will get the residence permit only under the condition of dependancy on the sponsor.

The right to the family reunification is ensured under the condition of previous residence of the sponsor on the territory at least for 15 months. The sponsor must hold a long term or permanent residence permit at the time of lodging of the application for family reunification.

The condition of previous residence is not applied in cases of minor children or spouses of
refugees (Sec. 42a par. 5 lett. c) Aliens Act) and of children adopted by the sponsor or his/her spouse or children who can not provide for his/her own needs on account of his/her state of health regardless of his/her age (Sec. 42a par. 5 lett. d) in conjunction with Sec. 42a par. 1 lett. f) Aliens Act).

A proceeding according to the general rules of the Administrative Proceedings Act is held.

**Q.11.C.** Minor children adopted of the sponsor and of his/her spouse (a. 4 § 1 b)?

- [X] OUI
- [ ] NON

The minor children adopted of the sponsor and of the spouse of the sponsor can ask for the residence permit for the reason of family reunification pursuant to the Sec. 42a par. 1 lett. d) Aliens Act. The condition of previous residence of the sponsor is not applied in cases of children adopted by the sponsor or his/her spouse (Sec. 42a par. 5 lett. d) Aliens Act).

**Q.11.D.** Minor children of the sponsor (a. 4 § 1 c)?

- [X] OUI
- [ ] NON

The minor children of the sponsor can ask for the residence permit for the reason of family reunification pursuant to the Sec. 42a par. 1 lett. b) Aliens Act. The law allows for submitting the application from minors and also adult children, but adults will get the residence permit only under the condition of dependancy on the sponsor. A proceeding according to the general rules of the Administrative Proceedings Act is held.

**Q.11. E.** If yes, does your national law foresee that the sponsor shall have children custody and children are dependant on him or her?

- [X] OUI
- [ ] NON

Specify if necessary the proofs required

The requirement of custody and dependancy of the minor is not explicitly stipulated in the migration law, but it is stipulated by the provisions of the family law (Sec. 34 par. 1 Family Act). The age of majority is stipulated in the provisions of the Civil Code as 18 years (Sec. 8/2 Civil Code). The Aliens Act also gives possibility to the minor to ask for an independant residence permit from 15 years of age. The requirement of dependancy is explicitly mentioned in the Asylum Act for the children over 18. The proof will be a document certifying the family ties.
The law stipulates that the approval of the parent with whom the child will not stay in the common household is required as a condition of the application (Sec. 42b par. 1 lett. c) Aliens Act). The approval will not be necessary if it can not be obtained for the reasons independent on the minors’ will.

**Q.11 F.** Minor children adopted of the sponsor (a 4 §1.c) ?

- [x] OUI
- [ ] NON

**Q.11. G.** If yes:

h. does your national law foresee that the sponsor shall have children custody and children are dependant on him or her?

- [x] OUI
- [ ] NON

Specify if necessary the proofs required

The requirement of dependancy of the minor is not explicitly stipulated in the migration law, but it is stipulated by the provisions of the family law (Sec. 34 par. 1 Family Act). The requirement of dependancy is explicitly mentioned for the children over 18.

The law stipulates that the approval of the parent with whom the child will not stay in the common household is required as a condition of the application (Sec. 42b par. 1 lett. c) Aliens Act). The approval will not be necessary if it can not be obtained for the reasons independent on the minors’ will.

**g.g.** Does national law provide that those children shall be 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’

- [x] OUI
- [ ] NON

Specify if necessary the proofs required

**Q.11. H.** Minor children of the spouse (a 4 §1.d.)?

- [x] OUI
- [ ] NON
The minor children of the spouse of the sponsor can ask for the residence permit for the reason of family reunification pursuant to the Sec. 42a par. 1 lett. c) Aliens Act. The right to the family reunification is ensured under the condition of previous residence of the sponsor on the territory at least for 15 months. The sponsor must hold a long term or permanent residence permit at the time of lodging of the application for family reunification.

A proceeding according to the general rules of the Administrative Proceedings Act is held.

**Q.11. I.** If yes, does your national law foresee that the spouse shall have children custody and children are dependant on him or her?

- [x] OUI
- [ ] NON

Specify if necessary the proofs required

The requirement of dependancy of the minor is not explicitly stipulated in the migration law, but it is stipulated by the provisions of the family law (Sec. 34 par. 1 Family Act). The requirement of dependancy is explicitly mentioned for the children over 18.

The law stipulates that the approval of the parent with whom the child will not stay in the common household is required as a condition of the application (Sec. 42b par. 1 lett. c) Aliens Act). The approval will not be neccessary if it can not be obtained for the reasons independent on the minors’ will.

**Q.11. J.** Minor children adopted of the spouse (a 4 §1.d )?

- [x] OUI
- [ ] NON

**Q.11. K.** If yes, does your national law foresee that the spouse shall have children custody and children are dependant on him or her?

- [x] OUI
- [ ] NON

Specify if necessary the proofs required

The requirement of dependancy of the minor is not explicitly stipulated in the migration law, but it is stipulated by the provisions of the family law (Sec. 34 par. 1 Family Act). The requirement of dependancy is explicitly mentioned for the children over 18.

The law stipulates that the approval of the parent with whom the child will not stay in the common household is required as a condition of the application (Sec. 42b par. 1 lett. c) Aliens Act). The approval will not be neccessary if it can not be obtained for the reasons independent on the minors’ will.
**Q.12 – Has your Member State transposed the option opened by article 4 § 1 c:**

**Q.12A.** To authorise reunification of minor children of the sponsor – including also adopted children – of whom custody is shared (a 4 §1.c)?

- [x] OUI
- [ ] NON

Specify if necessary

The minor children of the sponsor (including adopted children) of whom custody is shared can ask for the residence permit for the reason of family reunification pursuant to the Sec. 42a par. 1 lett. b) and d) Aliens Act. The right to the family reunification is ensured under the condition of previous residence of the sponsor on the territory at least for 15 months. The sponsor must hold a long term or permanent residence permit at the time of lodging of the application for family reunification. The condition of previous residence of the sponsor is not applied in cases of children adopted by the sponsor or his/her spouse (Sec. 42a par. 5 lett. d) Aliens Act).

The law stipulates that the approval of the parent with whom the child will not stay in the common household is required as a condition of the application (Sec. 42b par. 1 lett. c) Aliens Act). The approval will not be necessary if it can not be obtained for the reasons independent on the minors’ will. The family reunification of those children is therefore possible, under the condition that the other parent gives his consent/approval.

**Q.12.B.** If yes, has your legislation transposed the condition that the other party sharing custody has given his or her agreement (a 4 §1. c)?

- [x] OUI
- [ ] NON

Specify if necessary

The law stipulates that the approval of another lawful representative or custodian with whom the child will not stay in the common household is required as a condition of the application (Sec. 42b par. 1 lett. c) Aliens Act). The approval will not be necessary if it can not be obtained for the reasons independent on the minors’ will.
Q.13 – Has your Member State transposed the option opened by article 4 § 1 d):

Q.13.A. to authorise reunification of minor children of the spouse – including also adopted children – of whom custody is shared (a 4.1.d. in fine)?

☐ OUI
☐ NON

Specify if necessary

The minor children of the spouse of the sponsor (including adopted children) of whom custody is shared can ask for the residence permit for the reason of family reunification pursuant to the Sec. 42a par. 1 lett. b) and d) Aliens Act. The right to the family reunification is ensured under the condition of previous residence of the sponsor on the territory at least for 15 months. The sponsor must hold a long term or permanent residence permit at the time of lodging of the application for family reunification. The condition of previous residence of the sponsor is not applied in cases of children adopted by the sponsor or his/her spouse (Sec. 42a par. 5 lett. d) Aliens Act).

Q.13 B. If yes, has your legislation transposed the condition that the other party sharing custody has given his or her agreement (a 4. 1.d) ?

☐ OUI
☐ NON

Specify if necessary

The law stipulates that the approval of the parent with whom the child will not stay in the common household is required as a condition of the application (Sec. 42b par. 1 lett. c) Aliens Act). The approval will not be neccessary if it can not be obtained for the reasons independent on the minors’ will. The family reunification of those children is therefore possible, under the condition that the other parent gives his content/approval.

Q.14 – In any case referred to in questions 7 to 9, is the age of the minor children below the age of majority set up by the law of your Member State (a.4 §1, second indent)?

☐ OUI
☒ NON

If yes, indicate the age required:
Q.15 – In any case referred to in questions 7 to 9, has the prohibition of marriage of minor children been transposed (a.4 §1, second indent)?

☒ OUI
☐ NON

If not, explain Si non, expliquez

Basically a person can marry at the age of 18 – the age of majority. Marriage of a minor is possible if the minor is over 16, consent of parents is required, and he/she loses the status of a minor by contracting a marriage (Sec. 8 par. 2 Civil Code). He can also not be counted as dependant then.

Q.16 – Is the derogation set up in article 4 § 1 last indent relating to the conditions for integration of children over 12 years arrived independently from the rest of the family used by your Member State?

☐ OUI
☒ NON

How the criterion "arrives independently from the rest of his/her family" has been transposed in your national legislation?

Q.17 – If yes, did this integration condition already exist in your national legislation before the date of transposition of the Directive?

☐ OUI
☒ NON

Q.18 – Describe briefly the content of this condition, the date of its creation and the conditions of its examination

Q.19 – Are the children of refugees required to an integration test by your Member State (in contradiction with article 10 § 1)?

☐ OUI
☒ NON

If yes, explain
Q.20 – Does your Member State authorise:

Q.20 A – Reunification of first-degree relatives in the direct ascending line of the sponsor (a 4§2 a)?

☐ OUI
☐ NON

Yes. The law allows for a reunification of (1) a third country national who is a single person older than 65 years or of (2) a third country national who is unable to provide for his/her own needs on account of his/her state of health. The reunification is possible only with a parent or a child (=sponsor) to whom has a residence permit been issued, the previous stay in the Czech Republic is not required (Sec. 42a par. 1 lett. f) Aliens Act in conjunction with Sec. 42a par. 5 lett. d) Aliens Act). The dependency of the first-degree relatives in the direct ascending line on the sponsor and enjoyment of the proper family support in the country of origin is not explicitly mentioned, but the content of the wording single person is similar. The third country national is considered as a single person if he/she is single, widowed or divorced (Sec. 178a Aliens Act).

Q.20 B – If yes, shall they be dependant and not enjoy proper family support in the country of origin?

☐ OUI
☐ NON

How each of those criterions is transposed and checked?

The law allows for a reunification of (1) a third country national who is a single person older than 65 years or of (2) a third country national regardless of age that is unable to provide for his/her own needs on account of his/her state of health. The reunification is possible only with a parent or a child (=sponsor) to whom has a residence permit been issued, the previous stay in the Czech Republic is not required. (Sec. 42a par. 1 lett. f) Aliens Act in conjunction with Sec. 42a par. 5 lett. d) Aliens Act). The dependency of the first-degree relatives in the direct ascending line on the sponsor and enjoyment of the proper family support in the country of origin is not explicitly mentioned, but the content of the wording single person is similar. The third country national is considered as a single person if he/she is single, widowed or divorced (Sec. 178a Aliens Act).

Q. 20.C. Reunification of first-degree relatives in the direct ascending line of the spouse (a 4§2 a)?

☐ OUI
☒ NON

The reunification is possible with the spouse of the sponsor only under the condition that the spouse is himself/herself a holder of a residence permit (the residence permit issued for the reason of family reunification is considered as the residence permit) (Sec. 42a par. 1 lett. f) Aliens Act).
**Q.20.D.** If yes, shall they be dependant and not enjoy proper family support in the country of origin?

- [ ] OUI
- [x] NON

How each of those criterions is transposed and checked?

The possibilities are the same as mentioned above. The reunification is possible with the spouse of the sponsor only under the condition that the spouse is a holder of a residence permit (the residence permit issued for the reason of family reunification is considered as the residence permit) (Sec. 42a par. 1 lett. f) Aliens Act).

The dependency of the first-degree relatives in the direct ascending line on the spouse and enjoyment of the proper family support in the country of origin is not explicitly mentioned, but the content of the wording single person is similar. The third country national is considered as a single person if he/she is single, widowed or divorced (Sec. 178a Aliens Act).

**Q.20.E.** Reunification of adult unmarried children of the sponsor? (a 4§2 b) ?

- [x] OUI
- [ ] NON

If necessary, explain how this procedure is organised

The Art. 4 (2) (b) of the Directive which provides for a reunification of a child of the sponsor or of his/her spouse for the reason of their state of health is transposed through a provision which give the possibility of a family reunification of a third country national who is unable to provide for his/her own needs on account of his/her state of health regardless of his/her age with a holder of a residence permit (the residence permit issued for the reason of family reunification is also considered as the residence permit) (Sec. 42a par. 1 lett. f) Aliens Act).

The law also provides for the possibility to apply for family reunification of an adult dependent child. (Sec. 42a par. 1 lett. b) Aliens Act).

**Q.20.F.** If yes, does the national legislation impose that those adult unmarried children of the sponsor are objectively unable to provide for their own needs on account of their state of health (a 4 §2 b) ?

- [x] OUI
- [ ] NON

If necessary, specify how each of those criterions ("objectively" and "unable to provide for their own needs") is transposed and checked?

The law allows for submitting the application also from adult children, but adults will be granted the residence permit only under the condition of dependancy on the sponsor.
The possibility to grant a residence status to a third country national who is unable to provide for his/her own needs on account of his/her state of health regardless of his/her age is stipulated in Sec. 42a par. 1 lett. f) Aliens Act.

**Q.20. G.** Does your Member State authorise reunification of adult unmarried children of the spouse (a 4§2 b)?

☐ OUI

☒ NON

If necessary, specify how this condition is assessed

The Art. 4 (2) (b) which provides for a reunification of a child of the sponsor or of his/her spouse for the reason of their state of health is transposed through a provision which give the possibility of a family reunification of a third country national who is unable to provide for his/her own needs on account of his/her state of health regardless of his/her age with a holder of a residence permit (the residence permit issued for the reason of family reunification is also considered as the residence permit) (Sec. 42a par. 1 lett. f) Aliens Act).

The reunification with the spouse of the sponsor is possible only under the condition that the spouse is a holder of a residence permit (the residence permit issued for the reason of family reunification is considered as the residence permit) (Sec. 42a par. 1 lett. f) Aliens Act). So the possibility exists only after the spouse will get his/her long term residence permit (he/she is issued a residence permit which is dependent on the sponsor only in the term of duration).

**Q.20.H.** If yes, does the national legislation impose that those adult unmarried children of the sponsor are objectively unable to provide for their own needs on account of their state of health (a 4 §2 b) ?

☒ OUI

☐ NON

If necessary, specify how each of those criterions ("objectively" and "unable to provide for their own needs") is transposed and checked?

**Q.20. I.** Did your Member state use the by law or regulation norms to implement article 4 § 2 a et b?

☒ OUI

☐ NON

The law stipulates the possibility in Sec. 42a par. 1 lett. f) Aliens Act.
Q.21 – Does your Member State authorise reunification of the unmarried partner of the sponsor, being a third country national (a 4 §3)?

[ ] OUI

[ ] NON

Only the registered partnership is taken into account. The registered partner is considered as a husband/spouse (Sec. 180f Aliens Act).

Q.22 – If yes:

Q.22 A – This partnership shall be based on a duly attested stable long term relationship?

[ ] OUI

[ ] NON

If yes, specify how your Member State assess this situation

Q.22 B – This partnership shall be registered?

[ ] OUI

[ ] NON

Q.23 – Does your national law consider the registered partner as the husband/spouse (a 4 §3 alinéa 2)?

[ ] OUI

[ ] NON

The registered partner is considered as a husband/spouse (Sec. 180f Aliens Act).

Q.24 – Does your Member State authorise:

Q.24. A – Reunification of minor children of the partner, including adopted children (a 4§3)?

[ ] OUI

[ ] NON

The minor children of the partner, including adopted children in the registered partnership are taken into account.
Q. 24. B – Reunification of adult unmarried children of the partner, including adopted children (a 4§3)?

- [ ] OUI
- [x] NON

The adult unmarried children of the partner, including adopted children in the *registered partnership* are taken into account.

Q.25 – Does your Member State allow reunification of adult unmarried children who are objectively unable to provide for their own needs on account of their state of health (a 4§3)?

- [ ] OUI
- [x] NON

If yes, specify how the conditions, and more particularly the "objectivity", are assessed.

The registered partnership is treated equally as a marriage, the condition will be the same as in Q.20.E.

Q.26 – Did your Member state use the by law or regulation norms to implement article 4 § 3?

- [ ] OUI
- [x] NON

Q.27 – Is the prohibition of polygamous marriage enshrined in your national legislation (a. 4§4)?

- [x] OUI
- [ ] NON

The long term residence permit for the purpose of family reunification cannot be issued to a family member when the sponsor already resides in the country with another spouse (Sec. 42a/6 AA). Similar provision is stipulated in the Asylum Act, the refugee status for the purpose of family reunification cannot be issued when there is a spouse already residing with the sponsor in the country (Sec. 13/4).

Q.28 – Does your Member State limit family reunification of minor children of a further spouse and the sponsor (article 4§4 dernier alinéa,)?

- [ ] OUI
- [x] NON
Q.29 – Does your Member State use the option set up by article 4 § 5 requiring the sponsor and his/her spouse to be of a minimum age of 21 years old before reunification?

☐ OUI
☐ NON

Yes, the law requires the age of 20 years of both spouses. The right to the family reunification is stipulated for the families where the sponsor is a holder of a long term or permanent residence permit (national residence statuses) and at the same time already resides on the territory at least for 15 months (Sec. 42a par. 5 lett. a) Aliens Act).

Q.30 – If yes,

Q.30 A – What is the age required? 20

Q.30 B – Is the derogation founded on integration criteria and/or prevention of forced marriage? Not explicitly.

Q.31 – Does your Member State use the derogation of article 4 § 6 by requesting that the applications concerning family reunification of minor children have to be submitted before the age of 15?

☐ OUI
☐ NON

Explain

Q.32 – If yes, was it provided by existing legislation on the date of implementation of the directive?

Q.33 – If the application is not introduced before the age of 15, do Member States authorise entry and residence on grounds other than family reunification?

☐ OUI
☐ NON

Which grounds and which conditions?
PROCEDURE (ARTICLE 5)

We draw attention on the major importance given by the Court of justice regarding § 5 relating to the best interest of minor children.

Q.34 – Did your Member State institute a procedure regarding family reunification (a 5 §1) ?

☐ OUI

☐ NON

The general rules of administrative procedure according to the Administrative Proceedings Act apply, there is no special procedure instituted. The application for family reunification is submitted with the Embassy of the Czech Republic abroad or with the Aliens and Border Police Service if the foreigner already legally resides on the territory of the Czech Republic. The application is processed under the rules set up by the general Administrative Proceedings Act. No special procedure is set up for family reunification applications and there are no exception/changes to the general rules of administrative procedure.

Q.35 – If yes,

Q.35. A – Which authorities are in charge of this issue?

The authority responsible for the proceedings is Alien Police.

Q.35. B – Are NGO's associated to this procedure?

☐ OUI

☐ NON

If yes, describe the procedure

Q.35. C – Is the application submitted by the sponsor or by family members?

The application is submitted by the family member (or his/her legal representative in case of application of a minor).

Q.35. D – Is this procedure exclusive from other possibilities to grant family reunification?

☐ OUI

☐ NON

If other procedural possibilities exist, please describe them
The law does not stipulate a specific procedure for the family reunification. The procedure is held according to the general rules of the administrative procedure. There are other possibilities to obtain a residence permit and all of them are held according to the general rules of the administrative procedure. The migration law (Aliens Act) stipulates three different kinds of the stay on the territory (visa, long term residence permit or permanent residence permit), each one of them may be obtained by a family member.

Then there is also another law which is devoted solely to the issue of asylum seekers and refugees which give a possibility to grant a refugee status to family members, but the right of family reunification of refugees according to this Directive is ensured by the above mentioned provisions of Aliens Act.

Q. 35. E – Was this procedure existing before the adoption of Directive 2003/86?

☐ OUI

☒ NON

There was no provision in the migration law stipulating the family reunification as such, but there were, of course, the general rules of the administrative procedure.

Q.36 – Which documentary evidence are required to prove (a 5 §2):

Q.36. A – Family relationships according to article 4?

The law stipulates that the document certifying family ties is required (Sec. 42b par. 1 lett. b) Aliens Act). (The document can be e.g. the certificate of marriage, birth, adoption or custody certificate, per analogiam legis Sec. 70/2c) AA. The certified copies of the originals are required.).

Q.36. B – Accommodation conditions laid down in article 7?

The documentary evidence regarding accommodation must be provided (Sec. 42b par. 1 lett. a) in connection with Sec. 31 par. 1 lett. d) AA).

There are no general rules stipulated for the standards of accommodation in the migration law and the law does not require that the accommodation must satisfy certain standards. The law basically requires only the (1) document which certifies that the owner of the flat/house agrees with accommodation of the respective applicant (or a contract of lease) and (2) an abstract from the real estate register certifying who is the owner of the flat/house.

Only the accommodation provided for financial means must have standards specified by the law: the accommodation must be adequate to the accommodation provided by other providers in number of persons accommodated and in hygienic standards (Sec. 100 lett. d) Aliens Act).

Q.36. C – Sickness insurance conditions?

The sickness insurance is not a condition for submission of the application, but for imprinting of the residence permit. The third country national must show the document on sickness insurance before the imprinting of the visa which allows him/her to enter the territory in order to get the residence permit imprinted to the passport (Sec. 42b par. 4 Aliens Act).
There are some exceptions regarding the sickness insurance of persons whose sickness insurance is *inter alia* covered by an international treaty or by alternative manner or he/she may not acquire the sickness insurance in his state of residence because of the reasons independent on his will (Sec. 180i par. 2 Aliens Act).

Q.36. D – Certified copies of family member(s)' travel documents?

The third country national is required to submit a passport. The authority makes the copy itself.

Q.37 – Is the possibility foreseen to proceed to:

   Interviews:

   □ OUI
   □ NON

The law stipulates that an applicant is obliged to participate on the proceedings in person, if he asked to do so. The administrative authority is entitled to perform an interview *inter alia* in order to find out if the marriage is not a marriage of convenience (Sec. 169 par. 3 Aliens Act). It is not a necessary condition for the proceedings, but authorities can ask for it anytime during the administrative proceedings.

   Investigations:

   □ OUI
   □ NON

   If yes, describe them briefly

According to the general rules of administrative procedures the administrative authority is obliged to find out all facts which are necessary for its review of the application (Sec. 3 Administrative Proceedings Code). The authority will usually ask for more documents.

Q.38 – When examining an application concerning the unmarried partner of the sponsor, which evidences are taken into account by Member States on the basis of national law to prove family relationship (article 5§2 dernier alinea) ?

The law does not allow for the possibility of family reunification of an unmarried partner of the sponsor in general. He/she may ask for another type of residence permit, but the right to family reunification is not ensured.

The only exception is family reunification for the reason of a registered partnership of the same sex partners (also the minor children etc. of the partner of the spouse are taken into account). The law stipulates that if there is a term “marriage”, “spouse” or a “child of the spouse” mentioned in the Aliens Act, then also the “partnership”, “partner”, “child of the partner” is meant by it (Sec. 180f par. 1 Aliens Act).
Q.38. A – Existence of family ties and other elements such as a common child?

☐ OUI

☒ NON

Specify

Q.38. B - Previous cohabitation?

☐ OUI

☒ NON

Q.38. C - Registration of a partnership

☒ OUI

☐ NON

Q.38. D - Any other reliable means of proof foreseen in national law?

☒ OUI

☐ NON

If yes, specify which ones:

The registration of a partnership is proved by a certificate confirmation of the partnership.

Q.39 – Are family members obliged to reside outside the territory of the Member State while the application is being examined (a5 §3)?

☐ OUI

☒ NON

Is this obligation sanctioned and how?

The standard situation is that the procedure is held while the family members reside outside the territory of the Czech Republic. The application for the residence permit for the purpose of family reunification does not allow the family member to enter or stay. The Czech Republic applies the conditions of Art. 5 § 3 of the Directive.

However, it may occur that the residence permit for the reason of family reunification is asked while the spouse or a child resides already on a territory of the Czech Republic. The condition for this possibility is a previous stay of the family member on the territory of Czech Republic on the basis of a valid visa or a residence permit which was issued to the family member before for another purpose (Sec. 42a par. 4 Aliens Act).

If the family member does not have a valid residence permit before the application for family reunification, the sole fact of submitting the application does not allow him to enter/reside on the Czech territory.
Q.40 – If the answer is yes, is a derogation organised according to article 5 § 3 second indent?

☐ OUI

☑ NON

Please specify

The residence permit for the reason of family reunification can be also asked while the spouse or a child already resides on a territory of the Czech Republic. The condition for this possibility is a previous stay of the family member on the territory of Czech Republic on the basis of a valid visa or a residence permit which was issued to the family member before (Sec. 42a par. 4 Aliens Act).

Q.41 – Does your national legislation include a maximum period of 9 month to answer to the application by way of written notification (a5 §4)?

☐ OUI

☐ NON

If necessary, please specify

The time limit for the issue of the residence permit is stipulated as “without delay” in the Aliens Act, or if the permit can not be issued without delay, the time limit is 270 days from the date on which the application was lodged (Sec. 169 par. 2 lett. c) Aliens Act).

Q.42 – This time limit can be extended (a 5 §4 alinea 2) ?

☐ OUI

☐ NON

Q.43 – If yes,

Q.43. A – Because of the complexity of the examination of the application?

☐ OUI

☐ NON

If yes, please specify

Q.43. B – What is the length of the extension?
Q.44 — If no decision is taken by the end of the 9 months period provided, what are the consequences for the applicant?

The law provides for the protection from inactivity in Sec. 80 par. 1 of Administrative Proceedings Act, which provides for the activity of superior authority and in Sec. 79 par. Code of Administrative Justice which provides for the judicial review.

Q.45 — Is the decision rejecting the application notified? Does this written notification contain the reasons of rejection?

☐ OUI
☐ NON

Specify if only one condition is not required

Q.46 — How is the best interest of minor children taken into account by your Member State’s legislation and authorities during examination of the application (article 5§5)?

The national law has used this term before the transposition of this Directive because of the requirements of the Convention of the Right of a Child (Art. 3). This provision figures in different laws (Sec. 26 par. 4, Sec. 27 par. 4, Sec. 45 par. 1, Sec. 62 par.1 Family Act, Sec. 5 Act on Social and Legal Protection of Children, overall principle in Civil Proceedings Code). The Alien's Act does not contain an explicit provision in this respect and does not explicitly mention specific treatment of minors in the context of this Directive. The best interest of the child is taken into account in all laws which apply to minors and also applied by courts as a general principle of law (judgements of Constitutional Court, inter alia Judgement No. II. ÚS 568/06 from February 20, 2007, Judgement No. I. ÚS 48/04, from January 27, 2005).

Also the Aliens Act stipulates that its privisions will be applied unless the international treaty stipulates otherwise (Sec 175 AA).

CONDITIONS REQUIRED (ARTICLES 6 AND OTHERS)

• Questions relating to accommodation and resources will be carefully examined to assess if Member States use them, either as a migration tool or as an integration tool.

• The same assessment applies regarding the option to set up a period of lawfully residence not exceeding two years before applying for family reunification.

• According to article 8, the Court of justice states: "That provision does not therefore have the effect of precluding any family reunification, but preserves a limited margin of appreciation for the Member States by permitting them to make sure that family reunification will take place in favourable conditions, after the sponsor has been residing in the host State for a period sufficiently long for it to be assumed that the family members will settle down well and display a certain level of integration. Accordingly, the fact that a Member State takes those factors into account and the power to defer family reunification for two or, as the case may be, three years do not run counter to the right to respect for family rights set out in particular in Article 8 of the ECHR as interpreted by the European Court of Human Rights
• "It should, however, be remembered that, as is apparent from Article 17 of the Directive, duration of residence in the Member State is only one of the factors which must be taken into account by the Member State when considering an application and that a waiting period cannot be imposed without taking into account, in specific cases, all the relevant factors" (cons. 99). "The same is true of the criterion of the Member State’s reception capacity, which may be one of the factors taken into account when considering an application, but cannot be interpreted as authorising any quota system or a three-year waiting period imposed without regard to the particular circumstances of specific cases. Analysis of all the factors, as prescribed in Article 17 of the Directive, does not allow just this one factor to be taken into account and requires genuine examination of reception capacity at the time of the application" (cons. 100) "When carrying out that analysis, the Member States must, as is pointed out in paragraph 63 of the present judgment, also have due regard to the best interests of minor children" (cons. 101).

Q.47 – Can public policy, public security or public health grounds be taken into account to (a 6 §§1 et 2):

Q.47. A – Reject an application for family reunification?

☐ OUI
☐ NON

If yes, which ones?

The Aliens Act gives an opportunity to refuse the application for the residence permit for the purpose of family reunification on grounds of public policy, public security or public health (Sec. 46 par. 3 in conjunction Sec. 56 par. 1 lett. h) and Sec. 9 par. 1 lett. h), lett. i) and lett. j) Aliens Act). The terms public policy and public security are explicitly mentioned there, the reason of health is stipulated as follows: if there is a well-founded suspicion that the applicant suffers from an illness which is on a list issued by the Ministry of Health (Sec. 182a par. 1 Aliens Act). The list of illness is published as a regulation and those illnesses are taken into account as those which can endanger public health or seriously endanger public policy (Sec. 182a par. 1 Aliens Act).

Q.47. B – Withdraw an application for family reunification?

☐ OUI
☐ NON

If necessary, please specify

There are several reasons for withdrawal stipulated in the law. The residence permit for the reason of family reunification can be withdrawn inter alia if it was find out that the third country national would have endanger public security or seriously violate public policy (Sec. 46a par. 2 lett. d) Aliens Act). The reason of public health can be taken into account only in case of illness suffered before the entry to the Czech Republic. The inadequate impact to a private or family life of the person concerned is taken into account.
Q.47. C – Refuse to renew a family member's residence permit?

☐ OUI

☐ NON

If necessary, please specify

The family member's residence permit will not be renewed if there are reasons for withdrawal of the permit (Sec. 44a par. 4 in conjunction with Sec. 46a par. 2 lett. d) Aliens Act). See above the reasons for withdrawal in Q.47.B.

Q.48 – Does national legislation take into account:

Q.48. A – The severity or type of offence against public policy or public security?

☐ OUI

☐ NON

There is no easy answer to this question. The terms public policy and public security are explicitly mentioned in the law. The law uses this term as such and does not define it. There are also other reasons for which the application for the residence permit can be refused (or the permit not renewed/withdrawn). The reasons are *inter alia* the reason of submitting of falsified or modified documents (Sec. 46 par. 3 in conjunction Sec. 56 par. 1 lett. h) and Sec. 9 par. 1 lett. b), 46a par.2 lett. f) Aliens Act) is taken into account. Possibility of non-renewal or withdrawal is stipulated for those who were sentenced for an intentional crime etc. The law does not give clear answer on if these reasons can also be qualified as breach of public policy or security. The term public policy or public security is not specified in the migration legislative. There are some decisions of lower courts, but they do not give clear answer to this question. Some definition (but only of the term public policy) can be found in the Act on Private and Procedural International Law (Sec. 36). The respective Act considers the issue of public policy to cover the most fundamental principles of the social structure and of the state. But it is not an overall definition of this term in the law.

Q.48. B – The solidity of family relationships regarding article 17 of the Directive?

☐ OUI

☐ NON

If necessary, please specify

The inadequate impact to a private or family life of the person concerned is always taken into account. The law explicitly mentions only the impact to a private or family life, the other reasons stipulated in Art. 17 of the Directive are not explicitly mentioned. There was a plan to issue an internal circular on this issue, but according to my information it is still being prepared (the explanatory report for the draft law 1107, which was adopted as Act. No.
Q.49 – Does your Member State withdraw the residence permit or remove the third country national on the sole ground of illness or disability suffered after the issue of the residence permit (a 6 §3)?

☐ OUI

☒ NON

Only the ground of illness suffered before the entry to the Czech Republic is taken into account. The Czech Aliens Act does not mention “disability” explicitly.

The residence permit can be withdraw or non-renewed for the reason of public health only in case of illness suffered before the entry to the Czech Republic. The inadequate impact to a private or family life of the person concerned is taken into account.

Q.50 – Are accommodation conditions required from the applicant (a7 §1a)?

☒ OUI

☐ NON

Q.51 – If yes:

Q.51. A – What are those conditions?

Only a document certifying the possibility of accommodation is required from the applicant (e.g. a lease contract, a sub-lease contract, accommodation contract or contracts of similar content, or a consent of the owner of a house/flat with the accommodation of the foreigner). There are no requirements on the quality or other conditions of the accommodation to be proved by the applicant. However, if the accommodation is provided commercially, there are requirements on the accommodation provider/houselord.

Q.51. B – How are they assessed?

The law requires the document which contains the agreement of the owner of the house/flat (see above Q.51.A.) and also a document which certifies who is the owner of the house/flat. According to Sec. 100 lett. d) of the Aliens Act the accommodation provider/houselord (provided that the accommodation is provided on a commercial basis) is obliged to provide accommodation, which is not obviously inadequate compared to accommodation provided by other accommodation providers/houselords in similar facilities in the municipality/region. The adequacy is considered mainly through comparing the hygiene conditions and the numbers of accommodated persons.
Q.51 C – Are they comparable to the conditions required to a normal family living in the same region?

☐ OUI
☒ NON

If not, please specify the differences
Concerning the applicant, there are no requirements except for submitting the documents proving the possibility of the accommodation (which can be a lease or just an accommodation contract for a room in a lodging house etc). There are requirements on the conditions of accommodation which the commercial accommodation providers/houselords have to prove, as described in the previous question (the requirements concern mainly the hygiene conditions). General rules applicable to building conditions, process of approval of buildings designated to living etc. of course apply.

Q.52 – Is a sickness insurance required from the applicant (a. 7 §1b) ?

☒ OUI
☐ NON

Q.53 – Are stable resources required (a7 §1c) ?

☒ OUI
☐ NON

Specify their nature and content
Yes, the stable resources to maintain the whole family are required. The income requirement is derived from a subsistence minimum and costs of housing of whole family (Sec. 42b par. 1 lett. d) Aliens Act). The total monthly income of a third country national and other persons who are taken into account for the calculation must not be lower than the amount of total sum of subsistence minimums of a third country national and those other persons. Costs of housing are added up for the calculation.

There is an Act on Subsistence Minimum, which defines the “subsistence minimum”. The social assistance is derived from the subsistence minimum. The level of resources required from the third country national is higher than the subsistence minimum stipulated.

Q.54 – How is the condition “sufficient” assessed by your Member State? Is it in comparison with national wages?

There is an Act on Subsistence Minimum, which defines the “subsistence minimum”. The social assistance is derived from the subsistence minimum. The level of resources required from the third country national is higher than the subsistence minimum stipulated. So the comparision is done through the subsistence minimum.
Q.55 – Are integration criterions required to allow family reunification (a 7 §2)?

☐ OUI

☒ NON

Q.56 – If yes:

Q.56. A – What are those criterions?

Q.56. B – Do they apply indistinctly to all potential beneficiaries of reunification? (Spouse, dependant people, etc.)

Q.56. C – How are they evaluated by your Member State?

Q.56. D – Are refugees and their family members required to fulfil them (a 7 §2, second indent)?

☐ OUI

☒ NON

Q.57 – Is a minimal period of lawful reside is required before reunification (a 8 §1)?

☒ OUI

☐ NON

Q. 58 – Does this period exceed two years? No.

Please specify

The minimal period of previous lawful residence of 15 months is required before reunification with the spouse and children. The sponsor must held a long term or permanent residence permit (national residence statuses) at the time of lodging the application by the family member (Sec. 42a par. 5 lett. a) Aliens Act).

The condition of previous residence is not applied in cases of minor children or spouses of refugees (Sec. 42a par. 5 lett. c) Aliens Act) and of children adopted by the sponsor or his/her spouse or children who can not provide for his/her own needs on account of his/her state of health regardless of his/her age (Sec. 42a par. 5 lett. d) in conjunction with Sec. 42a par. 1 lett. f) Aliens Act).

Q.59 – Does your Member State apply the derogation set up by article 8 § 2 allowing Member States to impose a waiting period of maximum three years due to reception capacities between the submission of the application and the issuance of a residence permit?

☐ OUI

☒ NON
FAMILY REUNIFICATION OF REFUGEES

The legal regime applicable to refugees derogates from the one applicable to family reunification. The scope of those derogations (minimal lawful residence, members of the family, accommodation requirements) shall be assessed on the basis of national law.

Q.60 – If yes, did this derogation exist in national law before the 22nd of September 2003?

☐ OUI
☐ NON

Q.61 – Does your Member State allow family reunification of refugees on the basis of Directive 2003/86 a 9 §1)?

☒ OUI
☐ NON

Q.62 – Is this right limited to family relationships predating the entry on the territory (a 9 §2)?

☒ OUI
☐ NON

Q.63 – Does your Member State allow family reunification of family Members not quoted in article 4 of the Directive (a 10 §2)?

☐ OUI
☒ NON

Which members of the family and under which conditions?

The law ensures the right of family reunification for the spouse of the sponsor (sponsor = refugee) (Sec. 42a par. 5 lett. b) Aliens Act) and parent of the child – refugee. The family reunification of the spouse of the sponsor is possible under the condition that the marriage predates the entry of the sponsor to the Czech Republic.

The right is also stipulated for the children of the sponsor - refugee and for the first-degree relatives in the direct ascending line or for the guardian of a unaccompanied minor – refugee. The law requires the condition of previous residence of 15 months of the sponsor on the territory of the Czech Republic.

There are more provisions which stipulate the possibility of family reunification, mainly possibility to ask for a permanent residence permit (this is in fact also right to family
reunification as there is no margin of appreciation for the cases of applicants who are spouses or children of refugees (Sec. 66 par. 1 Aliens Act). No previous residence of the sponsor is required there). Also the Asylum Act gives the possibility to the authorities to give the refugee status for the reason of family reunification, but the margin of appreciation is there (Sec. 13 Asylum Act). But both of the possibilities are not marked as the transposition of the respective Directive, while the other above mentioned are.

**Q.64** – According to the specific case of unaccompanied minor refugees, does your Member State authorise family reunification of first degree relatives in the direct ascending line without applying the conditions laid down in article 4 § 2 (a10 §3 a)?

- [X] OUI
- [□] NON

What conditions are required?

The law (Sec. 42a (5) ALA) allows for family reunification of **minor refugees** including **unaccompanied** minors. The Czech Republic authorises the entry and residence for the purposes of family reunification of minor’s first degree relatives in the direct ascending line.

The law goes even further than the Directive as it allows for reunification with refugee minors as such, even if accompanied. The national status, the long-term residence permit for the purpose of family reunification, will be granted to family members if the minor with whom family reunification is to take place was granted asylum pursuant to special law (Asylum Act).

Therefore the obligation to allow family reunification of unaccompanied minors with his/her first degree relatives in direct ascending line is complied with.

**Q. 65** – Does your Member State authorise entry and residence of the legal guardian or any member of the family where the unaccompanied minor refugee has no relatives in the direct ascending line or such relatives cannot be traced (a10 §3 b)?

- [X] OUI
- [□] NON

If yes, please specify who the member of the family targeted is and which proofs are required to prove family ties?

The law stipulates that if there are no parents, then other relative in the direct ascending line can apply for the family reunification, if there are no such relatives in the direct ascending line then a legal guardian can apply for the family reunification. The proof is not specified in the law.

**Q.66** – Does your Member State take into account other evidence of family relationship where the refugee cannot provide official evidence (a 11 §2)?

- [X] OUI
- [□] NON
Which ones?

The proof is not specified in the law (the law only stipulates, that it must be reliable proof, Sec. 42a odst. 1 písm. b AA).

Q.67 – Does the examination of the refugee application take into account their specific situation:

**Q.67. A** – Are proofs regarding accommodation conditions, sickness insurance or resources required (a 12 §1)?

☐ OUI

☒ NON

If yes, are those requirements comparable to those imposed to other third country nationals?

**Q.67. B** – If one of the person concerned (sponsor or family member) has special links with a third country within which reunification is possible, does your member state require those proofs according to article 12 § 1 second indent.

☐ OUI

☒ NON

If necessary specify

**Q.67. C** – If a refugee has introduced its application after a period of three months, does your Member State require the refugee to meet the conditions or one of them (accommodation, sickness insurance, resources (a 12 §1 alinea 3) ?

☒ OUI

☐ NON

If yes, which ones?

He/she must than provide the same document as any other person who ask for family reunification (including accommodation, sickness insurance and resources) (Sec. 42b par. 1, par. 2 Aliens Act).
Q.68 – Does your Member State apply the prohibition to impose a residence condition before reunification (a 12 §2)?

☐ OUI
☐ NON

If not, what is the length of this period? Is it different from the one normally applied?

EXERCISE OF THE RIGHT TO FAMILY REUNIFICATION

The granting of an autonomous residence permit is one of the most sensitive issues of this part of the Directive.

Q.69 – Is entry and residence facilitated by your Member State, as soon as the application for family reunification has been accepted, including the issue of obtaining visas (a13 §1) ?

☐ OUI
☐ NON

If yes, how?

If the application for family reunification has been accepted (i.e. a positive decision has been issued), the applicant is automatically issued a long-term visa which entitles him/her to enter the Czech territory for the purpose of being handed-over the (long-term or permanent) residence permit for the purposes of family reunification. The visa entitles the applicant to enter the Czech territory and to visit the Aliens police within three days after arrival in order to be handed-over the residence permit (Sec. 30 par. 2 and 4 of the Aliens Act).

Q.70 – Is a residence permit of at least one year's duration granted to the family members (a 13 §2)?

☐ OUI
☐ NON

What is the duration of the residence permit?

The duration of residence permit of the family member is aligned with the duration of the residence permit of the sponsor. The residence permit will be issued for a period of one year, if the sponsor was granted a long term residence permit and two years if the sponsor was granted permanent residence permit (Sec. 44 par. 5 lett. c and d) and Sec. 44 par. 6 ALA).
Q.71 – Is this residence permit renewable?

☑ OUI
☐ NON

Q.72 – Is the duration of the residence permit aligned with the duration of sponsor's residence permit (a 13 §3) ?

☑ OUI
☐ NON

If no, please specify

Q.73 – Are the rights awarded to family members' equivalent to those granted to the sponsor (a14 §1):

Q.73. A – Regarding access to education?

☑ OUI
☐ NON

If no, please specify

Q.73. B - Regarding access to employment?

☑ OUI
☐ NON

Please specify the content of this access

Family members of refugees are granted access to work without a work permit, other family members have access to the labour market only with a valid work permit.

Q.73. C – Regarding access to vocational guidance, initial and further training and retraining?

☑ OUI
☐ NON

If no, please specify

Q.74 – Does your Member State grant specific rights in social matters to reunified family members?

☑ OUI
☐ NON
If yes, please describe them and specify if a time limit is established to take advantage from them.

There is a requirement of one year residence on the territory for the possibility to benefit from some of the social benefits for the family members who has the long-term residence permit. The family members of refugees have the same access as the citizens of Czech Republic.

**Q.75** – Has Member State set up conditions regarding specific access to employment for family members (a 14 §2)?

☐ OUI

☒ NON

If yes, how?

**Q.76** – If yes, do those conditions exceed 12 months (a 14 §2)?

☐ OUI

☐ NON

Which ones?

**Q.77** – Is access to employment limited in your Member State

**Q.77.A** – Regarding first-degree relatives in the direct ascending line?

☐ OUI

☒ NON

If yes, how?

**Q.77. B** – Regarding adult unmarried children objectively unable to provide for their own needs on account of their state of health (a 14 §3)?

☐ OUI

☒ NON

If yes, how?

**Q.78** – Are spouses, unmarried partners and child who has reached majority entitled to an autonomous residence permit at least five years after lawful residence on the basis of the residence permit issued for family reunification (a15 §1)?

☒ OUI

☐ NON
Any third country national who reside in the Czech Republic with the valid residence permit for the purpose of family reunification may after three years of residence or after reaching 18 years be granted an autonomous residence permit – long term residence permit (national status) for another purpose than for the purpose of family reunification (Sec. 45 par. 2 Aliens Act).

Any third country national who resides in the Czech Republic for at least five years is entitled to the permanent residence permit (national status) and to the long term residence status. He/she must fulfill several conditions basically pursuant to the provisions of the Long Term Residents Directive.

**Q.79** – Does your Member State limit the granting of the autonomous residence in cases of breakdown of the family relationship (a 15 §1 alinea 2)?

- [X] OUI
- [□] NON

Please explain

Any third country national who reside in the Czech Republic with the valid residence permit for the purpose of family reunification may after three years of residence or after reaching 18 years be granted an autonomous residence permit – long term residence permit (national status) for another purpose than for the purpose of family reunification (Sec. 45 par. 2 Aliens Act). If the breakdown of the family relationship happens before the three years limit, the long term residence permit is withdrawn.

**Q.80** – Does your Member State grant autonomous residence permit:

**Q.80. A** – To first-degree relatives in the direct ascending line (a15 §2)

- [X] OUI
- [□] NON

If necessary specify

Any third country national who reside in the Czech Republic with the valid residence permit for the purpose of family reunification may after three years of residence or after reaching 18 years be granted an autonomous residence permit – long term residence permit (national status) for another purpose than for the purpose of family reunification (Sec. 45 par. 2 Aliens Act).

The condition of five years stay is applied. He/she must also fulfill several conditions basically pursuant to the provisions of the Long Term Residents Directive.
Q.80. B – To adult unmarried children objectively unable to provide for their own needs on account of their state of health (a15 §2) ?

☐ OUI  ☑ NON

If necessary specify

Any third country national who reside in the Czech Republic with the valid residence permit for the purpose of family reunification may after three years of residence or after reaching 18 years be granted an autonomous residence permit – long term residence permit (national status) for another purpose than for the purpose of family reunification (Sec. 45 par. 2 Aliens Act). The state of health is not explicitly mentioned in the law.

The condition of five years stay is applied. He/she must also fulfill several conditions basically pursuant to the provisions of the Long Term Residents Directive.

Q.81 – Does your member State grant autonomous residence permit in the event of widowhood, divorce, separation or death of first first-degree relatives in the direct ascending or descending line (a 15 §3) ?

☐ OUI  ☑ NON

If necessary specify

The family member who is a survivor of a deceased sponsor may be granted an autonomous residence permit. The family member must have the long term residence permit for the purpose of family reunification issued and reside on the territory continuously for at least 2 years (as of the date of death of the sponsor). The continuous stay is not required if the survivor lost his Czech citizenship as a result of a marriage to a sponsor or the death of the sponsor was caused by work-related accident or occupational disease (Sec. 45 par. 3 AliA). The right to submit an application expires after one year (Sec. 45 par. 6 Aliens Act).

The family member who is divorced with the sponsor may be granted an autonomous residence permit. The marriage must have lasted for at least five years prior to the day of the divorce out of which the family member must have at least two years reside (stay continuously) in the Czech Republic. The condition of continuous stay is not required if the foreigner lost his Czech citizenship as a result of a marriage to a sponsor (Sec. 45 par. 4 AliA). The right to submit an application expires after one year (Sec. 45 par. 6 Aliens Act).

The problem which can be seen here is that the right is connected to the possibility to apply for the status. It is not the right to the issue of the residence permit itself. But the administrative procedure according to the general rules of administrative proceedings is held and if the third country national will satisfy all conditions of the law he will be granted the residence permit. There is no margin of appriciation.
Q.82 – Has your Member State adopted rules granting autonomous residence permit "in the event of particularly difficult circumstances" (a 15 §3)?

☑ OUI
☐ NON

If yes, how is this provision defined and transposed?

See Q.81. There are also general rules for the issue of the permanent residence permit in case which requires special consideration (Sec. 66 par. 1 lett. b) Aliens Act). It is applicable to any third country national in the event of particularly difficult circumstances.

**PENALTIES AND REDRESS**

*Those provisions must be read in parallel with those relating to the conditions to be fulfilled to obtain family reunification (articles 6, 7, 8)*

*Questions relating fraud, false or falsified documents are of importance to assess their impact.*

Q.83 – What are the legal grounds to reject, withdraw or refuse to renew a family member's residence permit (a16 §1 et 2):

Q.83. A – Conditions required by the directive not satisfied?

☑ OUI
☐ NON

Q.83. B – Absence of real martial or family relationship?

☑ OUI
☐ NON

If yes, how is this hypothesis assessed?

The hypothesis can be assessed by investigation of the authorities.

Q.83. C – Stable long term relationship with another person?

☑ OUI
☐ NON
If yes, how is this hypothesis assessed?

In case it is proved that one of the spouses has a stable long term relationship with another person it can be held that the marriage is fictitious (according to Sec. 46a par. 1 lett. j) of the Aliens Act, the residence permit can be withdrawn if it is proved that the marriage was concluded solely with the purpose of obtaining the residence permit; this provision cannot be used if a child was born of the marriage/a child was adopted in the marriage). The authorities are allowed to investigate the marriages either upon a suggestion of a third person or from their own initiative. The investigation is governed by the general rules of administrative procedure.

**Q.83. D** – False or falsified documents?

- [x] OUI
- [ ] NON

**Q.83. E** – Marriage, partnership or adoption contracted for the sole purpose of enabling reunification?

- [x] OUI
- [ ] NON

**Q.83. F** – If yes, how is this hypothesis assessed?

Mainly during the residence control by the authorities.

**Q.83. G** – When the sponsor's residence comes to an end and the family member does not yet enjoy an autonomous right of residence (a 16 §3) ?

- [x] OUI
- [ ] NON

In case the sponsor’s residence permit *comes to an end*, the residence permits of his/her family members also come to an end, because they are always issued for the same period of time.

In case the residence permit of the sponsor is *withdrawn*, it can (Sec. 46a par. 2 lett. k) of the Aliens Act) be a reason to withdraw the residence permits of his/her family members. However, the residence permits of family members can only be withdrawn if this is proportionate to the reasons for which the sponsor’s residence permit was withdrawn. Proportionality has to be determined especially with respect to the impact of this decision on the private and family life of foreigners.

**Q.83. H** – What type of control are organised thereof?

Mainly the residence control by the authorities. The residence controls (carried out by the Aliens Police) focus on controlling the legality of the stay of foreigners on the Czech territory and on whether the *purpose* for which their residence permits were issued is still valid.
Q.84 – Are resources of the family taken into account when renewing residence permit where the sponsor does not have sufficient resources without recourse to the social assistance system of the member state?

☐ OUI

☐ NON

If yes, under which modalities?

The resources of the family are always taken into account.

Q.85 – Does your Member State's legislation take into consideration (a. 17):

Q.85. A – The nature and solidity of the person's family relationships and the duration of his residence in the Member State?

☐ OUI

☒ NON

If yes, please specify how and on the basis of which norm (legislation, regulation, jurisprudence, …)

This is not explicitly mentioned in the law. Only the impact to a private or family life of the person concerned is taken into account since the January 1, 2000 (Aliens Act entered into force).

Thus there are two problems of transposition of this provision: firstly, the Aliens Act only mentions impact to private and family life and thus does not contain all the criteria explicitly mentioned in Article 17. Secondly, the notion of private and family life (also in terms of Article 8 ECHR) is not (contrary to the notion of the best interest of child) a widely used overall principle in the judicial and administrative practice.

According to the explanatory report to the draft law 1107 (which was later adopted as A161) the authorities intended to issue an internal circular covering this issue. However, such circular has not been adopted yet and is being prepared now according to my information.

Q.85. B - 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?

☐ OUI

☒ NON

If yes, please specify how and on the basis of which norm (legislation, regulation, jurisprudence, …)

This is not explicitly mentioned in the law. Only the impact to a private or family life of the person concerned is always taken into account. The internal circular is being prepared now according to my information.
Q.86 – Do the sponsor and/or members if his/her family have the right to mount a legal challenge where an application for family reunification is rejected (a18 §1)?

☐ OUI

☐ NON

Q.87 – Is this right to legal challenge considered as a right to a judicial review according to jurisprudence C-540/03 (a18 §1)?

☐ OUI

☐ NON
XX. IMPACT OF THE DIRECTIVE ON NATIONAL LAW

Q.88 A Did the transposition of the directive made the rules related to the best interest of minor children (a. 5 § 5) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

Please use one box per object and duplicate it if necessary

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Due regard to the best interest of minor children during examination of the application a. 5 § 5</td>
<td>• Statu quo</td>
<td>• In line with the directive</td>
</tr>
<tr>
<td>The best interest of a child had existed in the laws of Czech Republic before. It was not explicitly mentioned in the migration laws, but it was and integral part of it through other laws.</td>
<td>The legal frame of the best interest of a child remained the same.</td>
<td></td>
</tr>
</tbody>
</table>

Q.88 B Did the transposition of the directive made the rules related to the beneficiaries of the right to family reunification become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below
**OBJECT**
Definition of the beneficiaries of the right to family reunification a. 4 § 4

The migration law did not explicitly mention the possibility of family reunification as it is stipulated in the Directive. The possibility of issue the permanent residence permit had existed before and also the possibility to issue a refugee status to the family members in cases deserving special consideration.

The migration law explicitly mentions the possibility of family reunification as it is stipulated in the Directive. The beneficiaries are stipulated by the law and the right to family reunification for them is newly introduced. The possibility of issue the permanent residence permit and of issue of a refugee status to the family members in cases deserving special consideration remains.

- More favourable than previous national rules
- In line with the directive

---

**Q.88 C** Did the transposition of the directive made the rules related to reunification of minor children between 12 (a. 4 § 1) and 15 (a. 4 § 6) years old become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Limitation of reunification of minor children of 12 and 15 years of age (a. 4 § 1 and 4 § 6)</td>
<td>• Statu quo</td>
<td>• More favourable than the directive</td>
</tr>
<tr>
<td>There was nothing about this particular problem stipulated in the national law.</td>
<td>There is nothing about this particular problem stipulated in the national law.</td>
<td></td>
</tr>
</tbody>
</table>

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*NATIONAL REPORTS: DIRECTIVE ON FAMILY REUNIFICATION* 268
Q.88 D Did the transposition of the directive made the rules related to requirements to the exercise of family reunification (article 7) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

Please use one box per object and duplicate it if necessary

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Requirements for the exercise of family reunification (a. 7)</td>
<td>The migration law explicitly mentions the possibility of family reunification as it is stipulated in the Directive. The national status which the family member can apply for had existed in the law before and the documents which are required are the same.</td>
<td>• More favourable than previous national rules</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• In line with the directive</td>
</tr>
</tbody>
</table>

The migration law did not explicitly mention the possibility of family reunification as it is stipulated in the Directive. Third country nationals might have asked for different national statuses for this purpose, but the law did not explicitly stipulate it. When asking for the national statuses, the third country nationals had to present documents required by the law.
Q.88 E Did the transposition of the directive made the rules related to margins of manoeuvre awarded to Member States (a. 5 § 5, 17, C-540/03) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below.

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Limitation of margins of manoeuvre (a. 17, a.5 §5, C-540/03)</td>
<td>The regulation remained the same.</td>
<td>• Statu quo • In line with the directive</td>
</tr>
<tr>
<td>Both already existed in the national law.</td>
<td>The national law has used the term “best interest of child” before the transposition of this Directive because of the requirements of the Convention of the Right of a Child (Art. 3). The best interest of the child is taken into account in all laws which apply to minors and is also applied by courts as a general principle of law. The migration law took into account also the impact to a private or family life of the person concerned since January 1, 2000.</td>
<td></td>
</tr>
</tbody>
</table>
Q.88 F Did the transposition of the directive made the rules related to integration objectives and criterions more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below.

Please use one box per object and duplicate it if necessary.

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attention draw upon integration objectives (considérant 15) and criterions of integration (a.4 §1 dernier alinéa, a. 7 §2)</td>
<td></td>
<td>• More favourable than the directive</td>
</tr>
<tr>
<td>There were no provisions on integration.</td>
<td>No provisions on integration were introduced.</td>
<td>• Statu quo</td>
</tr>
</tbody>
</table>

Q.89 From your point of view, did the transposition of the directive imply other interesting changes for the third national country regarding other elements than the ones mentioned in the previous question. Make also a comparison with the standard of the directive in the last column of the table below.

If they want to do so, the thematic coordinators should complete this question by indicating the number of examples that they ask the national reporter to give.

Please use one box per object and duplicate it if necessary.

<table>
<thead>
<tr>
<th>OBJECT (to be precisely indicated by the national rapporteur)</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Explain the situation before transposition</td>
<td>Complete this box by keeping the right appreciation and deleting the two others:</td>
<td>Complete this box by keeping the right appreciation and deleting the other one:</td>
</tr>
<tr>
<td>Explain the situation after transposition</td>
<td>• Statu quo</td>
<td>• More favourable than the directive</td>
</tr>
<tr>
<td>(to evaluate the impact of the directive, take also into consideration national norms which have been adopted before the deadline for transposition or even before the adoption of the directive in cases of Member States having amended their national legislation in advance in view of the directive. Indicate the precise date of adoption of the change)</td>
<td>• More favourable than previous national rules</td>
<td>• More favourable than previous national rules</td>
</tr>
<tr>
<td></td>
<td>• Less favourable than previous national rules</td>
<td>• In line with the directive</td>
</tr>
</tbody>
</table>
Q.89. A. Mention if there is a general tendency to just copy the provisions of the directive into national legislation without redrafting or adaptation them to national circumstances.

☐ NO

☐ YES

Q.89.B. If yes, please indicate if this general tendency may or not create problems (for example difficulties of implementation, risk that a provision remain unapplied).

☐ NO

☐ YES

Q.89.C. If yes, give some of examples:

Q.89.D. If only some provisions of the directive have been copied and if this may create any problem, please quote them and explain the problem.

Q.90. Quote interesting decisions of jurisprudence related to the directive, its transposition or implementation (so this question concerns in principle decisions later that the directive, but previous ones might be quoted if relevant). Quote in particular decisions of supreme Courts; limit yourself to the appeal Courts and ignore the first resort if there are too many decisions at this level, unless there is a certain jurisprudence made of a group of decisions.

Please use one box per decision and duplicate it if necessary

<table>
<thead>
<tr>
<th>DECISION OF SUPREME COURTS</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
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</table>

<table>
<thead>
<tr>
<th>DECISION OF APPEAL COURTS</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
</tr>
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<table>
<thead>
<tr>
<th>DECISION(S) IN FIRST RESORT</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
</tr>
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<tbody>
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</tbody>
</table>

ANY SUPPLEMENTARY COMMENT ABOUT THE TREND OF THE JURISPRUDENCE:
Q.91 Specify if there are or not problems with the translation of the text of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated.

☐ There are no problems with the translation of the directive

☒ There are some problems with the translation of (indicate the number of the articles concerned) of the directive.

Translation of Art. 13 (1) is not precise, but it does not cause problems in the law.

**Explain the difficulties that this could create:**

**Q. 92 ANY OTHER INTERESTING ELEMENT**

Q.92 A. Following your personal point of view, mention from the point of view of third country nationals and/or from the Member State any interesting or innovative practice in your Member State

*Please use one table per practice and duplicate it if necessary*

<table>
<thead>
<tr>
<th>OBJECT OF THE PRACTICE</th>
<th>EXPLANATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>The complexity of the law remains a problem.</td>
<td>Not only the third country national, but also the authorities themselves may not always in practice know the rights stipulated by the Aliens Act precisely.</td>
</tr>
</tbody>
</table>

Q.92 B. Please add here any other interesting element in your Member State which you did not had the occasion to mention in your previous answers
The Directive has not been transposed in Danish, national legislation due to the Danish reservation as regards legal measures under Title IV TEC.

by

Jensen, Ulla Iben
LLM, national rapporteur
ullaiben@hotmail.com

The person in the team of thematic coordination in charge of this directive that you can contact if you have a question or need help when completing this questionnaire is: Yves Pascouau, + 33 5 59 57 41 20, yves.pascouau@univ-pau.fr

COMMENTARIES

1. Council directive 2003/86 on the right to family reunification faced hard negotiations requiring the presentation of revised proposals from the Commission before final adoption in 2003. The European Court of Justice rejected in June 2007 an action for annulment introduced by the European Parliament against the Council directive (C-540/03).

2. Transposition of the directive must be assessed regarding the nature of the provision concerned. So as to help you, those provisions are coloured within the questionnaire as follows: obligatory provision (Q.XX), optional provision (Q.YY), provision which set up a derogation (Q.ZZ)

3. The Court of justice has defined the margins of discretion awarded to the member States even in situations where the directive allows the member States to depart from the directive. The Court states :

"Article 4(1) of the Directive imposes precise positive obligations, with corresponding clearly defined individual rights, on the Member States, since it requires them, in the cases determined by the Directive, to authorise family reunification of certain members of the sponsor’s family, without being left a margin of appreciation" (cons. 60).

94 Denmark has a special arrangement as regards EU legislation under TEC Title IV according to the Protocol (5) on the Position of Denmark, annexed to the TEU and the TEC pursuant to the Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Related Acts (Official Journal C 340, 10 November 1997). Articles 1 to 3 of the Protocol on the Position of Denmark exempts Denmark from participating in the adoption of or being bound by the measures pursuant to Title IV of the TEC. According to Article 4 of the Protocol the exemptions in Articles 1,2 and 3 shall not apply to measures determining the third countries whose national must be in possession of a visa when crossing the external borders of the Member States, or measures relating to a uniform format for visas.

Article 5 of the Protocol provides a special procedure as regards the development of the Schengen acquis (opt-in) which indirectly binds Denmark to enter into intergovernmental agreements notwithstanding the Danish reservation against First Piller cooperation, cf. the Edinburgh Decision of December 1992 (Official Journal C 021, 25 January 1993) and Protocol (2) integrating the Schengen acquis into the framework of the European Union, annexed to the TEU and the TEC pursuant to the Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Related Acts (Official Journal C 340, 10 November 1997).

Directive 2003/86/EC of 22 September 2003 (Official Journal L 251, 3 March 2003) was not considered to be a development of the Schengen acquis.
"Note should also be taken of Article 17 of the Directive which requires Member States to 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 country of origin. As is apparent from paragraph 56 of the present judgment, such criteria correspond to those taken into consideration by the European Court of Human Rights when it reviews whether a State which has refused an application for family reunification has correctly weighed the competing interests" (cons. 64)

The fact that the concept of integration is not defined cannot be interpreted asauthorising the Member States to employ that concept in a manner contrary to general principles of Community law, in particular to fundamental rights. The Member States which wish to make use of the derogation cannot employ an unspecified concept of integration, but must apply the condition for integration provided for by their legislation existing on the date of implementation of the Directive in order to examine the specific situation of a child over 12 years of age arriving independently from the rest of his or her family" (cons. 70).

4. The main difficulty according to the transposition of the directive relies on the systematic opportunities offered to member States to depart from the provisions of the directive when applying it.

5. Article 19 indicates which themes where the most sensitive during the negotiations of the Directive (art. 3, 4, 7, 8 and 13).
FIRST PART

1. NORMS OF TRANSPOSITION AND JURISPRUDENCE

Q.1.A. Identify the MAIN (because of its content) norm(s) of transposition and indicate its legal nature

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)
- About legal nature in the table below: legislative refers to a norm adopted in principle by the Parliament; regulation refers to a norm complementing the law and adopted in principle by the executive power; circular or instructions refer to practical rules about implementation of laws and regulations and adopted in principle by the administrative authorities

The Directive has not been transposed due to the Danish reservation as regards legal measures under Title IV TEC.

This table is about: [x] a text already adopted [ ] a text which is still a project to be adopted

DATE: 6 August 2007
NUMBER: 1044
DATE OF ENTRY INTO FORCE: 1 October 1983
PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive): This is the most recent Consolidation Act.
LEGAL NATURE (indicate a cross in the correct box):

- [x] LEGISLATIVE:
- [ ] REGULATION:
- [ ] CIRCULAR or INSTRUCTIONS:

This table is about: [x] a text already adopted [ ] a text which is still a project to be adopted

TITLE: Act on amendment of Aliens Act and other acts.
DATE: 30 January 2007
NUMBER: 89
DATE OF ENTRY INTO FORCE: 1 February 2007
PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive): Aliens Act section 9 (3), section 9 (5), section 9 (7), section 9 (12), section 9 (17), section 9 (19), section 9 (22), section 9 (23), section 9g, section 11d, section 19 (1) (iv) and (v) and section 46 (2) et al.
LEGAL NATURE (indicate a cross in the correct box):

- [x] LEGISLATIVE:
- [ ] REGULATION:
- [ ] CIRCULAR or INSTRUCTIONS:
<table>
<thead>
<tr>
<th><strong>This table is about:</strong></th>
<th>☑ a text already adopted ☐ a text which is still a project to be adopted</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>TITLE:</strong></td>
<td>Act on amendment of Aliens Act and Act on an Active Social Policy.</td>
</tr>
<tr>
<td><strong>DATE:</strong></td>
<td>25 April 2007</td>
</tr>
<tr>
<td><strong>NUMBER:</strong></td>
<td>379</td>
</tr>
<tr>
<td><strong>DATE OF ENTRY INTO FORCE:</strong></td>
<td>1 May 2007. However, the act authorizes the Minister of Refugee, Immigration and Integration Affairs to determine this date of entry into force of section 9 (2) and 9f (4) (and 9a, (20) and 33 (3)). The Minister of Refugee, Immigration and Integration Affairs has not yet issued the Executive Order on entry into force.</td>
</tr>
<tr>
<td><strong>PROVISIONS CONCERNED:</strong></td>
<td>The Act deals with immigration test, integration exam, residence permit with the purpose of occupation etc. The act amended section 9 (2), 11 (9) and inserted section 11 (4) and (10) et al. Among other things the Act inserts a second sentence in section 9 (2) according to which a residence permit under section 9 (1) (i) on family reunification with a spouse/partner, unless exceptional reasons make it inappropriate, including regard for family unity, is conditioned by the applicant having passed an 'immigration test'; a test in the Danish language and in Danish social conditions. The Minister of Refugee, Immigration and Integration Affairs issues detailed rules on the test. The Foreign Affair Minister issues rules on charging of fee for participation in the test outside of Denmark.</td>
</tr>
<tr>
<td><strong>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:</strong></td>
<td>Lovtidende A, 27 April 2007.</td>
</tr>
<tr>
<td><strong>LEGAL NATURE:</strong></td>
<td>☑ LEGISLATIVE:</td>
</tr>
<tr>
<td></td>
<td>☐REGULATION</td>
</tr>
<tr>
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<td>☐CIRCULAR or INSTRUCTIONS</td>
</tr>
<tr>
<td><strong>TITLE:</strong></td>
<td>Consolidation Act on Marriage.</td>
</tr>
<tr>
<td><strong>DATE:</strong></td>
<td>15 January 2007</td>
</tr>
<tr>
<td><strong>NUMBER:</strong></td>
<td>38</td>
</tr>
<tr>
<td><strong>DATE OF ENTRY INTO FORCE:</strong></td>
<td>1 January 1970</td>
</tr>
<tr>
<td><strong>PROVISIONS CONCERNED:</strong></td>
<td>Section 9 on bigamy is the relevant provision</td>
</tr>
<tr>
<td><strong>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:</strong></td>
<td>Lovtidende A, 26 January 2007.</td>
</tr>
<tr>
<td><strong>LEGAL NATURE:</strong></td>
<td>☑ LEGISLATIVE:</td>
</tr>
<tr>
<td></td>
<td>☐REGULATION</td>
</tr>
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<td>☐CIRCULAR OR INSTRUCTIONS</td>
</tr>
<tr>
<td>NUMBER: 429</td>
<td>DATE OF ENTRY INTO FORCE: 1 June 2006</td>
</tr>
<tr>
<td>PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive): Aliens Act section 10 (3), 19 (4), 26 et al.</td>
<td>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: Lovtidende A, 13 May 2006</td>
</tr>
<tr>
<td>LEGAL NATURE (indicate a cross in the right box):</td>
<td></td>
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<tr>
<td>x LEGISLATIVE</td>
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<tr>
<td>REGULATION</td>
<td></td>
</tr>
<tr>
<td>CIRCULAR OR INSTRUCTIONS</td>
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</tbody>
</table>

| TITLE: Act on amendment of the Aliens Act and Act on Marriages Making and Break-up (Advanced deadline for application in cases on humanitarian residence permit, notification duty on suspicion of re-educational journeys, limitation of access to family reunification for people sentenced for abduction of children, changed rules on education and activation of adult asylum seekers etc.). | DATE: 19 April 2006 |
| NUMBER: 301 | DATE OF ENTRY INTO FORCE: 1 May 2006 as regards the relevant provisions. |
| LEGAL NATURE (indicate a cross in the right box): | |
| x LEGISLATIVE | |
| REGULATION | |
| CIRCULAR OR INSTRUCTIONS | |
DATE: 27 March 2006
NUMBER: 243
DATE OF ENTRY INTO FORCE: 1 April 2006 as regards the provisions in the Aliens Act.
PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive): Aliens Act section 11 (9) (ii), 11 (11) and 11c et al.
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: Lovtidende A, 29 March 2006
LEGAL NATURE (indicate a cross in the right box):
- [x] LEGISLATIVE
- [ ] REGULATION
- [ ] CIRCULAR OR INSTRUCTIONS

DATE: 1 June 2005
NUMBER: 403
DATE OF ENTRY INTO FORCE: 1 July 2005
PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive): Section 10 (3) and (4) and section 26 et al.
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: Lovtidende A, 2 June 2005
LEGAL NATURE (indicate a cross in the right box):
- [x] LEGISLATIVE
- [ ] REGULATION
- [ ] CIRCULAR OR INSTRUCTIONS

TITLE: Act on amendment of Act on Danish courses for adult aliens etc., Act on Integration and Aliens Act.
DATE: 1 June 2005
NUMBER: 402
DATE OF ENTRY INTO FORCE: 1 July 2005, as regards Aliens Act section 9 (2) and (3) and applications handed in after that date.
PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive): Aliens Act section 9 (2), (3) and (4) et al.
LEGAL NATURE (indicate a cross in the right box):
- [x] LEGISLATIVE
- [ ] REGULATION
- [ ] CIRCULAR OR INSTRUCTIONS
| DATE: 18 May 2005 |
| NUMBER: 324 |
| DATE OF ENTRY INTO FORCE: |
| PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive): Aliens Act section 9 (3), (4), (5), (6), (7), (8), (10), (11), (13), (16), (18), section 9c (1) and (4), section 10 (2), (3) and (4), section 11a (6) and 11b, section 14, section 26 (1) (iv) and section 40 (1) et al. |
| REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: Lovtidende A, 19 May 2005 |
| LEGAL NATURE (indicate a cross in the right box): |
| x LEGISLATIVE |
| REGULATION |
| CIRCULAR OR INSTRUCTIONS |

| TITLE: Act on Amendment of Aliens Act and the Act on Integration. |
| DATE: 9 June 2004 |
| NUMBER: 427 |
| DATE OF ENTRY INTO FORCE: 1 July as regards applications handed in after that date. |
| PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive): Aliens Act section 9 (1) (ii), 9 (10), 9 (11), 9 (13), 9 (14), 9 (15), 9 (16), section 10, section 11 (10), section 19 (1) (viii), 19 (5) and 19 (9) and section 46 (1) et al. |
| LEGAL NATURE (indicate a cross in the right box): |
| x LEGISLATIVE |
| REGULATION |
| CIRCULAR OR INSTRUCTIONS |

<p>| DATE: 27 December 2003 |
| NUMBER: 1204 |
| DATE OF ENTRY INTO FORCE: 1 January 2004; as regards section 9 (8) only for applications handed in after that date. |
| PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive): Aliens Act section 9 (7) and 9 (8). |
| LEGAL NATURE (indicate a cross in the right box): |
| x LEGISLATIVE |
| REGULATION |
| CIRCULAR OR INSTRUCTIONS |</p>
<table>
<thead>
<tr>
<th>TITLE: Act on amendment of the Act on Integration and Aliens Act.</th>
<th>DATE: 10 June 2003</th>
</tr>
</thead>
<tbody>
<tr>
<td>NUMBER: 425</td>
<td>DATE OF ENTRY INTO FORCE: 12 June 2003, as regards the relevant provisions.</td>
</tr>
<tr>
<td>PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive): Aliens Act section 9 (1) (ii) lit. d, section 9 (1) (iii) lit. d and section 11 (1), (2), (4) and (5) and section 52 (1) (i) et al.</td>
<td>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: Lovtidende A, 11 June 2003.</td>
</tr>
<tr>
<td>LEGAL NATURE (indicate a cross in the right box):</td>
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<td>[x] LEGISLATIVE</td>
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<td>[ ] CIRCULAR OR INSTRUCTIONS</td>
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</thead>
<tbody>
<tr>
<td>NUMBER: 386</td>
<td>DATE OF ENTRY INTO FORCE: 31 May 2003</td>
</tr>
<tr>
<td>PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive): Aliens Act section 11 (5) (iii)(^{95}) and Criminal Code section 245a et al.</td>
<td>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: Lovtidende A, 30 May 2003.</td>
</tr>
<tr>
<td>LEGAL NATURE (indicate a cross in the right box):</td>
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<tr>
<td>[x] LEGISLATIVE</td>
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<td>[ ] REGULATION</td>
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<td>[ ] CIRCULAR OR INSTRUCTIONS</td>
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</table>

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</thead>
<tbody>
<tr>
<td>NUMBER: 365</td>
<td>DATE OF ENTRY INTO FORCE: 1 July as regards applications handed in after that date.</td>
</tr>
<tr>
<td>PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive): Aliens Act section 9 and 9c, section 10, 11, 11a, section 14, section 19 (1) (i), 19 (1) (v), section 26 (1) (i) and section 46 (1) and (2) and section 52 (1) (i) et al.</td>
<td>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: Lovtidende A, 7 June 2002</td>
</tr>
<tr>
<td>LEGAL NATURE (indicate a cross in the right box):</td>
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<tr>
<td>[x] LEGISLATIVE</td>
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<td>[ ] REGULATION</td>
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<tr>
<td>[ ] CIRCULAR OR INSTRUCTIONS</td>
<td></td>
</tr>
</tbody>
</table>

\(^{95}\) Nota bene: This provision corresponds the present Aliens Act section 11 (7).
DATE: 6 June 2002
NUMBER: 362
DATE OF ENTRY INTO FORCE: 8 June 2002
PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive): Aliens Act section 10, section 19 (2) and (5), section 26 and section 40 (1) et al.
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:
Lovtidende A, 7 June 2002
LEGAL NATURE (indicate a cross in the right box):
[ ] LEGISLATIVE
[ ] REGULATION
[ ] CIRCULAR or INSTRUCTIONS

This table is about: [x] a text already adopted [ ] a text which is still a project to be adopted

DATE: 20 March 2002
NUMBER: 134
DATE OF ENTRY INTO FORCE: 2 December 2002
PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive): Aliens Act section 19 (4), 19 (5)-(7) et al. The amending act transposed Directive 2001/40 by insertion of new provisions into the Aliens Act on revocation of residence permits, cf. Aliens Act section 19 (4), and enforcement of expulsion decisions made by administrative authorities of other Schengen or EU countries, cf. Aliens Act Part IVa. As a consequence of the insertion of the new provisions in chapter 4a, section 33 on time-limit for departure from Denmark was amended; cf. the amending act section 7 and 8.
Also, the amending act implemented Council Regulation (EC) no. 1091/2001 of 28 May on freedom of movement with a long stay visa.
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:
LEGAL NATURE (indicate a cross in the correct box):
[ ] LEGISLATIVE:
[ ] REGULATION:
[ ] CIRCULAR or INSTRUCTIONS:
| TITLE | Act on amendment of the Aliens Act, Act on temporary residence permit for certain persons from the former Yugoslavia etc. and the Criminal Code.  
| DATE | 31 May 2000  
| NUMBER | 425  
| DATE OF ENTRY INTO FORCE | 3 June 2000 as regards the provisions in the Aliens Act and the Criminal Code.  
| PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive) | Aliens Act section 11 (1) et al.  
| REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL | Lovtidende A, 2 June 2000  
| LEGAL NATURE (indicate a cross in the right box) | [x] LEGISLATIVE  
| | REGULATION  
| | CIRCULAR OR INSTRUCTIONS  

| TITLE | Act on amendment of the Aliens Act and other acts.  
| DATE | 31 May 2000  
| NUMBER | 424  
| DATE OF ENTRY INTO FORCE | 3 June 2000, as regards applications handed in after that date.  
| PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive) | Aliens Act section 9 (10),  
| | (11), (13), section 14 and section 19 (5) and (6) and section 46 (1) and (2) et al.  
| REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL | Lovtidende A, 2 June 2000  
| LEGAL NATURE (indicate a cross in the right box) | [x] LEGISLATIVE  
| | REGULATION  
| | CIRCULAR OR INSTRUCTIONS  

| TITLE | Act on amendment of the Aliens Act and the Criminal Code.  
| DATE | 1 July 1998  
| NUMBER | 473  
| DATE OF ENTRY INTO FORCE | 3 July 1998; However, Aliens Act section 9 (11) (and 19 (1) (iv)) entered into force on 1 January 1999.  
| PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive) | Aliens Act section 9 (1) (ii)  
| | lit. d,  
| | section 10, section 11 (2), (3), (4), (5), (6), (7) and (8), section 14,  
| | section 19 (1) (iv) and 19 (6),  
| | section 26, section 40 (1), section 46 (1) et al.  
| REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL | Lovtidende A, 2 July 1998  
| LEGAL NATURE (indicate a cross in the right box) | [x] LEGISLATIVE  
| | REGULATION  
| | CIRCULAR OR INSTRUCTIONS  

96 Nota bene: This section corresponds the present Aliens Act section 9 (7).  
97 Nota bene: This section was similar to the present Aliens Act section 9 (1) (i) and not the present section 9 (1) (ii).  
98 Nota bene: This provision corresponds the present Aliens Act section 19 (8).
<table>
<thead>
<tr>
<th>TITLE: Act on amendment of Aliens Act.</th>
<th>DATE: 10 June 1997</th>
</tr>
</thead>
<tbody>
<tr>
<td>NUMBER: 410</td>
<td></td>
</tr>
<tr>
<td>PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive): Section 19 (3) et al.</td>
<td></td>
</tr>
<tr>
<td>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: Lovtidende A, 11 June 1997</td>
<td></td>
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<tr>
<td>LEGAL NATURE (indicate a cross in the right box):</td>
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<td>x LEGISLATIVE</td>
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<tr>
<td>REGULATION</td>
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<tr>
<td>CIRCULAR OR INSTRUCTIONS</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>TITLE: Act on amendment of Aliens Act.</th>
<th>DATE: 10 June 1997</th>
</tr>
</thead>
<tbody>
<tr>
<td>NUMBER: 407</td>
<td></td>
</tr>
<tr>
<td>PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive): Section 40c et al.</td>
<td></td>
</tr>
<tr>
<td>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: Lovtidende A, 11 June 1997</td>
<td></td>
</tr>
<tr>
<td>LEGAL NATURE (indicate a cross in the right box):</td>
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<td>x LEGISLATIVE</td>
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<tr>
<td>REGULATION</td>
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<tr>
<td>CIRCULAR OR INSTRUCTIONS</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>TITLE: Act on Integration.</th>
<th>DATE: 31 July 2006</th>
</tr>
</thead>
<tbody>
<tr>
<td>NUMBER: 902</td>
<td></td>
</tr>
<tr>
<td>DATE OF ENTRY INTO FORCE: 1 January 1999 with some exceptions.</td>
<td></td>
</tr>
<tr>
<td>PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive):</td>
<td></td>
</tr>
<tr>
<td>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: Lovtidende A, 8 September 2006</td>
<td></td>
</tr>
<tr>
<td>LEGAL NATURE (indicate a cross in the right box):</td>
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<tr>
<td>x LEGISLATIVE</td>
<td></td>
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<tr>
<td>REGULATION</td>
<td></td>
</tr>
<tr>
<td>CIRCULAR OR INSTRUCTIONS</td>
<td></td>
</tr>
</tbody>
</table>
Q.1.B.

List the others norms of transposition by order of importance of their legal nature (first laws, secondly regulations; thirdly circulars or instructions):

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)
**TITLE**: Executive Order on fulfillment of the housing requirement in cases of family reunification and on the local council’s opinion on the sponsor’s housing conditions.

**DATE**: 20 July 2004  
**NUMBER**: 814  
**DATE OF ENTRY INTO FORCE**: 1 August 2004 as regards applications handed in after this date.

**PROVISIONS CONCERNED** (for example if the norm is not devoted only to the transposition of the concerned directive): Aliens Act section 9 (6), (12), (17) and section 9c (1), and section 9 (24).


**LEGAL NATURE** (indicate a cross in the right box):

- [ ] LEGISLATIVE  
- [ ] REGULATION  
- [X] CIRCULAR OR INSTRUCTIONS

---

**TITLE**: Practice Note on clarification of practice on unmarried cohabiting couples’ access to family reunification from the Ministry of Refugee, Immigration and Integration.

**DATE**: 9 May 2007  
**NUMBER**: 2007/4130-511  
**DATE OF ENTRY INTO FORCE**: 9 May 2007

**PROVISIONS CONCERNED** (for example if the norm is not devoted only to the transposition of the concerned directive): Aliens Act section 9 (1) (i) and cf. section 9c (1).


**LEGAL NATURE** (indicate a cross in the right box):

- [ ] LEGISLATIVE  
- [ ] REGULATION  
- [X] CIRCULAR OR INSTRUCTIONS
### Practice Note on change of practice for deportation of aliens who have brought a decision made by the Ministry of Refugee, Immigration and Integration Affairs on application for residence permit before the courts.

**TITLE:** Practice Note on change of practice for deportation of aliens who have brought a decision made by the Ministry of Refugee, Immigration and Integration Affairs on application for residence permit before the courts. From the Ministry of Refugee, Immigration and Integration.

**DATE:** 21 March 2007

**NUMBER:** 2007/4130-506

**DATE OF ENTRY INTO FORCE:** 21 March 2007

**PROVISIONS CONCERNED** (for example if the norm is not devoted only to the transposition of the concerned directive): Aliens Act section 9c (4) and 9 (18).


**LEGAL NATURE** (indicate a cross in the right box):

- [ ] LEGISLATIVE
- [ ] REGULATION
- [x] CIRCULAR OR INSTRUCTIONS

### Practice Note on the scope of ECHR Article 8 in cases of family reunification, where the applicant comes from a country where the general conditions deviates significantly from the Western standards.

**TITLE:** Practice Note on the scope of ECHR Article 8 in cases of family reunification, where the applicant comes from a country where the general conditions deviates significantly from the Western standards. From the Ministry of Refugee, Immigration and Integration.

**DATE:** 26 January 2007

**NUMBER:** 2007/4130-471

**DATE OF ENTRY INTO FORCE:** 26 January 2007

**PROVISIONS CONCERNED** (for example if the norm is not devoted only to the transposition of the concerned directive): Aliens Act section 9 (1), cf. section 9 (3) – (16) and section 9c (1).


**LEGAL NATURE** (indicate a cross in the right box):

- [ ] LEGISLATIVE
- [ ] REGULATION
- [x] CIRCULAR OR INSTRUCTIONS
<table>
<thead>
<tr>
<th>TITLE: Practice Note on decisions from The European Court of Human Rights regarding Article 8 of The European Convention on Human Rights and family reunification of spouses/cohabitating couples. From the Ministry of Refugee, Immigration and Integration.</th>
</tr>
</thead>
<tbody>
<tr>
<td>DATE: 1 May 2007</td>
</tr>
<tr>
<td>NUMBER: 2006/4129-12</td>
</tr>
<tr>
<td>DATE OF ENTRY INTO FORCE: 1 May 2007</td>
</tr>
<tr>
<td>PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive): Aliens Act section 9 (1) (i) and 9c (1).</td>
</tr>
<tr>
<td>LEGAL NATURE (indicate a cross in the right box):</td>
</tr>
<tr>
<td>[ ] LEGISLATIVE</td>
</tr>
<tr>
<td>[ ] REGULATION</td>
</tr>
<tr>
<td>[x] CIRCULAR OR INSTRUCTIONS</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>TITLE: Practice Note on the importance of the applicant’s togetherness with children in cases on residence permit – selected decisions from The European Court of Human Rights and UN’s Human Rights Committee. From the Ministry of Refugee, Immigration and Integration.</th>
</tr>
</thead>
<tbody>
<tr>
<td>DATE: 1 May 2007</td>
</tr>
<tr>
<td>NUMBER: 2006/4129-12</td>
</tr>
<tr>
<td>DATE OF ENTRY INTO FORCE: 1 May 2007</td>
</tr>
<tr>
<td>PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive): Aliens Act section 9 (1).</td>
</tr>
<tr>
<td>LEGAL NATURE (indicate a cross in the right box):</td>
</tr>
<tr>
<td>[ ] LEGISLATIVE</td>
</tr>
<tr>
<td>[ ] REGULATION</td>
</tr>
<tr>
<td>[x] CIRCULAR OR INSTRUCTIONS</td>
</tr>
</tbody>
</table>
TITLE: Practice Note on decisions from The European Court of Human Rights regarding Article 8 of The European Convention on Human Rights and extension/revocation of residence permits. From the Ministry of Refugee, Immigration and Integration.

DATE: 16 January 2007

NUMBER: 2006/4129-12

DATE OF ENTRY INTO FORCE: 16 January 2007

PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive): Aliens Act section 9 (1), 9c, 11 and 19.


LEGAL NATURE (indicate a cross in the right box):

- [ ] LEGISLATIVE
- [x] REGULATION
- [ ] CIRCULAR OR INSTRUCTIONS

TITLE: Practice Note on decisions from The European Court of Human Rights regarding Article 8 of The European Convention on Human Rights and family reunification with children. From the Ministry of Refugee, Immigration and Integration.

DATE: 16 January 2007

NUMBER: 2006/4129-12

DATE OF ENTRY INTO FORCE: 16 January 2007

PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive): Aliens Act section 9 (1) (ii).


LEGAL NATURE (indicate a cross in the right box):

- [ ] LEGISLATIVE
- [ ] REGULATION
- [x] CIRCULAR OR INSTRUCTIONS
<table>
<thead>
<tr>
<th>TITLE: Practice Note on anonymized decision under Aliens Act section 9 (1) (i) and Aliens Act section 9c (1). From the Ministry of Refugee, Immigration and Integration.</th>
</tr>
</thead>
<tbody>
<tr>
<td>DATE: 31 May 2006</td>
</tr>
<tr>
<td>NUMBER:</td>
</tr>
<tr>
<td>DATE OF ENTRY INTO FORCE: 31 May 2006</td>
</tr>
<tr>
<td>PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive): Aliens Act section 9 (1) (i) and Aliens Act section 9c (1).</td>
</tr>
<tr>
<td>LEGAL NATURE (indicate a cross in the right box):</td>
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<td>LEGISLATIVE</td>
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<td>REGULATION</td>
</tr>
<tr>
<td>✗ CIRCULAR OR INSTRUCTIONS</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>TITLE: Practice Note on the condition on cohabitation on common address in Aliens Act section 9 (1) (ii) from the Minister of Interior Affairs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>DATE: 5 October 1999</td>
</tr>
<tr>
<td>NUMBER:</td>
</tr>
<tr>
<td>DATE OF ENTRY INTO FORCE: 5 October 1999</td>
</tr>
<tr>
<td>PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive): The present Aliens Act section 9 (1) (i).</td>
</tr>
<tr>
<td>LEGAL NATURE (indicate a cross in the right box):</td>
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<tr>
<td>LEGISLATIVE</td>
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<tr>
<td>REGULATION</td>
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<tr>
<td>✗ CIRCULAR OR INSTRUCTIONS</td>
</tr>
</tbody>
</table>

99 Nota bene: Both the competence and the Aliens Act have been changed since this note was issued, but the requirement on cohabitation in common residence still remains in Aliens Act section 9 (1) (i). The Minister of Interior Affairs was administrating Aliens Act at the time of the issuance.
**TITLE:** Practice Note on decision on cases on family reunification of refugee’s spouse/partner. From the Minister of Refugee, Immigration and Integration Affairs.

**DATE:** 14 June 2005

**NUMBER:**

**DATE OF ENTRY INTO FORCE:** 14 June 2005

**PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive):** Aliens Act section 9 (1) (i).


**LEGAL NATURE** (indicate a cross in the right box):

- [ ] LEGISLATIVE
- [ ] REGULATION
- [x] CIRCULAR OR INSTRUCTIONS

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**TITLE:** Practice Note on submission of applications for family reunification in Denmark from the Minister of Refugees, Immigration and Integration Affairs.

**DATE:** 15 December 2004

**NUMBER:** 2004/4139-207

**DATE OF ENTRY INTO FORCE:** 15 December 2004

**PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive):** Aliens Act section 9 (18) and 9c (4).


**LEGAL NATURE** (indicate a cross in the right box):

- [ ] LEGISLATIVE
- [ ] REGULATION
- [x] CIRCULAR OR INSTRUCTIONS
| **TITLE:** Practice Note on the application of the age requirement of 24 years, cf. Aliens Act section 9 (1) (i), and the affiliation requirement, cf. section 9 (7), especially in cases where the sponsor has a special commercial attachment to Denmark from the Ministry of Refugee, Immigration and Integration Affairs. |
| **DATE:** 26 May 2003 |
| **NUMBER:** 2002/4109-2 |
| **DATE OF ENTRY INTO FORCE:** 26 May 2003 |
| **PROVISIONS CONCERNED** (for example if the norm is not devoted only to the transposition of the concerned directive): Aliens Act section 9 (1) (i) and section 9 (7). |

| **LEGAL NATURE** (indicate a cross in the right box): |
| ☒ LEGISLATIVE |
| ☐ CIRCULAR OR INSTRUCTIONS |

| **TITLE:** Practise Note on anonymized decisions under Aliens Act section 9 (13), cf. section 9 (1) (ii) from the Ministry of Refugee, Immigration and Integration Affairs. |
| **DATE:** 4 February 2006 |
| **NUMBER:** |
| **DATE OF ENTRY INTO FORCE:** 4 February 2006 |
| **PROVISIONS CONCERNED** (for example if the norm is not devoted only to the transposition of the concerned directive): Aliens Act section 9 (1) (ii) and 9 (13). |

<p>| <strong>LEGAL NATURE</strong> (indicate a cross in the right box): |
| ☒ CIRCULAR OR INSTRUCTIONS |</p>
<table>
<thead>
<tr>
<th>TITLE: Practise Note on the age requirement of 24 years and business qualifying educations from the Ministry of Refugee, Immigration and Integration Affairs.</th>
<th>DATE: 30 September 2005</th>
</tr>
</thead>
<tbody>
<tr>
<td>NUMBER: 2002/4109-2</td>
<td>DATE OF ENTRY INTO FORCE: 30 September 2005</td>
</tr>
<tr>
<td>PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive): Aliens Act section 9 (1) (i) and 9 (7).</td>
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<tr>
<td>CIRCULAR OR INSTRUCTIONS</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>TITLE: Practice Note on anonymized decision on family reunification for spouses/partners under Aliens Act section 9 (8), cf. section (1) (i) from the Ministry of Refugee, Immigration and Integration Affairs.</th>
<th>DATE: 11 April 2007</th>
</tr>
</thead>
<tbody>
<tr>
<td>NUMBER:</td>
<td>DATE OF ENTRY INTO FORCE: 11 April 2007</td>
</tr>
<tr>
<td>PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive): Aliens Act section 9 (8), cf. section 9 (1) (i).</td>
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<tr>
<td>CIRCULAR OR INSTRUCTIONS</td>
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</tr>
</tbody>
</table>
Q.2. THIS QUESTION IS IN PRINCIPLE ONLY FOR FEDERAL OR ASSIMILATED MEMBER STATES LIKE AUSTRIA, BELGIUM, GERMANY, ITALY, SPAIN

Q.2.A. Explain which level of government is competent to adopt the norms of transposition.

Q.2.B. In case, explain if the federal structure and the distribution of competences between the different levels pose any problem or difficulty regarding the transposition and/or the implementation of the directive.
Q.3. Explain which authorities are competent for the practical implementation of the norm of transposition by taking the decisions in individual cases.

The Directive has not been transposed due to the Danish reservation as regards legal measures under Title IV TEC. The explanation below is based on the national rules on family reunification.

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Decisions regarding application for residence permits on the basis of family reunification. The Danish Immigration Service makes the decisions pursuant to Aliens Act section 9 (1) and 9c (1), cf. Aliens Act section 46 (1).</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Refugee, Immigration and Integration Affairs.</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>The decisions pursuant to Aliens Act section 9 (1) and 9c (1) made by the Danish Immigration Service, cf. Aliens Act section 46 (1), can be appealed to the Minister of Refugee, Immigration and Integration Affairs, cf. Aliens Act section 46 (2). The Minister of Refugee, Immigration and Integration Affairs may make decisions on and lay down more detailed provisions for the processing by the Danish Immigration Service of cases, cf. Aliens Act section 46 (4).</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td>Review by the competent court; a final administrative decision on refusal of an application for a residence permit with a possibility of permanent residence under section 9 (1) (ii) (unmarried child under 15), as well as the final withdrawal or refusal of extension of such residence permit, such a decision can be submitted for special judicial review (i.e. full review) by the competent court, cf. Aliens Act section 52 (1) (i) and (ii). The Ministry of Foreign Affairs assists the police, the county government offices, the Danish Immigration Service, the Refugee Board and the Mister of Refugee, Immigration and Integration Affairs to procure more detailed information for the purpose of examination of cases or groups of cases, cf. Aliens Act section 46b.</td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
<td></td>
</tr>
<tr>
<td>COMPETENCE CONCERNED:</td>
<td><em>Renewal of residence permits, cf. Aliens Act section 11 (2) and section 9c and issuance of a permanent residence permit, cf. section 11 (3). The decisions are made by the Danish Immigration Service, cf. Aliens Act section 46 (1).</em>&lt;sup&gt;100&lt;/sup&gt;</td>
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<td>Refugee, Immigration and Integration Affairs.</td>
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| DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY: | The decisions of the Danish Immigration Service can be *appealed* to the Minister of Refugee, Immigration and Integration Affairs, cf. Aliens Act section 46 (2).  

The Minister of Refugee, Immigration and Integration Affairs may make decisions on and lay down more detailed provisions for the processing by the Danish Immigration Service of cases, cf. Aliens Act section 46 (4). |
| OTHER LEVEL OF ADMINISTRATION: | The Ministry of Foreign Affairs assists the police, the county government offices, the Danish Immigration Service, the Refugee Board and the Mister of Refugee, Immigration and Integration Affairs to procure more detailed information for the purpose of examination of cases or groups of cases, cf. Aliens Act section 46b. |
| IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister) | |

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<sup>100</sup> Aliens Act section 11 (2) regarding time-limited residence permits issued with a possibility of permanent residence, which will normally be the case in situations of residence permits pursuant to section 9 (1); cf. section 11 (1) and Aliens Order section 22. As regards time-limited residence permits for the purpose of a temporary stay, which will normally be the case in situations of residence permits pursuant to the discretionary provisions, such as Aliens Act section 9c, the decision on renewal is based on a renewed assessment according to the section under which the residence permit was originally issued. Hence, the procedure will be a repetition of the procedure for granting the alien residence permit.
<table>
<thead>
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<td>CENTRAL MINISTRY OF:</td>
<td>Minister of Refugee, Immigration and Integration Affairs.</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>The decisions of the Danish Immigration Service can be <em>appealed</em> to the Minister of Refugee, Immigration and Integration Affairs, cf. Aliens Act section 46 (2). The Minister of Refugee, Immigration and Integration Affairs may make decisions on and lay down more detailed provisions for the processing by the Danish Immigration Service of cases, cf. Aliens Act section 46 (4).</td>
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<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td>The Ministry of Foreign Affairs assists the police, the county government offices, the Danish Immigration Service, the Refugee Board and the Mister of Refugee, Immigration and Integration Affairs to procure more detailed information for the purpose of examination of cases or groups of cases, cf. Aliens Act section 46b.</td>
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<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
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</tbody>
</table>

NATIONAL REPORTS - DIRECTIVE ON FAMILY REUNIFICATION
<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Decisions on issuance, extension, lapse and revocation of residence permits under Aliens Act section 9 (1) (iii) are made by the county government office of the place where the adoptive parents live or reside. If the adoptive parents do not live or reside in Denmark, the country government office of the place where it is assumed, on the basis of the application submitted, that the adoptive parents will live or reside in Denmark shall make the decision in the case. If it cannot be determined where in Denmark the adoptive parents intend to live or reside, the Government Office of Copenhagen shall make the decision in the case. In special cases the Danish Immigration Service may authorise another county government to make the decision, cf. Aliens Order section 40 (1).</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Minister of Refugee, Immigration and Integration Affairs.</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>The decision of the county government office under Aliens Order section 40 (1) can be appealed to the Danish Immigration Service, cf. Aliens Order section 42 (2). The Danish Immigration Service may make decisions on and lay down more detailed provisions for the processing by the country government office’s processing of the cases, cf. Aliens Order section 43.</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td>The Ministry of Foreign Affairs assists the police, the county government offices, the Danish Immigration Service, the Refugee Board and the Mister of Refugee, Immigration and Integration Affairs to procure more detailed information for the purpose of examination of cases or groups of cases, cf. Aliens Act section 46b.</td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
<td></td>
</tr>
</tbody>
</table>

**Q.4. A.** Has the main regulation foreseen explicitly by the main norm of transposition already been adopted or not:

- □ YES
- □ NO

**Q.4. B.** If the main norm(s) of transposition foresees the adoption of one or several regulations, indicate if they have all been adopted:

- □ YES
- □ NO
If NO, please indicate the missing text(s) in the table below

<table>
<thead>
<tr>
<th>MISSING TEXTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Act adopted by the parliament by Act No. 379 of 25 April 2007 makes it a precondition for family reunification for spouses/partners under section 9 (1), that an ‘immigration test’ has been passed before the residence permit is issued, i.e. before admission, in Aliens Act section 9 (2). The Act authorizes the Minister of Refugee, Immigration and Integration Affairs to determine the date of entry into force of section 9 (2), et al. The Minister of Refugee, Immigration and Integration Affairs has not yet issued the Executive Order on entry into force.</td>
</tr>
</tbody>
</table>

Add if necessary some explanations (specify in particular if the missing texts are at least under preparation or foreseen in the very near future):

**SECOND PART**

The Directive has not been transposed due to the Danish reservation as regards legal measures under Title IV TEC.

The answers below are therefore based on a description of the Danish, national legislation according to the Aliens Act; Consolidation Act. No. 1044 of 6 August 2007 and the Aliens Order; Executive Order No. 63 of 22 January 2007.

**AIM (ARTICLE 1)**

The purpose of the Directive is to determine the conditions for the exercise of the right to family reunification. In case C-540/03, the Court of justice recognizes that, in some cases, member States do not have any margin of appreciation to grant the right to family reunification.

Q.5 – Is family reunification considered as a right in your Member State?

[X] OUI

[] NON

Please explain

The access to family reunification is not based on a legal claim but is discretionary. However, the administrative discretion has to be performed according to very detailed guidelines for the discretion.

The right to family reunification is not absolute, but limited by absolute basic conditions for family reunification in Aliens Act section 9 (1) (age requirement, the sponsor’s citizenship or resident status, cohabitation, 3 year waiting period etc.). In addition to this, several conditions are supplementing the basic conditions for family reunification in Aliens Act section 9 (2) - (17), and cf. section 9 (18) - (25), (requirement of self-support, housing, etc.) These supplementary conditions are not absolute, however, since most\(^1\) of the supplementary conditions may be dispensed with in exceptional circumstances,

\(^1\) The supplementary conditions in section 9 (2) on integration declaration, section 9 (3) on supporting requirement for partner and section 9 (9) on pro forma may not be dispensed with.
including regard for family unity; especially if rejection of family reunification would lead to a breach of international obligations.\(^{102}\)

The primary provisions on family reunification containing the basic and supplementary conditions are in Aliens Act section 9. Aliens Act section 9c (1) constitutes the subsidiary provisions, since section 9c may lead to family reunification in cases where the basic conditions in Aliens Act section 9 are not fulfilled, but exceptional circumstances, including regard for family unity, are present; especially if rejection of family reunification would lead to a breach of international obligations, yet under very restrictive criteria. Unless particular reasons make it inappropriate, the supplementary conditions in Aliens Act section 9 have to be fulfilled under Aliens Act section 9c (1).\(^{103}\)

The rules on family reunification (and the rules on expulsion and lapse and revocation of residence permits in Aliens Act Part IV and III, respectively) are constructed on the background of international obligations regarding respect for family life, and especially ECHR Article 8 and 12 has to be observed in the administration of the provisions.\(^{104}\)

**Q.5. A** – Are there any figures available relating to the exercise of the right to family reunification between 2002 and 2006? If yes, what are the trends, including nationality assessment?

From 2001 to the end of 2005 the number of applications of residence permits under the rules of family reunification has dropped from approximately 15,000 a year to approximately 6,000 a year. The number of residence permits within the same period has dropped from approximately 10,900 a year to approximately 3,500 a year.\(^{105}\)

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\(^{102}\) Cf. Draft Bill No. L 152 of 28 February 2002, Draft Bill No. L 6 of 8 October 2003, Draft Bill No. L 171 of 20 February 2004 and Draft Bill No. L 78 of 23 February 2005 and Note on the scope of ECHR Article 8 in cases of family reunification, where the applicant comes from a country where the general conditions deviates significantly from the Western standards, 2007. The obligation to administrate the provisions in accordance with ECHR already follows from the Act on ECHR, cf. Consolidation Act No. 750 of 19 October and amendment.

\(^{103}\) Ibid. Section 9c (1) was inserted in the Aliens Act by Act No. 365 of 6 June 2002.

\(^{104}\) The Minister of Refugee, Immigration and Integration Affairs issues memorandums on the practise from ECHR et al; cf. Note on decisions from The European Court of Human Rights regarding Article 8 of The European Convention on Human Rights and family reunification of spouses/cohabitating couples, 2007 and Note on the importance of the applicant’s togetherness with children in cases on residence permit – selected decisions from The European Court of Human Rights and UN’s Human Rights Committee, 2007 and Note on decisions from The European Court of Human Rights regarding Article 8 of The European Convention on Human Rights and family reunification with children.

DEFINITIONS (ARTICLE 2)

SCOPE (ARTICLE 3)

The scope of the Directive is defined by article 3. We recall that:
- § 1 "reasonable prospect..." aims at excluding persons residing on a temporary basis (stagiaires, etc...)
- European citizens are excluded (§ 3)
- Comparison with existing legislation is of importance so as to assess the added value of the harmonization process (§ 5)

Q.6. Period of validity of the sponsor’s residence permit:

Q.6. A. Is the period of validity of the sponsor’s residence permit of one year or more according to article 3 § 1 of the Directive?

☐ OUI
☐ NON

Q.2.B. Quote precisely the period enshrined in national law:

Spouse/partner seeking family reunification

According to Aliens Act section 9 (1) (i) the sponsor has to be a resident in Denmark and either

- a Danish national, cf. section 9 (1) (i) (a)
- a national of one of the other Nordic countries, cf. section 9 (1) (i) (b)
- issued with a residence permit under section 7 or 8 (asylum with Convention refugee status or with subsidiary protection), cf. section 9 (1) (i) (c)
- having held a permanent residence permit for Denmark for more than the last 3 years, cf. section 9 (1) (i) (d).

A permanent residence permit is normally issued after 7 years of lawful residence on the same basis, cf. section 11 (3) and 19 (1). In exceptional cases a permanent residence permit may be issued after 3 or 5 years of lawful residence, cf. section 11 (4), (5) and (6).

In exceptional circumstances, including respect for family unity, the 3 year period in section 9 (1) (i) (d) may be dispensed with by the issuance of a residence permit under Aliens Act section 9c (1).106

Child seeking family reunification

According to Aliens Act section 9 (1) (ii) the sponsor has to be a resident in Denmark and either

- a Danish national, cf. section 9 (1) (ii) (a) and 9 (1) (iii) (a)
- a national of one of the other Nordic countries, cf. section 9 (1) (ii) (b) and 9 (1) (ii) (b)
- issued with a residence permit under section 7 or 8 (asylum with Convention refugee status or with subsidiary protection), cf. section 9 (1) (ii) (c) and 9 (iii) (c)
- issued with a permanent residence permit or a residence permit with a possibility of permanent residence, cf. section 9 (1) (ii) (d) and (iii) (d).

In exceptional circumstances, including respect for family unity, the requirement on the sponsor being issued with a permanent residence permit or a residence permit with the possibility of permanent residence in Aliens Act section 9 (1) (11) (d) and (iii) (d), may be dispensed with by way of issuing a residence permit under Aliens Act section 9c (1).107

**Q.6.C.** How does your Member State translate in national law the requirement for the sponsor to have "reasonable prospects of obtaining the right of permanent residence" (a 3 § 1)?

When the sponsor is neither a Danish nor Nordic national nor having an asylum-based residence permit, the sponsor is considered to have reasonable prospects of obtaining the right of permanent residence if the sponsor has held a permanent residence permit for the last three years, cf. Aliens Act section 9 (1) (i). As a modification of this, family reunification for a child requires only that the sponsor is holding a permanent residence permit or a residence permit with the possibility of permanent residence, cf. Aliens Act section 9 (1) (ii).

In exceptional circumstances the 3 year period in Aliens Act section 9 (1) (i) (d) may be dispensed with under Aliens Act section 9c (1).108

In exceptional circumstances, including respect for family unity, the requirement on the sponsor being issued with a permanent residence permit or a residence permit with the possibility of permanent residence in Aliens Act section 9 (1) (ii) (d) and (iii) (d), may be dispensed with by way of issuing a residence permit under Aliens Act section 9c (1).109

**Q.7.** – Members of the family concerned:

**Q7. A.** Are they third country nationals as required by article 3 § 1 of the Directive ?

- [x] OUI
- [ ] NON

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If not, explain

Q.7.B. How has your Member State translated in national law the wording of "whatever status" included in article 3 § 1 of the Directive?

Not applicable.

Q.8 – Did the transposition of the Directive in your Member state breached provisions of international law more favourable to individuals (a 3 § 4)?

☐ OUI
☒ NON

Q.9 – If yes, are those provisions based on:

Q.9.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?

☐ OUI
☐ NON

Specify which provisions

Q.9.B - The European Social Charter of 18 October 1961 (a 3 § 4)?

☐ OUI
☐ NON

Specify which provisions

Q.9.C. The amended European Social Charter of 3 May 1987 (a 3 § 4)?

☐ OUI
☐ NON

Specify which provisions


☐ OUI
☐ NON

Specify which provisions
Q.10 – Does the transposition of the Directive affect national provisions more favourable to individuals (a 3 § 5)?

☐ OUI

☑ NON

If yes, please specify which provisions

**Beneficiaries (Article 4)**

- Article 4 of the Directive contains numerous "may clauses". It is therefore important to pay attention on the way Member States use them and on the legal modalities adopted thereof.

- Article 4 § 1 a) and b) enacts a right to family reunification for some members of the sponsor's family. The Member State does not have any margin of discretion regarding those persons.

- Article 4 § 1 last indent foresee one derogation regarding child over 12 years on the basis of an integration criterion. This is one of the most sensitive questions encompassed by the directive beside the issue of the limit of age in § 6.

- Regarding article 4 § 6, the Court states "It does not matter that the final sentence of the contested provision provides that the Member States which decide to apply the derogation are to authorise the entry and residence of children in respect of whom an application is submitted after they have reached 15 years of age ‘on grounds other than family reunification’. The term ‘family reunification’ must be interpreted in the context of the Directive as referring to family reunification in the cases where family reunification is required by the Directive. It cannot be interpreted as prohibiting a Member State which has applied the derogation from authorising the entry and residence of a child in order to enable the child to join his or her parents", (cons. 86) The Court adds " Article 4(6) of the Directive must, moreover, be read in the light of the principles set out in Article 5(5) thereof, which requires the Member States to have due regard to the best interests of minor children, and in Article 17, which requires them to take account of a number of factors, one of which is the person’s family relationships" (cons. 87)

Q.11 – Does your national law recognize the right to family reunification to:

Q.11. A – The sponsor's spouse (a. 4 § 1 a)?

☑ OUI

☐ NON
Q.11. B - Minor children of the sponsor and of his/her spouse (a. 4 § 1 b)?

☐ OUI
☐ NON

Q.11.C. Minor children adopted of the sponsor and of his/her spouse (a. 4 § 1 b)?

☐ OUI
☐ NON

Q.11.D. Minor children of the sponsor (a. 4 § 1 c)?

☐ OUI
☐ NON

Q.11. E. If yes, does your national law foresee that the sponsor shall have children custody and children are dependant on him or her?

☐ OUI
☐ NON

Specify if necessary the proofs required

Section 9 (1) (ii) foresees that either the parent or spouse has custody, that the child lives with the person having custody and that the child is unmarried and has not started its own family through regular cohabitation.

Q.11 F. Minor children adopted of the sponsor (a 4 §1.c) ?

☐ OUI
☐ NON

Q.11. G. If yes:

h. does your national law foresee that the sponsor shall have children custody and children are dependant on him or her?

☐ OUI
☐ NON

Specify if necessary the proofs required

Aliens Act section 9 (1) (iii) foresees that the child lives with a person permanently resident in Denmark and that the residence permit is issued for the purpose of residence with a person other than the person having custody,
provided the residence permit is issued for the purpose of adoption, residence as a result of a foster relationship or residence with the child’s closest family.

According to Aliens Order section 27 (1) a residence permit under Aliens Act section 9 (1) (iii) for a minor alien with the purpose of possibility of permanent residence with others than the person having custody is issued with the possibility of

- adoption, where the applicant for adoption is approved as an adopter, where the child is comprised by the approval and where the applicant for adoption has consented to accept the child, cf. section 27 (1) (i)
- residence with the child’s closest family when there is a special reason why the child cannot live with its parents or other close relatives in its country of origin, cf. section 27 (1) (ii)
- residence with others in case of very special circumstances and when the foster relationship is recommended by the local council on the basis of an examination corresponding to that carried out at adoption of foreign children, or relating to children above the age of 14 when the foster relationship must be deemed satisfactory on the basis of other information, cf. section 27 (1) (iii).

According to Aliens Order section 27 (3) a residence permit under Aliens Act section 9 (1) (iii) with the purpose of adoption when the residence is with the child’s closest family or a foster relationship, cf. Aliens Order section 27 (1) (ii) and (iii), cannot be issued until the Department of Family Affairs has issued an opinion as to whether completion of the adoption is to be expected.

**g.g.** Does national law provide that those children shall be 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?"

- **X** OUI
- [ ] NON

Specify if necessary the proofs required

The Act on Adoption.\(^{110}\)

**Q.11. H.** Minor children of the spouse (a 4 §1.d.)?

- **X** OUI
- [ ] NON

---

\(^{110}\) Cf. Consolidation Act No. 928 of 14 September 2004 and amendment.
Q.11. I. If yes, does your national law foresee that the spouse shall have children custody and children are dependant on him or her?

☐ OUI

☐ NON

Specify if necessary the proofs required

Section 9 (1) (ii) foresees that either the parent or spouse has custody, that the child lives with the person having custody and that the child is unmarried and has not started its own family through regular cohabitation.

Q.11. J. Minor children adopted of the spouse (a 4 §1.d )?

☐ OUI

☐ NON

Q.11. K. If yes,

k. Does your national law foresee that the spouse shall have children custody and children are dependant on him or her?

☐ OUI

☐ NON

Specify if necessary the proofs required

k.k. Does national law provide that those children shall be 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”?

☐ OUI

☐ NON

Specify if necessary the proofs required

The Act on Adoption.¹¹¹

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¹¹¹ Cf. Consolidation Act No. 928 of 14 September 2004 and amendment.
Q.12 – Has your Member State transposed the option opened by article 4 § 1 c:

Q.12A. To authorise reunification of minor children of the sponsor – including also adopted children – of whom custody is shared (a 4 §1.c)?

☐ OUI
☒ NON

Specify if necessary

Q.12.B. If yes, has your legislation transposed the condition that the other party sharing custody has given his or her agreement (a 4 §1. c)?

☐ OUI
☒ NON

Specify if necessary

Q.13 – Has your Member State transposed the option opened by article 4 § 1 d):

Q.13.A. to authorise reunification of minor children of the spouse – including also adopted children – of whom custody is shared (a 4.1.d. in fine)?

☐ OUI
☒ NON

Specify if necessary

Q.13 B. If yes, has your legislation transposed the condition that the other party sharing custody has given his or her agreement (a 4. 1.d) ?

☐ OUI
☒ NON

Specify if necessary

Q.14 – In any case referred to in questions 7 to 9, is the age of the minor children below the age of majority set up by the law of your Member State (a.4 §1, second indent)?

☒ OUI
☐ NON
If yes, indicate the age required

Aliens Act section 9 (1) (ii) states that the general age limit for children seeking family reunification is 15 years as regards a child of the sponsor or spouse.112
Section 9 (1) (iii) states that the age limit is minor (i.e. below 18) in adoption, foster relationship or residence with the child’s closest family.
Aliens Act section 9c (1) on exceptional reasons, including respect for family unity, may lead to family reunification of a child above the mentioned age limits, such as when rejection of family reunification would lead to a breach of international obligations. The travaux préparatoires of this provision includes explanatory notes as to which circumstances shall be considered exceptional.113

Q.15 – In any case referred to in questions 7 to 9, has the prohibition of marriage of minor children been transposed (a.4 §1, second indent)?

☐ OUI

Aliens Act section 9 (1) (ii) holds the basic requirements that the child is unmarried (and lives with the person having custody and the basic requirement that the child has not started its own family through regular cohabitation).114

☐ NON

If not, explain Si non, expliquez

Q.16 – Is the derogation set up in article 4 § 1 last indent relating to the conditions for integration of children over 12 years arrived independently from the rest of the family used by your Member State?

☐ OUI

☒ NON

How the criterion "arrives independently from the rest of his/her family" has been transposed in your national legislation?

Aliens Act section 9 (13) states that in cases where the applicant and one of the applicant’s parents live in their country of origin or another country, a residence permit under subsection (1) (ii) can only be issued if the applicant has or is able to obtain such ties with Denmark that there is a basis for successful integration in Denmark. This does not apply, however, if the application is submitted at the latest 2 years after the person living in Denmark satisfies the conditions of subsection (1) (ii), or if exceptional reasons make in inappropriate, including regard for family unity.115

112 By Act on Amendment of Aliens Act and the Act on Integration No. 427 of 9 June 2004 the age limit in section 9 (1) was lowered from 18 years to 15 years.
113 Draft Bill No. L 171 of 20 February 2004, general remarks 3.1 and specific remarks section 1, 1.
114 Adopted in its present form by Act No. 365 of 6 June 2002.
This condition is not limited to children at the age of 12 years.

**Q.17** – If yes, did this integration condition already exist in your national legislation before the date of transposition of the Directive?

- [x] OUI
- [] NON

**Q.18** – Describe briefly the content of this condition, the date of its creation and the conditions of its examination

Aliens Act section 9 (13) states that in cases where the applicant and one of the applicant’s parents live in their country of origin or another country, a residence permit under subsection (1) (ii) can only be issued if the applicant has or is able to obtain such ties with Denmark that there is a basis for successful integration in Denmark. This does not apply, however, if the application is submitted at the latest 2 years after the person living in Denmark satisfies the conditions of subsection (1) (ii), or if exceptional reasons make in inappropriate, including regard for family unity.\footnote{Draft Bill No. L 171 of 20 February 2004, general remarks 3.2 and specific remarks section 1, 9 and Practise Note on anonymized decisions under Aliens Act section 9 (13), cf. section 9 (1) (ii) from the Ministry of Refugee, Immigration and Integration Affairs of 4 February 2006.}

This condition is not limited to children at the age of 12 years. Aliens Act section 9 (13) was adopted by Act No. 427 of 9 June 2004.

**Q.19** – Are the children of refugees required to an integration test by your Member State (in contradiction with article 10 § 1)?

- [] OUI
- [x] NON

If yes, explain

**Q.20** – Does your Member State authorise:

**Q.20 A** – Reunification of first-degree relatives in the direct ascending line of the sponsor (a 4§2 a)?

- [] OUI
- [x] NON

The main rule in Aliens Act section 9 (1) does not provide for family reunification of such kind.\footnote{The legal claim on family reunification with parents above 60 was abolished by Act No. 365 of 6 June 2002.} However, Aliens Act section 9c (1) on exceptional circumstances, including respect for family unity, provides the legal basis for reunification in cases where a refusal would be a breach of

\footnote{The Directive is not transposed in Danish legislation, but the integration condition in Aliens Act section 9 (13) was adopted by Act No. 427 of 9 June 2004 (it is presupposed that the date of transposition is 3 October 2005).}
international obligations, yet under very restrictive criteria. The travaux préparatoires generally refers to situations where it would be humanitarian irresponsible because of serious illness or handicap to reject family reunification.119

Q.20 B – If yes, shall they be dependant and not enjoy proper family support in the country of origin?

☐ OUI

☒ NON

How each of those criterions is transposed and checked?

The travaux préparatoires generally refers to situations where it would be humanitarian irresponsible because of serious illness or handicap to reject family reunification.120

Q. 20.C. Reunification of first-degree relatives in the direct ascending line of the spouse (a 4§2 a)?

☐ OUI

☒ NON

The main rule in Aliens Act section 9 (1) does not provide for family reunification of such kind.121 However, Aliens Act section 9c (1) on exceptional circumstances, including respect for family unity, provides the legal basis for reunification in cases where a refusal would be a breach of international obligations, yet under very restrictive criteria. The travaux préparatoires generally refers to situations where it would be humanitarian irresponsible because of serious illness or handicap to reject family reunification.122

Q.20.D. If yes, shall they be dependant and not enjoy proper family support in the country of origin?

☐ OUI

☒ NON

How each of those criterions is transposed and checked?


121 The ‘legal claim’ on family reunification with parents above 60 was abolished by Act No. 365 of 6 June 2002.

The travaux préparatoires generally refers to situations where it would be humanitarian irresponsible because of serious illness or handicap to reject family reunification.123

**Q.20.E.** Reunification of adult unmarried children of the sponsor? (a 4§2 b) ?

- [ ] OUI
- [x] NON

The main rule in Aliens Act section 9 (1) does not provide for family reunification of children above 15 years.124 However, Aliens Act section 9c (1) on exceptional reasons, including respect for family unity, may lead to family reunification of a child above 15. The travaux préparatoires of this provision includes explanatory notes as to which circumstances shall be considered exceptional.125

If necessary, explain how this procedure is organised

**Q.20.F.** If yes, does the national legislation impose that those adult unmarried children of the sponsor are objectively unable to provide for their own needs on account of their state of health (a 4 §2 b) ?

- [x] OUI
- [ ] NON

On the application of Aliens Act section 9c (1) the travaux préparatoires mentions situations where a handicapped alien above 18 has been dependant on the family’s care and support and the family is issued with a residence permit for Denmark.126

If necessary, specify how each of those criterions ("objectively" and "unable to provide for their own needs") is transposed and checked?

**Q.20. G.** Does your Member State authorise reunification of adult unmarried children of the spouse (a 4§2 b)?

- [ ] OUI
- [x] NON

If necessary, specify how this condition is assessed

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124 By Act on Amendment of Aliens Act and the Act on Integration No. 427 of 9 June 2004 the age limit in section 9 (1) was lowered from 18 years to 15 years.


126 Draft Bill No. L 152 of 28 February 2002.
The main rule in Aliens Act section 9 (1) does not provide for family reunification of children above 15 years. However, Aliens Act section 9c (1) on exceptional reasons, including respect for family unity, may lead to family reunification of a child above 15. The travaux préparatoires of this provision includes explanatory notes as to which circumstances shall be considered exceptional.

Q.20.H. If yes, does the national legislation impose that those adult unmarried children of the sponsor are objectively unable to provide for their own needs on account of their state of health (a 4 §2 b) ?

☐ OUI
☐ NON

On the application of Aliens Act section 9c (1) the travaux préparatoires mentions situations where a handicapped alien above 18 has been dependant on the family’s care and support and the family is issued with a residence permit for Denmark.

If necessary, specify how each of those criterions ("objectively" and "unable to provide for their own needs") is transposed and checked?

Q.20. I. Did your Member state use the by law or regulation norms to implement article 4 § 2 a et b?

☐ OUI
☐ NON

Q.21 – Does your Member State authorise reunification of the unmarried partner of the sponsor, being a third country national (a 4 §3)?

☐ OUI
☐ NON

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127 By Act on Amendment of Aliens Act and the Act on Integration No. 427 of 9 June 2004 the age limit in section 9 (1) was lowered from 18 years to 15 years.


129 Draft Bill No. L 152 of 28 February 2002.

130 The Directive is not transposed in Danish legislation, hence Art. 4 (2) is not applicable. However, Aliens Act section 9c (1) on exceptional reasons, including respect for family unity may lead to family reunification in these situations, where a refusal would be a breach of international obligations, yet under very restrictive criteria.
Q.22 – If yes:

Q.22 A – This partnership shall be based on a duly attested stable long term relationship?

☐ OUI

☐ NON

If yes, specify how your Member State assess this situation

According to Aliens Act section 9 (1) (i) unmarried partnership with regular cohabitation of prolonged duration and registered partnership131 are considered to be comparable with marriage.

According to Aliens Act section 9 (1) (i) unmarried partners have a right to family reunification if they have been living in regular cohabitation of prolonged duration; in practice this means that the partners normally have to prove that they have been cohabiting for a total period of 1½-2 years, although this requirement may be modified if they can show good reasons why they have only been able to cohabit for a shorter period, and/or other proof of stable long-term relationship.132

In situations where the unmarried partners are not able to prove regular cohabitation of prolonged duration and therefore are not encompassed by Aliens Act section 9 (1) (i), the couple may be considered as having established a family life encompassed by ECHR Article 8, however. In these cases family reunification will be granted under Aliens Act section 9c (1) on exceptional reasons. The evaluation has to be performed on a case-by-case basis with due regard to the practice under ECHR Article 8, where all relevant elements are involved; such as common children, other terms of commitment and the duration of the relationship.133

Q.22 B – This partnership shall be registered?

☐ OUI

☐ NON

However, partners of the same gender may registrate their partnership according to the Act on Registration of Partnership section 1 and 2, if one of the partners reside in Denmark and holds Danish citizenship or both partners have resided in Denmark for 2 years134 and obtain the same legal status as married people, cf. section 3, with some exceptions, however, cf. section 4. Hence, in cases of registered partnership the requirement on regular cohabitation of prolonged duration does not apply.

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131 See below Q.22.B.
134 Consolidation Act No. 938 of 10 October 2005.
Q.23 – Does your national law consider the registered partner as the husband/spouse (a 4 §3 alinéa 2)?

☐ OUI
☐ NON

Q.24 – Does your Member State authorise:

**Q.24. A** – Reunification of minor children of the partner, including adopted children (a 4§3)?

☐ OUI
☐ NON

As a main rule, Aliens Act section 9 (1) (ii) does not authorise reunification of minor children of the sponsor’s unmarried partner, as the provision holds a condition on the partner being a spouse in cases of family reunification with a child who is not a child of the sponsor. However, this is modified by the fact that a registered partner is considered compatible with a married partner, cf. the Act on Registration of Partnership section 3.\(^\text{135}\) Also, the residence permit issued for the partner may provide the legal basis for the partner’s own eligibility for family reunification with the child, cf. Aliens Act section 9 (1) (ii) and (iii). Finally, Aliens Act section 9c (1) on exceptional reasons, including regard for family unity, may provide the legal basis for family reunification with a minor child of the partner.

**Q. 24. B** – Reunification of adult unmarried children of the partner, including adopted children (a 4§3)?

☐ OUI
☐ NON

The main rule in Aliens Act section 9 (1) does not provide for family reunification of children above 15 years.\(^\text{136}\) However, Aliens Act section 9c (1) on exceptional reasons, including respect for family unity, may lead to family reunification of a child above 15. The travaux préparatoires of this provision includes explanatory notes as to which circumstances shall be considered exceptional.\(^\text{137}\)

\(^\text{135}\) Consolidation Act No. 938 of 10 October 2005.

\(^\text{136}\) By Act on Amendment of Aliens Act and the Act on Integration No. 427 of 9 June 2004 the age limit in section 9 (1) was lowered from 18 years to 15 years.

Q.25 – Does your Member State allow reunification of adult unmarried children who are objectively unable to provide for their own needs on account of their state of health (a 4§3)?

☐ OUI

☒ NON

If yes, specify how the conditions, and more particularly the "objectivity", are assessed.

The main rule in Aliens Act section 9 (1) does not provide for family reunification of children above 15 years.\(^{138}\) However, Aliens Act section 9c (1) on exceptional reasons, including respect for family unity, may lead to family reunification of a child above 15. The travaux préparatoires of this provision includes explanatory notes as to which circumstances shall be considered exceptional.\(^{139}\)

On the application of Aliens Act section 9c (1) the travaux préparatoires mentions situations where a handicapped alien above 18 has been dependant on the family’s care and support and the family is issued with a residence permit for Denmark.\(^{140}\)

Q.26 – Did your Member state use the by law or regulation norms to implement article 4 § 3?  

By law. Aliens Act section 9c (1) on exceptional reasons, including respect for family unity, may lead to family reunification of a child above 15. The travaux préparatoires of this provision includes explanatory notes as to which circumstances shall be considered exceptional.\(^{141}\)

Q.27 – Is the prohibition of polygamous marriage enshrined in your national legislation (a. 4§4)?

☒ OUI

☐ NON

Q.28 – Does your Member State limit family reunification of minor children of a further spouse and the sponsor (article 4§4 dernier alinéa,)?

☐ OUI

☒ NON

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\(^{138}\) By Act on Amendment of Aliens Act and the Act on Integration No. 427 of 9 June 2004 the age limit in section 9 (1) was lowered from 18 years to 15 years.


\(^{140}\) Draft Bill No. L 152 of 28 February 2002.

Q.29 – Does your Member State use the option set up by article 4 § 5 requiring the sponsor and his/her spouse to be of a minimum age of 21 years old before reunification?

☐ OUI

☐ NON

Aliens Act section 9 (1) (i) requires that both the sponsor and spouse/partner are minimum 24 years.\textsuperscript{142}

This requirement may be dispensed with by way of issuing a residence permit under Aliens Act section 9 c (1) on exceptional reasons, including respect for family unity, where a refusal of family reunification would be unreasonable due to exceptional reasons or lead to a breach of Denmark’s international obligations, cf. ECHR Article 8, yet under restrictive criteria. The travaux préparatoires of this provision includes explanatory notes as to which circumstances shall be considered exceptional.\textsuperscript{143}

In the case published in a Note from the Minister of Refugee, Immigration and Integration Affairs of 31 May 2006 the applicant was issued with a residence permit under Aliens Act section 9c (1) (i). The Minister of Refugee, Immigration and Integration Affairs upheld the decision of the Danish Immigration Service with regard to rejection of residence permit under Aliens Act section 9 (1) (i), since the applicant was not 24 years, but 20 years. However, the Minister of Refugee, Immigration and Integration Affairs found that there were exceptional circumstances, including respect for family unity, in the case and that a rejection would be disproportional, cf. Aliens Act section 9c (1). The Minister of Refugee, Immigration and Integrations Affairs weighted the fact that the applicant had resided legally in Denmark for 6 years (residence permit as a consequence of family reunification with her mother, and later as a student, cf. section 9 (1) (ii) and 9c (1), respectively), had educated herself in Denmark, spoke Danish, that the family life with the spouse was established at a time where the applicant had a residence permit with the possibility of permanent residence (the couple cohabitated for three years from the applicant was 18 and then got married and had a child), that the couple had never cohabitated in the applicant’s home country, that the applicant’s spouse did not have any attachment to the applicant’s home country with regard to family relations, language or culture and that the applicant’s spouse was educating himself in Denmark.\textsuperscript{144}

\textsuperscript{142} Adopted by Act on amendment of Aliens Act No. 365 of 6 June 2002.

\textsuperscript{143} Draft Bill No. L 152 of 28 February 2002 and Jens Vedsted-Hansen in Udlandingeret pp. 128-134, third edition, Jurist- og Økonomiforbundets Forlag, 2006. Cf. also Practice note on the application of the age requirement of 24 years, cf. Aliens Act section 9 (1) (i), and the affiliation requirement, cf. section 9 (7), especially in cases where the sponsor has a special commercial attachment to Denmark from the Ministry of Refugee, Immigration and Integration Affairs of 26 May 2003 and Practice note on the age requirement of 24 years and business qualifying educations from the Ministry of Refugee, Immigration and Integration Affairs 30 September 2005.

\textsuperscript{144} Practise note on anonymized decision under Aliens Act section 9 (1) (i) and Aliens Act section 9c (1) from the Ministry of Refugee, Immigration and Integration of 31 May 2006.
Q.30 – If yes,

Q.30 A – What is the age required?

24 years.

Q.30 B – Is the derogation founded on integration criteria and/or prevention of forced marriage?

Yes, especially prevention of forced marriage and arranged marriage, also with the purpose of family reunification, cf. also section 9 (8) on the voluntariness requirement.145

Q.31 – Does your Member State use the derogation of article 4 § 6 by requesting that the applications concerning family reunification of minor children have to be submitted before the age of 15?

☐ OUI
☐ NON

Explain

Aliens Act section 9 (1) (ii) states that the general age limit for children seeking family is 15 years as regards a child of the sponsor or spouse.146 Section 9 (1) (iii) states that the age limit is minor (i.e. below 18) in adoption, foster relationship or residence with the child’s closest family. Aliens Act section 9c (1) on exceptional reasons, including respect for family unity, may lead to family reunification of a child above the mentioned age limits, such as when rejection of family reunification would lead to a breach of international obligations. The travaux préparatoires of this provision includes explanatory notes as to which circumstances shall be considered exceptional.147

Q.32 – If yes, was it provided by existing legislation on the date of implementation of the directive?

The Directive has not been transposed in Danish legislation. However, the 15 year requirement was adopted by Act No. 427 of 9 June 2004.

Q.33 – If the application is not introduced before the age of 15, do Member States authorise entry and residence on grounds other than family reunification?

☐ OUI
☐ NON


146 By Act on Amendment of Aliens Act and the Act on Integration No. 427 of 9 June 2004 the age limit in section 9 (1) was lowered from 18 years to 15 years.

147 Draft Bill No. L 171 of 20 February 2004, general remarks 3.1 and specific remarks section 1, 1.
Aliens Act section 9 (1) (ii) states that the general age limit for children seeking family is 15 years as regards a child of the sponsor or spouse. Section 9 (1) (iii) states that the age limit is minor (i.e. below 18) in adoption, foster relationship or residence with the child’s closest family. Aliens Act section 9c (1) on exceptional reasons, including respect for family unity, may lead to family reunification of a child above the mentioned age limits, such as when rejection of family reunification would lead to a breach of international obligations. The travaux préparatoires of this provision includes explanatory notes as to which circumstances shall be considered exceptional.\textsuperscript{148}

Which grounds and which conditions?

**PROCEDURE (ARTICLE 5)**

*We draw attention on the major importance given by the Court of justice regarding § 5 relating to the best interest of minor children.*

**Q.34** – Did your Member State institute a procedure regarding family reunification (a 5 §1)?

\[\text{X} \text{ OUI}\]

According to Aliens Act section 9 (18) and 9c (4) a residence permit pursuant to Aliens Act section 9 (1)\textsuperscript{149} and 9c (1)\textsuperscript{150} must be obtained before the entry into Denmark, cf. Aliens Order section 26 (2). After entry an application can only be submitted and examined where exceptional reasons, including regard for family unity, make it appropriate.\textsuperscript{151}

If the alien is lawfully residing in Denmark pursuant to section 1 to 3a, 4b or 5 (2) or 6 to 9f at the time of the application, an application for a residence permit pursuant to section 9 (1) (i) and (ii) can be submitted and examined unless particular reasons make it inappropriate, cf. Aliens Order section 26 (3). An application submitted in Denmark must be submitted before the expiry of a valid visa or not later than 1 month before the duty to hold a residence permit commences, cf. Aliens Order section 26 (8).

An application on residence permit pursuant to Aliens Act section 9 (1) (iii) must be submitted to the country government which is competent in the case. If the adopted child does not live or reside in Denmark, the application must be submitted to a Danish mission in the adopted child’s country of origin or the country in which the child lawfully resides. The mission shall forward the application to the Government Office of Copenhagen, which re-forwards the application to the county government that is competent in the case under Aliens Order section 40 (1), cf. Aliens Order section 40 (2).

\textsuperscript{148} Draft Bill No. L 171 of 20 February 2004, general remarks 3.1 and specific remarks section 1, 1.
\textsuperscript{149} The normal conditions and procedure for family reunification.
\textsuperscript{150} The procedure in cases of exceptional reasons, where family reunification cannot be issued under section 9 (1).
\textsuperscript{151} Adopted by Act No. 365 of 6 June 2002.
According to Aliens Act section 9g an application on family reunification pursuant to Aliens Act section 9 (1) can be rejected if the necessary documents or information are not attached to the application, cf. section 40 (1).\(^{152}\) Aliens Act section 40 (1) describes the alien’s obligation to provide such information as is required for deciding whether a permit pursuant to the AA can be issued, revoked or can lapse, etc. The alien – and other persons – may be summoned to appear personally.

If the applicant or the sponsor refuses the DNA examination under Aliens Act section 40c, the request for family reunification may be rejected. This will be evaluated on a case-by-case basis in which – among other factors – it will be emphasized whether the lack of participation is due to excusable circumstances.

\[\text{NON}\]

**Q.35** – If yes,

**Q.35. A** – Which authorities are in charge of this issue?

The Danish Immigration Service makes the decisions pursuant to Aliens Act section 9 (1) and 9c (1), cf. Aliens Act section 46 (1).

The decisions pursuant to Aliens Act section 9 (1) and 9c (1) made by the Danish Immigration Service, cf. Aliens Act section 46 (1), can be appealed to the Minister of Refugee, Immigration and Integration Affairs, cf. Aliens Act section 46 (2).

A final administrative decision on refusal of an application for a residence permit with a possibility of permanent residence under Aliens Act section 9 (1) (ii) (unmarried child under 15) can be submitted for a full review by the competent court, cf. Aliens Act section 52 (1) (i).

An application for a residence permit has to be submitted to the Danish mission in the applicant’s country or in the country where the applicant has resided permanently for the last 3 months or the Danish mission in another country if there is no Danish mission in the country where the applicant has resided permanently for the last 3 months or another Danish mission when an agreement has been made with the country in question, cf. Aliens Order section 26 (2).

If submission of the application for residence permit is permitted in Denmark under Aliens Act section 9 (18), the application has to be submitted to the Danish Immigration Service or the police, who will forward it to the Danish Immigration Service, cf. Aliens Order section 26 (7). According to Aliens Order section 26 (8) an application submitted in Denmark must be submitted before the expiry of a valid visa or not later than 1 month before the duty to hold a residence permit commences.


\(^{152}\) Section 9g was inserted by Act No. 89 of 30 January 2007 as a part of a more efficient model of self-service introduced in cases of family reunification. A similar provision was adopted with regard to applications on permanent residence permits, cf. section 11d.
are made by the county government office of the place where the adoptive parents live or reside. If the adoptive parents do not live or reside in Denmark, the county government office of the place where it is assumed, on the basis of the application submitted, that the adoptive parents will live or reside in Denmark shall make the decision in the case. If it cannot be determined where in Denmark the adoptive parents intend to live or reside, the Government Office of Copenhagen shall make the decision in the case. In special cases the Danish Immigration Service may authorise another county government to make the decision, cf. Aliens Order section 40 (1).

An application on residence permit pursuant to Aliens Act section 9 (1) (iii) must be submitted to the country government which is competent in the case. If the adopted child does not live or reside in Denmark, the application must be submitted to a Danish mission in the adopted child’s country of origin or the country in which the child lawfully resides. The mission shall forward the application to the Government Office of Copenhagen, which re-forwards the application to the county government that is competent in the case under Aliens Order section 40 (1), cf. Aliens Order section 40 (2).

The decision of the county government office under Aliens Order section 40 (1) can be appealed to the Danish Immigration Service, cf. Aliens Order section 42 (2).

Q.35. B – Are NGO's associated to this procedure?

☐ OUI

☒ NON

If yes, describe the procedure

Q.35. C – Is the application submitted by the sponsor or by family members?

The family member.

Q.35. D – Is this procedure exclusive from other possibilities to grant family reunification?

☒ OUI

☐ NON

If other procedural possibilities exist, please describe them

The procedure is different from the procedure regarding family members to EU citizens performing the right to free movement, since the Regional Government Administration offices normally issues registration certificates under the EU Order.153

153 Cf. Executive Order No. 358 on Residence in Denmark for aliens comprised by the rules of the European Union (the EU Residence Order), Ministry of Refugee, Immigration and Integration Affairs, 21 April 2006. Applications for family reunification by third country spouses/partners of Danish citizens under the Singh principles are handled by the Danish Immigration Service under Aliens Act section 9c, since the EU Order only applies to family members of non-Danish citizens.
Q. 35. E – Was this procedure existing before the adoption of Directive 2003/86?

☐ OUI

☐ NON

Q.36 – Which documentary evidence are required to prove (a 5 §2)?

Q.36. A – Family relationships according to article 4?

Documents proving the marriage or registered partnership or cohabitation (where the sponsor and partner are not married/registered partners), birth certificate, maternity/paternity of child and, if relevant, custody document, approved adoption. Original documents must be presented as well as an authorised translation in Danish or English.

As regards cohabitation, a declaration of cohabitation of prolonged duration and actual cohabitation has to be presented if the sponsor and partner are not married or registered partners, cf. Aliens Act section 9 (1) (i).

Also, a declaration of actual cohabitation of the applicant’s spouse/partner has to be presented, if the applicant is in Denmark, including a statement of the purpose of the marriage or registered partnership not being to obtain a basis for residence permit, cf. Aliens Act section 9 (1) (i).

A DNA examination can be carried out if the family tie cannot otherwise be deemed sufficiently evidenced, cf. Aliens Act section 40c.

Q.36. B – Accommodation conditions laid down in article 7?

A statement from the local council on the sponsor not having received any assistance under the Act on an Active Social Policy or the Act on Integration for 1 year before the decision on the residence permit is made, cf. Aliens Act section 9 (5), 9 (12) and 9 (17).155

A statement from the partner on accepting responsibility of supporting the applicant, where the sponsor and partner are not married or registered partners and the sponsor is not studying.156

A statement from the sponsor on accepting responsibility of supporting the applicant in cases of the sponsor not having custody;157 in family adoption

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154 The forms and information on the documentation are available on the webpage of the Danish Immigration Service and Minister of Refugee, Immigration and Integration: www.nyidanmark.dk.

155 By Act No. 89 of 30 January 2007 the former scheme on supporting requirement, including the requirement of a certain income, was replaced by a requirement of self-support, where its essential whether the family receives financial assistance under the Act on an Active Social Policy or the Act on Integration. The act introduced a scheme combined by self-service (by presenting all the relevant information and documentation with the application and by seperating the processing of simple and complicated cases) and a reporting duty for the municipalities to the Danish Immigration Service if the family receives financial assistance, cf. Aliens Act section 9 (23).

156 The obligation to support one’s spouse or registered partner follows from the marriage or registered partnership, cf. Consolidation Act No. 1009 of 24 October 2005 on Active Social Policy and amendments section 2, which is why the declaration is only required from unmarried or unregistered partners.
approved in advance, foster relationship or residence with the child’s closest family, cf. Aliens Act section 9 (17) and Aliens Order section 27 (2).

Copy of deed or final contract of sale; copy of rental agreement; copy of proof for being a member of co-operative society or shareholder; documentation for living at a dormitory etc., documentation for living with the parents and information on the dwelling, cf. Aliens Act section 9 (6).

Q.36. C – Sickness insurance conditions?

No

Q.36. D – Certified copies of family member(s)’ travel documents?

Valid passport, or other travel document, ID, cf. Aliens Act section 39 and Aliens Order section 24 (2).\textsuperscript{158} According to the latter provision the Danish Immigration Service may in special cases deviate from the requirement of valid passport or other travel document in Aliens Act section 39 (1).

Other documents

- Integration declarations signed by both the applying spouse/partner and sponsor, cf. Aliens Act section 9 (2).

- Declaration of not being sentenced for the specified offences in the Criminal Code within a period of 10 years, cf. Aliens Act section 9 (10) and 9 (16).

- Passport like photos of applicants.

Q.37 – Is the possibility foreseen to proceed to:

Interviews:

\[
\begin{array}{l}
\checkmark \text{ OUI} \\
\text{ NON}
\end{array}
\]

Investigations:

\[
\begin{array}{l}
\checkmark \text{ OUI} \\
\text{ NON}
\end{array}
\]

If yes, describe them briefly

For the examination of an application for a residence permit under section 9 or 9c (1), the immigration authorities may require the applicant and the person

\textsuperscript{157} The obligation to support one’s child follows from the custody, cf. Consolidation Act No. 1009 of 24 October 2005 on Active Social Policy and amendments section 2.

\textsuperscript{158} The provision on the alien’s duty to hold passport or other document that can be approved as a travel document under the rules in Aliens Order upon on entry, during his stay in Denmark and on departure from Denmark.
with whom the applicant states that he has the family tie on which the residence permit is to be based, to assist in a DNA examination with a view to determining the family tie, if such tie cannot otherwise be deemed sufficiently evidenced, cf. Aliens Act section 40c.

Aliens Act section 40 (1) describes the alien’s obligation to provide such information as is required for deciding whether a permit pursuant to the AA can be issued, revoked or can lapse, etc. The alien – and other persons – may be summoned to appear personally.

The Danish Immigration Service may ask the police to undertake a control of the couple’s life together to determine whether the cohabitation is actual. This may also occur after the issuance of a residence permit to ensure that the requirement on actual cohabitation is fulfilled.159

Q.38 – When examining an application concerning the unmarried partner of the sponsor, which evidences are taken into account by Member States on the basis of national law to prove family relationship (article 5§2 dernier alinea)?

Q.38. A – Existence of family ties and other elements such as a common child?

☐ OUI
☐ NON

Specify

In situations where the unmarried partners are not able to prove regular cohabitation of prolonged duration and therefore are not encompassed by Aliens Act section 9 (1) (i), the couple may be considered as having established a family life encompassed by ECHR Article 8, however. In these cases family reunification will be granted under Aliens Act section 9c (1) on exceptional reasons. The evaluation has to be performed on a case-by-case basis with due regard to the practice under ECHR Article 8, where all relevant elements are involved; such as common children, other terms of commitment and the duration of the relationship.160

Q.38. B - Previous cohabitation?

☐ OUI
☐ NON

According to Aliens Act section 9 (1) (i) unmarried partnership with regular cohabitation of prolonged duration and registered partnership are considered to be comparable with marriage.


According to Aliens Act section 9 (1) (i) **unmarried partners** have a right to family reunification if they have been living in **regular cohabitation of prolonged duration**; in practice this means that the partners normally have to prove that they have been cohabiting for a total period of 1½-2 years, although this requirement may be modified if they can show good reasons why they have only been able to cohabit for a shorter period, and/or other proof of stable long-term relationship.161

**Q.38. C - Registration of a partnership**

☐ OUI  
☐ NON

According to Aliens Act section 9 (1) (i) **unmarried partnership with regular cohabitation of prolonged duration and registered partnership are considered to be comparable with marriage**. Hence, unmarried partners do not have to have registered their partnership in order to prove a family relationship.

**Q.38. D - Any other reliable means of proof foreseen in national law?**

☒ OUI  
☐ NON

If yes, specify which ones:

In situations where the **unmarried partners are not able to prove regular cohabitation of prolonged duration** and therefore are not encompassed by Aliens Act section 9 (1) (i), the couple may be considered as having established a family life encompassed by ECHR Article 8, however. In these cases family reunification will be granted under Aliens Act section 9c (1) on exceptional reasons. The evaluation has to be performed on a case-by-case basis with due regard to the practice under ECHR Article 8, where **all relevant elements** are involved; such as common children, other terms of commitment and the duration of the relationship.162

**Q.39 – Are family members obliged to reside outside the territory of the Member State while the application is being examined (a5 §3)?**

☒ OUI

According to Aliens Act section 9 (18) and 9c (4) a residence permit pursuant to Aliens Act section 9 (1) and 9c (1) **must be obtained before the entry into Denmark**, cf. Aliens Order section 26 (2). After entry an application can only be submitted and examined where exceptional reasons, including respect for family unity, make it appropriate.

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If the alien is lawfully residing in Denmark pursuant to section 1 to 3a, 4b or 5 (2) or 6 to 9f at the time of the application, an application for a residence permit pursuant to subsection (1) (i) and (ii) can be submitted and examined unless particular reasons make it inappropriate, cf. Aliens Order section 26 (3).

An application on residence permit pursuant to Aliens Act section 9 (1) (iii) must be submitted to the country government which is competent in the case. If the adopted child does not live or reside in Denmark, the application must be submitted to a Danish mission in the adopted child’s country of origin or the country in which the child lawfully resides. The mission shall forward the application to the Government Office of Copenhagen, which re-forwards the application to the county government which is competent in the case under Aliens Order section 40 (1), cf. Aliens Order section 40 (2).

☐ NON

Is this obligation sanctioned and how?

The obligation is not sanctioned separately in Aliens Act. However, the application will be rejected, unless exceptional reasons, including respect for family unity, make it appropriate, and the general rules on illegal entry, illegal stay, deportation etc. apply.

In situations where the alien has brought the decision made by The Ministry of Refugee, Immigration and Integration Affairs on rejection of allowing submission of the application in Denmark on residence permit under Aliens Act section 9 (1) (i)-(iii) and section 9c (1) before the courts, the trial will have suspensory effect with regard to deportation on the alien’s request, where the court of the first instance finds for the alien and the Ministry of Refugee, Immigration and Integration Affairs lodges an appeal, cf. Aliens Act section 30 and 33.

Q.40 – If the answer is yes, is a derogation organised according to article 5 § 3 second indent?

☐ OUI

☐ NON

Please specify

According to Aliens Act section 9 (18) and 9c (4) a residence permit pursuant to Aliens Act section 9 (1) and 9c (1) must be obtained before the entry into Denmark, cf. Aliens Order section 26 (2). After entry an application can only be submitted and examined where exceptional reasons, including respect for family unity, make it appropriate. In the Practice note on submission of applications for family reunification in Denmark from the Minister of Refugee, Immigration and Integration Affairs, the Minister states that the main criteria in allowing submission of the application in Denmark, is whether the exit from

163 Cf. Note on change of practice for deportation of aliens who have brought a decision made by the Ministry of Refugee, Immigration and Integration Affairs on application for residence permit before the courts, 2007.

164 Note of 15 December 2004.
Denmark with the purpose of entering into the applicant’s homeland in order to submit an application for family reunification, would cause significant disadvantage to the applicant and his spouse/partner and possible children. The note lays down examples of situations where existence of significant disadvantage would be considered.\(^{165}\)

If the alien is lawfully residing in Denmark pursuant to section 1 to 3a, 4b or 5 (2) or 6 to 9f at the time of the application, an application for a residence permit pursuant to subsection (1) (i) and (ii) can be submitted and examined unless particular reasons make it inappropriate, cf. Aliens Order section 26 (3).

**Q.41** – Does your national legislation include a maximum period of 9 month to answer to the application by way of written notification (a5 §4)?

- [ ] OUI
- [X] NON

If necessary, please specify

There are no provisions in the Aliens Act regulating the maximum period. By Act No. 89 of 30 January 2007 amending Aliens Act a model of self-service was introduced in cases of family reunification. According to the travaux préparatoires, the new model has as its purpose to make the processing of cases on family reunification more efficient and faster. It is stated that in cases where the Danish Immigration Service is provided with all the necessary information and documentation, the cases can normally be processed within 2 months.\(^{166}\)

According to the service level target for the Danish Immigration Service in 2007, simple cases with the required information should be processed within three months. Complicated cases should be processed within seven months and applications handed in before 1 February 2007 should be processed at the latest 30 November 2007; for simple cases 31 July 2007.\(^{167}\)

**Q.42** – This time limit can be extended (a 5 §4 alinea 2) ?

- [ ] OUI
- [X] NON

There are no provisions in the Aliens Act regulating the maximum period.

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\(^{165}\) The change of practice was due to two reasons according to the Note; conformity with Denmark’s international obligations and to avoid cases where an exit seemed obviously unreasonable, especially in cases where the applicant was very likely to be issued with a residence permit.

\(^{166}\) Cf. Draft Bill No. L 17 of 4 October 2006, general remarks 2 and specific remarks section 1, 11.

Q.43 – If yes,

Q.43. A – Because of the complexity of the examination of the application?

☐ OUI

☐ NON

If yes, please specify

Q.43. B – What is the length of the extension?

Q.44 – If no decision is taken by the end of the 9 months period provided, what are the consequences for the applicant?

There are no provisions in the Aliens Act regulating the maximum period. Hence, there are no consequences for the applicant when no decision is issued in terms of legal or administrative challenge. However, the Danish Ombudsman can hear complaints and examine cases on his own initiative and inspect any public authority within his competence.\textsuperscript{168} The Ombudsman can respond to errors and neglect with criticism, recommendations and submission of his opinion.\textsuperscript{169} On 24 October 2005 the Ombudsman inspected the Danish Immigration Service. According to the report, the service level target for the Danish Immigration Service to review cases of family reunification was 190 days in 2006. However, the average time for reviewing the cases was 206 days. On this background, the Ombudsman requested for the Danish Immigration Service’s comments, information on the level target for the maximum review time and further information on the average review time for the 20\% of the cases with the longest review time.\textsuperscript{170}

Q.45 – Is the decision rejecting the application notified? Does this written notification contain the reasons of rejection?

☐ OUI

☐ NON

Specify if only one condition is not required

Q.46 – How is the best interest of minor children taken into account by your Member State’s legislation and authorities during examination of the application (article 5§5)?

According to Aliens Act section 9 (15) a residence permit under Aliens Act section 9 (1) (ii) cannot be issued if that would be manifestly contrary to the applicant's best interests, cf. section 9 (25).\textsuperscript{171}

\textsuperscript{168} Cf. The Act on The Ombudsman Part VI, cf. Section 7, Consolidation Act No. 473 of 12 June 1996 and amendments.

\textsuperscript{169} Cf. The Act on The Ombudsman section 22.

\textsuperscript{170} The report is available on: http://www.ombudsmanden.dk/inspektioner/alle_inspektioner/Udlaendingservice/, accessed on 15 August 2007.

\textsuperscript{171} Cf. Practise note on the importance of the applicant’s togetherness with children in cases of residence permits – selected decisions from The European Court of Human Rights and UN’s Human Rights Committee from the Ministry of Refugee, Immigration and Integration Affairs of 1 May 2007 and Practise note on decisions from The European Court of Human Rights regarding Art. 8 of The European Convention of Human Rights and
According to Aliens Act section 9 (25) the local council issues an opinion to the Danish Immigration Service at the request of the Danish Immigration Service as to whether it would be manifestly contrary to the child’s interests to issue a residence permit.

The travaux préparatoires of this provision includes explanatory notes as to which circumstances shall be a part of the decision on the child’s best interests and assumes that the provisions should be administrated in accordance with UN’s Convention on the Rights of the Child, 1989, Article 3.\(^{172}\)

According to Aliens Act section 9 (14) an applicant previously issued with a residence permit under Aliens Act section 9 (1) (ii) which has lapsed under Aliens Act section 17,\(^{173}\) can only be issued with a residence certificate under Aliens Act section 9 (1) (ii) if regard for the applicant’s best interest makes it appropriate. The travaux préparatoires of this provision includes explanatory notes as to which circumstances shall be a part of the decision on the child’s best interests. The provision was adopted with the purpose of counteracting ‘re-education journeys’.\(^{174}\)

According to section 9 (16) a residence permit under section 9 (1) (ii) cannot be issued, unless exceptional reasons, including respect for family unity, make it appropriate, if, within a period of 10 years prior to the date of the decision, a sentence of imprisonment or suspended imprisonment or other criminal sanction involving or allowing deprivation of liberty in respect of an offence that would have resulted in a punishment of such nature for violation of specified provisions in the Criminal Code committed against minors has been imposed by final judgment on the sponsor or his spouse/partner. The travaux préparatoires of this provision includes explanatory notes as to which circumstances shall be a part of the decision on exceptional reasons.\(^{175}\)

According to Aliens Act section 9 (11) a residence permit under subsection (1) (i) cannot be issued if the application for such permit is submitted simultaneously with an application from the applicant’s child for a residence permit under subsection (1) (ii), which is refused under subsection (16). This does not apply if the applicant’s child can be required to take up residence with close family in its country of origin and regard for the interests of the child does not make it inappropriate, including regard for family unity.

In terms of dispensing with the age limit of 15 years for submitting an application for family reunification under Aliens Act section 9 (1) (ii) this is possible if exceptional reasons, including regard for family unity, make it appropriate, since a residence permit may be issued to a child over 15 years according to Aliens Act section 9c (1). The travaux préparatoires have laid down various circumstances to be

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\(^{172}\) Section 9 (15) – and 9 (13), (14) and (16) – was inserted by Act No. 427 of 9 June 2004. The Explanatory notes to the Draft Bill No. L 171 of 20 February 2004 is specifically refering to UN’s Convention on the Rights of the Child, 1989, Article 3.

\(^{173}\) Lapse of residence permit due to the alien giving up residence in Denmark or staying outside Denmark.


\(^{175}\) Ibid. The provision was adopted by Act No 427 of 9 June 2004 and amended by Act No. 301 of 19 April 2006.
considered exceptional in this respect, reflecting considerations of the best interests of the child.\textsuperscript{176}

According to Aliens Order section 21 (1), a child under the age of 18 residing permanently with the person having custody of it is exempt from proof of a \textit{residence permit} during its residence in Denmark when the child has been issued with a residence permit under section 7, 8, 9 (1) (ii) or 9b to 9e, or when the child was born in Denmark and the person having custody of it is a lawful resident of Denmark pursuant to a residence permit under sections 7 to 9e. The first sentence applies correspondingly when the child has been issued with a residence permit under section 9 (1) (iii). According to Aliens Order section 21 (2) a proof of residence permit may be issued to a child as referred to in subsection (1) if the child in question needs documentation.

\textbf{CONDITIONS REQUIRED (ARTICLES 6 AND OTHERS)}

- Questions relating to accommodation and resources will be carefully examined to assess if Member States use them, either as a migration tool or as an integration tool.

- The same assessment applies regarding the option to set up a period of lawfully residence not exceeding two years before applying for family reunification.

- According to article 8, the Court of justice states: "That provision does not therefore have the effect of precluding any family reunification, but preserves a limited margin of appreciation for the Member States by permitting them to make sure that family reunification will take place in favourable conditions, after the sponsor has been residing in the host State for a period sufficiently long for it to be assumed that the family members will settle down well and display a certain level of integration. Accordingly, the fact that a Member State takes those factors into account and the power to defer family reunification for two or, as the case may be, three years do not run counter to the right to respect for family rights set out in particular in Article 8 of the ECHR as interpreted by the European Court of Human Rights.

- "It should, however, be remembered that, as is apparent from Article 17 of the Directive, duration of residence in the Member State is only one of the factors which must be taken into account by the Member State when considering an application and that a waiting period cannot be imposed without taking into account, in specific cases, all the relevant factors" (cons. 99). "The same is true of the criterion of the Member State’s reception capacity, which may be one of the factors taken into account when considering an application, but cannot be interpreted as authorising any quota system or a three-year waiting period imposed without regard to the particular circumstances of specific cases. Analysis of all the factors, as prescribed in Article 17 of the Directive, does not allow just this one factor to be taken into account and requires genuine examination of reception capacity at the time of the application" (cons. 100) "When carrying out that analysis, the Member States must, as is pointed out in paragraph 63 of the present judgment, also have due regard to the best interests of minor children" (cons. 101).

\textbf{Q.47} – Can public policy, public security or public health grounds be taken into account to (a 6 §§1 et 2):
Q.47. A – Reject an application for family reunification?

☐ OUI

☐ NON

If yes, which ones?

According to Aliens Act section 10 (1) an alien cannot be issued with a residence permit if the alien:

- must be deemed a danger to national security, cf. section 10 (1) (i)
- must be deemed a serious threat to the public order, safety or health, cf. section 10 (1) (ii) or
- is deemed to fall within Article 1F of the Convention relating to the status of Refugees, cf. section 10 (1) (iii).

According to Aliens Act section 10 (2) in cases other than those just mentioned, an alien cannot, unless particular reasons, including respect for family unity, make it appropriate, be issued with a residence permit if:

- the alien has been convicted abroad of an offence that could lead to expulsion under Aliens Act section 22, 23 or 24 in Denmark, cf. section 10 (2) (i)
- there are serious reasons for assuming that the alien has committed an offence abroad which could lead to expulsion under Aliens Act section 22, 23 or 24, cf. section 10 (2) (ii)
- circumstances otherwise exist that could lead to expulsion under the rules of Aliens Act Part IV, cf. section 10 (2) (iii)
- the alien is not a national of a Schengen country or a Member State of the European Union, and an alert has been entered into SIS, cf. section 10 (2) (iv) or
- because of communicable diseases or serious mental disorder the alien must be deemed potentially to represent a threat or cause substantial inconvenience to his surroundings, cf. section 10 (2) (v).

According to Aliens Act section 10 (4) an alien cannot be issued with a residence permit unless exceptional reasons, including respect for family unity, make it appropriate, but at the earliest 2 years after departure, if the alien is prohibited from entering Denmark, cf. section 32 (1).

Q.47. B – Withdraw an application for family reunification?

☐ OUI

☐ NON

If necessary, please specify

According to Aliens Act section 19 (2) a time-limited or permanent residence permit may be revoked if:

- information has been provided on circumstances, that, under the rules of Aliens Act section 10 (1), would exclude the alien from a residence permit, cf. section 19 (2) (ii), or
information has been provided on circumstances, that, under the rules of Aliens Act section 10 (2) (i) and (ii), would exclude the alien from a residence permit, cf. section 19 (2) (iii).

According to Aliens Act section 19 (3) a time-limited or permanent residence permit may be revoked if an alert has been entered into SIS in respect of an alien who is not a national of a Schengen country or a Member State of the European Union, because of circumstances, which, in Denmark, could lead to expulsion under Aliens Act Part IV, cf. Article 25 of the Schengen Convention.

According to Aliens Act section 19 (4) a time-limited or permanent residence permit may be revoked if an administrative authority of another Schengen country or a Member State of the European Union has made a final decision on the return of an alien who is not a national of a Schengen country or a Member State of the European Union, because of circumstances, which, in Denmark, could lead to expulsion under sections 22 to 24, 25, 25a (1) or (2) (iii) or 25c.

Q.47. C – Refuse to renew a family member's residence permit?

☐ OUI
☐ NON

If necessary, please specify

Aliens Act section 11 (2) regarding time-limited residence permits issued with a possibility of permanent residence, which will normally be the case in situations of residence permits pursuant to section 9 (1); cf. section 11 (1) and Aliens Order section 22. Section 11 (2) on renewal and section 11 (3) on the issuance of a permanent residence permit, refers to the grounds in section 19.

As regards time-limited residence permits for the purpose of a temporary stay, which will normally be the case in situations of residence permits pursuant to the discretionary provisions, such as Aliens Act section 9c, the decision on renewal is based on a renewed assessment according to the section under which the residence permit was originally issued. Hence, the procedure will be a repetition of the procedure for granting the alien residence permit and section 10 becomes relevant.177

Q.48 – Does national legislation take into account:

Q.48. A – The severity or type of offence against public policy or public security?

☐ OUI
☐ NON

Q.48. B – The solidity of family relationships regarding article 17 of the Directive?

Regarding revocation/withdrawal of residence permit, Aliens Act section 26 (1), cf. ECHR Article 8, applies correspondingly to decisions on revocation, cf. section 19 (7).

Regarding rejection of issuance of residence permit, see section 10 (2) and (4), according to which exceptional reasons, including regard for family unity may lead to the issuance of a residence permit.

Regarding renewal, see section 11 (2), cf. section 19 (7) and cf. section 26 (1), which applies correspondingly to decisions on renewal of residence permits issued with a possibility of permanent residence. Section 26 (1) does not apply to residence permits for the purpose of a temporary stay, since the decision on renewal is not based on section 11 (2), but based on a renewed assessment according to the section under which the residence permit was originally issued.178

Q.49 – Does your Member State withdraw the residence permit or remove the third country national on the sole ground of illness or disability suffered after the issue of the residence permit (a 6 §3)?

☐ OUI

☒ NON

Q.50 – Are accommodation conditions required from the applicant (a7 §1a) ?

☒ OUI

☐ NON

Q.51 – If yes:

Q.51. A – What are those conditions?

According to Aliens Act section 9 (6) it must be a condition for a residence permit for a spouse/partner under Aliens Act section 9 (1) (i) that the sponsor proves that he disposes of his own dwelling of a reasonable size, unless particular reasons, including respect for family unity, make it inappropriate, cf. Aliens Act section 9 (24).

According to Aliens Act section 9 (12) it may be a condition for a residence permit for a child under Aliens Act section 9 (1) (ii) if essential considerations were to be made for his or her welfare.

make it appropriate, that the sponsor proves that he disposes of his own dwelling of a reasonable size, cf. Aliens Act section 9 (24).

According to Aliens Act section 9 (17) it is a condition for a residence permit under Aliens Act section 9 (1) (iii) issued for the purpose of residence with the child’s closest family, that the sponsor proves that he disposes of his own dwelling of a reasonable size, cf. Aliens Act section 9 (24).

According to Aliens Act section 9 (24) the local council issues an opinion as to the housing situation of the sponsor at the request of the Danish Immigration Service, including the number of habitable rooms and occupants of his dwelling.

Q.51. B – How are they assessed?

Aliens Act section 9 (24) authorises the Minister of Refugee, Immigration and Integration Affairs to lay down more detailed rules on when it can be considered proved that the sponsor disposes of his own dwelling of a reasonable size and on the local council’s opinion. These rules are laid down in Executive Order No. 814 of 20 July 2004 on Fulfillment of The Housing Requirement in Cases of Family Reunification and on The Local Council’s Opinion on The Sponsor’s Housing Conditions.

Section 4, 6 and 7 of the Executive Order contains the rules on the housing conditions; the time wise disposal, the legal disposal and the size, respectively. According to section 4 the sponsor as a main rule has to have legal disposal of his own dwelling of a reasonable size for at least 3 years upon the application for family reunification.

According to section 6 (1) the sponsor is considered to dispose of his own dwelling, when the sponsor disposes of the usufruct for a house or part of a house as an owner, as a member of a co-operative society or shareholder, rental occupant or similar. It is not a condition that the dwelling has its own kitchen and bathroom.

According to section 6 (2) the condition in section 6 (1) is not met in situations of sublease or lending agreement.

According to section 6 (3) the fact that the sponsor disposes of the dwelling together with others, including the applicant, does not hinder considering the sponsor to dispose of his own dwelling.

According to section 7 (1) the dwelling is considered to be of a reasonable size when upon the completion of the family reunification a maximum of 2 people will be living per room or the area of the dwelling upon the completion of the family reunification will be at least 20 square metre per person residing in the house. It is a condition that no other legislation hinder that the dwelling is occupied by the number of people occupying the dwelling after the completion of the family reunification, cf. section 7 (4).

According to section 7 (2) and (3) the information from the Building and Housing Register (‘Bygnings- og Boligregistret’, BBR) forms the basis of the assessment of the amount of rooms and the area of the dwelling. Kitchen, bathroom and similar rooms are not included in the assessment of the number of rooms.

If the sponsor disposes of part of a house the information appearing from the sponsor’s documentation on disposal will also form the basis of the assessment, cf. section 7 (5).
According to section 8 it will not hinder issuance of a residence permit for the applicant that the sponsor does not dispose of the dwelling, cf. section 6, if the sponsor lives in a dwelling of a reasonable size, cf. section 7, and lives with and takes care of his spouse, partner, parent, parents, child, children or one or more close relatives who, due to serious illness, handicap or other particular reasons are not able to take care of themselves.

**Q.51 C** – Are they comparable to the conditions required to a normal family living in the same region?

[X] OUI  
☐ NON

If not, please specify the differences

**Q.52** – Is a sickness insurance required from the applicant (a. 7 §1b) ?

☐ OUI  
[X] NON

**Q.53** – Are stable resources required (a7 §1c) ?

[X] OUI  
☐ NON

Specify their nature and content

In cases of family reunification it is essential that the family is self-supporting and not a burden to the public.¹⁷⁹

According to Aliens Act section 9 (3) it is a condition for a residence permit for a partner under section 9 (1) (i) that the sponsor undertakes to maintain the applicant.¹⁸⁰ If exceptional reasons make it appropriate it may be made a condition for a residence permit under subsection (1) (i) to (iii) that the sponsor proves his ability to maintain the family member.

According to Aliens Act section 9 (5) it is a condition for a residence permit for a spouse/partner under Aliens Act section 9 (1) (i) that the sponsor has not received any assistance under the Act on an Active Social Policy or the Act on Integration for 1 year before the decision on the residence permit is made and that the applicant and the sponsor do not receive any assistance under the Act

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¹⁷⁹ By Act No. 89 of 30 January 2007 the former scheme on supporting requirement, including the requirement of a certain income, was replaced by a requirement of self-support, where its essential whether the family receives financial assistance under the Act on an Active Social Policy or the Act on Integration. The act introduced a scheme combined by self-service (by presenting all the relevant information and documentation with the application and by separating the processing of simple and complicated cases) and a reporting duty for the municipalities to the Danish Immigration Service if the family receives financial assistance, cf. section 9 (23), cf. Draft Bill No. L 17 of 4 October 2006.

¹⁸⁰ The obligation to support one’s spouse or registered partner follows from the marriage or registered partnership, cf. Consolidation Act No. 1009 of 24 October 2005 on Active Social Policy and amendments section 2, which is why the declaration is only required from unmarried or unregistered partners.
on an Active Social Policy or the Act on Integration up to the point where the applicant is issued with a time-unlimited residence permit, unless exceptional reasons, including respect for family unity, make it inappropriate. This does not, however, comprise assistance in the form of isolated benefits of a minor amount not directly related to support, or benefits that are comparable with a wage or salary or pension or replace such payment.

According to Aliens Act section 9 (12) it may be a condition for a residence permit for a child under Aliens Act section 9 (1) (ii) if essential considerations make it appropriate that the sponsor does not receive any assistance under the Act on an Active Social Policy or the Act on Integration until the applicant is issued with a time-unlimited residence permit. This does not, however, comprise assistance in the form of isolated benefits of a minor amount not directly related to support, or benefits that are comparable with a wage or salary or pension or replace such payment.

If exceptional reasons make it appropriate it may be made a condition for a residence permit under subsection (1) (i) to (iii) that the sponsor proves his ability to maintain the family member, cf. Aliens Act section 9 (3).\(^{181}\)

According to Aliens Act section 9 (17) it is a condition for a residence permit under Aliens Act section 9 (1) (iii) issued for the purpose of foster relationship or residence with the child’s closest family\(^{182}\) that the sponsor undertakes to maintain the applicant and does not receive any assistance under the Act on an Active Social Policy or the Act on Integration until the issuance of a time-unlimited residence permit. This does not, however, comprise assistance in the form of isolated benefits of a minor amount not directly related to support, or benefits that are comparable with a wage or salary or pension or replace such payment.

If exceptional reasons make it appropriate it may be made a condition for a residence permit under subsection (1) (i) to (iii) that the sponsor proves his ability to maintain the family member, cf. Aliens Act section 9 (3).

According to Aliens Act section 9 (21) the local council may issue an opinion to the Danish Immigration Service about circumstances concerning the sponsor and applicant which the local council deems to be of importance to the decision in the case under Aliens Act section 9 (1).

According to Aliens Act section 9 (22) the local council issues a statement on the extent to which the sponsor has received any assistance under the Act on an Active Social Policy or the Act on Integration at the request of the Danish Immigration Service.

According to Aliens Act section 9 (23) the local council notifies the Danish Immigration Service if the sponsor or applicant receives any assistance under the Act on an Active Social Policy or the Act on Integration in cases where the residence permit was conditioned by the sponsor or applicant not receiving any assistance under the Act on an Active Social Policy or the Act on Integration.

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\(^{181}\) The obligation to support one’s child follows from the custody, cf. Consolidation Act No. 1009 of 24 October 2005 on Active Social Policy and amendments section 2.

\(^{182}\) Adoption is not mentioned, since the supporting requirement has already been examined as part of the adoption procedure.
Q.54 – How is the condition "sufficient" assessed by your Member State? Is it in comparison with national wages?

In cases of family reunification it is essential that the family is self-supporting and not a burden to the public.\(^{183}\)

According to Aliens Act section 9 (3) it is a condition for a residence permit for a partner under section 9 (1) (i) that the sponsor undertakes to maintain the applicant.\(^{184}\) If exceptional reasons make it appropriate it may be made a condition for a residence permit under subsection (1) (i) to (iii) that the sponsor proves his ability to maintain the family member.

According to Aliens Act section 9 (5) it is a condition for a residence permit for a spouse/partner under Aliens Act section 9 (1) (i) that the sponsor has not received any assistance under the Act on an Active Social Policy or the Act on Integration for 1 year before the decision on the residence permit is made and that the applicant and the sponsor do not receive any assistance under the Act on an Active Social Policy or the Act on Integration up to the point where the applicant is issued with a time-unlimited residence permit, unless exceptional reasons, including respect for family unity, make it inappropriate. This does not, however, comprise assistance in the form of isolated benefits of a minor amount not directly related to support, or benefits that are comparable with a wage or salary or pension or replace such payment.

According to Aliens Act section 9 (12) it may be a condition for a residence permit for a child under Aliens Act section 9 (1) (ii) if essential considerations make it appropriate that the sponsor does not receive any assistance under the Act on an Active Social Policy or the Act on Integration until the applicant is issued with a time-unlimited residence permit. This does not, however, comprise assistance in the form of isolated benefits of a minor amount not directly related to support, or benefits that are comparable with a wage or salary or pension or replace such payment.

If exceptional reasons make it appropriate it may be made a condition for a residence permit under subsection (1) (i) to (iii) that the sponsor proves his ability to maintain the family member, cf. Aliens Act section 9 (3).\(^{185}\)

According to Aliens Act section 9 (17) it is a condition for a residence permit under Aliens Act section 9 (1) (iii) issued for the purpose of foster relationship or residence with the child’s closest family,\(^{186}\) that the sponsor undertakes to maintain the applicant and does not receive any assistance under the Act on an Active Social Policy or the Act on Integration until the issuance of a time-

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\(^{183}\) By Act No. 89 of 30 January 2007 the former scheme on supporting requirement, including the requirement of a certain income, was replaced by a requirement of self-support, where its essential whether the family receives financial assistance under the Act on an Active Social Policy or the Act on Integration. The act introduced a scheme combined by self-service (by presenting all the relevant information and documentation with the application and by separating the processing of simple and complicated cases) and a reporting duty for the municipalities to the Danish Immigration Service if the family receives financial assistance, cf. section 9 (23), cf. Draft Bill No. L 17 of 4 October 2006.

\(^{184}\) The obligation to support one’s spouse or registered partner follows from the marriage or registered partnership, cf. Consolidation Act No. 1009 of 24 October 2005 on Active Social Policy and amendments section 2, which is why the declaration is only required from unmarried or unregistered partners.

\(^{185}\) The obligation to support one’s child follows from the custody, cf. Consolidation Act No. 1009 of 24 October 2005 on Active Social Policy and amendments section 2.

\(^{186}\) Adoption is not mentioned, since the supporting requirement has already been examined as part of the adoption procedure.
unlimited residence permit. This does not, however, comprise assistance in the form of isolated benefits of a minor amount not directly related to support, or benefits that are comparable with a wage or salary or pension or replace such payment.

If exceptional reasons make it appropriate it may be made a condition for a residence permit under subsection (1) (i) to (iii) that the sponsor proves his ability to maintain the family member, cf. Aliens Act section 9 (3).
Q.55 – Are integration criterions required to allow family reunification (a 7 §2)?

☐ OUI
☐ NON

Q.56 – If yes:

Q.56. A – What are those criterions?

According to Aliens Act section 9 (2) it must be made a condition for family reunification under Aliens Act section 9 (1) (i) (partner/spouse) that the applicant and the person living in Denmark sign a declaration stating that they will involve themselves actively in the Danish course and integration into Danish society of the applicant and any accompanying foreign children.

According to Aliens Act section 9 (13) a residence permit under Aliens Act section 9 (1) (ii) (minor unmarried child) in cases where the applicant and one of the applicant’s parents live in their country of origin or another country, as a main rule can only be issued if the applicant has or is able to obtain such ties with Denmark that there is basis for a successful integration in Denmark.

Third country nationals will normally be required to participate in a financed introduction programme under the Act on Integration of Aliens upon taking up residence in Denmark. The introduction programme encompasses Danish course and guidance, trainee placement at a company and/or employment with wage subsidy. In addition to economical sanctions for the refusal of participation or absence from introduction measures, the right to permanent residence permit will normally be conditioned upon the applicant’s successful participation in the introduction programme, cf. Aliens Act section 11 (9).

The Act adopted by the parliament by Act No. 379 of 25 April 2007 makes it a precondition for family reunification for spouses/partners under section 9 (1), that an ‘immigration test’ has been passed before the residence permit is issued, i.e. before admission, in Aliens Act section 9 (2). The immigration test is a supplement to participation in the introduction programme. The Act authorizes the Minister of Refugee, Immigration and Integration Affairs to determine the date of entry into force of section 9 (2), et al. The Minister of Refugee, Immigration and Integration Affairs has not yet issued the Executive Order on entry into force.

Q.56. B – Do they apply indistinctly to all potential beneficiaries of reunification? (Spouse, dependant people, etc.)

Yes, however, only aliens above 18 are offered an introduction programme, cf. section 16 (1).

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187 Consolidation Act No. 902 of 31 July 2006 and amendments.
189 The Act on Integration of Aliens does not apply to citizens from other Nordic countries and EU citizens and members of their families cf. section 2 (3).
Q.56. C – How are they evaluated by your Member State?

According to Aliens Act section 9 (2) it must be made a condition for family reunification under Aliens Act section 9 (1) (i) (partner/spouse) that the applicant and the person living in Denmark sign a declaration stating that they will involve themselves actively in the Danish course and integration into Danish society of the applicant and any accompanying foreign children.

According to Aliens Act section 9 (13) a residence permit under Aliens Act section 9 (1) (ii) (minor unmarried child) in cases where the applicant and one of the applicant’s parents live in their country of origin or another country, as a main rule can only be issued if the applicant has or is able to obtain such ties with Denmark that there is basis for a successful integration in Denmark. This does not apply, however, if the application is submitted at the latest 2 years after the person living in Denmark satisfies the conditions of subsection (1) (ii), or if exceptional reasons make in inappropriate, including regard for family unity.

Third country nationals will normally be required to participate in a financed introduction programme under the Act on Integration of Aliens upon taking up residence in Denmark. The introduction programme encompasses Danish course and guidance, trainee placement at a company and/or employment with wage subsidy. In addition to economical sanctions for the refusal of participation or absence from introduction measures, the right to permanent residence permit will normally be conditioned upon the applicant’s successful participation in the introduction programme and signing of an integration contract and declaration on integration and an active citizenship, cf. Aliens Act section 11 (9) and 11c.

The Act adopted by the parliament by Act No. 379 of 25 April 2007 makes it a precondition for family reunification for spouses/partners under section 9 (1), that an ‘immigration test’ has been passed before the residence permit is issued, i.e. before admission, in Aliens Act section 9 (2). The immigration test is a supplement to participation in the introduction programme.

The Act authorizes the Minister of Refugee, Immigration and Integration Affairs to determine the date of entry into force of section 9 (2), et al. The Minister of Refugee, Immigration and Integration Affairs has not yet issued the Executive Order on entry into force.

Q.56. D – Are refugees and their family members required to fulfil them (a 7 §2, second indent)?

☐ OUI

However, most of the supplementary requirements for family reunification according to Aliens Act section 9 (2) - (11) (for spouses/partners) may be dispensed with for refugees in accordance with the travaux préparatoires.

☐ NON

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190 Consolidation Act No. 902 of 31 July 2006 and amendments.
Q.57 – Is a minimal period of lawful reside is required before reunification (a 8 §1)?

☐ OUI

☐ NON

Q. 58 – Does this period exceed two years?

Yes

Please specify

The waiting period will normally be 10 years for third country nationals, when the sponsor is neither a Danish nor Nordic national nor having an asylum-based residence permit, cf. Aliens Act section 9 (1) (i), as the sponsor is required to having held a permanent residence permit for Denmark for more than the last 3 years, cf. section 9 (1) (i) (d). As a modification of this, family reunification for a child requires only that the sponsor is holding a permanent residence permit or a residence permit with the possibility of permanent residence, cf. Aliens Act section 9 (1) (ii) (d) and (iii) (d).

A permanent residence permit is normally issued after 7 years of lawful residence on the same basis, cf. section 11 (3) and 19 (1). In exceptional cases a permanent residence permit may be issued after 3 or 5 years of lawful residence, cf. Aliens Act section 11 (4), (5) and (6).

In exceptional circumstances the 3 year period in Aliens Act section 9 (1) (i) (d) may be dispensed with under Aliens Act section 9c (1).192

In exceptional circumstances, including respect for family unity, the requirement on the sponsor being issued with a permanent residence permit or a residence permit with the possibility of permanent residence in Aliens Act section 9 (1) (ii) (d) and (iii) (d), may be dispensed with by way of issuing a residence permit under Aliens Act section 9c (1).193

Q.59 – Does your Member State apply the derogation set up by article 8 § 2 allowing Member States to impose a waiting period of maximum three years due to reception capacities between the submission of the application and the issuance of a residence permit?

☐ OUI

☒ NON

Please specify

The Directive is not transposed in Danish legislation, hence Art. 8 (2) is not applicable.

Q.60 – If yes, did this derogation exist in national law before the 22nd of September 2003?

☐ OUI

☐ NON

FAMILY REUNIFICATION OF REFUGEES

The legal regime applicable to refugees derogates from the one applicable to family reunification. The scope of those derogations (minimal lawful residence, members of the family, accommodation requirements) shall be assessed on the basis of national law.

Q.61 – Does your Member State allow family reunification of refugees on the basis of Directive 2003/86 (a 9 §1) ?

☐ OUI

☒ NON

Refugees are allowed family reunification on the basis of the provisions in Aliens Act on family reunification and on the basis of a practise on ‘consequence status’, under which it is presumed that the applicant - as a result of the relation to the sponsor - has the same need for protection. Most of the supplementary requirements for family reunification according to section 9 (2) - (11) (for spouses/partners) can be dispensed with for refugees in accordance with the travaux préparatoires. There is similar treatment under the Aliens Act rules on family reunification of all sponsors with an asylum-based residence permit, regardless whether they have Convention refugee status or have been granted subsidiary protection, cf. Aliens Act section 7-8.

Q.62 – Is this right limited to family relationships predating the entry on the territory (a 9 §2)?

☐ OUI

☒ NON

Since the 2002 amendments of the Aliens Act such dispensation was generally limited to family relationships predating the entry of the refugee, but further amendments adopted in 2005 extended the privileges (i.e., the dispensation criteria) so as to include family relationships established subsequent to the entry under certain, rather narrow conditions. In cases where the sponsor cannot return to his home country, family reunification will in general be granted, without the common conditions are fulfilled, if a rejection would lead to a breach of Denmark’s international obligations.

In the decision on whether the couple has a right to family reunification, five criteria taken together in the assessment are relevant:

194 In cases of ‘consequence-status’, the family members will be issued with residence permits under Aliens Act section 7 (1) or (2), depending on the sponsor’s residence permit.
- cohabitation on a common address in Denmark
- cohabitation on a common address in the home country or in a third country before the sponsor’s entry into Denmark
- contact between the partners/spouses before the sponsor’s flight from the home country, when the cohabitation has been hindered by the circumstances which led to the sponsor’s flight from the home country
- children, and whether they have residence permit in Denmark
- the applicant’s legal stay in Denmark on the basis of visa or residence permit

Notably, the refugee’s actual risk of persecution has to be tested at the time of processing the application for family reunification.\(^\text{195}\)

**Q.63** – Does your Member State allow family reunification of family Members not quoted in article 4 of the Directive (a 10 §2) ?

- [ ] OUI
- [x] NON

Not explicitly, but cf. Aliens Act section 9c on exceptional reasons and 9b on essential humanitarian reasons, possibly.

Which members of the family and under which conditions?

**Q.64** – According to the specific case of unaccompanied minor refugees, does your Member State authorise family reunification of first degree relatives in the direct ascending line without applying the conditions laid down in article 4 § 2 (a10 §3 a) ?

- [ ] OUI
- [x] NON

There is no legal claim under a specific provision to a residence permit for such persons. Family reunification with unaccompanied minors may be permitted on a discretionary basis according to Aliens Act section 9 c (1), but that is likely to be decided under very restrictive criteria.

What conditions are required?

\(^\text{195}\) Cf. Explanatory notes for Draft Bill No. L 152 of 28 February 2002 and Act No. 324 of 18 May 2005, by the latter (and Act No. 301 of 19 April 2006) the dispensention criteria ‘regard for family unity’ was inserted, cf. the Explanatory notes to the Draft Bill No. L 78 of 23 February 2005, specific remarks section 1, 3 and 11 and general remarks 10. See also Note on decision on cases on family reunification of refugee’s spouse/partner of 14 June 2005.
Q. 65 – Does your Member State authorise entry and residence of the legal guardian or any member of the family where the unaccompanied minor refugee has no relatives in the direct ascending line or such relatives cannot be traced (a10 §3 b) ?

☐ OUI

X NON

There is no legal claim under a specific provision to a residence permit for such persons. Family reunification with unaccompanied minors may be permitted on a discretionary basis according to Aliens Act section 9 c (1), but that is likely to be decided under very restrictive criteria.

If yes, please specify who the member of the family targeted is and which proofs are required to prove family ties?

Q.66 – Does your Member State take into account other evidence of family relationship where the refugee cannot provide official evidence (a 11 §2) ?

X OUI

☐ NON

Which ones?

Aliens Act section 40 (1) obliges applicants to provide such information as is required for deciding whether a residence permit can be issued. According to the travaux préparatoires of this provision, however, the obligation to provide official documents has to be implemented in a manner taking account of the particular circumstances prevailing in the applicant’s country of origin. Hence, while there is no specific rule governing that situation, a refugee lacking official documentary evidence of the family relationship will in practice have his/her application for family reunification assessed under evidentiary rules largely in accordance with Article 11 of the Directive.

For the examination of an application for a residence permit under section 9 or 9c (1), the immigration authorities may require the applicant and the person with whom the applicant states that he has the family tie on which the residence permit is to be based, to assist in a DNA examination with a view to determining the family tie, if such tie cannot otherwise be deemed sufficiently evidenced, cf. Aliens Act section 40c.

Q.67 – Does the examination of the refugee application take into account their specific situation:
Q.67. A – Are proofs regarding accommodation conditions, sickness insurance or resources required (a 12 §1)?

☑ OUI
☒ NON

As regards the additional requirements for family reunification with spouses/partners under section 9 (2) - (11), including income and housing, refugees will normally fall within the dispensation criteria, thus in practice being exempted in accordance with the travaux préparatoires.\textsuperscript{196}

If yes, are those requirements comparable to those imposed to other third country nationals?

Q.67. B – If one of the person concerned (sponsor or family member) has special links with a third country within which reunification is possible, does your member state require those proofs according to article 12 § 1 second indent.

☑ OUI
☒ NON

As regards the additional requirements for family reunification with spouses/partners under section 9 (2) - (11), including income and housing, refugees will normally fall within the dispensation criteria, thus in practice being exempted in accordance with the travaux préparatoires.\textsuperscript{197}

If necessary specify

Q.67. C – If a refugee has introduced its application after a period of three months, does your Member State require the refugee to meet the conditions or one of them (accommodation, sickness insurance, resources (a 12 §1 alinea 3)?

☑ OUI
☒ NON

If yes, which ones?

Q.68 – Does your Member State apply the prohibition to impose a residence condition before reunification (a 12 §2)?

☒ OUI

Refugee sponsors are explicitly exempted from the lengthy waiting period normally required from third country nationals under Aliens Act section 9 (1) (i), cf. section 9 (1) (i) (c).

\textsuperscript{196} Cf. Explanatory remarks to Draft Bill No. L 152 of 28 February 2002.
\textsuperscript{197} Cf. Explanatory remarks to Draft Bill No. L 152 of 28 February 2002.
If not, what is the length of this period? Is it different from the one normally applied?

**EXERCISE OF THE RIGHT TO FAMILY REUNIFICATION**

*The granting of an autonomous residence permit is one of the most sensitive issues of this part of the Directive.*

**Q.69** – Is entry and residence facilitated by your Member State, as soon as the application for family reunification has been accepted, including the issue of obtaining visas (a13 §1)?

- [ ] OUI
- [X] NON

If yes, how?

**Q.70** – Is a residence permit of at least one year's duration granted to the family members (a 13 §2)?

- [X] OUI
- [ ] NON

What is the duration of the residence permit?

**Spouse/partner seeking family reunification**

A time-limited residence permit, cf. Aliens Act section 11, under Aliens Act section 9 (1) (i) is issued for not more than two years at a time. After four years it is issued for not more than three years at a time, cf. Aliens Order section 23 (2).

**Child seeking family reunification**

A time-limited residence permit, cf. Aliens Act section 11, under Aliens Act section 9 (1) (ii) is issued until the child’s 18th birthday, but only until expiry of the period for which one of or both the persons having custody of it hold a residence permit for Denmark, cf. Aliens Order section 23 (3).

According to Aliens Order section 21 (1), a child under the age of 18 residing permanently with the person having custody of it is exempt from proof of a residence permit during its residence in Denmark when the child has been issued with a residence permit under section 7, 8, 9 (1) (ii) or 9b to 9e, or when the child was born in Denmark and the person having custody of it is a lawful

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198 There is no specific rule on this, but normally administrative practice is likely to be in accordance with the standard laid down in Article 13 (1). There has, however, been reported certain practical difficulties in obtaining the requisite visa due to long distance or difficult access to Danish embassies.
resident of Denmark pursuant to a residence permit under sections 7 to 9e. The first sentence applies correspondingly when the child has been issued with a residence permit under section 9 (1) (iii). According to Aliens Order section 21 (2) a proof of residence permit may be issued to a child as referred to in subsection (1) if the child in question needs documentation for its residence permit.

Aliens Order section 23 (1)–(10) mentions situations of issuance of time-limited residence permits and these residence permit’s duration. In situations outside the cases referred to in these sections, a first time time-limited residence permit is issued for not more than one year; in special cases for up to three years, and may be extended by periods of up to three years, cf. Aliens Order section 23 (10).

Q.71 – Is this residence permit renewable?

☐ OUI

☐ NON

Q.72 – Is the duration of the residence permit aligned with the duration of sponsor's residence permit (a 13 §3) ?

☐ OUI

☐ NON

If no, please specify

The duration of the sponsor’s residence permit:

Spouse/partner seeking family reunification

According to Aliens Act section 9 (1) (i) the sponsor has to be a resident in Denmark and either

- a Danish national, cf. section 9 (1) (i) (a)
- a national of one of the other Nordic countries, cf. section 9 (1) (i) (b)
- issued with a residence permit under section 7 or 8 (asylum with Convention refugee status or with subsidiary protection), cf. section 9 (1) (i) (c)
- having held a permanent residence permit for Denmark for more than the last 3 years, cf. section 9 (1) (i) (d).

A permanent residence permit is normally issued after 7 years of lawful residence on the same basis, cf. section 11 (3) and 19 (1). In exceptional cases a permanent residence permit may be issued after 3 or 5 years of lawful residence, cf. section 11 (4), (5) and (6).

In exceptional circumstances, including respect for family unity, the 3 year period in section 9 (1) (i) (d) may be dispensed with by the issuance of a
residence permit under Aliens Act section 9c (1).199

Child seeking family reunification

According to Aliens Act section 9 (1) (ii) the sponsor has to be a resident in Denmark and either

- a Danish national, cf. section 9 (1) (ii) (a) and 9 (1) (iii) (a)
- a national of one of the other Nordic countries, cf. section 9 (1) (ii) (b) and 9 (1) (ii) (b)
- issued with a residence permit under section 7 or 8 (asylum with Convention refugee status or with subsidiary protection), cf. section 9 (1) (ii) (c) and 9 (iii) (c)
- issued with a permanent residence permit or a residence permit with a possibility of permanent residence, cf. section 9 (1) (ii) (d) and (iii) (d).

In exceptional circumstances, including respect for family unity, the requirement on the sponsor being issued with a permanent residence permit or a residence permit with the possibility of permanent residence, may be dispensed with by way of issuing a residence permit under Aliens Act section 9c (1).200

The duration of the family member’s residence permit:

Spouse/partner seeking family reunification

A time-limited residence permit, cf. Aliens Act section 11, under Aliens Act section 9 (1) (i) is issued for not more than two years at a time. After four years it is issued for not more than three years at a time, cf. Aliens Order section 23 (2).

Child seeking family reunification

A time-limited residence permit, cf. Aliens Act section 11, under Aliens Act section 9 (1) (ii) is issued until the child’s 18th birthday, but only until expiry of the period for which one of or both the persons having custody of it hold a residence permit for Denmark, cf. Aliens Order section 23 (3).

Aliens Order section 23 (1)–(10) mentions situations of issuance of time-limited residence permits and these residence permit’s duration. In situations outside the cases referred to in these sections, a first time time-limited residence permit is issued for not more than one year; in special cases for up to three years, and may be extended by periods of up to three years, cf. Aliens Order section 23 (10).

Q.73 – Are the rights awarded to family members’ equivalent to those granted to the sponsor (a14 §1):

Q.73. A – Regarding access to education?

☐ OUI
☐ NON
If no, please specify

Q.73. B - Regarding access to employment?

☒ OUI
☐ NON
Please specify the content of this access

Aliens holding a residence permit for the purpose of family reunification are generally exempt from the requirement of a work permit, cf. Aliens Act section 14 (1) (iv) and (vii).

Q.73. C – Regarding access to vocational guidance, initial and further training and retraining?

☒ OUI
☐ NON
If no, please specify

201 Tuition is free for all EU/EEA students as well as for students participating in an exchange programme. As from 2006 all other students normally have to pay a tuition fee, cf. Act No. 337 of 18 May 2005 amending the University Act, cf. Consolidation Act No. 280 of 21 March 2006.

According to Consolidation Act on the State Education Grant No. 983 of 27 July 2007 (State Education Grant), and Executive Order No. 349 of 20 April 2006 section 66 students, who are not Danish citizens or EU/EEA citizens, can obtain study grants on equal conditions as for Danish citizens when the alien either

• is a German citizen belonging to the Danish minority in Southern Slesvig, or
• is an Icelandic citizen having resided in Denmark the 6 March 1946 or within 10 years before that date, or
• is encompassed by the Act on Integration, or
• upon entry in Denmark was below 20 and together with his/her parents took up residence in Denmark and the family still resides in Denmark, or
• just prior to the application has resided in Denmark for 2 consecutive years and has been, and still is, married or in a registered partnership with a Danish citizen for minimum 2 years, or
• just prior to the start of the education has resided in Denmark for minimum 2 years as a main rule and been working as an employee or self-employed for minimum of 30 hours a week, or
• just prior to the application has resided in Denmark for 5 consecutive years, when the stay in Denmark was not with the object of studying.

In cases of more than 2 years consecutive stay abroad, the right to study grants ceases until one of the above mentioned conditions once again are fulfilled, cf. section 68 (3).
Q.74 – Does your Member State grant specific rights in social matters to reunified family members?

☐ OUI

☒ NON

Unless the measures under the Act on Integration are considered as specific rights.

If yes, please describe them and specify if a time limit is established to take advantage from them

Q.75 – Has Member State set up conditions regarding specific access to employment for family members (a 14 §2)?

☐ OUI

☒ NON

If yes, how?

Q.76 – If yes, do those conditions exceed 12 months (a 14 §2)?

☐ OUI

☒ NON

Which ones?

Q.77 – Is access to employment limited in your Member State

Q.77.A – Regarding first-degree relatives in the direct ascending line?

☐ OUI

☒ NON

If yes, how?

Q.77. B – Regarding adult unmarried children objectively unable to provide for their own needs on account of their state of health (a 14 §3)?

☐ OUI

☒ NON

If yes, how?
Q.78 – Are spouses, unmarried partners and child who has reached majority entitled to an autonomous residence permit at least five years after lawful residence on the basis of the residence permit issued for family reunification (a15 §1)?

☐ OUI
☐ NON

An autonomous residence permit under Danish law must be understood as a permit that is protected against withdrawal in case of either expulsion of the sponsor or breakdown of the family relationship. Hence, it has to be a permanent residence permit, which is normally issued after 7 years of lawful residence on the same legal and factual basis, unless there is basis for revoking the residence permit under Aliens Act section 19, cf. Aliens Act section 11 (3). In exceptional cases a permanent residence permit may be issued after 3 or 5 years of lawful residence, cf. Aliens Act section 11 (4), (5) and (6). The travaux préparatoires of these provisions includes explanatory notes as to which circumstances shall be considered exceptional.202

An alien issued with a residence permit under section 9 (1) (ii) cannot be issued with a permanent residence permit until his 18th birthday, cf. Aliens Act section 11 (3) in fine.

According to Aliens Act section 11 (4) a permanent (i.e., autonomous) residence permit may be issued after 5 years of lawful residence on the same basis under sections 7 to 9e if the alien
  ▪ has had permanent ties with the labour market as an employee or self-employed for the last 3 years, and must be assumed to continue to have such ties
  ▪ has not received cash benefits under the Act on Active Social Policy or the Integration Act on an ongoing basis for maintenance purposes (apart from pension-like benefits) for the last 3 years, and
  ▪ has obtained essential ties with Danish society.

According to Aliens Act section 11 (5), a permanent residence permit may be issued after 3 years of lawful residence on the same basis under sections 7 to 9e if exceptional reasons make it appropriate.

According to Aliens Act section 11 (6) a permanent residence permit may be issued irrespective of all of the abovementioned periods of residence, if essential considerations conclusively make it appropriate; in practice that may be the case for aliens having particularly strong affiliations with Danish society or with other persons living in Denmark.

In addition to the required duration of residence, the issue of a permanent (i.e., autonomous) residence permit generally depends on the fulfilment of conditions relating to
  ▪ criminal offences (exclusion due to serious criminal offences; suspension for periods between 2 and 15 years after conviction for a less serious criminal offence),
  ▪ completion of an introduction programme under the Act on Integration,

- passing a test in the Danish language, and
- having no overdue debts to public authorities
- signing a declaration on integration and active citizenship and an integration contract\(^{203}\)
- a requirement on ordinary full time occupation in Denmark for at least 2 years and 6 months\(^{204}\)

cf. Aliens Act section 11 (7) - (10) and section 11a, 11b and 11c.

Aliens Act section 19 (8) contains the special rule that in deciding on revocation of a residence permit issued pursuant to Aliens Act section 9 (1) (i), special regard must be had to the question whether the basis of residence is no longer present because of cessation of cohabitation due to the fact that the alien issued with the residence permit has been exposed to outrages, abuse or other ill-treatment, etc. in Denmark.

According to Aliens Act section 11d an application on permanent residence permit pursuant to Aliens Act section 11 (3) can be rejected if the necessary documents or information are not attached to the application, cf. section 40.\(^{205}\)

If yes, please specify when and how for each category

**Q.79** – Does your Member State limit the granting of the autonomous residence in cases of breakdown of the family relationship (a 15 §1 alinea 2)?

- [x] OUI
- [ ] NON

Please explain

A permanent residence permit is normally issued after 7 years of lawful residence *on the same legal and factual basis*, unless there is basis for revoking the residence permit under Aliens Act section 19, cf. Aliens Act section 11 (3).

According to Aliens Act section 19 (1) a time-limited residence permit may be revoked among other factors if:

- the basis of the application or the residence permit was *not correct* or is *no longer present*, cf. section 19 (1) (i)
- the alien *fails to comply with conditions* laid down for his residence permit or work permit, cf. section 19 (1) (iii)

According to Aliens Act section 19 (2) a time-limited or permanent residence permit may be revoked if:

\(^{203}\) Section 11c was adopted by Act No. 243 of 27 March 2006.

\(^{204}\) This provision was inserted by Act No. 379 of 25 April 2007 as a new section 11 (9) (iv). Section 11 (10) was also inserted in the Aliens Act by this amending act. Section 11 (10) states that section 11 (9) (iv) does not apply to aliens who are issued with a residence permit under section 9 (1) (i) or 9c (1) following from a family relation with an alien residing in Denmark, provided the alien at the time of the issuance of the residence permit was above 50 years and within the past 10 years before the issuance of the residence permit was married or cohabitating with the person residing in Denmark.

\(^{205}\) This provision was inserted by Act No. 89 of 30 January 2007 as a part of a more efficient model of self-service introduced in cases of family reunification.
the alien has obtained his residence permit by fraud, cf. section 19 (2) (i).

Aliens Act section 19 (8) contains the rules that in deciding on revocation of a residence permit issued pursuant to Aliens Act section 9 (1) (i), special regard must be had to the question whether the basis of residence is no longer present because of cessation of cohabitation due to the fact that the alien issued with the residence permit has been exposed to outrages, abuse or other ill-treatment, etc. in Denmark.

Q.80 – Does your Member State grant autonomous residence permit:

Q.80. A – To first-degree relatives in the direct ascending line (a15 §2)

☐ OUI

☐ NON

If necessary specify

Q.80. B – To adult unmarried children objectively unable to provide for their own needs on account of their state of health (a15 §2) ?

☐ OUI

☐ NON

If necessary specify

Q.81 – Does your member State grant autonomous residence permit in the event of widowhood, divorce, separation or death of first first-degree relatives in the direct ascending or descending line (a 15 §3) ?

☐ OUI

Partly, see below

☐ NON

If necessary specify

There is no legal claim under a specific provision to a residence permit in such situations, but residence permits may be permitted on a discretionary basis under section 11 (5) or (6).

Aliens Act section 19 (8) contains the special rule that in deciding on revocation of a residence permit issued pursuant to Aliens Act section 9 (1) (i), special regard must be had to the question whether the basis of residence is no longer present because of cessation of cohabitation due to the fact that the alien issued with the residence permit has been exposed to outrages, abuse or other ill-treatment, etc. in Denmark.

A permanent residence permit is normally issued after 7 years of lawful residence on the same legal and factual basis, unless there is basis for revoking the residence permit under Aliens Act section 19, cf. Aliens Act section 11 (3).
Q.82 – Has your Member State adopted rules granting autonomous residence permit "in the event of particularly difficult circumstances" (a 15 §3)?

☐ OUI
☒ NON

There is no legal claim under a specific provision to a residence permit in such situations, but residence permits may be permitted on a discretionary basis under section 11 (5) or (6).

If yes, how is this provision defined and transposed?

**Penalties and Redress**

*Those provisions must be read in parallel with those relating to the conditions to be fulfilled to obtain family reunification (articles 6, 7, 8)*

Questions relating fraud, false or falsified documents are of importance to assess their impact.

Q.83 – What are the legal grounds to reject, withdraw or refuse to renew a family member's residence permit (a16 §1 et 2):

Q.83. A – Conditions required by the directive not satisfied?

☒ OUI
☐ NON

Including supplementary conditions

Q.83. B – Absence of real martial or family relationship?

☒ OUI
☐ NON

If yes, how is this hypothesis assessed?

**Rejection**

An application for family reunification will be rejected when the basic conditions in Aliens Act section 9 (1) are not met, and there are no exceptional circumstances causing the application to fall within Aliens Act section 9c (1) and hereby dispensing with the requirements, or when the supplementary conditions in Aliens Act section 9 are not met and there are no exceptional circumstances for dispensing with the requirements.²⁰⁶

²⁰⁶ Cf. Practise note on the condition on cohabitation on common address in Aliens Act section 9 (1) (ii) from the Minister of Interior Affairs of 5 October 1999 and Practice note on clarification of practice on unmarried cohabiting couples’ access to family reunification from the Ministry of Refugee, Immigration and Integration Affairs of 9 May 2007.
Withdrawal/revocation

The grounds for revocation in Aliens Act section 19 has to be seen in context with the conditions for issuance of residence permits in Aliens Act section 9 and 9c.

According to Aliens Act section 19 (1) a time-limited residence permit may be revoked among other factors if:
- the basis of the application or the residence permit was not correct or is no longer present, cf. section 19 (1) (i)

According to Aliens Act section 19 (2) a time-limited or permanent residence permit may be revoked among other factors if:
- the alien has obtained his residence permit by fraud, cf. section 19 (2) (i).

Aliens Act section 19 (8) contains the rules that in deciding on revocation of a residence permit issued pursuant to Aliens Act section 9 (1) (i), special regard must be had to the question whether the basis of residence is no longer present because of cessation of cohabitation due to the fact that the alien issued with the residence permit has been exposed to outrages, abuse or other ill-treatment, etc. in Denmark.

Refusal to renewal

Aliens Act section 11 (2) regarding time-limited residence permits issued with a possibility of permanent residence, which will normally be the case in situations of residence permits pursuant to Aliens Act section 9 (1); cf. Aliens Act section 11 (1) and Aliens Order section 22. Aliens Act section 11 (2) on renewal and section 11 (3) on the issuance of a permanent residence permit refers to the grounds in Aliens Act section 19.

As regards time-limited residence permits for the purpose of a temporary stay, which will normally be the case in situations of residence permits pursuant to the discretionary provisions, such as Aliens Act section 9c, the decision on renewal is based on a renewed assessment according to the section under which the residence permit was originally issued. Hence, the procedure will be a repetition of the procedure for granting the alien residence permit.

Q.83. C – Stable long term relationship with another person?

☑ OUI

☐ NON

If yes, how is this hypothesis assessed?

Rejection

An application for family reunification will be rejected when the basic conditions in Aliens Act section 9 (1) are not met, and there are no exceptional circumstances causing the application to fall within Aliens Act section 9c (1) and hereby dispensing with the requirements, or when the supplementary
conditions in Aliens Act section 9 are not met and there are no exceptional circumstances for dispensing with the requirements.207

Withdrawal/revocation

The grounds for revocation in Aliens Act section 19 has to be seen in context with the conditions for issuance of residence permits in Aliens Act section 9 and 9c.

According to Aliens Act section 19 (1) a time-limited residence permit may be revoked among other factors if:
- the basis of the application or the residence permit was not correct or is no longer present, cf. section 19 (1) (i)

According to Aliens Act section 19 (2) a time-limited or permanent residence permit may be revoked among other factors if:
- the alien has obtained his residence permit by fraud, cf. section 19 (2) (i).

Aliens Act section 19 (8) contains the rules that in deciding on revocation of a residence permit issued pursuant to Aliens Act section 9 (1) (i), special regard must be had to the question whether the basis of residence is no longer present because of cessation of cohabitation due to the fact that the alien issued with the residence permit has been exposed to outrages, abuse or other ill-treatment, etc. in Denmark.

Refusal to renewal

Aliens Act section 11 (2) regarding time-limited residence permits issued with a possibility of permanent residence, which will normally be the case in situations of residence permits pursuant to Aliens Act section 9 (1); cf. Aliens Act section 11 (1) and Aliens Order section 22. Aliens Act section 11 (2) on renewal and section 11 (3) on the issuance of a permanent residence permit refers to the grounds in Aliens Act section 19.

As regards time-limited residence permits for the purpose of a temporary stay, which will normally be the case in situations of residence permits pursuant to the discretionary provisions, such as Aliens Act section 9c, the decision on renewal is based on a renewed assessment according to the section under which the residence permit was originally issued. Hence, the procedure will be a repetition of the procedure for granting the alien residence permit.

Q.83. D – False or falsified documents?

X OUI

☐ NON

207 Cf. Pratice note on the condition on cohabitation on common address in Aliens Act section 9 (1) (ii) from the Minister of Interior Affairs of 5 October 1999 and Practice note on clarification of practice on unmarried cohabiting couples’ access to family reunification from the Ministry of Refugee, Immigration and Integration Affairs of 9 May 2007.
Q.83. E – Marriage, partnership or adoption contracted for the sole purpose of enabling reunification?

☐ OUI

☐ NON

Q.83. F – If yes, how is this hypothesis assessed?

According to Aliens Act section 9 (9) family reunification for a spouse/partner must be refused if there are definite reasons on certain basis for assuming that the decisive purpose of contracting the marriage/establishing cohabitation was to obtain a residence permit. In the assessment all the conditions in the case must be considered; such as lack of cohabitation and communication in the same language, large age difference, former marriages etc. In practice this means that a minimum of 2-3 of the objective conditions have to exist independently to indicate pro forma relationship.\(^{208}\)

If the residence permit has already been issued, and fraud – relating either to possible marriage of convenience or to any other part of the basis for issuing the residence permit – can be proven subsequently, the residence permit can be withdrawn under Aliens Act section 19 (2) (i); this provision applies even in cases where the spouse/partner has in the meantime obtained a permanent residence permit.

Pro forma is criminalised in Aliens Act section 59 (1) (iv).

Q.83. G – When the sponsor’s residence comes to an end and the family member does not yet enjoy an autonomous right of residence (a 16 §3) ?

☐ OUI

☐ NON

Q.83. H – What type of control are organised thereof?

The checks undertaken in this regard seem to be generally in conformity with Article 16 (4), including both documentary evidence, data checks and the possibility for the immigration authorities to request police inspection of the spouses’/partners’ common place of residence.

When the sponsor’s residence comes to an end and the family member does not yet enjoy an autonomous right of residence, the family member’s residence permit may be withdrawn or not renewed.

Withdrawal/revocation

The grounds for revocation in Aliens Act section 19 has to be seen in context with the conditions for issuance of residence permits in Aliens Act section 9 and 9c.

According to Aliens Act section 19 (1) a time-limited residence permit may be revoked among other factors if:

the basis of the application or the residence permit was not correct or is no longer present, cf. section 19 (1) (i)

Refusal to renewal

Aliens Act section 11 (2) regarding time-limited residence permits issued with a possibility of permanent residence, which will normally be the case in situations of residence permits pursuant to Aliens Act section 9 (1); cf. Aliens Act section 11 (1) and Aliens Order section 22. Aliens Act section 11 (2) on renewal and section 11 (3) on the issuance of a permanent residence permit refers to the grounds in Aliens Act section 19, see above.

As regards time-limited residence permits for the purpose of a temporary stay, which will normally be the case in situations of residence permits pursuant to the discretionary provisions, such as Aliens Act section 9c, the decision on renewal is based on a renewed assessment according to the section under which the residence permit was originally issued. Hence, the procedure will be a repetition of the procedure for granting the alien residence permit.

Q.84 – Are resources of the family taken into account when renewing residence permit where the sponsor does not have sufficient resources without recourse to the social assistance system of the member state?

☐ OUI

☐ NON

If yes, under which modalities?

In cases of family reunification it is essential that the family is self-supporting and not a burden to the public.209

According to Aliens Act section 9 (3) it is a condition for a residence permit for a partner under section 9 (1) (i) that the sponsor undertakes to maintain the applicant.210 If exceptional reasons make it appropriate it may be made a condition for a residence permit under subsection (1) (i) to (iii) that the sponsor proves his ability to maintain the family member.

According to Aliens Act section 9 (5) it is a condition for a residence permit for a spouse/partner under Aliens Act section 9 (1) (i) that the sponsor has not received any assistance under the Act on an Active Social Policy or the Act on Integration for 1 year before the decision on the residence permit is made and that the applicant and the sponsor does not receive any assistance under the Act on an Active Social Policy or the Act on Integration up to the point where the applicant is issued with a time-unlimited residence permit, unless exceptional

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209 By Act No. 89 of 30 January 2007 the former scheme on supporting requirement, including the requirement of a certain income, was replaced by a requirement of self-support, where its essential whether the family receives financial assistance under the Act on an Active Social Policy or the Act on Integration. The act introduced a scheme combined by self-service (by presenting all the relevant information and documentation with the application and by separating the processing of simple and complicated cases) and a reporting duty for the municipalities to the Danish Immigration Service if the family receives financial assistance, cf. section 9 (23), cf. Draft Bill No. L 17 of 4 October 2006.

210 The obligation to support one’s spouse or registered partner follows from the marriage or registered partnership, cf. Consolidation Act No. 1009 of 24 October 2005 on Active Social Policy and amends section 2, which is why the declaration is only required from unmarried or unregistered partners.
reasons, including respect for family unity, make it inappropriate. This does not, however, comprise assistance in the form of isolated benefits of a minor amount not directly related to support, or benefits that are comparable with a wage or salary or pension or replace such payment.

According to Aliens Act section 9 (12) it may be a condition for a residence permit for a child under Aliens Act section 9 (1) (ii) if essential considerations make it appropriate that the sponsor does not receive any assistance under the Act on an Active Social Policy or the Act on Integration until the applicant is issued with a time-unlimited residence permit. This does not, however, comprise assistance in the form of isolated benefits of a minor amount not directly related to support, or benefits that are comparable with a wage or salary or pension or replace such payment.

If exceptional reasons make it appropriate it may be made a condition for a residence permit under subsection (1) (i) to (iii) that the sponsor proves his ability to maintain the family member, cf. Aliens Act section 9 (3).211

According to Aliens Act section 9 (17) it is a condition for a residence permit under Aliens Act section 9 (1) (iii) issued for the purpose of foster relationship or residence with the child’s closest family212 that the sponsor undertakes to maintain the applicant and does not receive any assistance under the Act on an Active Social Policy or the Act on Integration until the issuance of a time-unlimited residence permit. This does not, however, comprise assistance in the form of isolated benefits of a minor amount not directly related to support, or benefits that are comparable with a wage or salary or pension or replace such payment.

If exceptional reasons make it appropriate it may be made a condition for a residence permit under subsection (1) (i) to (iii) that the sponsor proves his ability to maintain the family member, cf. Aliens Act section 9 (3).

According to Aliens Act section 9 (21) the local council may issue an opinion to the Danish Immigration Service about circumstances concerning the sponsor and applicant which the local council deems to be of importance to the decision in the case under Aliens Act section 9 (1).

According to Aliens Act section 9 (22) the local council issues a statement on the extent to which the sponsor has received any assistance under the Act on an Active Social Policy or the Act on Integration at the request of the Danish Immigration Service.

According to Aliens Act section 9 (23) the local council notifies the Danish Immigration Service if the sponsor or applicant receives any assistance under the Act on an Active Social Policy or the Act on Integration in cases where the residence permit was conditioned by the sponsor or applicant not receiving any assistance under the Act on an Active Social Policy or the Act on Integration.

Regarding renewal, see Aliens Act section 11 (2) regarding time-limited residence permits issued with a possibility of permanent residence, which will normally be the case in situations of residence permits pursuant to Aliens Act section 9 (1); cf. Aliens Act section 11 (1) and Aliens Order section 22. Aliens

211 The obligation to support one’s child follows from the custody, cf. Consolidation Act No. 1009 of 24 October 2005 on Active Social Policy and amendments section 2.

212 Adoption is not mentioned, since the supporting requirement has already been examined as part of the adoption procedure.
Act section 11 (2) on renewal and section 11 (3) on the issuance of a permanent residence permit refers to the grounds in Aliens Act section 19. As regards time-limited residence permits for the purpose of a temporary stay, which will normally be the case in situations of residence permits pursuant to the discretionary provisions, such as Aliens Act section 9c, the decision on renewal is based on a renewed assessment according to the section under which the residence permit was originally issued. Hence, the procedure will be a repetition of the procedure for granting the alien residence permit.

According to Aliens Act section 19 (1) a time-limited residence permit may be revoked among other factors if:

- the basis of the application or the residence permit was not correct or is no longer present, cf. section 19 (1) (i)
- the alien fails to comply with conditions laid down for his residence permit or work permit, cf. section 19 (1) (iii)
- the residence permit is conditioned by the alien and the sponsor not receiving any assistance under the Act on an Active Social Policy or the Act on Integration, and the alien or the sponsor receives such assistance, cf. section 19 (1) (iv), cf. section 18
- the residence permit, because exceptional reasons make it inappropriate, is not conditioned by the alien and the sponsor not receiving any assistance under the Act on an Active Social Policy or the Act on Integration, and these exceptional reasons no longer exist and the alien and or the sponsor receives such assistance, cf. section 19 (1) (v) 213
- the residence permit is conditioned by the sponsor proving he disposes of his own dwelling of a reasonable size and the sponsor can no longer so prove, section 9 (24) applies correspondingly, cf. section 9 (1) (vi)
- the residence permit, because exceptional reasons make it inappropriate, is not conditioned by the sponsor proving disposal of his own dwelling of a reasonable size, and these exceptional reasons no longer exist and the sponsor cannot prove that he disposes of his own dwelling of a reasonable size, cf. section 19 (1) (vii)
- the residence permit is conditioned by the sponsor and the aliens issued with a residence permit as a result of family ties with the sponsor do not receive any public assistance, cf. section 9f (4), 215 and the sponsor or the persons issued with a residence permit as a result of family ties receives public assistance for maintenance, cf. section 19 (1) (viii).

In the case published in U2006.639H the court found no basis for overruling the decision of the Ministry of Refugee, Immigration and Integration Affairs on rejection of renewal of residence permit. The alien, who was a Pakistan citizen, was issued with a residence permit on the basis of family reunification with a spouse, who was a Pakistan citizen born in Denmark. The issuance of the residence permit was conditioned by the sponsor supporting the applicant.

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213 This provision was phrased by Act No. 89 of 30 January 2007 and has to be seen in connection with the reporting duty for the municipalities to the Danish Immigration Service if the family receives financial assistance, cf. section 9 (23).

214 See the note above.

215 Aliens Act section 9f contains the rules on residence permits for religious preachers, missionaries and alien who are to act within a religious order in Denmark.
The application of renewal of the residence permit was rejected on the grounds that the sponsor was no longer able to provide for the applicant. The sponsor was unemployed and received unemployment benefit. The fact that the sponsor was born in Denmark and had his childhood in Denmark did not in itself lead to the dispensing with the requirement on documentation of supporting requirement. The decision was not found to breach ECHR Article 8.

**Q.85** – Does your Member State's legislation take into consideration (a. 17):

**Q.85. A** – The nature and solidity of the person's family relationships and the duration of his residence in the Member State?

[X] OUI

[ ] NON

If yes, please specify how and on the basis of which norm (legislation, regulation, jurisprudence, ...)

Aliens Act section 26 (1) (i)-(vi) on expulsion applies correspondingly to decisions on revocation or refusal of extension of residence permits, cf. Aliens Act section 19 (7) and 11 (2) and above Q.48.B.

In cases of rejection of residence permits a case-by-case evaluation on the basis of all the circumstances in the case must be made in order to determine whether a rejection under Aliens Act section 9 (1) and 9c (1) is proportional, cf. ECHR Article 8. Regarding rejection of issuance of residence permit, see also Aliens Act section 10 (2) and (4), according to which exceptional reasons, including regard for family unity may lead to the issuance of a residence permit.

In cases of rejection of applications for family reunification the requirements in Aliens Act section 9 may be dispensed with by way of issuing a residence permit under Aliens Act section 9c (1) on exceptional reasons, including respect for family unity, where a refusal of family reunification would be unreasonable due to exceptional reasons or lead to a breach of Denmark’s international obligations, cf. ECHR Article 8. The travaux préparatoires of this provision includes explanatory notes as to which circumstances shall be considered exceptional.216

As for Aliens Act section 26 (1), the grounds for revocation or refusal must be weighed against various humanitarian criteria such as those listed in section 26 (1). Hence, regard must be had to whether revocation or refusal of extension can be assumed to be particularly burdensome, in particular because of

- the alien’s ties with the Danish society
- the alien’s age, health, and other personal circumstances
- the alien’s ties with persons living in Denmark
- the consequences of the expulsion for the alien’s close relatives living in Denmark
- the alien’s slight or non-existent ties with his/her country of origin or other country of expected residence

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216 Draft Bill No. L 152 of 28 February 2002.
the risk that the alien will be ill-treated in his/her country of origin or any other country of expected residence, outside the scope of the asylum provisions in section 7.

According to the travaux préparatoires of the expulsion provisions in Aliens Act Part IV, any decision to expel an alien must have due regard to Article 8 ECHR and other international obligations.\textsuperscript{217} This has resulted in a number of Supreme Court and other judgments which in practice significantly limit the scope of the expulsion provisions.\textsuperscript{218}

In the judgment in the case published in U2004.2790V the decision of the Ministry of Refugee, Immigration and Integration Affairs on renewal of residence permit was overruled by the court on the basis of Aliens Act section 26.

The alien, who was a Philippine citizen, was issued with a residence permit under the rules of family reunification for children when she was 16 years\textsuperscript{219} – the mother was the sponsor. 2 years after the issuance, the alien’s mother left Denmark. The alien was rejected renewal of the residence permit due to fact, that the mother/sponsor left Denmark, that the alien lived in Denmark for not more than 2 years, that the alien spend most of her childhood in the Philippines and the fact that there was no information on health related issues or similar causing the rejection to be particularly burdensome. Information on the alien not having any family to return to in the Philippines, that the alien had a boyfriend in Denmark the past 2 years, spoke Danish, was well integrated in Denmark and provided for herself did not change this evaluation.

The court overruled the decision with regard to the circumstances mentioned in Aliens Act section 26. The court agreed that the conditions for the residence permit was no longer present, but found that a rejection of renewal would be particularly burdensome based on an assessment of all the circumstances in the case, such as the fact that the alien was well-integrated in Denmark and did not have any family in her home country.

**Q.85. B -** 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?

- [X] OUI
- [ ] NON

If yes, please specify how and on the basis of which norm (legislation, regulation, jurisprudence, …)

Aliens Act section 26 (1) (i)-(vi) on expulsion applies correspondingly to decisions on revocation or refusal of extension of residence permits, cf. Aliens Act section 19 (7) and 11 (2) and above Q.48.B.

\textsuperscript{217} Cf. Note on decisions from The European Court of Human Rights regarding Article 8 of The European Convention on Human Rights and extension/revocation of residence permits of 16 January 2007.


\textsuperscript{219} The age requirement for reunification under Aliens Act section 9 (1) (ii) was 18 at the time of the decision.
In cases of rejection of residence permits a case-by-case evaluation on the basis of all the circumstances in the case must be made in order to determine whether a rejection under Aliens Act section 9 (1) and 9c (1) is proportional, cf. ECHR Article 8. Regarding rejection of issuance of residence permit, see also Aliens Act section 10 (2) and (4), according to which exceptional reasons, including regard for family unity may lead to the issuance of a residence permit.

In cases of rejection of applications for family reunification the requirements in Aliens Act section 9 may be dispensed with by way of issuing a residence permit under Aliens Act section 9c (1) on exceptional reasons, including respect for family unity, where a refusal of family reunification would be unreasonable due to exceptional reasons or lead to a breach of Denmark’s international obligations, cf. ECHR Article 8. The travaux préparatoires of this provision includes explanatory notes as to which circumstances shall be considered exceptional.220

As for Aliens Act section 26 (1), *the grounds for revocation or refusal must be weighed against various humanitarian criteria* such as those listed in section 26 (1). Hence, regard must be had to whether revocation or refusal of extension can be assumed to be particularly burdensome, in particular because of221

- the alien’s ties with the Danish society
- the alien’s age, health, and other personal circumstances
- the alien’s ties with persons living in Denmark
- the consequences of the expulsion for the alien’s close relatives living in Denmark
- the alien’s slight or non-existent ties with his/her country of origin or other country of expected residence
- the risk that the alien will be ill-treated in his/her country of origin or any other country of expected residence, outside the scope of the asylum provisions in section 7.

According to the travaux préparatoires of the expulsion provisions in Aliens Act Part IV, any decision to expel an alien must have due regard to Article 8 ECHR and other international obligations. This has resulted in a number of Supreme Court and other judgments which in practice significantly limit the scope of the expulsion provisions.222

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223 The age requirement for reunification under Aliens Act section 9 (1) (ii) was 18 at the time of the decision.
and the fact that there was no information on health related issues or similar causing the rejection to be particularly burdensome. Information on the alien not having any family to return to in the Philippines, that the alien had a boyfriend in Denmark the past 2 years, spoke Danish, was well integrated in Denmark and provided for herself did not change this evaluation.

The court overruled the decision with regard to the circumstances mentioned in Aliens Act section 26. The court agreed that the conditions for the residence permit was no longer present, but found that a rejection of renewal would be particularly burdensome based on an assessment of all the circumstances in the case, such as the fact that the alien was well-integrated in Denmark and did not have any family in her home country.

Q.86 – Do the sponsor and/or members if his/her family have the right to mount a legal challenge where an application for family reunification is rejected (a18 §1)?

☐ OUI
☐ NON

Q.87 – Is this right to legal challenge considered as a right to a judicial review according to jurisprudence C-540/03 (a18 §1) ?

☐ OUI
☐ NON

The decisions made by the Danish Immigration Service, cf. Aliens Act section 46 (1), can be appealed to the Minister of Refugee, Immigration and Integration Affairs, cf. Aliens Act section 46 (2).

The decision of the county government office under Aliens Order section 40 (1) can be appealed to the Danish Immigration Service, cf. Aliens Order section 42 (2).

Administrative decisions may be brought before the courts in accordance with the Danish Constitutional Act section 63. A judicial review under the Constitutional Act section 63 does not encompass an in-depth examination of all the aspects in case. A judicial review under section 63 will encompass a full examination of the legal aspects of the case and the legality of the decision, but with regard to the discretionary aspects, such as the weighing of factors in the case, the examination are not in-depth, but reserved.

With regard to a final administrative decision on refusal of an application for a residence permit with a possibility of permanent residence under section 9 (1) (ii) (unmarried child under 15), as well as the final withdrawal or refusal of extension of such residence permit, such a decision can be submitted for special judicial review by the competent court, cf. Aliens Act section 52 (1) (i) and (ii). Hence, Aliens Act section 52 (1) (i) and (ii) forms the legal basis of an

224 Constitutional Act No. 169 of 5 June 1953.
225 The decision having to be final means that the decision made by the Danish Immigration Service, cf. section 46 (1) has to be appealed and processed by the Minister of Refugee, Immigration and Integration Affairs, cf. section 46 (2).
in-depth examination/full review of the administrative decision; including the discretionary aspects.

In situations where the alien has brought the decision made by The Ministry of Refugee, Immigration and Integration Affairs on rejection of allowing submission of the application in Denmark on residence permit under Aliens Act section 9 (1) (i)-(iii) and section 9c (1) before the courts, the trial will have suspensory effect with regard to deportation on the alien’s request, where the court of the first instance finds for the alien and the Ministry of Refugee, Immigration and Integration Affairs lodges an appeal, cf. Aliens Act section 30 and 33.\footnote{Cf. Note on change of practice for deportation of aliens who have brought a decision made by the Ministry of Refugee, Immigration and Integration Affairs on application for residence permit before the courts, 2007.}
The Directive has not been transposed due to the Danish reservation as regards legal measures under Title IV TEC.

**XX. IMPACT OF THE DIRECTIVE ON NATIONAL LAW**

**Q.88 A**

Did the transposition of the directive made the rules related to the best interest of minor children (a. 5 § 5) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below.

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Due regard to the best interest of minor children during examination of the application a. 5 § 5</td>
<td>Explain the situation before transposition</td>
<td>Explain the situation after transposition</td>
</tr>
<tr>
<td></td>
<td>See above Q.46.</td>
<td></td>
</tr>
</tbody>
</table>

**Q.88 B**

Did the transposition of the directive made the rules related to the beneficiaries of the right to family reunification become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below.

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Definition of the beneficiaries of the right to family reunification a. 4 § 4</td>
<td>Explain the situation before transposition</td>
<td>Explain the situation after transposition</td>
</tr>
<tr>
<td></td>
<td>See above Q.11 – Q.33</td>
<td></td>
</tr>
</tbody>
</table>

**Q.88 C**

Did the transposition of the directive made the rules related to reunification of minor children between 12 (a. 4 § 1) and 15 (a. 4 § 6) years old become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below.
### OBJECT
Limitation of reunification of minor children of 12 and 15 years of age (a. 4 § 1 and 4 § 6)

<table>
<thead>
<tr>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Explain the situation before transposition</td>
<td></td>
</tr>
<tr>
<td>See above Q.14 – Q.15 and Q.31</td>
<td></td>
</tr>
</tbody>
</table>

#### Q.88 D
Did the transposition of the directive made the rules related to requirements to the exercise of family reunification (article 7) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Requirements for the exercise of family</td>
<td></td>
<td></td>
</tr>
<tr>
<td>reunification (a. 7)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Explain the situation before transposition</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### Q.88 E
Did the transposition of the directive made the rules related to margins of manoeuvre awarded to Member States (a. 5 § 5, 17, C-540/03) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Limitation of margins of manoeuvre (a. 17, a.5 § 5, C-540/03)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Explain the situation before transposition</td>
<td></td>
<td></td>
</tr>
<tr>
<td>See above Q.48, Q.85 and Q.88.A, respectively.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Q.88 F  Did the transposition of the directive made the rules related to integration objectives and criterions more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Explain the situation before transposition</td>
<td>Explain the situation after transposition</td>
<td></td>
</tr>
<tr>
<td>See above Q.16 and Q.55 – Q.56, respectively.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Q.89  From your point of view, did the transposition of the directive imply other interesting changes for the third national country regarding other elements than the ones mentioned in the previous question. Make also a comparison with the standard of the directive in the last column of the table below

Q.89. A.  Mention if there is a general tendency to just copy the provisions of the directive into national legislation without redrafting or adaptation them to national circumstances.

☐ NO
☐ YES

Q.89.B.  If yes, please indicate if this general tendency may or not create problems (for example difficulties of implementation, risk that a provision remain unapplied).

☐ NO
☐ YES

Q.89.C.  If yes, give some of examples:

Q.89.D.  If only some provisions of the directive have been copied and if this may create any problem, please quote them and explain the problem.

Q.90.  Quote interesting decisions of jurisprudence related to the directive, its transposition or implementation (so this question concerns in principle decisions later that the directive, but previous ones might be quoted if relevant). Quote in particular decisions of supreme Courts; limit yourself to the appeal Courts and ignore the first resort if there are too many decisions at this level, unless there is a certain jurisprudence made of a group of decisions.

The Directive has not been transposed due to the Danish reservation as regards legal measures under Title IV TEC. The following is therefore decisions of jurisprudence related to the Danish, national legislation.
<table>
<thead>
<tr>
<th>DECISION OF SUPREME COURTS</th>
<th>DATE: 30 November 2005</th>
<th>REFERENCE OF PUBLICATIONS: U2006.639H</th>
<th>SUMMARY OF CONTENT: Supporting requirement. No basis for overruling the decision of the Ministry of Refugee, Immigration and Integration Affairs on rejection of renewal of residence permit. The alien, who was a Pakistan citizen, was issued with a residence permit on the basis of family reunification with a spouse, who was a Pakistan citizen born in Denmark. The issuance of the residence permit was conditioned by the sponsor supporting the applicant. The application of renewal of the residence permit was rejected on the grounds that the sponsor was no longer able to provide for the applicant. The sponsor was unemployed and received unemployment benefit. The fact that the sponsor was born in Denmark and had his childhood in Denmark did not in itself lead to the dispensing with the requirement on documentation of supporting requirement. The decision was not found to breach ECHR Article 8.</th>
</tr>
</thead>
<tbody>
<tr>
<td>DECISION OF APPEAL COURTS</td>
<td>DATE:</td>
<td>REFERENCE OF PUBLICATIONS:</td>
<td>SUMMARY OF CONTENT:</td>
</tr>
<tr>
<td>DECISION(S) IN FIRST RESORT</td>
<td>DATE:</td>
<td>REFERENCE OF PUBLICATIONS:</td>
<td>SUMMARY OF CONTENT:</td>
</tr>
<tr>
<td>DECISION OF SUPREME COURTS</td>
<td>DATE: 9 August 2004</td>
<td>REFERENCE OF PUBLICATIONS: U2004.2790V</td>
<td>SUMMARY OF CONTENT: The decision of the Ministry of Refugee, Immigration and Integration Affairs on renewal of residence permit was overruled by the court on the basis of Aliens Act section 26. The alien, who was a Philippine citizen, was issued with a residence permit under the rules of family reunification for children when she was 16 years old – the mother was the sponsor. 2 years after the issuance, the alien’s mother left Denmark. The alien was rejected renewal of the residence permit due to fact, that the mother/sponsor left Denmark, that the alien lived in Denmark for not more than 2 years, that the alien spend most of childhood in the Philippines and the fact that there was no information on health related issues or similar causing the rejection to be particularly burdensome. Information on the alien not having any family to return to in the Philippines, that the alien had had a boyfriend in Denmark the past 2 years, spoke Danish, was well integrated in Denmark and provided for herself did not change this evaluation. The court overruled the decision with regard to the circumstances mentioned in Aliens Act section 26. The court agreed that the conditions for the residence permit was no longer present, but found that a rejection of renewal would be particularly burdensome based on an assessment of all the circumstances in the case, such as the fact that the alien was well-integrated in Denmark and did not have a family in her home country.</td>
</tr>
</tbody>
</table>

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227 The age requirement for reunification under Aliens Act section 9 (1) (ii) was 18 at the time of the decision.
| DECISION OF SUPREME COURTS | DATE: 27 March 2003 | REFERENCE OF PUBLICATIONS: U2003.1322H | SUMMARY OF CONTENT: Biologically parenthood or adoption considered a condition for the issuance of residence permit for a child. The alien applied for residence permit with a reference to her father, living in Denmark and being a Danish citizen. The alien presented a copy of her baptismal record. The forensic examination lead to the result, that the person living in Denmark was not the father of the alien. The administrative authorities therefore rejected the application. The court upheld the rejection with reference to the fact that Biologically parenthood or adoption is considered a condition for the issuance of residence permit for a child. |
| DECISION OF APPEAL COURTS | DATE:  | REFERENCE OF PUBLICATIONS: | SUMMARY OF CONTENT: |
| DECISION(S) IN FIRST RESORT | DATE:  | REFERENCE OF PUBLICATIONS: | SUMMARY OF CONTENT: |
| DECISION OF SUPREME COURTS | DATE: 30 November 2001 | REFERENCE OF PUBLICATIONS: U2002.463V | SUMMARY OF CONTENT: The rules in Aliens Act on residence permit for a child, does not encompass minors who by marriage have started their own family. The residence permit was revoked due to fraud. The alien was issued with a residence permit on the basis of the rules on family reunification with minors. The alien stated in the application that she was unmarried. The residence permit was later revoked due to fraud, since the authorities learned that the alien was married. The court stated that the rules in Aliens Act on family reunification of a child have to be seen in context with the general rules on custody. The rules on custody states that persons below 18 are under custody unless they are married. On this background - and due to the fact that the rejection did not seem particularly burdensome for the applicant - it was considered a condition for family reunification of a child, that the child is not married. |
| DECISION(S) IN FIRST RESORT | DATE: 31 October 2000 | REFERENCE OF PUBLICATIONS: U2001.257Ø | SUMMARY OF CONTENT: A father was considered to be a resident in Denmark. The alien was issued with a temporary residence permit for a total of 5 years due to the fact that it was not possible to deport the alien. The aliens’ 3 children was rejected residence permit with reference to the sponsor’s status. The court overruled the decision based on an assessment of all the aspects in the case, such as the duration of the father’s stay in Denmark, the purpose of the rules on family reunification and ECHR Article 8. |
### DECISION(S) IN FIRST RESORT

<table>
<thead>
<tr>
<th>DATE</th>
<th>REFERENCE OF PUBLICATIONS</th>
<th>SUMMARY OF CONTENT</th>
</tr>
</thead>
</table>

### DECISION OF SUPREME COURTS

<table>
<thead>
<tr>
<th>DATE</th>
<th>REFERENCE OF PUBLICATIONS</th>
<th>SUMMARY OF CONTENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>19 October 1993</td>
<td>U1994.23Ø</td>
<td>Rejection of residence permit despite of foreign decision on parental custody. The court found that the decision on transferring the custody to the child’s father made by Turkish judgment during the processing of the case was made in order to facilitate the child’s permanent stay with the father, living in Denmark. Under these circumstances the court found that where the legal consequences of the decision occur in Denmark, the decision was found having to presuppose that the Danish rules on custody was complied with in order for the decision to be valid in Denmark.</td>
</tr>
</tbody>
</table>

### DECISION(S) IN APPEAL COURTS

### ANY SUPPLEMENTARY COMMENT ABOUT THE TREND OF THE JURISPRUDENCE:

**Q.91** Specify if there are or not problems with the translation of the text of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated.

- [x] There are no problems with the translation of the directive
- [ ] There are some problems with the translation of (indicate the number of the articles concerned) of the directive.

**Explain the difficulties that this could create:**

**Q. 92 ANY OTHER INTERESTING ELEMENT**

**Q.92 A.** Following your personal point of view, mention from the point of view of third country nationals and/or from the Member State any interesting or innovative practice in your Member State

**Q.92 B.** Please add here any other interesting element in your Member State which you did not had the occasion to mention in your previous answers
QUESTIONNAIRE FOR THE NATIONAL REPORT ON THE IMPLEMENTATION OF THE DIRECTIVE FAMILY REUNIFICATION OF 22 SEPTEMBRE 2003

ESTONIA

By
Lehte Roots
Lehte.roots@mail.ee
EUI researcher in Law and Member of the Board of Estonian Refugee Council

Anne Adamson
Anne.adamson@sorainen.ee
L.M, MBA, Associate, Sorainen Law Offices
29.05.2007

The person in the team of thematic coordination in charge of this directive that you can contact if you have a question or need help when completing this questionnaire is: Yves Pascouau, + 33 5 59 57 41 20, yves.pascouau@univ-pau.fr

COMMENTARIES

1. Council directive 2003/86 on the right to family reunification faced hard negotiations requiring the presentation of revised proposals from the Commission before final adoption in 2003. The European Court of Justice rejected in June 2007 an action for annulment introduced by the European Parliament against the Council directive (C-540/03).

2. Transposition of the directive must be assessed regarding the nature of the provision concerned. So as to help you, those provisions are coloured within the questionnaire as follows: obligatory provision (Q.XX), optional provision (Q.YY), provision which set up a derogation (Q.ZZ)

3. The Court of justice has defined the margins of discretion awarded to the member States even in situations where the directive allows the member States to depart from the directive. The Court states:
"Article 4(1) of the Directive imposes precise positive obligations, with corresponding clearly defined individual rights, on the Member States, since it requires them, in the cases determined by the Directive, to authorise family reunification of certain members of the sponsor’s family, without being left a margin of appreciation” (cons. 60).
"Note should also be taken of Article 17 of the Directive which requires Member States to 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 country of origin. As is apparent from paragraph 56 of the present judgment, such criteria correspond to those taken into consideration by the European Court of Human Rights when it reviews whether a State which has refused an application for family reunification has correctly weighed the competing interests” (cons. 64)
The fact that the concept of integration is not defined cannot be interpreted as authorising the Member States to employ that concept in a manner contrary to general principles of Community law, in particular to fundamental rights. The Member States which wish to make use of the derogation cannot employ an unspecified concept of integration, but must apply the
condition for integration provided for by their legislation existing on the date of implementation of the Directive in order to examine the specific situation of a child over 12 years of age arriving independently from the rest of his or her family" (cons. 70).

4. The main difficulty according to the transposition of the directive relies on the systematic opportunities offered to member States to depart from the provisions of the directive when applying it.

5. Article 19 indicates which themes where the most sensitive during the negotiations of the Directive (art. 3, 4, 7, 8 and 13).

FIRST PART

1. NORMS OF TRANSPOSITION AND JURISPRUDENCE

Q.1.A. Identify the MAIN (because of its content) norm(s) of transposition and indicate its legal nature
This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)
About legal nature in the table below: legislative refers to a norm adopted in principle by the Parliament; regulation refers to a norm complementing the law and adopted in principle by the executive power; circular or instructions refer to practical rules about implementation of laws and regulations and adopted in principle by the adminisратive authorities

Please duplicate the table below if there is more than one MAIN norm of transposition

<table>
<thead>
<tr>
<th>This table is about:</th>
<th>a text already adopted</th>
<th>a text which is still a project to be adopted</th>
</tr>
</thead>
<tbody>
<tr>
<td>TITLE:</td>
<td>ACT ON GRANTING INTERNATIONAL PROTECTION TO ALIENS RAHVUSVAHELISE KAITSE NDMISE SEADUS</td>
<td></td>
</tr>
<tr>
<td>DATE:</td>
<td>14 December 2005</td>
<td></td>
</tr>
<tr>
<td>NUMBER:</td>
<td>Declared by President decision No. 968</td>
<td></td>
</tr>
<tr>
<td>DATE OF ENTRY INTO FORCE:</td>
<td>01.07.2006</td>
<td></td>
</tr>
<tr>
<td>PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive): also 2001/55/EC; 2003/9/EC; 2003/86/EC; 2004/83/EC;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:</td>
<td>RT I 2006, 2, 3</td>
<td></td>
</tr>
<tr>
<td>LEGAL NATURE (indicate a cross in the correct box):</td>
<td>☑️ LEGISLATIVE:</td>
<td></td>
</tr>
<tr>
<td>TITLE:</td>
<td>Aliens Act</td>
<td></td>
</tr>
<tr>
<td>DATE:</td>
<td>12.07.1993</td>
<td></td>
</tr>
<tr>
<td>NUMBER:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>DATE OF ENTRY INTO FORCE:</td>
<td>Last amendments entered into force 1.02.2007</td>
<td></td>
</tr>
</tbody>
</table>
PROVISIONS CONCERNED:
(for example if the norm is not devoted only to the transposition of the concerned directive)

REFERENCES OF PUBLICATION
IN THE OFFICIAL JOURNAL: RT I 1993, 44, 637 last amendments RT I 2007, 9, 44

LEGAL NATURE (indicate a cross in the right box):
- [x] LEGISLATIVE
- [ ] REGULATION
- [ ] CIRCULAR OR INSTRUCTIONS

TITLE: Amendment Act of the Aliens Act and other relevant acts
VÄLISMAALASTE SEADUSE MUUTMISE NING SELLEST TULENEVALT TEISTE SEADUSTE MUUTMISE SEADUS

DATE: 14.04.2004

NUMBER:

DATE OF ENTRY INTO FORCE:

PROVISIONS CONCERNED:
The Amendment act changed or added following articles to Aliens Act Art 12 section 10 and 11, art 13 2 section 1, art 12 1 section 4, art 12 2, 12 3, 12 4, 14 section 1 1 and section 3-5, art 15 section 1

REFERENCES OF PUBLICATION

LEGAL NATURE (indicate a cross in the right box):
- [x] LEGISLATIVE
- [ ] REGULATION
- [ ] CIRCULAR OR INSTRUCTIONS

TITLE: Amendment Act of Aliens Act and relevant acts.

DATE: 19.04.2006

NUMBER:

DATE OF ENTRY INTO FORCE: 01.06.2006

PROVISIONS CONCERNED:
Aliens Act art 12 1 section 1 was amended, added art 12 1 section 4 1, art 12 3

REFERENCES OF PUBLICATION
IN THE OFFICIAL JOURNAL: makes amendments to the Aliens law

LEGAL NATURE (indicate a cross in the right box):
- [x] LEGISLATIVE
- [ ] REGULATION
- [ ] CIRCULAR OR INSTRUCTIONS

Q.1.B. List the others norms of transposition by order of importance of their legal nature (first laws, secondly regulations; thirdly circulars or instructions):

This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence). Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)

Please use one table per norm and duplicate as much as necessary
| TITLE: Amendment Act of the Aliens Act and other relevant acts  |
| VÄLISMAALASTE SEADUSE MUUTMISE NING SELLEST TULENEVALT TEISTE SEADUSTE MUUTMISE SEADUS |
| DATE: 14.04.2004 |
| NUMBER: |
| DATE OF ENTRY INTO FORCE: |
| PROVISIONS CONCERNED: |
| (for example if the norm is not devoted only to the transposition of the concerned directive) |
| REFERENCES OF PUBLICATION |
| IN THE OFFICIAL JOURNAL: |
| LEGAL NATURE (indicate a cross in the right box): |
| ☑ LEGISLATIVE |
| REGULATION |
| CIRCULAR OR INSTRUCTIONS |

| TITLE: Amendment Act of the Aliens Act and relevant acts. |
| DATE: 19.04.2006 |
| NUMBER: |
| DATE OF ENTRY INTO FORCE: 01.06.2006 |
| PROVISIONS CONCERNED: |
| (for example if the norm is not devoted only to the transposition of the concerned directive) |
| REFERENCES OF PUBLICATION |
| IN THE OFFICIAL JOURNAL: makes amendments to the Aliens law |
| LEGAL NATURE (indicate a cross in the right box): |
| ☑ LEGISLATIVE |
| REGULATION |
| CIRCULAR OR INSTRUCTIONS |

| TITLE: Rules for issuing, restore and declaring null and void of the temporary residence permit and the registration of an alien in case of absence. Täht jalise elamisloa ja tööloa taotlemise, andmise, pikendamise ning kehtetüks tunnistamise kord ja välismaalase Eestist eemalviibimise registreerimise kord |
| NUMBER: 364 |
| DATE OF ENTRY INTO FORCE: last amendments 01.02.2007 |
| PROVISIONS CONCERNED: |
| (for example if the norm is not devoted only to the transposition of the concerned directive) |
| REFERENCES OF PUBLICATION |
| LEGAL NATURE (indicate a cross in the right box): |
| ☑ LEGISLATIVE |
| REGULATION |
| ☑ CIRCULAR OR INSTRUCTIONS |
**TITLE:** Rules for issuing, restore and declaring null and void and data inserted to the ID card of the person with temporary protection and its family member.

**Ajutise kaitse saaja ja tema perekonnaliikme elamisloa taotlemise, andmise ja pikendamise ning kehtetuks tunnistamise kord, elamisloa taotlemisel esitatavate tõendite ja andmete loetelu ning elamisloa andmete isikutunnistusele kandmise kord**

**DATE:** 28.09.2006,

**NUMBER:** 211

**DATE OF ENTRY INTO FORCE:** 08.10.2006

**PROVISIONS CONCERNED:**

(for example if the norm is not devoted only to the transposition of the concerned directive)

**REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:** RT I 2006, 42,324

**LEGAL NATURE** (indicate a cross in the right box):

- [x] CIRCULAR OR INSTRUCTIONS

---

**TITLE:** Rules for issuing, restore and declaring null and void and data inserted to the ID card of a refugee and the person with subsidiary protection and its family member. **Pagulase ja täiendava kaitse saaja ja tema perekonnaliikme elamisloa taotlemise, andmise ja pikendamise ning kehtetuks tunnistamise kord, elamisloa taotlemisel esitatavate tõendite ja andmete loetelu ning elamisloa andmete isikutunnistusele kandmise kord**

**DATE:** 14.07.2006,

**NUMBER:** 162

**DATE OF ENTRY INTO FORCE:** 29.07.2006

**PROVISIONS CONCERNED:**

(for example if the norm is not devoted only to the transposition of the concerned directive)

**REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:**

**LEGAL NATURE** (indicate a cross in the right box):

- [x] CIRCULAR OR INSTRUCTIONS
Q.2. THIS QUESTION IS IN PRINCIPLE ONLY FOR FEDERAL OR ASSIMILATED MEMBER STATES LIKE AUSTRIA, BELGIUM, GERMANY, ITALY, SPAIN

Q.2.A. Explain which level of government is competent to adopt the norms of transposition.

Please include your answer in the tables below

<table>
<thead>
<tr>
<th>LEGISLATIVE RULES</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</td>
</tr>
<tr>
<td>COMPETENCES OF THE COMPONENTS:</td>
</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>REGULATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</td>
</tr>
<tr>
<td>COMPETENCES OF THE COMPONENTS:</td>
</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
</tr>
</tbody>
</table>

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<tr>
<th>CIRCULAR OR INSTRUCTIONS</th>
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</thead>
<tbody>
<tr>
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<tr>
<td>COMPETENCES OF THE COMPONENTS:</td>
</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
</tr>
</tbody>
</table>

Q.2.B. In case, explain if the federal structure and the distribution of competences between the different levels pose any problem or difficulty regarding the transposition and/or the implementation of the directive.

Q.3. Explain which authorities are competent for the practical implementation of the norm of transposition by taking the decisions in individual cases.

Please use one table per competence concerned and duplicate it if necessary

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Citizen and Migration Board (CMB)</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Ministry of Interior</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>Refugee Board</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td></td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
<td>CMB is an independent identity under the Ministry of Interior</td>
</tr>
</tbody>
</table>
Q.4. A. Has the main regulation foreseen explicitly by the main norm of transposition already been adopted or not:

☐ YES

☐ NO

Q.4.B. If the main norm(s) of transposition foresees the adoption of one or several regulations, indicate if they have all been adopted:

☐ YES

☐ NO

If NO, please indicate the missing text(s) in the table below

*Please use one line per missing text and duplicate it if necessary*

<table>
<thead>
<tr>
<th>MISSING TEXTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>INDICATE HERE THE MISSING TEXTS</td>
</tr>
</tbody>
</table>

Add if necessary some explanations (specify in particular if the missing texts are at least under preparation or foreseen in the very near future):
AIM (ARTICLE 1)

The purpose of the Directive is to determine the conditions for the exercise of the right to family reunification. In case C-540/03, the Court of justice recognizes that, in some cases, member States do not have any margin of appreciation to grant the right to family reunification.

Q.5 – Is family reunification considered as a right in your Member State?

☐ OUI
☐ NON

Please explain

According to the Aliens Act art 12 1 (spouse) art 12 3 (close relative) and AGIPA art 46 third country nationals have a right to obtain a residence permit in order to live together with the family members if all conditions stated in the law are met. Article 65 of AGIPA states what is the reunification of a family and who can benefit from the reunification.

Art 7 of AGIPA defines who is a family member of the person in need of international protection (subsidiary, temporary, refugee protection)

As a general rule, aliens shall apply for a temporary residence permit at the representations of the Republic of Estonia. The following may apply for a temporary residence permit at the Citizenship and Migration Board:

- Estonian, his/her wife/husband and underage child;
- Estonian citizen’s wife/husband and underage child;
- an applicant in the status of long-term resident of another EU Member State;
- for a child under twelve months, descent of a foreigner living in Estonia under residence permit;
- foreigner staying in Estonia during the activities of international cooperation programme with participation of a governmental- or local government agency;
- foreigner staying in Estonia under fixed-term residence permit and applying for a new fixed-term residence permit;
- foreigner having received a permit for it from National Citizenship and Immigration Board in exceptional circumstances of his/her inability to apply for residence permit to an Estonian foreign mission due to justified reason;
- foreigner having issued a permit for it by the Minister of interior on the motivated proposal of the member of the Government of the Republic with justified reason of his/her arrival in Estonia being of national interest;
- foreigner, a citizen of the country having a visa freedom pact with Estonia or in whose case Estonia has unilaterally waived visa requirement, and wife/husband and underage child of the named foreigner;
- citizen of USA or Japan and his/her wife/husband and underage child;
- foreigner, having taken up residence in Estonia before July 1, 1990 and not left to reside in any other country after the named date and who has not been refused a residence permit or prolongation of such or whose residence permit was not declared invalid.
As a general rule, an applicant submits his/her application personally. If an applicant cannot submit an application for a residence permit personally it can be done by his/her representative. An application for a residence permit for a child under 15 years of age or a person without active legal capacity shall be submitted by his/her legal representative - a parent, a guardian or a representative of a guardianship authority. If an application is submitted by a representative he/she has to submit a document certifying his/her right of representation.

A minor who resides permanently in a foreign state and who is at least 15 years of age may file an application for a temporary residence permit personally with the notarised consent of a parent.

The decision as to whether or not to issue a residence permit shall be decided within a period of 3 months from the date of starting the processing of the application. If any deficiencies are found in the application the decision shall be made within a period of 3 months from the date of rectifying these deficiencies.

The above-mentioned term may be extended if the checking of the data and documents added to the application and the verification of whether the application is verified takes longer than foreseen for the processing of applications.

The CMB shall not review the application if the applicant has not rectified, on time, any deficiencies found in the application or documents, or has not submitted all the necessary documents.

An applicant shall be informed in writing, on the basis of contacts given in the application, about the issue of a residence permit, the place of issue, the extension of the period of processing of his/her application, the refusal to process his/her application or the refusal to issue a residence permit by sending him/her a notice at the address given in the application.

Q.5. A – Are there any figures available relating to the exercise of the right to family reunification between 2002 and 2006? If yes, what are the trends, including nationality assessment?

In 2006 there were 2316 cases of family reunification.

DEFINITIONS (ARTICLE 2)

SCOPE (ARTICLE 3)

The scope of the Directive is defined by article 3. We recall that:

§ 1 "reasonable prospect..." aims at excluding persons residing on a temporary basis (stagiaires, etc...)

European citizens are excluded (§ 3)

Comparison with existing legislation is of importance so as to assess the added value of the harmonization process (§ 5)

Q.6. Period of validity of the sponsor’s residence permit:
Q.6. A. Is the period of validity of the sponsor’s residence permit of one year or more according to article 3 § 1 of the Directive?

☐ OUI

☐ NON
According to Aliens Act article 12 \(^1\) section 1 the permanent residence permit can be given to the foreigner who is a spouse of an Estonian citizen, or a foreigner who has resided in Estonia for two years and the spouses have an economical and psychological dependency, family is permanent and marriage is not fictive and it is justified to give the residence permit. Article 12 \(^3\) does not specify the length of the residence permit requirement for sponsor. It regulates the residence permit for children, children in custody and parents who need care. In the case of the person who received international protection the family member has to apply for the family reunification within 3 months otherwise additional proof will be asked. (Article 46 and article 65 of AGIPA)

**Q.2.B.** Quote precisely the period enshrined in national law:

In the case of the person with subsidiary protection the residence permit is given for one year (Article 38 section 2 and article 46 of AGIPA). In the case of a refugee it is three years (Article 38 section 1 and article 46 of AGIPA). In the case of temporary protection the residence permit is given for one year (article 53 of AGIPA).

Aliens Act art 12 \(^1\) subsection 1 \(^3\) the duration of the residence permit should not exceed the length of the residence permit of a sponsor.

Foreigner who is married to the person legally residing in Estonia less than three years will be issued a residence permit for one year which can be prolonged twice for one year. Foreigner who has been married to a person legally residing in Estonia for more than three years can be issued a residence permit valid up to three years and can be prolonged also up to 3 years in one time. (Aliens Act art 12 \(^1\) section 3).

The residence permit for a foreigner who is married to Estonian citizen or foreigner legally residing in Estonia may not be issued if the spouses can live in another state than Estonia. (Aliens Act art 12 \(^1\) section 5 and section 7)

Residence permit cannot be issued if the foreigner lives in Estonia because of the studies. (Aliens Act art 12 \(^1\) section 4 \(^1\))

According to Aliens Act art 12 \(^3\) the residence permit given to the person who wants to settle with a closed relative cannot exceed the duration of the residence permit of the foreigner who is living in Estonia.

**Q.6.C.** How does your Member State translate in national law the requirement for the sponsor to have "reasonable prospects of obtaining the right of permanent residence" (a 3 § 1)?

Not regulated.

**Q.7.** – Members of the family concerned:

**Q7. A.** Are they third country nationals as required by article 3 § 1 of the Directive ?

[ ] OUI

Article 2 of AGIPA

[ ] NON

If not, explain
Q.7.B. How has your Member State translated in national law the wording of "whatever status" included in article 3 § 1 of the Directive?

The family reunification is available only for the persons with a refugee, subsidiary protection or temporary protection. (Article 46 and 65 of AGIPA)
It is not available for the asylum seekers. Family reunification is available also for third country nationals under the Aliens Act art 12 1 to settle with a spouse and art 12 3 to settle with the close relative.

Q.8 – Did the transposition of the Directive in your Member state breached provisions of international law more favourable to individuals (a 3 § 4)?

☐ OUI
☐ NON

Q.9 – If yes, are those provisions based on:

Q.9.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?

☐ OUI
☐ NON

Specify which provisions

Q.9.B - The European Social Charter of 18 October 1961 (a 3 § 4)?

☐ OUI
☐ NON

Specify which provisions

Q.9.C. The amended European Social Charter of 3 May 1987 (a 3 § 4)?

☐ OUI
☐ NON

Specify which provisions


☐ OUI
☐ NON

Specify which provisions
Q.10 – Does the transposition of the Directive affect national provisions more favourable to individuals (a 3 § 5)?

☐ OUI

☐ NON

If yes, please specify which provisions

Before the persons could wait 5 years for family reunification now if the person has resided in Estonia for two years he can apply for the reunification. (Aliens Act art 12 1). The Directive brought more favorable provisions for an alien to the Estonian legislation.

In case of the refugee or a person with subsidiary protection there is no need to wait. When he/she gets the residence permit the family reunification application has to be submitted within 3 months. If this is not done additional requirements (flat, income, etc) can be placed in order to agree upon family reunification. (AGIPA art 46 section 4).

Beneficiaries (Article 4)

Article 4 of the Directive contains numerous "may clauses". It is therefore important to pay attention on the way Member States use them and on the legal modalities adopted thereof.

Article 4 § 1 a) and b) enacts a right to family reunification for some members of the sponsor's family. The Member State does not have any margin of discretion regarding those persons.

Article 4 § 1 last indent foresee one derogation regarding child over 12 years on the basis of an integration criterion. This is one of the most sensitive questions encompassed by the directive beside the issue of the limit of age in § 6.

Regarding article 4 § 6, the Court states "'It does not matter that the final sentence of the contested provision provides that the Member States which decide to apply the derogation are to authorise the entry and residence of children in respect of whom an application is submitted after they have reached 15 years of age 'on grounds other than family reunification'. The term 'family reunification' must be interpreted in the context of the Directive as referring to family reunification in the cases where family reunification is required by the Directive. It cannot be interpreted as prohibiting a Member State which has applied the derogation from authorising the entry and residence of a child in order to enable the child to join his or her parents". (cons. 86) The Court adds "Article 4(6) of the Directive must, moreover, be read in the light of the principles set out in Article 5(5) thereof, which requires the Member States to have due regard to the best interests of minor children, and in Article 17, which requires them to take account of a number of factors, one of which is the person’s family relationships" (cons. 87)

Q.11 – Does your national law recognize the right to family reunification to:

Q.11. A – The sponsor’s spouse (a. 4 § 1 a)?

☐ OUI

☐ NON
Aliens Act art 12 for third country nationals. AGIPA art 46 for persons in need of international protection (refugees, subsidiary protection) art 59 and 53 of AGIPA (temporary protection receivers)

Q.11. B - Minor children of the sponsor and of his/her spouse (a. 4 § 1 b)?

☑ OUI
☐ NON

Aliens Act Article 12 for third country nationals and AGIPA art 46 for persons in need of international protection (refugees, subsidiary protection) art 59 and 53 of AGIPA (temporary protection receivers) family members. The definition of a family member is given in art 7 of AGIPA.

Q.11.C. Minor children adopted of the sponsor and of his/her spouse (a. 4 § 1 b)?

☑ OUI
☐ NON

AGIPA art 7 section 2 defines that the adopted children of a spouse or a sponsor are considered to be a family member of the refugee and a person with subsidiary protection. AGIPA art 7 section 4 (2) defines that adopted child of a sponsor or the spouse is a family member of a person with temporary protection who has a right for family reunification. Aliens Act does not specify the rights of the adopted children. According to the general principles and family law of Estonia adopted child must have the same rights and obligations as all children. Minor children in custody have a right to get unified with the person having custody. (Aliens Act art 12 section 1 (4)).

Q.11.D. Minor children of the sponsor (a. 4 § 1 c)?

☑ OUI
☐ NON

AGIPA Article 7 section 2 (1) defines the child of a refugee or person with subsidiary protection to be a family member benefiting from family reunification clause. AGIPA Article 7 section 4 (2) defines the child of a person with subsidiary protection to be a family member benefiting from family reunification clause. Aliens Act art 12 section 1 (1) allows to give residence permit to minor children to a permanent resident of Estonia.

Q.11. E. If yes, does your national law foresee that the sponsor shall have children custody and children are dependant on him or her?

☑ OUI
☐ NON
AGIPA article 7 section 2 (3) defines a person in custody of the sponsor and/or its spouse to be a family member of a refugee or a person with subsidiary protection benefiting from family reunification. The person in custody had to be dependant on him or her. This is not a case of the person with temporary protection. AGIPA art 7 section 4 (3) does not mention the person in custody but allows to consider a person who is a close relative and who lived together with the sponsor and was dependant on him/her.

Aliens Act art 12 3 section 1 (1) allows to give residence permit to minor children to a permanent resident of Estonia. Art 12 3 regulates the right of children in custody and they have a right for reunification if the sponsor have enough means of income to take care of him/her.

Specify if necessary the proofs required

Q.11 F. Minor children adopted of the sponsor (a 4 §1.c) ?

☐ OUI
☐ NON

AGIPA art 7 section 2 (2) defines a single and minor adopted child of a sponsor or a spouse of a refugee or a person with subsidiary protection to be a family member benefiting from family reunification. AGIPA art 7 section 4 (2) defines a single and minor adopted minor child of a sponsor or a spouse of a person with temporary protection to be a family member benefiting from family reunification. Aliens Act art 12 3 section 1 (1) allows to give residence permit to minor children to a permanent resident of Estonia. Art 12 3 regulates the right of children in custody and they have a right for reunification if the sponsor have enough means of income to take care of him/her. There are no provisions about the adopted children mentioned in the law.

Q.11. G. If yes:

h. does your national law foresee that the sponsor shall have children custody and children are dependant on him or her?

☐ OUI
☐ NON

AGIPA art 7 section 2 (3) regulates that the family member of a refugee or a person with subsidiary protection is a child of a sponsor or spouse who is under custody and dependant, single and minor. AGIPA article 7 section 4 (2) does not mention the custody only adopted child is considered to be a family member of a person with temporary protection. The dependency and custody is not required. AGIPA art 7 section 1 declares that the family member of the asylum seeker is a single and minor child of the sponsor and the spouse including adopted child. They do not benefit from the family reunification.

Aliens Act art 12 3 section 1 (1) allows to give residence permit to minor children to a permanent resident of Estonia. Art 12 3 regulates the right of children in custody and they
have a right for reunification if the sponsor have enough means of income to take care of him/her.

Regulation no 364 from 2003 amended in 2006 regulate what documents have to be presented in order to apply for a residence permit. The information about custody has to be presented. The law does not specify in which form it has to be done. The general principle derived from Civil Code should be applied.

Specify if necessary the proofs required

In the case of a refugee, person with subsidiary protection and temporary protection the requirement of presenting proof of the family ties is not regulated in the Act therefore it is not clear how the relationship will be established.

**g.g.** Does national law provide that those children shall be 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'?

☐ OUI

☒ NON

Specify if necessary the proofs required

Generally the person should be able to prove the adoption. It is not written in the law that international obligations matter in that case. The general principle applies that Estonia should follow its international obligations.

**Q.11. H.** Minor children of the spouse (a 4 §1.d.)?

☒ OUI

☐ NON

AGIPA art 7 section 2 (2) defines a single and minor adopted child of a sponsor or a spouse of a refugee or a person with subsidiary protection to be a family member benefiting from family reunification.

AGIPA art 7 section 4 (2) defines a single and minor adopted minor child of a sponsor or a spouse of a person with temporary protection to be a family member benefiting from family reunification.

Aliens Act art 12 ³ provide the possibility of a spouse to be reunited with a minor child.

**Q.11. I.** If yes, does your national law foresee that the spouse shall have children custody and children are dependant on him or her?

☒ OUI

☐ NON
AGIPA art 7 section 2 (3) regulates that the family member of a refugee or a person with subsidiary protection is a child of a sponsor or spouse who is under custody and dependant, single and minor.
AGIPA article 7 section 4 (2) does not mention the custody, only adopted child is considered to be a family member of a person with temporary protection. The dependency and custody is not required.
AGIPA art 7 section 1 declares that the family member of the asylum seeker is a single and minor child of the sponsor and the spouse including adopted child. They do not benefit from the family reunification.

In Aliens Act the children in custody are recognised as objects for family reunification. Own children can reunite also.

Specify if necessary the proofs required

Q.11. J. Minor children adopted of the spouse (a 4 §1.d )?

☐ OUI
☐ NON

AGIPA art 7 section 2 (2) regulates that the family member of a refugee or a person with subsidiary protection is a child of a sponsor or spouse who is minor, single including adopted child.
AGIPA article 7 section 4 (2) regulates that the family member of a person with temporary protection is child of a sponsor or a spouse who is single and minor including adopted child.
AGIPA art 7 section 1 declares that the family member of the asylum seeker is a single and minor child of the sponsor and the spouse including adopted child. They do not benefit from the family reunification.

Aliens Act is silent about adopted children.

Q.11. K. If yes,
k. Does your national law foresee that the spouse shall have children custody and children are dependant on him or her?

☐ OUI
☐ NON

AGIPA art 7 section 2 (3) regulates that the family member of a refugee or a person with subsidiary protection is a child of a sponsor or spouse who is under custody and dependant, single and minor.
AGIPA article 7 section 4 (2) does not mention the custody, only adopted child is considered to be a family member of a person with temporary protection. The dependency and custody is not required.
AGIPA art 7 section 1 declares that the family member of the asylum seeker is a single and minor child of the sponsor and the spouse including adopted child. They do not benefit from the family reunification.

Aliens Act art 12 3 provide the possibility of a spouse to be reunited with a minor child. It is not specified if the custody has to be established.
Specify if necessary the proofs required

It is not specified in the law how it should be provided in the case of a refugee, person with subsidiary protection or temporary protection.

**k.k.** Does national law provide that those children shall be 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"?

☐ OUI

☒ NON

Specify if necessary the proofs required
The person should be able to approve the adoption. It is not explicitly written in the law that international obligations matter in that case. The general principle applies that Estonia should follow its international obligations.

**Q.12** – Has your Member State transposed the option opened by article 4 § 1 c:

**Q.12A.** To authorise reunification of minor children of the sponsor – including also adopted children – of whom custody is shared (a 4 §1.c)?

☒ OUI

☐ NON

It is not specified in the law that in the case of shared custody the children could not join the parent. AGIPA art 7 section 2 (2) defines a single and minor adopted child of a sponsor or a spouse of a refugee or a person with subsidiary protection to be a family member benefiting from family reunification.
AGIPA art 7 section 2 (3) regulates that the family member of a refugee or a person with subsidiary protection is a child of a sponsor or spouse who is under custody and dependant, single and minor.
AGIPA article 7 section 4 (2) does not mention the custody, only adopted child is considered to be a family member of a person with temporary protection. The dependency and custody is not required.
AGIPA art 7 section 1 declares that the family member of the asylum seeker is a single and minor child of the sponsor and the spouse including adopted child.
They do not benefit from the family reunification.

It is also not specified in the Aliens Act what should be the procedure in the case of shared custody.

Specify if necessary
Q.12.B. If yes, has your legislation transposed the condition that the other party sharing custody has given his or her agreement (a 4 §1. c)?

☐ OUI

☒ NON

Specify if necessary

It is not explicitly written to the legislation but general rule that the consent has to be given should be applied.

Q.13 – Has your Member State transposed the option opened by article 4 § 1 d):

Q.13.A. to authorise reunification of minor children of the spouse – including also adopted children – of whom custody is shared (a 4.1.d. in fine)?

☒ OUI

☐ NON

Specify if necessary

Reunification of children of the spouse whose custody is shared is allowed. The consent of the other parent has to be given. All documents have to be translated and have apostille. Art 17 of the Government Act from 01.06.2006 the rules for application, issuing, extending and declaring void of residence permits. In the case of a refugee and a person with subsidiary or temporary protection the rules are different. They have to provide proof that is possible to get. (Government regulation no 162 from 14.07.2006 and no 211 from 28.09.2006.)

Q.13 B. If yes, has your legislation transposed the condition that the other party sharing custody has given his or her agreement (a 4. 1.d) ?

☒ OUI

☐ NON

Specify if necessary

Reunification of children of the spouse whose custody is shared is allowed. The consent of the other parent has to be given. All documents have to be translated and have apostille. Art 17 of the Government Act from 01.06.2006 the rules for application, issuing, extending and declaring void of residence permits. In the case of a refugee and a person with subsidiary or temporary protection the rules are different. They have to provide proof that is possible to get. (Government regulation no 162 from 14.07.2006 and no 211 from 28.09.2006.)
Q.14 – In any case referred to in questions 7 to 9, is the age of the minor children below the age of majority set up by the law of your Member State (a.4 §1, second indent)?

☐ OUI
☒ NON

If yes, indicate the age required

Q.15 – In any case referred to in questions 7 to 9, has the prohibition of marriage of minor children been transposed (a.4 §1, second indent)?

☒ OUI
☐ NON

If not, explain

If the person under age 18 is married s/he can be considered to have more rights and obligations and might not have the protection that is provided to a minor. The principle comes from the family law and is not written explicitly to the AGIPA.

Q.16 – Is the derogation set up in article 4 § 1 last indent relating to the conditions for integration of children over 12 years arrived independently from the rest of the family used by your Member State?

☐ OUI
☒ NON

How the criterion "arrives independently from the rest of his/her family" has been transposed in your national legislation?

The child is called “separated child” and the best interest of the child have to be followed. There is no integration requirement for the family reunification cases.

Q.17 – If yes, did this integration condition already exist in your national legislation before the date of transposition of the Directive?

☐ OUI
☒ NON

There is no integration requirement for family reunification. Integration requirement is only applied if a person asks for the long term resident status.

Q.18 – Describe briefly the content of this condition, the date of its creation and the conditions of its examination

The integration principle is applicable for those who apply for the long term residence permit. And the only integration requirement is to know the Estonian language on the minimum level.
Q.19 – Are the children of refugees required to an integration test by your Member State (in contradiction with article 10 § 1)?

☐ OUI  
☒ NON  

If yes, explain

Q.20 – Does your Member State authorise:

Q.20 A – Reunification of first-degree relatives in the direct ascending line of the sponsor (a 4§2 a)?

☒ OUI  
☐ NON

It depends from the status of the person applying for family reunification. The persons with refugee status and subsidiary protection have a right to reunify with direct ascending line if the parents, grandparents are dependant (AGIPA article 7 section 2 (5)). The persons with temporary protection have a right to reunify only with a closed relative who is dependent and lived together with the applicant. Art 7 (4) of the AGIPA. Third country nationals who are not asylum seekers are regulated by Aliens Act art 12 3 section 3 says that a parent or grandparent can join the adult child or grandchild in the case of need for care and it is not possible to get it in the country of origin or in another state and who can take care of the parent or grandparent.

Q.20 B – If yes, shall they be dependant and not enjoy proper family support in the country of origin?

☐ OUI  
☐ NON

Yes, the persons with refugee status and subsidiary protection have a right to reunify with direct ascending line in the case the parents, grandparents are dependant (AGIPA article 7 section 2 (5)).

Yes, the persons who are not asylum seekers are regulated by Aliens Act art 12 3 section 3 which says that a parent or grandparent can join the adult child or grandchild in the case of need for care and it is not possible to get it in the country of origin or in another state and who can take care of the parent or grandparent.

How each of those criterions is transposed and checked?

No special criterions for family reunification of the people in need of international protection is specified in the law and there has been no family reunification cases of people in need of international protection. Other third country nationals, legally residing in Estonia and Estonian citizens are reunited with the family members.
The regulation no 364 from 2003 amended in 2006 regulate what data has to be presented in order to benefit from family reunification of a third country national.

Parent or a grandparent has to submit following documents:
1. a standard application form;
2. an application form “Application for issue or extension of temporary residence permit,
3. an application “Settlement of a parent or grandparent with an adult child or grandchild who resides in Estonia permanently,
4. an application form “Data on close relatives, spouse, family members and dependants
5. a standard CV of an applicant,
6. an identity document of an applicant;
7. a coloured photograph sized 40x50 mm;
8. documents certifying kinship;
9. an applicant’s confirmation that he/she cannot receive appropriate care/assistance in his/her country of habitual residence;
10. a document that certifies the legal income of a sponsor or a sponsor and an applicant during the six months preceding the submission of an application for a residence permit;
11. an insurance policy which ensures the reimbursement of expenses incurred for medical treatment connected with the illness or incapacity of the applicant during the period of validity of the residence permit applied for. There is no need for an insurance policy if the person is insured by compulsory health insurance pursuant to the Health Insurance Act, and in cases provided for by international agreements;
12. justification as to why an alien wishes to settle in Estonia;
13. a document that certifies that the sponsor has an actual dwelling place in Estonia;
14. data concerning the state of health of the applicant if the need for care proceeds from the state of health of the applicant;
15. a document certifying the payment of the state fee.

Regulation no 211 regulates the data that has to be presented in order to reunite with the family member who is a receipt of temporary protection and regulation no 162 regulates the data that has to be presented in order to reunite with the family member who is a refugee or who has been granted a subsidiary protection.

Q. 20.C. Reunification of first-degree relatives in the direct ascending line of the spouse (a 4§2 a)?

X OUI

X NON

It depends from the status of the person applying for family reunification. The persons and their spouses with refugee status and subsidiary protection have a right to reunify with direct ascending line if the parents, grandparents when they are dependant (AGIPA article 7 section 2 (5)). The spouse of the persons with temporary protection does not have a right for family reunification of ascending relative. (Art 7 of the AGIPA).

Other third country nationals and Estonian nationals rights are regulated in Aliens Act. Aliens Act article 12 3 section 1 (3) provide the family reunification for parents and grandparents. There is no special link made to the spouses of a sponsor. If the spouse has a residence permit he/she can apply also for the family reunification of his/her parents and grandparents.
Q.20.D. If yes, shall they be dependant and not enjoy proper family support in the country of origin?

☐ OUI
☐ NON

How each of those criterions is transposed and checked?

There are no special criterions on family reunification for persons in need of international protection. For other third country nationals proof has to be provided (according to general principles), letter of explanation what kind of support the person needs, which kind of help has been asked, data from what time the support is needed. (Regulation no 364 art16).

According to the article 16 section 2 (4) of the Regulation no 364 the explanation and why the applicant cant get care from the country of nationality or country of settlement and documents certifying kinship etc.

The full list of documents and applications is following:

1. A standard application form;
2. An application form “Application for issue or extension of temporary residence permit”;
3. An application “Settlement of a parent or grandparent with an adult child or grandchild who resides in Estonia permanently”;
4. An application form “Data on close relatives, spouse, family members and dependants;”.
5. A standard CV of an applicant;
6. An identity document of an applicant;
7. A coloured photograph sized 40x50 mm;
8. Documents certifying kinship;
9. An applicant's confirmation that he/she cannot receive appropriate care/assistance in his/her country of habitual residence;
10. A document that certifies the legal income of a sponsor or a sponsor and an applicant during the six months preceding the submission of an application for a residence permit;
11. A health insurance which ensures the reimbursement of expenses incurred for medical treatment connected with the illness or incapacity of the applicant during the period of validity of the residence permit applied for. There is no need for an insurance policy if the person is insured by compulsory health insurance pursuant to the Health Insurance Act, and in cases provided for by international agreements;
12. Justification as to why an alien wishes to settle in Estonia;
13. A document that certifies that the sponsor has an actual dwelling place in Estonia;
14. Data concerning the state of health of the applicant if the need for care proceeds from the state of health of the applicant;
15. A document certifying the payment of the state fee.

Q.20.E. Reunification of adult unmarried children of the sponsor? (a 4§2 b) ?

☐ OUI
☐ NON

AGIPA article 7 section 2 4) says that the family member of the refugee or person with subsidiary protection is an adult child of the sponsor or spouse when the adult child is dependant because of its health conditions or disability.
If necessary, explain how this procedure is organised

Q.20.F. If yes, does the national legislation impose that those adult unmarried children of the sponsor are objectively unable to provide for their own needs on account of their state of health (a 4 §2 b)?

☐ OUI
☐ NON

AGIPA article 7 section 2 4) says that the family member of the refugee or person with subsidiary protection and its spouse, is an adult child of the sponsor or spouse when the adult child is dependant because of its health conditions or disability.

Aliens Act art 12 3 section 2 (1) states that the residence permit can be granted to an adult child to settle with a parent who is a permanent resident and if the child is not able because of the health conditions or disability to take care of himself/herself.

If necessary, specify how each of those criterions ("objectively" and "unable to provide for their own needs") is transposed and checked?

Not specified in the law and there has been no family reunification cases of refugees or asylum seekers. In case of third country nationals the regulation no 364 from 2003 amended in 2006 art 15 section 3 (1) specifies that the document proving that person is not able to take care of him/herself because of health conditions or disability has to be issued by the pädev institution.

The list of documents to be submitted in the family reunification case of the child is following:

In the case of minors under 18 years of age

- a standard application form;
- an application form “Application for issue or extension of temporary residence permit;
- an application form “Data on close relatives, spouse, family members and dependants
- an application form “Settlement of a minor with a parent who resides in Estonia permanently”
- a coloured photograph sized 40x50 mm;
- a child's birth certificate;
- a child's identity document if he/she has one;
- a notary confirmed consent of a parent who will not settle in Estonia for the settling of a minor child in Estonia which will be valid for the submission of an application for a residence permit for up to two months from the date of giving the consent;
- a document that certifies that the parent has an actual dwelling in Estonia, except if the minor and the parent arrive in Estonia together;
- a written confirmation by the parent that the settlement of a child with him/her does not deteriorate the child’s legal, financial or social status;
- a parent's identity document (if the parent’s name in the child’s birth certificate differs from the name in the parent’s identity document a document certifying the change of the name of the parent);
- a document certifying the payment of the state fee.
In the case of an adult child the following documents must be submitted in addition to the above-mentioned documents:

- CV
- a document issued by a competent authority which certifies that the person is not able to cope on his/her own due to his/her state of health or disability;
- a confirmation of a parent that he/she undertakes to incur the costs of care and treatment of his/her child;
- an insurance policy (there is no need for an insurance policy if the person is insured by a compulsory health insurance pursuant to the Health Insurance Act, and in cases provided for by international agreements).
- there is also no need for a notary confirmed consent of a parent who will not settle in Estonia for the settling of a child in Estonia.
- upon the extension of a residence permit the same documents must be submitted as for the application for the issue of a permit. A curriculum vitae must be submitted in the case that it has not been submitted before. Data concerning close relatives, a spouse, family members and dependants must be submitted if the data has changed after the application for a residence permit or if it has not been submitted before.

**Q.20. G.** Does your Member State authorize reunification of adult unmarried children of the spouse (a 4§2 b)?

☑ OUI
☐ NON

It depends from the case. Only in the case when the adult unmarried child of the spouse is unable to provide for their own needs because of their state of health. The same rules apply as in the case of the sponsors child. There are no special provisions for the children of the spouse. If the spouse is permanently residing in Estonia the usual rule of family reunification is applied.

AGIPA article 7 section 2 4) says that the family member of the refugee or person with subsidiary protection and its spouse, is an adult child of the sponsor or spouse when the adult child is dependant because of its health conditions or disability.

If necessary, specify how this condition is assessed

In the case of the third country national who is not the refugee or a person in need of subsidiary protection, the proof has to be provided, letter of explanation what kind of support the person needs, which kind of help has been asked, data from what time the support is needed and proof on health conditions. (Regulation no 364 article 16)

**Q.20.H.** If yes, does the national legislation impose that those adult unmarried children of the sponsor are objectively unable to provide for their own needs on account of their state of health (a 4 §2 b) ?

☑ OUI
☐ NON
If necessary, specify how each of those criterions ("objectively" and "unable to provide for their own needs") is transposed and checked?

The proof has to be provided, letter of explanation what kind of support the person needs, which kind of help has been asked, data from what time the support is needed and proof on health conditions. (Rules §16)

**Q.20. I.** Did your Member state use the by law or regulation norms to implement article 4 § 2 a et b?

- [ ] OUI
- [ ] NON

Ascending first degree relatives - AGIPA article 7 section 2 5) says that the persons with refugee status and subsidiary protection and their spouses have a right to reunify with direct ascending line if the parents, grandparents are dependant (AGIPA article 7 section 2 (5)). The persons with temporary protection have a right to reunify only with a closed relative who is dependent and lived together with the applicant. Art 7 (4) of the AGIPA.

Adult unmarried children – AGIPA article 7 section 2 4) says that the family member of the refugee or a person with subsidiary protection is the sponsors or the spouses unmarried and adult child when the child is not able to take care of himself/herself because of health problems or disability.

**Q.21** – Does your Member State authorise reunification of the unmarried partner of the sponsor, being a third country national (a 4 §3)?

- [ ] OUI
- [x] NON

**Q.22** – If yes:

**Q.22 A** – This partnership shall be based on a duly attested stable long term relationship?

- [ ] OUI
- [ ] NON

If yes, specify how your Member State assess this situation

**Q.22 B** – This partnership shall be registered?

- [ ] OUI
- [ ] NON
Q.23 – Does your national law consider the registered partner as the husband/spouse (a 4 §3 alinéa 2)?
☐ OUI
☒ NON

Q.24 – Does your Member State authorise:

Q.24. A – Reunification of minor children of the partner, including adopted children (a 4§3)?
☐ OUI
☒ NON

Q. 24. B – Reunification of adult unmarried children of the partner, including adopted children (a 4§3)?
☐ OUI
☒ NON

Q.25 – Does your Member State allow reunification of adult unmarried children who are objectively unable to provide for their own needs on account of their state of health (a 4§3)?
☐ OUI
☒ NON

Only in the case when the adult unmarried children are from the marriage. Estonia does not recognize unmarried or registered partnership other than marriage.

Adult unmarried children – AGIPA article 7 section 2 4) says that the family member of the refugee or a person with subsidiary protection is the sponsors or the spouses unmarried and adult child when the child is not able to take care of himself/herself because of health problems or disability.

Aliens Act article 12 1 section 1 (2) residence permit can be submitted to an adult child in order to settle with a parent if the child is unable to cope independently due to health reasons or a disability.

If yes, specify how the conditions, and more particularly the "objectivity", are assessed.

There are no conditions of “objectivity” set by the law. The regulation no 364 from 2003 amended in 2006 art 16 lists the documents that have to be submitted for the family reunification. The refusal of the residence permit can be contested in the court.

Q.26 – Did your Member state use the by law or regulation norms to implement article 4 § 3?
YES
Ascending first degree relatives - AGIPA article 7 section 2 5) says that the persons with refugee status and subsidiary protection and their spouses have a right to reunify with direct ascending line if the parents, grandparents are dependant (AGIPA article 7 section 2 (5)). The persons with temporary protection have a right to reunify only with a closed relative who is dependent and lived together with the applicant. Art 7 (4) of the AGIPA.

Adult unmarried children – AGIPA article 7 section 2 4) says that the family member of the refugee or a person with subsidiary protection is the sponsors or the spouses unmarried and adult child when the child is not able to take care of himself/herself because of health problems or disability.

Regulations no 211, 164 from 2006 and regulation no 364 from 2003 amended in 2006.

The partner is not considered to be eligible for the family reunification.

Q.27 – Is the prohibition of polygamous marriage enshrined in your national legislation (a. 4§4)?

☐ OUI
☒ NON

Only one spouse is allowed to take with. Estonia does not accept polygamy. Family law and Civil Code principles apply.

Q.28 – Does your Member State limit family reunification of minor children of a further spouse and the sponsor (article 4§4 dernier alinéa,)?

☐ OUI
☒ NON

If the applicant is a father of the child, the general rules of family reunification with a child apply. The consent of the mother of the child has to be given. It is not explicitly written that the minor child of the further spouse can’t benefit from the family reunification. Article 12 3 Aliens Act and AGIPA art 46 apply and principle that a child has a right to reunify with a parent. A notary confirmed consent of a parent who will not settle in Estonia for the settling of a minor child in Estonia which will be valid for the submission of an application for a residence permit for up to two months from the date of giving the consent.

Q.29 – Does your Member State use the option set up by article 4 § 5 requiring the sponsor and his/her spouse to be of a minimum age of 21 years old before reunification?

☐ OUI
☒ NON

Q.30 – If yes,

Q.30 A – What is the age required?
Q.30 B – Is the derogation founded on integration criteria and/or prevention of forced marriage?

Q.31 – Does your Member State use the derogation of article 4 § 6 by requesting that the applications concerning family reunification of minor children have to be submitted before the age of 15?

☐ OUI  
☒ NON

Explain

Minor is a person under age 18 if not married.

Q.32 – If yes, was it provided by existing legislation on the date of implementation of the directive?

Q.33 – If the application is not introduced before the age of 15, do Member States authorise entry and residence on grounds other than family reunification?

☐ OUI  
☒ NON

Which grounds and which conditions?

PROCEDURE (ARTICLE 5)

We draw attention on the major importance given by the Court of justice regarding § 5 relating to the best interest of minor children.

Q.34 – Did your Member State institute a procedure regarding family reunification (a 5 §1) ?

☒ OUI  
☐ NON

Yes there is a rule for issuing, restoring and declaring null and void of the temporary residence permit and the registration of an absence of the alien. (Regulation no 211 from 2006, published RT I 2006, 57, 436).

Rules for issuing, restore and declaring null and void of the temporary residence permit and the registration of absence of the alien. (Regulation no 364 from 2003 amended in 2006).

Rules for issuing, restore and declaring null and void and data inserted to the ID card of a refugee and the person with subsidiary protection and its family member. (Regulation no 162 from 2006).

Also Aliens Act and AGIPA are regulating the procedure for family reunification. The application for family reunification has to be submitted in general to the Estonian Embassy. There are some exceptions to this rule.

Q.35 – If yes,
Q.35. A – Which authorities are in charge of this issue?

Ministry of Interior, Citizen and Migration Board, Ministry of Foreign Affairs via consulates.

Q.35. B – Are NGO’s associated to this procedure?

☐ OUI
☒ NON

If yes, describe the procedure

Usually the regulations issued are not consulted with NGO-s, although in case of the new Acts or legislation amendments the NGO-s opinion is asked during the legislation drafting. NGOs can provide legal, social counseling etc. to the persons seeking family reunification. Officially NGOs are not part of the procedure.

Q.35. C – Is the application submitted by the sponsor or by family members?

The family member who wants to come to Estonia has to submit the application for a residence permit on the basis of family reunification (Aliens Act article 11 1) usually in the Estonian Embassy. Some exceptions can be made.

As a general rule, aliens shall apply for a temporary residence permit at the representations of the Republic of Estonia (Embassy). The following may apply for a temporary residence permit at the Citizenship and Migration Board:

1. an applicant in the status of long-term resident of another EU Member State;
2. for a child under twelve months, descent of a foreigner living in Estonia under residence permit;
3. foreigner staying in Estonia during the activities of international cooperation programme with participation of a governmental- or local government agency;
4. foreigner staying in Estonia under fixed-term residence permit and applying for a new fixed-term residence permit;
5. foreigner having received a permit for it from National Citizenship and Immigration Board in exceptional circumstances of his/her inability to apply for residence permit to an Estonian foreign mission due to justified reason;
6. foreigner having issued a permit for it by the Minister of interior on the motivated proposal of the member of the Government of the Republic with justified reason of his/her arrival in Estonia being of national interest;
7. foreigner, a citizen of the country having a visa freedom pact with Estonia or in whose case Estonia has unilaterally waived visa requirement, and wife/husband and underage child of the named foreigner;
8. citizen of USA or Japan and his/her wife/husband and underage child;
9. foreigner, having taken up residence in Estonia before July 1, 1990 and not left to reside in any other country after the named date and who has not been refused a residence permit or prolongation of such or whose residence permit was not declared invalid;
10. a long term resident who has received the status in another EU Member State and its spouse and minor child;
11. foreigner whose residence permit has been declared void because he presented wrong data or used fraud, can apply within 2 months in the CMB. (Aliens Act article 11 1).
Q.35. D – Is this procedure exclusive from other possibilities to grant family reunification?

☐ OUI

☒ NON

If other procedural possibilities exist, please describe them

When a person is already inside Estonia it can be allowed to apply directly to the Citizen and Migration Board office. Explanation letter has to be written by the applicant and CMB will make a separate decision on allowing the submission of the application inside the country. (Article 4 from regulation 162 and 211 from 2006). Other cases when application can be placed in CMB are explained before and are stated in article 11 of Aliens Act.

Q. 35. E – Was this procedure existing before the adoption of Directive 2003/86?

☒ OUI

☐ NON

The family reunification procedure for third country nationals was in place before the directive was adopted but the specific rules for refugees, persons with temporary or subsidiary protection were introduced with the new law AGIPA and by the regulations adopted in 2006.

Q.36 – Which documentary evidence are required to prove (a 5 §2):

Q.36. A – Family relationships according to article 4?

Yes. According to article 8 of regulation 211 and 162 from 2006.

Q.36. B – Accommodation conditions laid down in article 7?

Yes, but not for refugees and persons with subsidiary, temporary protection

Q.36. C – Sickness insurance conditions?

Yes, but not for refugees and persons with subsidiary, temporary protection

Q.36. D – Certified copies of family member(s)’ travel documents?

Yes
Q.37 – Is the possibility foreseen to proceed to:

Interviews:

☐ OUI

☐ NON

Investigations:

☐ OUI

☐ NON

If yes, describe them briefly

CMB officials have a right to conduct interviews, do investigations and visit the living premises in order to find out if it is a real or fake marriage according to Aliens Act article 15. These provisions are not specified in AGIPA.

In the process of controlling the stay and working legality of a foreigner in Estonia the migration official can use physical power, special equipment, cuffs, truncheon and gas weapons according to the law (Obligation to leave and Prohibition to Enter Act).

Q.38 – When examining an application concerning the unmarried partner of the sponsor, which evidences are taken into account by Member States on the basis of national law to prove family relationship (article 5§2 dernier alinea) ?

Family reunification is possible only with married husband or wife.

Q.38. A – Existence of family ties and other elements such as a common child?

☐ OUI

☐ NON

Specify

Q.38. B - Previous cohabitation?

☐ OUI

☐ NON

Q.38. C - Registration of a partnership

☐ OUI

☐ NON
Q.38. D - Any other reliable means of proof foreseen in national law?

☐ OUI
☐ NON

If yes, specify which ones:

Q.39 – Are family members obliged to reside outside the territory of the Member State while the application is being examined (a5 §3) ?

☐ OUI
☐ NON

Generally yes. The conditions to enter and reside in Estonia are specified in Aliens Act article 5. The residence permit application has to be submitted to the Estonian Embassy (Article 11 Aliens Act). In exceptional cases like the person is already inside the country the special permission from CMB has to be acquired in order to place the application for residence permit inside the country.

Is this obligation sanctioned and how?

Not sanctioned. Generally they are obliged to reside outside of the territory, some exceptions can be made.

Q.40 – If the answer is yes, is a derogation organised according to article 5 § 3 second indent?

☐ OUI
☐ NON

Please specify

There is a possibility to apply for the family reunification inside Estonia when the person is residing in Estonia and it is not possible for the spouse to move abroad to apply for the family reunification. Also the residence permit can be issued to an Estonian (ethnic background), his/her spouse and minor child etc.. The Art 11 section 2 of Aliens Act gives a list of persons who can apply inside the country.

As a general rule, aliens shall apply for a temporary residence permit at the representations of the Republic of Estonia. The following may apply for a temporary residence permit at the Citizenship and Migration Board:

- Estonian, his/her wife/husband and underage child;
- Estonian citizen’s wife/husband and underage child;
- an applicant in the status of long-term resident of another EU Member State;
- for a child under twelve months, descent of a foreigner living in Estonia under residence permit;
- foreigner staying in Estonia during the activities of international cooperation programme with participation of a governmental- or local government agency;
- foreigner staying in Estonia under fixed-term residence permit and applying for a new fixed-term residence permit;
- foreigner having received a permit for it from National Citizenship and Immigration Board in exceptional circumstances of his/her inability to apply for residence permit to an Estonian foreign mission due to justified reason;
- foreigner having issued a permit for it by the Minister of interior on the motivated proposal of the member of the Government of the Republic with justified reason of his/her arrival in Estonia being of national interest;
- foreigner, a citizen of the country having a visa freedom pact with Estonia or in whose case Estonia has unilaterally waived visa requirement, and wife/husband and underage child of the named foreigner;
- citizen of USA or Japan and his/her wife/husband and underage child;
- foreigner, having taken up residence in Estonia before July 1, 1990 and not left to reside in any other country after the named date and who has not been refused a residence permit or prolongation of such or whose residence permit was not declared invalid
- a long term resident who has received the status in another EU Member State and its spouse and minor child
- Foreigner whose residence permit has been declared void because he presented wrong data or used fraud, can apply within 2 months in the CMB. (Aliens Act article 11 1).

Regulation no 211 from 2006 article 2 and regulation 162 from 2006 article 2 state that the procedures for applying the residence permit has to be done personally which means that the family member has to submit the application to the Estonian Embassy. If they are at the border or in the State, the application can be placed at the border or directly to the CMB. (Article 4 Regulation no 162 from 2006 and article 4).

Q.41 – Does your national legislation include a maximum period of 9 month to answer to the application by way of written notification (a5 §4)?

☐ OUI
☐ NON

If necessary, please specify

Regulation of the Government from 26 November 2002, no 364 Art 27 (3) the temporary residence permit application has to be reviewed within 3 months in the case the person falls under the quota systems the application can be reviewed within 6 months.

Q.42 – This time limit can be extended (a 5 §4 ailine 2)?

☐ OUI
☐ NON

Q.43 – If yes,

Q.43. A – Because of the complexity of the examination of the application?

☐ OUI
☐ NON
Q.43. B – What is the length of the extension?

The CMB will give a reasonable time for an applicant to submit the relevant documents. If the person does not correct the mistakes by that time the application can be not reviewed. No length for extension the procedure will be suspended until the complete application is submitted and then the decision on a submission of a residence permit has to be made within 2 months. (Art 15 of the Government regulation no 211 from 28th September 2006).

There is no explicit provision to extend the decision making time. In fact the decision making time itself is not extended but just the application will lie on the shelf until all documents are received. As in the case when the application is not complete the procedure can be suspended until the complete application with relevant proof is submitted. Government regulation no 211 from 28th September 2006 article 15 (4) says that the application review will be suspended until the deficiencies will be abolished. Application can be suspended until all relevant proof is provided the complexity of the case itself is not the reason to suspend the review of the application. Art 17 of the Regulation no 211 and regulation no 162.

Q.44 – If no decision is taken by the end of the 9 months period provided, what are the consequences for the applicant?

No consequences. It is not regulated.

Q.45 – Is the decision rejecting the application notified? Does this written notification contain the reasons of rejection?

☑ OUI  ☐ NON

Specify if only one condition is not required

Q.46 – How is the best interest of minor children taken into account by your Member State’s legislation and authorities during examination of the application (article 5§5) ?

Best interest of the child have to be respected. AGIPA article 46 (8) says the residence permit of a minor should not be declared void nor not extended when this is not compatible with the rights and interests of the child also the Child Protection Act (Lastekaitseeadus) applies.

CONDITIONS REQUIRED (ARTICLES 6 AND OTHERS)

Questions relating to accommodation and resources will be carefully examined to assess if Member States use them, either as a migration tool or as an integration tool.

The same assessment applies regarding the option to set up a period of lawfully residence not exceeding two years before applying for family reunification.

According to article 8, the Court of justice states: "That provision does not therefore have the effect of precluding any family reunification, but preserves a limited margin of appreciation for the Member States by permitting them to make sure that family reunification will take place in favourable conditions, after the sponsor has been residing in the host State for a
period sufficiently long for it to be assumed that the family members will settle down well and
display a certain level of integration. Accordingly, the fact that a Member State takes those
factors into account and the power to defer family reunification for two or, as the case may
be, three years do not run counter to the right to respect for family rights set out in particular
in Article 8 of the ECHR as interpreted by the European Court of Human Rights

"It should, however, be remembered that, as is apparent from Article 17 of the Directive,
duration of residence in the Member State is only one of the factors which must be taken into
account by the Member State when considering an application and that a waiting period
cannot be imposed without taking into account, in specific cases, all the relevant factors" (cons. 99). "The same is true of the criterion of the Member State’s reception capacity, which
may be one of the factors taken into account when considering an application, but cannot be
interpreted as authorising any quota system or a three-year waiting period imposed without
regard to the particular circumstances of specific cases. Analysis of all the factors, as
prescribed in Article 17 of the Directive, does not allow just this one factor to be taken into
account and requires genuine examination of reception capacity at the time of the
application" (cons. 100) "When carrying out that analysis, the Member States must, as is
pointed out in paragraph 63 of the present judgment, also have due regard to the best
interests of minor children" (cons. 101).

Q.47 – Can public policy, public security or public health grounds be taken into account to (a
6 §§1 et 2):

Q.47. A – Reject an application for family reunification?

☐ OUI

☐ NON

If yes, which ones?
Both. Aliens Act Article 12 section 4 3) says that the residence permit will not be given or
extended to a person whose activity has been against or is against the Estonian state and its
security. Section 10 2) of the same article states that the person will not be given or prolonged
the residence permit when his/her stay can threaten the public order, public security, morality
or the rights and interests of other persons. Health is not specified but can be considered a
threat to interests of other persons.

Q.47. B – Withdraw an application for family reunification?

☐ OUI

☐ NON

Aliens Act Article 12 section 4 3) says that the residence permit will not be given or extended
to a person whose activity has been against or is against the Estonian state and its security.
Section 10 2) of the same article states that the person will not be given or prolonged the
residence permit when his/her stay can threaten the public order, public security, morality or
the rights and interests of other persons. Health is not specified in the legal acts but can be
considered a threat to interests of other persons.
The residence permit can be declared void when there is no reason to give a residence permit
under conditions of family reunification but there is no specific provision of withdrawal. By
declaring a residence permit void it is basically withdrawn. Aliens Act Article 12 1 sections 8
and 11 regulate the reasons for declaring the residence permit void.
If necessary, please specify

**Q.47.** C – Refuse to renew a family member's residence permit?

- [ ] OUI
- [ ] NON

Aliens Act Article 12 section 4 3) says that the residence permit will not be given nor extended to a person whose activity has been against or is against the Estonian state and its security. Section 10 2) of the same article states that the person will not be given or prolonged the residence permit when his/her stay can threaten the public order, public security, morality or the rights and interests of other persons. Health is not specified but can be considered a threat to interests of other persons.

If necessary, please specify

**Q.48** – Does national legislation take into account:

**Q.48. A** – The severity or type of offence against public policy or public security?

- [ ] OUI
- [ ] NON

Different types of reasons are given in the Aliens Act article 12 section 4

A residence permit shall not be issued to or extended for an alien if:

1) he or she has submitted false information (including information concerning his or her earlier activities) upon application for a visa, residence permit or work permit or upon application for extension thereof;
2) he or she does not observe the constitutional order and laws of Estonia;
3) his or her activities have been or are or there is good reason to believe that such activities have been or are directed against the Estonian state and its security;
4) he or she has incited or incites, or there is good reason to believe that he or she has incited or incites racial, religious or political hatred or violence;
5) he or she has committed a criminal offence for which he or she has been sentenced to imprisonment for a term of more than one year and his or her criminal record has neither expired nor been expunged, or the information concerning the punishment has not been expunged from the punishment register;
6) he or she is in the active service of the armed forces of a foreign state;
7) he or she has served as a professional member of the armed forces of a foreign state or has been assigned to the reserve forces thereof or has retired therefrom;
8) he or she has been repeatedly punished pursuant to criminal procedure for an intentionally committed criminal offence;
9) there is information or good reason to believe that he or she belongs to a criminal organisation, that he or she is connected with the illegal conveyance of narcotics, psychotropic substances or persons across the border, that he or she is a member of a terrorist organisation or has committed an act of terrorism, or that he or she is involved in money laundering;
10) he or she is or there is good reason to believe that he or she is employed by an intelligence or security service of a foreign state, or he or she has or there is good reason to
believe that he or she has been employed by an intelligence or security service of a foreign state, and his or her age, rank or other circumstances do not preclude his or her conscription into service in the security forces or armed forces or other armed units of his or her country of nationality;

11) he or she has received or there is good reason to believe that he or she has received special training in landing operations, or in diversion or sabotage activities, or other special training, and if the knowledge and skills acquired in the process of such training can be directly applied in the formation or training of illegal armed units;

12) he or she has or there is good reason to believe that he or she has participated in punitive operations against civil population;

13) there is good reason to believe that he or she has committed a crime against humanity or a war crime;

14) he or she is the spouse or a minor child of a person specified in clauses 6), 7), 10), 11) or 12);

(17.05.2000 entered into force 01.08.2000 - RT I 2000, 40, 254)

15) prohibition on entry applies to him or her.

Q.48. B – The solidity of family relationships regarding article 17 of the Directive?

☐ OUI

☐ NON

If necessary, please specify

Aliens Act Article 12 ¹ and 14 ⁹

Q.49 – Does your Member State withdraw the residence permit or remove the third country national on the sole ground of illness or disability suffered after the issue of the residence permit (a 6 §3)?

☐ OUI

☒ NON

But there is no practice.

Q.50 – Are accommodation conditions required from the applicant (a7 §1a)?

☒ OUI

☐ NON

Aliens Act article 12 ¹ section 2 gives the list of requirements that must be fulfilled in order to benefit from the family reunification.

Q.51 – If yes:

Q.51. A – What are those conditions?

Registered common living place Aliens Act article 12 ¹ section 2 also regulation no 364 art 15 and art 16, 17, 20, which oblige a sponsor to have a dwelling for the family members. There should be 18 m² for a family plus 15 m² for each family member.
Q.51. B – How are they assessed?

CMB Officials have a right to visit a place. Renting contract should be submitted and person should be registered in the inhabitants’ registry.

Q.51 C – Are they comparable to the conditions required to a normal family living in the same region?

☐ OUI
☐ NON

If not, please specify the differences

Q.52 – Is a sickness insurance required from the applicant (a. 7 §1b) ?

☐ OUI
☐ NON

The family member who wants to get residence permit has to have a valid health insurance. Aliens Act article 12 §1 section 2.

Q.53 – Are stable resources required (a7 §1c)?

☐ OUI
☐ NON

Aliens Act article 12 §1 section 2. There is an legal income requirement depending on a number of family members.

**The following forms of income are deemed legal:**

- lawfully earned remuneration for work;
- income received from lawful business activities or property;
- pension;
- scholarships;
- alimony;
- parental benefit;
- state benefits paid by a foreign country;
- subsistence ensured by family members earning legal income.

The maintenance ensured by family member includes:

- the maintenance of a minor child (under 18 years of age) by a parent;
- the maintenance of an adult child who due to his or her state of health or disability is unable to cope independently, by a parent;
- the maintenance of an adult child, who attains school, by a parent;
- the maintenance by the spouse;
- the maintenance of a parent who due to his or her state of health or disability is unable to cope independently, by an adult child.

Upon application **temporary residence permit for settling with close relative** the legal income of a family must meet at least the rates given in the above-mentioned table.
<table>
<thead>
<tr>
<th>Size of your family</th>
<th>Your family's legal income per month</th>
<th>Your family's legal income during the past 6 months</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 member</td>
<td>900</td>
<td>5 400</td>
</tr>
<tr>
<td>2 members</td>
<td>1 620</td>
<td>9 720</td>
</tr>
<tr>
<td>3 members</td>
<td>2 340</td>
<td>14 040</td>
</tr>
<tr>
<td>4 members</td>
<td>3 060</td>
<td>18 360</td>
</tr>
<tr>
<td>5 members</td>
<td>3 780</td>
<td>22 680</td>
</tr>
<tr>
<td>6 members</td>
<td>4 500</td>
<td>27 000</td>
</tr>
<tr>
<td>7 members</td>
<td>5 220</td>
<td>31 320</td>
</tr>
<tr>
<td>8 members</td>
<td>5 940</td>
<td>35 640</td>
</tr>
<tr>
<td>9 members</td>
<td>6 660</td>
<td>39 960</td>
</tr>
<tr>
<td>10 members</td>
<td>7 380</td>
<td>44 280</td>
</tr>
</tbody>
</table>

Upon application for a temporary residence permit for settling with a spouse or a temporary residence for study the legal income of a family must meet at least the rates given in the above-mentioned table.

<table>
<thead>
<tr>
<th>Size of your family</th>
<th>Your family's legal income per month</th>
<th>Your family's legal income during the past 6 months</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 member</td>
<td>1 800</td>
<td>10 800</td>
</tr>
<tr>
<td>2 members</td>
<td>3 240</td>
<td>19 440</td>
</tr>
<tr>
<td>3 members</td>
<td>4 680</td>
<td>28 080</td>
</tr>
<tr>
<td>4 members</td>
<td>6 120</td>
<td>36 720</td>
</tr>
<tr>
<td>5 members</td>
<td>7 560</td>
<td>45 360</td>
</tr>
<tr>
<td>6 members</td>
<td>9 000</td>
<td>54 000</td>
</tr>
<tr>
<td>7 members</td>
<td>10 440</td>
<td>62 640</td>
</tr>
<tr>
<td>8 members</td>
<td>11 880</td>
<td>71 280</td>
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<tr>
<td>9 members</td>
<td>13 320</td>
<td>79 920</td>
</tr>
<tr>
<td>10 members</td>
<td>14 760</td>
<td>88 560</td>
</tr>
</tbody>
</table>

**Q.54** – How is the condition "sufficient" assessed by your Member State? Is it in comparison with national wages?

Related to the minimum living standard and is reviewed time to time as a general principle of law. Information is available from the CMB webpage.
Q.55 – Are integration criterions required to allow family reunification (a 7 §2)?

☐ OUI

☒ NON

Q.56 – If yes:

Q.56. A – What are those criterions?

Q.56. B – Do they apply indistinctly to all potential beneficiaries of reunification? (Spouse, dependant people, etc.)

Q.56. C – How are they evaluated by your Member State?

Q.56. D – Are refugees and their family members required to fulfil them (a 7 §2, second indent)?

☐ OUI

☒ NON

There is no integration requirement for the refugee family members.

Q.57 – Is a minimal period of lawful reside is required before reunification (a 8 §1)?

☒ OUI

☐ NON

The alien has to be residing in Estonia at least two years with a temporary residence permit before he/she can benefit from the family reunification (Article 12 1 section 1 of the Aliens Act). The application for the family reunification can be submitted earlier and is not related to the time of residence of the sponsor. Nevertheless the answer for the family reunification can be negative if the two years residence condition is not met.

Q.58 – Does this period exceed two years?

No. According to the Aliens Act art 12 1 The temporary resident permit can be given to the spouse of Estonian citizen or spouse with residence permit who have lived at least for two years in Estonia and is living permanently in Estonia and if the spouses have tight economical ties and psychological dependency, the family is permanent and the marriage is not fictive. In the case of a refugee or a person with subsidiary or temporary protection there is no minimal period of lawful residence requirement.

Q.59 – Does your Member State apply the derogation set up by article 8 § 2 allowing Member States to impose a waiting period of maximum three years due to reception capacities between the submission of the application and the issuance of a residence permit?

☐ OUI

☒ NON
Please specify

Q.60 – If yes, did this derogation exist in national law before the 22nd of September 2003?
☐ OUI
☐ NON

FAMILY REUNIFICATION OF REFUGEES

The legal regime applicable to refugees derogates from the one applicable to family reunification. The scope of those derogations (minimal lawful residence, members of the family, accommodation requirements) shall be assessed on the basis of national law.

Q.61 – Does your Member State allow family reunification of refugees on the basis of Directive 2003/86 (a 9 §1) ?
☒ OUI
☐ NON

AGIPA art 46 section 1 states that the family member will get the residence permit for the same time as the sponsor has.

Q.62 – Is this right limited to family relationships predating the entry on the territory (a 9 §2)?
☒ OUI
☐ NON

Q.63 – Does your Member State allow family reunification of family Members not quoted in article 4 of the Directive (a 10 §2) ?
☐ OUI
☒ NON

Which members of the family and under which conditions?

Q.64 – According to the specific case of unaccompanied minor refugees, does your Member State authorise family reunification of first degree relatives in the direct ascending line without applying the conditions laid down in article 4 § 2 (a10 §3 a) ?
☒ OUI
☐ NON

What conditions are required?

Article 7 section 3 of AGIPA states that the family member of the unaccompanied minor is its parent and the person in responsible of custody or other family member, if the child does not
have parents or it is not possible to find them but not in the case it is contrary with rights and the best interests of the child.

**Q. 65** – Does your Member State authorise entry and residence of the legal guardian or any member of the family where the unaccompanied minor refugee has no relatives in the direct ascending line or such relatives cannot be traced (a10 §3 b) ?

☐ OUI
☐ NON

If yes, please specify who the member of the family targeted is and which proofs are required to prove family ties?

It is not regulated what kind of proof the person has to establish.

**Q. 66** – Does your Member State take into account other evidence of family relationship where the refugee cannot provide official evidence (a 11 §2) ?

☐ OUI
☑ NON

Which ones?

It is not specified in the law how the family ties have to be proved in the case of the refugee or person in need of other type of international protection.

**Q. 67** – Does the examination of the refugee application take into account their specific situation:

**Q. 67. A** – Are proofs regarding accommodation conditions, sickness insurance or resources required (a 12 §1)?

☐ OUI
☑ NON

Accommodation requirement does not apply to the family member of a refugee or a person with subsidiary or temporary protection if a sponsor applies for family reunification within 3 months after getting a status.

Only in the case when the application for family reunification is not presented within the time frame specified in the law. According to AGIPA article 46 (3) the family member must submit the family reunification application on the first possible time but not later than 3 months. If the application for family reunification is not submitted within that time (art 46 (5)) the CMB might apply additional conditions. If the additional conditions are not met the residence permit for a family reunification might be rejected. Then these requirements are comparable to other third country nationals applying for residence permit. The additional requirements that can be asked if application for family reunification is submitted after three months are following:
Legal income that will cover the living costs of a family in Estonia, family must have a place for living in Estonia and the family member of the refugee or person with subsidiary or temporary protection must have a health insurance. (AGIPA Article 46 (4)).

Article 46 (4) of the AGIPA says

If yes, are those requirements comparable to those imposed to other third country nationals?

Q.67. B – If one of the person concerned (sponsor or family member) has special links with a third country within which reunification is possible, does your member state require those proofs according to article 12 § 1 second indent.

☐ OUI
☐ NON

If necessary specify
The persons have to give a proof why it is not possible to benefit from the family reunification in another country than Estonia. Explanation letter has to be written. Regulation no 465 art 15, 16, 17.

Q.67. C – If a refugee has introduced its application after a period of three months, does your Member State require the refugee to meet the conditions or one of them (accommodation, sickness insurance, resources (a 12 §1 alinea 3) ?

☐ OUI
☐ NON

If yes, which ones?
All of them

Q.68 – Does your Member State apply the prohibition to impose a residence condition before reunification (a 12 §2)?

☐ OUI
☐ NON

If not, what is the length of this period? Is it different from the one normally applied?

EXERCISE OF THE RIGHT TO FAMILY REUNIFICATION

The granting of an autonomous residence permit is one of the most sensitive issues of this part of the Directive.

Q.69 – Is entry and residence facilitated by your Member State, as soon as the application for family reunification has been accepted, including the issue of obtaining visas (a13 §1) ?

☐ OUI
☐ NON
If yes, how?

There is no requirement for extra visas as the residence permit is enough to enter the country. Aliens Act article 5 1 section 1 (1).

**Q.70** – Is a residence permit of at least one year's duration granted to the family members (a 13 §2)?

- OUI
- NON

What is the duration of the residence permit?

The same duration as the residence permit of the sponsor. Aliens Act Article 12 1 section 1 2. AGIPA art 46 section 2.

**Q.71** – Is this residence permit renewable?

- OUI
- NON

**Q.72** – Is the duration of the residence permit aligned with the duration of sponsor's residence permit (a 13 §3)?

- OUI
- NON

If no, please specify

**Q.73** – Are the rights awarded to family members' equivalent to those granted to the sponsor (a14 §1):?

**Q.73. A** – Regarding access to education?

- OUI
- NON

If no, please specify

Not explicitly written in Aliens Act. The family members of a refugee, subsidiary protection and temporary protection permit holders have the same rights as the sponsor (AGIPA art 75). Under general rules and other laws everybody residing legally in Estonia has a right to education. Children under age of 17 have an obligation to attend schools.
Q.73. B - Regarding access to employment?

☐ OUI

☒ NON

Please specify the content of this access
Not explicitly provided by the law. The family member can apply for the work permit under general rules. (Article 75 AGIPA). Which means that the application for the work permit can be rejected.

Q.73. C – Regarding access to vocational guidance, initial and further training and retraining?

☒ OUI

☐ NON

If no, please specify
It is closely related to the right to work. If a person has a right to work also (s)he has an access to vocational guidance, training as it is part of the employment policy in Estonia. Art 75 from AGIPA provides that the same conditions for access to work, social security, family allowances, social allowances, education and other help should be provided as a permanent resident in Estonia has. The access to vocational training is not specifically regulated in the Aliens Act.

Q.74 – Does your Member State grant specific rights in social matters to reunified family members?

☒ OUI

☐ NON

If yes, please describe them and specify if a time limit is established to take advantage from them

Article 75 of AGIPA provides that the same conditions for access to work, social security, family allowances, social allowances, education and other help should be provided as a permanent resident in Estonia has.

Q.75 – Has Member State set up conditions regarding specific access to employment for family members (a 14 §2)?

☒ OUI

☐ NON

If yes, how? ‘

Has to apply for the work permit and general rules apply, but there are no specific conditions for the family members. Article 75 of AGIPA provides that the same conditions for access to work, social security, family allowances, social allowances, education and other help should be provided as a permanent resident in Estonia has.
work, social security, family allowances, social allowances, education and other help should be provided as a permanent resident in Estonia has.

Q.76 – If yes, do those conditions exceed 12 months (a 14 §2)?

☐ OUI

☒ NON

Which ones?

Q.77 – Is access to employment limited in your Member State

Q.77.A – Regarding first-degree relatives in the direct ascending line?

☐ OUI

☒ NON

If yes, how?

Q.77.B – Regarding adult unmarried children objectively unable to provide for their own needs on account of their state of health (a 14 §3)?

☐ OUI

☒ NON

If yes, how?

Q.78 – Are spouses, unmarried partners and child who has reached majority entitled to an autonomous residence permit at least five years after lawful residence on the basis of the residence permit issued for family reunification (a15 §1)?

☐ OUI

☒ NON

If yes, please specify when and how for each category

They can apply for the residence permit in normal grounds, person can fall under the immigration quota if he or she is not a family member any more. The person can use other options to apply for a residence permit for example residence permit for working, studying etc. There is no special provision for autonomous residence permit.

Q.79 – Does your Member State limit the granting of the autonomous residence in cases of breakdown of the family relationship (a 15 §1 alinea 2)?

☐ OUI

☒ NON
Please explain
There is no autonomous residence permit benefit after living some time in Estonia as a family member. The general rules of application for the residence permit apply. Applicant can fall under quota if he or she is not a family member any more. After five years of residence person can apply for the long term residence permit but then the integration requirement applies.

Q.80 – Does your Member State grant autonomous residence permit:

Q.80. A – To first-degree relatives in the direct ascending line (a15 §2)

☐ OUI

☒ NON

If necessary specify

Q.80. B – To adult unmarried children objectively unable to provide for their own needs on account of their state of health (a15 §2) ?

☐ OUI

☒ NON

If necessary specify

Q.81 – Does your member State grant autonomous residence permit in the event of widowhood, divorce, separation or death of first first-degree relatives in the direct ascending or descending line (a 15 §3) ?

☐ OUI

☒ NON

If necessary specify

Q.82 – Has your Member State adopted rules granting autonomous residence permit "in the event of particularly difficult circumstances" (a 15 §3)?

☐ OUI

☒ NON

There is no autonomous residence permit as such. If the reason for family reunification is ended the persons residence permit can be declared void or it will not be extended. Person can apply for a residence permit on other grounds like for working, studying etc. After five years of living with a temporary residence permit in Estonia a person can apply for the long term residence permit.

If yes, how is this provision defined and transposed?
**PENALTIES AND REDRESS**

*Those provisions must be read in parallel with those relating to the conditions to be fulfilled to obtain family reunion (articles 6, 7, 8)*

*Questions relating fraud, false or falsified documents are of importance to assess their impact.*

**Q.83** – What are the legal grounds to reject, withdraw or refuse to renew a family member's residence permit (a16 §1 et 2):

**Q.83. A** – Conditions required by the directive not satisfied?

- [x] OUI
- [ ] NON

**Q.83. B** – Absence of real martial or family relationship?

- [x] OUI
- [ ] NON

If yes, how is this hypothesis assessed?

Marriage is divorced. Officials have a right to make interviews, conduct investigations and visit the dwelling of a couple. (Aliens Act art 15)

**Q.83. C** – Stable long term relationship with another person?

- [x] OUI
- [ ] NON

If yes, how is this hypothesis assessed?

Persons must have stable relationship – economical and emotional relationship (Aliens Act art 12 1 section 1). Officials have a right to make interviews, conduct investigations and visit the dwelling of a couple and witnesses can be interviewed.

**Q.83. D** – False or falsified documents?

- [x] OUI
- [ ] NON
Q.83. E – Marriage, partnership or adoption contracted for the sole purpose of enabling reunification?

☐ OUI

☐ NON

Q.83. F – If yes, how is this hypothesis assessed?

CMB officials have a right to interview partners, witnesses, conduct investigations and visit their home. (Aliens Act article 15)

Q.83. G – When the sponsor's residence comes to an end and the family member does not yet enjoy an autonomous right of residence (a 16 §3)?

☐ OUI

☐ NON

The person can apply for residence on other grounds. Work, study, enough legal income etc.

Q.83. H – What type of control are organised thereof?

CMB officials have a right to interview partners, witnesses, conduct investigations and visit their home. (Aliens Act article 15).

Q.84 – Are resources of the family taken into account when renewing residence permit where the sponsor does not have sufficient resources without recourse to the social assistance system of the member state?

☐ OUI

☐ NON

If yes, under which modalities?

Minimum living standards have to be met.

Q.85 – Does your Member State's legislation take into consideration (a. 17) :

Q.85. A – The nature and solidity of the person's family relationships and the duration of his residence in the Member State?

☐ OUI

☐ NON

If yes, please specify how and on the basis of which norm (legislation, regulation, jurisprudence, …)

Aliens Act art 12¹, Art 14⁹ section 2, AGIPA art 72
**Q.85. B** - 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?

☐ OUI

☒ NON

If yes, please specify how and on the basis of which norm (legislation, regulation, jurisprudence, …).

**Q.86** – Do the sponsor and/or members if his/her family have the right to mount a legal challenge where an application for family reunification is rejected (a18 §1)?

☒ OUI

☐ NON

**Q.87** – Is this right to legal challenge considered as a right to a judicial review according to jurisprudence C-540/03  (a18 §1) ?

☒ OUI

☐ NON
XX. IMPACT OF THE DIRECTIVE ON NATIONAL LAW

Q.88 A Did the transposition of the directive made the rules related to the best interest of minor children (a. 5 § 5) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below.

Please use one box per object and duplicate it if necessary

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Due regard to the best interest of minor children during examination of the application a. 5 § 5</td>
<td>The best interest of the child have to be taken into account. It is not allowed to declare void or refuse to give the residence permit to a minor when it is not in conformity with the rights of a minor. Amendments to Aliens Act were enforce from 1st July 2006</td>
<td>More favourable than previous national rules</td>
</tr>
</tbody>
</table>

Q.88 B Did the transposition of the directive made the rules related to the beneficiaries of the right to family reunification become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below.

Please use one box per object and duplicate it if necessary

<table>
<thead>
<tr>
<th>OBJECT</th>
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<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Definition of the beneficiaries of the right to family reunification a. 4 § 4</td>
<td>Polygamy is not accepted in Estonia The situation has not changed</td>
<td>Statu quo</td>
</tr>
</tbody>
</table>
**Q.88 C** Did the transposition of the directive made the rules related to reunification of minor children between 12 (a. 4 § 1) and 15 (a. 4 § 6) years old become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

Please use one box per object and duplicate it if necessary

<table>
<thead>
<tr>
<th>OBJECT</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Limitation of reunification of minor children of 12 and 15 years of age (a. 4 § 1 and 4 § 6)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>There is no age limit of a minor to reunify</td>
<td>There is no age limit of a minor to reunify</td>
<td>Statu quo</td>
</tr>
</tbody>
</table>

**Q.88 D** Did the transposition of the directive made the rules related to requirements to the exercise of family reunification (article 7) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

Please use one box per object and duplicate it if necessary

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Requirements for the exercise of family reunification (a. 7)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Residence of a sponsor up to 5 years</td>
<td>Residence of a sponsor up to 2 years</td>
<td>Statu quo</td>
</tr>
</tbody>
</table>

**Q.88 E** Did the transposition of the directive made the rules related to margins of manoeuvre awarded to Member States (a. 5 § 5, 17, C-540/03) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

Please use one box per object and duplicate it if necessary

<table>
<thead>
<tr>
<th>OBJECT</th>
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<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Limitation of margins of manoeuvre (a. 17, a.5 §5, C-540/03)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>It is not explicitly written to the law</td>
<td>It is not explicitly written to the law</td>
<td>Statu quo</td>
</tr>
</tbody>
</table>
**Q.88 F** Did the transposition of the directive made the rules related to integration objectives and criterions more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

*Please use one box per object and duplicate it if necessary*

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attention draw upon integration objectives (considérant 15) and criterions of integration (a.4 §1 dernier alinéa, a. 7 §2)</td>
<td>No integration requirements</td>
<td>Status quo</td>
</tr>
</tbody>
</table>

**Q.89** From your point of view, did the transposition of the directive imply other interesting changes for the third national country regarding other elements than the ones mentioned in the previous question. Make also a comparison with the standard of the directive in the last column of the table below

*Please use one box per object and duplicate it if necessary*

<table>
<thead>
<tr>
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<tbody>
<tr>
<td>(to be precisely indicated by the national rapporteur)</td>
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</table>

**Q.89.A.** Mention if there is a general tendency to just copy the provisions of the directive into national legislation without redrafting or adaptation them to national circumstances.

- [X] NO
- [ ] YES

**Q.89.B.** If yes, please indicate if this general tendency may or not create problems (for example difficulties of implementation, risk that a provision remain unapplied).

- [ ] NO
- [ ] YES

**Q.89.C.** If yes, give some of examples:
Q.89.D. If only some provisions of the directive have been copied and if this may create any problem, please quote them and explain the problem.

Q.90. Quote interesting decisions of jurisprudence related to the directive, its transposition or implementation (so this question concerns in principle decisions later that the directive, but previous ones might be quoted if relevant). Quote in particular decisions of supreme Courts; limit yourself to the appeal Courts and ignore the first resort if there are too many decisions at this level, unless there is a certain jurisprudence made of a group of decisions.

Please use one box per decision and duplicate it if necessary

<table>
<thead>
<tr>
<th>DECISION OF SUPREME COURTS</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
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<tr>
<th>DECISION OF APPEAL COURTS</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
</tr>
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<tbody>
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</table>

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<thead>
<tr>
<th>DECISION(S) IN FIRST RESORT</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
</tr>
</thead>
<tbody>
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</table>

ANY SUPPLEMENTARY COMMENT ABOUT THE TREND OF THE JURISPRUDENCE:

Q.91 Specify if there are or not problems with the translation of the text of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated.

☐ There are no problems with the translation of the directive

☒ There are some problems with the translation of (indicate the number of the articles concerned) of the directive.

Explain the difficulties that this could create:

Preamble section no 5 is translated in following “Member State should give effect to the provisions of this Directive without discrimination on the basis of sex, race, colour, nationality or…..” Instead of nationality should be ethnic origin. In the translation of art 4 there is missing part of the sentence “as well as in Article 16”. The article 4 is translated in following way: “The Member States allow according to this Directive and conditions laid down in Chapter IV to enter and settle the following family members….. Also the convenience marriage is not translated in a proper way. It should have a meaning of fictive marriage now it is translated as opposite word to inconvenience.

Q. 92 ANY OTHER INTERESTING ELEMENTS
Q.92 A. Following your personal point of view, mention from the point of view of third country nationals and/or from the Member State any interesting or innovative practice in your Member State

Please use one table per practice and duplicate it if necessary

<table>
<thead>
<tr>
<th>OBJECT OF THE PRACTICE</th>
<th>EXPLANATIONS</th>
</tr>
</thead>
</table>

Q.92 B. Please add here any other interesting element in your Member State which you did not had the occasion to mention in your previous answers
COMMENTARIES

1. Council directive 2003/86 on the right to family reunification faced hard negotiations requiring the presentation of revised proposals from the Commission before final adoption in 2003. The European Court of Justice rejected in June 2007 an action for annulment introduced by the European Parliament against the Council directive (C-540/03).

2. Transposition of the directive must be assessed regarding the nature of the provision concerned. So as to help you, those provisions are coloured within the questionnaire as follows: obligatory provision (Q.XX), optional provision (Q.YY), provision which set up a derogation (Q.ZZ).

3. The Court of justice has defined the margins of discretion awarded to the member States even in situations where the directive allows the member States to depart from the directive. The Court states:

   "Article 4(1) of the Directive imposes precise positive obligations, with corresponding clearly defined individual rights, on the Member States, since it requires them, in the cases determined by the Directive, to authorise family reunification of certain members of the sponsor’s family, without being left a margin of appreciation" (cons. 60).

   "Note should also be taken of Article 17 of the Directive which requires Member States to 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 country of origin. As is apparent from paragraph 56 of the present judgment, such criteria correspond to those taken into consideration by the European Court of Human Rights when it reviews whether a State which has refused an application for family reunification has correctly weighed the competing interests" (cons. 64).

   The fact that the concept of integration is not defined cannot be interpreted as authorising the Member States to employ that concept in a manner contrary to general principles of Community law, in particular to fundamental rights. The Member States which wish to make use of the derogation cannot employ an unspecified concept of integration, but must apply the condition for integration provided for by their legislation existing on the date of implementation of the Directive in order to examine the specific situation of a child over 12 years of age arriving independently from the rest of his or her family" (cons. 70).
4. The main difficulty according to the transposition of the directive relies on the systematic opportunities offered to member States to depart from the provisions of the directive when applying it.

5. Article 19 indicates which themes where the most sensitive during the negotiations of the Directive (art. 3, 4, 7, 8 and 13).

FIRST PART

1. NORMS OF TRANSPOSITION AND JURISPRUDENCE

Q.1.A Identify the MAIN (because of its content) norm(s) of transposition and indicate its legal nature

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)
- About legal nature in the table below: legislative refers to a norm adopted in principle by the Parliament; regulation refers to a norm complementing the law and adopted in principle by the executive power; circular or instructions refer to practical rules about implementation of laws and regulations and adopted in principle by the administrative authorities

Please duplicate the table below if there is more than one MAIN norm of transposition

<table>
<thead>
<tr>
<th>This table is about:</th>
<th>☒</th>
<th>a text already adopted</th>
<th>☐</th>
<th>a text which is still a project to be adopted</th>
</tr>
</thead>
<tbody>
<tr>
<td>TITLE:</td>
<td>Ulkomaalaislaki (Aliens Act)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>DATE:</td>
<td>30.4.2004</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>NUMBER:</td>
<td>301/2004</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>DATE OF ENTRY INTO FORCE:</td>
<td>1.5.2004</td>
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<tr>
<td>PROVISIONS CONCERNED:</td>
<td>6 §, 7 §, 36 §, 37 §, 38 §, 39 §, 52 §, 53 §, 54 §, 55 §, 56 §, 58 §, 60 §, 62 §, 66a §, 69a §, 79 §, 114 §, 146 §, 190 §</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:</td>
<td>30.4.2004/2004</td>
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<tr>
<td>LEGAL NATURE:</td>
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<td>REGULATION:</td>
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<td></td>
<td>☐</td>
<td>CIRCULAR or INSTRUCTIONS:</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
This table is about: [x] a text already adopted [ ] a text which is still a project to be adopted

**TITLE:** Laki ulkomaalaislain muuttamisesta (Act amending the Aliens Act)  
**DATE:** 19.5.2006  
**NUMBER:** 380/2006  
**DATE OF ENTRY INTO FORCE:** 1.7.2006  
**PROVISIONS CONCERNED:** All provisions of this act are devoted to transposition of the directive.  
**REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:** 19.5.2006/380  

**LEGAL NATURE:**  
[ ] LEGISLATIVE:  
[ ] REGULATION:  
[ ] CIRCULAR or INSTRUCTIONS:

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This table is about: [x] a text already adopted [ ] a text which is still a project to be adopted  

**TITLE:** Ulkomaalaisviraston antama ohje ulkomaalaislakiin (301/2004) sisältävien perhesiteen perusteella myönnettäviä oleskelulupia koskevien säännösten soveltamisesta (Guidelines given by the Directorate of Immigration concerning the application of the provisions of the Aliens Act (301/2004) that concern residence permits on grounds of family ties)  
**DATE:** 30.5.2005  
**NUMBER:** Dnro 6/010/2005  
**DATE OF ENTRY INTO FORCE:** 30.5.2005  
**PROVISIONS CONCERNED:** All provisions of the Guidelines concern family reunification. The Guidelines is not, however, explicitly devoted to transposing the directive.  
**REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:** not published in the Official Journal  

**LEGAL NATURE:**  
[ ] LEGISLATIVE:  
[ ] REGULATION:  
[ ] CIRCULAR or INSTRUCTIONS:

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**Q.1.B.**  
List the others norms of transposition by order of importance of their legal nature (first laws, secondly regulations; thirdly circulars or instructions):  

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).  
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)
### Perusopetuslaki (Act on basic education)

**Title:** Perusopetuslaki (Act on basic education)

**Date:** 21.8.1998

**Number:** 628/1998

**Date of Entry into Force:** 1.1.1999

**Provisions Concerned:** In particular 25 §.

**References of Publication:**

**In the Official Journal:** 21.8.1998/628

**Legal Nature:**

- [x] Legislative
- Regulation
- Circular or Instructions

### Laki julkisesta työvoimapalvelusta (Act on public employment services)

**Title:** Laki julkisesta työvoimapalvelusta (Act on public employment services)

**Date:** 30.12.2002

**Number:** 1295/2002

**Date of Entry into Force:** 1.1.2003

**Provisions Concerned:** In particular Chapter I, 7 § and Chapter III, 7 §.

**References of Publication:**

**In the Official Journal:** 30.12.2002/1295

**Legal Nature:**

- [x] Legislative
- Regulation
- Circular or Instructions

### Laki ammatillisesta koulutuksesta (Act on vocational training)

**Title:** Laki ammatillisesta koulutuksesta (Act on vocational training)

**Date:** 21.8.1998

**Number:** 630/1998

**Date of Entry into Force:** 1.1.1999

**Provisions Concerned:** In particular 26 § and 27 §.

**References of Publication:**

**In the Official Journal:** 21.8.1998/630

**Legal Nature:**

- [x] Legislative
- Regulation
- Circular or Instructions
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Q.2. 

**THIS QUESTION IS IN PRINCIPLE ONLY FOR FEDERAL OR ASSIMILATED MEMBER STATES LIKE AUSTRIA, BELGIUM, GERMANY, ITALY, SPAIN**

- Those provisions of the Aliens Act 301/2004 that transpose the provisions of the Directive to national legislation are directly applicable in Åland and thus no special legislative measures were required in this respect. Åland has autonomy in the area of education. The legislation in force in Åland in this area meets the requirements following from the Directive.

Q.2.A. 

**Explain which level of government is competent to adopt the norms of transposition.**

*Please include your answer in the tables below*

<table>
<thead>
<tr>
<th>LEGISLATIVE RULES</th>
<th>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</th>
<th>COMPETENCES OF THE COMPONENTS:</th>
<th>EXPLANATIONS IF NECESSARY:</th>
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<th>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</th>
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<th>COMPETENCES OF THE COMPONENTS:</th>
<th>EXPLANATIONS IF NECESSARY:</th>
</tr>
</thead>
</table>

Q.2.B. 

**In case, explain if the federal structure and the distribution of competences between the different levels pose any problem or difficulty regarding the transposition and/or the implementation of the directive.**
Q.3. Explain which authorities are competent for the practical implementation of the norm of transposition by taking the decisions in individual cases.

Please use one table per competence concerned and duplicate it if necessary

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Taking decisions on issuing of residence permits on ground of family tie</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Ministry of Interior</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>-</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td>Directorate of Immigration</td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
<td>The Directorate of Immigration that is subordinated to the Ministry of the Interior is entrusted with the competence to take decisions on residence permits. The Ministry of Interior may guide the work of the Directorate at general level but cannot interfere in decision making in individual cases.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Issuing extended and permanent residence permits.</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Ministry of Interior</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td></td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td>Municipal police</td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ON THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent ministry)</td>
<td>The Ministry of Interior may guide the municipal police at a general level but may not interfere in decision-making in individual cases.</td>
</tr>
</tbody>
</table>

Q.4. A. Has the main regulation foreseen explicitly by the main norm of transposition already been adopted or not:

- The main norm of transposition does not foresee a regulation.

☐ YES

☐ NO
Q.4.B. If the main norm(s) of transposition foresees the adoption of one or several regulations, indicate if they have all been adopted:

- YES
- NO

If NO, please indicate the missing text(s) in the table below

*Please use one line per missing text and duplicate it if necessary*

<table>
<thead>
<tr>
<th>MISSING TEXTS</th>
</tr>
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<tbody>
<tr>
<td>INDICATE HERE THE MISSING TEXTS</td>
</tr>
</tbody>
</table>

Add if necessary some explanations (specify in particular if the missing texts are at least under preparation or foreseen in the very near future):
AIM (ARTICLE 1)

The purpose of the Directive is to determine the conditions for the exercise of the right to family reunification. In case C-540/03, the Court of justice recognizes that, in some cases, member States do not have any margin of appreciation to grant the right to family reunification.

Q.5 – Is family reunification considered as a right in your Member State?

[ ] OUI
[ ] NON

Please explain

According to 45 (3) § of the Aliens Act 301/2004: "Family members of an alien who has been issued with a temporary residence permit are issued with a temporary residence permit for the same period." Furthermore, according to 47 (3) of the Aliens Act 301/2004: "Family members of an alien who has been issued with a continuous or permanent residence permit are issued with a continuous residence permit." No discretion is left for the authorities in this respect; when the preconditions for family reunification are met, the residence permit on this ground shall be issued and thus family reunification is regarded as a right.

It is, however, argued by the Finnish Red Cross and the Refugee Advice Centre that the preconditions for using the right to family reunification are applied in practice very strictly and thus the persons concerned face problems in realising this right. For example DNA-testing is used very widely to establish the biological kinship in cases where no official documents are available.

Q.5. A – Are there any figures available relating to the exercise of the right to family reunification between 2002 and 2006? If yes, what are the trends, including nationality assessment?

-No covering figures are available. According to the Directorate of Immigration, in 2006 3600 residence permits on ground of family tie were issued. The most important countries were Russia, Iraq, India, Serbia Montenegro and Somalia.

DEFINITIONS (ARTICLE 2)

SCOPE (ARTICLE 3)

The scope of the Directive is defined by article 3. We recall that:

- § 1 "reasonable prospect..." aims at excluding persons residing on a temporary basis (stagiaires, etc...)
Q.6. Period of validity of the sponsor’s residence permit:

Q.6. A. Is the period of validity of the sponsor’s residence permit of one year or more according to article 3 § 1 of the Directive?

☐ OUI
☒ NON

Q.6.B. Quote precisely the period enshrined in national law:

- According to subsections 1, 2 and 3 of section 53 of the Aliens Act 301/2004: "First fixed term residence permits are issued for one year, however, for no longer than the validity period for the travel document, unless requested for a shorter period.

If a residence permit is issued on the basis of family ties, the validity period for the residence permit must not, however, exceed the validity period for the family member's residence permit which was the basis for issuing the residence permit.

A residence permit may be issued for a period longer or shorter than one year if it is issued for carrying out a legal act, an assignment or studies that will be completed within a set period. However, the duration of a fixed-term residence permit must not exceed two years."

Thus, according to the main rule the period of validity of the sponsor's residence permit is one year, but it can be shorter or longer than that, too.

Under the national legislation the right to family reunification is not conditional upon the duration of the sponsor's residence permit; family reunification is permitted also in most cases where the sponsor resides in Finland by virtue of a temporary residence permit and for a period shorter than one year.

Q.6.C. How does your Member State translate in national law the requirement for the sponsor to have "reasonable prospects of obtaining the right of permanent residence" (a 3 § 1)?

- This requirement is not explicitly translated to national legislation; it is, however, regarded to be contained implicitly in the national provisions concerning family reunification of persons residing in the country by virtue a continuous residence permit. According to section 33 of the Aliens Act 301/2004, residence permits are either fixed-term or permanent. Fixed-term residence permits are issued for a residence of temporary nature (temporary residence permit) or of continuous nature (continuous residence permit). Permit authorities decide on the purpose of residence, taking account of the information given by the alien on the purpose of his or her entry into the country. Temporary permits are issued for example to students and to persons
working on a temporary basis. According to section 56 of the Aliens Act, a person who resides in Finland by virtue of a continuous fixed-term residence permit shall be issued with a permanent residence permit after four years of residence in the country. Those who reside in the country by virtue of a continuous residence permit are regarded as persons who have “reasonable prospects of obtaining the right of permanent residence”.

However, according to the national legislation, the right to family reunification is not restricted to cases where the sponsor resides in the country by virtue of a continuous residence permit and is thus regarded to have "reasonable prospects of obtaining the right to permanent residence". With certain exceptions, the family members of sponsors residing in Finland by virtue of temporary permit are entitled to family reunification under same conditions as family members of sponsors residing in Finland by virtue of continuous permit. These situations are, however, not regarded to fall within the scope of application of the Directive.

Q.7. – Members of the family concerned:

Q7. A. Are they third country nationals as required by article 3 § 1 of the Directive?

☐ OUI

☐ NON

If not, explain

- According to the main rule, the national provisions that implement the provisions of the Directive apply to cases involving third country nationals as required by Article 3.1. of the Directive.

However, under exceptional circumstances the national provisions implementing the provisions of the Directive are applied to family members of EU citizens, as well. This is so, because the general rules on family reunification, including those that transpose the provisions of the Directive, shall, according to section 153 of the Aliens Act, be applied to cases involving family members of Union citizens if the persons concerned do not meet the requirements laid down for the free movement of Union citizens (for example the requirement concerning secure income, or in case of third country national family members the requirement of previous legal residence in another Member State). EU citizens – and others who are excluded from the scope of the Directive – are not able to appeal directly to the provisions of the Directive, but they can appeal to the national provisions that transpose the Directive, as the scope of application of the national rules is not limited in the same way as the scope of application of the provisions of the Directive is.

Q.7.B. How has your Member State translated in national law the wording of "whatever status” included in article 3 § 1 of the Directive?

This is not adopted in the national law.
Q.8 – Did the transposition of the Directive in your Member state breached provisions of international law more favourable to individuals (a 3 § 4)?

☐ OUI

☒ NON

Q.9 – If yes, are those provisions based on:

Q.9.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?

☐ OUI

☐ NON

Specify which provisions

Q.9.B - The European Social Charter of 18 October 1961 (a 3 § 4)?

☐ OUI

☐ NON

Specify which provisions

Q.9.C. The amended European Social Charter of 3 May 1987 (a 3 § 4)?

☐ OUI

☐ NON

Specify which provisions


☐ OUI

☐ NON

Specify which provisions

Q.10 – Does the transposition of the Directive affect national provisions more favourable to individuals (a 3 § 5)?

☐ OUI

☒ NON

If yes, please specify which provisions
**Beneficiaries (Article 4)**

- Article 4 of the Directive contains numerous "may clauses". It is therefore important to pay attention on the way Member States use them and on the legal modalities adopted thereof.

- Article 4 § 1 a) and b) enacts a right to family reunification for some members of the sponsor's family. The Member State does not have any margin of discretion regarding those persons.

- Article 4 § 1 last indent foresee one derogation regarding child over 12 years on the basis of an integration criterion. This is one of the most sensitive questions encompassed by the directive beside the issue of the limit of age in § 6.

- Regarding article 4 § 6, the Court states ""It does not matter that the final sentence of the contested provision provides that the Member States which decide to apply the derogation are to authorise the entry and residence of children in respect of whom an application is submitted after they have reached 15 years of age 'on grounds other than family reunification'. The term 'family reunification' must be interpreted in the context of the Directive as referring to family reunification in the cases where family reunification is required by the Directive. It cannot be interpreted as prohibiting a Member State which has applied the derogation from authorising the entry and residence of a child in order to enable the child to join his or her parents". (cons. 86) The Court adds " Article 4(6) of the Directive must, moreover, be read in the light of the principles set out in Article 5(5) thereof, which requires the Member States to have due regard to the best interests of minor children, and in Article 17, which requires them to take account of a number of factors, one of which is the person’s family relationships" (cons. 87)

**Q.11** – Does your national law recognize the right to family reunification to:

**Q.11. A** – The sponsor's spouse (a. 4 § 1 a)?

- OUI
- NON

**Q.11. B** - Minor children of the sponsor and of his/her spouse (a. 4 § 1 b)?

- OUI
- NON

**Q.11.C.** Minor children adopted of the sponsor and of his/her spouse (a. 4 § 1 b)?

- OUI
- NON
Q.11.D. Minor children of the sponsor (a. 4 § 1 c)?

☐ OUI
☐ NON

Q.11. E. If yes, does your national law foresee that the sponsor shall have children custody and children are dependant on him or her?

☐ OUI
☐ NON

-According to 37 § of the Aliens Act unmarried children under 18 years of age over whom the person residing in Finland or her spouse had guardianship are considered family members. No other criteria for the dependency are laid down than that the child has to be unmarried. Married children are not regarded as dependent. The biological parent is regarded to hold the custody unless there are grounds indicating to the contrary. The relationship between the parent and the child has to be real and efficient, and the mere formal custody is not necessarily a sufficient link for family reunification.

Specify if necessary the proofs required

-According to the Guidelines given by the Directorate of Immigration concerning the application of the provisions of the Aliens Act (301/2004) that concern residence permits on ground of family tie (hereafter Guidelines on family reunification), documents such as the following should be presented if available: the birth certificate concerning the child; if the biological parents have divorced or one of them has died, a certificate of the divorce or a death certificate; and an official document (for example a court order) indicating that the sponsor holds custody. If such documents are not available, oral proof and other such information is required and DNA-tests may be used.

Q.11 F. Minor children adopted of the sponsor (a 4 §1.c) ?

☐ OUI
☐ NON

Q.11. G. If yes:

h. does your national law foresee that the sponsor shall have children custody and children are dependant on him or her?

☐ OUI
☐ NON

--According to 37 § of the Aliens Act unmarried children under 18 years of age over whom the person residing in Finland or her spouse had guardianship are considered family members. No other criteria for the dependency are explicitly laid down than that the child has to be unmarried. Married children are not
regarded as dependent. The biological parent is regarded to hold the custody unless there are grounds indicating to the contrary. The relationship between the parent and the child has to be real and efficient, and the mere formal custody is not necessarily a sufficient link for family reunification.

Specify if necessary the proofs required

- According to the Guidelines on family reunification documents such as the following should be presented if available: the birth certificate concerning the child; certificate of the adoption; in case the adoptive parents have divorced or one of them has died, a certificate of the divorce or a death certificate; and an official document (for example a court order) indicating that the sponsor holds custody. If such documents are not available, oral proof and other such information is required.

\textbf{g.g.} Does national law provide that those children shall be 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'"

\begin{itemize}
  \item [OUI]
  \item [NON]
\end{itemize}

Specify if necessary the proofs required

- Such formal requirement is not laid down in the national law. According to the Guidelines on family reunification, the certificate on the adoption has to be presented if such is available but if a certificate is not available, other proof shall be required. It is stated in the Guidelines that in some states no formal decisions on adoption are taken and in such cases no official certificates on adoption can be required. Furthermore, according to the Guidelines, foster children, too, may be regarded as family members and as such entitled to family reunification. In this kind of cases official documents don't normally exist. In Finland rather large number of cases of family reunification involves refugees and others who receive international protection and it is rather common that official documents are thus not available.

\textbf{Q.11. H. Minor children of the spouse (a 4 §1.d.)?}

\begin{itemize}
  \item [OUI]
  \item [NON]
\end{itemize}
Q.11. I. If yes, does your national law foresee that the spouse shall have children custody and children are dependant on him or her?

☐ OUI

☐ NON

- According to 37 § of the Aliens Act unmarried children under 18 years of age over whom the person residing in Finland or her spouse had guardianship are considered family members. No other criteria for the dependency are explicitly laid down in the Act than that the child has to be unmarried. Married children are not regarded as dependent. The biological parent is regarded to hold the custody unless there are grounds indicating to the contrary. The relationship between the parent and the child has to be real and efficient, and the mere formal custody is not necessarily a sufficient link for family reunification.

Specify if necessary the proofs required

- According to the Guidelines on family reunification, documents such as the following should be presented if such are available: the birth certificate concerning the child; in case the biological parents have divorced or one of them has died, a certificate of the divorce or a death certificate and an official document (for example a court order) indicating that the sponsor holds custody. If such documents are not available, oral proof and other such information is required and DNA-testing may be used.

Q.11. J. Minor children adopted of the spouse (a 4 §1.d )?

☐ OUI

☐ NON

Q.11. K. If yes, k. Does your national law foresee that the spouse shall have children custody and children are dependant on him or her?

☐ OUI

☐ NON

- According to 37 § of the Aliens Act unmarried children under 18 years of age over whom the person residing in Finland or her spouse had guardianship are considered family members. No other criteria for the dependency are explicitly laid down in the Act than that the child has to be unmarried. Married children are not regarded as dependent. The biological parent is regarded to hold the custody unless there are grounds indicating to the contrary. The relationship between the parent and the child has to be real and efficient, and the mere formal custody is not necessarily a sufficient link for family reunification.
Specify if necessary the proofs required

- According to the Guidelines on family reunification, documents such as the following should be presented if available: the birth certificate concerning the child; certificate of the adoption; in case the adoptive parents have divorced or one of them has died, a certificate of the divorce or a death certificate; and an official document (for example a court order) indicating that the sponsor holds custody. If such documents are not available, oral proof and other such information is required.

**k.k.** Does national law provide that those children shall be 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"?

☐ OUI
☐ NON

Specify if necessary the proofs required

- Such formal requirement is not laid down in the national law. According to the Guidelines on family reunification, the certificate on the adoption has to be presented if such is available but if such certificate is not available, other proof of the adoption shall be required. It is stated in the Guidelines on family reunification, that in some states no formal decisions on adoption are taken and therefore no official certificates on adoption can be required. According to the guidelines, foster children, too, may be regarded as family members and as such entitled to family reunification. For these cases it is typical that no official documents are available.

**Q.12** – Has your Member State transposed the option opened by article 4 § 1 c:

**Q.12A.** To authorise reunification of minor children of the sponsor – including also adopted children – of whom custody is shared (a 4 §1.c)?

☐ OUI
☐ NON

Specify if necessary

**Q.12.B.** If yes, has your legislation transposed the condition that the other party sharing custody has given his or her agreement (a 4 §1. c)?

☐ OUI
☐ NON
Specify if necessary

- According to the Guidelines on family reunification, the agreement has to be given in writing and it has to be officially certified. Alternatively, the other party can be heard orally on the matter. If her whereabouts is unknown and therefore a written agreement cannot be obtained and she cannot be heard orally, a court order shall be required.

Q.13 – Has your Member State transposed the option opened by article 4 § 1 d):

Q.13 A. to authorise reunification of minor children of the spouse – including also adopted children – of whom custody is shared (a 4.1.d. in fine)?

☐ OUI
☐ NON

Specify if necessary

Q.13 B. If yes, has your legislation transposed the condition that the other party sharing custody has given his or her agreement (a 4.1.d.)?

☐ OUI
☐ NON

Specify if necessary

- According to the Guidelines on family reunification, the agreement has to be given in writing and it has to be officially certified. Alternatively, the other party can be heard orally on the matter. If her whereabouts is unknown and therefore a written agreement cannot be obtained and she cannot be heard orally, a court order shall be required.

Q.14 – In any case referred to in questions 7 to 9, is the age of the minor children below the age of majority set up by the law of your Member State (a.4 §1, second indent)?

☐ OUI
☒ NON

If yes, indicate the age required

Q.15 – In any case referred to in questions 7 to 9, has the prohibition of marriage of minor children been transposed (a.4 §1, second indent)?

☒ OUI
☐ NON
If not, explain Si non, expliquez

Q.16 – Is the derogation set up in article 4 § 1 last indent relating to the conditions for integration of children over 12 years arrived independently from the rest of the family used by your Member State?

☐ OUI
☐ NON

How the criterion "arrives independently from the rest of his/her family" has been transposed in your national legislation?

Q.17 – If yes, did this integration condition already exist in your national legislation before the date of transposition of the Directive?

☐ OUI
☐ NON

Q.18 – Describe briefly the content of this condition, the date of its creation and the conditions of its examination

Q.19 – Are the children of refugees required to an integration test by your Member State (in contradiction with article 10 § 1)?

☐ OUI
☒ NON

If yes, explain

Q.20 – Does your Member State authorise:

Q.20 A – Reunification of first-degree relatives in the direct ascending line of the sponsor (a 4§2 a)?

☐ OUI
☒ NON

-Family reunification is not authorised in this kind of case. However, a residence permit on one of the following grounds may come into question. According to 45 (1) (4) § of the Aliens Act a temporary residence permit is issued to a person residing abroad if there are special reasons for it. Furthermore, according to 49 (1) (4) of the Aliens Act, an alien who has entered Finland without a residence permit is issued with a temporary or continuous residence permit in Finland if the requirements for issuing such permit abroad are met and if refusing a residence permit would be manifestly unreasonable. According to 52 § of the Aliens Act aliens residing in Finland are issued with a continuous residence permit if refusing a residence permit would be manifestly unreasonable with regard to their health, ties to Finland or
on other compassionate grounds, particularly in consideration of their circumstances they would face in their home country or of their vulnerable position.

**Q.20 B** – If yes, shall they be dependant and not enjoy proper family support in the country of origin?

☐ OUI

☐ NON

How each of those criterions is transposed and checked?

**Q. 20.C.** Reunification of first-degree relatives in the direct ascending line of the spouse (a 4§2 a)?

☐ OUI

☒ NON

-Family reunification is not authorised in this kind of case. However, a residence permit on one of the following grounds may come into question. According to 45 (1) (4) § of the Aliens Act a temporary residence permit is issued to a person residing abroad if there are special reasons for it. Furthermore, according to 49 (1) (4) of the Aliens Act, an alien who has entered Finland without a residence permit is issued with a temporary or continuous residence permit in Finland if the requirements for issuing such permit abroad are met and if refusing a residence permit would be manifestly unreasonable. According to 52 § of the Aliens Act aliens residing in Finland are issued with a continuous residence permit if refusing a residence permit would be manifestly unreasonable with regard to their health, ties to Finland or on other compassionate grounds, particularly in consideration of their circumstances they would face in their home country or of their vulnerable position.

**Q.20.D.** If yes, shall they be dependant and not enjoy proper family support in the country of origin?

☐ OUI

☐ NON

How each of those criterions is transposed and checked?

**Q.20.E.** Reunification of adult unmarried children of the sponsor? (a 4§2 b) ?

☐ OUI

☒ NON
If necessary, explain how this procedure is organised

--Family reunification is not authorised in this kind of case. However, a residence permit on one of the following grounds may come into question. According to 45 (1) (4) § of the Aliens Act a temporary residence permit is issued to a person residing abroad if there are special reasons for it. Furthermore, according to 49 (1) (4) of the Aliens Act, an alien who has entered Finland without a residence permit is issued with a temporary or continuous residence permit in Finland if the requirements for issuing such permit abroad are met and if refusing a residence permit would be manifestly unreasonable. According to 52 § of the Aliens Act aliens residing in Finland are issued with a continuous residence permit if refusing a residence permit would be manifestly unreasonable with regard to their health, ties to Finland or on other compassionate grounds, particularly in consideration of their circumstances they would face in their home country or of their vulnerable position.

**Q.20.F**. If yes, does the national legislation impose that those adult unmarried children of the sponsor are objectively unable to provide for their own needs on account of their state of health (a 4 §2 b) ?

☐ OUI
☒ NON

If necessary, specify how each of those criterions ("objectively" and "unable to provide for their own needs") is transposed and checked?

**Q.20. G**. Does your Member State authorise reunification of adult unmarried children of the spouse (a 4 §2 b)?

☐ OUI
☒ NON

If necessary, specify how this condition is assessed

-Family reunification is not authorised in this kind of case. However, a residence permit on one of the following grounds may come into question. According to 45 (1) (4) § of the Aliens Act a temporary residence permit is issued to a person residing abroad if there are special reasons for it. Furthermore, according to 49 (1) (4) of the Aliens Act, an alien who has entered Finland without a residence permit is issued with a temporary or continuous residence permit in Finland if the requirements for issuing such permit abroad are met and if refusing a residence permit would be manifestly unreasonable. According to 52 § of the Aliens Act aliens residing in Finland are issued with a continuous residence permit if refusing a residence permit would be manifestly unreasonable with regard to their health, ties to Finland or on other compassionate grounds, particularly in consideration of their circumstances they would face in their home country or of their vulnerable position.
Q.20.H. If yes, does the national legislation impose that those adult unmarried children of the sponsor are objectively unable to provide for their own needs on account of their state of health (a 4 § 2 b) ?

☐ OUI
☐ NON

If necessary, specify how each of those criterions ("objectively" and "unable to provide for their own needs") is transposed and checked?

Q.20. I. Did your Member state use the by law or regulation norms to implement article 4 § 2 a et b?

☐ OUI
☒ NON

Q.21 – Does your Member State authorise reunification of the unmarried partner of the sponsor, being a third country national (a 4 §3)?

☒ OUI
☐ NON

Q.22 – If yes:

Q.22 A – This partnership shall be based on a duly attested stable long term relationship?

☒ OUI
☐ NON

If yes, specify how your Member State assess this situation

-According to subsection 2 of section 37 of the Aliens Act: “Persons living continuously in a marriage-like relationship within the same household regardless of their sex are comparable to a married couple. The requirement is that they have lived together for at least two years. This is not required if the persons have a child in their joint custody or if there is some other weighty reason for it.”

Q.22 B – This partnership shall be registered?

☐ OUI
☒ NON
Q.23 – Does your national law consider the registered partner as the husband/spouse (a 4 §3 alinéa 2)?

☐ OUI
☐ NON

Q.24 – Does your Member State authorise:

Q.24. A – Reunification of minor children of the partner, including adopted children (a 4§3)?

☐ OUI
☐ NON

Q. 24. B – Reunification of adult unmarried children of the partner, including adopted children (a 4§3)?

☐ OUI
☐ NON

-Family reunification is not authorised in this kind of case. However, a residence permit on one of the following grounds may come into question. According to 45 (1) (4) § of the Aliens Act a temporary residence permit is issued to a person residing abroad if there are special reasons for it. Furthermore, according to 49 (1) (4) of the Aliens Act, an alien who has entered Finland without a residence permit is issued with a temporary or continuous residence permit in Finland if the requirements for issuing such permit abroad are met and if refusing a residence permit would be manifestly unreasonable. According to 52 § of the Aliens Act aliens residing in Finland are issued with a continuous residence permit if refusing a residence permit would be manifestly unreasonable with regard to their health, ties to Finland or on other compassionate grounds, particularly in consideration of their circumstances they would face in their home country or of their vulnerable position.

Q.25 – Does your Member State allow reunification of adult unmarried children who are objectively unable to provide for their own needs on account of their state of health (a 4§3)?

☐ OUI
☐ NON

-Family reunification is not authorised in this kind of case. However, a residence permit on one of the following grounds may come into question. According to 45 (1) (4) § of the Aliens Act a temporary residence permit is issued to a person residing abroad if there are special reasons for it. Furthermore, according to 49 (1) (4) of the Aliens Act, an alien who has entered
entered Finland without a residence permit is issued with a temporary or continuous residence permit in Finland if the requirements for issuing such permit abroad are met and if refusing a residence permit would be manifestly unreasonable. According to 52 § of the Aliens Act aliens residing in Finland are issued with a continuous residence permit if refusing a residence permit would be manifestly unreasonable with regard to their health, ties to Finland or on other compassionate grounds, particularly in consideration of their circumstances they would face in their home country or of their vulnerable position.

If yes, specify how the conditions, and more particularly the "objectivity", are assessed.

Q.26 – Did your Member state use the by law or regulation norms to implement article 4 § 3?

- The rule according to which persons living continuously in a married-like relationship and registered partners are comparable to a married couple was laid down in section 37 of the Aliens Act already before the formal implementation of the Directive.

Q.27 – Is the prohibition of polygamous marriage enshrined in your national legislation (a. 4§4)?

☒ OUI
☐ NON

Q.28 – Does your Member State limit family reunification of minor children of a further spouse and the sponsor (article 4§4 dernier alinéa,)?

☒ OUI
☐ NON

Q.29 – Does your Member State use the option set up by article 4 § 5 requiring the sponsor and his/her spouse to be of a minimum age of 21 years old before reunification?

☐ OUI
☒ NON

Q.30 – If yes,

Q.30 A – What is the age required?

Q.30 B – Is the derogation founded on integration criteria and/or prevention of forced marriage?
Q.31 – Does your Member State use the derogation of article 4 § 6 by requesting that the applications concerning family reunification of minor children have to be submitted before the age of 15?

☐ OUI

☒ NON

Explain

Q.32 – If yes, was it provided by existing legislation on the date of implementation of the directive?

Q.33 – If the application is not introduced before the age of 15, do Member States authorise entry and residence on grounds other than family reunification?

☐ OUI

☐ NON

Which grounds and which conditions?

PROCEDURE (ARTICLE 5)

We draw attention on the major importance given by the Court of justice regarding § 5 relating to the best interest of minor children.

Q.34 – Did your Member State institute a procedure regarding family reunification (a 5 §1)?

☒ OUI

☐ NON

Q.35 – If yes,

Q.35. A – Which authorities are in charge of this issue?

-The procedure for issuing residence permits on ground of family tie is regulated by the Aliens Act (Ulkomaalaislaki 301/2004) and the Administration Act (Hallintolaki 434/2003) as well as the Act on Judicial Procedures in Administrative Matters (Hallintolainkäyttölaki 586/1996). This procedure existed already before the formal implementation of the Directive.

The Directorate of Immigration is the first-instance decision making body regarding applications for residence permits, including residence permits on ground of family reunification.

In case of negative decision, it is possible to appeal to an administrative court and further to the Supreme Administrative Court if the Supreme Administrative Court gives leave to appeal.
Q.35. B – Are NGO's associated to this procedure?

☐ OUI

☒ NON

If yes, describe the procedure

- NGO's are not associated in this procedure formally. However, the Refugee Advice Centre may provide the applicants with counselling and free legal aid.

Q.35. C – Is the application submitted by the sponsor or by family members?

The application may be lodged either by the family member or the sponsor. According to subsection 1 of section 62 of the Aliens Act: "An alien who does not have a residence permit (applicant) may apply for a residence permit abroad on the ground of family tie by filing an application with a Finnish mission, or a sponsor may initiate the procedure by filing an application with the municipal police."

Q.35. D – Is this procedure exclusive from other possibilities to grant family reunification?

☒ OUI

☐ NON

If other procedural possibilities exist, please describe them

-A claim for family reunification may come up in any residence permit procedure including asylum procedures, and when such claim is made it has to be assessed by the authorities. When processing applications for a residence permit the Directorate of Immigration is obliged to take into account and assess all possible grounds for issuing a permit. For example, when processing an application for a residence permit on ground of need for international protection, the Directorate of Immigration has to assess in this same procedure the possible claim for family reunification, as well, and issue the applicant with the permit if the preconditions for that are met.

Q. 35. E – Was this procedure existing before the adoption of Directive 2003/86?

☒ OUI

☐ NON
Q.36 – Which documentary evidence are required to prove (a 5 §2):

**Q.36. A – Family relationships according to article 4?**

According to the Guidelines on family reunification the following documents shall be required:

**In case of married partners:**
- A form concerning information on the family relationship.
- A photocopy of the applicant’s and the sponsor’s passport or other travel document, or if the person concerned does not have a passport or a travel document, a photocopy of her identity document.
- Marriage certificate and certificate of the registration of the marriage in the country of origin if such certificates are issued. If the marriage is concluded in religious ceremony, information on that, too, should be provided.
- Certificate of divorce or death certificate if the previous marriage has terminated or if the former spouse has died.
- Proof concerning secure income if secure income is a condition for issuing the residence permit.
- Information on the previous trips to Finland and possible previous visas and residence permits to Finland.
- Extracts from the criminal record concerning the applicant and the sponsor.

**In case of cohabiting partners:**
- The same documents as in case of married partners except documents concerning marriage.
- Official documents indicating that the persons concerned have lived together at least for two years (for example the rent contract)
- Documents concerning the joint custody of a child.

**In case of registered partners:**
- The same documents as in case of married partners except documents concerning the marriage.
- Certificate of the registration of the partnership.

**In case of minor children:**
- A form concerning information on the family relationship.
- A photocopy of the applicant’s and the sponsor’s passport or other travel document, or if the person concerned does not have a passport or a travel document, a photocopy of her identity document.
- Birth certificate that contains information on the parents.
- Certificate or proof on adoption if such is relevant in the case.
- In case of a child born outside marriage, certificate on paternity.
- Death certificate in case one or both of the parents have died.
- Divorce certificate in case the parents have divorced.
- Proof on custody (for example a court order).
- If the child is in joint custody, a written and officially certified statement from the other parent indicating that the parent allows the child to move to Finland. Alternatively the other parent can be heard orally. If the written and officially certified statement cannot be received and the parent cannot be heard, a court decision shall be required.
-Information on earlier trips to Finland including information on possible previous visas and residence permits.
-Information on income in cases where secure income is required.
-Extracts from the criminal record concerning the applicant and the sponsor.

As these requirements are laid down in administrative guidelines, they do not create legally binding obligations upon individuals. If the required documents cannot be presented for reasons such as the documents don’t exist or cannot be received from the country of origin, other proof may be presented instead. Furthermore, in case of lack of documents, the significance of the oral hearing of the applicant and the sponsor is emphasised. Furthermore, DNA testing may be used in order to prove the biological kinship. The documents do not have to be certified if certified documents cannot be obtained.

**Q.36. B – Accommodation conditions laid down in article 7?**

The accommodation condition is not applied in Finland.

**Q.36. C – Sickness insurance conditions?**

The sickness insurance is not required. Persons falling within the ambit of this Directive reside are issued with a continuous residence permit and those residing in Finland by virtue of a continuous residence permit are covered by the public health care system.

**Q.36. D – Certified copies of family member(s)’ travel documents?**

-Copies of family member’s travel documents should be provided. It is however not required that they are certified.

**Q.37 – Is the possibility foreseen to proceed to:**

**Interviews:**

- OUI

- NON

**Investigations:**

- OUI

- NON

If yes, describe them briefly

-Section 64 of the Aliens Act concern oral hearing. According to this provision:
"When applying for a residence permit on the basis of family ties, the applicant, sponsor or other relative may be heard orally to establish whether the requirements for entry or for a residence permit are met."
The hearing is conducted by the police or by an official of a Finnish mission. The Directorate of Immigration may conduct the hearing if establishing the matter so requires."

In practice the applicant and the sponsor are systematically heard orally.

Sections 65 and 66 of the Aliens Act lay down rules on establishing family ties by means of DNA analysis. The Directorate of Immigration may provide the applicant and the sponsor with an opportunity to prove their biological kinship with DNA analysis paid from State funds if no other adequate evidence of family ties based on biological kinship is available and if it is possible to obtain material evidence of the family ties though DNA analysis. It is argued by the Finnish Red Cross and the Refugee Advice Centre that DNA tests are required systematically to provide proof of the biological kinship.

Q.38  – When examining an application concerning the unmarried partner of the sponsor, which evidences are taken into account by Member States on the basis of national law to prove family relationship (article 5§2 dernier alinea)?

Q.38. A – Existence of family ties and other elements such as a common child?

☐ OUI
☐ NON

Specify

-According to section 37 of the Aliens Act persons living continuously in a marriage-like relationship within the same household are comparable to a married couple. The requirement is that they have lived together for at least two years. This is not required if they have a child in their joint custody or if there is some other weighty reason for it.

Q.38. B - Previous cohabitation?

☐ OUI
☐ NON

Q.38. C - Registration of a partnership

☐ OUI
☐ NON

Q.38. D - Any other reliable means of proof foreseen in national law?

☐ OUI
☐ NON
If yes, specify which ones:

-According to section 37 of the Aliens Act persons living continuously in a marriage-like relationship within the same household are comparable to a married couple. The requirement is that they have lived together for at least two years. This is not required if they have a child in their joint custody or if there is some other weighty reason for it. Reunification is thus possible even if the persons concerned have not resided together for two years or do not have a child in their joint custody. According to the Guidelines on family reunification, reunification may be allowed for example in situations where the cohabitation of the persons concerned was interrupted for reasons beyond their control. This can be proved by means such as documentary evidence and oral or written statements.

**Q.39** – Are family members obliged to reside outside the territory of the Member State while the application is being examined (a5 §3) ?

- **OUI**
- **NON**

-According to the main rule laid down in section 60 of the Aliens Act, a first residence permit shall be applied for abroad in the country where the alien resides legally before entering Finland. However, section 49 lays down exceptions to this rule. According to this provision:

“An alien who has entered the country without a residence permit is issued with a temporary or continuous residence permit in Finland if the requirements for issuing such a permit abroad are met, and if:

... 
2. the alien has already, before entering Finland, lived together with his or her married spouse who lives in Finland, or has continuously lived together for at least two years in the same household in a marriage-like relationship with a person who lives in Finland;

... or

4. refusing a residence permit would be manifestly unreasonable.

A temporary or continuous residence permit is issued on the same grounds as an equivalent permit applied for abroad.

Correspondingly, the provision in subsection 1 (2) applies to registered partnerships of the same sex and to marriage-like relationships of two persons of the same sex living continuously together in the same household.”

Thus, if the preconditions laid down in 49 § are met and, for example, the spouses have lived together before entering Finland, the residence permit on grounds of family reunification may be applied for after entering Finland.

Is this obligation sanctioned and how?
According to subsection 1 of section 185 of the Aliens Act: “An alien who deliberately resides in the country without the required travel document, visa or residence permit … shall be sentenced for violation of the Aliens Act to a fine.” If the preconditions laid down in 49 § for issuing the residence permit after entering Finland are not met, 185 § of the Aliens Act may be applied.

Q.40 – If the answer is yes, is a derogation organised according to article 5 § 3 second indent?

☐ OUI
☐ NON

Please specify

According to the main rule laid down in section 60 of the Aliens Act, a first residence permit shall be applied for abroad in the country where the alien resides legally before entering Finland. However, section 49 lays down exceptions to this rule. According to this provision:

“An alien who has entered the country without a residence permit is issued with a temporary or continuous residence permit in Finland if the requirements for issuing such a permit abroad are met, and if:

2. the alien has already, before entering Finland, lived together with his or her married spouse who lives in Finland, or has continuously lived together for at least two years in the same household in a marriage-like relationship with a person who lives in Finland;

or

4. refusing a residence permit would be manifestly unreasonable.

A temporary or continuous residence permit is issued on the same grounds as an equivalent permit applied for abroad.

Correspondingly, the provision in subsection 1 (2) applies to registered partnerships of the same sex and to marriage-like relationships of two persons of the same sex living continuously together in the same household.”

This provision does not create an exception from the obligation to obtain a visa if such is required. The purpose of this provision is to make it possible for the spouse to wait for the decision on the residence permit application in Finland.

Q.41 – Does your national legislation include a maximum period of 9 month to answer to the application by way of written notification (a5 §4)?

☐ OUI
☐ NON

If necessary, please specify
Q.42 – This time limit can be extended (a 5 §4 alinea 2) ?

☐ OUI
☐ NON

Q.43 – If yes,

Q.43. A – Because of the complexity of the examination of the application?

☐ OUI
☐ NON

If yes, please specify

- According to section 69a of the Aliens Act, the time limit of 9 months can be extended ‘under exceptional circumstances’. The Aliens Act does not further elaborate on the notion of ‘exceptional circumstances’. According to the Government Proposal for the act amending the Aliens Act (Hallituksen esitys laiksi ulkomaalaislain muuttamisesta HE 198/2005), the time limit can be extended, for example, if the application is particularly complex.

Q.43. B – What is the length of the extension?

- The length of the extension is not defined.

Q.44 – If no decision is taken by the end of the 9 months period provided, what are the consequences for the applicant?

- There are no consequences for the applicant for this. If the decision is not taken within 9 months the applicant may request a decision from the Directorate of Immigration and the Directorate of Immigration shall give an explanation for why the period of 9 months has been exceeded.

Q.45 – Is the decision rejecting the application notified? Does this written notification contain the reasons of rejection?

☐ OUI
☐ NON

Specify if only one condition is not required

Q.46 – How is the best interest of minor children taken into account by your Member State’s legislation and authorities during examination of the application (article 5 §5) ?

- According to section 6 of the Aliens Act:
  “In any decisions issued under this Act that concern a child under eighteen years of age, special attention shall be paid to the best interest of the child and to circumstances related to the child’s development and health."
Before a decision is made concerning a child who is at least twelve years old, the child shall be heard unless such hearing is manifestly unnecessary. The child’s views shall be taken into account in accordance with the child’s age and level of development. A younger child may also be heard if the child is sufficiently mature to have his or her views taken into account.

Matters concerning minors shall be processed with urgency.”

The Guidelines on family reunification emphasize that the best interest of the child has to be assessed in each individual case separately. Each negative decision has to contain an explicit statement expressing how the best interest of the child is taken into account. According to the Guidelines, the child shall be heard in order to find out what constitutes her best interest. Furthermore, the Guidelines emphasize the importance of collecting sufficient information on the country of origin, including information on the position and treatment of children there.

Furthermore, according to section 63 of the Aliens Act, the Directorate of Immigration or the municipal Police may obtain an opinion concerning the sponsor’s social situation or health from the social welfare or health authorities of the sponsor’s domicile or place of residence, if the sponsor is an unaccompanied minor. The purpose of such statements would be to help to define the best interest of the child in the given case.

**CONDITIONS REQUIRED (ARTICLES 6 AND OTHERS)**

- Questions relating to accommodation and resources will be carefully examined to assess if Member States use them, either as a migration tool or as an integration tool.

- The same assessment applies regarding the option to set up a period of lawfully residence not exceeding two years before applying for family reunification.

- According to article 8, the Court of justice states: “That provision does not therefore have the effect of precluding any family reunification, but preserves a limited margin of appreciation for the Member States by permitting them to make sure that family reunification will take place in favourable conditions, after the sponsor has been residing in the host State for a period sufficiently long for it to be assumed that the family members will settle down well and display a certain level of integration. Accordingly, the fact that a Member State takes those factors into account and the power to defer family reunification for two or, as the case may be, three years do not run counter to the right to respect for family rights set out in particular in Article 8 of the ECHR as interpreted by the European Court of Human Rights.

- “It should, however, be remembered that, as is apparent from Article 17 of the Directive, duration of residence in the Member State is only one of the factors which must be taken into account by the Member State when considering an application and that a waiting period cannot be imposed without taking into account, in specific cases, all the relevant factors” (cons. 99). “The same is true of the criterion of the Member State’s reception capacity, which may be one of the factors taken into account when considering an application, but cannot be interpreted as authorising any quota system or a three-year waiting period imposed without regard to the particular circumstances of specific cases. Analysis of all the factors, as prescribed in Article 17 of the Directive, does not allow just this one factor to be taken into account and requires genuine examination of reception capacity at the time of the application” (cons. 100)
"When carrying out that analysis, the Member States must, as is pointed out in paragraph 63 of the present judgment, also have due regard to the best interests of minor children" (cons. 101).

Q.47 – Can public policy, public security or public health grounds be taken into account to (a 6 §§1 et 2):

Q.47. A – Reject an application for family reunification?

☑ OUI
☐ NON

If yes, which ones?

- According to section 36 of the Aliens Act, a residence permit on ground of family tie may be refused if the alien is considered a danger to public order, security or public health.

This provision is further elaborated on in the Guidelines on family reunification. According to the Guidelines, measures the purpose of which is to guarantee safe and comfortable environment to the members of society and to prevent and solve crimes and injustices as well as to prevent and remove disturbances, belong to public order and security. Among other aspects the Guidelines emphasize that any measure taken on grounds of public order or public security must be based solely on the alien’s own behaviour and not on considerations of general prevention. The behaviour of the person concerned must represent a genuine, immediate and sufficiently serious threat affecting fundamental interests of society.

The Directorate of Immigration may ask for the Security Police to give a statement concerning the applicant.

Q.47. B – Withdraw an application for family reunification?

☑ OUI
☐ NON

If necessary, please specify

- A residence permit on ground of family tie may be withdrawn if the alien is considered a danger to public order or security. The public health ground cannot be appealed to as a ground for withdrawing the residence permit.

Q.47. C – Refuse to renew a family member's residence permit?

☑ OUI
☐ NON
If necessary, please specify

-The renewal of a residence permit on ground of family tie may be refused if the alien is considered a danger to public order or security. The public health ground cannot be appealed to as a ground for refusing to renew the residence permit.

**Q.48** – Does national legislation take into account:

- **Q.48. A** – The severity or type of offence against public policy or public security?
  - [x] OUI
  - [ ] NON

- **Q.48. B** – The solidity of family relationships regarding article 17 of the Directive?
  - [x] OUI
  - [ ] NON

If necessary, please specify

-According to section 66 a of the Aliens Act as amended by the Act 380/2006 “When the residence permit has been applied on the ground of family tie, when considering refusal of the permit, due account shall be taken of the nature and solidity of the person’s family relationships, the duration of his or her residence in the country as well as the existence of family, cultural and social ties with the country of origin. The same applies to the consideration concerning withdrawal of the residence permit issued on the ground of family tie as well as taking a decision on removing the sponsor or her family member from the country.”

Furthermore, according to subsection 1 of section 146 of the Aliens Act as amended by the Act 380/2006:

“When considering refusal of entry, deportation, or prohibition of re-entry, and the duration of the prohibition of re-entry, account shall be taken of the facts on which the decision is based and the facts and circumstances affecting the matter otherwise as a whole. When considering the matter, particular attention shall be paid to the best interest of children and the protection of family life. Other facts to be considered include at least the length and purpose of the alien’s ties to Finland as well as possible family, cultural and social ties to the country of origin. Should the refusal of entry, deportation or prohibition of re-entry be based on any criminal activity of the person concerned, account shall be taken of the seriousness of the act and the detriment, damage or danger caused to public order or private security.”

Further guidance in applying the public order and public security grounds are given in the Guidelines on Family Reunification of 30.5.2005 in 3.3.1.
Q.49 – Does your Member State withdraw the residence permit or remove the third country national on the sole ground of illness or disability suffered after the issue of the residence permit (a 6 §3)?

☐ OUI
☒ NON

Q.50 – Are accommodation conditions required from the applicant (a7 §1a) ?

☐ OUI
☒ NON

Q.51 – If yes:

Q.51. A – What are those conditions?
Q.51. B – How are they assessed?
Q.51 C – Are they comparable to the conditions required to a normal family living in the same region?

☐ OUI
☒ NON

If not, please specify the differences

Q.52 – Is a sickness insurance required from the applicant (a. 7 §1b) ?

☐ OUI
☒ NON

Q.53 – Are stable resources required (a7 §1c) ?

☒ OUI
☐ NON

Specify their nature and content

-According to section 39 of the Aliens Act:
“Issuing a residence permit requires that the alien has secure means of support unless otherwise provided in this Act. In individual cases, an exemption may be made from the requirement for means of support if there are exceptionally weighty reasons for such an exemption or if the exemption is in the best interest of the child. The requirement for means of support is not applied if a residence permit is issued under Chapter 6 [that lays down the rules on granting international protection including subsidiary and temporary protection].
An alien’s means of support are considered secure at the time when the alien’s first residence permit is issued if the alien’s residence is financed through gainful employment, pursuit of a trade, pensions, property or income from other sources considered normal so that the alien cannot be expected to become dependent on social assistance as referred to in the Act on Social Assistance (1412/1997) or on other similar benefit to secure his or her means of support. Social security benefits compensating for expenses [such as child allowances] are not regarded as such a benefit.

When issuing extended permits, the alien’s means of support shall be secure as provided in subsection 2, provided, however, that temporary resort to social assistance or other similar benefit securing the alien’s means of support does not prevent the issue of the permit.

The applicant shall submit to the authorities a statement on how his or her means of support will be secured in Finland.”

Q.54 – How is the condition "sufficient" assessed by your Member State? Is it in comparison with national wages?

- The Guidelines given by the Directorate of Immigration on applying the income requirement laid down in 39.2 § of the Aliens Act (Ulkomaalaisviraston antama ohje ulkomaalaislain 36 §:n 2 momentin toimeentuloedellytyksen soveltamisesta) define an indicative level of net monthly income that is 900 euros/month and 10,800 euros/year for the sponsor and 630 euros/month and 7,560 euros/year for the spouse. In case of minor children the indicative level of net monthly income is 450 euros/month and 5,400 euros/year. It is emphasized in the Guidelines that the defined levels of net monthly income are only indicative and that the situation of the family concerned, including factors such as the number of children, should always be taken into account when assessing whether the income is secure within the meaning of section 36 of the Act. The sufficient means of support as defined in the Guidelines is in comparison with the subsistence support as defined under the Act on Social Assistance (Toimeentuloturvalaki 1412/1997).

Q.55 – Are integration criterions required to allow family reunification (a 7 §2)?

☐ OUI

☒ NON

Q.56 – If yes:

Q.56. A – What are those criterions?

Q.56. B – Do they apply indistinctly to all potential beneficiaries of reunification? (Spouse, dependant people, etc.)

Q.56. C – How are they evaluated by your Member State?
Q.56. Are refugees and their family members required to fulfil them (a 7 §2, second indent)?

☐ OUI
☒ NON

Q.57 – Is a minimal period of lawful residence is required before reunification (a 8 §1)?

☐ OUI
☒ NON

Q.58 – Does this period exceed two years?

Please specify

Q.59 – Does your Member State apply the derogation set up by article 8 § 2 allowing Member States to impose a waiting period of maximum three years due to reception capacities between the submission of the application and the issuance of a residence permit?

☐ OUI
☒ NON

Please specify

Q.60 – If yes, did this derogation exist in national law before the 22nd of September 2003?

☐ OUI
☒ NON

FAMILY REUNIFICATION OF REFUGEES

The legal regime applicable to refugees derogates from the one applicable to family reunification. The scope of those derogations (minimal lawful residence, members of the family, accommodation requirements) shall be assessed on the basis of national law.

Q.61 – Does your Member State allow family reunification of refugees on the basis of Directive 2003/86 (a 9 §1)?

☒ OUI
☐ NON
Q.62 – Is this right limited to family relationships predating the entry on the territory (a 9 §2)?

☐ OUI

☒ NON

Q.63 – Does your Member State allow family reunification of family Members not quoted in article 4 of the Directive (a 10 §2) ?

☒ OUI

☐ NON

Which members of the family and under which conditions?

- According to section 115 of the Aliens Act:
  “A residence permit is issued to other relatives of a refugee or an alien who has been granted a residence permit on the basis of a need for protection or enjoyed temporary protection, if refusing the residence permit would be unreasonable because the persons intend to resume their close family life in Finland or because the relative is fully dependent on the sponsor living in Finland. If the applicant is considered a danger to public order, security or health, or Finland’s international relations, an overall consideration is carried out as provided in section 114.2.

Issuing a residence permit does not require that the alien have secure means of support.”

According to subsection 2 of section 114 of the Aliens Act:
“ If any of the circumstances mentioned in subsection 1.2. emerge [public order, security and health], an overall consideration is made taking account of the sponsor’s possibilities for leading a family life with the applicant in a third country. In the consideration, importance of the family tie for the persons concerned shall be taken into account.”

In principle, these provisions may cover also other relatives than those mentioned in Article 4 of the Directive such as unmarried siblings who are dependent on the sponsor. Section 115 of the Act is, however, normally, applied only in case of old parents or adult unmarried children who are dependent on the sponsor.

Q.64 – According to the specific case of unaccompanied minor refugees, does your Member State authorise family reunification of first degree relatives in the direct ascending line without applying the conditions laid down in article 4 § 2 (a10 §3 a) ?

☐ OUI

☒ NON

What conditions are required?
-According to section 37 of Aliens Act, if a person residing in Finland is a minor, his or her guardian is considered a family member. Thus, strictly taken, according to the Aliens Act it is the guardian and not parent, whose entry shall be authorised. The Government Proposal for the Act amending the Aliens Act (HE 185/2005) however clarifies that this provision is based on the idea that a child’s parent is normally also her guardian and thus the person whose entry shall be authorised under the Aliens Act. In situations where a child has both a biological parent and a guardian, the emphasis shall, according to the administrative practice, be paid on which of the relationships is more real and meaningful for the child; if the child, for example, had lived with the biological parent and not with the guardian, it is the parent and not the guardian who shall be regarded as the family member within the meaning of section 37 of the Act. Proof of the guardianship is not required if nothing indicates that the biological parent would have lost the legal guardianship. In case the parent has lost the guardianship the authorities may investigate the reasons that caused that. It is anticipated that in most cases where the parents have lost the guardianship there are serious reasons for that such as domestic violence or negligence. In such case it would not be in the best interest of the child to unite her with her biological parents. If such weighty reasons don’t exist the child may be reunited with the biological parent even despite of legal guardianship.

Q. 65 – Does your Member State authorise entry and residence of the legal guardian or any member of the family where the unaccompanied minor refugee has no relatives in the direct ascending line or such relatives cannot be traced (a10 §3 b) ?

☐ OUI
☐ NON

If yes, please specify who the member of the family targeted is and which proofs are required to prove family ties?

-According to section 37 of Aliens Act, if the person residing in Finland is a minor, his or her guardian is considered a family member. Thus, strictly taken, according to the Aliens Act it is the guardian and not the biological parent, whose entry shall be authorised under this provision. The Government Proposal for the Act amending the Aliens Act (HE 185/2005) however clarifies that this provision is based on the idea that a child’s parent is normally also her guardian and thus the person whose entry shall be authorised under the Aliens Act. In situations where a child has both a biological parent and a guardian, the emphasis is in the administrative practice paid on which of the relationships is more real and meaningful for the child; if the child, for example, had lived with the biological parent and not with the guardian, it is the parent who shall be regarded as the family member within the meaning of section 37 of the Act and vice versa. If the child does not have biological parents, the guardian’s entry shall be authorised. It is worth noting, that the authorisation of the guardian’s entry is not conditional upon that the child does not have biological parents or that they cannot be traced. According to the Aliens Act and administrative practice it is in principle sufficient that the parent no longer has the custody of the child and that their relationship is not effective.
Furthermore, according to section 115 of the Aliens Act, a residence permit on grounds of family tie is issued to other relatives of a refugee or an alien who has been granted a residence permit on the basis of a need for protection or enjoyed temporary protection, if refusing the residence permit would be unreasonable because the persons concerned intend to resume their close family life in Finland or because the relative is fully dependent on the sponsor living in Finland. If the applicant is considered a danger to public order, security or health, an overall consideration is carried out as provided in section 114 (2) of the Act. According to the Guidelines on family reunification, this provision would cover, for example, minor siblings of a sponsor who is a minor in case they don’t have a guardian.

According to the Guidelines on family reunification, the following documents and information shall be required to prove the family ties:

- A form concerning information on the family relationship between the persons concerned.
- A photocopy of the applicant’s and the sponsor’s passport or other travel document or if the person concerned does not have a passport or a travel document, a photocopy of her identity document.
- Birth certificate that contains information on the parents.
- Certificate or other proof on adoption if such is relevant in the case.
- In case of a child born outside marriage, certificate on paternity.
- Death certificate in case one or both of the parents have died.
- Divorce certificate in case the parents have divorced.
- Proof on custody (for example a court order).
- If the child is in joint custody, a written and officially certified statement from the other parent indicating that the parent allows the child to move to Finland. Alternatively the other parent can be heard orally. If the written and officially certified statement cannot be received and the parent cannot be heard, a court decision shall be required.
- Information on earlier trips to Finland including information on possible previous visas and residence permits.
- Information on income in cases where secured income is required.
- Extracts from the criminal record concerning the applicant and the sponsor.

If the person concerned is other relative as referred to in section 115 of the Aliens Act the following proofs, too, are required:

- Ground for why the residence permit should be granted.
- Information on whether the persons concerned had previously lived together and if they have, for how long time.
- Information on how the persons concerned have kept in touch during their separation.

As these requirements are laid down in administrative guidelines, they do not create legally binding obligations upon individuals. If required documents cannot be presented, for example because such documents don’t exist or cannot be received from the country of origin, other proof may be presented instead. Furthermore, in case of lack of documents the significance of the oral hearing of the applicant and the sponsor is emphasised. Furthermore, a DNA testing may be used in order to establish the biological kinship.
Worth noting in this connection is also section 52 of the Aliens Act. According to this provision:
"Aliens residing in Finland are issued with a continuous residence permit if refusing a permit would be manifestly unreasonable with regard to their health, ties to Finland or on other compassionate grounds, particularly in consideration of the circumstances they would face in their home country or of their vulnerable position.

Issuing a residence permit does not require that the alien have secure means of support.

[...] If unaccompanied minor children who have entered Finland are issued with a residence permit under subsection 1, their minor siblings residing abroad are issued with a continuous residence permit. A requirement for issuing a residence permit is that the children and their siblings have lived together and that their parents are no longer alive or the parents’ whereabouts are unknown. Another requirement for issuing a residence permit is that issuing the permit is in best interest of the children. Issuing a residence permit does not require that the alien have secure means of support."

Q.66 – Does your Member State take into account other evidence of family relationship where the refugee cannot provide official evidence (a 11 §2)?

☐ OUI
☐ NON

Which ones?

-In case of lack of official documents, the significance of oral hearing of the applicant and the sponsor is emphasized. According to section 64 of the Aliens Act, when applying for a residence permit on the basis of family ties, the applicant, sponsor or other relative may be heard orally to establish whether the requirements for entry or for a residence permit are met. The hearing is conducted by the police or by an official of a Finnish mission. The Directorate of Immigration may conduct the hearing if establishing the matter so requires.

Furthermore, sections 65 and 66 of the Aliens Act lay down rules on establishment of family ties by means of DNA testing.

Q.67 – Does the examination of the refugee application take into account their specific situation:

Q.67. A – Are proofs regarding accommodation conditions, sickness insurance or resources required (a 12 §1)?

☐ OUI
☒ NON

If yes, are those requirements comparable to those imposed to other third country nationals?
**Q.67. B** – If one of the person concerned (sponsor or family member) has special links with a third country within which reunification is possible, does your member state require those proofs according to article 12 § 1 second indent.

☐ OUI

☒ NON

If necessary specify

**Q.67. C** – If a refugee has introduced its application after a period of three months, does your Member State require the refugee to meet the conditions or one of them (accommodation, sickness insurance, resources (a 12 §1 alinea 3) ?

☐ OUI

☒ NON

If yes, which ones?

**Q.68** – Does your Member State apply the prohibition to impose a residence condition before reunification (a 12 §2)?

☒ OUI

☐ NON

If not, what is the length of this period? Is it different from the one normally applied?

**EXERCISE OF THE RIGHT TO FAMILY REUNIFICATION**

*The granting of an autonomous residence permit is one of the most sensitive issues of this part of the Directive.*

**Q.69** – Is entry and residence facilitated by your Member State, as soon as the application for family reunification has been accepted, including the issue of obtaining visas (a13 §1) ?

☒ OUI

☐ NON

If yes, how?

-According to the main rule, the family member has to wait for the decision of the Directorate of Immigration abroad. After the Directorate of Immigration has decided to issue a residence permit on ground of family tie, a Finnish embassy abroad serves the decision and the permit to the family member. A
person who has been issued with a residence permit is not required to hold a visa to enter Finland. She is able to enter the country by virtue of the valid residence permit.

**Q.70** – Is a residence permit of at least one year’s duration granted to the family members (a 13 §2)?

- [x] NON

What is the duration of the residence permit?

- According to section 53 of the Aliens Act the validity period for a residence permit that is issued on ground of family tie shall not exceed the validity period for the sponsor’s residence permit.

According to the main rule, the first fixed-term residence permit shall be issued for one year. The validity period of the residence permit must, however, not exceed the validity period of the travel document. Furthermore, if the residence permit is requested for a shorter period than one year, its validity period must not exceed that requested period. In addition to this, the first fixed-term residence permit may be issued for a period of longer or shorter than one year if it is issued for carrying out a legal act, an assignment, or studies that will be completed within a set period. However, the duration of a fixed-term residence permit must not exceed two years. As the validity period of a family member residence permit is aligned with the duration of the sponsor’s permit, its validity period can under the circumstances referred to be either longer or shorter than one year.

**Q.71** – Is this residence permit renewable?

- [x] OUI

**Q.72** – Is the duration of the residence permit aligned with the duration of sponsor’s residence permit (a 13 §3)?

- [x] OUI

If no, please specify
Q.73 – Are the rights awarded to family members' equivalent to those granted to the sponsor (a14 §1):

**Q.73. A – Regarding access to education?**

☐ OUI
☐ NON

If no, please specify

**Q.73. B - Regarding access to employment?**

☐ OUI
☐ NON

Please specify the content of this access

According to section 79 of the Aliens Act as amended by the Act amending the Aliens Act 380/2006: “Aliens who have been issued with a residence permit on the ground of family ties have a right to gainful employment.” This provisions covers self-employment, as well.

**Q.73. C – Regarding access to vocational guidance, initial and further training and retraining?**

☐ OUI
☐ NON

If no, please specify

**Q.74 – Does your Member State grant specific rights in social matters to reunified family members?**

☐ OUI
☐ NON

If yes, please describe them and specify if a time limit is established to take advantage from them

- The Finnish system on social security and social benefits is by and large based on permanent residence in the country. Thus, according to section 3a of the Act on the application of the legislation on residence based social security (Laki asumiseen perustuvan sosiaaliturvalainsäädännön soveltamisesta 30.12.1993/1573), the social security legislation shall be applied to persons residing in Finland or moving to reside in Finland permanently. Whether the residence can be regarded as permanent shall be assessed by considering the situation as a whole. Furthermore, according to this same provision, as grounds indicating that the residence is permanent shall be regarded for example an employment contract that is concluded for the duration of two years, and
the fact that the person concerned is a family member of a person residing in Finland permanently. According to the main rule, no time limit is thus established to being covered by social security legislation. If the residence is regarded as permanent as defined in this Act, the person concerned is covered by social security legislation after the entry to the country. The benefits covered by this Act include national pension and child allowance. Corresponding rule on the scope of application is contained, for example, in the Act on sickness insurance and the Act on unemployment benefits. Regarding individual benefits, waiting periods as defined in the legislation may be applied. Such waiting periods do, however, not differentiate on ground of the ground of residence in the country.

Q.75 – Has Member State set up conditions regarding specific access to employment for family members (a 14 §2)?

☐ OUI

☒ NON

If yes, how?

Q.76 – If yes, do those conditions exceed 12 months (a 14 §2)?

☐ OUI

☐ NON

Which ones?

Q.77 – Is access to employment limited in your Member State

Q.77.A – Regarding first-degree relatives in the direct ascending line?

☐ OUI

☒ NON

If yes, how?

Q.77. B – Regarding adult unmarried children objectively unable to provide for their own needs on account of their state of health (a 14 §3)?

☐ OUI

☒ NON

If yes, how?
Q.78 – Are spouses, unmarried partners and child who has reached majority entitled to an autonomous residence permit at least five years after lawful residence on the basis of the residence permit issued for family reunification (a15 §1)?

☐ OUI

☒ NON

If yes, please specify when and how for each category

-Section 56 of the Aliens Act 301/2004 as amended by the Act 380/2006 concerns permanent residence permits. Subsection one and three lay down the general conditions for permanent residence permits and subsection two lays down the rule on family member’s permanent autonomous permits. According to section 56 of the Act:

“A permanent residence permit is issued to an alien who has resided legally in the country for a continuous period of four years after being issued with a continuous residence permit if the requirements for issuing a continuous residence permit are still met and if there are no obstacles mentioned in this Act to issuing a permanent residence permit. Residence is considered continuous if an alien has resided in Finland for at least half of the validity period for the residence permit. The continuous residence is not cut by regular holiday or other trips abroad or working abroad as posted worker sent by an employer established in Finland.

A person who has been issued with a fixed-term residence permit on the ground of a family tie may be issued with a permanent residence permit even if the sponsor does not meet the requirements for issuing a permanent permit.

The period of four years is calculated from the date of entry into the country if the alien held a residence permit for continuous residence upon entry. If the residence permit was applied for in Finland, the period of four years is calculated from the first day of the first fixed-term residence permit issued for continuous residence in the country.”

This provision thus covers the spouses, unmarried partners, registered partners and children including children who have reached majority, who reside in Finland by virtue of a residence permit on grounds of family ties. Autonomous residence permit may be issued under similar conditions in all these cases.

The residence permit referred to in subsection two of this provision is autonomous so that the family member may be issued with it even though the sponsor would not meet the requirements for being issued with a permanent residence permit. Furthermore, once the permanent and autonomous residence permit is issued to the family member, it cannot be withdrawn even if the sponsor’s residence permit would be withdrawn. However, the existence of the family tie is the preconditions for issuing the permanent permit under this provision.

It is, however, important to notice that the wording of this provision deviates from the wording of the Directive. According to the Aliens Act autonomous residence permit ‘may be issued’ whereas according to the Directive persons concerned are entitled to autonomous residence permit.
Q.79 – Does your Member State limit the granting of the autonomous residence in cases of breakdown of the family relationship (a 15 §1 alinea 2)?

- OUI
- NON

Please explain

- According to section 56 of the Aliens Act, autonomous permanent residence permit shall be issued to an alien who has resided legally in the country for a continuous period of four years after being issued with a continuous residence permit if the requirements for issuing a continuous residence permit are still met. In case of breakdown of the family relationship the requirements for a residence permit on grounds of family tie are no longer met and thus the residence permit on this ground shall not be issued.

However, according to 54 § of the Aliens Act, an alien who has been issued with a continuous or temporary residence permit on the basis of family ties may be issued with a residence permit on the basis of close ties to Finland after these family ties are broken.

Q.80 – Does your Member State grant autonomous residence permit:

Q.80. A – To first-degree relatives in the direct ascending line (a15 §2)

- OUI
- NON

If necessary specify

- According to the main rule, residence permits on grounds of family ties are not issued to first-degree relatives in the direct ascending line. However, section 115 of the Aliens Act lays down a special rule concerning refugees and others who get international protection. According to this provision, a residence permit on ground of family tie is issued to other relatives, including to first-degree relatives in the direct ascending line, of a refugee or an alien who has been granted a residence permit on the basis of a need for protection (subsidiary protection) or enjoys temporary protection, if refusing the residence permit would be unreasonable because the persons concerned intend to resume their close family life in Finland or because the relative is fully dependent on the sponsor living in Finland. If the applicant is considered a danger to public order, security or health, an overall consideration is carried out as provided in section 114 (2) of the Act. Section 56 of the Act concerning autonomous residence permits is applicable in these cases, and thus an autonomous permit may be issued. Furthermore, according to 54 § of the Aliens Act, an alien who has been issued with a continuous or temporary residence permit on the basis of family ties may be issued with a residence permit on the basis of close ties to Finland after these family ties are broken.
Q.80. B – To adult unmarried children objectively unable to provide for their own needs on account of their state of health (a15 §2) ?

☐ OUI

☒ NON

If necessary specify

- According to the main rule, residence permits on grounds of family ties are not issued to adult unmarried children objectively unable to provide for their own needs on account of their state of health. However, section 115 of the Aliens Act lays down a special rule concerning refugees and others who get international protection. According to this provision, a residence permit on grounds of family tie is issued to other relatives, including adult unmarried children objectively unable to provide for their own needs on account of their state of health, of a refugee or an alien who has been granted a residence permit on the basis of a need for protection (subsidiary protection) or enjoyed temporary protection, if refusing the residence permit would be unreasonable because the persons concerned intend to resume their close family life in Finland or because the relative is fully dependent on the sponsor living in Finland. If the applicant is considered a danger to public order, security or health, an overall consideration is carried out as provided in section 114 (2) of the Act. Section 56 of the Act concerning autonomous residence permits is applicable in these cases, and thus an autonomous permit may be issued. Furthermore, according to 54 § of the Aliens Act, an alien who has been issued with a continuous or temporary residence permit on the basis of family ties may be issued with a residence permit on the basis of close ties to Finland after these family ties are broken.

Q.81 – Does your member State grant autonomous residence permit in the event of widowhood, divorce, separation or death of first first-degree relatives in the direct ascending or descending line (a 15 §3) ?

☐ OUI

☒ NON

If necessary specify

- However, according to 54 § of the Aliens Act, an alien who has been issued with a residence permit on ground of family tie may be issued with a residence permit on the basis of close ties to Finland after these family ties are broken. This provision may be applied in the event of widowhood, divorce, separation or death.
Q.82 – Has your Member State adopted rules granting autonomous residence permit "in the event of particularly difficult circumstances" (a 15 §3)?

☐ OUI
☐ NON

If yes, how is this provision defined and transposed?

- According to subsections 1 and 2 of section 52 of the Aliens Act:
  “Aliens residing in Finland are issued with a continuous residence permit if refusing a residence permit would be manifestly unreasonable with regard to their health or ties to Finland or on other compassionate grounds, particularly in consideration of the circumstances they would face in their home country or of their vulnerable position.

Issuing a residence permit does not require that the alien has secure means of support.”

PENALTIES AND REDRESS

Those provisions must be read in parallel with those relating to the conditions to be fulfilled to obtain family reunification (articles 6, 7, 8)

Questions relating fraud, false or falsified documents are of importance to assess their impact.

Q.83 – What are the legal grounds to reject, withdraw or refuse to renew a family member's residence permit (a16 §1 et 2):

Q.83. A – Conditions required by the directive not satisfied?

☐ OUI
☐ NON

Q.83. B – Absence of real marital or family relationship?

☐ OUI
☐ NON

If yes, how is this hypothesis assessed?

- According to the Guidelines on family reunification, when taking decision on issuing the first, extended or permanent residence permit on family grounds, factors such as the following shall be taken into account:
  - Life together: when and under what kind of circumstances the persons concerned had met; have they lived together before and/or after concluding the marriage; how have they kept in touch when they have lived separately.
  - Meetings and contacts before concluding the marriage.
Contradictory information given by the partners on each other and their relationship.
-If one of the spouses paid to the other for concluding the marriage, the relationship shall normally not be regarded as real.
-Lack of common language.
-Indications on the fact that the spouses don’t live together without an acceptable reason for that.

Q.83. C – Stable long term relationship with another person?

☑ OUI
☐ NON

If yes, how is this hypothesis assessed?

-The criteria for assessing this hypothesis are not defined in the legislation of the Guidelines.

Q.83. D – False or falsified documents?

☑ OUI
☐ NON

Q.83. E – Marriage, partnership or adoption contracted for the sole purpose of enabling reunification?

☑ OUI
☐ NON

Q.83. F – If yes, how is this hypothesis assessed?

-According to the Guidelines on family reunification, when taking decision on issuing the first, extended or permanent residence permit on family grounds, factors such as the following shall be taken into account:
  -Life together: when and under what kind of circumstances the persons concerned had met; have they lived together before and/or after concluding the marriage; how have they kept in touch when they have lived separately.
  -Meetings and contacts before concluding the marriage.
  -Contradictory information given by the partners on each other and their relationship.
  -If one of the spouses paid to the other for concluding the marriage, the relationship shall normally not be regarded as real.
  -Lack of common language.
  -Indications on the fact that the spouses / the family don’t live together without an acceptable reason for that.
  -When was the marriage concluded or the adoption registered? If this happened right after one of the persons concerned was issued a negative decision on an application for a residence permit on some other ground,
a strong suspect arises that the marriage or partnership is contracted for the sole purpose of enabling reunification.

**Q.83. G** – When the sponsor's residence comes to an end and the family member does not yet enjoy an autonomous right of residence (a 16 §3)?

☐ OUI
☐ NON

**Q.83. H** – What type of control are organised thereof?

-This is controlled when considering renewal of the fixed-term residence permit or issuing of permanent permit; in this kind of case the family member’s fixed-term residence permit would not be renewed or she would not be issued with a permanent residence permit.

**Q.84** – Are resources of the family taken into account when renewing residence permit where the sponsor does not have sufficient resources without recourse to the social assistance system of the member state?

☐ OUI
☐ NON

If yes, under which modalities?

-There are no explicit provisions on this in the Aliens Act. According to the Guidelines given by the Directorate of Immigration on applying the income requirement laid down in 36.2 § of the Aliens Act (Ulkomaalaisviraston antama ohje ulkomaalaislain 39 §:n 2 momentin toimeentuloedellytyksen soveltamisesta), in case of a residence permit on grounds on family tie, proof of secured income can be presented by both the sponsor and the person who would like to move to Finland.

**Q.85** – Does your Member State's legislation take into consideration (a. 17) :

**Q.85. A** – The nature and solidity of the person's family relationships and the duration of his residence in the Member State?

☐ OUI
☐ NON

If yes, please specify how and on the basis of which norm (legislation, regulation, jurisprudence, …)

-According to section 66a of the Aliens Act 301/2004 as amended by the Act 380/2006:
“When the residence permit has been applied on the ground of family tie, when considering refusal of the permit, due account shall be taken of the nature and solidity of the family relationships, the duration of the residence in Finland as well as the existence of family, cultural and social ties with the country of origin. The same applies to the consideration concerning withdrawal of the residence permit issued on the ground of family tie as well as taking a decision on removing the sponsor or her family member from the country.”

Q.85. B - 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?

☐ OUI
☐ NON

If yes, please specify how and on the basis of which norm (legislation, regulation, jurisprudence, …)

-According to section 66a of the Aliens Act 301/2004 as amended by the Act 380/2006:

“When the residence permit has been applied on the ground of family tie, when considering refusal of the permit, due account shall be taken of the nature and solidity of the family relationships, the duration of the residence in Finland as well as the existence of family, cultural and social ties with the country of origin. The same applies to the consideration concerning withdrawal of the residence permit issued on the ground of family tie as well as taking a decision on removing the sponsor or her family member from the country.”

Q.86 – Do the sponsor and/or members if his/her family have the right to mount a legal challenge where an application for family reunification is rejected (a18 §1)?

☐ OUI
☐ NON

Q.87 – Is this right to legal challenge considered as a right to a judicial review according to jurisprudence C-540/03 (a18 §1) ?

☐ OUI
☐ NON

XX. IMPACT OF THE DIRECTIVE ON NATIONAL LAW

Q.88 A Did the transposition of the directive made the rules related to the best interest of minor children (a. 5 § 5) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below


<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Due regard to the best interest of minor children during examination of the application a. 5 § 5</td>
<td></td>
<td></td>
</tr>
<tr>
<td>According to section 6 of the Aliens Act: “In any decisions issued under this Act that concern a child under eighteen years of age, special attention shall be paid to the best interest of the child and to circumstances related to the child’s development and health. Before a decision is made concerning a child who is at least twelve years old, the child shall be heard unless such hearing is manifestly unnecessary. The child’s views shall be taken into account in accordance with the child’s age and level of development. A younger child may also be heard if the child is sufficiently mature to have his or her views taken into account.”</td>
<td>Section 6 of the Aliens Act concerning the best interest of a child was not amended by the Act transposing the Directive.</td>
<td>• Statu quo • More favourable than the directive</td>
</tr>
</tbody>
</table>
Matters concerning minors shall be processed with urgency."

**Q.88 B**

Did the transposition of the directive made the rules related to the beneficiaries of the right to family reunification become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

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<tr>
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</tr>
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<tbody>
<tr>
<td>Definition of the beneficiaries of the right to family reunification a. 4 § 4</td>
<td>• Statu quo</td>
<td>• In line with the directive</td>
</tr>
<tr>
<td>The prohibition to issue a residence permit to a second spouse in a polygamous marriage was laid down in the Guidelines on family reunification.</td>
<td>The transposition of the Directive did not change the national legislation in this respect.</td>
<td></td>
</tr>
<tr>
<td>There is no absolute prohibition to issue a residence permit to children of the sponsor and the second spouse. According to the Guidelines on family reunification this is, however, done only under exceptional circumstances.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Q.88 C**

Did the transposition of the directive made the rules related to reunification of minor children between 12 (a. 4 § 1) and 15 (a. 4 § 6) years old become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

*Please use one box per object and duplicate it if necessary*
Q.88 D Did the transposition of the directive made the rules related to requirements to the exercise of family reunification (article 7) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

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</tr>
</thead>
<tbody>
<tr>
<td>Limitation of reunification of minor children of 12 and 15 years of age (a. 4 § 1 and 4 § 6)</td>
<td>- Status quo</td>
<td>- More favourable than the directive</td>
</tr>
<tr>
<td>There were no limitations of reunification of children of 12 and 15 years of age.</td>
<td>The transposition of the Directive did not change the national legislation in this respect.</td>
<td></td>
</tr>
</tbody>
</table>

Q.88 E Did the transposition of the directive made the rules related to margins of manoeuvre awarded to Member States (a. 5 § 5, 17, C-540/03) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

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</tr>
</thead>
<tbody>
<tr>
<td>Requirements for the exercise of family reunification (a. 7)</td>
<td>- Status quo</td>
<td>- More favourable than the directive</td>
</tr>
<tr>
<td>No requirement of accommodation or sickness insurance is laid down in the Aliens Act. Secure income is required with some exceptions in cases other than those where the sponsor receives international protection including subsidiary and temporary protection. There is no obligation to participate in integration measures.</td>
<td>The transposition of the Directive did not change the national legislation in this respect.</td>
<td></td>
</tr>
</tbody>
</table>

Please use one box per object and duplicate it if necessary.
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</thead>
<tbody>
<tr>
<td>Limitation of margins of manoeuvre (a. 17, a.5 §5, C-540/03)</td>
<td>Regarding Article 5.5, the transposition of the Directive did not cause any changes to the national legislation.</td>
<td></td>
</tr>
</tbody>
</table>
| | Regarding Article 17, the following provision was added to the Aliens Act when the Directive was transposed: Section 66 a of the Aliens Act: "When the residence permit has been applied on the ground of family tie, when considering refusal of the permit, due account shall be taken of the nature and solidity of the person's family relationships, the duration of his or her residence in the country as well as the existence of family, cultural and social tie with the country of origin. The same applies to the consideration concerning withdrawal of the residence permit issued on the ground of family tie as well as taking a decision on removing the sponsor or her family member from the country." | • Status quo (Article 5.5.)

• More favourable than previous national rules (Article 17)

• More favourable than the directive (Article 5.5.)

• In line with the directive (Article 17) |
**Q.88 F**  Did the transposition of the directive made the rules related to integration objectives and criterions more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

*Please use one box per object and duplicate it if necessary*

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attention draw upon integration objectives (considérant 15) and criterions of integration (a.4 §1 dernier alinéa, a. 7 §2)</td>
<td>Regarding Article 4.1, the transposition of the Directive did not cause any changes to the national legislation. The clause “reasonable prospects of obtaining the right of permanent residence in the Member State” was considered to be implicitly contained in the national provisions concerning family reunification of persons residing in the country by virtue a continuous residence permit and thus no transposition measure was needed.</td>
<td>• Statu quo</td>
</tr>
<tr>
<td>Regarding Article 7.2, no obligation to participate integration measures was contained in the national legislation.</td>
<td>Regarding Article 7.2, the transposition of the directive did not cause any changes to the national legislation.</td>
<td>• More favourable than the directive</td>
</tr>
</tbody>
</table>

**Q.89**  From your point of view, did the transposition of the directive imply other interesting changes for the third national country regarding other elements than the ones mentioned in the previous question. Make also a comparison with the standard of the directive in the last column of the table below
### OBJECT
Definition of the beneficiaries of the right to family reunification a 4 § 1 d

<table>
<thead>
<tr>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Before the transposition of this provision, the children of the spouse were not entitled to family reunification. Section 37 § 1 of the Aliens Act laying down the definition of a family was amended so that it now covers also the spouse's minor children.</td>
<td>• More favourable than previous national rules • In line with the directive</td>
</tr>
</tbody>
</table>

### OBJECT
Right to gainful employment a 14 § 1 b

<table>
<thead>
<tr>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Before the transposition of the Directive all persons residing in Finland by virtue of a family member's residence permit were not entitled to gainful employment. Section 79 of the Aliens Act was amended and now according to it: &quot;Aliens who have been issued with a residence permit on ground of family tie have right to gainful employment.&quot;</td>
<td>• More favourable than previous national rules • In line with the directive</td>
</tr>
</tbody>
</table>

### OBJECT
Refusal of residence permit on ground of jeopardy to public order and security or public health a 6 § 1

<table>
<thead>
<tr>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Before the transposition a family members residence permit could be refused not only on ground of jeopardy to public order and security or public health but also on ground of jeopardy to Finland's international relations. Section 36 of the Aliens Act was amended and now a residence permit on ground of family tie may no longer be refused on the ground that the person concerned would jeopardize Finland's international relations.</td>
<td>• More favourable than previous national rules • In line with the directive</td>
</tr>
</tbody>
</table>
Q.89. A. Mention if there is a general tendency to just copy the provisions of the directive into national legislation without redrafting or adaptation them to national circumstances.

☐ NO

☒ YES

Q.89.B. If yes, please indicate if this general tendency may or not create problems (for example difficulties of implementation, risk that a provision remain unapplied).

☐ NO

☐ YES

Q.89.C. If yes, give some of examples:

Q.89.D. If only some provisions of the directive have been copied and if this may create any problem, please quote them and explain the problem.

Q.90. Quote interesting decisions of jurisprudence related to the directive, its transposition or implementation (so this question concerns in principle decisions later that the directive, but previous ones might be quoted if relevant). Quote in particular decisions of supreme Courts; limit yourself to the appeal Courts and ignore the first resort if there are too many decisions at this level, unless there is a certain jurisprudence made of a group of decisions.

-There is not yet any interesting jurisprudence concerning the directive.

Q.91 Specify if there are or not problems with the translation of the text of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated.

☒ There are no problems with the translation of the directive

☐ There are some problems with the translation of (indicate the number of the articles concerned) of the directive.

Explain the difficulties that this could create:

Q. 92 ANY OTHER INTERESTING ELEMENT

Q.92 A. Following your personal point of view, mention from the point of view of third country nationals and/or from the Member State any interesting or innovative practice in your Member State
<table>
<thead>
<tr>
<th>OBJECT OF THE PRACTICE</th>
<th>EXPLANATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Right to family reunification for not only refugees within the meaning of the Refugee Convention but also for persons receiving subsidiary and temporary protection under the same conditions.</td>
<td>Under the Finnish Aliens Act the right to family reunification and more favourable treatment in this respect (for example lifting the income requirement) is not limited to refugees within the meaning of the Refugee Convention but covers also persons receiving subsidiary and temporary protection.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>OBJECT OF THE PRACTICE</th>
<th>EXPLANATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Right to family reunification for not only those residing in the country by virtue of continuous permit but also those who reside in the country by virtue of temporary permit such as students.</td>
<td>Family reunification is granted not only in cases where the sponsor resides in Finland by virtue of a continuous residence permit but also in most cases where she resides in Finland by virtue of a temporary residence permit such as students provided that the preconditions (such as the income requirement) for that are met. The Aliens Act does not differentiate between these cases and therefore the provisions of the Aliens Act that implement the directive are, too, applied in cases of family members of persons residing in the country by virtue of a temporary permit.</td>
</tr>
</tbody>
</table>

**Q.92 B.** Please add here any other interesting element in your Member State which you did not had the occasion to mention in your previous answers
QUESTIONNAIRE POUR LE RAPPORT NATIONAL

FRANCE

SUR

LA TRANSPOSITION DE LA DIRECTIVE 2003/86
SUR LE DROIT AU REGROUPEMENT FAMILIAL DU 22 SEPTEMBRE 2003

Par

Henri LABAYLE

Membre du réseau Odysseus
henri.labayle@univ-pau.fr

COMMENTAIRES

PREMIERE PARTIE

1. NORMES DE TRANSPOSITION ET JURISPRUDENCE

Q.1.A. Identifiez la ou les PRINCIPALE(S) norme(s) de transposition (en raison de leur contenu) et indiquez leur nature juridique

Cette table concerne : [X] un texte déjà adopté


**DATE** : 26 novembre 2003

**NUMBER** : 2003-119 (NOR : INTX0300040L)

**DATE D'ENTREE EN VIGUEUR** : 26 novembre 2003
### DISPOSITIONS CONCERNEES :
- L-411-1 et suivants du CESEDA

### REFERENCES DE PUBLICATION AU JOURNAL OFFICIEL :
JORF n° 274 du 27 novembre 2003, p. 20136

### NATURE JURIDIQUE
[X] LEGISLATIVE

---

**Cette table concerne :**

- un texte déjà adopté

**TITRE**


**DATE** : 24 juillet 2006

**NUMBER** : 2006-911 (NOR: INTX0600037L)

**DATE D'ENTREE EN VIGUEUR** : 25 juillet 2006

**DISPOSITIONS CONCERNEES** :
- Articles L-411-1 et suivants du CESEDA

**REFERENCES DE PUBLICATION AU JOURNAL OFFICIEL** :
JORF, 25 juillet 2006 p. 11047

**NATURE JURIDIQUE**
[X] LEGISLATIVE:
### Décret n° 2006-1561 relatif au regroupement familial des étrangers et modifiant le Code de l’entrée et du séjour des étrangers et du droit d’asile (partie réglementaire)

**Titre**

Décret n° 2006-1561 relatif au regroupement familial des étrangers et modifiant le Code de l’entrée et du séjour des étrangers et du droit d’asile (partie réglementaire)

**Date**

8 décembre 2006

**Number**

2006-1561 (NOR:SOCX0609759D)

**Date d'entrée en vigueur**

10 décembre 2006

**Dispositions concernées**

- Articles R-411 et suivants du CESEA

**Références de publication au Journal Officiel**

JORF du 10 décembre 2006 p.18720

**Nature juridique**

REGULATION

---

### Circulaire interministérielle relative au regroupement familial des étrangers

**Titre**

Circulaire interministérielle relative au regroupement familial des étrangers

**Date**

17 janvier 2006

**Number**

DPM/DMI2/2006/26 et INT/D/06/00009/C

**Date d'entrée en vigueur**

17 janvier 2006

**Dispositions concernées**

- Articles L.411-1 à L.441-1 et R.411-1 à R.431-1 du CESEA

**Références de publication au Journal Officiel**


**TITRE** : Circulaire du ministre de l'Intérieur relative au regroupement familial des étrangers

**DATE** : 27 décembre 2006

**NUMBER** : INT/D/06/0017/C

**DATE D'ENTREE EN VIGUEUR** : 27 décembre 2006

**DISPOSITIONS CONCERNEES** :
-Articles L.411-1 à L.441-1 et R.411-1 à R.431-1 du CESEDA

**REFERENCES DE PUBLICATION AU JOURNAL OFFICIEL**:

**TITRE** : Circulaire du ministre de l'Emploi relative au regroupement familial des étrangers

**DATE** : 22 février 2007

**NUMBER** : DPM/DMI2/2007/75

**DATE D'ENTREE EN VIGUEUR** : 27 décembre 2006

**DISPOSITIONS CONCERNEES** :
- Articles L.411-1 à L.441-1 et R.411-1 à R.431-1 du CESEDA

**REFERENCES DE PUBLICATION AU JOURNAL OFFICIEL**:
Q.2. Cette question ne concerne en principe que les États fédéraux ou assimilés tels que l'Autriche, la Belgique, l'Allemagne, l'Italie et l'Espagne.

Q.2.A. Expliquez quel niveau de gouvernement est compétent pour adopter les normes de transposition.

**Insérez vos réponses dans le tableau ci-dessous**

<table>
<thead>
<tr>
<th>LEGISLATIVE RULES</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</td>
</tr>
<tr>
<td>COMPETENCES OF THE COMPONENTS:</td>
</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>REGULATIONS</th>
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</thead>
<tbody>
<tr>
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</tr>
<tr>
<td>COMPETENCES OF THE COMPONENTS:</td>
</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CIRCULAR OR INSTRUCTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</td>
</tr>
<tr>
<td>COMPETENCES OF THE COMPONENTS:</td>
</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
</tr>
</tbody>
</table>

Q.2.B. In case, explain if the federal structure and the distribution of competences between the different levels pose any problem or difficulty regarding the transposition and/or the implementation of the directive.

Q.3. Expliquez quelles autorités sont compétentes pour l'application pratique des normes de transposition par l'adoption de décisions individuelles. Explain which authorities are competent for the practical implementation of the norm of transposition by taking the decisions in individual cases.

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNÉE:</th>
<th>Etat</th>
</tr>
</thead>
<tbody>
<tr>
<td>MINISTERE DE:</td>
<td>Intérieur</td>
</tr>
<tr>
<td>DIRECTION OU SERVICE DANS L'ADMINISTRATION PRECITÉE:</td>
<td>Direction des Libertés publiques et des Affaires juridiques Sous direction des Etrangères et de la circulation transfrontière</td>
</tr>
<tr>
<td>AUTRES NIVEAUX D'ADMINISTRATION:</td>
<td>Préfet du lieu de résidence, bureau des étrangers</td>
</tr>
<tr>
<td>SI NECESSAIRE, PORTEZ UN</td>
<td>Le préfet est le représentant de l'État dans le département. Il est</td>
</tr>
<tr>
<td>COMMENTAIRE SUR LA NATURE DE L'AUTORITE CONCERNEE (par exemple si elle est indépendante du ministère compétent)</td>
<td>compétent à ce titre.</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>COMPETENCE CONCERNEE:</td>
<td>Etat</td>
</tr>
<tr>
<td>MINISTERE DE :</td>
<td>Emploi, Cohésion sociale et logement</td>
</tr>
<tr>
<td>DIRECTION OU SERVICE DANS L'ADMINISTRATION PRECITEE:</td>
<td>Direction de la population et des migrations Sous direction de la démographie, des mouvements de population et des questions internationales</td>
</tr>
<tr>
<td>AUTRES NIVEAUX D'ADMINISTRATION:</td>
<td>Préfet du lieu de résidence, Direction des affaires sanitaires et sociales</td>
</tr>
<tr>
<td>SI NECESSAIRE, PORTEZ UN COMMENTAIRE SUR LA NATURE DE L'AUTORITE CONCERNEE (par exemple si elle est indépendante du ministère compétent)</td>
<td>Le préfet est le représentant de l'Etat dans le département. Il est compétent à ce titre.</td>
</tr>
<tr>
<td>COMPETENCE CONCERNEE:</td>
<td>Etat</td>
</tr>
<tr>
<td>MINISTERE DE :</td>
<td>Emploi, Cohésion sociale et logement</td>
</tr>
<tr>
<td>DIRECTION OU SERVICE DANS L'ADMINISTRATION PRECITEE:</td>
<td>Agence nationale de l'accueil des Etrangers et des migrations (ANAEM)</td>
</tr>
<tr>
<td>AUTRES NIVEAUX D'ADMINISTRATION:</td>
<td></td>
</tr>
<tr>
<td>SI NECESSAIRE, PORTEZ UN COMMENTAIRE SUR LA NATURE DE L'AUTORITE CONCERNEE (par exemple si elle est indépendante du ministère compétent)</td>
<td>L'ANAEM, créée en 2005, rassemble les moyens et les compétences de l'Office des migrations internationales (OMI), créé pour gérer et réglementer la venue des immigrés, et du Service Social d'Aide aux Emigrants (SSAE) dont la vocation est d’accueillir les migrants à leur arrivée.</td>
</tr>
</tbody>
</table>
Q.4. A. Est ce que la principale règle d'exécution prévue par la norme principale de transposition a été adoptée ou non (autrement dit le décret d'application principal prévu par la loi a-t-il été adopté)

X OUI

□ NON

Q.4.B. Si la ou les principale(s) norme(s) de transposition prévoient l'adoption d'une ou plusieurs réglementation (au sens de régulation), indiquez si elles ont toutes été adoptées:

X OUI

□ NON

Si non, indiquez les textes manquant dans la table ci dessous

Utilisez une ligne par texte faisant défaut et dupliquez autant que nécessaire
SECONDE PARTIE

BUT (ARTICLE 1)

Q.5 – Le regroupement familial est-il un droit dans l'Etat membre ?

[ ] OUI
[ ] NON

Expliquez


L'article L.411-1 du CESEDA fait état expressément du "droit à être rejoint au titre du regroupement familial" dont le bénéfice peut être demandé par l'étranger séjournant régulièrement en France.

Q.5. A – L'exercice du droit au regroupement familial dans votre Etat membre entre 2002 et 2006 donne-t-il matière à évaluation chiffrée et laquelle, y compris par nationalité ?

Les débats relatifs à l'immigration familiale permettent de disposer de chiffres récents à ce sujet, en provenance de l'ANAEM.

<table>
<thead>
<tr>
<th></th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regroupement familial</td>
<td>23 485</td>
<td>21 069</td>
<td>17 309</td>
</tr>
<tr>
<td>Familles de Français</td>
<td>61 625</td>
<td>56 609</td>
<td>57 995</td>
</tr>
<tr>
<td>Liens personnels et familiaux</td>
<td>13 989</td>
<td>14 219</td>
<td>22 041</td>
</tr>
</tbody>
</table>

DOSSIERS ACCEPTÉS DANS LE CADRE DU REGROUPEMENT FAMILIAL

<table>
<thead>
<tr>
<th></th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dossiers</td>
<td>13 037</td>
<td>14 046</td>
<td>16 525</td>
<td>15 870</td>
<td>15 456</td>
<td>14 371</td>
<td>11 816</td>
</tr>
<tr>
<td>Personnes</td>
<td>21 404</td>
<td>23 081</td>
<td>27 267</td>
<td>26 768</td>
<td>25 420</td>
<td>22 978</td>
<td>14 371</td>
</tr>
</tbody>
</table>

DEFINITIONS (ARTICLE 2)

CHAMP D'APPLICATION (ARTICLE 3)

Q.6. La durée de validité du titre de séjour du regroupant :
Q.6. A. La durée de validité du titre de séjour dont le regroupant doit être titulaire est-elle supérieure ou égale à un an conformément à l’article 3. 1 ?

[X] OUI

[] NON

Q.6.B. Indiquez précisément la durée prévue par votre législation nationale :

L'article L.411-1 du CESEDA exige que le demandeur soit titulaire d'un titre de séjour dont la durée de validité est d'au moins un an. L'article R.411-1 précise que ce titre de séjour est soit une carte de séjour temporaire, d'une durée de validité d'au moins un an, soit une carte de résident, soit une carte de résident portant la mention “résident de longue durée-CE et délivrée en France, soit le récépissé de la demande de renouvellement de l'un de ces titres.

L'article L.411-1 précise que le ressortissant étranger doit séjourner régulièrement en France depuis au moins dix-huit mois. Cette durée a été portée à dix-huit mois par l'article 24 de la loi du 24 juillet 2006 conformément à l'article 8 de la directive 2003/86.

Q.6.C. Comment votre Etat a-t-il traduit-il dans son droit interne l'exigence pour le regroupant d'avoir « une perspective fondée d'obtenir un droit de séjour permanent" (a3 §1) ?

La législation française exige la possession d'un titre de séjour "d'au moins un an" (a L.411-1 et a R.411-1). Le titre de séjour est soit une carte de séjour temporaire, d'une durée de validité d'au moins un an, soit une carte de résident, soit une carte de résident portant la mention “résident de longue durée" CE et délivrée en France, soit le récépissé de la demande de renouvellement de l'un de ces titres. L'allongement de la durée de séjour préalable portée à 18 mois est présenté comme faisant la preuve d'un établissement durable en France.

Q.7. – Les membres de la famille concernés :

Q7. A. Sont-ils des ressortissants de pays tiers conformément à l’article 3 §1 ?

[X] OUI

[] NON

Expliquez si non
Q.7.B. Comment votre Etat a-t-il traduit dans son droit interne la mention « indépendamment de leur statut juridique » qui figure à l’article 3.1 ?

La généralité des termes utilisés par l'article L.411-1 et l'article R.411-1 est exclusive de toute condition particulière. Une série de dispositions particulières dérogeant au droit commun permettent d'exclure :

1. les étrangers bénéficiant de conventions particulières parmi lesquelles figurent les citoyens de l’Union européenne ou les ressortissants de l'Espace économique européen ou les ressortissants suisses
2. Les membres de la famille d'un ressortissant français dont la situation est régie par les articles L.313-11 et L.314-11 du CESEDA
3. Les ressortissants tunisiens et algériens relevant de conventions particulières notamment sur le plan procédural

Q.8 – La transposition de la directive porte-t-elle atteinte à des dispositions internationales plus favorables (a.3 §4)?

☐ OUI
☒ NON

La quasi-totalité des conventions et accords internationaux passés par la France concernant l'entrée et le séjour des étrangers stipulent qu'ils ne font pas obstacle à l'application de la législation française sur les points qu'ils ne traitent pas et la tendance générale est de procéder à un alignement sur les conditions du droit commun fixé par le CESEDA.

Q.9 – Si oui, ces dispositions sont-elles issues de :

Q.9.A - des accords bilatéraux et multilatéraux entre la Communauté ou la Communauté et ses États membres, d'une part, et des pays tiers ?

☐ OUI
☐ NON
Précisez

Q.9.B - de la Charte sociale européenne du 18 octobre 1961 (a.3 §4)?

☐ OUI
☐ NON
Précisez

Q.9.C. De la Charte sociale européenne modifiée du 3 mai 1987 (a.3 §4)?

☐ OUI
☐ NON
Précisez :
Q.9.D. De la Convention européenne relative au statut juridique du travailleur migrant du 24 novembre 1977 (a.3 §4)?

☐ OUI

☐ NON

Précisez

Q.10 – La transposition de la directive met-elle fin à des dispositions nationales plus favorables (a.3 §5) ?

☒ OUI

☐ NON

Si oui, lesquelles ?

La transposition de la directive 2003/86 a principalement été effectuée par la loi 2003-1119 (de manière anticipée) laquelle a été modifiée ensuite par la loi 2006-911. Sans aborder la question des modalités techniques du regroupement (traitées par la loi du novembre 2007) et pour n'en rester qu'aux conditions mises à ce regroupement, la modification législative de 2006 met fin à des dispositions nationales plus favorables en s'appuyant sur la conformité de cette réduction à la directive par exemple en allongeant d'une année à 18 mois la durée du séjour initial nécessaire pour demander le regroupement (a L.411-1) ou en augmentant de deux à trois ans la durée pendant laquelle le titre de séjour du conjoint peut être retiré en cas de rupture de la vie commune (a L.431-2). En outre, une condition nouvelle a été introduite concernant le conjoint qui doit désormais être âgé de 18 ans à la date de la demande (art. L 411-1). À l'ouverture technique, la modification législative de 2007 va toucher, elle, au renforcement des conditions d'intégration (art. L.411-8) et aux conditions de ressources (art. L.411-5) ainsi qu'aux modalités de preuve de la filiation (art. L. 111-6).

BENEFICIAIRES (ARTICLE 4)

Q.11 – Le droit national reconnaît-il le droit au regroupement familial pour :

Q.11. A - Le conjoint du regroupant (a.4 §1,a) ?

☒ OUI (sous couvert d'être majeur)

☐ NON

Q.11. B - Les enfants mineurs du regroupant et de son conjoint (a.4 §1 b) ?

☒ OUI

☐ NON
Q.11.C. Les enfants mineurs adoptés du regroupant ainsi que de son conjoint (a 4 §1 b) ?

☑ OUI
☐ NON

Q.11.D. Les enfants mineurs du regroupant (a 4 §1.c.) ?

☑ OUI
☐ NON

Q.11.E. Si oui, votre législation nationale prévoit-elle bien que le regroupant doit avoir la garde et la charge de ces enfants ?

☑ OUI
☐ NON

Précisez éventuellement quelles preuves sont exigées du demandeur

L'article L.411-3 du CESEDA prévoit que "le regroupement familial peut être demandé pour les enfants mineurs de dix-huit ans du demandeur et ceux de son conjoint, qui sont confiés, selon le cas, à l'un ou l'autre, au titre de l'exercice de l'autorité parentale, en vertu d'une décision d'une juridiction étrangère. Une copie de cette décision devra être produite ainsi que l'autorisation de l'autre parent de laisser le mineur venir en France".

La condition relative à la garde et la charge des enfants figure à propos des enfants adoptés ou nés d'une précédente union. Elle ne figure pas à propos des enfants légitimes à propos desquels sont demandées les pièces justificatives de l'état civil des membres de la famille à savoir l'acte de mariage ainsi que les actes de naissance du demandeur, de son conjoint et des enfants du couple comportant l'établissement du lien de filiation. Ces pièces sont vérifiées dans les conditions définies par le Code Civil.

De manière très récente et controversée, puisque le juge constitutionnel en a été saisi et a donné son assentiment à cette technique (CC, 15 novembre 2007, déc. 2007-557 DC), le législateur a modifié le CESEDA dans son livre premier relatif aux dispositions générales pour y introduire la technique des tests ADN. Désormais, sur la base de l'article L.116-6 nouveau, le demandeur d'un visa pour un séjour d'une durée supérieure à trois mois, ou son représentant légal, ressortissant d'un pays dans lequel l'état civil présente des carences, qui souhaite rejoindre ou accompagner l'un de ses parents mentionné aux articles L. 411-1 et L. 411-2 ou ayant obtenu le statut de réfugié ou le bénéfice de la protection subsidiaire, peut, en cas d'inexistence de l'acte de l'état civil ou lorsqu'il a été informé par les agents diplomatiques ou consulaires de l'existence d'un doute sérieux sur l'authenticité de celui-ci qui n'a pu être levé par la possession d'état telle que définie à l'article 311-1 du code civil, demander que l'identification du demandeur de visa par ses empreintes génétiques soit recherchée afin d'apporter un élément de preuve d'une filiation...
déclarée avec la mère du demandeur de visa. Le consentement des personnes dont l'identification est ainsi recherchée doit être préalablement et expressément recueilli. Une information appropriée quant à la portée et aux conséquences d'une telle mesure leur est délivrée. Les agents diplomatiques ou consulaires saisissent sans délai le tribunal de grande instance de Nantes pour qu'il statue, après toutes investigations utiles et un débat contradictoire, sur la nécessité de faire procéder à une telle identification. Si le tribunal estime la mesure d'identification nécessaire, il désigne une personne chargée de la mettre en œuvre parmi les personnes habilitées dans les conditions prévues au dernier alinéa. La décision du tribunal et, le cas échéant, les conclusions des analyses d'identification autorisées par celui-ci sont communiquées aux agents diplomatiques ou consulaires. Ces analyses sont réalisées aux frais de l'État.

Un décret à venir, pris après avis du Comité consultatif national d'éthique, devrait définir les conditions de mise en œuvre des mesures d'identification des personnes par leurs empreintes génétiques préalablement à une demande de visa, la liste des pays dans lesquels ces mesures sont mises en œuvre, à titre expérimental, la durée de cette expérimentation, qui ne peut excéder dix-huit mois à compter de la publication de ce décret et qui s'achève au plus tard le 31 décembre 2009, les modalités d'habilitation des personnes autorisées à procéder à ces mesures.

En d'autres termes, les tests ADN afin de prouver la filiation sont autorisés en cas de défaillance de l'état civil des pays d'origine, à la demande des personnes concernées et dans un cadre judiciaire, leur coût étant à la charge de l'Etat. Il s'agit là d'une expérimentation.

L'article R.421-5, 2° du CESEDA prévoit que lorsque le regroupement familial est demandé pour des enfants dont l'un des parents est décédé ou s'est vu retirer l'autorité parentale, l’acte de décès ou la décision de retrait.

L'article R.421-5, 3° du CESEDA prévoit que lorsque le regroupement familial est demandé pour un enfant mineur de dix-huit ans du demandeur ou de son conjoint, qui lui a été confié au titre de l'exercice de l'autorité parentale par décision d'une juridiction étrangère, cette décision, accompagnée du consentement de l’autre parent à la venue en France de cet enfant dans les formes prévues par la législation du pays de résidence.

Q.11.F. Les enfants mineurs adoptés du regroupant (a 4 §1.c) ?

☑ OUI

☐ NON

Q.11.G. Si oui :

g. Votre législation nationale prévoit-elle que le regroupant doit avoir la garde et la charge de ces enfants ?

☑ OUI

☐ NON
Précisez éventuellement quelles preuves sont exigées du demandeur
L'article R.421-5, 1° du CESEDA prévoit que lorsque le regroupement concerne un enfant adopté, le ressortissant étranger regroupant doit fournir la décision d'adoption, sous réserve de la vérification ultérieure par le procureur de la République de la régularité de celle-ci lorsqu'elle a été prononcée à l'étranger.

Dans cette hypothèse, il appartient à la délégation locale de l'ANAEM compétente d'adresser, dès le dépôt du dossier, le document attestant l'adoption, accompagné de sa traduction, au procureur de la République, aux fins de vérification, à charge pour lui de faire connaître les conclusions du tribunal à l’ANAEM dans le délai des six mois imparti au préfet pour prendre sa décision.

g.g. La législation de votre Etat prévoit-elle que ces enfants sont adoptés "conformément à une décision prise par l'autorité compétente de l'État membre concerné ou à une décision exécutoire de plein droit en vertu d'obligations internationales dudit État membre ou qui doit être reconnue conformément à des obligations internationales"?

☐ OUI
☐ NON

Précisez éventuellement quelles preuves sont exigées du demandeur
Cette condition figure à propos des enfants adoptés ou nés d'une précédente union. Elle ne figure pas à propos des enfants légitimes à propos desquels sont demandées les pièces justificatives de l'état civil des membres de la famille à savoir l'acte de mariage ainsi que les actes de naissance du demandeur, de son conjoint et des enfants du couple comportant l’établissement du lien de filiation.

Q.11.H. Les enfants mineurs du conjoint du regroupant ( a 4 §1.d.) ?

☐ OUI
☐ NON

Q.11.I. Si oui, votre législation nationale prévoit-elle bien que le conjoint doit avoir la garde et la charge de ces enfants ?

☐ OUI
☐ NON
L'article R.421-5, 2° du CESEDA prévoit que lorsque le regroupement familial est demandé pour des enfants dont l’un des parents est décédé ou s’est vu retirer l’autorité parentale, l’acte de décès ou la décision de retrait.

L'article R.421-5, 3° du CESEDA prévoit que lorsque le regroupement familial est demandé pour un enfant mineur de dix-huit ans du demandeur ou de son conjoint, qui lui a été confié au titre de l’exercice de l’autorité parentale par décision d’une juridiction étrangère, cette décision, accompagnée du consentement de l’autre parent à la venue en France de cet enfant dans les formes prévues par la législation du pays de résidence.

Le CESEDA concerne les enfants d’une précédente union dont la garde a été confiée au parent demandeur ou dont la résidence habituelle a été fixée auprès de lui par décision de justice, sous réserve du consentement de l’autre parent dont la signature doit être authentifiée dans les formes prévues par la législation du pays de résidence ou par le consulat de France compétent.

Q.11.J. Les enfants mineurs adoptés du conjoint (a 4 §1.d) ?

[X] OUI
[ ] NON

Q.11.K. Si oui :

k. Votre législation nationale prévoit-elle bien que le conjoint doit avoir la garde et la charge de ces enfants ?

[X] OUI
[ ] NON

Précisez éventuellement quelles preuves sont exigées du demandeur

L'article R. 421-5, 1° du CESEDA prévoit que lorsque le regroupement concerne un enfant adopté, le ressortissant étranger regroupant doit fournir la décision d’adoption, sous réserve de la vérification ultérieure par le procureur de la République de la régularité de celle-ci lorsqu’elle a été prononcée à l’étranger.

Dans cette hypothèse, il appartient à la délégation locale de l’ANAEM compétente d’adresser, dès le dépôt du dossier, le document attestant l’adoption, accompagné de sa traduction, au procureur de la République, aux fins de vérification, à charge pour lui de faire connaître les conclusions du tribunal à l’ANAEM dans le délai des six mois imparti au préfet pour prendre sa décision.

k.k. La législation de votre Etat prévoit-elle que ces enfants sont adoptés "conformément à une décision prise par l’autorité compétente de l’État membre concerné ou à une décision exécutoire de plein droit en vertu d’obligations internationales dudit État membre ou qui doit être reconnue conformément à des obligations internationales"?
Précisez

L'article R. 421-5, 1° du CESEDA prévoit que lorsque le regroupement concerne un enfant adopté, le ressortissant étranger regroupant doit fournir la décision d'adoption, sous réserve de la vérification ultérieure par le procureur de la République de la régularité de celle-ci lorsqu'elle a été prononcée à l'étranger.

Q.12 – L'Etat membre a-t-il transposé la faculté offerte par l'article 4 §1 c :

Q.12.A. d'autoriser le regroupement des enfants mineurs du regroupant - y compris les enfants adoptés - quand le droit de garde est partagé (a 4 §1.c) ?

OUI

NON

Préciser si nécessaire :

La seule hypothèse qui est envisagée par la réglementation est celle de la garde simple. En vertu des articles L.411-2 et L.411-3 du CESEDA mis en œuvre par l'article R.421-5 dans ses alinéas 1,2,3, le regroupement familial peut être demandé pour les enfants mineurs du demandeur ou de son conjoint, dont l'autre parent est décédé ou s’est vu retirer l’exercice de l’autorité parentale. Dans ce cas, l'autorité administrative apprécie si la législation étrangère applicable à l’enfant prévoit une procédure équivalente à la procédure de retrait de l’autorité parentale organisée par le Code civil français. Le regroupement familial peut également bénéficier à des enfants d'un précédent mariage ou d'une précédente union lorsque leur garde a été confiée "en vertu d'une décision de justice" au parent demandeur ou leur "résidence habituelle" fixée auprès de lui par décision judiciaire et que l'autre parent a donné son autorisation de venue en France. Le terme "résidence habituelle" semble donc exclure une résidence alternée et une garde partagée.

Par ailleurs, le droit français refuse le regroupement familial des mineurs confiés à une tierce personne résidant en France en vertu d'une délégation d'autorité parentale, totale ou partielle, même lorsque l’exequatur du jugement étranger a été prononcé par une juridiction française.

Ce n'est qu'à titre exceptionnel que le titre II de protocole annexé à l’accord franco-algérien du 27 décembre 1968 prévoit que le regroupement familial est ouvert aux enfants de moins de 18 ans dont l'intéressé a juridiquement la charge en vertu d'une décision de l'autorité judiciaire algérienne (kafala prévue par le code de la famille algérien), sur la base expresse d'une prise en compte de l'intérêt supérieur de l'enfant". Exceptionnellement, certains enfants confiés à une tierce personne dans le cadre d’une délégation d’autorité parentale peuvent également relever du champ du regroupement familial sur la base...

Q.12.B. Si oui, la législation de votre État a-t-elle transposé la condition que l’autre titulaire du droit de garde ait donné son accord (a 4 §1. c) ?

☐ OUI
☐ NON

Préciser si nécessaire

Q.13 – L’État membre a-t-il transposé la faculté offerte par l'article 4 §1 d) :

Q.13.A. d’autoriser le regroupement des enfants mineurs du conjoint - y compris les enfants adoptés- quand le droit de garde est partagé (a 4.1.d. in fine) ?

☐ OUI
☐ NON

Préciser si nécessaire

Q.13.B. Si oui, la législation de votre État a-t-elle transposé la condition que l’autre titulaire du droit de garde ait donné son accord (a 4. 1.d) ?

☐ OUI
☐ NON

Préciser si nécessaire

Q.14 – Dans tous les cas visés aux Q 7 à Q 9, l’âge de minorité des enfants est-il inférieur à la majorité légale dans l’État membre (a.4 §1 alinea 2) ?

☐ OUI
☐ NON
Q.15 – Dans tous les cas visés aux Q.7 à Q.9, l'interdiction de mariage des enfants mineurs est-elle transposée (a.4 §1 alinea 2) ?

☐ OUI
☒ NON

Q.16 – La dérogation de l'article 4§1 dernier alinéa relative à la satisfaction d'un critère d'intégration des enfants de plus de 12 ans arrivés indépendamment du reste de la famille est-elle utilisée par l'Etat membre ?

☐ OUI
☒ NON

Comment le critère de l'arrivée "indépendamment du reste de la famille" est-il transposé ?

Q.17 – Si oui, ce critère d'intégration existait-il en droit interne à la date de la transposition de la directive ?

☐ OUI
☒ NON

Q.18 – Décrivez brièvement en quoi consiste ce critère, sa date de création et ses modalités d'examen

Q.19 – Les enfants de réfugiés sont-ils soumis à un test d'intégration par l'Etat membre (a 10§1) ?

☐ OUI
☒ NON

Si oui, expliquez

Q.20 – L'Etat membre autorise-t-il

Q.20.A - le regroupement des ascendants en ligne directe au premier degré du regroupant ou du conjoint (a 4§2 a) ?

☐ OUI
☒ NON

Q.20.B - Si oui, doivent-ils être à charge et dépourvu du soutien familial nécessaire dans le pays d'origine ?

☐ OUI
☐ NON
Comment chacun de ces deux critères est-il transposé et vérifié ?

Q. 20.C. Le regroupement des ascendants en ligne directe au premier degré du conjoint du regroupant (a 4§2 a) ?

☐ OUI
☒ NON

Q.20.D. Si oui, doivent-ils être à charge et dépourvu du soutien familial nécessaire dans le pays d'origine ?

☐ OUI
☐ NON

Q.20.E. autorise-t-il le regroupement des enfants majeurs célibataires du regroupant (a 4§2 b) ?

☐ OUI
☒ NON

Si nécessaire, précisez de quelle manière est aménagée cette procédure

Q.20.F. Si oui, la législation nationale de votre Etat impose-t-elle que ces enfants majeurs célibataires du regroupant soient objectivement dans l'incapacité de subvenir à leurs propres besoins en raison de leur état de santé (a 4 §2 b) ?

☐ OUI
☐ NON

Si nécessaire, précisez

Q.20.G. L'Etat membre autorise-t-il le regroupement des enfants majeurs célibataires du conjoint du regroupant (a 4§2 b) ?

☐ OUI
☒ NON

Si nécessaire, précisez
Q.20.H. Si oui, la législation nationale de votre Etat impose-t-elle que ces enfants majeurs célibataires du conjoint du regroupant soient objectivement dans l'incapacité de subvenir à leurs propres besoins en raison de leur état de santé (a 4 §2 b) ?

☐ OUI

☐ NON

Si nécessaire, précisez comment chacun de ces deux critères ("objectivement" et "incapacité de subvenir à leurs besoins...") est-il transposé et vérifié ?

Q.20.I. L'Etat membre a-t-il utilisé la voie législative ou réglementaire pour mettre en œuvre l'article 4 §2 a et b ?

☐ OUI

☐ NON

Q.21 – L'Etat membre autorise-t-il le regroupement du partenaire non marié du regroupant (a 4 §3) ?

☐ OUI

☒ NON

L'autorisation de regroupement du partenaire non marié ne fait pas l'objet d'une transposition explicite par la législation française.

Le regroupement du partenaire non marié fait l'objet d'une inclusion indirecte dans la législation par l'intermédiaire de l'article L.313-11, 7° du CESEDA rédigé antérieurement à la directive 2003/86 par la loi 99-944 du 15 novembre 1999 relative au Pacte civil de solidarité (PACS). Ce dernier disposait que la conclusion d'un PACS constituait un des éléments d'appréciation des liens personnels visés par l'article 12 de l'Ordonnance de 1945 susceptible de donner accès au regroupement. Le législateur de 2003 et de 2006 n'ont pas modifié ce dispositif qui protège contre l'éloignement davantage qu'il ne favorise le regroupement. Le regroupement est en effet dépendant de la qualité de "conjoint".

L'article L.313-11, 7° dispose que la carte de séjour temporaire "vie privée et familiale" doit être délivrée de plein droit à "l'étranger ne vivant pas en état de polygamie, qui n'entre pas dans les catégories précédentes ou dans celles qui ouvrent droit au regroupement familial, dont les liens personnels et familiaux en France, appréciés notamment au regard de leur intensité, de leur ancienneté et de leur stabilité, des conditions d'existence de l'intéressé, de son insertion dans la société française ainsi que de la nature de ses liens avec la famille restée dans le pays d'origine, sont tels que le refus d'autoriser son séjour porterait à son droit au respect de sa vie privée et familiale une atteinte disproportionnée au regard des motifs du refus, sans que la condition prévue à l’article L. 311-7 soit exigée".
Q.22 – Si oui :

Q.22.A - Ce partenariat doit-il fondé sur une relation durable et stable ?

☐ OUI
☐ NON

Si oui, précisez comment l'Etat apprécie cette situation

Les instructions administratives commandent en l'espèce (circulaire 2004-134 du directeur des libertés publiques du ministère de l'Intérieur en date du 30 octobre 2004, NOR INTDO400134C) de procéder à un examen "particulièrement attentif et circonstancié" des demandes d’admission au séjour émanant de ressortissants étrangers signataires d’un PACS. L'article R.313-21 du CESEDA indique en effet que "pour l’application du 7° de l’article L. 313-11, l’étranger qui invoque la protection due à son droit au respect de la vie privée et familiale en France doit apporter toute justification permettant d’apprécier la réalité et la stabilité de ses liens personnels et familiaux effectifs en France au regard de ceux qu’il a conservés dans son pays d’origine". L'administration exige donc des intéressés qu’ils produisent, à chaque demande de délivrance ou de renouvellement du titre de séjour, la production d’une attestation datée de moins de trois mois, du greffe du tribunal d’instance de leur lieu de naissance ou du tribunal de grande instance de Paris en cas de naissance à l’étranger, certifiant l’engagement dans les liens du PACS.

En outre, et conformément aux critères habituels d’examen des demandes de regroupement familial, il incombe aux intéressés de justifier de la réalité et de la stabilité de leurs liens sur le territoire français compte tenu notamment de l’effectivité et de l’ancienneté de leur vie commune en France, qui n’est jamais présumée, au regard des liens conservés dans le pays d’origine. Le critère de stabilité des liens permet à l'administration de vérifier que le partenaire du demandeur dispose d'une situation administrative stable sur le territoire, c’est à dire réside en France sous couvert d’une carte de séjour en cours de validité, possède la nationalité française ou encore dispose d’un droit au séjour en qualité de citoyen de l’Union européenne.

Q.22.B - Ce partenariat doit-il être enregistré ?

☐ OUI
☐ NON

Q.23 – Le droit de l'Etat membre assimile-t-il le partenaire enregistré au conjoint (a 4 §3 alinéa 2) ?

☐ OUI
☒ NON

Q.24 – L'Etat membre autorise-t-il :
Q.24. A – Le regroupement des enfants mineurs du partenaire, y compris les enfants adoptés (a 4§3) ?

☐ OUI
☒ NON

Q.24. B – Le regroupement des enfants non mariés du partenaire, y compris les enfants adoptés (a 4§3)

☐ OUI
☒ NON

Q.25 – L'Etat membre autorise-t-il le regroupement des enfants majeurs célibataires du partenaire qui sont objectivement dans l'incapacité de subvenir à leurs propres besoins en raison de leur état de santé (a 4§3)?

☐ OUI
☒ NON

Si oui, précisez notamment la condition "objective"

Q.26 – L'Etat membre a-t-il utilisé la voie législative ou réglementaire pour mettre en œuvre l'article 4 §3 ?

Q.27 – L'interdiction du regroupement polygame est-elle formulée par le droit interne de l'Etat membre (a. 4§4)?

☒ OUI
☐ NON

Oui. L'article L.411-7 du CESEDA précise que "lorsqu'un étranger polygame réside en France avec un premier conjoint, le bénéfice du regroupement familial ne peut être accordé à un autre conjoint. (…)".

Dans cette hypothèse, l'étranger et son conjoint doivent présenter la copie intégrale de leur acte de naissance afin de mettre à même l'administration, en cas de mariages antérieurs, de vérifier qu'une situation de polygamie n'est pas susceptible d'être créée sur le territoire français. Afin de mener à bien cette vérification et dans l'hypothèse où l'acte de naissance révèlerait un précédent mariage, l'administration est invitée à se reporter à l'acte de divorce du demandeur ainsi que, le cas échéant, à celui de son conjoint. Ces documents font partie des pièces à fournir dans le dossier de demande de regroupement familial, afin de contrôler que la dissolution des liens matrimoniaux a été effective.

Lorsqu'il s'agit d'un étranger ressortissant d'un Etat dont la loi autorise la polygamie, l'article R.421-5, 4° du CESEDA exige qu'une déclaration sur
l'honneur que le regroupement familial ne créera pas une situation de polygamie sur le territoire français soit fournie par le demandeur. Les pièces et documents relatifs à la situation matrimoniale de l'étranger et de son conjoint doivent être accompagnés, s'ils ne sont pas rédigés en langue française, de leur traduction établie par un traducteur interprète agréé auprès d'une Cour d'appel.

**Q.28 – L'Etat membre impose-t-il des restrictions concernant le regroupement familial des enfants mineurs d'un autre conjoint auprès du regroupant (article 4§4 dernier alinéa) ?**

[X] OUI  
[ ] NON

**Expliquez :**

L'article L.411-7 du CESEDA prévoit que "lorsqu'un étranger polygame réside en France avec un premier conjoint, le bénéfice du regroupement familial ne peut être accordé à un autre conjoint. Sauf si cet autre conjoint est décédé ou déchu de ses droits parentaux, ses enfants ne bénéficient pas non plus du regroupement familial".

Par conséquent, les enfants d'un autre conjoint non admissible au regroupement familial sont exclus du regroupement sauf dans l'hypothèse où ce dernier est décédé ou s'est vu retirer l'exercice de l'autorité parentale comme le prévoient les articles L.411-2 à L.411-7 du CESEDA. En cas de mariage polygamique, la filiation des enfants dont le regroupement est demandé fait donc l'objet d'une vérification particulière et toutes les pièces et documents relatifs à la situation des enfants doivent être accompagnés, s'ils sont rédigés dans une langue étrangère, de leur traduction en langue française par un traducteur interprète agréé près d'une Cour d'appel.

**Q.29 – L'Etat membre utilise-t-il l'option de l'article 4§5 relative à un âge minimal de 21 ans concernant le regroupement du conjoint ?**

[X] OUI  
[ ] NON

La dérogation a été utilisée sans fixer un âge minimal de 21 ans. L'article L.411-1 du CESEDA a néanmoins été modifié par l'article 44 de la loi du 24 juillet 2006 et il introduit désormais une condition d'âge opposable au conjoint du regroupant : ce dernier doit être âgé au moins de 18 ans, condition qui est appréciée à la date du dépôt de la demande.

**Q.30 – Si oui**

**Q.30.A - Quel âge est retenu ?**

18 ans
Q.30.B - La dérogation est-elle fondée sur le critère d'intégration et l'interdiction des mariages forcés ?

La dérogation a été utilisée par la voie d'un amendement parlementaire à l'Assemblée nationale, en mentionnant sa compatibilité avec l'article 4§5 de la directive.

Q.31 – L'État membre fait-il usage de la dérogation de l'article 4§6 en demandant que la demande de regroupement d'un enfant mineur soit introduite avant l'âge de 15 ans ?

☐ OUI  ☒ NON

Expliquez

Q.32 – Si oui, la législation nationale en vigueur le prévoyait-elle à la date de la transposition et de quelle manière ?

Q.33 – Si la demande n'est pas introduite avant l'âge de 15 ans, les États membres autorisent-ils l'entrée et le séjour pour d'autres motifs que le regroupement ?

☐ OUI  ☐ NON

Lesquels ?

PROCEDURE (ARTICLE 5)

On attire l'attention sur l'importance du §5 relatif à l'intérêt supérieur de l'enfant dont l'arrêt C-540/03 souligne le caractère déterminant

Q.34 – L'État membre a-t-il institué une procédure relative au regroupement familial (a 5 §1) ?

☒ OUI  ☐ NON

Q.35 – Si oui,

Q.35. A – Quelles autorités de l'État en traitent ?

La demande de regroupement familial est déposée auprès des services de la préfecture du département de résidence du regroupant, son instruction est effectuée par la direction départementale des Affaires sociales, recueille l'avis du maire de la commune de résidence et la décision d'admission ou de refus est prise par le préfet.
L'article R.421-1 dispose que la demande de regroupement familial est formulée sur un imprimé dont le modèle est établi par arrêté conjoint du ministre chargé de l'intégration et du ministre de l'Intérieur.

Cette demande comporte l’engagement du demandeur :

1° De permettre à des agents des services de la commune où doit résider la famille, chargés des affaires sociales ou du logement, spécialement habilités à cet effet, ainsi qu’aux agents de l’Agence nationale de l’accueil des étrangers et des migrations l’entrée dans le logement prévu pour accueillir la famille aux fins de vérification des conditions de logement ou, si le logement n’est pas encore disponible, de mettre le maire de la commune en mesure de procéder à cette vérification sur pièces ;

2° De verser à l’Agence nationale de l’accueil des étrangers et des migrations la redevance forfaitaire mentionnée à l’article R. 421-29 ;

3° De participer, ainsi que sa famille, aux réunions d’information et aux entretiens d’accueil organisés par l’Agence nationale de l’accueil des étrangers et des migrations et les services sociaux spécialisés pour faciliter l’installation et l’intégration de la famille.

Elle comporte par ailleurs la liste de tous les membres de la famille concernés, ce qui permet d’évaluer l’âge des enfants à cette date, sur la base de l'article R.421-2.

**Q.35.B – Les ONG sont-elles associées à cette procédure ?**

☐ OUI

☒ NON

**Q.35.C – La demande est-elle à l'initiative du regroupant ou/et des membres de la famille ?**

L'étranger doit présenter sa demande personnellement, dans le département du lieu de résidence prévue pour la famille, auprès de la direction départementale des affaires sanitaires et sociales ou de la délégation de l’Agence nationale de l'Accueil des Etrangers et des Migrations (ANAEM) dans les départements où l'agence a été chargée de la réception des dossiers par arrêté du ministre chargé de l'intégration et du ministre de l'intérieur. Un arrêté en date du 3 janvier 2007 prévoit que dans une série de départements les demandes de regroupement familial sont déposées auprès des services de l'Agence nationale de l'accueil des étrangers et des migrations dans les départements identifiés.

A compter de la constitution du dossier complet, il est délivré immédiatement une attestation faisant courir le délai de six mois prévu par l'article L.421-4 du CESEDA.

**Q. 35. D – Cette procédure est-elle exclusive de toute autre possibilité de regroupement familial ?**
Q. 35. E – Cette procédure existait-elle avant la directive 2003/86 ?

☐ OUI
☐ NON

Q.36 – Quelles pièces justificatives (a 5 §2) sont exigées pour prouver :

Q.36. A – Les liens familiaux de l'article 4 ?

Sur la base de l'article R.421-4 du CESEDA, il est exigé du demandeur la production de justificatifs d'état civil. Les copies intégrales des documents suivants doivent être présentées, accompagnées d'une traduction en langue française, établie par un traducteur interprète près une cour d'appel ou certifiée conforme par une autorité consulaire ou diplomatique.

Ces pièces sont :
- l'acte de mariage ainsi que les actes de naissance du demandeur, de son conjoint et des enfants du couple indiquant le lien de filiation vis-à-vis du demandeur et de son conjoint ;
- lorsqu'il s'agit d'enfants adoptés, la décision d'adoption, et pour les enfants algériens confiés, la kafala judiciaire ;
- lorsque l'un des parents est décédé, l'acte de décès de celui-ci ;
- lorsque l'un des parents s'est vu retirer l'autorité parentale, la décision judiciaire prononçant le retrait;
- lorsque le mineur a été confié au titre de l'exercice de l'autorité parentale par décision judiciaire, la dite décision, accompagnée du consentement de l'autre parent à la venue en France de cet enfant dont la signature doit être authentifiée dans les formes prévues par la législation du pays de résidence ou par le consulat de France compétent;
- lorsqu'il s'agit d'enfants issus d'un mariage antérieur, un acte de divorce confiant la garde au parent demandeur ou fixant auprès de lui la résidence habituelle de l'enfant ;
- lorsqu'il s'agit d'une union libre antérieure, un jugement attestant que la garde de l'enfant a été confiée au parent demandeur ;
- lorsque le demandeur ou son conjoint ont déjà divorcé antérieurement, le ou les jugements de divorce.

Q.36. B – Le respect des conditions de logement de l'article 7 ?

Le 4° de l'article R 421-4 du CESEDA prévoit qu'à l'appui des demandes de regroupement, le regroupant présente les copies intégrales des documents relatifs au logement prévu pour l'accueil de la famille tels que : titre de propriété, bail de location, promesse de vente ou tout autre document de nature à établir que le demandeur disposera d’un logement à la date qu’il précise. Ces documents mentionnent les caractéristiques du logement au regard des conditions posées à l'article R. 411-5 et la date à laquelle le logement sera disponible. Lorsque le demandeur occupe déjà le logement, il joint un justificatif de domicile de moins de trois mois.

Q.36. C – Le respect de la condition d'assurance maladie ?

Q.36. D – La copie certifiée des documents de voyage ?
Q.37 - Existe-t-il une possibilité :

D’entretien :

- [X] OUI
- [ ] NON

D’enquête :

- [X] OUI
- [ ] NON

Si oui, décrivez-les sommairement

- L’entretien personnalisé :

Le dépôt des dossiers doit donner lieu à un entretien personnalisé qui permet d’informer le demandeur sur les démarches qu’il aura à accomplir afin de réussir le parcours d’intégration de sa famille. Il est informé des modalités du pré-accueil, destiné à aider les demandeurs à accomplir les dernières démarches avant l’arrivée de la famille et à préparer cette arrivée, de celles de l’accueil, ainsi que du rôle des services sociaux spécialisés. Le contrat d’accueil et d’intégration lui est présenté à cette occasion, en soulignant les devoirs qui s’y attachent, notamment en matière d’apprentissage de la langue française et de respect des lois de la République.

La délégation locale de l’ANAEM la plus proche du domicile du demandeur est chargée du contact avec le demandeur pendant la durée de l’instruction (information sur l’avancement de la procédure, demandes éventuelles de pièces nouvelles). A l’occasion de l’entretien personnalisé, le demandeur doit être informé de l’obligation de signaler à la délégation compétente toute modification de sa situation personnelle ou familiale pendant l’instruction de sa demande. La délégation concernée se chargera de signaler au maire, au préfet et au consulat ces éléments nouveaux portés à sa connaissance.

- L’enquête :

L’enquête est d’abord menée par le maire, agissant en tant qu’agent de l’Etat et elle concerne les conditions de ressources et de logement selon l'article L.421-2 du CESEDA.
Cette vérification se fait à partir des justificatifs de logement et de ressources, et, en tant que de besoin, par des enquêtes sur place qui sont confiées à des agents de la commune appartenant aux services chargés des affaires sociales ou du logement qui ont été nommément désignés par le maire en vertu d’une décision signée par celui-ci ou par un adjoint compétent en la matière. Dans les communes qui ne disposent pas de tels services, le maire peut habiliter tout agent intervenant dans ces domaines d’activité placés sous son autorité hiérarchique en qualité d’agent de l’Etat, confier ces enquêtes à des adjoints ayant reçu délégation à cet effet ou procéder lui-même à ces vérifications ;
Elle peut être également confiée aux enquêteurs de l’ANAEM, à la demande du maire.

Toute enquête donne lieu à l’établissement par l’agent enquêteur d’un compte-rendu, après s’être assurés du consentement de l’occupant, recueilli par écrit si celui-ci n’est pas le demandeur. Lorsque ces vérifications ne peuvent être effectuées sur place parce que le logement n’est pas encore disponible, les enquêteurs procèdent impérativement à un contrôle sur pièces. Ils vérifient donc que les caractéristiques du logement répondent aux normes exigées.

En cas de doute sérieux sur la réalité et de la stabilité de l’emploi du demandeur, le maire peut saisir la direction départementale du travail, de l’emploi et de la formation professionnelle, et lui fournir les éléments qu’il possède. Le directeur départemental du travail, de l’emploi et de la formation professionnelle doit communiquer les résultats de son enquête dans un délai maximum d’un mois pour répondre à la demande du maire.

D’une manière générale, les agents de la commune ou les enquêteurs de l’ANAEM réalisent l’enquête sur le logement et les ressources dans un délai de deux mois maximum. L’ANAEM peut ensuite demander à ses enquêteurs de procéder, s’ils ne l’ont déjà fait à la demande du maire, à des vérifications sur place du logement, après que ceux-ci se soient assurés au préalable du consentement écrit de son occupant. L’ANAEM établit le relevé d’enquête sur le logement et les ressources et transmet le dossier au préfet qui statue sur la demande de regroupement familial dans les six mois à compter du dépôt de la demande.

Q.38 – Lors de l’examen de la demande du partenaire non marié, quels éléments d’appréciation sont pris en compte sur la base du droit de l’Etat membre afin d’établir les liens familiaux ?

Q.38. A - L’existence de liens familiaux, d’éléments tels qu’un enfant commun ?

☐ OUI  ☑ NON

Précisez

L’article L.311-11, 7° du CESEDA permet de prendre en considération la vie personnelle et familiale de l’étranger afin de lui accorder un titre de séjour. Il renvoie implicitement aux garanties de l’article 8 CEDH. A cet égard, la jurisprudence comme les circulaires administratives prennent une série de considérations en compte, dont notamment la présence d’un enfant.

Q.38. B - une cohabitation préalable ?

☐ OUI  ☑ NON
Q.38. C - l’enregistrement du partenariat ?

☐ OUI
X NON

Q.38. D - D’autres éléments sont-ils prévus par votre droit national ?

X OUI
☐ NON

Si oui, précisez lesquels :

L'article L.313-11, 7° du CESEDA dispose notamment que la carte de séjour temporaire "vie privée et familiale" doit être délivrée de plein droit à l'étranger ne vivant pas en état de polygamie, qui n'entre pas dans les catégories précédentes ou dans celles qui ouvrent droit au regroupement familial, dont les liens personnels et familiaux en France, appréciés notamment au regard de leur intensité, de leur ancienneté et de leur stabilité, des conditions d'existence de l'intéressé, de son insertion dans la société française ainsi que de la nature de ses liens avec la famille restée dans le pays d'origine, sont tels que le refus d'autoriser son séjour porterait à son droit au respect de sa vie privée et familiale une atteinte disproportionnée au regard des motifs du refus, sans que la condition prévue à l’article L. 311-7 soit exigée”.

Q.39 - Les membres de la famille sont-ils tenus de résider à l'extérieur durant l'instruction de la demande (a5 §3) ?

X OUI
☐ NON

L'article L.411-6, 3° du CESEDA prévoit expressément qu'un " membre de la famille résidant sur le territoire français" peut être exclu du regroupement familial. Lorsque les membres de la famille du demandeur sont déjà présents sur le territoire français, ils sont en principe exclus du regroupement familial.


A l’occasion du dépôt de sa demande, le regroupant est informé par écrit qu’il s’expose, en cas de refus, au retrait du titre de séjour dont il est titulaire, afin de conduire les membres de famille au bénéfice desquels est déposée la demande de regroupement familial à demeurer ou à regagner leur pays d’origine jusqu’à la décision définitive.
Q.40 – Si la réponse est oui, existe-t-il néanmoins une dérogation à cette situation et laquelle (a 5 §3 alinéa 2)?

☐ OUI
☐ NON

Précisez

L'article R.411-6 du CESEDA formule cette dérogation à l'article L.411-6 en indiquant que le bénéfice du regroupement familial ne peut être refusé à un ou plusieurs membres de la famille résidant sur le territoire français dans le cas où l'étranger qui réside régulièrement en France…contracte mariage avec une personne de nationalité étrangère régulièrement autorisée à séjourner sur le territoire national sous couvert d’une carte de séjour temporaire d’une durée de validité d’un an. Le bénéfice du droit au regroupement familial est alors accordé sans recours à la procédure d’introduction. Peuvent en bénéficier le conjoint et, le cas échéant, les enfants de moins de dix-huit ans de celui-ci résidant en France, sauf si l’un des motifs de refus ou d’exclusion mentionnés aux 1°, 2° et 3° de l’article L. 411-5 leur est opposé.

La jurisprudence administrative indique que l'autorité administrative n'est pas tenue de refuser le regroupement en se fondant sur l'article L.411-6, notamment au cas où ce refus porterait une atteinte disproportionnée à la vie familiale ou serait impossible du fait des conséquences du retour dans le pays d'origine.

Q.41 – Le droit national prévoit-il une durée maximale de neuf mois pour répondre après la demande précédant la notification écrite (a5 §4)?

☐ OUI
☐ NON

Précisez si nécessaire

L'article L.421-4 indique que l'autorité administrative statue sur la demande dans un délai de six mois à compter du dépôt par l'étranger du dossier complet de cette demande, compte tenu notamment du délai de deux mois dont dispose le maire pour faire connaître son avis.

Dans le cas où la décision ne serait pas prise dans le délai de six mois, le demandeur est fondé à se prévaloir au terme de ce délai d'une décision implicite de rejet, qu'il pourrait attaquer devant la juridiction administrative.

La circulaire 2006/26 du 17 janvier 2006 indique que dans un tel cas, le préfet s'attache à statuer expressément et dans les meilleurs délais sur le dossier qui lui a été soumis malgré la présence d'une telle décision implicite qui ne le dessaisit pas. Lorsqu'il aura constaté que les conditions du regroupement familial sont ou non remplies, il devra prendre une décision d'accord ou de rejet qui se substitue à la décision implicite antérieure.
Q.42 – Le délai initial peut-il être prorogé (a 5 §4 alinea 2) ?

☐ OUI

☒ NON

Q.43 – Si oui :

Q.43. A - Ces possibilités sont-elles liées à la complexité de l’examen de la demande ?

☐ OUI

☐ NON

Q.43. B - Quelle est la durée de la prorogation ?

Q.44 – En cas d'absence de décision à l'expiration du délai initialement prévu, quelle conséquence en résulte pour le demandeur ?

Il est titulaire d'une décision implicite de rejet qu'il peut déférer au juge administratif

Q.45 – La décision de rejet est-elle notifiée par écrit et motivée ?

☒ OUI

☐ NON

Précisez si une seule de ces conditions n’est pas exigée

Q.46 – Comment l'intérêt supérieur de l'enfant est-il pris en compte par la législation de l'Etat membre et ses autorités durant l'examen de la demande (article 5§5) ?

La condition relative à "l'intérêt supérieur de l'enfant" visé par la directive 2003/86 et dont l'importance est soulignée par la CJCE n'a pas fait l'objet d'une transposition expresse par la législation française.

Elle fait néanmoins partie intégrante des critères jurisprudentiels utilisés par le juge dans son contrôle de la décision administrative répondant au regroupement et elle correspond à l'article 3-1 de la Convention de New York relative aux droits de l'enfant.

Par ailleurs, la possibilité d'autoriser un regroupement partiel est prévue par l'article L.411-4 dernier alinéa à la seule condition de prendre en considération "des motifs tenant à l'intérêt des enfants".
Q.47 – Des motifs d'ordre public, sécurité ou de santé publique peuvent-il fonder (a 6 §§1 et 2) :

Q.47. A – Le rejet de la demande de regroupement ?

X OUI
☐ NON

Si oui, lesquels ?

L'article L.411-6 du CESEDA prévoit que peuvent être exclus du regroupement familial un membre de la famille dont la présence en France constituerait une menace pour l'ordre public ou un membre de la famille atteint d'une maladie inscrite au règlement sanitaire international dans ses alinéas 1 et 2.

Ce rejet n'entraîne pas le rejet de la demande pour l'ensemble des bénéficiaires du regroupement familial.


Q.47. B - le retrait de la demande de regroupement ?

☐ OUI
X NON

Précise si nécessaire

Le droit français ne contient pas de disposition explicite relative au retrait d'un titre de séjour pour motif d'ordre public dans le CESEDA.

Q.47. C - le refus de renouvellement du titre de séjour du membre de la famille ?

X OUI
☐ NON

Précisez si nécessaire
Q.48 – Le droit de l'État membre prend-il en compte ;

Q.48. A – La gravité de l'atteinte à l'ordre public ?

☐ OUI
☐ NON

Q.48. B – L'importance des liens familiaux visés à l'article 17 ?

☐ OUI
☐ NON

Précisez si nécessaire

Les prévisions de l'article 17 de la directive 2003/86 n'ont pas fait l'objet d'une transposition expresse en droit français. Elles font néanmoins partie intégrante du contrôle juridictionnel opéré par le juge administratif sur les mesures administratives.

Q.49 – La survenance de maladie ou d'infirmité après l'octroi de l'autorisation peut-elle à elle seule justifier un retrait ou un éloignement (a 6 §3)?

☐ OUI
☐ NON

Q.50 – Des conditions de logement sont-elles exigées du demandeur (a7 §1a) ?

☐ OUI
☐ NON

Q.51 – Si oui :

Q.51. A - Quelles sont ces conditions ?

L'article L.411-5 2° du CESEDA dispose que le regroupement peut être refusé si le demandeur ne dispose pas ou ne disposera pas à la date d'arrivée de sa famille en France d'un logement considéré comme normal pour une famille comparable vivant dans la même région géographique.

Deux hypothèses doivent être distinguées : celle où le demandeur dispose d'un logement et celle où il n'en dispose pas.

Dans le cas où le demandeur ne dispose pas d'un logement, il peut fournir, à l'appui de sa demande, une promesse de logement (documents attestant, de manière probante, la disponibilité ultérieure du logement). L'administration effectuera impérativement un contrôle sur pièces pour vérifier si le logement répond aux critères de superficie et d'habitabilité considérés comme normaux.
pour une famille comparable vivant en France. Le demandeur devra à cette occasion être en mesure d'indiquer la date de la mise à sa disposition du logement. Celle-ci ne saurait être postérieure à celle prévue pour l'arrivée de la famille.

Dans le cas où le demandeur dispose d'un logement, ceux critères sont mis en avant par l'administration : celui de la jouissance du logement et celui de son habitabilité. Ce deuxième critère fait l'objet d'une attention particulière (voir infra).

La circulaire 2006/117 du 27 décembre 2006 donne un tableau d'évaluation des surfaces jugées habitables, appliquant l'article R.411-5 du CESEDA :

<table>
<thead>
<tr>
<th>Composition de la famille</th>
<th>couple</th>
<th>3 personnes</th>
<th>4 personnes</th>
<th>5 personnes</th>
<th>6 personnes</th>
<th>7 personnes</th>
<th>8 personnes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Surface exigible (m²)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Zone A</td>
<td>22 (+38%)</td>
<td>32 (+28%)</td>
<td>42 (+24%)</td>
<td>52 (+21%)</td>
<td>62 (+19%)</td>
<td>72 (+18%)</td>
<td>82 (+17%)</td>
</tr>
<tr>
<td>Zone B</td>
<td>24 (+50%)</td>
<td>34 (+36%)</td>
<td>44 (+29%)</td>
<td>54 (+26%)</td>
<td>64 (+23%)</td>
<td>74 (+21%)</td>
<td>84 (+20%)</td>
</tr>
<tr>
<td>Zone C</td>
<td>28 (+75%)</td>
<td>38 (+52%)</td>
<td>48 (+41%)</td>
<td>58 (+35%)</td>
<td>68 (+31%)</td>
<td>78 (+28%)</td>
<td>88 (+26%)</td>
</tr>
</tbody>
</table>

Q.51. B - Comment sont-elles évaluées ?

Les agents spécialement habilités des services de la commune chargés des affaires sociales ou du logement ou les enquêteurs de l’ANAEM vérifieront, au vu du bail et de l’état des lieux qui y est annexé ou par une enquête sur place que les conditions de l'article R.411-5 sont respectées.

Celui-ci distingue (en application des catégories du Code général des impôts) trois catégories de logement susceptibles de satisfaire à la condition d'habitabilité (16 m² pour 2 personnes, 9 m² par personne supplémentaire jusqu’à 8 personnes et 5 m² de plus par personne au-delà). Pour ce qui est des conditions d'hygiène, de confort, et d'habitabilité du logement notamment prévues par le décret 2002-120 du 30 janvier 2002 relatif aux caractéristiques du logement décent, la circulaire 2006/26 souligne la nécessité d'apprécier les normes de surface au regard de leur habitabilité, notamment compte tenu du nombre des pièces, de leur surface et de leur répartition, et de la composition de la famille. Il est exclu d’accepter, même à titre provisoire, des conditions d’habitat insuffisantes, voire dangereuses (immeuble en péril, baraquements, logements insalubres ou surpeuplés).

La circulaire 2006-117 précise que si la réglementation ne contient explicitement aucune référence au caractère adapté du logement par rapport à la composition de la famille, notamment en fonction du nombre, de l’âge et du sexe des enfants, la jurisprudence (CAA Paris, 17 juin 1999, Ministre de l’intérieur c/M. Camara, n°97PA01735) permet d’opposer, dans les cas où le logement est manifestement inadapté, que le logement n’est pas considéré comme « normal pour une famille comparable ». Cela peut conduire à refuser de prendre en compte un logement dont la superficie serait suffisante, mais dont l’habitabilité n’apparaîtrait pas satisfaisante, notamment compte tenu du
nombre de pièces, de leur surface et de leur répartition, et de la composition de la famille

Q.51 C - Sont-elles comparables à celles d'une famille normale habitant dans la même région de l'Etat membre ?

☐ OUI
☐ NON

Si non, précisez en quoi elles sont différentes

Q.52 – Une assurance maladie est-elle exigée du demandeur (a. 7 §1b) ?

☐ OUI
☐ NON

Q.53 – Des conditions de ressources "stables" sont-elles fixées (a7 §1c) ?

☐ OUI
☐ NON

Expliquez leur nature et leur montant

L'article L.411-5, 1° du CESEDA tel qu'il a été modifié en novembre 2007 dispose que le demandeur doit justifier de ressources stables et suffisantes pour subvenir aux besoins de sa famille et que sont prises en compte toutes les ressources du demandeur et de son conjoint indépendamment des prestations familiales et des allocations prévues à l’article L. 262-1 du Code de l'action sociale et des familles, à l’article L. 815-1 du Code de la sécurité sociale et aux articles L. 351-9, L. 351-10 et L.351- 10-1 du Code du travail. Les ressources doivent atteindre un montant qui tient compte de la taille de la famille du demandeur, qui est nouveau.

Un décret en Conseil d'État prévu à l'article L. 441-1 fixe ce montant qui doit être au moins égal au salaire minimum de croissance mensuel (soit 1 280 euros bruts au 1er juillet 2007) et au plus égal à ce salaire majoré d'un cinquième (soit 1536 euros bruts mensuels). Ces dispositions ne sont pas applicables lorsque la personne qui demande le regroupement familial est titulaire de l'allocation aux adultes handicapés mentionnée à l'article L. 821-1 du code de la sécurité sociale ou de l'allocation supplémentaire mentionnée à l'article L. 815-24 du même code

Le montant mensuel moyen des ressources du demandeur et, le cas échéant, de son conjoint, est calculé sur la base des douze derniers mois précédant le dépôt de la demande de regroupement familial (article 6 du décret). Le montant mensuel du SMIC est le résultat du produit du montant horaire du SMIC en vigueur par le nombre d’heures correspondant à la durée légale mensualisée du travail résultant de la loi n° 2000-37 du 19 janvier 2000 relative à la réduction négociée du temps de travail, soit 151,67 heures.
Q.54 – Comment leur caractère "suffisant" est-il évalué par l'Etat membre, est-ce par comparaison avec le niveau national ?

Le niveau des ressources du demandeur est apprécié par référence à la moyenne du salaire minimum de croissance sur une durée de douze mois. Les ressources du conjoint sont prises en compte dans les mêmes conditions pour l’appréciation des ressources qui alimentent de manière stable le budget de la famille. Lorsque le niveau de cette référence est atteint, les ressources sont considérées comme suffisantes.

Sont exclues de ces ressources : les prestations familiales, dont la liste est précisée à l’article L 511-1 du Code de la sécurité sociale, l’aide personnalisée au logement, les versements effectués spontanément par des tierces personnes (par exemple, une aide financière versée par des membres de famille...), dans la mesure où leur stabilité n’est pas assurée.

Selon la jurisprudence constitutionnelle, les étudiants ne sont pas écartés par principe du droit au regroupement familial. Toutefois, les étudiants autorisés temporairement à exercer une activité salariée à titre accessoire sont mis en possession d'une autorisation provisoire de travail. Les ressources dont ils disposent peuvent être suffisantes au regard du critère du SMIC, mais les autorisations de travail étant par hypothèse précaires et les changements de statut soumis à plusieurs conditions, les ressources que procurent leurs activités ne présentent pas de garantie de stabilité. En ce qui concerne les titulaires de contrats à durée déterminée, de contrats d'intérim ou de travail temporaire qui bénéficient d’une carte de séjour autre que la carte "travailleur temporaire ", le caractère stable des ressources est apprécié au cas par cas. Les changements d'employeurs ne constituent pas en tout cas à eux seuls un motif de refus fondé sur l'instabilité des ressources.

Pour l'appréciation de ce critère et en cas de doute sérieux sur la réalité de l'emploi, le maire ou l’ANAEM peut, le cas échéant, saisir la Direction départementale du travail, de l'emploi et de la formation professionnelle compétente d'une demande d'enquête sur la réalité et la stabilité de l'emploi.

S’agissant des revenus non salariaux, se voient reconnaître un caractère stable les pensions alimentaires versées par décision de justice.

Q.55 – Des critères d'intégration sont-ils fixés pour permettre le regroupement familial (a 7 §2) ?

[X] OUI

[ ] NON

Q.56 – Si oui :

Q.56. A – Quels sont ces critères ?

Sans que l'on puisse parler véritablement de critères d'intégration, le droit français se caractérise par l'apparition de "mesures d'intégration" dont les
La première autorités nationales n'hésitent pas à attribuer la référence à la directive 2003/86. Ces mesures ont une triple finalité.

- La première consiste à "cadrer" le regroupement familial au sein d'un environnement politique, culturel et social prenant la forme de "principes" qui vont guider l'exercice du regroupement.

L'article L. 411-5 dans sa version de 2003, indiquait que le regroupement familial est soumis au respect "des principes fondamentaux reconnus par les lois de la République". Cette condition était distincte de la condition d'intégration républicaine visée par la section 2 du chapitre 1° du titre premier du Livre III du CESEDA et qui traite des "dispositions relatives à l'intégration dans la société française".

Il s'agit en réalité et en l'absence de textes d'application des "principes essentiels qui, conformément aux lois de la République, régissent la vie familiale en France, pays d'accueil" (Conseil Constitutionnel, 20 juillet 2006, Loi relative à l'immigration et à l'intégration, Décision 2006-539 DC, considérant 47).

On peut identifier ces principes comme étant ceux qui ordonnent la vie familiale normale en France : monogamie, égalité de l'homme et la femme, respect de l'intégrité physique de l'épouse et des enfants, respect de la liberté du mariage, assiduité scolaire, respect des différences ethniques et religieuses, acceptation de la règle selon laquelle la France est une République laïque....le législateur, en novembre 2007, a procédé à une mise à niveau terminologique en substituant une nouvelle formule à l'ancienne. L'article L. 411-5 §3 fait désormais état de la nécessité de se conformer aux "principes essentiels qui, conformément aux lois de la République, régissent la vie familiale en France, pays d'accueil".

- La seconde finalité de ces mesures, comme le législateur l'exprime clairement, vise à faciliter l'intégration de l'étranger dans la société française, notamment d'un point de vue linguistique et culturel.

L'article L. 411-8 nouvellement créé par la loi de novembre 2007 dispose ainsi que, pour lui permettre de préparer son intégration républicaine dans la société française, le ressortissant étranger âgé de plus de seize ans et de moins de soixante-cinq ans pour lequel le regroupement familial est sollicité bénéficie, dans son pays de résidence, d'une évaluation de son degré de connaissance de la langue et des valeurs de la République. Si cette évaluation en établit le besoin, l'autorité administrative organise à l'intention de l'étranger, dans son pays de résidence, une formation dont la durée ne peut excéder deux mois, au terme de laquelle il fait l'objet d'une nouvelle évaluation de sa connaissance de la langue et des valeurs de la République. La délivrance du visa est subordonnée à la production d'une attestation de suivi de cette formation. Cette attestation est délivrée immédiatement à l'issue de la formation.

Un décret en Conseil d'État fixera les conditions d'application de ces dispositions, notamment le délai maximum dans lequel l'évaluation et la formation doivent être proposées à compter du dépôt du dossier complet de la demande de regroupement familial, le contenu de l'évaluation et de la
formation, le nombre d'heures minimum que la formation doit compter ainsi
que les motifs légitimes pour lesquels l'étranger peut en être dispensé.

Enfin, une troisième finalité de ces mesures vise à s'assurer que l'étranger se
soumet bien à ce dispositif.

L'article L. 311-9-1, nouvellement créé par la loi de novembre 2007, institue
un nouveau contrat à destination de la famille (CAIF).

L'étranger admis au séjour en France et, le cas échéant, son conjoint préparent,
loqu'un ou plusieurs enfants ont bénéficié de la procédure de regroupement
familial, l'intégration républicaine de la famille dans la société française. À
 cette fin, ils concluent conjointement avec l'État un contrat d'accueil et
d'intégration pour la famille par lequel ils s'obligent à suivre une formation sur
les droits et les devoirs des parents en France, ainsi qu'à respecter l'obligation
scolaire. Le président du conseil général est informé de la conclusion de ce
contrat.

En cas de non-respect des stipulations de ce contrat, manifesté par une volonté
caractérisée de l'étranger ou de son conjoint, le préfet peut saisir le président du
conseil général en vue de la mise en œuvre du contrat de responsabilité
parentale prévue à l'article L. 222-4-1 du code de l'action sociale et des
familles.

Lors du renouvellement de leur carte de séjour, l'autorité administrative tient
compte du non-respect manifesté par une volonté caractérisée, par l'étranger et
son conjoint, des stipulations du contrat d'accueil et d'intégration pour la
famille et, le cas échéant, des mesures prises en application du deuxième
alinéa.

En l'attente d'un décret d'application, ce dispositif d'ensemble constitue l'une
des principales nouveautés du droit français applicable au regroupement
familial.

Q.56.B – S'appliquent-ils indifféremment à tous les bénéficiaires potentiels
du regroupement (conjoint, personnes dépendantes, etc…) ?

La formulation du droit français est générale et indifférenciée puisqu'elle est
applicable

Q.56.C – Comment sont-ils évalués par l'État membre ?

La circulaire 2006/117 du 27 décembre 2006 indique aux préfets que cette
disposition est essentielle pour que la famille arrivant en France ait les
meilleures chances d’intégration.

Elle précise que ce n'est pas au demandeur de faire la preuve qu'il respecte ces
principes mais à l'administration d'établir qu'il ne les respecte pas, ce qui
suppose qu'elle dispose d'éléments en ce sens sur le comportement en France
du demandeur du regroupement familial. L'article L.421-1 du CESEDA
précise que, outre sa saisine obligatoire pour le logement et les ressources, le
maire de la commune de résidence peut être saisi sur ce point et émettre un
avis sur la condition tenant au respect des principes fondamentaux reconnus
par les lois de la République. Cette saisine pourra notamment être mise en
œuvre dans les situations où l’intégration de la famille serait compromise par l’attitude du demandeur du regroupement familial au regard de ces principes fondamentaux.

Q.56. D – Les réfugiés et leur famille y sont-ils soumis (a 7 §2 alinea 2) ?

☐ OUI
☐ NON

Q.57 – Un délai de séjour minimal est-il opposable avant de procéder au regroupement (a 8 §1) ?

☐ OUI
☐ NON

Q.58 – Cette durée est-elle supérieure à deux ans ?

Non, la durée est de dix-huit mois en vertu de l'article L.411-1 du CESEDA.

Q.59 – L'Etat membre fait-il usage de la dérogation de l'article 8 §2 autorisant un délai de trois ans au maximum entre le dépôt de la demande de regroupement familial et la délivrance d'un titre de séjour aux membres de la famille en raison de sa "capacité d'accueil" ?

☐ OUI
☐ NON

Q.60 – Si oui, cette possibilité existait-elle avant le 22 septembre 2003 ?

☐ OUI
☐ NON

REGROUPEMENT FAMILIAL DES REFUGIES

Q.61 – L'Etat membre autorise-t-il le regroupement familial des réfugiés sur la base de la directive 2003/86 (a 9 §1) ?

☐ OUI
☐ NON
Q.62 – Ce droit est-il restreint aux liens familiaux antérieurs à l'entrée sur le territoire (a 9 §2) ?

☐ OUI
☒ NON

Le droit au regroupement familial est reconnu en dehors de la procédure de regroupement de droit commun lorsque les bénéficiaires de l’asile conventionnel, de la protection subsidiaire ou les apatrides sont déjà mariés au moment où ils obtiennent leur statut. Il est alors soumis aux dispositions du 8° de l'article L.314-11 du CESEDA en ce qui concerne les réfugiés relevant de la Convention de Genève, à celles de l’article L.313-13 pour les bénéficiaires de la protection subsidiaire, et à celles du 10° de l’article L.313-11 s’agissant des apatrides.

La demande est adressée au Ministère des Affaires Etrangères, à la direction des Français à l’étranger et des étrangers en France. Après vérifications de la composition de la famille par l’OFPRA, le dossier est transmis au consulat de France.

Si le réfugié, le bénéficiaire de la protection subsidiaire ou l’apatride se marie après l’obtention du statut, la procédure de regroupement familial est applicable.

Lorsque l’étranger qui s’est vu reconnaître la qualité de réfugié se marie après la reconnaissance de son statut avec un étranger résidant régulièrement en France, son conjoint bénéficie d’une carte de résident après un an de mariage, sous réserve d’une communauté de vie effective entre les époux, conformément aux dispositions du 8° de l’article L.314-11. Lorsque l’apatride ou le bénéficiaire de la protection subsidiaire se marie après la reconnaissance de son statut avec un étranger, son conjoint bénéficie d’une carte de séjour temporaire portant la mention « vie privée et familiale » après un an de mariage, sous réserve d’une communauté de vie effective entre les époux, conformément aux dispositions du 10° de l’article L.313-11 et du 2ème alinéa de l’article L.313-13.

Q.63 – L’Etat membre autorise-t-il le regroupement de membres de la famille non visés à l'article 4 de la directive (a 10 §2) ?

☐ OUI
☒ NON

Lesquels et quelles conditions sont requises ?

Q.64 – L’Etat membre autorise-t-il le regroupement familial des ascendants directs au premier degré d'un mineur réfugié non accompagné sans que les conditions fixées à l'article 4§2 a soient exigées (a 10 §3 a) ?

☐ OUI
☒ NON
Lesquels et quelles conditions sont requises ?

Q. 65 – L'Etat membre autorise-t-il l'entrée et le séjour du tuteur légal ou de tout autre membre de la famille lorsque le réfugié mineur non accompagné n'a pas d'ascendants directs ou que ceux-ci ne peuvent être retrouvés (a10 §3 b) ?

☐ OUI
☒ NON

Si oui, précisez de qui il s'agit et précisez les preuves requises pour justifier du lien de parenté

Q.66 – L'Etat membre prend-il en compte d'autres preuves de l'existence de liens familiaux lorsque le réfugié ne peut fournir de pièces justificatives (a 11 §2)?

☒ OUI
☐ NON

Lesquelles ?
Toutes pièces probantes et présentant un caractère authentique

Q.67 – L'examen de la demande du réfugié tient-elle compte de la particularité de sa situation :

Q.67. A – Exige-t-on qu'il fournisse les preuves relatives au logement, à l'assurance, aux ressources (a 12 §1) ?

☐ OUI
☒ NON

Si oui, les conditions requises sont-elles comparables à celles demandées aux autres ressortissants de pays tiers ?

Q.67. B - Si l'une des personnes concernées (regroupant ou membre de la famille) a des liens particuliers avec un Etat tiers avec lequel le regroupement familial est possible, l'Etat membre exige-t-il ces preuves ?

☐ OUI
☒ NON

Précisez si nécessaire
Q.67. C - Si le réfugié a introduit sa demande plus de trois mois après l'octroi du statut de réfugié, l'État membre exige-t-il la satisfaction de ces trois conditions ou d'une de ses trois conditions (logement, assurance, ressources) (a 12 §1 alinea 3) ?

☐ OUI
☒ NON

Si oui, lesquelles ?

Q.68 – L'État membre respecte-t-il l'interdiction d'imposer une condition de séjour aux réfugiés (a 12 §2)?

☒ OUI
☐ NON

Si non, quelle est cette durée ? Diffère-t-elle de la durée normalement exigée ?

EXERCICE DU DROIT AU REGROUPEMENT

Q.69 – L'entrée et le séjour des membres de la famille sont-ils facilités par l'État membre après acceptation de la demande, y compris en matière de visa (article 13 §1)?

☒ OUI
☐ NON

Si oui, comment ?

La circulaire 2006/26 du ministre de l'Intérieur indique à l'autorité préfectorale que, dans tous les cas, le titre de séjour devra être délivré dans des délais rapides. Les bénéficiaires, admis au titre du regroupement familial au terme d'un examen attentif de leur demande, sont en droit de voir traiter leur dossier dans les délais les plus brefs possibles. Le récépissé délivré porte la mention "il autorise son titulaire à travailler".

La réglementation issue du décret 2005-253 du 17 mars 2005 dans son article 14 faisait obligation aux membres de la famille d'être en possession d'un visa de long séjour pour être admis sur le territoire au titre du regroupement familial. L'article R 421-28 du CESEDA reprend cette obligation. La circulaire 2006-9 du 17 janvier 2007 précise à ce sujet les conditions de délivrance du visa requis. En effet, "après versement de la redevance due à l'Agence nationale de l'accueil des étrangers et des migrations, dont le montant est fixé par arrêté conjoint du ministre chargé de l'intégration et du ministre chargé du budget, le dossier de regroupement familial est transmis par l'établissement à ses missions dans les pays où il est implanté ou aux consulats de France compétents en raison du lieu de résidence de la famille. La mission ou le consulat convoque la famille dont les membres doivent se présenter munis de
passeports en cours de validité, afin de procéder aux formalités de départ. Après les vérifications d'usage, le consulat de France appose, sur chaque passeport en cours de validité présenté par les membres de la famille, un visa portant la mention "regroupement familial".

Au cas où une fraude aurait été constatée, le consulat refuse la délivrance du visa. Le préfet est informé et la décision est retirée. L’autorité consulaire ne peut légalement refuser à l’étranger bénéficiaire de la mesure de regroupement familial un visa d’entrée sur le territoire français que pour des motifs d’ordre public le justifient, ou lorsque l’authenticité des documents d’état civil n’est pas établie ou bien encore, lorsque la décision concerne un enfant confié par kafala, lorsqu’il apparaît qu’il serait contraire à l’intérêt supérieur de l’enfant d’autoriser son entrée en France. Il lui appartient d’en informer au plus tôt le préfet afin que celui-ci puisse le cas échéant procéder au retrait de l’autorisation de regroupement familial.

Q.70 – Un titre de séjour minimal d'un an est-il délivré aux membres de la famille (a 13 §2) ?

☐ OUI
☐ NON

Quelle en est la durée ?

Le titre de séjour délivré aux membres de la famille autorisés à résider en France au titre du regroupement familial est, en application de l’article L.431-1 du Code de l’entrée et du séjour des étrangers et du droit d’asile, une carte de séjour temporaire, valable un an, quelle que soit la nature du titre de séjour dont est titulaire l’étranger qu’ils rejoignent.

Q.71 – Ce titre de séjour est-il renouvelable ?

☐ OUI
☐ NON

Q.72 – La durée du titre de séjour est-elle alignée sur le titre de séjour du regroupant (a 13 §3) ?

☐ OUI
☒ NON

Si non, précisez

Le titre de séjour des membres de la famille n'est pas de même nature que celui du regroupant. Il s'agit d'un titre de séjour temporaire portant mention "vie privée et familiale". La loi du 24 juillet 2006 allonge la période permettant au conjoint du titulaire d'une carte de résident d'invoquer le bénéfice d'une telle
Il doit désormais justifier d'une résidence non interrompue, conforme aux lois et règlements en vigueur, d'au moins trois années en France.

Q.73 – Les droits des membres de la famille sont-ils équivalents à ceux du regroupant (a14 §1) :

Q.73. A - En matière d'accès à l'éducation ?

☐ OUI
☐ NON

Si non, précisez

Q.73. B - En matière d'accès à l'emploi ?

☒ OUI
☐ NON

Précisez le contenu de cet accès

Q.73. C – En matière d'accès à l'orientation à la formation, au perfectionnement et au recyclage professionnel ?

☒ OUI
☐ NON

Si non, précisez

Q.74 – Le droit de l'État membre reconnaît-il des droits spécifiques en matière sociale aux membres de la famille regroupée ?

☐ OUI
☒ NON

Si oui, décrivez et précisez si une condition de délai est fixer pour en profiter

Q.75 – Le droit de l'État membre règlemente-t-il de manière particulière les conditions d'accès des membres de la famille au marché du travail national (article 14 §2) ?

☐ OUI
☒ NON

Si oui, comment ?

Q.76 – Si oui, les restrictions excèdent-elles douze mois (a 14 §2) ?
Q.77 – L’accès à l’emploi est-il restreint dans les États membres

Q.77.A - Pour ce qui concerne les ascendants en ligne directe et du premier degré ?

☐ OUI
☐ NON

Lesquelles ?

Si oui, comment ?

Les ascendants en ligne directe ne rentrent pas dans le champ des dispositions relatives au regroupement familial.

Q.77.B - Pour ce qui concerne les enfants majeurs célibataires objectivement dans l’incapacité de subvenir à leurs propres besoins en raison de leur état de santé (a 14 §3) ?

☐ OUI
☐ NON

Si oui, comment ?

Ils ne rentrent pas dans le champ des dispositions relatives au regroupement familial.

Q.78 – Les conjoints, le partenaire non marié et l’enfant devenu majeur ont-ils droit à un titre de séjour autonome au plus tard passé cinq ans de résidence régulière sur la base d’un titre de séjour pour regroupement familial (a15 §1) ?

☐ OUI
☐ NON

Si oui, précisez quand et comment pour chaque catégorie

- La carte de résident peut être accordée aux membres de famille d’un étranger titulaire de la carte de résident, lorsqu’ils justifient d’une résidence régulière non interrompue d’au moins trois ans en France (article L.314-9, 1) CESEDA) et satisfont à la condition d’intégration républicaine dans la société française posée par la loi et codifiée à l’article L. 314-2 du Code de l’entrée et du séjour des étrangers et du droit d’asile.
Lorsque le conjoint bénéficiaire de la demande relève des dispositions de l’article 15 du décret du 17 mars 2005 et qu’il justifie d’une résidence ininterrompue, conforme aux lois et règlements en vigueur, d’au moins trois années en France, il peut se voir délivrer une carte de résident en application de l’article L.314-9 1° du CESEDA, s’il remplit les conditions suivantes : avoir été autorisé à séjourner en France au titre du regroupement familial en qualité de conjoint d’un étranger titulaire d’une carte de résident, remplir la condition de communauté de vie et satisfaire à la condition d’intégration républicaine dans la société française.

Dans tous les autres cas, l’intéressé se verra remettre une carte de séjour temporaire portant la mention "vie privée et familiale", en application du 1° de l’article L.313-11 1° du CESEDA.

- Lorsque l’enfant mineur autorisé à séjourner en France au titre du regroupement familial accède à la majorité et sollicite la délivrance d’un premier titre de séjour, le préfet lui délivre une carte de résident s’il justifie d’une résidence ininterrompue d’au moins deux années depuis son entrée sur le territoire au titre du regroupement familial, s’il remplit la condition d’intégration républicaine dans la société française et si son parent à l’origine de la procédure de regroupement familial est titulaire d’une carte de résident (article L.314-9 1° du CESEDA).

Q.79 – L’État membre prévoit-il l’hypothèse de la rupture du lien familial pour le conjoint ou le partenaire non marié (a 15 §1 alinea 2)?

☐ OUI
☐ NON

Expliquez

L'article L.431-2 du CESEDA règle la question. En cas de rupture de la vie commune ne résultant pas du décès de l'un des conjoints, le titre de séjour qui a été remis au conjoint d'un étranger peut, pendant les trois années suivant l'autorisation de séjourner en France au titre du regroupement familial, faire l'objet d'un retrait ou d'un refus de renouvellement. Lorsque la rupture de la vie commune est antérieure à la demande de titre, l'autorité administrative refuse de l'accorder.

Il existe deux exceptions au refus ou au retrait de titre de séjour durant les trois années suivant l'autorisation de séjour. La première est la naissance d'un ou plusieurs enfants, lorsque l'étranger est titulaire de la carte de résident et qu'il établit contribuer effectivement, depuis la naissance, à l'entretien et à l'éducation du ou des enfants dans les conditions prévues à l'article 371-2 du Code civil. La seconde est celle de la rupture en raison de violences conjugales subies de la part de son conjoint. En ce cas, depuis la réforme législative de novembre 2007, l'autorité administrative ne peut procéder au retrait du titre de séjour de l'étranger admis au séjour au titre du regroupement familial (modifié par l'article 5) et peut en accorder le renouvellement. En cas de violence commise après l’arrivée en France du conjoint mais avant la première délivrance de la carte de séjour temporaire, le conjoint se voit...
délivrer, sauf si sa présence constitue une menace pour l’ordre public, une carte de séjour temporaire portant la mention "vie privée et familiale".

Q.80 – L'Etat membre prévoit-il un titre de séjour autonome :

Q.80. A - Pour les ascendants en ligne directe et du premier degré (a15 §3)

☐ OUI

☒ NON

Précisez si nécessaire

Q.80. B – Pour les enfants majeurs célibataires objectivement dans l'incapacité de subvenir à leurs propres besoins en raison de leur état de santé (a15 §3) ?

☐ OUI

☒ NON

Précisez si nécessaire

Q.81 – L'Etat membre prévoit-il un titre de séjour autonome pour les situations de veuvage, de divorce, de séparation ou de décès d'ascendants ou de descendants directs au premier degré (a 15 §3) ?

☐ OUI

☒ NON

Précisez si nécessaire

L'article L.431-2 du CESEDA indique qu'en cas de rupture de la vie commune ne résultant pas du décès de l'un des conjoints, le titre de séjour qui a été remis au conjoint d'un étranger peut, pendant les trois années suivant l'autorisation de séjourner en France au titre du regroupement familial, faire l'objet d'un retrait ou d'un refus de renouvellement. Lorsque la rupture de la vie commune est antérieure à la demande de titre, l'autorité administrative refuse de l'accorder.

Les dispositions du premier alinéa ne s'appliquent pas si un ou plusieurs enfants sont nés de cette union, lorsque l'étranger est titulaire de la carte de résident et qu'il établit contribuer effectivement, depuis la naissance, à l'entretien et à l'éducation du ou des enfants dans les conditions prévues à l'article 371-2 du Code civil.
Q.82 – L'Etat membre a-t-il arrêté des dispositions garantissant un titre de séjour autonome "en cas de situation particulièrement difficile" (a 15 §3) ?

☐ OUI
☐ NON

Si oui, comment cette disposition est-elle définie et transposée ?

L'article L. 313-4 prévoit que la carte de séjour temporaire mentionnée à l'article L. 313-11 peut être délivrée, sauf si sa présence constitue une menace pour l'ordre public, à l'étranger ne vivant pas en état de polygamie dont l'admission au séjour répond à des considérations humanitaires ou se justifie au regard des motifs exceptionnels qu'il fait valoir, sans que soit opposable la condition prévue à l'article L. 311-7.

SANCTIONS ET VOIES DE RECOURS

Q.83 – Quels sont les motifs légaux de rejet, de retrait ou de refus de renouvellement d'une autorisation de regroupement familial (a16 §1 et 2) ?

Q.83. A – L'absence de conditions requises par la directive ?

☐ OUI
☐ NON

L'article L.431-3 ajoute à cela la transgression de l'obligation de demeurer à l'extérieur du territoire français durant la procédure de regroupement familial.

L'article L.311-9 ajoute que lors du premier renouvellement de la carte de séjour, il peut être tenu compte du non-respect, manifesté par une volonté caractérisée, par l'étranger, des stipulations du contrat d'accueil et d'intégration

Q.83. B – l'absence de vie familiale ou conjugale effective ?

☐ OUI
☐ NON

Si oui, comment cette hypothèse est-elle appréciée ?

Par le jeu de la procédure de regroupement, pour établir la réalité de cette vie commune. Ensuite, à l'occasion de la demande de renouvellement de la carte temporaire et sur la base de l'article R.313-35, le demandeur doit présenter à l'appui de sa demande les indications relatives à son état civil et, le cas échéant, à celui de son conjoint et de ses enfants à charge, ce qui le conduit à faire la preuve que la vie commune n'a pas cessé.
L'article L.431-2 du CESEDA prévoit cette situation. Il énonce que "en cas de rupture de la vie commune ne résultant pas du décès de l'un des conjoints, le titre de séjour qui a été remis au conjoint d'un étranger peut, pendant les trois années suivant l'autorisation de séjourner en France au titre du regroupement familial, faire l'objet d'un retrait ou d'un refus de renouvellement". De plus, l'article R 311-15, 4° du CESEDA rappelle que le titre de séjour peut être retiré si l'étranger autorisé à séjourner en France au titre du regroupement familial n'est plus en situation de vie commune avec le conjoint qu'il est venu rejoindre dans les trois ans qui suivent la délivrance du titre de séjour sauf dans les cas mentionnés à l'article L 431-2.

Q.83. C – Des relations durables avec un autre partenaire ?
- [ ] OUI
- [X] NON

Q.83. D – Des falsifications de pièces ?
- [X] OUI
- [ ] NON

Q.83. E – La conclusion d'une union aux seules fins du regroupement ?
- [X] OUI
- [ ] NON

Q.83. F – Si oui, comment cette hypothèse est-elle appréciée ?

L'article L.311-7 du CESEDA résultant de la loi du 24 juillet 2006 oblige à être en possession d'un visa de long séjour pour bénéficier de l'octroi d'une carte de séjour temporaire. Cette obligation relève de l'article R 421-28 du CESEDA aux termes duquel "pour être admis sur le territoire français, les membres de la famille du ressortissant étranger doivent être munis du visa d'entrée délivré par l'autorité diplomatique et consulaire après réception de la décision du préfet". La généralisation de l'obligation de visa posée par l'article L 311-7 du CESEDA est explicité comme suit par les travaux parlementaires : "Par ailleurs, la nécessité de produire un visa de long séjour ne signifie aucunement que la France renforce les conditions d'attribution des différentes cartes de séjour, mais seulement qu'elle veut se donner les moyens d'en vérifier le respect. Par exemple, concernant les conjoints de Français, le nouvel article L. 311-7 ne remet pas en cause le droit au séjour dont bénéficient ces personnes à raison de leur mariage avec un Français, mais elle permettra une vérification préalable de la réalité de l'intention matrimoniale, notamment l'absence de détournement ou de caractère forcé de l'union".
Q.83. G – Le terme du séjour du regroupant en cas d'absence de titre de séjour autonome (a 16 §3) ?

[ ] OUI

[ ] NON

Q.83. H – Quels types de contrôle sont-ils opérés ?

Q.84 – Les ressources du ménage sont-elles prises en compte à l'occasion d'un renouvellement du titre de séjour si le regroupant ne dispose pas de ressources suffisantes sans recourir au système d'aide sociale de l'État membre ?

[ ] OUI

[ ] NON

Si oui, selon quelles modalités

Ce contrôle découle des dispositions de l'article R 313-36 du CESEDA, tel que modifié par le décret 2007-373, au terme duquel "l'étranger qui sollicite le renouvellement de l'une des cartes de séjour temporaire prévues aux articles L. 313-4-1, L. 313-6, L. 313-7, L. 313-9, L. 313-11 et L. 313-11-1 présente en outre les pièces prévues pour une première délivrance et justifiant qu'il continue de satisfaire aux conditions requises pour celle-ci"

Q.85 – Le droit de l'État membre prend-il en considération (a. 17) :

Q.85. A - la nature et la solidité des liens familiaux de la personne et sa durée de résidence dans l'État membre ?

[ ] OUI

[ ] NON

Si oui précisez comment et par quel type de norme (textuelle, jurisprudentielle, …)

Cette situation ressort notamment des cas dans lesquels la personne, et en particulier l'enfant dans le cadre de la kafala, n'entrent pas dans le champ du regroupement familial. La circulaire 2006-9 précise à ce sujet : "il y a donc lieu de ne pas rejeter les demandes de regroupement familial formées en faveur d'enfants recueillis par kafala au seul motif que ces derniers n'entrent pas dans le champ d'application de cette procédure défini par les articles L.314-11 dernier alinéa et L.411-4 du code de l’entrée et du séjour des étrangers et du droit d’asile. Il vous appartient en effet d’apprécier si la situation familiale de l’enfant et des requérants est de nature à justifier son admission au séjour au titre du regroupement familial, à la lumière des critères dégagés par la jurisprudence précitée du Conseil d’Etat : parents biologiques décédés, inconnus ou incapables d’assumer l’entretien et l’éducation de l’enfant, âge de l’enfant eu moment où il a été recueilli, situation familiale et ancienneté du séjour du couple qui recueille l’enfant…"
Q.85. B - l'existence d'attachées familiales, culturelles ou sociales avec son pays d'origine, dans les cas de rejet d'une demande, de retrait ou de non-renouvellement du titre de séjour, ainsi qu'en cas d'adoption d'une mesure d'éloignement du regroupant ou des membres de sa famille ?

☐ OUI
☐ NON

Si oui précisez comment et par quel type de norme (textuelle, jurisprudentielle, …)

Q.86 – Le regroupant et les membres de la famille ont-ils un droit de recours contre la décision négative les concernant (a18 §1)?

☐ OUI
☐ NON

Q.87 – Ce droit de recours est-il un recours en justice, conformément à la jurisprudence C-540/03 (a18 §1) ?

☐ OUI
☐ NON
**Impact de la directive sur le droit national**

**Q.88.A** Est-ce que la transposition de la directive au sujet de la garantie de l'intérêt supérieur des enfants (a.5 §5) a rendu l'évolution du droit national plus ou moins favorable du point de vue du ressortissant de pays tiers. Comparez également avec les standards de la directive dans la dernière colonne de la table ci-dessous.

<table>
<thead>
<tr>
<th>OBJET</th>
<th>EVALUATION DE L'ÉVOLUTION DU DROIT NATIONAL</th>
<th>EVALUATION EN COMPARAISON DES STANDARDS DE LA DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prise en considération de l'intérêt supérieur des enfants dans l'examen de la demande (a.5 §5)</td>
<td>Il n'y a pas eu de transposition formelle et textuelle</td>
<td>• Statu quo</td>
</tr>
</tbody>
</table>

**Q.88.B** Est-ce que la transposition de la directive au sujet de la définition des bénéficiaires du droit au regroupement familial a rendu l'évolution du droit national plus ou moins favorable du point de vue du ressortissant de pays tiers. Comparez également avec les standards de la directive dans la dernière colonne de la table ci-dessous.

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</tr>
</thead>
<tbody>
<tr>
<td>Délimitation des bénéficiaires du droit au regroupement familial (a. 4)</td>
<td>La transposition s'est effectuée a minima</td>
<td>• Statu quo</td>
</tr>
</tbody>
</table>

**Q.88.C** Est-ce que la transposition de la directive en matière de regroupement des enfants de 12 (a. 4§1) et 15 ans (a. 4§6) a rendu l'évolution du droit national plus ou moins favorable du point de vue du ressortissant de pays tiers. Comparez également avec les standards de la directive dans la dernière colonne de la table ci-dessous.

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</tr>
</thead>
<tbody>
<tr>
<td>Limitations du regroupement des enfants de 12 et de 15 ans</td>
<td>La transposition n'a pas changé cette option</td>
<td>• Statu quo</td>
</tr>
</tbody>
</table>
**Q.88.D**

Est-ce que la transposition de la directive au sujet des conditions matérielles mises au regroupement (a. 7) a rendu l'évolution du droit national plus ou moins favorable du point de vue du ressortissant de pays tiers. Comparez également avec les standards de la directive dans la dernière colonne de la table ci-dessous.

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</tr>
</thead>
<tbody>
<tr>
<td>Conditions d'exercice du droit au regroupement (a. 7)</td>
<td>Le renforcement des conditions du regroupement en droit interne a pu s'appuyer sur les dispositions &quot;plancher&quot; de la directive</td>
<td>• Moins favorable que les règles nationales antérieures</td>
</tr>
</tbody>
</table>

**Q.88.E**

Est-ce que la transposition de la directive au sujet de la marge d'appréciation des États membres (a. 5 §5, a. 17, C-540/03) a rendu l'évolution du droit national plus ou moins favorable du point de vue du ressortissant de pays tiers. Comparez également avec les standards de la directive dans la dernière colonne de la table ci-dessous.

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<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>Encadrement de la marge d'appréciation des États membres (a. 17, a.5 §5, C-540/03)</td>
<td>Elle demeure de même nature et de même intensité</td>
<td>• Statu quo</td>
</tr>
</tbody>
</table>

**Q.88.F**

Est-ce que la transposition de la directive au sujet des objectifs et des critères d'intégration poursuivis par la directive a rendu l'évolution du droit national plus ou moins favorable du point de vue du ressortissant de pays tiers. Comparez également avec les standards de la directive dans la dernière colonne de la table ci-dessous.

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</tr>
</thead>
<tbody>
<tr>
<td>Prise en considération de l'objectif d'intégration (considérant 15) et des critères d'intégration (a.4 §1 dernier alinéa, a. 7 §2)</td>
<td>La négociation puis la transposition de la directive ont été l'occasion d'introduire ces éléments dans le débat et de les introduire partiellement en droit interne</td>
<td>• Moins favorable que les règles nationales antérieures</td>
</tr>
</tbody>
</table>
Q.89. De votre point de vue, la transposition de la directive a-t-elle impliqué d'autres changements intéressants pour les ressortissants de pays tiers en ce qui concerne d'autres éléments que ceux mentionnés dans la question précédente. Comparez également avec les standards de la directive dans la dernière colonne de la table ci – dessous.

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</thead>
<tbody>
<tr>
<td>Age du conjoint mineur (article 4 §5c)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Il n'existait pas de conditions</td>
<td>L'article L.411-1 du CESEDA introduit désormais une condition d'âge opposable au conjoint du regroupant : ce dernier doit être âgé au moins de 18 ans sans que le seuil de 21 ans fixé par la directive soit atteint.</td>
<td>• Plus favorable que les règles nationales antérieures</td>
</tr>
</tbody>
</table>

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</thead>
<tbody>
<tr>
<td>Conditions de ressources et de logement (art.7)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- conditions de logement : la référence est celle de la taille comparable en France - conditions de ressources : la règle n'excluait pas les prestations sociales, hors prestations familiales</td>
<td>- conditions de logement : la référence est celle de la &quot;taille comparable dans la région&quot; - conditions de ressources : l'article L-411-5 introduit le critère des ressources &quot;stables et suffisantes&quot;</td>
<td>• Plus favorable que les règles nationales antérieures</td>
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</tbody>
</table>

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</thead>
<tbody>
<tr>
<td>Durée de séjour préalable (art. 8§1)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cette durée était de une année</td>
<td>Elle est portée à 18 mois en 2006</td>
<td>• Plus favorable que les règles nationales antérieures</td>
</tr>
</tbody>
</table>

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</tr>
</thead>
<tbody>
<tr>
<td>Retrait du titre de séjour (art.15)</td>
<td></td>
<td></td>
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</tbody>
</table>
En cas de rupture de la vie commune, le retrait du titre de séjour était possible pendant une année après l'octroi de ce titre.

L'article L-431-2 porte ce délai à deux années.

- Moins favorable que les règles nationales antérieures
- Conforme à la directive

Q.89. A. Indiquez si le droit national démontre une tendance générale à simplement copier les dispositions de la directive sans rechercher à reformuler ou les adapter aux circonstances nationales.

☐ NO
☐ YES

Q.89.B. Si oui, indiquez si cette tendance générale peut créer des problèmes (par exemple des difficultés d'exécution, des risques que la disposition demeure inappliquée).

☐ NO
☐ YES

Q.89.C. Si oui, donnez quelques exemples :

Q.89.D. Si seulement quelques dispositions de la directive ont été copiées, et si cela doit créer des problèmes, citez les et expliquez le problème.

Q.90. Citez des décisions de jurisprudence intéressantes relatives à la directive, sa transposition ou son application (Cette question concerne en principe les décisions ultérieures à l'adoption de la directive. Des décisions antérieures peuvent être citées si elle sont pertinentes). Citez en particulier les décisions des cours suprêmes. Limitez vous au sujet des décisions de cours d'appel etignorez les jugement en première instance s'il existe trop de jugement à ce niveau à moins qu'une jurisprudence ne se dessine au regard d'un groupe de jugements.

Utilisez une case par décision et dupliquez si nécessaire

<table>
<thead>
<tr>
<th>DECISION OF SUPREME COURTS</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>RESUME:</th>
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<tr>
<th>DECISION OF APPEAL COURTS</th>
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<tr>
<th>DECISION(S) IN FIRST RESORT</th>
<th>DATE:</th>
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<th>RESUME:</th>
</tr>
</thead>
<tbody>
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</tbody>
</table>
Q.91. Expliquez s'il existe des problèmes de traduction de la directive dans la langue officielle de votre Etat membre et donnez si besoin une liste des exemples les plus significatifs de mauvaise traduction.

- Il n'y a pas de problème de traduction de la directive.
- Il y a quelques problèmes de traduction de (indiquez l'article concerné) de la directive.

Expliquez les difficultés que ces problèmes de traduction peuvent créer.

92. AUTRES ELEMENTS INTERESSANTS

Q.92.A A votre avis, mentionnez du point de vue du ressortissant de pays tiers et/ou de l'Etat membre toutes pratiques nationales intéressante ou innovante.

Utilisez une table par pratique et dupliquez si nécessaire.

<table>
<thead>
<tr>
<th>OBJET DE LA PRATIQUE</th>
<th>EXPLICATIONS</th>
</tr>
</thead>
</table>

Q.92.B Ajoutez tout autre élément intéressant que vous n'avez pas eu l'occasion de mentionner dans les questions précédentes.
QUESTIONNAIRE FOR THE NATIONAL REPORT
ON THE IMPLEMENTATION OF THE DIRECTIVE
FAMILY REUNIFICATION OF 22 SEPTEMBRE 2003

IN: GERMANY

By
Kay Hailbronner, Professor, Dr. iur.
Director of the Center for International and European Law on Immigration and Asylum

And
Cordelia Carlitz, Ass. iur., Researcher
cordelia.carlitz@uni-konstanz.de

12 November 2007

The person in the team of thematic coordination in charge of this directive that you can contact if you have a question or need help when completing this questionnaire is: Yves Pascouau, +33 5 59 57 41 20, yves.pascouau@univ-pau.fr

COMMENTARIES


2. Transposition of the directive must be assessed regarding the nature of the provision concerned. So as to help you, those provisions are coloured within the questionnaire as follows: obligatory provision (Q.XX), optional provision (Q.YY), provision which set up a derogation (Q.ZZ)

3. The Court of justice has defined the margins of discretion awarded to the member States even in situations where the directive allows the member States to depart from the directive. The Court states:

"Article 4(1) of the Directive imposes precise positive obligations, with corresponding clearly defined individual rights, on the Member States, since it requires them, in the cases determined by the Directive, to authorise family reunification of certain members of the sponsor’s family, without being left a margin of appreciation" (cons. 60).

"Note should also be taken of Article 17 of the Directive which requires Member States to 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 country of origin. As is apparent from paragraph 56 of the present judgment, such criteria correspond to those taken into consideration by the European Court of Human Rights when it reviews whether a State which has refused an application for family reunification has correctly weighed the competing interests” (cons. 64)

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228 This report has been elaborated and drafted by the aforementioned member of the German research group and Prof. Dr. Kay Hailbronner. Please contact the indicated researcher who has worked on this report in case of any requests during the study.
The fact that the concept of integration is not defined cannot be interpreted as authorising the Member States to employ that concept in a manner contrary to general principles of Community law, in particular to fundamental rights. The Member States which wish to make use of the derogation cannot employ an unspecified concept of integration, but must apply the condition for integration provided for by their legislation existing on the date of implementation of the Directive in order to examine the specific situation of a child over 12 years of age arriving independently from the rest of his or her family” (cons. 70).

4. The main difficulty according to the transposition of the directive relies on the systematic opportunities offered to member States to depart from the provisions of the directive when applying it.

5. Article 19 indicates which themes where the most sensitive during the negotiations of the Directive (art. 3, 4, 7, 8 and 13).

FIRST PART

1. NORMS OF TRANSPOSITION AND JURISPRUDENCE

Q.1.A Identify the MAIN (because of its content) norm(s) of transposition and indicate its legal nature

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)
- About legal nature in the table below: legislative refers to a norm adopted in principle by the Parliament; regulation refers to a norm complementing the law and adopted in principle by the executive power; circular or instructions refer to practical rules about implementation of laws and regulations and adopted in principle by the administrative authorities

*Please duplicate the table below if there is more than one MAIN norm of transposition*
<table>
<thead>
<tr>
<th>This table is about:</th>
<th>X a text already adopted</th>
<th></th>
<th>a text which is still a project to be adopted</th>
</tr>
</thead>
</table>

**TITLE:** Aufenthaltsgesetz – AufenthG (Residence Act), adopted as part of the Zuwanderungsgesetz (Immigration Act), hereinafter: *Residence Act*.

**DATE:** 30 July 2004.

**NUMBER:** Not applicable.

**DATE OF ENTRY INTO FORCE:** 1 January 2005

**PROVISIONS CONCERNED** (for example if the norm is not devoted only to the transposition of the concerned directive): Sec. 27 to 36 Residence Act

**REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:**

**LEGAL NATURE** (indicate a cross in the correct box):

<table>
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<tr>
<th></th>
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</table>

**TITLE:** Gesetz zur Umsetzung aufenthaltsrechtlicher und asylrechtlicher Richtlinien der Europäischen Union (Act on Transposition of EU-Directives on Issues of Residence and Asylum, this Act amends the Residence Act), hereinafter: *Transposition Act*²²⁹.

**DATE:** 19 August 2007.

**NUMBER:** Not applicable.

**DATE OF ENTRY INTO FORCE:** 28 August 2007

**PROVISIONS CONCERNED** (for example if the norm is not devoted only to the transposition of the concerned directive): Sec. 27 to 36 Residence Act

**REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:**

**LEGAL NATURE** (indicate a cross in the correct box):

<table>
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²²⁹ This act is based on the draft bill of the Federal Government of 23 April 2007. The draft bill is published as Bundestagsdrucksache (Parliamentary Document) no. 16/5065. An electronic version of the draft is available on http://dip.bundestag.de/btd/16/050/1605065.pdf . The draft bill has been adopted with some minor changes and has entered into force on 28 August 2007. The answers given in this questionnaire include the amendments coming from this act.
This table is about: X a text already adopted ☐ a text which is still a project to be adopted

TITLE: Schreiben des Bundesministeriums des Innern (Instruction of the Federal Ministry of the Interior), hereinafter: Instruction FMI

DATE: 19 September 2005
NUMBER: M 13-937 115-33/0

DATE OF ENTRY INTO FORCE: 19 September 2005

PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive): No. 1 to 5 Instruction FMI

REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: none

LEGAL NATURE (indicate a cross in the correct box):
☐ LEGISLATIVE:
☒ REGULATION:
☐ CIRCULAR or INSTRUCTIONS: The Instruction FMI was issued to prevent the public authorities from infringing Directive 2003/86/EC until the amendments to the Residence Act finally entered into force on 28 August 2007.230

Due to the federal structure prevailing in Germany the Instruction FMI did not have direct effect on the foreigners’ authorities of the German Länder (states) which are in charge of dealing with residence permits according to the Residence Act. However the governments of the Länder had the constitutional duty to follow this instruction. They therefore needed to instruct their own authorities accordingly. To our knowledge at least the following Länder had issued corresponding instructions:

1. Baden Württemberg (Instruction 3-1325/22 of 7 November 2005);
2. Berlin (Instruction I B 2 – 0345/180.2 of 10 October 2005);
3. Brandenburg (Instruction III/5-50.114 of 27 September 2005);
4. Bremen (Instruction no. 05-09-02 of 29 September 2005);
5. Hamburg (Instruction 8/2005 of 29 September 2005);
6. Lower Saxony (Instruction no 45.2-12230/1-8 of 28 September 2005);
7. Mecklenburg-Western Pomerania (Instruction II 610b-1300.1 of 29 September 2005);
8. Rhineland-Palatinate (Instruction 19 303-2:316 2.01 of 20 September 2006);
9. Saarland (Instruction B 5 5519/2 of 22 September 2005);
10. Saxony (Instruction of 4 January 2006, effective as of 3 October 2005);

Since the instructions of the Länder are identical to the Instruction FMI in the following questionnaire reference will be made only to the Instruction FMI.

Q.1.B.
List the others norms of transposition by order of importance of their legal nature (first laws, secondly regulations; thirdly circulars or instructions):

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).

230 See indents 1 and 4 Instruction FMI.
• Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)

Please use one table per norm and duplicate as much as necessary

<table>
<thead>
<tr>
<th>This table is about:</th>
<th>a text already adopted</th>
<th>a text which is still a project to be adopted</th>
</tr>
</thead>
<tbody>
<tr>
<td>TITLE: Residence Act (adopted as part of the Immigration Act)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>DATE: 30 July 2004</td>
<td></td>
<td></td>
</tr>
<tr>
<td>NUMBER: not applicable</td>
<td></td>
<td></td>
</tr>
<tr>
<td>DATE OF ENTRY INTO FORCE: 1 January 2005</td>
<td></td>
<td></td>
</tr>
<tr>
<td>PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive):</td>
<td></td>
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<tr>
<td>• Sec. 5 (General preconditions for the granting of a residence title),</td>
<td></td>
<td></td>
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<tr>
<td>• sec. 6 para. 4 (Visa),</td>
<td></td>
<td></td>
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<tr>
<td>• sec. 7 (Residence permit),</td>
<td></td>
<td></td>
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<tr>
<td>• sec. 8 para. 1 (Extension of the residence permit),</td>
<td></td>
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<tr>
<td>• sec. 9 (Residence permit),</td>
<td></td>
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<tr>
<td>• sec. 14 para 1 no. 2 (Illegal entry)</td>
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<tr>
<td>• sec. 53 to 55 (Expulsion),</td>
<td></td>
<td></td>
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<tr>
<td>• sec. 71 para 1 and 2, 77, 79, 81, 82 para 1 sent. 1 and para 4 sent. 1 (Procedure) Residence Act.</td>
<td></td>
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</tr>
<tr>
<td>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>LEGAL NATURE (indicate a cross in the right box):</td>
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<tr>
<td>X LEGISLATIVE</td>
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<tr>
<td>[ ] REGULATION</td>
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<tr>
<td>[ ] CIRCULAR OR INSTRUCTIONS</td>
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<table>
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</tr>
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<tbody>
<tr>
<td>TITLE: Gesetz zur Umsetzung aufenthaltsrechtlicher und asylrechtlicher Richtlinien der Europäischen Union (Act on Transposition of EU-Directives on Issues of Residence and Asylum, this Act amends the Residence Act), hereinafter: Transposition Act</td>
<td></td>
<td></td>
</tr>
<tr>
<td>DATE: 19 August 2007</td>
<td></td>
<td></td>
</tr>
<tr>
<td>NUMBER: not applicable</td>
<td></td>
<td></td>
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<tr>
<td>DATE OF ENTRY INTO FORCE: 28 August 2007</td>
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<tr>
<td>PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive): 81 (Application) Residence Act.</td>
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<tr>
<td>LEGAL NATURE (indicate a cross in the right box):</td>
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<tr>
<td>X LEGISLATIVE</td>
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<tr>
<td><strong>TITLE:</strong> Bürgerliches Gesetzbuch (Civil Code), hereinafter: <strong>BGB</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>DATE: 2 January 2002</td>
<td></td>
<td></td>
</tr>
<tr>
<td>NUMBER: Not applicable.</td>
<td></td>
<td></td>
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<tr>
<td>DATE OF ENTRY INTO FORCE: 1 January 2002</td>
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<td>PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive):</td>
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<tr>
<td>Sec. 1754 and 1755 Civil Code²³¹</td>
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<tr>
<td>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:</td>
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<td>☐ REGULATION:</td>
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<tr>
<td>☐ CIRCULAR or INSTRUCTIONS:</td>
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<tbody>
<tr>
<td><strong>TITLE:</strong> Gesetz über die Wirkungen der Annahme als Kind nach ausländischem Recht – Adoptionswirkungsgesetz (Code on the Effects of Adoptions carried out under foreign law), hereinafter: <strong>AdWirkG</strong></td>
<td></td>
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<tr>
<td>DATE: 5 November 2001</td>
<td></td>
</tr>
<tr>
<td>NUMBER: Not applicable.</td>
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<tr>
<td>DATE OF ENTRY INTO FORCE: 1 January 2002</td>
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<tr>
<td>PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive):</td>
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<tr>
<td>Sec. 2, 3</td>
<td></td>
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<tr>
<td>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:</td>
<td></td>
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<tr>
<td><strong>LEGAL NATURE</strong> (indicate a cross in the correct box):</td>
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<td>☐ REGULATION:</td>
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<th>☑ a text already adopted ☐ a text which is still a project to be adopted</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>TITLE:</strong> Einführungsgesetz zum Bürgerlichen Gesetzbuch (Introductory Code to the Civil Code), hereinafter: <strong>EG-BGB</strong></td>
<td></td>
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<tr>
<td>DATE: 5 November 2001²³²</td>
<td></td>
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<tr>
<td>NUMBER: Not applicable.</td>
<td></td>
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<tr>
<td>DATE OF ENTRY INTO FORCE: 1 January 2002</td>
<td></td>
</tr>
<tr>
<td>PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive):</td>
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<tr>
<td>Art. 22</td>
<td></td>
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<td></td>
</tr>
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<tr>
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<tr>
<td>☐ REGULATION:</td>
<td></td>
</tr>
<tr>
<td>☐ CIRCULAR or INSTRUCTIONS:</td>
<td></td>
</tr>
</tbody>
</table>

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²³¹ These norms already existed before but were republished in the Federal Law Gazette on 8 January 2002.
²³² The norm existed before but was republished.
| TITLE: Verwaltungsgerichtsgesetz (Administrative Courts Act), hereinafter: VwGO |
| DATE: 19 March, 1991 |
| NUMBER: Not applicable. |
| DATE OF ENTRY INTO FORCE: 1 January 1991 |
| PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive): Sec. 75 and 42 VwGO |
| LEGAL NATURE (indicate a cross in the correct box): |
| ☑ LEGISLATIVE: |
| ☑ REGULATION |
| ☑ CIRCULAR or INSTRUCTIONS: |

| TITLE: Verwaltungsverfahrensgesetz (Administrative Procedures Act), hereinafter: VwVfG |
| DATE: 23 January, 2003 |
| NUMBER: Not applicable. |
| DATE OF ENTRY INTO FORCE: 1 February 2003 |
| PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive): Sec. 10 sent. 2, sec. 26, sec. 71b, 48 VwVfG |
| LEGAL NATURE (indicate a cross in the correct box): |
| ☑ LEGISLATIVE: |
| ☑ REGULATION |
| ☑ CIRCULAR or INSTRUCTIONS: |

| TITLE: Aufenthaltsverordnung, hereinafter: Residence Regulation |
| DATE: 25 November 2004 |
| NUMBER: |
| DATE OF ENTRY INTO FORCE: 1 January 2005 |
| PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive): particularly sec. 39 and 41 Residence Regulation |
| REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: BGBl I 2004, 2945 |
| LEGAL NATURE (indicate a cross in the right box): |
| ☑ LEGISLATIVE |
| ☑ REGULATION |
| ☑ CIRCULAR OR INSTRUCTIONS: |
Q.2. THIS QUESTION IS IN PRINCIPLE ONLY FOR FEDERAL OR ASSIMILATED MEMBER STATES LIKE AUSTRIA, BELGIUM, GERMANY, ITALY, SPAIN

Q.2.A. Explain which level of government is competent to adopt the norms of transposition.

Please include your answer in the tables below

<table>
<thead>
<tr>
<th>LEGISLATIVE RULES</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL: YES</td>
</tr>
<tr>
<td>COMPETENCES OF THE COMPONENTS: NO</td>
</tr>
</tbody>
</table>

EXPLANATIONS IF NECESSARY: Art. 74 para. 1 no. 4 (in connection with Art. 72 para. 1) Grundgesetz (hereinafter: Federal Constitution) confers the legislative competence in matters of the right of residence and settlement to the federal level.
**REGULATIONS**

<table>
<thead>
<tr>
<th>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</th>
<th>YES</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMPETENCES OF THE COMPONENTS:</td>
<td>NO</td>
</tr>
</tbody>
</table>

**EXPLANATIONS IF NECESSARY:** Sec. 99 para. 2 Residence Act confers the competence to adopt the Residence Regulation to the Federal Government with approval by the German *Bundesrat* (Legislative Representation of the *Länder* on the federal level)
CIRCULAR OR INSTRUCTIONS
COMPETENCES OF THE FEDERAL/CENTRAL LEVEL: YES
COMPETENCES OF THE COMPONENTS: YES
EXPLANATIONS IF NECESSARY: The Länder are responsible for the organisation of the administration and thus for implementing federal laws (Art. 83 Federal Constitution). Consequently, they may adopt administrative instructions.
Art. 84 para. 2 of the Federal Constitution gives an additional and superior competence to the federal government to adopt general administrative instructions for the implementation of federal laws. These general administrative instructions must not be adopted without the consent of the Bundesrat (Legislative Representation of the Components on the federal level).
To date the Federal Government has issued preliminary instructions only (the so-called Vorläufige Anwendungshinweise des Bundesministeriums des Innern, hereinafter: AH-BMI) on the implementation of the Residence Act. However, these instructions were issued without the consent of the Bundesrat. Therefore, they do not have direct effect. Nevertheless it is common practice of the public authorities even of the Länder to use the AH-BMI as guidelines. Hence, on the basis of the constitutional guarantee of equality (Art. 3 para 1 Federal Constitution) a foreigner may claim to be treated according to the AH-BMI when another foreigner has been treated alike.

Q.2.B. In case, explain if the federal structure and the distribution of competences between the different levels pose any problem or difficulty regarding the transposition and/or the implementation of the directive.

➢ No difficulties observed.

Q.3. Explain which authorities are competent for the practical implementation of the norm of transposition by taking the decisions in individual cases.

Please use one table per competence concerned and duplicate it if necessary

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Issuance of national entry-visa for the purpose of family reunification allowing applicants to enter federal territory.</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Auswärtiges Amt (Foreign Office, this is the federal ministry for foreign affairs)</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>Diplomatic missions entitled by the Foreign Office</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td>The diplomatic missions form part of the Foreign Office. Therefore, they are not independent from the Federal Minister of Foreign Affairs but are subjected to his instructions.</td>
</tr>
</tbody>
</table>

NATIONAL REPORTS - DIRECTIVE ON FAMILY REUNIFICATION
### Competence Concerned:

- Granting, extension and withdrawal a (temporary) **residence permit**
- Granting an withdrawal of an – in most cases subsequent – (permanent) settlement permit

### Central Ministry of:

*Landesinnenministerien* (Ministries of the Interior of the German Länder (states))

### Direction or Service Within the Above Ministry:

*Ausländerbehörden* (foreigners’ authorities of the Länder)

### Other Level of Administration:

The foreigners’ authorities, when granting a residence permit according to the Residence Act, apply federal law (the Residence Act is a federal law). However they are authorities of the Länder. This means that they are subjected to the instructions of the corresponding minister, in most cases the minister of the interior, of the Land.

### Competence Concerned:

Access to education

### Central Ministry of:

*Landesschulministerien* (Ministries of School and Education of the German Länder (states) (resp. titles vary between the Länder)

### Direction or Service Within the Above Ministry:

School Department

### Other Level of Administration:

*Schulämter* (school authorities of the Länder, resp titles vary between the Länder)

### If Necessary, Comment About the Nature of the Authority (for instance if it is independent of the competent minister)

### Competence Concerned:

Access to employment and self-employed activity

### Central Ministry of:

Federal Ministry of Labour and Social Affairs

### Direction or Service Within the Above Ministry:

Department II – (Employment policy, employment of foreigners, unemployment insurance, basic security for unemployed people)

### Other Level of Administration:

*Bundesagentur für Arbeit* (Federal Employment Agency), *Regionaldirektionen* (regional divisions), *Agenturen für Arbeit* (local employment agencies)

### If Necessary,

The Federal Ministry of Labour and Social Affairs exercises the...
COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister) | right of legal supervision of the Federal Employment Agency and its other levels of administration. (Access to employment and self-employed activity is aligned to the sponsor’s access. Thus, the authorities mentioned above only acts where the sponsor’s access is restricted.)

COMPETENCE CONCERNED: | Access to vocational guidance, initial and further training and retraining

CENTRAL MINISTRY OF: | Federal Ministry of Labour and Social Affairs

DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY: | Department II – (Employment policy, employment of foreigners, unemployment insurance, basic security for unemployed people)

OTHER LEVEL OF ADMINISTRATION: | Bundesagentur für Arbeit (Federal Employment Agency), Regionaldirektionen (regional divisions), Agenturen für Arbeit (local employment agencies)

IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister) | The Federal Ministry of Labour and Social Affairs exercises the right of legal supervision of the Federal Employment Agency and its other levels of administration.

Q.4. A. Has the main regulation foreseen explicitly by the main norm of transposition already been adopted or not:

- Not applicable. There is no main regulation provided for by the main norms of transposition. The main norms of transposition are included in the Residence Act itself that entered into force on 1 January 2005 and in the Transposition Act that amended the Residence Act which entered into force on 28 August 2007.

☐ YES

☐ NO

Q.4.B. If the main norm(s) of transposition foresees the adoption of one or several regulations, indicate if they have all been adopted:

- See above.

☐ YES

☐ NO

If NO, please indicate the missing text(s) in the table below

Please use one line per missing text and duplicate it if necessary

MISSING TEXTS
Add if necessary some explanations (specify in particular if the missing texts are at least under preparation or foreseen in the very near future):
AIM (ARTICLE 1)

The purpose of the Directive is to determine the conditions for the exercise of the right to family reunification. In case C-540/03, the Court of justice recognizes that, in some cases, member States do not have any margin of appreciation to grant the right to family reunification.

Q.5 – Is family reunification considered as a right in your Member State?

☐ OUI
☐ NON

Please explain

- According to a decision reached by the Bundesverfassungsgericht (Federal Constitutional Court) in 1987 the right to live with one’s family forms part of the guarantee and protection of family enshrined in art. 6 Federal Constitution. The Court ruled however, that the competence to define this right is with the legislator; therefore applicants can not directly challenge the constitution.
- Consequently sec. 27 para. 1 Residence Act provides that the residence permit for the purpose of family reunification “shall be granted and extended to protect marriage and family in accordance with Art. 6 Federal Constitution.”

Q.5. A – Are there any figures available relating to the exercise of the right to family reunification between 2002 and 2006? If yes, what are the trends, including nationality assessment?

- Figures:

1) Holders of a residence title in Germany

<table>
<thead>
<tr>
<th>Total</th>
<th>1.137.867</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Thereof for the purpose of education:</td>
<td>137.227</td>
</tr>
<tr>
<td>- Thereof for the purpose of employment:</td>
<td>72.096</td>
</tr>
<tr>
<td>- Thereof for the purpose of family reunification:</td>
<td>615.839</td>
</tr>
<tr>
<td>- Special residence purposes</td>
<td>66.709</td>
</tr>
</tbody>
</table>


233 Bundesverfassungsgericht (Federal Constitutional Court), decision of 12 May 1987, case numbers 2 BvR 1226/93, 2 BvR 101/94 and BvR 313/94, BVerfGE 76, 1, 42.
2) Visa issued to third country nationals for the purpose of family reunification

<table>
<thead>
<tr>
<th>Migration of...</th>
<th>Wives to foreign husbands</th>
<th>In %</th>
<th>Husbands to foreign spouses</th>
<th>In %</th>
<th>Wives to German husbands</th>
<th>In %</th>
<th>Husbands to German wives</th>
<th>In %</th>
<th>children under the age of 18*</th>
<th>In %</th>
<th>Total</th>
<th>In %</th>
<th>Variance in comparison to the preceding year</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003</td>
<td>18.412</td>
<td>24.2</td>
<td>6.535</td>
<td>8.6</td>
<td>20.539</td>
<td>26.9</td>
<td>12.683</td>
<td>15.7</td>
<td>17.908</td>
<td>23.5</td>
<td>76.077</td>
<td>-11%</td>
<td></td>
</tr>
</tbody>
</table>


* Figures contain family reunification to foreigners and Germans.

- Main countries of origin in 2004 (the total number of immigrants for the purpose of family reasons was 65,935):
  - The main country of origin was Turkey (27%). However the number of Turkish applicants is falling.
  - Turkey is followed by the Russian Federation (8%)
  - Serbia & Montenegro (7%)
  - Thailand (6%)
  - Kazakhstan, Morocco, Ukraine, Bosnia-Herzegovina, India with 3% each.

- Trends:
  - Family reunification is by far the most important reason for holding a temporary residence title.
  - Since 2003 the number of visa issued for the purpose of family reunification to third country nationals is falling. This concerns spouses and children alike. One reason for this development lays in the fact, that citizens of the new EU Member States are no longer considered as third country nationals within the statistics.
  - The number of women successfully applying to reunite with their third country national husbands is about three times higher than the number of men reuniting with their third country national wives.

234 Explanatory remarks:
- The overall statistics on migration do not distinguish between the kind of migration (e.g. family reunification).
- The only figures available are provided by the Foreign Office as cited by the Migration Report 2005 of the Federal Authority for Migration and Refugees. These statistics contain the number of successful visa applications for the purpose of family reunification in the years 1996-2005. Those statistics do however only consider visa which were issued for family reunification reasons. They do not consider cases, in which an applicant entered the territory for example with a tourist visa or without a visa at all and applied for a residence title for the purpose of family reunification only when already in the territory.
- It should be noted, that prior to the accession date of the new EU-Member State, the report considered their nationals as third country nationals. I.e. although the family reunification directive would not be applicable today, these applicants are included in the category ‘visa for family reunification with third country nationals’ (E.g. Applicants wishing to reunite with Czech applicants, in 2003 were counted as third country national-family reunification.)

235 The statistics of the Foreign Office do not clearly distinguish between the nationalities of the applicants. They only state, that a certain number of family reunification visa was issued in the diplomatic missions of a certain country. Nevertheless, one may generally presume that most applicants apply in the country that corresponds to their nationality. Moreover, the statistics only give accumulated figures for the migration to foreigners (including third country nationals and EU-nationals) and German nationals.
DEFINITIONS (ARTICLE 2)

SCOPE (ARTICLE 3)

The scope of the Directive is defined by article 3. We recall that:
- § 1 "reasonable prospect..." aims at excluding persons residing on a temporary basis (stagiaires, etc…)
- European citizens are excluded (§ 3)
- Comparison with existing legislation is of importance so as to assess the added value of the harmonization process (§ 5)

Q.6. Period of validity of the sponsor’s residence permit:

Q.6. A. Is the period of validity of the sponsor’s residence permit of one year or more according to article 3 § 1 of the Directive?

☐ OUI
☐ NON

Q.6.B. Quote precisely the period enshrined in national law:

- Concerning spouses the Residence Act distinguishes between marriages that have been concluded before and those which have been concluded after the sponsor was granted the residence title for the first time:
  In case the marriage has been entered into before the sponsor was granted his residence title, sec. 30 para. 1 no. 3 lit. e) Residence Act\textsuperscript{236} requires that the sponsor – among other possible reasons - “is in possession of a residence permit … and the duration of the foreigner’s [sponsor’s] stay is expected to exceed one year.”
  In case the marriage has been entered into only later, this condition does not apply: In this case the sponsor must (among other conditions cf. Q.6.C) have been in possession of a residence permit since two years (sec. 30 para. 1 no. 3 lit d) Residence Act\textsuperscript{237}.
- However there is no such requirement for the reunification of children.

Q.6.C. How does your Member State translate in national law the requirement for the sponsor to have "reasonable prospects of obtaining the right of permanent residence" (a 3 § 1)?

- Concerning spouses – where the sponsor is in possession of a temporary residence title only (so-called Aufenthaltserlaubnis, i.e. residence permit) – the Residence Act distinguishes between marriages that have been concluded before and after the sponsor was first granted the residence title:

\textsuperscript{236} This provision was renumbered by the Transposition Act. The content has remained unchanged. It was previously contained in sec. 30 para. 1 no. 4 Residence Act.
\textsuperscript{237} This provision was amended and renumbered by the Transposition Act. The former sec. 30 para. 1 no. 3 Residence Act stipulated a period of five years. As this contradicted the Directive, the Instruction FMI had already instructed the Foreigners Authorities to apply a period of two years only. The Instruction FMI explained that in this case the condition of an expected stay of one year was fulfilled anyway.
In case the marriage has been concluded before, sec: 30 para: 1 no. 3 lit. e) Residence Act only requires that the duration of the foreigner’s stay is expected to exceed one year\textsuperscript{238}.

Where the marriage has been entered into after the sponsor was granted the residence permit, sec. 30 para. 1 no. 3 lit. d) Residence Act provides that the granting of a permanent title (the so-called \textit{Niederlassungserlaubnis}, i.e. settlement permit) must not be excluded or that the residence permit must not contain a clause according to sec. 8 para. 2 Residence Act\textsuperscript{239}. (Sec. 8 para. 2 Residence Act states that as a rule a residence permit will not be renewed where the foreigners’ authority made a corresponding statement when the residence permit was granted or lastly renewed.)

➢ There is no such requirement for the reunification of children.

Q.7. – Members of the family concerned:

Q7. A. Are they third country nationals as required by article 3 § 1 of the Directive?

[ ] OUI

[ ] NON

If not, explain

Q7. B. How has your Member State translated in national law the wording of "whatever status" included in article 3 § 1 of the Directive?

➢ There is no explicit transposition. However, national law grants the right to family reunification to the members of the nuclear family without setting up special requirements concerning their status.

Q.8 – Did the transposition of the Directive in your Member state breach provisions of international law more favourable to individuals (a 3 § 4)?

[ ] OUI

[ ] NON

Q.9 – If yes, are those provisions based on:

Q9.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?

[ ] OUI

[ ] NON

\textsuperscript{238} This provision was renumbered by the Transposition Act. The content has remained unchanged. It was previously contained in sec. 30 para. 1 no. 4 Residence Act.

\textsuperscript{239} This provision has been introduced by the Transposition Act.
Specify which provisions

**Q.9.B** - The European Social Charter of 18 October 1961 (a 3 § 4)?

☐ OUI

☐ NON

Specify which provisions

**Q.9.C**. The amended European Social Charter of 3 May 1987 (a 3 § 4)?

☐ OUI

☐ NON

Specify which provisions

**Q.9.D**. The European Convention on the legal status of migrant workers of 24 November 1977 (a 3 § 4)?

☐ OUI

☐ NON

Specify which provisions

**Q.10** – Does the transposition of the Directive affect national provisions more favourable to individuals (a 3 § 5)?

☐ OUI

☒ NON

If yes, please specify which provisions

**Beneficiaries (Article 4)**

- Article 4 of the Directive contains numerous "may clauses". It is therefore important to pay attention on the way Member States use them and on the legal modalities adopted thereof.

- Article 4 § 1 a) and b) enacts a right to family reunification for some members of the sponsor’s family. The Member State does not have any margin of discretion regarding those persons.

- Article 4 § 1 last indent foresee one derogation regarding child over 12 years on the basis of an integration criterion. This is one of the most sensitive questions encompassed by the directive beside the issue of the limit of age in § 6.

- Regarding article 4 § 6, the Court states ”’It does not matter that the final sentence of the contested provision provides that the Member States which decide to apply the
derogation are to authorise the entry and residence of children in respect of whom an application is submitted after they have reached 15 years of age ‘on grounds other than family reunification’. The term ‘family reunification’ must be interpreted in the context of the Directive as referring to family reunification in the cases where family reunification is required by the Directive. It cannot be interpreted as prohibiting a Member State which has applied the derogation from authorising the entry and residence of a child in order to enable the child to join his or her parents”. (cons. 86) The Court adds " Article 4(6) of the Directive must, moreover, be read in the light of the principles set out in Article 5(5) thereof, which requires the Member States to have due regard to the best interests of minor children, and in Article 17, which requires them to take account of a number of factors, one of which is the person’s family relationships" (cons. 87)

Q.11 – Does your national law recognize the right to family reunification to:

Q.11. A – The sponsor's spouse (a. 4 § 1 a)?

☐ OUI
☐ NON

Q.11. B - Minor children of the sponsor and of his/her spouse (a. 4 § 1 b)?

☐ OUI
☐ NON

Q.11.C. Minor children adopted of the sponsor and of his/her spouse (a. 4 § 1 b)?

☐ OUI
☐ NON

Q.11.D. Minor children of the sponsor (a. 4 § 1 c)?

☐ OUI
☐ NON

Q.11. E. If yes, does your national law foresee that the sponsor shall have children custody and children are dependant on him or her?

☐ OUI
☐ NON

Specify if necessary the proofs required

➢ National law (sec. 32 para. 3 Residence Act) does provide that the sponsor shall have child custody.
The word “dependent” has been translated into the German version of the Directive as “für den Unterhalt aufkommt”, meaning that the sponsor must support the child. The Residence Act itself does not explicitly provide that the child shall be dependent in this sense. However sec. 1601 of the German Civil Code provides that relatives in the direct ascending line must support their descendents. Sec. 27 para. 1 establishes that a residence permit is issued to permit the foreigner to live together as a family. Where a child is not dependent anymore – e.g. because he/she has founded a household or a family on his/her own, the existence of a family relationship, in which the parent pursues care and custody according to sec. 27 para. 1 Residence Act will generally be assumed to have ended and therefore family reunification will generally not be allowed.²⁴⁰

Q.11 F. Minor children adopted of the sponsor (a 4 §1.c)?

[X] OUI

[] NON

Q.11. G. If yes:

h. does your national law foresee that the sponsor shall have children custody and children are dependant on him or her?

[X] OUI

[] NON

Specify if necessary the proofs required

According to German Law an adopted child resumes the full status of a natural child of the adopting parent (sec. 1754 of the Bürgerliches Gesetzbuch, hereinafter: Civil Code). According to German civil collision norms the law of the adopting parent/s is applicable, cf. sec. 22 of the Einführungsgesetz zum BGB (Introductory Act to the Civil Code, hereinafter EG-BGB). Sec. 2 para. 1 Adoptionswirkungsgesetz (Act on the effects of adoptions, hereinafter: AdWirkG)²⁴¹ states that for adoptions carried out under foreign law a decision of the German Vormundschaftsgericht (guardianship court) is required. This decision must state that the adoption at hand is equivalent to an adoption carried out under German law. Hence, in case of adopted children the general rules on children apply, therefore cf. Q.11 E.

g.g. Does national law provide that those children shall be 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’

[X] OUI

²⁴⁰ Cf. BVerfG (Federal Constitutional Court), BVerfGE 80, 81, 90, 95.
²⁴¹ The act “Gesetz über Wirkungen der Annahme als Kind nach ausländischem Recht - Adoptionswirkungsgesetz was adopted on 5 November 2001 and entered into force on 1 January 2002.
Specify if necessary the proofs required

- The Residence Act itself does not contain such a provision. However according to civil collision law, an adoption will only be recognized, if one of the above-mentioned conditions is met. The German Civil Code provides that in case of adoption the child resumes the full status of a natural child of the adopting parent (sec. 1754 Bürgerliches Gesetzbuch, hereinafter: Civil Code). The ties to the natural parents end (sec. 1755 Civil Code, so-called “full adoption”). According to German civil collision norms the law of the adopting parent/s is applicable, cf. sec. 22 Einführungsgesetz zum Bürgerlichen Gesetzbuch (Introductory Act to the Civil Code, hereinafter: EG-BGB). For adoptions carried out under foreign law the Adoptionswirkungsgesetz (Act on the effects of adoptions, hereinafter: AdWirkG) is applicable. Sec. 2 para. 1 AdWirkG states that a decision of the guardianship court is required. The guardianship court must state that the adoption at hand is equivalent to an adoption carried out under German law (sec. 2 para. 2 AdWirkG. Therefore only a full adoption will be recognized.

Q.11. H. Minor children of the spouse (a 4 §1.d.)?

- OUI
- NON

- Sec. 32 para. 3 Residence Act provides that a minor, unmarried child of a foreigner who is under 16 years of age shall be granted a residence permit if both parents or the parent possessing the sole right of care and custody possess at least a residence permit.

Q.11. I. If yes, does your national law foresee that the spouse shall have children custody and children are dependant on him or her?

- OUI
- NON

Specify if necessary the proofs required

- See above Q.11.E.

Q.11. J. Minor children adopted of the spouse (a 4 §1.d )?

- OUI
- NON

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242 The act “Gesetz über Wirkungen der Annahme als Kind nach ausländischem Recht - Adoptionswirkungsgesetz was adopted on 5 November 2001 and entered into force on 1 January 2002.

243 According to sec. 5 para. 1 AdWirkG the Vormundschaftsgericht (guardianship court) is the competent authority for these decisions.
Since adopted children according to German law have the same status as natural children, they are entitled to a residence permit under the same conditions as a natural child of the spouse.

**Q.11. K.** If yes,

k. Does your national law foresee that the spouse shall have children custody and children are dependant on him or her?

[X] OUI

[ ] NON

Specify if necessary the proofs required

➢ See above Q.11.E.

**k.k.** Does national law provide that those children shall be 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"?

[X] OUI

[ ] NON

Specify if necessary the proofs required

➢ See above Q.11.G.gg.

**Q.12 – Has your Member State transposed the option opened by article 4 § 1 c:**

**Q.12A.** To authorise reunification of minor children of the sponsor – including also adopted children – of whom custody is shared (a 4 §1.c)?

[ ] OUI

[X] NON

Specify if necessary

➢ In case of shared care and custody a child is entitled to family reunification only where both parents possess a residence permit (sec. 32 para. 1 to 3 Residence Act).

➢ Hence, where this requirement is not fulfilled, it is of no importance, whether the other parent has given his or her consent.

**Q.12.B.** If yes, has your legislation transposed the condition that the other party sharing custody has given his or her agreement (a 4 §1. c)?

[ ] OUI

[ ] NON
Specify if necessary

Q.13 – Has your Member State transposed the option opened by article 4 § 1 d):

Q.13.A. to authorise reunification of minor children of the spouse – including also adopted children – of whom custody is shared (a 4.1.d. in fine)?

☐ OUI

☒ NON

Specify if necessary

➢ In case of shared care and custody a child is entitled to family reunification only where both parents possess a residence permit (sec. 32 para. 1 to 3 Residence Act).
➢ Hence, where this requirement is not fulfilled, it is of no importance, whether the other parent has given his or her consent.

Q.13 B. If yes, has your legislation transposed the condition that the other party sharing custody has given his or her agreement (a 4. 1.d) ?

☐ OUI

☐ NON

Specify if necessary

Q.14 – In any case referred to in questions 11-13, is the age of the minor children below the age of majority set up by the law of your Member State (a.4 §1, second indent)?

☒ OUI

☐ NON

If yes, indicate the age required

➢ The provision on reunification of children (sec. 32 Residence Act) provides for the reunification of minor children only. Thus they must be below 18 years as with 18 years they reach majority (sec. 2 Bürgerliches Gesetzbuch – Civil Code BGB).

Q.15 – In any case referred to in questions 11-13, has the prohibition of marriage of minor children been transposed (a.4 §1, second indent)?

☒ OUI

☐ NON

If not, explain Si non, expliquez
Q.16 – Is the derogation set up in article 4 § 1 last indent relating to the conditions for integration of children over 12 years arrived independently from the rest of the family used by your Member State?

[X] OUI

[ ] NON

- The derogation is set up for minor children aged 16 and older (sec. 32 para 2 Residence Act).

How the criterion "arrives independently from the rest of his/her family" has been transposed in your national legislation?

- Sec. 32 para. 1 no. 2 Residence Act provides, that a minor child is entitled to a residence permit for the purpose of family reunification, if the child relocates the central focus of his life to the Federal territory together with his/her parents or with the parent possessing the sole right of care and custody.
- Hence a minor arrives independently in terms of the directive, if he or she does not arrive as described by sec. 32 para. 1 no. 2 Residence Act.

Q.17 – If yes, did this integration condition already exist in your national legislation before the date of transposition of the Directive?

[X] OUI

[ ] NON

Q.18 – Describe briefly the content of this condition, the date of its creation and the conditions of its examination

- The integration condition was already set up by sec. 20 para. 4 of the Ausländergesetz (Foreigners’ Act, enacted on 9 July 1990; this act was in force until 31 December 2004. It preceded and was abolished by the Residence Act.) Its content has not changed and is now enacted in sec. 32 para. 2 Residence Act.
- Content: The applicant may meet the integration requirement in two different ways:
  - either he or she has command of the German language or
  - it must appear on the basis of the child’s education and way of life to date that he or she will be able to integrate into the way of life which prevails in the Federal Republic of Germany.
- This condition is examined within the application process, i.e. it is examined by the diplomatic mission or by the foreigners’ authority (if the applicant is already in the territory).
- According to no. 32.2.2 AH-BMI the authorities generally consider language skills corresponding to level C1 of the Common European Reference Frame to be necessary. Proof shall be furnished by means of a certificate of a suitable foreign or national entity (no. 32.2.3 AH-BMI).
Q.19 – Are the children of refugees required to an integration test by your Member State (in contradiction with article 10 § 1)?

☐ OUI

☒ NON

If yes, explain

Q.20 – Does your Member State authorise:

Q.20 A – Reunification of first-degree relatives in the direct ascending line of the sponsor (a 4§2 a)?

☐ OUI

☒ NON

- Exception: All members of the family not included in the nuclear family may be allowed subsequent migration only according to sec. 36 para. 2 Residence Act.\(^{244}\)
- Sec. 36 para. 2 Residence Act provides that a residence title may, at the discretion of the administration, be granted if it is necessary to avoid an exceptional hardship. This means applicants are entitled to a discretionary decision only. When examining this condition, the administration or courts may consider whether an applicant is dependant and does not enjoy proper family support in the country of origin (compare Art. 4 § 2 lit. a of Directive 2003/86/EC).
- In any case migration is only allowed to enable the applicants to live in a family relationship with the sponsor (sec. 27 para 1 Residence Act, this section applies to all kinds of family reunification). According to German jurisprudence this condition is not met, if there is a closer family relationship in the country of origin.

Q.20 B – If yes, shall they be dependant and not enjoy proper family support in the country of origin?

☐ OUI

☐ NON

How each of those criterions is transposed and checked?

Q. 20.C. Reunification of first-degree relatives in the direct ascending line of the spouse (a 4§2 a)?

☐ OUI

☒ NON

\(^{244}\) This numbering of this provision was changed by the Transposition Act. The content has remained unchanged. The provision was previously numbered sec. 36 Residence Act.
For the exceptional hardship case see Q.20.A.

Q.20.D. If yes, shall they be dependant and not enjoy proper family support in the country of origin?

☐ OUI  ☐ NON

How each of those criterions is transposed and checked?

Q.20.E. Reunification of adult unmarried children of the sponsor? (a 4§2 b) ?

☐ OUI  ☒ NON

For the exceptional hardship clause see Q.20.A.

If necessary, explain how this procedure is organised

Q.20.F. If yes, does the national legislation impose that those adult unmarried children of the sponsor are objectively unable to provide for their own needs on account of their state of health (a 4 §2 b) ?

☐ OUI  ☐ NON

If necessary, specify how each of those criterions ("objectively" and "unable to provide for their own needs") is transposed and checked?

Adult unmarried children may receive a residence permit under the exceptional hardship clause of sec. 36 para. 2 Residence Act\(^{245}\).

Sec. 36 para. 2 Residence Act does not state explicitly that the adult unmarried children shall be objectively unable to provide for their own needs on account of their state of health. It does provide that the migration must be necessary to avoid an exceptional hardship. When examining this condition, the administration or courts may take into account the above-mentioned criterions.

According to the jurisprudence of German administrative courts dependency of adult sick children in care of parents living in Germany is considered as an exceptional hardship.

Q.20. G. Does your Member State authorise reunification of adult unmarried children of the spouse (a 4§2 b)?

☐ OUI  ☒ NON

\(^{245}\) This numbering of this provision was changed by the Transposition Act. The content has remained unchanged. The provision was previously numbered sec. 36 Residence Act.
Reunification of adult unmarried children of the spouse may only be allowed under sec. 36 para. 2 Residence Act to avoid an exceptional hardship, cf. Q.20.A.

If necessary, specify how this condition is assessed

**Q.20.H.** If yes, does the national legislation impose that those adult unmarried children of the sponsor are objectively unable to provide for their own needs on account of their state of health (a 4 §2 b) ?

- [ ] OUI
- [ ] NON

If necessary, specify how each of those criterions ("objectively" and "unable to provide for their own needs") is transposed and checked?

**Q.20. I.** Did your Member state use the by law or regulation norms to implement article 4 § 2 a et b?

- [ ] OUI
- [ ] NON

Not applicable. (Art. 4 § 2 a and b of the Directive have not been precisely implemented, since reunification of those family members is not allowed in general but only in the special hardship case – which is provided for by law, cf. sec. 36 para. 2 Residence Act).

**Q.21 –** Does your Member State authorise reunification of the unmarried partner of the sponsor, being a third country national (a 4 §3)?

- [x] OUI
- [ ] NON

- This answer and the following answers apply to same-sex partners only. Sec. 27 para. 2 Residence Act provides that the norms concerning family reunification with a spouse also apply to reunification with the registered partner. According to national law the possibility to register a partnership is restricted to same-sex partners. The registration is considered as equivalent to marriage for the residential status.

**Q.22 –** If yes:

**Q.22 A –** This partnership shall be based on a duly attested stable long term relationship?

- [ ] OUI
- [x] NON
If yes, specify how your Member State assess this situation

**Q.22 B** – This partnership shall be registered?

[X] OUI

[ ] NON

➢ Explanation: According to sec. 1 para. 1 *Lebenspartnerschaftsgesetz* (Act on Life Partners of 16 February 2001, entered into force on 1 August 2001) a life partnership is established when the two partners make a corresponding statement in front of the authority in charge.

**Q.23** – Does your national law consider the registered partner as the husband/spouse (a 4 §3 alinéa 2)?

[ ] OUI

[X] NON

Explanation: Sec. 27 para 2 Residence Act provides that the norms on reunification with a spouse shall apply to the reunification with a registered partner mutatis mutandis by referring explicitly to the corresponding norms sec. 28 to 31 Residence Act. Sec. 27 para. 2 Residence Act does not contain a reference to the norms concerning reunification with children (sec. 32 Residence Act). Therefore it does not include reunification of children.

**Q.24** – Does your Member State authorise:

**Q.24. A** – Reunification of minor children of the partner, including adopted children (a 4§3)?

[X] OUI

[ ] NON

**Q.24. B** – Reunification of adult unmarried children of the partner, including adopted children (a 4§3)?

[ ] OUI

[X] NON

**Q.25** – Does your Member State allow reunification of adult unmarried children who are objectively unable to provide for their own needs on account of their state of health (a 4§3)?

[ ] OUI

[X] NON

If yes, specify how the conditions, and more particularly the "objectivity", are assessed.
Q.26 – Did your Member state use the by law or regulation norms to implement article 4 § 3?

➢ No.

Q.27 – Is the prohibition of polygamous marriage enshrined in your national legislation (a. 4§4)?

[ ] OUI
[ ] NON

➢ Sec. 30 para. 4 Residence Act now states explicitly, that a residence permit will not be issued to a further spouse246.

➢ Even before this amendment entered into force on 28 August 2007, according to German jurisprudence a polygamous second marriage, which may legally be entered into only abroad (cf. sec. 172 German Penal Code) did not enjoy the protection of marriage as guaranteed by Art. 6 Federal Constitution. Therefore a further spouse was not entitled to a residence permit. However, subsequent migration was in rare cases allowed under the terms of sec. 36 Residence Act (now sec. 36 para. 2 Residence Act247), i.e. to avoid an extraordinary hardship.

➢ In view of art. 4 § 3 Directive 2003/86/EC sec. 36 para.2 Residence Act will have to be interpreted as not allowing for the further spouse to reunite.

Q.28 – Does your Member State limit family reunification of minor children of a further spouse and the sponsor (article 4§4 dernier alinéa,)?

[ ] OUI
[ ] NON

➢ German law does not distinguish between children of a first and a further spouse. Therefore general rules concerning subsequent migration of children apply: family reunification is granted when the sponsor enjoys the sole right of child custody or when custody is shared and the other spouse is in possession of a residence permit.

Q.29 – Does your Member State use the option set up by article 4 § 5 requiring the sponsor and his/her spouse to be of a minimum age of 21 years old before reunification?

[ ] OUI
[ ] NON

➢ Sec. 30 para. 1 no. 1 Residence Act now stipulates a minimum age of 18 years for both spouses. Sec. 30 para. 2 Residence Act states that notwithstanding the aforementioned condition a residence permit may be issued to avoid a particular hardship. (These requirements were introduced by the Transposition Act that entered into force on 28 August 2007).

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246 This provision was introduced by the Transposition Act which entered into force on 28 August 2007.
247 The numbering was changed by the Transposition Act that entered into force on 28 August 2007.
Until these amendments entered into force on 28 August 2007, the Residence Act did not provide for a minimum age.

Q.30 – If yes,

Q.30 A – What is the age required?

Q.30 B – Is the derogation founded on integration criteria and/or prevention of forced marriage?

According to the explanation given in the Government’s Draft for the Transposition Act (hereinafter: Transposition Act-Draft) the derogation is based on both reasons.248

Q.31 – Does your Member State use the derogation of article 4 § 6 by requesting that the applications concerning family reunification of minor children have to be submitted before the age of 15?

☐ OUI

☒ NON

Explain

Q.32 – If yes, was it provided by existing legislation on the date of implementation of the directive?

Q.33 – If the application is not introduced before the age of 15, do Member States authorise entry and residence on grounds other than family reunification?

☐ OUI

☐ NON

Which grounds and which conditions?

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PROCEDURE (ARTICLE 5)

We draw attention on the major importance given by the Court of justice regarding § 5 relating to the best interest of minor children.

Q.34 – Did your Member State institute a procedure regarding family reunification (a 5 §1)?

☐ OUI

□ NON

Q.35 – If yes,

Q.35. A – Which authorities are in charge of this issue?

➢ To enter the federal territory applicants generally need to apply for a national long-term visa for the purpose of family reunification (sec. 6 para. 4 Residence Act). The diplomatic missions authorised by the Foreign Office are responsible for all matters relating to visa (sec. 71 para. 2 Residence Act). In this process the foreigners’ authority in Germany is involved also and needs to give its consent to the issuance (sec. 31 para. 1 sent. 1 no. 1 Residence Regulation).

(Applicants from certain countries are exempted from the obligation to get a long-term visa before entering the federal territory. They may apply for the residence permit in Germany directly. This applies to citizens of Australia, Israel, Japan, Canada, New Zealand, the Republic of Korea and the United States of America, cf. sec. 41 para. 1 Residence Regulation).

➢ Once a foreigner is in the territory it is the local foreigners’ authority which is in charge. This applies to the granting, renewal and withdrawal of a residence permit for the purpose of family reunification (sec. 71 para. 1 Residence Act).

Q.35. B – Are NGO’s associated to this procedure?

☐ OUI

□ NON

If yes, describe the procedure

Q.35. C – Is the application submitted by the sponsor or by family members?

➢ The new sec. 81 para. 1 Residence Act (as amended by the Transposition Act, entered into force on 28 August 2007) states that the application shall be made by the applicant him- or herself. The applicant is to be understood as the person requesting a residence title for the purpose of family reunification, i.e. the family member, not the sponsor.

➢ Until this amendment entered into force, the previous sec. 81 para. 1 Residence Act provided, that an application was needed in order to issue a residence title, it did however not state, who should submit it. According to general rules of the Administrative Procedures Act however the application had to be submitted by the family member.
Q.35. D – Is this procedure exclusive from other possibilities to grant family reunification?

☐ OUI

☒ NON

If other procedural possibilities exist, please describe them

- An applicant may have entered the federal territory with a visa issued for another reason than family reunification. Or the applicant may have entered the federal territory illegally. In these cases according to sec. 5 para. 2 sent. 1 Residence Act a residence permit cannot be granted. Therefore, the applicant will generally be required to return to his/her country of origin and redo the visa application process. Where the applicant fulfills all other requirements, the local German foreigners’ authority will give its prior consent to the applicant to re-enter German territory for the purpose of family reunification. Only if return is considered as unreasonable an applicant may apply within Germany for a residence permit (sec. 5 para. 2 sent. 2 Residence Act).

Q.35. E – Was this procedure existing before the adoption of Directive 2003/86?

☒ OUI

☐ NON

Q.36 – Which documentary evidence are required to prove (a 5 §2):

Q.36. A – Family relationships according to article 4?

- According to sec. 82 para. 1 sent. 1 Residence Act the foreigner is obliged to put forward his or her interests and any circumstances in his or her favour which are not evident or known, specifying verifiable circumstances, and to produce forthwith the necessary evidence relating to his or her situation, other required certificates and permits and other required documents which he or she is able to furnish. This means that the foreigner requesting the residence title generally needs to furnish proofs for all the requirements that need to be fulfilled to grant the residence permit.

- The preliminary instructions of the Federal Ministry of the Interior (AH-BMI) further specify, which proofs will generally be asked for: No. 27.0.4 of the preliminary instructions (AH-BMI) provides: “The proof shall generally be made by official documents, especially documents on the civil status” [such as birth certificates]. It is at the discretion of the administration how the family relationship is to be proven. A translation of a foreign document, made by a suitable person, may be required. Generally, the administration may also ask for the authentication of a foreign document, which has to be made by the diplomatic mission in charge.”

- No. 27.1.8 AH-BMI further provides that investigations may be necessary to decide that there is a real family relationship which is
characterised by the fact that family members care for and assist each other. These investigations may also focus on the actual economic relations of the family members and consequently as proofs may be accepted for example records proving that the partners share responsibilities (for example bank account records, contracts on water supply or heating).

Q.36. B – Accommodation conditions laid down in article 7?

- According to sec. 82 para. 1 sent. 1 Residence Act the foreigner is obliged to put forward his or her interests and any circumstances in his or her favour which are not evident or known, specifying verifiable circumstances, and to produce forthwith the necessary evidence relating to his or her situation, other required certificates and permits and other required documents which he or she is able to furnish. This means that the foreigner requesting the residence title generally needs to furnish proofs for all the requirements that need to be fulfilled to grant a residence permit.
- The preliminary instructions of the Federal Ministry of the Interior (AH-BMI) further specify under no. 82.1.2. that the foreigner must explain actual verifiable circumstances and put forward the supporting documents. The AH-BMI do not further specify which proofs will generally be asked for to prove the accommodation conditions. No. 2.0.4 only describes the accommodation conditions that need to be fulfilled (e.g. the necessary size of the accommodation).

Q.36. C – Sickness insurance conditions?

- In general an insurance policy is needed.249

Q.36. D – Certified copies of family member(s)' travel documents?

- According to sec. 82 para. 1 sent. 1 Residence Act the foreigner is obliged to put forward his or her interests and any circumstances in his or her favour which are not evident or known, specifying verifiable circumstances, and to produce forthwith the necessary evidence relating to his or her situation, other required certificates and permits and other required documents which he or she is able to furnish.
- Generally a passport is needed in order to stay in the Federal territory, sec. 3 para. 1 Residence Act. It is generally sufficient to show the passport to the foreigners' authority. Certified copies of the travel documents are generally not asked for.

Q.37 – Is the possibility foreseen to proceed to:

Interviews:

- OUI
- NON

Investigations:

- OUI

If yes, describe them briefly

- According to sec. 79 para. 1 Residence Act the foreigners’ authority decides on the basis of the circumstances which are known in the Federal territory and accessible knowledge.
- General administrative procedure rules further provide, that the administration may investigate the facts on its own by, asking for information, interviews with the applicants and the family members, witnesses or authorised experts, consulting official documents and doing inspections (sec. 26 VwVfG)

Q.38 – When examining an application concerning the unmarried partner of the sponsor, which evidences are taken into account by Member States on the basis of national law to prove family relationship (article 5§2 dernier alinea) ?

Q.38. A – Existence of family ties and other elements such as a common child?
- OUI
- NON

Specify

- Only same-sex registered partners are allowed to reunite. Since they do not have the possibility to marry, registration of their partnership is considered the equivalent. Only in case of a registered partnership, the family reunification norms on spouses do apply mutatis mutandis.

Q.38. B - Previous cohabitation?
- OUI
- NON

Q.38. C - Registration of a partnership
- OUI
- NON

Q.38. D - Any other reliable means of proof foreseen in national law?
- OUI
- NON

If yes, specify which ones:
Q.39 – Are family members obliged to reside outside the territory of the Member State while the application is being examined (a5 §3)?

☐ OUI
☐ NON

Is this obligation sanctioned and how?

➢ To enter Federal territory a third country national generally needs an entry visa issued for the purpose of family reunification (cf. sec. 4 and 14 para. 1 no. 2 Residence Act). Therefore, third country nationals generally need to stay outside the territory until the application has been examined.

➢ A third country national entering Federal territory without the necessary visa is obliged to leave the country (sec. 50 para. 1 Residence Act).

Q.40 – If the answer is yes, is a derogation organised according to article 5 § 3 second indent?

☐ OUI
☐ NON

Please specify

➢ A residence permit may at the discretion of the administration be granted to an applicant already in Germany where the person is entitled to a residence permit or due to special circumstances return is considered unreasonable (sec. 5 para. 2 sent. 2 Residence Act).

➢ Furthermore sec. 39-41 Residence Regulation contain certain cases in which third country nationals may apply for a residence title in Germany directly. The main case concerns citizens of certain countries such as Australia, Israel, Japan, the Republic of Korea, New Zealand, the USA,

Q.41 – Does your national legislation include a maximum period of 9 month to answer to the application by way of written notification (a5 §4)?

☐ OUI
☐ NON

If necessary, please specify

➢ There is no explicit time limit.

➢ However, there are several provisions ensuring a decision without delay: According to sec. 10 sent. 2 Verwaltungsverfahrensgesetz (Administrative Procedures Act) every administrative procedure has to be conducted simple, appropriate and efficient. For procedures which are directed to obtain a permission (such as a residence permit) sec. 71 b Administrative Procedures Act contemplates that they have to be concluded within an appropriate period of time (principle of a speedy procedure). In particular cases the procedure can be additionally accelerated upon application.
Furthermore, according to sec. 75 of the Verwaltungsgerichtsordnung (Administrative Courts Act) applicants are entitled to file a motion against the authorities which did not decide within the stipulated time frame of three months from their application. Therefore, the administration generally has three months to decide upon an application and there is no need for a supplementary explicit transposition of the period mentioned in art. 5 sec. 4 of the Directive.

Q.42 – This time limit can be extended (a 5 §4 alinea 2)?

☐ OUI
☐ NON

Sec. 75 Administrative Courts Act specifies that the Court may set a deadline for the decision and that this deadline may be extended if there is a reason deemed to be sufficient that the administration has not reached a decision yet. In practice this reason is generally linked to the complexity of the examination of the application.

Q.43 – If yes,

Q.43. A – Because of the complexity of the examination of the application?

☐ OUI
☐ NON

If yes, please specify

☐ Not applicable (cf. however Q.41 point 4).

Q.43. B – What is the length of the extension?

☐ Not applicable.

Q.44 – If no decision is taken by the end of the 9 months period provided, what are the consequences for the applicant?

☐ The applicant may file a claim according to sec. 75 Verwaltungsgerichtsordnung (Administrative Courts Act). This is generally possible already if no decision has been reached within three months from the application. The court will then decide whether the applicant is entitled to a residence permit for family reunification (for details see Q.41).

Q.45 – Is the decision rejecting the application notified? Does this written notification contain the reasons of rejection?

☐ OUI
☐ NON
The decision rejecting the application for a residence permit is notified and contains the reasons of rejection (cf. sec. 39 Administrative Procedures Acts of the Components).

The decision rejecting the application for a visa is notified. German legislation does not contain a norm stating that the decision must contain the reasons of rejection. However, according to administrative guidelines negative decisions relating to a visa request for family reunification must be explained in writing.

Q.46 – How is the best interest of minor children taken into account by your Member State’s legislation and authorities during examination of the application (article 5§5)?

It is assumed that in the application of the provisions of the Residence Act the best interest of the child is taken into consideration as a general public interest obligatory due to the Federal Republic of Germany’s ratification of the UN Convention on the Rights of the Child. In case a minor child is not entitled to a residence permit anyway, sec. 32 para. 4 Residence Act provides that a residence permit may be issued if it is necessary to avoid a particular hardship. This paragraph states explicitly that the well-being of the child and the family situation have to be considered.

CONDITIONS REQUIRED (ARTICLES 6 AND OTHERS)

Questions relating to accommodation and resources will be carefully examined to assess if Member States use them, either as a migration tool or as an integration tool.

The same assessment applies regarding the option to set up a period of lawfully residence not exceeding two years before applying for family reunification.

According to article 8, the Court of justice states: "That provision does not therefore have the effect of precluding any family reunification, but preserves a limited margin of appreciation for the Member States by permitting them to make sure that family reunification will take place in favourable conditions, after the sponsor has been residing in the host State for a period sufficiently long for it to be assumed that the family members will settle down well and display a certain level of integration. Accordingly, the fact that a Member State takes those factors into account and the power to defer family reunification for two or, as the case may be, three years do not run counter to the right to respect for family rights set out in particular in Article 8 of the ECHR as interpreted by the European Court of Human Rights.

"It should, however, be remembered that, as is apparent from Article 17 of the Directive, duration of residence in the Member State is only one of the factors which must be taken into account by the Member State when considering an application and that a waiting period cannot be imposed without taking into account, in specific cases, all the relevant factors" (cons. 99). "The same is true of the criterion of the Member State’s reception capacity, which may be one of the factors taken into account when considering an application, but cannot be interpreted as authorising any quota system or a three-year waiting period imposed without regard to the particular circumstances.

250 The Convention entered into force in Germany on 5 April 1992.
of specific cases. Analysis of all the factors, as prescribed in Article 17 of the Directive, does not allow just this one factor to be taken into account and requires genuine examination of reception capacity at the time of the application” (cons. 100) “When carrying out that analysis, the Member States must, as is pointed out in paragraph 63 of the present judgment, also have due regard to the best interests of minor children” (cons. 101).

Q.47 – Can public policy, public security or public health grounds be taken into account to (a 6 §§1 et 2):

Q.47. A – Reject an application for family reunification?

☐ OUI

☐ NON

If yes, which ones?

Ș When issuing a residence permit, public policy, public security or public health grounds can be taken into account due to the following legislation:
Ș Sec. 5 para. 1 Residence Act sets up general requirements for the issuance of a residence permit. It reads: “The granting of a residence title shall generally require […] and shall further presuppose […]
2. That no grounds for expulsion apply and
3. Insofar as the foreigner has no entitlement to the granting of a residence title, that the foreigner's residence does not compromise or jeopardise the interests of the Federal Republic of Germany for any other reason.”
Ș Hence, sec. 5 para. 1 no. 2 Residence Act refers to the provisions concerning expulsion, laid down in sec. 53 to 55 Residence Act. According to sec. 53 Residence Act expulsion is mandatory e.g. for foreigners sentenced to a prison term of at least three years or two years in case of offences against the narcotics act or for breach of peace. Moreover, sec. 54 para. 1 Residence Act provides for the regular expulsion in case of a sentence to two years prison term. Pursuant to sec. 54 para. 5a Residence Act a foreigner will generally be expelled if he or she endangers the free democratic basic order or the security of the Federal Republic of Germany, participates in acts of violence or publicly incites to violence in pursuit of political objectives or threatens the use of violence. A foreigner may – at the discretion of the administration – be expelled if his or her stay is detrimental to public safety and law and order or other substantial interests of the Federal Republic of Germany. Finally a foreigner may be expelled if he or she endangers public health through his or her behaviour (sec. 55 para. 2 no. 5 Residence Act).
Ș Therefore rejection of a residence permit is possible on grounds of public policy (cf. sec. 5 para. 1 no. 2 Residence Act in connection with sec. 54 para. 5a Residence Act), public security (cf. sec. 5 para. 1 no. 2 Residence Act in connection with sec. 54 para. 5a Residence Act) and public health (cf. sec. 5 para 1 no. 2 Residence Act in connection with sec. 55 para 2 no. 5 Residence Act).
Q.47. B – Withdraw an application for family reunification?

☐ OUI
☐ NON

If necessary, please specify

- Sec. 51 para. 1 Residence Act states that the residence permit expires upon withdrawal (sec. 51 para. 1 no. 3 Residence Act) and revocation (sec. 51 para 1 no. 4 Residence Act) of the residence permit and in case of the foreigner’s expulsion (sec. 51 para. 1 no. 5 Residence Act).

- It is not clear, whether art. 6 sec. 2 Directive 2003/86/EC is meant to comprise all three alternatives. The English wording “withdraw” is translated as “entziehen” in the directive, although this is no legal term in German law. Therefore it seems that the term “withdraw” in art. 6 para. 2 Directive 2003/86/EC has to be construed in a way as comprising all three alternatives existing in German law for loosing a residence permit.

- Withdrawal in German law concerns unlawful administrative acts only, whereas revocation concerns lawful administrative acts.

- The Residence Act does not contain provisions on withdrawal of unlawful acts itself. Therefore, the corresponding norms on withdrawal of administrative acts contained in the Administrative Procedures Acts of the Länder are applicable. (Due to the federal structure of Germany the administrative bodies of the Länder are in charge of implementing the Residence Act, therefore their Administrative Procedures Acts are applicable. However, these acts in general fully correspond to the Federal Administrative Procedures Act which therefore will be cited hereinafter251).

- Sec. 48 para. 1 sent. 2 Administrative Procedures Acts of the Components provide that an unlawful administrative act may, even after it has become non-appealable, be withdrawn wholly or in part either retrospectively or with effect for the future.

An administrative act is regarded unlawful, if it has been issued contrary to the law. Therefore, when deciding on the withdrawal the general requirements on the issuance of a residence permit stipulated in sec. 5 para 1 no. 2 and 3 Residence Act need to be examined. The provisions take into account public policy, security and health (i.a. by referring to the provisions on expulsion of foreigners (sec. 53 to 55 Residence Act, cf. Q. 47 A).

- Concerning revocation of lawful administrative acts sec. 52 Residence Act provides that a residence permit may only be revoked in specific cases: i.e. if
  - No. 1: He or she no longer possesses a valid passport or passport substitute,
  - No. 2: He or she changes or loses his or her nationality,
  - No. 3: He or she has not yet entered the Federal territory or
  - No. 4: His or her recognition as a person entitled to asylum or his or her refugee status lapses or becomes null and void.)

As this is a discretionary decision, the administration has to weigh, whether the public interest to terminate the residence of the foreigner or his

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251 An English version of this Act is available on http://www.bmi.bund.de/Internet/Content/Common/Anlagen/Gesetze/VwVfg__englisch,templateId=raw,property=publicationFile.pdf/VwVfg_englisch.pdf.
or her personal interests preponderate. This means that public policy, security and health alone are no sufficient basis for the revocation of a lawful residence title. However the revocation is a discretionary decision. Therefore if one of the requirements stipulated in sec. 52 Residence Act is met public policy, security and health may be taken into account when applying the discretion.

- Concerning the termination of a residence permit due to an expulsion (cf. sec. 51 para. 1 no 5 Residence Act) please refer to Q.47 A.

Q.47. C – Refuse to renew a family member's residence permit?

- OUI
- NON

If necessary, please specify

Sec. 8 para. 1 Residence Act states that extension of the residence permit shall be subject to the same provisions that apply to the issuance of a residence permit. So reference is made to the general requirements mentioned in sec. 5 para. 1 no. 2 and 3 Residence Act in connection with the provision on expulsion. These provisions provide that public policy, security and public health may be taken into account (for more details see Q.47 A: The provisions on expulsion, especially sec. 55 para. 2 no. 5 Residence Act do not stipulate that an expulsion may be carried out only because of the mere illness or disability of the foreigner (cf. art. 6 para 3 of the Directive). Rather the foreigner may only be expelled if he endangers public health through his or her behaviour (sec. 55 para. 2 no. 5 Residence Act)).

Q.48 – Does national legislation take into account:

Q.48. A – The severity or type of offence against public policy or public security?

- OUI
- NON

Q.48. B – The solidity of family relationships regarding article 17 of the Directive?

- OUI
- NON

If necessary, please specify

Sec. 30 para. 3 Residence Act states that a residence permit may be renewed to avoid a particular hardship as long as the marital relationship exists although the requirements set up for the family reunification of a spouse (in particular: sufficient resources, sec. 5 para. 1 no. 1 Residence Act, and accommodation, sec. 29 para. 1 no. 2 Residence Act...
Act) are no longer fulfilled. According to sec. 32 para. 4 Residence Act a residence permit may be granted to a **minor child** if necessary in order to prevent special hardship on account of the circumstances pertaining to the individual case concerned. The child's wellbeing and the family situation are to be taken into consideration in this connection.

Sec. 5 para. 1 Residence Act states that **as a rule** a residence title will only be **issued** where no reason for expulsion exists (sec. 5 para. 1 no. 2 Residence Act) or (among other reasons) the applicant’s livelihood is secured. That means that if these requirements are not fulfilled the application will generally be rejected. Sec. 8 para. 1 Residence Act states that this provision is applicable in case of a **renewal** as well. The wording “as a rule” means that a different decision is possible only where special circumstances, which deviate from the normal case, are brought forward. Consequently, the public authorities, when deciding on a rejection of issuance or renewal, may consider the nature and solidity of the family relationship and the duration of his stay in Germany.

**Q.49** – Does your Member State withdraw the residence permit or remove the third country national on the sole ground of illness or disability suffered after the issue of the residence permit (a 6 §3)?

☑️ OUI

☒ NON

**Q.50** – Are accommodation conditions required from the applicant (a7 §1a) ?

☒ OUI

☐ NON

**Q.51** – If yes:

**Q.51. A** – What are those conditions?

Sec. 2 para. 4 Residence Act defines: The space which is required to accommodate a person in need of accommodation in state-subsidised welfare housing shall constitute sufficient living space. Living space must be sufficient in regard to **condition** and **occupancy**. Children under the age of two are not counted.

**Q.51. B** – How are they assessed?

No. 2.4.2-2.4.3 AH-BMI define the size necessary as follow:

- 12 m² for a person above the age of 6 and
- 10 m² for a child under the age of 6,
- (children under the age of 2 are not counted).

The AH-BMI further mention that these figures are maximum figures. The Components may stipulate smaller figures; the bottom line is defined by the legislation of the Components on social welfare housing which is applicable to Germans as well.
The Practice Report of the Ministry of the Interior Baden-Württemberg mentions a requirement of 12 m² for a person above the age of 6.\textsuperscript{252}

**Q.51 C** – Are they comparable to the conditions required to a normal family living in the same region?

- [ ] OUI
- [ ] NON

If not, please specify the differences

- Concerning the size of the accommodation German law requires even less than normal standard, see Q.51.A, since sec. 2 para. 4 Residence Act considers accommodation on the level of state-subsidised welfare housing to be sufficient. Since the standards are defined by the German Components, it is secured that the conditions are comparable to the standards prevailing in the same region.

**Q.52** – Is a sickness insurance required from the applicant (a. 7 §1b) ?

- [ ] OUI
- [ ] NON

**Q.53** – Are stable resources required (a7 §1c) ?

- [ ] OUI
- [ ] NON

Specify their nature and content

- The applicant must be able to earn his living without recourse to public funds. This includes health insurance but excludes child benefits or child raising benefits as well as public funds based on contributions.

**Q.54** – How is the condition "sufficient" assessed by your Member State? Is it in comparison with national wages?

- No, the administration generally demands resources on the social security level only (cf. no. 2.3 AH-BMI).
- Sec. 2 para. 3 Residence Act specifies: “A foreigner's livelihood is secure when he or she is able to earn their living, including adequate health insurance coverage, without recourse to public funds. For the purposes of this definition, such funds do not include child benefits, child raising benefits and public funds which are based on contributions or which are granted in order to enable residence in the Federal territory. Contributions to the household income by family members shall be taken into account in connection with the issuance or extension of a residence permit in the context of the subsequent immigration of dependents.”

\textsuperscript{252} Practice report of Baden-Württemberg, p. 12.
According to the Practice Report of Baden-Württemberg the applicant has to proof funds corresponding to the social security level plus heating and the costs for accommodation and an integration course (where applicable)\textsuperscript{253}.

**Q.55** – Are integration criterions required to allow family reunification (a 7 §2)?

- [X] OUI
- [ ] NON

**Q.56** – If yes:

**Q.56. A** – What are those criterions?

- A spouse seeking family reunification is required to be able to make her- or himself understood in German on a basic level (sec. 30 para. 1 sent. 1 no. 2 Residence Act). The provision is also applicable within the visa procedure (\textit{cf. sec. 6 para. 4 sent. 1 Residence Act}), meaning that also an entry-visa for the purpose of family reunification will be granted only if the applicant possesses basic language skills.\textsuperscript{254} The new sec. 30 para. 1 sent. 2 of the Residence Act takes exceptional circumstances explicitly into account by providing that in certain enumerated cases spouses are exempted from this language requirement. For example spouses who are not able to prove German language skills due to mental, psychic or physical illness or disability or who will live in Germany only for a short period of time are exempted.

- The relevant provision for spouses is sec. 30 para. 1 of the amended Residence Act and it reads as follows:

  “(1) (sentence 1) A foreigner's spouse shall be granted a residence permit if

1. …
2. the spouse is able to communicate in the German language on a basic level
3. …

(sentence 3) Notwithstanding sentence 1 no. 2 a residence permit shall be granted when

1. The foreigner [i.e. the sponsor] is in possession of a residence title pursuant to sec. 25 para. 1 [this concerns recognized refugees] … and the marriage existed at the time when the foreigner relocated the central focus of his/her life into the Federal territory,

\textsuperscript{253} Practice report of Baden-Württemberg, p. 12.

\textsuperscript{254} This system was criticized by the political party \textit{Bündnis 90/Die Grünen} in its motion of 25 April 2007 regarding the Residence Act-Draft, see Parliamentary Document no. 16/5103, pp. 2 and 5, no. II.A.1.2. Spouses should acquire German language skills in integration courses in Germany. Therefore it holds, there is no need for setting up such precondition before entry. The party states that it is easier to learn German in Germany than abroad where there are no corresponding possibilities to learn German all over the place. The political party \textit{Die Linke} criticizes the precondition of language skills before entry as amounting to “social selection”, Parliamentary Document no. 16/5108, p. 1 no. 2. In regard to this condition the NGO \textit{ProAsyl} bashes the fact, that in many countries it is not possible to learn German, especially in regions far away from bigger cities. \textit{ProAsyl} holds that the requirement is therefore infringing the right of family reunification as embodied in Art. 8 ECHR and Art. 6 Federal Constitution, \textit{cf.} practice report \textit{ProAsyl} of 12 April 2007, p. 22.
2. the spouse is not able to prove basic knowledge of the German language due to physical, mental or psychic illness or disability,
3. there is obviously only marginal necessity for integration in the sense of the regulation adopted on the basis of sec. 43 para. 4 [this is the regulation on integration courses which provides that in certain cases spouses do not need to attend the integration course, e.g. spouses of short time residents]
4. by virtue of his or her nationality the foreigner may enter and stay in the Federal territory without requiring a visa also for a stay which does not constitute a short time visit.”

The spouse must generally demonstrate (and thus possess) the abovementioned language skills still abroad when applying for a visa at the German embassy or consulate general. This is a consequence of sec. 4 para. 1 no. 1 Residence Act according to which foreigners generally need a visa to enter the Federal territory. Pursuant to sec. 6 para. 4 sentence 2 Residence Act the visa is issued on the basis of the same provisions that apply on the issuance of the residence permit and since sec. 30 § 1 sent. 1 no. 2 Residence Act requires language skills for the residence title, this is needed for the visa already.

Sec. 30 para. 1 sentences 2 and 3 Residence Act exempt certain categories of spouses from the language requirement. Thus, spouses who by virtue of their nationality do not need a visa before entering Germany even for long-term stays are exempted from the language requirement at all. This applies to citizens of Australia, Israel, Japan, Canada, The Republic of Korea, New Zealand and the United States of America (sec. 41 §1 AufenthV).

During the debate on the adoption of the Transposition Act it has been argued that this integration criterion works as a precondition for entry and is therefore not covered by art. 7 para. 2 Directive 2003/86/EC which speaks of “integration measures”.

In its Draft on the Transposition Act the German Government explains that sec. 30 para. 1 no. 2 takes into account that art. 7 para. 2 of the Directive provides the possibility to link the family reunification to the requirement that the third country nationals must comply with integration measures. The Government continues that the participation in an integration course inside Germany is no sufficient alternative, since in this case the successful completion of this course is not guaranteed whereas the obligation to prove knowledge of the German language before entry makes sure that this knowledge exists. According to the Government’s explanation the new provision is also meant to make it harder for families in law to prevent victims of forced marriages from establishing their own social life by using the fact that they do not possess language skills. The provision shall also have preventive effects, since educated men and women are considered less “controllable” and therefore less attractive for forced marriages. The Government stresses furthermore that no sufficient language skills but only basic language skills, i.e. the ability to make oneself understood in a rudimentary way is required. Furthermore Germany offers a variety of tools to acquire knowledge of the German

257 L.c.
258 L.c.
259 L.c., p. 174.
language abroad: The Goethe Institutes offer German language courses in all main countries of origin and further other tools are available (internet, radio) (Parliamentary Document of the German Bundestag no 16/7288 of 27 November 2007).

- Another integration measure is contained in new sec. 44a para. 1 no. 1 a) Residence Act (this condition was introduced by the Transposition Act that entered into force on 28 August 2007). According to this provision a foreigner’s spouse is obliged to participate in an integration course if he/she does not possess sufficient knowledge of the German language. (According to the previous legislation the spouse, as generally all foreigners - was only obliged in case he/she was not able to communicate verbally at a basic level.)

Q.56. B – Do they apply indistinctly to all potential beneficiaries of reunification? (Spouse, dependant people, etc.)

- The integration criterion on spouses applies on life partners as well. They also apply on all other adult family members who can be granted a residence permit according to sec. 36 para. 1 Residence Act to avoid an exceptional hardship (discretionary decision).
- The integration condition for children above the age of 16 is not based on Art. 7 para 2, but on Art. 4 para 1 subpara 3 of the Directive and only applies to these children. It is also stricter: Children need a command of German, spouses instead only basic language skills.

Q.56. C – How are they evaluated by your Member State?

- The Transposition Act which amended the Residence Act does not contain any provision specifying how basic language skills (which are required from spouses according to sec. 30 para. 1 no. 2 Residence Act) should be interpreted and how they should be proven.
- Pursuant to the general provision sec. 82 Residence Act the applicant [i.e. the family member seeking reunification] must provide evidence of the existence of language skills.
- The practical implementation of sec. 82 Residence Act is described in the Instructions of the Federal Ministry of the Interior on the Transposition. According to these instructions basic knowledge of the German language is knowledge at “Competence level A1 of the Common European Framework of Reference for languages" (no. 200-236 Instructions Transposition Act). [In comparison minor children aged 16 and older are required to have a command of German language according to sec. 32 para. 2 Residence Act. The preliminary instructions of the Federal Ministry for the Interior explain in no. 32.2.2. that for them language skills corresponding to level C 1 of the CEFL are required.]
- These language skills must be demonstrated before entering the country when applying for the visa for subsequent immigration of a spouse at the German embassy or consulate general. The instructions state that the applicant must generally submit a certificate of the Goethe Institute for the A1-level language examination “Start Deutsch 1” (together with the application documents). The Goethe Institutes are the German cultural institutes abroad. They offer German lessons and examinations and the language test “Start Deutsch 1” can be taken there. The language test can, however, also be taken at a licensed examiner’s or in the premises of a
partner institute of the Goethe Institute. In countries in which the “Start Deutsch 1” examination is not yet available, the embassies or consulates general determine whether the spouse has basic knowledge of the German language during the visa application procedure. In exceptional cases, other language certificates shall suffice as proof, if they are of equal value to the language test “Start Deutsch 1” of the Goethe Institute. If during the personal interview in the embassy or consulate general it becomes evident beyond reasonable doubt that the applicant has the required knowledge of the German language, no separate proof is required (no. 200-236 Instructions Transposition Act). This interpretation has been confirmed by the High Administrative Court of Berlin Brandenburg (judgement of 16 January 2008, case 2 M 1.08) which rejected a contradicting practice of the German embassies and consulates.

- Conclusion: a family member must furnish proof of the language skills corresponding to level A1 of the Common European Framework for reference on languages already before entering Germany during the visa application procedure. This does not mean that the passing of the test “Start Deutsch 1” is compulsory. However, this test is the best way to demonstrate such language skills. If it becomes clear during the visa procedure that such language skills exist, they must not be demonstrated otherwise.

Q.56. D – Are refugees and their family members required to fulfil them (a 7 §2, second indent)?

☐ OUI

☒ NON

Q.57 – Is a minimal period of lawful reside required before reunification (a 8 §1)?

☒ OUI

☐ NON

- This period of two years is applicable only to spouses and life partners. However it is only required where the marriage has been entered into after the sponsor was first granted a residence permit (sec. 30 para. 1 sent. 1 no. 3 lit. d Residence Act260).

- The two-years-period must be completed not at the moment of the application but at the moment when the requested residence title becomes effective. (Temporary residence titles are always issued for a specific time. The applicant, when applying for the residence title, must specify from which date on the residence title shall be valid, this will obviously be the date when he wishes to enter Germany, hence the date of reunification is crucial).

- The requirement of a minimal period of lawful reside is not applicable in case of reunification of children.

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260 The two-year-period was introduced by the Transposition Act that entered into force on 28 August 2007. Prior to this amendment sec. 30 para. 1 no. 3 Residence Act provided for a period of five years. However since this contradicted the Directive this provision was no longer applied: Instruction FMI obliged the Ministries of the Länder to instruct their Foreigners’ Authorities to apply a two-year-period until the Transposition Act finally entered into force.
Q. 58 – Does this period exceed two years?
Please specify

- The Residence Act provides in its new sec. 30 para. 1 sent. 1 no. 3 lit. d)\textsuperscript{261} a two-year period.
- Before this amendment entered into force sec. 30 para. 1 no. 3 Residence Act stated that the sponsor must have been in possession of a residence permit for at least \textbf{5 years}. (Only in case the marriage had already been concluded when the sponsor’s residence permit was issued there was no minimal period needed, (sec. 30 para. 1 no 4 Residence Act, now sec. 30 para. 1 sent. 1 no. 3 lit. e Residence Act). Sec. 30 para. 2 Residence Act gave the administration the right to deviate from the provision stated in sec. 30 para. 1 no. 4 Residence Act.
- As this former legislation contradicted the Directive it was no longer applied: The Instruction FMI obliged the Ministries of the \textit{Länder} to instruct their foreigners’ authorities (by binding discretion) to apply sec. 30 para. 2 Residence Act in accordance with the Directive, i.e. to apply a two-year instead of a five-year period.

Q.59 – Does your Member State apply the derogation set up by article 8 § 2 allowing Member States to impose a waiting period of maximum three years due to reception capacities between the submission of the application and the issuance of a residence permit?

☐ OUI
☐ NON

Please specify

Q.60 – If yes, did this derogation exist in national law before the 22nd of September 2003?

☐ OUI
☐ NON

\textbf{FAMILY REUNIFICATION OF REFUGEES}

\textit{The legal regime applicable to refugees derogates from the one applicable to family reunification. The scope of those derogations (minimal lawful residence, members of the family, accommodation requirements) shall be assessed on the basis of national law.}

Q.61 – Does your Member State allow family reunification of refugees on the basis of Directive 2003/86 (a 9 §1) ?

☐ OUI
☐ NON

\textsuperscript{261} This provision was introduced by the Transposition Act that entered into force on 28 August 2007.
Q.62 – Is this right limited to family relationships predating the entry on the territory (a 9 §2)?

☐ OUI

☒ NON

➢ Only in case of refugees enjoying temporary protection (on the basis of a decision of the European council according to directive 2001/55/EC) the family relationship must be predating (sec. 29 para. 4 no. 1 Residence Act). This applies to spouses and children alike.

Q.63 – Does your Member State allow family reunification of family Members not quoted in article 4 of the Directive (a 10 §2)?

☐ OUI

☒ NON

Which members of the family and under which conditions?

➢ All members of the family, even grandparents, uncles, aunts, grandchildren or sisters or brothers in law, may be granted the right to family reunification on the basis of sec. 36 para. 2 Residence Act. According to this section, a residence permit may be granted if it is necessary to avoid an extraordinary hardship. In addition, the provisions set up for spouses apply to adult family members, and the provisions set up for reunification of children apply to minor family members.

➢ It is not specified clearly whether, despite the provision of art. 4 para. 4 1st indent Directive 2003/86/EC, a residence permit may be granted to a further spouse under the terms of sec. 36 para. 2 Residence Act, i.e. in case of an exceptional hardship. The Government’s Draft for the Transposition Act explains only, that a further spouse is not entitled to a residence permit according to the provisions on the reunification of spouses (new sec. 30 para. 4 Residence Act). In view of the directive sec. 36 para. 2 Residence Act will have to be interpreted in a way as not allowing a further spouse to reunite under the extraordinary hardship clause. However, there is no jurisprudence in this regard yet.

Q.64 – According to the specific case of unaccompanied minor refugees, does your Member State authorise family reunification of first degree relatives in the direct ascending line without applying the conditions laid down in article 4 § 2 (a10 §3 a)?

☒ OUI

☐ NON

262 The answer "NOT" is chosen because the family members mentioned below even in case of an extraordinary hardship are not entitled to a residence permit in general but only to a discretionary decision.

263 The numbering of this provision was changed by the Transposition Act that entered into force on 28 August 2007. The provision corresponds to the former sec. 36 Residence Act.
Sec. 36 para. 1 Residence Act now provides that a residence permit must be issued to the parents of a minor recognized refugee **notwithstanding the conditions laid down in sec. 5 para. 1 no. 1 (resources including health insurance, Art. 4 para. 2 a) Directive) and sec. 29 para 1 no. 2 (accommodation) Residence Act** if there is no parent living in Germany who is in possession of the right of care and custody. Parent means first degree relative in the direct ascending line.

Before this new legislation entered into force on 28 August 2007 the legal situation was the following: The old sec. 36 Residence Act provided that reunification of other family members [i.e. for example parents] **may at the discretion** of the administration be allowed only in case of an extraordinary hardship. Such discretion would have infringed Art. 10 para. 3 of the Directive. In order to ensure that no administrative decisions were taken until the new legislation entered into force the application of this section was modified by the Instruction MFI and the corresponding instructions of the Ministries of the Interior of the Länder. The Instruction FMI provided that the discretion accorded to the administration by sec. 36 Residence Act was to be applied as follows: A residence permit will be issued to the first-degree relatives in the direct ascending line of an unaccompanied minor living in the Federal territory as a refugee.

**What conditions are required?**

- See above.

**Q. 65** – Does your Member State authorise entry and residence of the legal guardian or any member of the family where the unaccompanied minor refugee has no relatives in the direct ascending line or such relatives cannot be traced (a10 §3 b) ?

- [ ] OUI
- [x] NON

If yes, please specify who the member of the family targeted is and which proofs are required to prove family ties?

**Q.66** – Does your Member State take into account other evidence of family relationship where the refugee cannot provide official evidence (a 11 §2) ?

- [x] OUI
- [ ] NON

Which ones?

- To prove family relationship all other means of evidence are admissible, (interviews, declarations and witnesses etc.).

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264 This provision was introduced by the Transposition Act that entered into force on 28 August 2007.

265 The NGO Amnesty International, criticizes that according to its experience the diplomatic missions often ask refugees in a transit country to render original documents or a copy certified by the country of origin. Amnesty International mentions that there are cases in which only the UNHCR on site may convince the authorities that their acting is not acceptable, cf. practice report Amnesty International of 19 April 2007, p. 14.
According to the Ministry of the Interior of Thuringia the administration will interview the family members already living in Germany or the administration will try to search for information on the family member in the country of origin with the help of the diplomatic missions. The Ministry of the Interior of Saxony declares that there is nearly no experience with other means of evidence. In case these are used (witnesses, statutory declaration, visual inspection) the procedure may be very time-consuming.

Q.67 – Does the examination of the refugee application take into account their specific situation:

Yes.

Q.67. A – Are proofs regarding accommodation conditions, sickness insurance or resources required (a 12 §1)?

☐ OUI
☒ NON

The new sec. 29 para. 2 sent. 2 Residence Act states that the spouse and the child of a recognized refugee do not need proofs of accommodation, health insurance or resources in case they or the sponsor apply within three months after recognition and it is not possible for them to live the family relationship in a third country.

Before this legislation entered into force sec. 29 para. 2 Residence Act provided that the spouse and the child of a recognized refugee may – at the discretion of the administration – be exempted from the obligation to earn his or her living, which, according to the definition given by the Residence Act includes health insurance. [This provision, which has now become sec. 29 para. 2 sent. 1 Residence Act, is still applicable where one or both of the above-mentioned criteria are not fulfilled (application within three months and no possibility to live elsewhere)].

Until the first-mentioned amendment entered into force, the implementation of art. 12 para. 1 Directive EC/2003/86 was secured by the Instruction MFI and the corresponding instructions of the Ministries of the Interior of the Components. No. 2 Instruction FMI modified the application of sec. 29 para. 2 Residence Act by providing that the discretion accorded to the administration by sec. 29 para. 2 Residence Act shall be applied as follows: A residence permit shall be issued to the spouse and the minor child without the requirement to earn his or her living (which includes health insurance) and accommodation requirements if the application is made within three months after recognition and it is not possible to live the family relationship in a third country.

[Although Q.67 A, by referring to art. 12 para. 1 Directive 2003/86/EC, covers the case of spouses and children only (cf. art. 4 para. 1 Directive 2003/86/EC) it seems useful to mention, that German legislation also transposes the waiving of the above-mentioned requirements in case of minor

268 This provision was introduced by the Transposition Act which entered into force on 28 August 2007.
recognized refugees: sec. 36 para. 1 Residence Act\textsuperscript{269} embodies that the parents of a recognized minor refugee are entitled to a residence permit even without accommodation conditions, health insurance or resources met, when there is no parent entitled to care and custody living in Germany. So in case of a minor recognized refugee there is no three-month-deadline to be respected and it is irrelevant whether the family relationship may be lived in a third county.\]

If yes, are those requirements comparable to those imposed to other third country nationals?

Q.67. B – If one of the person concerned (sponsor or family member) has special links with a third country within which reunification is possible, does your member state require those proofs according to article 12 § 1 second indent.

\[ \square \text{OUI} \]
\[ \square \text{NON} \]

If necessary specify

\[ \checkmark \text{In that case the spouse and the children of the recognized refugee are not entitled to a residence permit without the proofs (cf. sec. 29 para. 2 sent. 2 Residence Act}\textsuperscript{270}). So the proofs are generally needed. However, sec. 29 para. 2 sent. 1 Residence Act}\textsuperscript{271} applies. Pursuant to this paragraph the accommodation, health insurance and resources requirements may be waived at the discretion of the deciding administration.} \]

Q.67. C – If a refugee has introduced its application after a period of three months, does your Member State require the refugee to meet the conditions or one of them (accommodation, sickness insurance, resources (a 12 §1 alinea 3) ?

\[ \square \text{OUI} \]
\[ \square \text{NON} \]

If yes, which ones?

\[ \checkmark \text{Sec. 29 para. 2 sent. 2 Residence Act}\textsuperscript{272} provides that all three requirements are not needed when the application is made within three months from recognition as a refugee (and it is not possible for them to live the family relationship in a third country to which the refugee or the family member has special links). When this deadline expires it is at the discretion of the administration whether it requires those conditions (sec. 29 para. 2 sent. 1 Residence Act).} \]

\textsuperscript{269} This provision was introduced by the Transposition Act which entered into force on 28 August 2007.
\textsuperscript{270} This provision was introduced by the Transposition Act which entered into force on 28 August 2007.
\textsuperscript{271} The numbering of this provision was changed by the Transposition Act which entered into force on 28 August 2007. The provision was previously numbered sec. 29 para. 2 Residence Act.
\textsuperscript{272} This provision was introduced by the Transposition Act which entered into force on 28 August 2007.
This means that after the three month period has expired, all three conditions are generally needed, but the public authority may decide (at its discretion) to grant the residence permit even without proofs of accommodation and/or resources (which according to sec. 2 para. 3 Residence Act encompasses health insurance).

Q.68 – Does your Member State apply the prohibition to impose a residence condition before reunification (a 12 §2)?

☐ OUI
☐ NON

If not, what is the length of this period? Is it different from the one normally applied?

EXERCISE OF THE RIGHT TO FAMILY REUNIFICATION

The granting of an autonomous residence permit is one of the most sensitive issues of this part of the Directive.

Q.69 – Is entry and residence facilitated by your Member State, as soon as the application for family reunification has been accepted, including the issue of obtaining visas (a13 §1)?

☐ OUI
☐ NON

If yes, how?

☐ There are no specific provisions on the procedure. As a rule, visas are issued as soon as the application has been accepted.

Q.70 – Is a residence permit of at least one year's duration granted to the family members (a 13 §2)?

☐ OUI
☐ NON

What is the duration of the residence permit?

☐ Sec. 27 para. 4 sent. 4 Residence Act provides that a residence permit is issued for at least one year, if no exception clause applies (passport of the family member is only valid for a shorter period, sec. 27 para. 4 sent. 3 Residence Act or the sponsor’s residence permit is valid for a shorter period, sec. 27 para. 4 sent. 1 Residence Act.

Before this provision entered into force on 28 August 2007 German legislation did not yet mention a minimum period.

Therefore, until the above-mentioned provision entered into force no. 1 Instruction FMI obliged the administration to grant residence permits for at

273 The entire sec. 27 para. 4 Residence Act was introduced by the Transposition Act which entered into force on 28 August 2007.
least one year if the residence permit of the sponsor also lasts at least as long.

Q.71 – Is this residence permit renewable?

[X] OUI

[] NON

Q.72 – Is the duration of the residence permit aligned with the duration of sponsor's residence permit (a 13 §3)?

[X] OUI

[] NON

If no, please specify

- Sec. 27 para. 4 sent. 1 Residence Act\textsuperscript{274} stipulates that the residence period shall be issued for the period of validity of the sponsor’s residence permit at the longest.

- Before this section entered into force, German legislation did not provide that the duration of the residence permit shall be aligned. However, Sec. 7 para. 2 Residence Act already provided that the duration of a residence permit shall be limited having regard to the purpose it was issued for.

- Until sec. 27 para. 4 sent. 1 Residence Act entered into force the Instruction FMI obliged the administration explicitly to align the duration of the residence permit with the sponsor’s residence permit.

Q.73 – Are the rights awarded to family members' equivalent to those granted to the sponsor (a14 §1):

Q.73. A – Regarding access to education?

[X] OUI

[] NON

If no, please specify

- Sec. 29 para. 5 Residence Act provides that the family members’ access is aligned to the sponsor’s access to employment. This right includes access to vocational training.

- Concerning school and tertiary education access is granted because there is no restricting legislation.

Q.73. B - Regarding access to employment?

[X] OUI

[] NON

\textsuperscript{274} The entire sec. 27 para. 4 Residence Act was introduced by the Transposition Act which entered into force on 28 August 2007.
Please specify the content of this access

- Sec. 29 para. 5 Residence Act permits access to employment where the sponsor is also entitled to employment or, in case of reunification of a spouse, if marital cohabitation has lawfully existed in the Federal territory for at least two years.
- [In case of a reunification with a German sponsor it is provided that the residence permit includes access to employment (sec. 28 para. 5 Residence Act).]

**Q.73. C** – Regarding access to vocational guidance, initial and further training and retraining?

[X] OUI

[ ] NON

If no, please specify

**Q.74** – Does your Member State grant specific rights in social matters to reunified family members?

[ ] OUI

[X] NON

If yes, please describe them and specify if a time limit is established to take advantage from them

**Q.75** – Has Member State set up conditions regarding specific access to employment for family members (a 14 §2)?

[ ] OUI

[X] NON

- See Q.73. B.
  If yes, how?

**Q.76** – If yes, do those conditions exceed 12 months (a 14 §2)?

[ ] OUI

[ ] NON

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275 **Explanation:**

- Family members are only entitled to participate in an integration course (sec. 44 para. 1 no. 1 b) Residence Act).
- According to the new sec. 44 a para. 1 no. 1 b) Residence Act a spouse is even **obliged** to participate if he or she does not have sufficient knowledge of the German language.
Which ones?

Q.77 – Is access to employment limited in your Member State

Q.77.A – Regarding first-degree relatives in the direct ascending line?

☐ OUI
☐ NON

☑ OUI
☐ NON

Explanation: If a residence permit has been granted under sec. 36 para. 2 Residence Act, sec. 29 para. 5 Residence Act applies. It reads: “Without prejudice to section 4 para. 2, sent. 3 Residence Act [this section states that access to employment generally is not allowed without the explicit consent of the employment agency], the residence permit shall entitle the holder to pursue an economic occupation insofar as the foreigner who is being joined by his or her dependents by way of subsequent immigration is entitled to pursue an economic activity or if marital cohabitation has lawfully existed in the Federal territory for at least two years.”

If yes, how?

Q.77. B – Regarding adult unmarried children objectively unable to provide for their own needs on account of their state of health (a 14 §3)?

☐ OUI
☐ NON

☑ OUI
☐ NON

If yes, how?

Q.78 – Are spouses, unmarried partners and child who has reached majority entitled to an autonomous residence permit at least five years after lawful residence on the basis of the residence permit issued for family reunification (a15 §1)?

☐ OUI
☐ NON

☑ OUI
☐ NON

If yes, please specify when and how for each category

☑ Spouse: The spouse (as all holders of – temporary – residence permits) is entitled to an autonomous permanent residence title (so-called Niederlassungserlaubnis) after five years. In this case additional requirements must be fulfilled (e.g. sufficient resources, sufficient language skills, no conviction of a certain degree in the last three years, sufficient accommodation etc., sec. 9 para. 2 no. 1 Residence Act, cf. art. 15 para. 4 of the Directive).

(2) In addition the spouse is granted an autonomous residence title in case of breakdown of the family relationship (2) after two years or (b) in case of death of the sponsor immediately. This autonomous residence title is granted for one year but may be prolonged (at the discretion of the Foreigners’ Authority, sec. 31 para 4 Residence Act).
➢ The same applies to unmarried but registered (same-sex) partners.

➢ Children who have reached majority: Upon reaching majority the residence title of **children** automatically becomes an autonomous residence title (sec. 34 para. 2 Residence Act), i.e. it continues to exist independently even if the family relationship has ceased to exist. Prolongation is at the discretion of the Foreigners’ Authority, sec. 34 para. 3 Residence Act.

The possibility for children who have reached majority to receive an **autonomous permanent residence title** after **five years** also exists. Also in this case additional requirements need to be fulfilled. However they are less strict than those applicable to spouses. When, after reaching majority the child has been in possession of a residence permit for five years the child must fulfil the following additional conditions: (a) Sufficient language skills and (b) stable resources or undergoing of education which leads to a recognized qualification (sec. 35 para. 1 Residence Act) (c) no conviction of a certain degree during the last three years.\(^\text{276}\)

**Q.79** – Does your Member State limit the granting of the autonomous residence in cases of breakdown of the family relationship (a 15 §1 alinea 2)?

[ ] OUI

[X] NON

Please explain

➢ Spouses as well as same-sex registered partners are entitled to an autonomous residence title after five years according to sec. 9 para. 2 Residence Act without the requirement of a breakdown of the family relationship, cf. Q.78. Therefore the granting of an autonomous residence title to spouses and registered partners is not limited to cases of breakdown of the family relationship in the sense of art. 15 para. 2 of the Directive.

Children obtain the autonomous residence permit after five years as well, for them generally more favourable rules apply (sec. 35 Residence Act).

➢ Rather the case of breakdown of the family relationship provides an additional reason for receiving an autonomous residence title already before five years are over: According to sec. 31 para. 1 Residence Act the spouse’s residence permit is prolonged for one year in case of breakdown of the relationship, if the relationship has existed for two years or if the sponsor has died.

➢ This provision is applicable to registered partners (so-called life partners), sec. 27 para. 2 Residence Act.

➢ In case of other adult family members, who have been granted a residence permit pursuant to sec. 36 para. 2 Residence Act\(^\text{277}\) to avoid exceptional hardship, the provision on spouses is applicable as well.

➢ In contrast to the provisions for spouses, children do not have the possibility to receive an autonomous residence title in case of **breakdown** of the family relationship before they turn 18.

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\(^{276}\) The provisions for minor children above 16 are even less strict: Minor children who when turning 16 have already been in possession of a residence permit for five years (sec. 35 para 1 sent. 1 Residence Act) are entitled to a permanent residence title right away and do not need to fulfil further requirements.

\(^{277}\) The numbering of this provision was changed by the Transposition Act that entered into force on 28 August 2007. The content has remained unchanged. The provision was numbered sec. 36 Residence Act before.
Q.80 – Does your Member State grant autonomous residence permit:

Q.80. A – To first-degree relatives in the direct ascending line (a15 §2)

[X] OUI

[ ] NON

If necessary specify

➢ Relatives in the direct ascending line, who according to sec. 36 para. 2 Residence Act\(^{278}\) are granted a residence permit to avoid a particular hardship receive an autonomous residence title pursuant to the provisions on spouses in case of breakdown of the relationship: Sec. 36 para. 2 Residence Act states that sec. 31 Residence Act is applicable. This includes a reference to sec. 31 para. 1 Residence Act on the autonomous right of residence of spouses (for details see Q.78). Therefore, in case of breakdown of relationship (generally the relationship must have lasted for two years) a relative in the direct ascending line is entitled to an autonomous residence permit of one year.

➢ In addition (without breakdown of the family relationship), pursuant to sec. 9 para. 2 Residence Act an autonomous resident permit is issued to adult family members after five years of lawful residence, if additional requirements (e.g. sufficient financial resources, language skills etc.) are met.

Q.80. B – To adult unmarried children objectively unable to provide for their own needs on account of their state of health (a15 §2) ?

[X] OUI

[ ] NON

If necessary specify

➢ Sec. 36 para. 2 Residence Act\(^{279}\) refers to sec. 31 Residence Act. This means, in case of breakdown of the family relationship with an adult family member of the sponsor the family member is entitled to an autonomous residence permit after two years, or, in case of the death of the sponsor immediately.

➢ In addition, pursuant to sec. 9 para. 2 Residence Act an autonomous resident permit is issued to adult family members after five years of lawful residence, if additional requirements (e.g. sufficient financial resources, language skills etc.) are met.

Q.81 – Does your member State grant autonomous residence permit in the event of widowhood, divorce, separation or death of first first-degree relatives in the direct ascending or descending line (a 15 §3) ?

[X] OUI

\(^{278}\) The numbering of this provision was changed by the Transposition Act that entered into force on 28 August 2007. The content has remained unchanged. The provision was numbered sec. 36 Residence Act before.

\(^{279}\) The numbering of this provision was changed by the Transposition Act that entered into force on 28 August 2007. The content has remained unchanged. The provision was numbered sec. 36 Residence Act before.
If necessary specify

- On adult family members in the direct ascending or descending line [who have been granted a residence permit pursuant to sec. 36 para. 2 Residence Act\textsuperscript{280} to avoid exceptional hardship] the provision on spouses is applicable. Sec. 31 para. 1 Residence Act provides that the residence permit is prolonged for one year in case of breakdown of the relationship if (no. 1) the family relationship has existed for two years or (no. 2). the sponsor has died.
- There is no such provision for minor children and other minor descendents (who may as well have received a residence title according to sec. 36 para. 2 Residence Act).

Q.82 – Has your Member State adopted rules granting autonomous residence permit "in the event of particularly difficult circumstances" (a 15 §3)?

\[\text{X} \quad \text{OUI}\]

If yes, how is this provision defined and transposed?

- Sec. 31 para. 2 Residence Act reads: “The requirement for marital cohabitation [this requirement is set up by sec. 31 para. 1 no. 1 Residence Act for the autonomous residence title in case of breakdown of the family relationship] to have existed lawfully for two years in the Federal territory shall be waived if necessary to enable the spouse to continue his or her residence in order to avoid particular hardship, unless an extension of the foreigner's residence permit is excluded. Particular hardship shall be deemed to apply if the obligation to return to the country of origin resulting from the termination of marital cohabitation threatens to substantially erode the foreigner's legitimate interests, or if the continuation of marital cohabitation is unreasonable due to the erosion of the foreigner's legitimate interests; such legitimate interests shall also include the wellbeing of a child living with the spouse in a family household.”
- Concerning children who have reached majority sec. 35 para. 4 Residence Act provides that the following additional requirements shall be waived if the child is not able to fulfil the requirements due to physical, mental or psychic illness or disability:
  - Sufficient language skills, sec. 35 para. 1 no. 2 Residence Act,
  - Sufficient resources or participation in a recognized education track, sec. 35 para. 1 no. 3 Residence Act,
  - No reception of social welfare money, sec. 35 para. 1 no. 2 Residence Act.

However the requirement of holding a residence title for five years still persists.

\textsuperscript{280} The numbering of this provision was changed by the Transposition Act that entered into force on 28 August 2007. The content has remained unchanged. The provision was numbered sec. 36 Residence Act before.
PENALTIES AND REDRESS

Those provisions must be read in parallel with those relating to the conditions to be fulfilled to obtain family reunification (articles 6, 7, 8).

Questions relating fraud, false or falsified documents are of importance to assess their impact.

Q.83 – What are the legal grounds to reject, withdraw or refuse to renew a family member's residence permit (a16 §1 et 2):

Q.83. A – Conditions required by the directive not satisfied?
- [X] OUI
- [ ] NON

Q.83. B – Absence of real marital or family relationship?
- [X] OUI
- [ ] NON

If yes, how is this hypothesis assessed?

➢ Mainly by interviews (sec. 27 para. 1, sec. 82 para. 4 Residence Act). Visits of the family accommodation are in most cases only possible when the people living there give their consent\(^{281}\).

➢ The Ministry of the Interior of Baden-Württemberg mentions that this hypothesis can rarely be assessed in a court-proof way\(^{282}\).

➢ The NGO Amnesty International stresses that the absence of real marital or family relationship depends very much of the understanding of the relevant person in charge. Amnesty International mentions cases in which the fact that the wife was much older than her husband lead to longsome interviews and several requests for further proves\(^{283}\).

Q.83. C – Stable long term relationship with another person?

- [X] OUI
- [ ] NON

If yes, how is this hypothesis assessed?

➢ Mainly by interviews.

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\(^{281}\) Practice report Thuringia of 20 April 2007, p. 12.

\(^{282}\) Practice report of Baden-Württemberg of April 2007, p. 12, point E.5; see also practice report Saxony of 12 April 2004, no. E.5

Q.83. D – False or falsified documents?

☐ OUI
☐ NON

Q.83. E – Marriage, partnership or adoption contracted for the sole purpose of enabling reunification?

☐ OUI
☐ NON

- According to the new sec. 27 para. 1a no. 1 Residence Act\textsuperscript{284} family reunification shall not be permitted if it is established, that the relationship has been contracted for the sole purpose of enabling reunification.
- Pursuant to sec. 27 para. 1 Residence Act a residence permit is granted and extended only to enable foreigners to be joined by foreign dependents so that they can live together as a family to protect marriage and the family in accordance with Art. 6 Federal Constitution. Therefore, even before sec. 27 para. 1a no. 1 Residence Act had entered into force, on the basis of sec. 27 para. 1 Residence Act a residence permit was not issued when a family relationship was only entered into for the reason of family reunification without the existence of a real family relationship.

Q.83. F – If yes, how is this hypothesis assessed?

- According to sec. 27 para. 1a no. 1 Residence Act\textsuperscript{285} family reunification shall not be permitted if it is established, that the relationship has been contracted for the sole purpose of enabling reunification.
- According to the information given by the Ministries of the Interior Thuringia, Baden-Württemberg and Mecklenburg-Western Pomerania, this hypothesis is rarely to ascertain in court-proof way\textsuperscript{286}.
- The assessment is mainly done by interviews.
- The NGO Amnesty International mentions that the foreigners’ authorities consult a lawyer of confidence in the country of origin where the marriage has been concluded abroad or where it is supposed that the spouse wants to get away from his or her bad economic situation. Amnesty International criticises that this leads to a rather intransparent procedure since the investigations of the lawyer may not be reconstructed even by access to records\textsuperscript{287}.

\textsuperscript{284} This provision was introduced by the Transposition Act which entered into force in 28 August 2007.
\textsuperscript{285} This provision was introduced by the Transposition Act which entered into force in 28 August 2007.
\textsuperscript{287} Practice report Amnesty International of April 2007, p. 13, no. E.2.
Q.83. G – When the sponsor’s residence comes to an end and the family member does not yet enjoy an autonomous right of residence (a 16 §3) ?

X OUI

[] NON

Q.83. H – What type of control are organised thereof?

- Upon the decision on renewal of the residence permit the foreigners’ authority will establish whether the sponsor’s residence permit is still valid. If it is not valid anymore, the request for renewal will be denied.
- Despite this case there is no organized control of the fact, whether the sponsor’s residence permit has come to an end. In most cases this is not necessary, because the duration of the family member’s residence title is aligned to the duration of the sponsor’s residence title anyway (cf. new sec. 27 para. 4 sent. 1 Residence Act and, before this provision entered into force, Instruction FMI). When the sponsor’s residence title comes to an end irregularly (for example by revocation) and the foreigners’ authority receives this information it will withdraw the family member’s residence title.

Q.84 – Are resources of the family taken into account when renewing residence permit where the sponsor does not have sufficient resources without recourse to the social assistance system of the member state?

X OUI

[] NON

If yes, under which modalities?

- According to German law it is not necessary that the resources of the sponsor be sufficient (although if they are not sufficient, the sponsor will generally not be entitled to a residence permit himself) but that the applicant has sufficient resources. However, when assessing the applicant’s resources the means of his or her family members may be taken into account by the administration, if the family members are obliged to support the applicant or if they have signed a corresponding declaration, cf. no. 2.3.3.3 AH-BMI.

Q.85 – Does your Member State's legislation take into consideration (a. 17):

Q.85. A – The nature and solidity of the person's family relationships and the duration of his residence in the Member State?

X OUI

[] NON
If yes, please specify how and on the basis of which norm (legislation, regulation, jurisprudence, …)

Legislation:

- Sec. 30 para. 3 Residence Act provides that a spouse’s residence permit may, at the discretion of the authority, be renewed, irrespective of sufficient means of subsistence and adequate accommodation as long as the marital relationship continues. In the exercise of discretion foreigners’ authorities will apply all criteria of art. 17 Directive 2003/86/EC.

- According to sec. 32 para. 4 Residence Act a residence permit may be granted to a minor child if necessary in order to prevent special hardship on account of circumstances pertaining to the individual case concerned. The child’s wellbeing and the family situation have to be taken into account (sec. 32 para 4 sent. 2 Residence Act).

- The authorities have discretion whether family reunification is granted in which all the criteria mentioned in art. 17 Directive 2003/86/EC are applicable. It is not altogether clear whether art. 17 Directive 2003/86/EC requires only that in such cases in which the conditions for a residence permit are not fulfilled, authorities are obliged to exercise discretion or whether art. 17 only prescribes for a consideration of the criteria of a discretionary decision provided that there is scope for discretion.

- Sec. 30 para. 3 Residence Act is based on the interpretation that there is no general obligation to introduce a provision granting a residence permit for a family reunion on discretionary considerations of art. 17 even if the conditions are not met. A different view seems do have been taken by the Ministry of the Interior of Lower Saxony: the Ministry of the Interior of Lower-Saxony thinks that the transposition of art. 17 Directive 2003/86/EC is questionable. The Ministry stresses that the circumstances mentioned in art. 17 Directive 2003/86/EC have to be considered in case of a negative decision. However, in case of a necessary negative decision neither the rootedness in Germany nor minor ties with the country will generally justify a different decision.

- In addition, there are various other provisions providing for a grant or renewal of a residence permit in deviation of the general conditions. Sometimes deviation is obligatory, sometimes discretion is granted. Whenever the Residence Act provides for a discretionary decision either on refusal or renewal of a residence permit or on expulsion the criteria of art. 17 Directive 2003/86/EC are taken into account. Sec. 55 Residence Act on expulsion provides explicitly that the criteria of art. 17 Directive 2003/86/EC are to be considered in a discretionary expulsion decision.

Q.85. B - 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?

[X] OUI

[] NON

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If yes, please specify how and on the basis of which norm (legislation, regulation, jurisprudence, …)

➢ See Q.85. A.

Q.86 – Do the sponsor and/or members if his/her family have the right to mount a legal challenge where an application for family reunification is rejected (a18 §1)?

☒ OUI
☐ NON

Q.87 – Is this right to legal challenge considered as a right to a judicial review according to jurisprudence C-540/03 (a18 §1) ?

☒ OUI
☐ NON
XX. IMPACT OF THE DIRECTIVE ON NATIONAL LAW

Q.88 A Did the transposition of the directive made the rules related to the best interest of minor children (a. 5 § 5) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

Please use one box per object and duplicate it if necessary

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Situation before transposition:</strong>&lt;br&gt;It is assumed that in the application of the provisions of the Foreigners Act and the subsequent Residence Act the best interest of the child is taken into consideration as a general public interest, obligatory due to the Federal Republic of Germany’s ratification of the UN Convention on Children.</td>
<td>Complete this box by keeping the right appreciation and deleting the two others:&lt;br&gt;• <strong>Status quo</strong></td>
<td>Complete this box by keeping the right appreciation and deleting the other one:&lt;br&gt;• <strong>In line with the directive</strong></td>
</tr>
<tr>
<td><strong>Situation after transposition:</strong>&lt;br&gt;It is assumed that in the application of the provisions of the Residence Act the best interest of the child is taken into consideration as a general public interest obligatory due to the Federal Republic of Germany’s ratification of the UN Convention on Children.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Q.88 B Did the transposition of the directive made the rules related to the beneficiaries of the right to family reunification become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

Please use one box per object and duplicate it if necessary

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Definition of the beneficiaries of the right to family reunification a. 4 § 4</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

NATIONAL REPORTS - DIRECTIVE ON FAMILY REUNIFICATION 610
Q.88 C Did the transposition of the directive made the rules related to reunification of minor children between 12 (a. 4 § 1) and 15 (a. 4 § 6) years old become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

Please use one box per object and duplicate it if necessary

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Limitation of reunification of minor children of 12 and 15 years of age (a. 4 § 1 and 4 § 6)</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Situation before transposition</strong>&lt;br&gt;Sec. 20 para. 4 no. 1 Foreigners’ Act provided that a child aged over 16 arriving independently is entitled to a discretionary decision only when he/she fulfils an additional integration condition.</td>
<td><strong>Situation after transposition</strong>&lt;br&gt;Sec. 32 para. 2 Residence Act provides that a child above the age of 16 is entitled to a residence permit if he/she fulfils the additional integration condition.</td>
<td>Complete this box by keeping the right appreciation and deleting the two others:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Status quo</td>
</tr>
<tr>
<td></td>
<td>Complete this box by keeping the right appreciation and deleting the other one:</td>
<td>- More favourable than previous national law</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- In line with the directive</td>
</tr>
</tbody>
</table>
Q.88 D Did the transposition of the directive made the rules related to requirements to the exercise of family reunification (article 7) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

Please use one box per object and duplicate it if necessary

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Requirements for the exercise of family reunification (a. 7)</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Situation before transposition</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sec. 17 para. 2 no. 2 Foreigners’ Act already set up the requirement for accommodation, sec. 17 para. 2 no. 3 Foreigners’ Act provided for sufficient resources. (This section did not mention clearly whether health insurance was required. However sec. 7 para. 2 Foreigners’ Act stated that granting of a residence permit will generally be rejected if resources including health insurance are not provided. Therefore the resources requirement was to be understood as including health insurance.) Accordingly, even the Foreigners’ Act presupposed these three requirements.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Situation after transposition</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The requirements have not changed, they are now enshrined in the Residence Act (accommodation: sec. 29 para. 1 no. 2 Residence Act, resources (generally needed according to sec. 5 para. 1 Residence Act), now explicitly including health insurance: cf. definition of sec. 2 para. 3 Residence Act)</td>
<td></td>
<td>Complete this box by keeping the right appreciation and deleting the two others: • Status quo</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Complete this box by keeping the right appreciation and deleting the other one: • In line with the directive</td>
</tr>
</tbody>
</table>

Q.88 E Did the transposition of the directive made the rules related to margins of manoeuvre awarded to Member States (a. 5 § 5, 17, C-540/03) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law.
Make also a comparison with the standard of the directive in the last column of the table below

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Limitation of margins of manœuvre (a. 17, a.5 §5, C-540/03)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Situation before transposition 1. Art. 5 sec. 5 (best interest of the children) It is assumed that in the application of the provisions of the Foreigners’ Act and the subsequent Residence Act the best interest of the child was taken into consideration as a general public interest obligatory due to the Federal Republic of Germany’s ratification of the UN Convention on the Rights of the Child. Moreover, sec. 20 para. 4 no. 2 Foreigners’ Act provided: “…a residence permit may be granted to avoid a particular hardship.”</td>
<td>Situation after transposition 1. Art. 5 sec. 5 It is assumed that the situation of children is paid regard due to the impositions of the UN Convention on Children. In case a minor is not already entitled to a residence permit, sec. 32 para. 4 Residence Act provides that a residence permit may be issued if it is necessary avoid a particular hardship. This paragraph now states explicitly that the well-being of the child and the family situation have to be considered (sec. 32 para. 4 sent. 2 Residence Act). 2. Art. 17 Several norms provide for a discretionary decision on issuance, renewal or withdrawal of a residence permit, e.g. sec. 30 para. 3 Residence Act (concerning renewal of a spouse’s residence permit) and sec. 32 para. 4 Residence Act. In this case the criteria mentioned in art. 17 Directive/86/EC may Complete this box by keeping the right appreciation and deleting the two others:</td>
<td>Complete this box by keeping the right appreciation and deleting the other one:</td>
</tr>
<tr>
<td></td>
<td>More favourable than previous national law</td>
<td>In line with the directive</td>
</tr>
</tbody>
</table>

Please use one box per object and duplicate it if necessary
Did the transposition of the directive made the rules related to integration objectives and criterions more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below.

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Situation before transposition</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Situation in regard to:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Integration objectives (art. 15 Directive 2003/86/EC)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.1 Spouses</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Under the Foreigners’ Act spouses were entitled to a permanent after five years or, in case of breakdown of the family relationship after four years of lawful residence (cf. sec. 24 para. 1 no. 1 and sec. 19 para. 1 sent. 1 no. 1 Foreigners’ Act respectively).</td>
<td>Complete this box by keeping the right appreciation and deleting the two others: 1. Integration objectives: • More favourable than previous national rules</td>
<td>Complete this box by keeping the right appreciation and deleting the other one: • In line with the directive</td>
</tr>
<tr>
<td>2. Integration criterions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.1 Spouses:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Originally there was no integration criterion provided for spouses (cf. sec. 18 Foreigners’ Act of 1990, which was in force until 31/12/2004).</td>
<td>Complete this box by keeping the right appreciation and deleting the two others: 1. Integration objectives: • More favourable than previous national rules</td>
<td>Complete this box by keeping the right appreciation and deleting the other one: • In line with the directive</td>
</tr>
<tr>
<td>- The same was true for the subsequent sec. 30 Residence</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Act as entered into force on 1/1/2005

2.2 Children:
- Sec. 20 para. 4 no 1 Foreigners’ Act already provided for a child above the age of 16 arriving independently to fulfil an additional integration criterion (i.e. command of the German language or it appears on the basis of the child’s education and way of life today that he or she will be able to integrate into the way of life which prevails in the Federal Republic of Germany). However in case of fulfilment of this condition the child was only entitled to a discretionary decision.

...to make him-/herself understood in German on a basic level. Spouses of recognized refugees are exempted from the integration requirement when the marriage had been entered into before the refugee came to Germany (sec. 30 para. 2 sent. 3 no. 1 Residence Act as amended by the Transposition Act). Spouses who, due to physical, mental or psychic illness or disability are not able to prove basic German knowledge are exempted as well. The integration criterion is shaped as a precondition for access to the Federal territory.

The integration condition has not been altered. It is now contained in sec. 32 para. 2 Residence Act. The wording of this paragraph fully corresponds to the previous sec. 20 para. 4 no 1 Foreigners’ Act. However, in case of fulfilment of this condition the child is fully entitled to a residence permit.

Q.89 From your point of view, did the transposition of the directive imply other interesting changes for the third national country regarding other elements than the ones mentioned in the previous question. Make also a comparison with the standard of the directive in the last column of the table below
If they want to do so, the thematic coordinators should complete this question by indicating the number of examples that they ask the national reporter to give.

*Please use one box per object and duplicate it if necessary*

<table>
<thead>
<tr>
<th>OBJECT (to be precisely indicated by the national rapporteur)</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Explain the situation before transposition</td>
<td>Complete this box by keeping the right appreciation and deleting the two others:</td>
<td>Complete this box by keeping the right appreciation and deleting the other one:</td>
</tr>
<tr>
<td></td>
<td>• <em>Status quo</em></td>
<td>• <em>More favourable than previous national rules</em></td>
</tr>
<tr>
<td></td>
<td>• <em>More favourable than previous national rules</em></td>
<td>• <em>In line with the directive</em></td>
</tr>
<tr>
<td></td>
<td>• <em>Less favourable than previous national rules</em></td>
<td></td>
</tr>
</tbody>
</table>

**Q.89. A.** Mention if there is a general tendency to just copy the provisions of the directive into national legislation without redrafting or adaptation them to national circumstances.

- [ ] NO

- [ ] YES

  ➢ Explanation: There is a tendency to adapt the provision of the directive to national circumstances.

**Q.89.B.** If yes, please indicate if this general tendency may or not create problems (for example difficulties of implementation, risk that a provision remain unapplied).

- [ ] NO

- [ ] YES

**Q.89.C.** If yes, give some of examples:

**Q.89.D.** If only *some* provisions of the directive have been copied and if this may create any problem, please quote them and explain the problem.
Q.90. Quote interesting decisions of jurisprudence related to the directive, its transposition or implementation (so this question concerns in principle decisions later that the directive, but previous ones might be quoted if relevant). Quote in particular decisions of supreme Courts; limit yourself to the appeal Courts and ignore the first resort if there are too many decisions at this level, unless there is a certain jurisprudence made of a group of decisions.

Please use one box per decision and duplicate it if necessary

<table>
<thead>
<tr>
<th>DECISION OF SUPREME COURTS</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Niedersächsisches OVG</strong> (Administrative Court of Appeal of Lower Saxony)</td>
<td>Decision of 13 March 2006</td>
<td>Case no. 11 ME 313/05, cited by the review InfAuslR 2006, pp 328-329.</td>
<td>The court ruled the following: 1. In case the applicant is a minor child and has been issued a visa for the purpose of family reunification by the diplomatic mission abroad, the subsequent application for a residence permit with the foreigners’ authority is to be regarded as an application for renewal of the residence permit (not as a primary application). 2. Therefore – in regard to this application for renewal – the foreigners’ authority may not reject the residence permit on the basis of the fact that the applicant has passed the specific age limit.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>DECISION OF APPEAL COURTS</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Hessischer Verwaltungsgerichtshof</strong> (Administrative Court of Appeal of Hesse)</td>
<td>Decision of 16 January 2007</td>
<td>Case no 7 TG 2879/06, available on <a href="http://www.asyl.net/magazin/docs/2007/M-7/9651.pdf">www.asyl.net/magazin/docs/2007/M-7/9651.pdf</a></td>
<td>The court ruled: In case of an application for a residence permit the applicant carries the burden of proof for the existence of a family relationship. In contrast, in a case in which the administration wants to rescind an existing residence permit, it is the administration that carries the burden of proof. However, in cases of untypical marital cohabitation the foreigner is obliged to name the facts that allow reasoning that a family relationship exists indeed.</td>
</tr>
<tr>
<td>Verwaltungsgericht Aachen (Administrative Court of Aachen)</td>
<td>Decision of 9 November 2006</td>
<td>Case no. 8 L 272/06, available on <a href="http://www.asyl.net/magazin/Doc/2007/M-7/9593.pdf">www.asyl.net/magazin/Doc/2007/M-7/9593.pdf</a></td>
<td>This decision, which was taken before the Transposition Act entered into force on 28 August 2007, concerned the question to which extent the Directive 2003/86/EC has an impact on the family reunification of spouses of refugees. The decision regarded the requirement of stable resources in case of refugees. Art. 12 para. 1 1st indent of the Directive 2003/86/EC obliges the Member States to exempt refugees and/or their families from the requirements of accommodation, stable resources and health insurance. Since a transposition norm was missing at the time the court stated that Art. 12 para. 1 1st indent of the Directive was directly applicable. The court also held that art. 9 para. 2 of the Directive was not directly applicable but needed a transposition act. (Art. 9 para. 2 Directive 2003/86/EC provides the option for Member States to confine the application of art. 12 para. 1 to refugees whose family relationships predate their entry.) The court furthermore tends to the opinion that the derogations of art. 12 para. 1 2nd and 3rd indent of the Directive are not directly applicable as well. The question was, whether those provisions were to be interpreted as an exception of art. 12 para. 1 1st indent or whether it they have to be understood as a room for manoeuvre for the member states (in this case they may only applied after transposition). In view of the projected explicit transposition the court doubted that the provisions only</td>
</tr>
</tbody>
</table>
constituted a directly applicable exception. However there was no final decision on this issue: Since the case was presented to the court within the framework of expedited proceedings the court’s doubts were already sufficient to rule in favour of the applicant. The court finally reasoned that instructions of a German Land were not sufficient to transpose those provisions.

ANY SUPPLEMENTARY COMMENT ABOUT THE TREND OF THE JURISPRUDENCE:

Q.91 Specify if there are or not problems with the translation of the text of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated.

☐ There are no problems with the translation of the directive

☒ There are some problems with the translation of (indicate the number of the articles concerned) of the directive.

There is one article concerned (the translation of the word “withdrawal” in art. 6 para. 2 Directive 2003/86/EC, cf. Q.47 B).

Explain the difficulties that this could create:

There are no difficulties to be expected. The German wording most certainly will be construed in the way suggested in Q.47 B: Hence, “withdrawal” in art. 6 para. 2 Directive 2003/86/EC is to be understood as concerning all kinds of loosing an existing title, i.e. revocation of lawful, withdrawal of unlawful administrative acts and expulsion according to German law.

Q. 92 ANY OTHER INTERESTING ELEMENT

Q.92 A. Following your personal point of view, mention from the point of view of third country nationals and/or from the Member State any interesting or innovative practice in your Member State

Please use one table per practice and duplicate it if necessary

<table>
<thead>
<tr>
<th>OBJECT OF THE PRACTICE</th>
<th>EXPLANATIONS</th>
</tr>
</thead>
</table>

Q.92 B. Please add here any other interesting element in your Member State which you did not had the occasion to mention in your previous answers
FIRST PART

1. NORMS OF TRANSPOSITION AND JURISPRUDENCE

Q.1.A. Identify the MAIN (because of its content) norm(s) of transposition and indicate its legal nature

<table>
<thead>
<tr>
<th>This table is about:</th>
<th>+</th>
<th>a text already adopted</th>
<th>-</th>
<th>a text which is still a project to be adopted</th>
</tr>
</thead>
<tbody>
<tr>
<td>TITLE:</td>
<td>PRESIDENTIAL DECREE Harmonisation of Greek law with the Directive 2003/86/EC on the right to family reunification</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>DATE:</td>
<td>2006</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>NUMBER:</td>
<td>131</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>DATE OF ENTRY INTO FORCE:</td>
<td>13 JULY 2006</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive):</td>
<td>ALL</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:</td>
<td>FEK 143/A 13.7.2006</td>
<td></td>
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</tr>
<tr>
<td>LEGAL NATURE (indicate a cross in the correct box):</td>
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</tr>
<tr>
<td>+</td>
<td>LEGISLATIVE:</td>
<td></td>
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<td>-</td>
<td>REGULATION:</td>
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<tr>
<td>-</td>
<td>CIRCULAR or INSTRUCTIONS:</td>
<td></td>
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<th>a text which is still a project to be adopted</th>
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</thead>
<tbody>
<tr>
<td>TITLE:</td>
<td>Reception of persons seeking international protection procedure for the examination and conditions for the recognition and revocation of the status of international protection and deportation. Rights obligations. Family reunification</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
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<td></td>
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<td>DATE OF ENTRY INTO FORCE:</td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive):</td>
<td>Art. 66-73</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Q.1.B. List the others norms of transposition by order of importance of their legal nature (first laws, secondly regulations; thirdly circulars or instructions):

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)

This table is about: [ ] a text already adopted [ ] a text which is still a project to be adopted

| TITLE | LAW Entry, residence and social integration of third country nationals in the Hellenic Territory |
| DATE | 2005 |
| NUMBER | 3386 |
| DATE OF ENTRY INTO FORCE | 1 JANUARY 2006 |
| PROVISIONS CONCERNED | Art. 53-60 |
| REFERENCES OF PUBLICATION | 212/A 23.8.2005 |

Q.2. THIS QUESTION IS IN PRINCIPLE ONLY FOR FEDERAL OR ASSIMILATED MEMBER STATES LIKE AUSTRIA, BELGIUM, GERMANY, ITALY, SPAIN

Q.2.A. Explain which level of government is competent to adopt the norms of transposition.
Q.2.B. In case, explain if the federal structure and the distribution of competences between the different levels pose any problem or difficulty regarding the transposition and/or the implementation of the directive.

Q.3. Explain which authorities are competent for the practical implementation of the norm of transposition by taking the decisions in individual cases.

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Decision to authorize family reunification</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>MINISTRY OF INTERIOR AFFAIRS, PUBLIC ADMINISTRATION AND DECENTRALISATION</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE REGION</td>
<td>General Secretariat of the Region</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td></td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
<td></td>
</tr>
<tr>
<td>COMPETENCE CONCERNED:</td>
<td>issuing of visas to family members</td>
</tr>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Foreign Affairs</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>Greek consular authorities</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td></td>
</tr>
<tr>
<td>---------------------------------</td>
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</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Granting of residence permits</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>MINISTRY OF INTERIOR AFFAIRS, PUBLIC ADMINISTRATION AND DECENTRALISATION</td>
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<tr>
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</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td>Migration Services</td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
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</tbody>
</table>

**Q.4. A.** Has the main regulation foreseen explicitly by the main norm of transposition already been adopted or not:

The main norm does not foresee explicitly a regulation.

- YES
- NO

**Q.4.B.** If the main norm(s) of transposition foresees the adoption of one or several regulations, indicate if they have all been adopted:

- YES
- NO

If NO, please indicate the missing text(s) in the table below

<table>
<thead>
<tr>
<th>MISSING TEXTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>INDICATE HERE THE MISSING TEXTS</td>
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</tbody>
</table>

Add if necessary some explanations (specify in particular if the missing texts are at least under preparation or foreseen in the very near future):
SECOND PART

AIM (ARTICLE 1)

Q.5 – Is family reunification considered as a right in your Member State?

☐ OUI
☐ NON

Please explain

The law determines some conditions and if they are met the right to family reunification is granted. According to art 53 law 3386/2005 and art 5 par. 1 p.d. 131/2006 the alien is entitled to ask the entry and residence of his family members if the conditions provided by the law are met.

Q.5. A – Are there any figures available relating to the exercise of the right to family reunification between 2002 and 2006? If yes, what are the trends, including nationality assessment?

No, there are not such figures

DEFINITIONS (ARTICLE 2)

SCOPE (ARTICLE 3)

Q.6. Period of validity of the sponsor’s residence permit:

Q.6. A. Is the period of validity of the sponsor’s residence permit of one year or more according to article 3 § 1 of the Directive?

☐ OUI
☐ NON

Q.2.B. Quote precisely the period enshrined in national law:

One year or more

Q.6.C. How does your Member State translate in national law the requirement for the sponsor to have "reasonable prospects of obtaining the right of permanent residence" (a 3 § 1)?

The right is granted only if the sponsor has a residence permit which gives him the possibility of obtaining a permit of permanent residence.

Q.7. – Members of the family concerned:

Q7. A. Are they third country nationals as required by article 3 § 1 of the Directive?

☐ OUI
☐ NON
If not, explain

**Q.7.B.** How has your Member State translated in national law the wording of "whatever status" included in article 3 § 1 of the Directive?
No change. Simple translation.

**Q.8** – Did the transposition of the Directive in your Member state breached provisions of international law more favourable to individuals (a 3 § 4)?

☐ OUI
☐ NON

**Q.9** – If yes, are those provisions based on:

**Q.9.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?

☐ OUI
☐ NON
Specify which provisions

**Q.9.B** - The European Social Charter of 18 October 1961 (a 3 § 4)?

☐ OUI
☐ NON
Specify which provisions

**Q.9.C**. The amended European Social Charter of 3 May 1987 (a 3 § 4)?

☐ OUI
☐ NON
Specify which provisions

**Q.9.D**. The European Convention on the legal status of migrant workers of 24 November 1977 (a 3 § 4)?

☐ OUI
☐ NON
Specify which provisions
Q.10 – Does the transposition of the Directive affect national provisions more favourable to individuals (a 3 § 5)?

☐ OUI

☐ NON

If yes, please specify which provisions

BENEFICIARIES (ARTICLE 4)

Q.11 – Does your national law recognize the right to family reunification to:

Q.11. A – The sponsor's spouse (a. 4 § 1 a)?

☐ OUI

☐ NON

Q.11. B - Minor children of the sponsor and of his/her spouse (a. 4 § 1 b)?

☐ OUI

☐ NON

Q.11. C. Minor children adopted of the sponsor and of his/her spouse (a. 4 § 1 b)?

☐ OUI

☐ NON

Q.11. D. Minor children of the sponsor (a. 4 § 1 c)?

☐ OUI

☐ NON

Q.11. E. If yes, does your national law foresee that the sponsor shall have children custody and children are dependant on him or her?

☐ OUI

☐ NON

Specify if necessary the proofs required
Q.11 F. Minor children adopted of the sponsor (a 4 §1.c) ?

☐ OUI
☐ NON

Q.11. G. If yes:

h. does your national law foresee that the sponsor shall have children custody and children are dependant on him or her?

☐ OUI
☐ NON

Specify if necessary the proofs required

g.g. Does national law provide that those children shall be 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'?

☐ OUI
☐ NON

Specify if necessary the proofs required

Q.11. H. Minor children of the spouse (a 4 §1.d.)?

☐ OUI
☐ NON

Q.11. I. If yes, does your national law foresee that the spouse shall have children custody and children are dependant on him or her?

☐ OUI
☐ NON

Specify if necessary the proofs required

Q.11. J. Minor children adopted of the spouse (a 4 §1.d)?

☐ OUI
☐ NON
Q.11. K. If yes,
k. Does your national law foresee that the spouse shall have children custody and children are dependant on him or her?

[ ] OUI
[ ] NON

Specify if necessary the proofs required

k.k. Does national law provide that those children shall be 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'"?

[ ] OUI
[ ] NON

Specify if necessary the proofs required

Q.12 – Has your Member State transposed the option opened by article 4 § 1 c:

Q.12.A. To authorise reunification of minor children of the sponsor – including also adopted children – of whom custody is shared (a 4 §1.c)?

[ ] OUI
[ ] NON

Specify if necessary

Q.12.B. If yes, has your legislation transposed the condition that the other party sharing custody has given his or her agreement (a 4 §1. c)?

[ ] OUI
[ ] NON

Specify if necessary

Q.13 – Has your Member State transposed the option opened by article 4 § 1 d):

Q.13.A. to authorise reunification of minor children of the spouse – including also adopted children – of whom custody is shared (a 4.1.d. in fine)?

[ ] OUI
[ ] NON

Specify if necessary
Q.13 B. If yes, has your legislation transposed the condition that the other party sharing custody has given his or her agreement (a 4. 1.d) ?

☐ OUI
☐ NON

Specify if necessary

Q.14 – In any case referred to in questions 7 to 9, is the age of the minor children below the age of majority set up by the law of your Member State (a.4 §1, second indent)?

+ OUI

The age of majority is 18 years old.

☐ NON

If yes, indicate the age required

Q.15 – In any case referred to in questions 7 to 9, has the prohibition of marriage of minor children been transposed (a.4 §1, second indent)?

+ OUI

☐ NON

If not, explain Si non, expliquez

Q.16 – Is the derogation set up in article 4 § 1 last indent relating to the conditions for integration of children over 12 years arrived independently from the rest of the family used by your Member State?

☐ OUI

+ NON

How the criterion "arrives independently from the rest of his/her family" has been transposed in your national legislation?

Q.17 – If yes, did this integration condition already exist in your national legislation before the date of transposition of the Directive?

☐ OUI

☐ NON

Q.18 – Describe briefly the content of this condition, the date of its creation and the conditions of its examination
Q.19 – Are the children of refugees required to an integration test by your Member State (in contradiction with article 10 § 1)?

☐ OUI

☐ NON

If yes, explain

Q.20 – Does your Member State authorise:

Q.20 A – Reunification of first-degree relatives in the direct ascending line of the sponsor (a 4§2 a)?

☐ OUI

☐ NON

Q.20 B – If yes, shall they be dependant and not enjoy proper family support in the country of origin?

☐ OUI

☐ NON

How each of those criterions is transposed and checked?

Q. 20.C. Reunification of first-degree relatives in the direct ascending line of the spouse (a 4§2 a)?

☐ OUI

☐ NON

Q.20.D. If yes, shall they be dependant and not enjoy proper family support in the country of origin?

☐ OUI

☐ NON

How each of those criterions is transposed and checked?

Q.20.E. Reunification of adult unmarried children of the sponsor? (a 4§2 b) ?

☐ OUI

☐ NON

If necessary, explain how this procedure is organised
Q.20.F. If yes, does the national legislation impose that those adult unmarried children of the sponsor are objectively unable to provide for their own needs on account of their state of health (a 4 §2 b) ?

☐ OUI
☐ NON

If necessary, specify how each of those criterions ("objectively" and "unable to provide for their own needs") is transposed and checked?

Q.20. G. Does your Member State authorise reunification of adult unmarried children of the spouse (a 4§2 b)?

☐ OUI
☐ NON

If necessary, specify how this condition is assessed

Q.20.H. If yes, does the national legislation impose that those adult unmarried children of the sponsor are objectively unable to provide for their own needs on account of their state of health (a 4 §2 b) ?

☐ OUI
☐ NON

If necessary, specify how each of those criterions ("objectively" and "unable to provide for their own needs") is transposed and checked?

Q.20. I. Did your Member state use the by law or regulation norms to implement article 4 § 2 a et b?

☐ OUI
☐ NON

Q.21 – Does your Member State authorise reunification of the unmarried partner of the sponsor, being a third country national (a 4 §3)?

☐ OUI
☐ NON
Q.22 – If yes:

Q.22 A – This partnership shall be based on a duly attested stable long term relationship?

☐ OUI

☐ NON

If yes, specify how your Member State assess this situation

Q.22 B – This partnership shall be registered?

☐ OUI

☐ NON

Q.23 – Does your national law consider the registered partner as the husband/spouse (a 4 §3 alinéa 2)?

☐ OUI

+ NON

Q.24 – Does your Member State authorise:

Q.24. A – Reunification of minor children of the partner, including adopted children (a 4§3)?

☐ OUI

+ NON

Q. 24. B – Reunification of adult unmarried children of the partner, including adopted children (a 4§3)?

☐ OUI

+ NON

Q.25 – Does your Member State allow reunification of adult unmarried children who are objectively unable to provide for their own needs on account of their state of health (a 4§3)?

☐ OUI

+ NON

If yes, specify how the conditions, and more particularly the "objectivity", are assessed.
Q.26 – Did your Member state use the by law or regulation norms to implement article 4 § 3?

Q.27 – Is the prohibition of polygamous marriage enshrined in your national legislation (a. 4§4)?

☐ OUI
☐ NON

Q.28 – Does your Member State limit family reunification of minor children of a further spouse and the sponsor (article 4§4 dernier alinéa,)?

☐ OUI
☐ NON

Q.29 – Does your Member State use the option set up by article 4 § 5 requiring the sponsor and his/her spouse to be of a minimum age of 21 years old before reunification?

☐ OUI
☐ NON

Q.30 – If yes,

Q.30 A – What is the age required?
18 years old.

Q.30 B – Is the derogation founded on integration criteria and/or prevention of forced marriage?
It is not possible to determine the legislator’s criteria.

Q.31 – Does your Member State use the derogation of article 4 § 6 by requesting that the applications concerning family reunification of minor children have to be submitted before the age of 15?

☐ OUI
☐ NON

Explain
There is only one procedure concerning all minor children.

Q.32 – If yes, was it provided by existing legislation on the date of implementation of the directive?
Q.33 – If the application is not introduced before the age of 15, do Member States authorise entry and residence on grounds other than family reunification?

☐ OUI

☐ NON

Which grounds and which conditions?

PROCEDURE (ARTICLE 5)

Q.34 – Did your Member State institute a procedure regarding family reunification (a 5 §1)?

☐ OUI

☐ NON

Q.35 – If yes,

Q.35. A – Which authorities are in charge of this issue?

Service for aliens and immigration of the region

Q.35. B – Are NGO's associated to this procedure?

☐ OUI

☐ NON

If yes, describe the procedure

Q.35. C – Is the application submitted by the sponsor or by family members?

The application is submitted by the sponsor.

Q.35. D – Is this procedure exclusive from other possibilities to grant family reunification?

☐ OUI

☐ NON

If other procedural possibilities exist, please describe them

Q.35. E – Was this procedure existing before the adoption of Directive 2003/86?

☐ OUI

Yes, but we can consider that law 3386/2005 attempted also to implement Directive 2003/86 in a less detailed way.

☐ NON
Q.36 – Which documentary evidence are required to prove (a 5 §2):

Q.36. A – Family relationships according to article 4?

According to art. 5 par. 4 b) p.d. 131/2006 a recent certificate of family situation proving the family relationships, translated and certified by the competent Greek authorities is required.

Q.36. B – Accommodation conditions laid down in article 7?

According to art. 5 par. 4 c) p.d. 131/2006 a certified lease agreement or purchase contract or any other document proving that the sponsor has an appropriate accommodation is required.

Q.36. C – Sickness insurance conditions?

According to art. 5 par. 4 d) p.d. 131/2006 a certificate of a social security institution proving that the sponsor and the members of his family are covered for expenses concerning illnesses is required.

Q.36. D – Certified copies of family member(s)’ travel documents?

No, according to art. 5 par. 4 a) p.d. 131/2006 the application is accompanied only by the certified copies of the applicants travel documents.

Q.37 – Is the possibility foreseen to proceed to:

Interviews:

+ OUI

- NON

According to art 5 par. 3 p.d. 131/2006 the competent body has the right to proceed to interview in order to certify the existence of the family relation.

Investigations:

OUI

- NON

If yes, describe them briefly

Q.38 – When examining an application concerning the unmarried partner of the sponsor, which evidences are taken into account by Member States on the basis of national law to prove family relationship (article 5§2 dernier alinea) ?

The unmarried partner is not recognised as family member.

Q.38. A – Existence of family ties and other elements such as a common child?

- OUI

+ NON
Specify

**Q.38. B** - Previous cohabitation?

- [ ] OUI
- [ ] NON

**Q.38. C** - Registration of a partnership

- [ ] OUI
- [ ] NON

**Q.38. D** - Any other reliable means of proof foreseen in national law?

- [ ] OUI
- [ ] NON

If yes, specify which ones:

**Q.39** – Are family members obliged to reside outside the territory of the Member State while the application is being examined (a5 §3) ?

- [x] OUI
- [ ] NON

Is this obligation sanctioned and how? There is not a particular sanction. The law (art. 2 par. 3, art. 4 p.d.131/2006) only provides that the procedure concerns members entering the territory for family reunification.

**Q.40** – If the answer is yes, is a derogation organised according to article 5 § 3 second indent?

- [ ] OUI
- [x] NON

Please specify

**Q.41** – Does your national legislation include a maximum period of 9 month to answer to the application by way of written notification (a5 §4)?

- [x] OUI
- [ ] NON

If necessary, please specify

**Q.42** – This time limit can be extended (a 5 §4 alinea 2) ?
Q.43 – If yes,

Q.43. A – Because of the complexity of the examination of the application?

Q.43. B – What is the length of the extension?

According to art. 7 par. 4 ind. 2 p.d. 131/2006, the length of the extension is up to three months.

Q.44 – If no decision is taken by the end of the 9 months period provided, what are the consequences for the applicant?

The law does not provide directly the consequences, if no decision is taken by the end of the 9 months period. However, the possibility of judicial protection is provided according to the general principles concerning the failure of emission of an administrative act.

Q.45 – Is the decision rejecting the application notified? Does this written notification contain the reasons of rejection?

Q.46 – How is the best interest of minor children taken into account by your Member State’s legislation and authorities during examination of the application (article 5§5)?

According to the law, the family links shall be taken into account by the authorities. There are no more particular specifications. The circular cites as example of such a situation that if the application concerns a child residing abroad, the application is examined in priority. However, we have to precise that Greece has ratified the Convention of 1989 concerning the Rights of Children (Law 2101/1992) and that according art. 28 of Greek Constitution the international Conventions shall be an integral part of domestic law and shall prevail over any contrary provision of the law.
CONDITIONS REQUIRED (ARTICLES 6 AND OTHERS)

Q.47 – Can public policy, public security or public health grounds be taken into account to (a 6 §§1 et 2):

Q.47. A – Reject an application for family reunification?

+ OUI

☐ NON

If yes, which ones?

According to art. 9 par. 1 p.d. 131/2006, public policy, public security or public health grounds can be taken into account to reject an application for family reunification

Q.47. B – Withdraw an application for family reunification?

+ OUI

☐ NON

According to art. 9 par. 1 p.d. 131/2006, public policy, public security or public health grounds can be taken into account to withdraw a residence permit.

If necessary, please specify

Q.47. C – Refuse to renew a family member's residence permit?

+ OUI

☐ NON

If necessary, please specify

According to art. 9 par. 1 p.d. 131/2006, public policy, public security or public health grounds can be taken into account to refuse to renew a family member's residence permit. The above art provides that renewal of the residence permit may not be withheld and removal from the territory may not be ordered on the sole ground of illness suffered after the issue of the residence permit.

Q.48 – Does national legislation take into account:

Q.48. A – The severity or type of offence against public policy or public security?

+ OUI According to art. 9 par. 1 d) p.d. 131/2006, the severity or type of offence against public policy or public security (the kind and the gravity of the crime) shall be taken into account concerning the withdraw and the refusal to renew the permit.
Q.48. B – The solidity of family relationships regarding article 17 of the Directive?

+ OUI

According to art. 9 par. 3 p.d. 131/2006, the solidity of family relationships shall be taken into account

- NON

If necessary, please specify

Q.49 – Does your Member State withdraw the residence permit or remove the third country national on the sole ground of illness or disability suffered after the issue of the residence permit (a 6 §3)?

- OUI

+ NON

Q.50 – Are accommodation conditions required from the applicant (a7 §1a)?

+ OUI

- NON

Q.51 – If yes:

Q.51. A – What are those conditions?

According to art. 5 par. 2 d) p.d. 131/2006 “confortable accomodation” for the sponsor and the members of his family is required.

Q.51. B – How are they assessed?

There are no guidelines. The competent authority decides under the auspices of the courts.

Q.51 C – Are they comparable to the conditions required to a normal family living in the same region?

+ OUI

However no particular precisions are given by the law.

- NON

If not, please specify the differences

Q.52 – Is a sickness insurance required from the applicant (a. 7 §1b)?

+ OUI

- NON
Q.53 – Are stable resources required (a7 §1c) ?

☐ OUI
☐ NON

Specify their nature and content

Any nature of income is accepted. The existence of stable ressources is proved by the tax statements of the last year or any other official document.

Q.54 – How is the condition "sufficient" assessed by your Member State? Is it in comparison with national wages?

A concrete amount is fixed by the law (annual income 8,500 €). However, there is a link with the national wage as art 5 p.d. 131/2006 provides also that this amount shall not be inferior than the unskilled workers’ national wage. This amount is superadded by 20 % for the spouse and by 15 % for each child.

Q.55 – Are integration criterions required to allow family reunification (a 7 §2)?

☐ OUI
☐ NON

Q.56 – If yes:

Q.56. A – What are those criterions?

Q.56. B – Do they apply indistinctly to all potential beneficiaries of reunification? (Spouse, dependant people, etc.)

Q.56. C – How are they evaluated by your Member State?

Q.56. D – Are refugees and their family members required to fulfil them (a 7 §2, second indent)?

☐ OUI
☐ NON

Q.57 – Is a minimal period of lawful reside is required before reunification (a 8 §1)?

☐ OUI

Art 5 par. 1 p.d. 131/2006 specifies that the sponsor must have resided legally in Greece for a period of two years prior to being able to apply for reunification of his/her family.

☐ NON

Q. 58 – Does this period exceed two years?

Please specify

According to art. 5 par. 1 p.d. 131/2006, the period is fixed at two years.
Q.59 – Does your Member State apply the derogation set up by article 8 § 2 allowing Member States to impose a waiting period of maximum three years due to reception capacities between the submission of the application and the issuance of a residence permit?

☐ OUI

☐ NON

Please specify

Q.60 – If yes, did this derogation exist in national law before the 22nd of September 2003?

☐ OUI

☐ NON

FAMILY REUNIFICATION OF REFUGEES

Q.61 – Does your Member State allow family reunification of refugees on the basis of Directive 2003/86 (a 9 §1) ?

☐ OUI

☐ NON

Q.62 – Is this right limited to family relationships predating the entry on the territory (a 9 §2)?

☐ OUI

☐ NON

Q.63 – Does your Member State allow family reunification of family Members not quoted in article 4 of the Directive (a 10 §2) ?

☐ OUI

☐ NON

Which members of the family and under which conditions?

However family reunification of adult unmarried children and of first degree relatives is allowed. The adult unmarried children of the refugee or of the spouse are accepted where they are unable to provide for their own needs on account of their state of health. First degree relatives of the refugee where they were dependent on him before the entry and they do not enjoy proper support in their country.
Q.64 – According to the specific case of unaccompanied minor refugees, does your Member State authorise family reunification of first degree relatives in the direct ascending line without applying the conditions laid down in article 4 § 2 (a10 § 3 a) ?

+ OUI
- NON

What conditions are required?
Application and evidence of the family relationship.

Q. 65 – Does your Member State authorise entry and residence of the legal guardian or any member of the family where the unaccompanied minor refugee has no relatives in the direct ascending line or such relatives cannot be traced (a10 § 3 b) ?

+ OUI
- NON

If yes, please specify who the member of the family targeted is and which proofs are required to prove family ties?
The first line ascendants of the minor, the legal guardian and any other member of the family if the first line ascendants is not possible to be detected. (art 67 of draft p.d on Reception of persons seeking international protection). Official documents proving the family link shall be provided.

Q.66 – Does your Member State take into account other evidence of family relationship where the refugee cannot provide official evidence (a 11 § 2) ?

+ OUI
- NON

Which ones?
According to art 68 par. 1 c) ind 2 of draft p.d on Reception of persons seeking international protection, any other appropriate evidence of family relationship shall be taken into account where the refugee cannot provide official evidence.

Q.67 – Does the examination of the refugee application take into account their specific situation:

Q.67. A – Are proofs regarding accommodation conditions, sickness insurance or resources required (a 12 § 1)?

- OUI
+ NON

If yes, are those requirements comparable to those imposed to other third country nationals? However such a proof is necessary concerning first degree relatives in direct ascending line.
Q.67. B – If one of the person concerned (sponsor or family member) has special links with a third country within which reunification is possible, does your member state require those proofs according to article 12 § 1 second indent.

☐ OUI
☐ NON

If necessary specify

Q.67. C – If a refugee has introduced its application after a period of three months, does your Member State require the refugee to meet the conditions or one of them (accommodation, sickness insurance, resources (a 12 §1 alinea 3) ?

☐ OUI
☐ NON

If yes, which ones?

According to art 68 par. 4 of draft p.d on Reception of persons seeking international protection, accommodation, sickness insurance and resources conditions are required.

Q.68 – Does your Member State apply the prohibition to impose a residence condition before reunification (a 12 §2)?

☐ OUI
☐ NON

If not, what is the length of this period? Is it different from the one normally applied?

EXERCISE OF THE RIGHT TO FAMILY REUNIFICATION

Q.69 – Is entry and residence facilitated by your Member State, as soon as the application for family reunification has been accepted, including the issue of obtaining visas (a13 §1) ?

☐ OUI
☐ NON

If yes, how?

According to art. 6 par. 3 p.d. 131/2006, the decision of authorising the family reunification is transmitted to the competent Greek consulate in order to grant a visa.
Q.70 – Is a residence permit of at least one year's duration granted to the family members (a 13 §2)?

☐ OUI

+ NON

What is the duration of the residence permit?

According to art. 8 of PD 131/06, the duration of the initial residence permit granted to a family member, corresponds to the residence permit held by the sponsor (implementing art. 13§3 of the directive). Further renewals have the same duration with residence permit of the sponsor (which, in any case, according to migration legislation, cannot be less than a year – normally residence permits for working purposes are renewed every two years, after the initial issue).

Q.71 – Is this residence permit renewable?

☐ OUI

+ NON

Q.72 – Is the duration of the residence permit aligned with the duration of sponsor's residence permit (a 13 §3) ?

☐ OUI

+ NON

If no, please specify

Q.73 – Are the rights awarded to family members' equivalent to those granted to the sponsor (a14 §1):

Q.73. A – Regarding access to education?

☐ OUI

+ NON

If no, please specify

Q.73. B - Regarding access to employment?

☐ OUI

+ NON

Please specify the content of this access
Q.73. C – Regarding access to vocational guidance, initial and further training and retraining?

☐ OUI

☐ NON

If no, please specify

Q.74 – Does your Member State grant specific rights in social matters to reunified family members?

☐ OUI

☐ NON

If yes, please describe them and specify if a time limit is established to take advantage from them

Q.75 – Has Member State set up conditions regarding specific access to employment for family members (a 14 §2)?

☐ OUI

☐ NON

If yes, how?

According to art. 10 par. 1 b) of p.d. 131/2006 during the first 12 months the competent body decides according to the vacant jobs.

Q.76 – If yes, do those conditions exceed 12 months (a 14 §2)?

☐ OUI

☐ NON

Which ones?

Q.77 – Is access to employment limited in your Member State

Q.77.A – Regarding first-degree relatives in the direct ascending line?

☐ OUI

☐ NON

They are not considered as family members of the sponsor
If yes, how?
Q.77. B – Regarding adult unmarried children objectively unable to provide for their own needs on account of their state of health (a 14 §3)?

☐ OUI

☐ NON

They are not considered as family members of the sponsor

If yes, how?

Q.78 – Are spouses, unmarried partners and child who has reached majority entitled to an autonomous residence permit at least five years after lawful residence on the basis of the residence permit issued for family reunification (a15 §1)?

☐ OUI

☐ NON

If yes, please specify when and how for each category

Spouses are entitled to an autonomous residence permit at least five years after lawful residence on the basis of the residence permit issued for family reunification. Children who have reached majority are also entitled to an autonomous residence permit.

Q.79 – Does your Member State limit the granting of the autonomous residence in cases of breakdown of the family relationship (a 15 §1 alinea 2)?

☐ OUI

☐ NON

Please explain

There is not such a limit.

Q.80 – Does your Member State grant autonomous residence permit:

Q.80. A – To first-degree relatives in the direct ascending line (a15 §2)

☐ OUI

☐ NON

If necessary specify

They are not considered as family members of the sponsor

Q.80. B – To adult unmarried children objectively unable to provide for their own needs on account of their state of health (a15 §2)?

☐ OUI

☐ NON

If necessary specify
Q.81 – Does your member State grant autonomous residence permit in the event of widowhood, divorce, separation or death of first first-degree relatives in the direct ascending or descending line (a 15 §3)?

☑ OUI
☐ NON

If necessary specify
According to art. 11 p.d. 131/2006, in the event of death of the sponsor autonomous residence permit is granted, if the family members have resided in Greece for at least one year prior to the sponsor’s death. In the event of divorce or annulment of marriage or proven interruption of marital cohabitation autonomous residence permit is granted if the marriage has lasted for at least three years prior to the initiation of divorce proceedings, proceedings for annulment or proven interruption, out of which one year at least had been in Greece.

Q.82 – Has your Member State adopted rules granting autonomous residence permit "in the event of particularly difficult circumstances" (a 15 §3)?

☑ OUI
☐ NON

If yes, how is this provision defined and transposed?
According to art. 11 p.d. 131/2006 autonomous residence permit is granted if there are particularly difficult circumstances in the family such as the one of the spouses being the victim of conjugal violence during marriage.

PENALTIES AND REDRESS

Q.83 – What are the legal grounds to reject, withdraw or refuse to renew a family member's residence permit (a16 §1 et 2):

Q.83. A – Conditions required by the directive not satisfied?

☑ OUI
☐ NON

Q.83. B – Absence of real martial or family relationship?

☑ OUI
☐ NON

If yes, how is this hypothesis assessed?
According to art. 9 par. 2 p.d. 131/2006 investigations, interviews is possible to be undertaken by the competent authorities.
Q.83. C – Stable long term relationship with another person?

+ OUI

☐ NON

If yes, how is this hypothesis assessed?

According to art. 9 par. 2 p.d. 131/2006 investigations, interviews is possible to be undertaken by the competent authorities

Q.83. D – False or falsified documents?

+ OUI

☐ NON

Q.83. E – Marriage, partnership or adoption contracted for the sole purpose of enabling reunification?

+ OUI

☐ NON

Q.83. F – If yes, how is this hypothesis assessed?
Investigations, interviews and any other proof.

Q.83. G – When the sponsor's residence comes to an end and the family member does not yet enjoy an autonomous right of residence (a 16 §3) ?

+ OUI

Art 9 par. 1 h) provides that a family member's residence permit is withdrawn or not renewed when the sponsor's residence comes to an end and the family member does not yet enjoy an autonomous right of residence

☐ NON

Q.83. H – What type of control are organised thereof?
Any kind of control under legal circonstances

Q.84 – Are resources of the family taken into account when renewing residence permit where the sponsor does not have sufficient resources without recourse to the social assistance system of the member state?

+ OUI

☐ NON

If yes, under which modalities?
There are no particular precisions. Resources of the family taken into account are resources of the spouse (salary, donations, inheritance) or of the children.
Q.85 – Does your Member State's legislation take into consideration (a. 17) :

Q.85. A – The nature and solidity of the person's family relationships and the duration of his residence in the Member State?

☐ OUI
☐ NON

If yes, please specify how and on the basis of which norm (legislation, regulation, jurisprudence, …)
The presidential decree 131/2005 provides (art 17 par. 3) that these elements shall be taken into account.

Q.85. B - 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?

☐ OUI
☐ NON

If yes, please specify how and on the basis of which norm (legislation, regulation, jurisprudence, …)
Presidential decree 131/2005 provides (art 17 par. 3) that these elements shall be taken into account.

Q.86 – Do the sponsor and/or members if his/her family have the right to mount a legal challenge where an application for family reunification is rejected (a18 §1)?

☐ OUI
☐ NON

Q.87 – Is this right to legal challenge considered as a right to a judicial review according to jurisprudence C-540/03 (a18 §1) ?

☐ OUI
☐ NON
XX. IMPACT OF THE DIRECTIVE ON NATIONAL LAW

Q.88 A

Did the transposition of the directive made the rules related to the best interest of minor children (a. 5 § 5) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below.

Please use one box per object and duplicate it if necessary

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
</table>
| Due regard to the best interest of minor children during examination of the application a. 5 § 5 | Complete this box by keeping the right appreciation and deleting the two others:  
• More favourable than previous national rules | Complete this box by keeping the right appreciation and deleting the other one:  
• In line with the directive |

Q.88 B

Did the transposition of the directive made the rules related to the beneficiaries of the right to family reunification become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below.

Please use one box per object and duplicate it if necessary

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Definition of the beneficiaries of the right to family reunification a. 4 § 4</td>
<td>Complete this box by keeping the right appreciation and</td>
<td>Complete this box by keeping the right appreciation and</td>
</tr>
<tr>
<td>No right concerning family reunification</td>
<td>is</td>
<td></td>
</tr>
</tbody>
</table>

A right to family reunification is provided  
Date of adoption 13.7.2006

Complete this box by keeping the right appreciation and deleting the two others:

• More favourable than previous national rules

Complete this box by keeping the right appreciation and deleting the other one:

• In line with the directive
Q.88 C  Did the transposition of the directive made the rules related to reunification of minor children between 12 (a. 4 § 1) and 15 (a. 4 § 6) years old become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
</table>
| Limitation of reunification of minor children of 12 and 15 years of age (a. 4 § 1 and 4 § 6) | Complete this box by keeping the right appreciation and deleting the two others:  
• More favourable than previous national rules | Complete this box by keeping the right appreciation and deleting the other one:  
• In line with the directive |

Q.88 D  Did the transposition of the directive made the rules related to requirements to the exercice of family reunification (article 7) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
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</thead>
<tbody>
<tr>
<td>Requirements for the exercice of family reunification (a. 7)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Q.88 E  Did the transposition of the directive made the rules related to margins of manoeuvre awarded to Member States (a. 5 § 5, 17, C-540/03) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

Please use one box per object and duplicate it if necessary

<table>
<thead>
<tr>
<th>OBJECT</th>
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<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Limitation of margins of manoeuvre (a. 17, a.5 §5, C-540/03)</td>
<td>Complete this box by keeping the right appreciation and deleting the two others:</td>
<td>Complete this box by keeping the right appreciation and deleting the other one:</td>
</tr>
<tr>
<td>No right concerning family reunification</td>
<td>• More favourable than previous national rules</td>
<td>• In line with the directive</td>
</tr>
</tbody>
</table>

Q.88 F  Did the transposition of the directive made the rules related to integration objectives and criterions more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

Please use one box per object and duplicate it if necessary

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attention draw upon integration objectives (considérant 15) and criterions of integration (a.4 §1 dernier alinéa, a. 7)</td>
<td>Complete this box by keeping the right appreciation and deleting the two others:</td>
<td>Complete this box by keeping the right appreciation and deleting the other one:</td>
</tr>
<tr>
<td>No right concerning family reunification</td>
<td>• More favourable than previous national rules</td>
<td>• In line with the directive</td>
</tr>
</tbody>
</table>
§2) The Directive

No right concerning family reunification

A right to family reunification is provided

Date of adoption: 13.7.2006

Complete this box by keeping the right appreciation and deleting the two others:

- More favourable than previous national rules

Complete this box by keeping the right appreciation and deleting the other one:

- In line with the directive

Q.89 From your point of view, did the transposition of the directive imply other interesting changes for the third national country regarding other elements than the ones mentioned in the previous question. Make also a comparison with the standard of the directive in the last column of the table below

If they want to do so, the thematic coordinators should complete this question by indicating the number of examples that they ask the national reporter to give.

Please use one box per object and duplicate it if necessary

<table>
<thead>
<tr>
<th>OBJECT (to be precisely indicated by the national rapporteur)</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• More favourable than previous national rules</td>
<td>• In line with the directive</td>
</tr>
</tbody>
</table>

Q.89. A. Mention if there is a general tendency to just copy the provisions of the directive into national legislation without redrafting or adaptation them to national circumstances.

☐ NO

☐ YES
Q.89.B. If yes, please indicate if this general tendency may or not create problems (for example difficulties of implementation, risk that a provision remain unapplied).

+ NO

☐ YES

Q.89.C. If yes, give some of examples:

Q.89.D. If only some provisions of the directive have been copied and if this may create any problem, please quote them and explain the problem.

Q.90. Quote interesting decisions of jurisprudence related to the directive, its transposition or implementation (so this question concerns in principle decisions later that the directive, but previous ones might be quoted if relevant). Quote in particular decisions of supreme Courts; limit yourself to the appeal Courts and ignore the first resort if there are too many decisions at this level, unless there is a certain jurisprudence made of a group of decisions.

Please use one box per decision and duplicate it if necessary

<table>
<thead>
<tr>
<th>DECISION OF SUPREME COURTS</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
</tr>
</thead>
<tbody>
<tr>
<td>DECISION OF APPEAL COURTS</td>
<td>DATE:</td>
<td>REFERENCE OF PUBLICATIONS:</td>
<td>SUMMARY OF CONTENT:</td>
</tr>
<tr>
<td>DECISION(S) IN FIRST RESORT</td>
<td>DATE:</td>
<td>REFERENCE OF PUBLICATIONS:</td>
<td>SUMMARY OF CONTENT:</td>
</tr>
</tbody>
</table>

ANY SUPPLEMENTARY COMMENT ABOUT THE TREND OF THE JURISPRUDENCE:

Q.91 Specify if there are or not problems with the translation of the text of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated.

+ There are no problems with the translation of the directive

☐ There are some problems with the translation of (indicate the number of the articles concerned) of the directive.

Explain the difficulties that this could create:
Q. 92 ANY OTHER INTERESTING ELEMENT

Q.92 A. Following your personal point of view, mention from the point of view of third country nationals and/or from the Member State any interesting or innovative practice in your Member State

*Please use one table per practice and duplicate it if necessary*

<table>
<thead>
<tr>
<th>OBJECT OF THE PRACTICE</th>
<th>EXPLANATIONS</th>
</tr>
</thead>
</table>

Q.92 B. Please add here any other interesting element in your Member State which you did not had the occasion to mention in your previous answers
The person in the team of thematic coordination in charge of this directive that you can contact if you have a question or need help when completing this questionnaire is: Yves Pascouau, + 33 5 59 57 41 20, yves.pascouau@univ-pau.fr

COMMENTARIES

1. Council directive 2003/86 on the right to family reunification faced hard negotiations requiring the presentation of revised proposals from the Commission before final adoption in 2003. The European Court of Justice rejected in June 2007 an action for annulment introduced by the European Parliament against the Council directive (C-540/03).

2. Transposition of the directive must be assessed regarding the nature of the provision concerned. So as to help you, those provisions are coloured within the questionnaire as follows: obligatory provision (Q.XX), optional provision (Q.YY), provision which set up a derogation (Q.ZZ)

3. The Court of justice has defined the margins of discretion awarded to the member States even in situations where the directive allows the member States to depart from the directive. The Court states:

"Article 4(1) of the Directive imposes precise positive obligations, with corresponding clearly defined individual rights, on the Member States, since it requires them, in the cases determined by the Directive, to authorise family reunification of certain members of the sponsor’s family, without being left a margin of appreciation" (cons. 60).

"Note should also be taken of Article 17 of the Directive which requires Member States to 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 country of origin. As is apparent from paragraph 56 of the present judgment, such criteria correspond to those taken into consideration by the European Court of Human Rights when it reviews whether a State which has refused an application for family reunification has correctly weighed the competing interests” (cons. 64)

The fact that the concept of integration is not defined cannot be interpreted as authorising the Member States to employ that concept in a manner contrary to general principles of Community law, in particular to fundamental rights. The Member States which wish to make use of the derogation cannot employ an unspecified concept of integration, but must apply the condition for integration provided for by their legislation existing on the date of implementation of the Directive in order to examine the specific situation of a child over 12 years of age arriving independently from the rest of his or her family” (cons. 70).
4. The main difficulty according to the transposition of the directive relies on the systematic opportunities offered to member States to depart from the provisions of the directive when applying it.

5. Article 19 indicates which themes where the most sensitive during the negotiations of the Directive (art. 3, 4, 7, 8 and 13).

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**FIRST PART**

**1. NORMS OF TRANSPOSITION AND JURISPRUDENCE**

**Q.1.A.** Identify the MAIN (because of its content) norm(s) of transposition and indicate its legal nature

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)
- About legal nature in the table below: legislative refers to a norm adopted in principle by the Parliament; regulation refers to a norm complementing the law and adopted in principle by the executive power; circular or instructions refer to practical rules about implementation of laws and regulations and adopted in principle by the administrative authorities

*Please duplicate the table below if there is more than one MAIN norm of transposition*

<table>
<thead>
<tr>
<th>This table is about:</th>
<th>a text already adopted</th>
<th>a text which is still a project to be adopted</th>
</tr>
</thead>
<tbody>
<tr>
<td>TITLE:</td>
<td>Act on entry and residence of third country nationals</td>
<td></td>
</tr>
<tr>
<td>DATE:</td>
<td>5 January 2007</td>
<td></td>
</tr>
<tr>
<td>NUMBER:</td>
<td>II of 2007</td>
<td></td>
</tr>
<tr>
<td>DATE OF ENTRY INTO FORCE:</td>
<td>1 July 2007</td>
<td></td>
</tr>
<tr>
<td>PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive):</td>
<td>Chapter I, Chapter III</td>
<td></td>
</tr>
<tr>
<td>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:</td>
<td>Magyar Közlöny, 2007/1</td>
<td></td>
</tr>
<tr>
<td>LEGAL NATURE (indicate a cross in the correct box):</td>
<td>LEGISLATIVE:</td>
<td></td>
</tr>
</tbody>
</table>
### Government Decree implementing Act II of 2007 on the entry and residence of third country nationals

**TITLE:** Government Decree implementing Act II of 2007 on the entry and residence of third country nationals  
**DATE:** 24 May 2007  
**NUMBER:** 114/2007 (V.24.)  
**DATE OF ENTRY INTO FORCE:** 1 July 2007  
**PROVISIONS CONCERNED:** Chapter I, Chapter III

**REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:** Magyar Közlöny, 2007/65

**LEGAL NATURE** (indicate a cross in the correct box):  
- [X] LEGISLATIVE:  
- [ ] REGULATION: Government Decree  
- [ ] CIRCULAR or INSTRUCTIONS:

---

### Ministerial Decree of the Minister of Justice and Police Affairs on implementing the Act I of 2007 on the entry and residence of persons with the right of free movement and Act II of 2007 on entry and residence of third country nationals

**TITLE:** Ministerial Decree of the Minister of Justice and Police Affairs on implementing the Act I of 2007 on the entry and residence of persons with the right of free movement and Act II of 2007 on entry and residence of third country nationals  
**DATE:** 31 May 2007  
**NUMBER:** 25 of 2007  
**DATE OF ENTRY INTO FORCE:** 1 July 2007  
**PROVISIONS CONCERNED:** II Chapter

**REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:** Magyar Közlöny, 2007/67

**LEGAL NATURE** (indicate a cross in the correct box):  
- [X] LEGISLATIVE:  
- [ ] REGULATION: Ministerial Decree  
- [ ] CIRCULAR or INSTRUCTIONS:
This table is about: X a text already adopted  □ a text which is still a project to be adopted

**TITLE:** Ministerial Decree of the Minister of Justice and Police Affairs on the procedural fees related to the entry and residence of persons with the right of free movement and of third country nationals

**DATE:** 31 May 2007

**NUMBER:** 28 of 2007

**DATE OF ENTRY INTO FORCE:** 1 July 2007

**PROVISIONS CONCERNED** (for example if the norm is not devoted only to the transposition of the concerned directive):

**REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:** Magyar Közlöny, 2007/67

**LEGAL NATURE** (indicate a cross in the correct box):

- [ ] LEGISLATIVE:
- [X] REGULATION: Ministerial Decree
- [ ] CIRCULAR or INSTRUCTIONS:

**Q.1.B.**

List the others norms of transposition by order of importance of their legal nature (first laws, secondly regulations; thirdly circulars or instructions):

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)

*Please use one table per norm and duplicate as much as necessary*

**TITLE:** Act on General Rules of Public Proceedings and Services

**DATE:** 28 December 2004

**NUMBER:** CXL of 2004

**DATE OF ENTRY INTO FORCE:** 1 November 2005

**PROVISIONS CONCERNED:** (for example if the norm is not devoted only to the transposition of the concerned directive) the whole norm is a subsidiary norm to be used if there is no provision in the Act or Government Decree

**REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:** Magyar Közlöny, 2004/203.

**LEGAL NATURE** (indicate a cross in the right box):

- [X] LEGISLATIVE: Act
- [ ] REGULATION
- [ ] CIRCULAR or INSTRUCTIONS
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<td><strong>TITLE:</strong></td>
<td>Act on Asylum as amended</td>
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<tr>
<td><strong>DATE:</strong></td>
<td>15 December 1997</td>
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<tr>
<td><strong>TITLE:</strong></td>
<td>Act on Civil Procedure as amended</td>
<td></td>
<td></td>
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<tr>
<td><strong>DATE:</strong></td>
<td>6 June 1952</td>
<td></td>
<td></td>
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<td><strong>NUMBER:</strong></td>
<td>III of 1952</td>
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<td><strong>DATE:</strong></td>
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Ministerial Decree

| TITLE: Decree of the Minister of Social and Family Affairs on Work Permits Issued to Foreign Nationals in Hungary as amended | DATE: 10 November 1999 | NUMBER: 8/1999 (XI. 10.) | DATE OF ENTRY INTO FORCE: 1 January 2000 |
| REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: Magyar Közlöny, 1999/99 |
Q.2. THIS QUESTION IS IN PRINCIPLE ONLY FOR FEDERAL OR ASSIMILATED MEMBER STATES LIKE AUSTRIA, BELGIUM, GERMANY, ITALY, SPAIN

Q.2.A. Explain which level of government is competent to adopt the norms of transposition.

Please include your answer in the tables below

<table>
<thead>
<tr>
<th>LEGISLATIVE RULES</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</td>
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<td>COMPETENCES OF THE COMPONENTS:</td>
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<td>EXPLANATIONS IF NECESSARY:</td>
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</table>

Q.2.B. In case, explain if the federal structure and the distribution of competences between the different levels pose any problem or difficulty regarding the transposition and/or the implementation of the directive.

Q.3. Explain which authorities are competent for the practical implementation of the norm of transposition by taking the decisions in individual cases.

Please use one table per competence concerned and duplicate it if necessary

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
</tr>
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<tbody>
<tr>
<td>Upon application issuing and withdrawing a residence permit to third country nationals.</td>
</tr>
<tr>
<td>CENTRAL MINISTRY OF:</td>
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<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister):</td>
</tr>
</tbody>
</table>

| COMPETENCE CONCERNED: | Upon application issuing and withdrawing a residence visa to third country nationals. |
| CENTRAL MINISTRY OF: | |
| DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY: | |
| OTHER LEVEL OF ADMINISTRATION: | Regional Directorates of the Office of Immigration and Nationality (OIN), Central Authority of the Office of Immigration and Nationality (OIN) |
| IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister): | The OIN is subordinated to the Ministry of the Interior and since July 2006 by the Ministry of Justice and Law Enforcement. |

<p>| COMPETENCE CONCERNED: | Upon application issuing a residence visa to third country nationals. |
| CENTRAL MINISTRY OF: | |
| DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY: | |
| OTHER LEVEL OF ADMINISTRATION: | Embassies of the Republic of Hungary |
| IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister): | |</p>
<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Decision on appeals against refusal of issuing or extending residence permit, or the of its withdrawal.</th>
</tr>
</thead>
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<tr>
<td>CENTRAL MINISTRY OF:</td>
<td></td>
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<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td></td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
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</tr>
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<td></td>
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<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td></td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister):</td>
<td>County Courts (including Budapest Metropolitan Court) according to jurisdiction based on the venue of first instance application submission (in case of Central Authority decision – Metropolitan Court)</td>
</tr>
</tbody>
</table>

**Q.4. A.** Has the main regulation foreseen explicitly by the main norm of transposition already been adopted or not:

- [x] YES
- [ ] NO

**Q.4.B.** If the main norm(s) of transposition foresees the adoption of one or several regulations, indicate if they have all been adopted:

- [x] YES
- [ ] NO
If NO, please indicate the missing text(s) in the table below
*Please use one line per missing text and duplicate it if necessary*

<table>
<thead>
<tr>
<th>MISSING TEXTS</th>
</tr>
</thead>
</table>

Add if necessary some explanations (specify in particular if the missing texts are at least under preparation or foreseen in the very near future):
AIM (ARTICLE 1)

The purpose of the Directive is to determine the conditions for the exercise of the right to family reunification. In case C-540/03, the Court of justice recognizes that, in some cases, member States do not have any margin of appreciation to grant the right to family reunification.

Q.5 – Is family reunification considered as a right in your Member State?

☐ OUI

☒ NON

Please explain

It’s not mentioned specifically in the immigration regulation, in the statutory rules, as persons concerned have the right for family reunification under certain conditions. Law uses a permissive language (may get).

Q.5. A – Are there any figures available relating to the exercise of the right to family reunification between 2002 and 2006? If yes, what are the trends, including nationality assessment?

<table>
<thead>
<tr>
<th>Purpose of visa for staying</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
</tr>
</thead>
<tbody>
<tr>
<td>Labour</td>
<td>7 660</td>
<td>26 421</td>
<td>30 957</td>
<td>19 374</td>
<td>23 604</td>
</tr>
<tr>
<td>Studying</td>
<td>5 095</td>
<td>6 742</td>
<td>4 721</td>
<td>3 659</td>
<td>3911</td>
</tr>
<tr>
<td>Visiting</td>
<td>1 040</td>
<td>2 026</td>
<td>3 518</td>
<td>1 876</td>
<td>1 509</td>
</tr>
<tr>
<td>Entrepreneurship</td>
<td>856</td>
<td>1 340</td>
<td>1 823</td>
<td>906</td>
<td>891</td>
</tr>
<tr>
<td>Family unification</td>
<td>218</td>
<td>1 283</td>
<td>1 914</td>
<td>1 232</td>
<td>1 805</td>
</tr>
<tr>
<td>Seasonal labour</td>
<td>0</td>
<td>796</td>
<td>779</td>
<td>34</td>
<td>34</td>
</tr>
<tr>
<td>Official</td>
<td>216</td>
<td>230</td>
<td>121</td>
<td>171</td>
<td>103</td>
</tr>
<tr>
<td>Medical, curing</td>
<td>15</td>
<td>20</td>
<td>37</td>
<td>21</td>
<td>16</td>
</tr>
<tr>
<td>Other</td>
<td>2 282</td>
<td>3 676</td>
<td>4 263</td>
<td>3 438</td>
<td>2 647</td>
</tr>
</tbody>
</table>
The OIN provides statistics on rejected cases in total: they amount to about 5-6 % of the issued permits. For example in the year 2006 altogether 32714 residence visas had been issued and 1806 applications denied.

**DEFINITIONS (ARTICLE 2)**

**SCOPE (ARTICLE 3)**

The scope of the Directive is defined by article 3. We recall that:

- § 1 "reasonable prospect..." aims at excluding persons residing on a temporary basis (stagiaires, etc...)
- European citizens are excluded (§ 3)
- Comparison with existing legislation is of importance so as to assess the added value of the harmonization process (§ 5)

Q.6. Period of validity of the sponsor’s residence permit:

Q.6. A. Is the period of validity of the sponsor’s residence permit of one year or more according to article 3 § 1 of the Directive?

☐ OUI

✘ NON

Q.2.B. Quote precisely the period enshrined in national law:

The validity period for a visa for a validity period of longer than three months shall be:

maximum one year for residence visas. (AA §14(2))

The third-country nationals holding a valid residence visa or national visa shall be authorized to remain in the territory of the Republic of Hungary after the period of residence authorized in the visa expires in possession of a residence permit, unless this Act provides otherwise.
A residence permit is an authorization to reside in the territory of the Republic of Hungary for a limited duration of at least three months and not more than two years. (AA §16 (1)-(2))
In theory, it is possible family reunification to sponsor holding residence visa or residence permit with a validity less than one year.

**Q.6.C.** How does your Member State translate in national law the requirement for the sponsor to have "reasonable prospects of obtaining the right of permanent residence" (a 3 § 1)?

There is no such requirement concerning the sponsor’s status. According to the law the sponsor must have either a residence visa, or a residence permit, immigration permit, permanent residence permit, interim permanent residence permit, a national or EC permanent residence permit, or – under specific other legislation – has to be in possession of a residence card or permanent residence card. The latter is given for EU citizens, and family members of EU citizens and Hungarians.

**Q.7.** Members of the family concerned:

**Q7. A.** Are they third country nationals as required by article 3 § 1 of the Directive?

☐ OUI

☒ NON

If not, explain

**Q7.B.** How has your Member State translated in national law the wording of "whatever status" included in article 3 § 1 of the Directive?

The national law provides only about third country nationals without specifying their status.

**Q.8 –** Did the transposition of the Directive in your Member state breached provisions of international law more favourable to individuals (a 3 § 4)?

☐ OUI

☒ NON

**Q.9 –** If yes, are those provisions based on:

**Q.9.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?

☐ OUI

☐ NON

Specify which provisions
Q.9.B - The European Social Charter of 18 October 1961 (a 3 § 4)?

☐ OUI
☐ NON

Specify which provisions

Q.9.C. The amended European Social Charter of 3 May 1987 (a 3 § 4)?

☐ OUI
☐ NON

Specify which provisions


☐ OUI
☐ NON

Specify which provisions

Q.10 – Does the transposition of the Directive affect national provisions more favourable to individuals (a 3 § 5)?

☐ OUI
☒ NON

If yes, please specify which provisions

Beneficiaries (Article 4)

- Article 4 of the Directive contains numerous "may clauses". It is therefore important to pay attention on the way Member States use them and on the legal modalities adopted thereof.

- Article 4 § 1 a) and b) enacts a right to family reunification for some members of the sponsor's family. The Member State does not have any margin of discretion regarding those persons.

- Article 4 § 1 last indent foresee one derogation regarding child over 12 years on the basis of an integration criterion. This is one of the most sensitive questions encompassed by the directive beside the issue of the limit of age in § 6.

- Regarding article 4 § 6, the Court states ""It does not matter that the final sentence of the contested provision provides that the Member States which decide to apply the derogation are to authorise the entry and residence of children in respect of whom an application is submitted after they have reached 15 years of age 'on grounds other
than family reunification’. The term ‘family reunification’ must be interpreted in the context of the Directive as referring to family reunification in the cases where family reunification is required by the Directive. It cannot be interpreted as prohibiting a Member State which has applied the derogation from authorising the entry and residence of a child in order to enable the child to join his or her parents”. (cons. 86)

The Court adds " Article 4(6) of the Directive must, moreover, be read in the light of the principles set out in Article 5(5) thereof, which requires the Member States to have due regard to the best interests of minor children, and in Article 17, which requires them to take account of a number of factors, one of which is the person’s family relationships” (cons. 87)

Q.11 – Does your national law recognize the right to family reunification to:
‘family member’ shall mean:
a) the spouse of a third-country national;
b) the minor child (including adopted children) of a third-country national and his/her spouse;
c) the minor child, including adopted and foster children, of a third-country national where this third-country national has parental custody and the children are dependent on him/her;
d) the minor child, including adopted and foster children, of the spouse of a third-country national where the spouse has parental custody and the children are dependent on him/her.
(AA §2 d))

Q.11. A – The sponsor's spouse (a. 4 § 1 a)?
[ ] OUI

[ ] NON

Q.11. B - Minor children of the sponsor and of his/her spouse (a. 4 § 1 b)?
[ ] OUI

[ ] NON

Q.11.C. Minor children adopted of the sponsor and of his/her spouse (a. 4 § 1 b)?
[ ] OUI

[ ] NON

Q.11.D. Minor children of the sponsor (a. 4 § 1 c)?
[ ] OUI

[ ] NON

Q.11. E. If yes, does your national law foresee that the sponsor shall have children custody and children are dependant on him or her?
[ ] OUI
Specify if necessary the proofs required

Q.11 F. Minor children adopted of the sponsor (a 4 §1.c) ?

X OUI

Q.11. G. If yes:

h. does your national law foresee that the sponsor shall have children custody and children are dependant on him or her?

X OUI

Specify if necessary the proofs required

no specific proofs/documents are referred to by the regulations regarding children custody and being dependant. GD only lists birth certificate, marriage certificate, document on adoption, or other genuine way. It also provides that documents issued by foreign authorities, which equal to birth or marriage registry document, shall also be accepted. (GD § 56 (1)-(2))

g.g. Does national law provide that those children shall be 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'?

X NON

Specify if necessary the proofs required

no specific proofs/documents are referred to by the regulations regarding children custody, being dependant or the way being adopted.

Q.11. H. Minor children of the spouse (a 4 §1.d.)?

X OUI

Q.11. I. If yes, does your national law foresee that the spouse shall have children custody and children are dependant on him or her?

X OUI
Specify if necessary the proofs required

no specific proofs/documents are referred to by the regulations regarding children custody and being dependant.

**Q.11. J.** Minor children adopted of the spouse (a 4 §1.d)?

- [x] OUI
- [ ] NON

**Q.11. K.** If yes, does your national law foresee that the spouse shall have children custody and children are dependant on him or her?

- [x] OUI
- [ ] NON

Specify if necessary the proofs required

**k.k.** Does national law provide that those children shall be 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"?

- [ ] OUI
- [x] NON

Specify if necessary the proofs required

**Q.12** – Has your Member State transposed the option opened by article 4 § 1 c:

**Q.12A.** To authorise reunification of minor children of the sponsor – including also adopted children – of whom custody is shared (a 4 §1.c)?

- [ ] OUI
- [x] NON

Specify if necessary

**Q.12.B.** If yes, has your legislation transposed the condition that the other party sharing custody has given his or her agreement (a 4 §1. c)?

- [ ] OUI
- [ ] NON
Q.13 – Has your Member State transposed the option opened by article 4 § 1 d):

**Q.13.A.** to authorise reunification of minor children of the spouse – including also adopted children – of whom custody is shared (a 4.1.d. in fine)?

☐ OUI

☒ NON

Specify if necessary

Q.13 B. If yes, has your legislation transposed the condition that the other party sharing custody has given his or her agreement (a 4.1.d)?

☐ OUI

☐ NON

Specify if necessary

Q.14 – In any case referred to in questions 7 to 9, is the age of the minor children below the age of majority set up by the law of your Member State (a.4 §1, second indent)?

☐ OUI

☒ NON

If yes, indicate the age required

Q.15 – In any case referred to in questions 7 to 9, has the prohibition of marriage of minor children been transposed (a.4 §1, second indent)?

☒ OUI

☐ NON

If not, explain

There is no any regulation on this in the implementing main norms, however, according to the Hungarian Civil Code §12, a minor is a person who did not complete the age of 18 years, with the exception if he/she got married.

Q.16 – Is the derogation set up in article 4 § 1 last indent relating to the conditions for integration of children over 12 years arrived independently from the rest of the family used by your Member State?

☐ OUI

☒ NON
There is neither provision nor intention to make a difference between children based on their age or integrational potential.

How the criterion "arrives independently from the rest of his/her family" has been transposed in your national legislation?

It has not been transposed in any way.

**Q.17** – If yes, did this integration condition already exist in your national legislation before the date of transposition of the Directive?

☐ OUI

☐ NON

**Q.18** – Describe briefly the content of this condition, the date of its creation and the conditions of its examination

**Q.19** – Are the children of refugees required to an integration test by your Member State (in contradiction with article 10 § 1)?

☐ OUI

☒ NON

If yes, explain

**Q.20** – Does your Member State authorise:

**Q.20 A** – Reunification of first-degree relatives in the direct ascending line of the sponsor (a 4§2 a)?

☒ OUI

☐ NON

**Q.20 B** – If yes, shall they be dependant and not enjoy proper family support in the country of origin?

☒ OUI

☒ NON

Dependant yes, the second criterion is not implemented.

How each of those criterions is transposed and checked?

The following relatives of the sponsor, the spouse of sponsor or of persons with refugee status may be granted a residence visa or a residence permit on the grounds of family reunification:

a) the parents if they are dependant parents

b) brothers and sisters and relatives in the direct line, if they are unable to provide for themselves due to health reasons. (AA § 19(4))
Family ties has to be proven by proper document, as a not exclusive list: by birth certificate, marriage certificate, document on adoption, or in other genuine way. (GD §56(1))
Way of checking the conditions set out by Article 4(2)a) has not been transposed and incorporated into national legislation in any way.

Q. 20.C. Reunification of first-degree relatives in the direct ascending line of the spouse (a 4§2 a)?

X OUI
□ NON

Q.20.D. If yes, shall they be dependant and not enjoy proper family support in the country of origin?

X OUI
X NON
Dependant yes, the second criterion is not implemented.

How each of those criterions is transposed and checked?

The following relatives of the sponsor, the spouse of sponsor or of persons with refugee status may be granted a residence visa or a residence permit on the grounds of family reunification:

a) the parents if they are dependant parents
b) brothers and sisters and relatives in the direct line of the sponsor, if they are unable to provide for themselves on account of their state of health. (AA § 19(4))
Family ties has to be proven by proper document, as a not exclusive list: by birth certificate, marriage certificate, document on adoption, or other genuine way. (GD §56(1))
Way of checking the conditions set out by Article 4(2)a) has not been transposed and incorporated into national legislation in any way.

Q.20.E. Reunification of adult unmarried children of the sponsor? (a 4§2 b) ?

X OUI
□ NON

If necessary, explain how this procedure is organised

No specific statutory regulation on this.

Q .20.F. If yes, does the national legislation impose that those adult unmarried children of the sponsor are objectively unable to provide for their own needs on account of their state of health (a 4 §2 b) ?

X OUI
□ NON
If necessary, specify how each of those criterions ("objectively" and "unable to provide for their own needs") is transposed and checked?

No further specification, law only says “they are unable to provide for their own needs on account of their state of health”. No further rules on checking it. (AA §19 (4) b))

**Q.20. G.** Does your Member State authorise reunification of adult unmarried children of the spouse (a 4§2 b)?

- [X] OUI
- [□] NON

If necessary, specify how this condition is assessed

**Q.20.H.** If yes, does the national legislation impose that those adult unmarried children of the sponsor are objectively unable to provide for their own needs on account of their state of health (a 4 §2 b) ?

- [X] OUI
- [□] NON

If necessary, specify how each of those criterions ("objectively" and "unable to provide for their own needs") is transposed and checked?

No further specification, law only says “they are unable to provide for their own needs on account of their state of health”. No further rules on checking it. (AA §19 (4) b))

**Q.20. I.** Did your Member state use the by law or regulation norms to implement article 4 § 2 a et b?

- [X] OUI
- [□] NON

**Q.21 –** Does your Member State authorise reunification of the unmarried partner of the sponsor, being a third country national (a 4 §3)?

- [□] OUI
- [X] NON

**Q.22 –** If yes:

**Q.22 A –** This partnership shall be based on a duly attested stable long term relationship?

- [□] OUI
- [□] NON
If yes, specify how your Member State assess this situation

Q.22 B – This partnership shall be registered?

☐ OUI
☐ NON

Q.23 – Does your national law consider the registered partner as the husband/spouse (a 4 §3 alinéa 2)?

☐ OUI
☒ NON

Q.24 – Does your Member State authorise:

Q.24. A – Reunification of minor children of the partner, including adopted children (a 4§3)?

☐ OUI
☒ NON

Q. 24. B – Reunification of adult unmarried children of the partner, including adopted children (a 4§3)?

☐ OUI
☒ NON

Q.25 – Does your Member State allow reunification of adult unmarried children of the partner who are objectively unable to provide for their own needs on account of their state of health (a 4§3)?

☐ OUI
☒ NON

If yes, specify how the conditions, and more particularly the "objectivity", are assessed.

Q.26 – Did your Member state use the by law or regulation norms to implement article 4 § 3?

Q.27 – Is the prohibition of polygamous marriage enshrined in your national legislation (a. 4§4)?

☒ OUI
☐ NON
Q.28 – Does your Member State limit family reunification of minor children of a further spouse and the sponsor (article 4§4 dernier alinéa,)?

☐ OUI

☒ NON

But it’s still a condition to have children custody rights.

Q.29 – Does your Member State use the option set up by article 4 § 5 requiring the sponsor and his/her spouse to be of a minimum age of 21 years old before reunification?

☐ OUI

☒ NON

Q.30 – If yes,

Q.30 A – What is the age required?

Q.30 B – Is the derogation founded on integration criteria and/or prevention of forced marriage?

Q.31 – Does your Member State use the derogation of article 4 § 6 by requesting that the applications concerning family reunification of minor children have to be submitted before the age of 15?

☐ OUI

☒ NON

Explain

Q.32 – If yes, was it provided by existing legislation on the date of implementation of the directive?

Q.33 – If the application is not introduced before the age of 15, do Member States authorise entry and residence on grounds other than family reunification?

☐ OUI

☐ NON

Which grounds and which conditions?
PROCEDURE (ARTICLE 5)

We draw attention on the major importance given by the Court of justice regarding § 5 relating to the best interest of minor children.

Q.34 – Did your Member State institute a procedure regarding family reunification (a 5 §1) ?

☐ OUI
☐ NON

Q.35 – If yes,

Q.35. A – Which authorities are in charge of this issue?

No specific procedure, it is provided as a procedure on issue of residence permit or residence visa.

Q.35. B – Are NGO's associated to this procedure?

☐ OUI
☐ NON

If yes, describe the procedure

Q.35. C – Is the application submitted by the sponsor or by family members?

Q.35. D – Is this procedure exclusive from other possibilities to grant family reunification?

☐ OUI
☐ NON

If other procedural possibilities exist, please describe them

Q. 35. E – Was this procedure existing before the adoption of Directive 2003/86?

there has not been so far specific family reunification procedure implemented

☐ OUI
☐ NON
Q.36 – Which documentary evidence are required to prove (a 5 §2):

Q.36. A – Family relationships according to article 4?

Family ties has to be proven by proper document, as a not exclusive list: by birth certificate, marriage certificate, document on adoption, or other genuine way. (GD §56(1))

Q.36. B – Accommodation conditions laid down in article 7?

Third country citizen commands proper accommodation conditions, who is registered in the real estate register as the owner of the property registered as dwelling or residential building, or he/she is entitled to use such property under any title. (GD §29(3))

In course of the procedure of applying for visa entitling longer residence than three months or for a residence permit, proper accommodation can be verified with, in particular:

(a) copy of a title deed not older than thirty days, which proves the applicant’s ownership in connection with its Hungarian dwelling;
(b) lease contract, which proves the rental relationship;
(c) letter of invitation with valid official endorsement;
(d) a document, which proves the existence of the reserved and paid lodging;
(e) a family member’s statement incorporated into a public notary document who possesses a residence visa, a residence permit, immigration or settlement permit, under specific other legislation in possession of a residence card or permanent residence card, or who has been granted refugee status, ensuring the proper accommodation of the applicant; or
(f) in any other genuine way. (GD §29(4))

Q.36. C – Sickness insurance conditions?

The third country national shall meet the requirements provided by the §13 (1) g) of the Act [NB: sickness insurance], who disposes one of the following conditions regarding the whole duration of its Hungarian residence:

(a) on the basis of the Act on social security provisions
   aa) who is deemed as an insured person; or
   ab) obtains rights with separate agreement for the provision of Hungarian health insurance services, or the financing of the provision of services which are to be provided under the same conditions as to the Hungarian citizens, are arranged by international treaty or convention;
   ac) who is entitled to health care service;

(b) on the basis of its business accident insurance or health insurance, which do not fall under the competence of the social security he/she is entitled to resort the provision of the health insurance in the same way as persons falling under the scope of a separate Act [i.e. the Act on Social Security];
(c) on the basis of international treaty or convention he/she is entitled to the provision of services under the same conditions as it is provided to an insured Hungarian person;
(d) on the basis of the documents proving its subsistence he/she can pay the costs of its own health care.

(GD §29(7))

But:
If at the time of submitting the application for residence permit, the conditions, underlying the resident visa or resident permit previously issued in Hungary, did not change, the applicant do not have to submit the documents pertaining to the constant conditions. (GD §47(6))
Q.36. D – Certified copies of family member(s)' travel documents?

Upon application for a residence visa, applicant has to show his/her valid travel document to the official. (GD §36(2))
Upon application for a residence permit, applicant has to show his/her valid travel document to the official. (GD §48(3))

Q.37 – Is the possibility foreseen to proceed to:

- Interviews:
  - OUI
  - NON

- Investigations:
  - OUI
  - NON

If yes, describe them briefly

As family reunification process takes shape in form of an administrative procedure, all procedural possibilities set out by general rules on administrative procedures are available, including interview with the persons concerned, interview with witnesses, requirement of any document, inspection of objects or venues.
If it deems necessary to clarify the conditions of the entry and stay of the third country national, authority may require the submission of any further document not specified by the regulations. (GD §35(6) and §47(5))

Q.38 – When examining an application concerning the unmarried partner of the sponsor, which evidences are taken into account by Member States on the basis of national law to prove family relationship (article 5§2 dernier alinea) ?

Not applicable

Q.38. A – Existence of family ties and other elements such as a common child?

- OUI
- NON

Specify

Q.38. B - Previous cohabitation?

- OUI
- NON
Q.38. C - Registration of a partnership

☐ OUI
☐ NON

Q.38. D - Any other reliable means of proof foreseen in national law?

☐ OUI
☐ NON

If yes, specify which ones:

Q.39 – Are family members obliged to reside outside the territory of the Member State while the application is being examined (a5 §3)?

☐ OUI
☒ NON

Is this obligation sanctioned and how?

Q.40 – If the answer is yes, is a derogation organised according to article 5 § 3 second indent?

☐ OUI
☐ NON

Please specify

Q.41 – Does your national legislation include a maximum period of 9 month to answer to the application by way of written notification (a5 §4)?

☒ OUI
☐ NON

If necessary, please specify

As a default rule, legislation provides 30 days to provide a decision on applications for residence visa or residence permit. (GD §38 (1) and §49 (1))

Q.42 – This time limit can be extended (a 5 §4 alinea 2)?

☒ OUI
☐ NON

Q.43 – If yes,
Q.43. A – Because of the complexity of the examination of the application?

☐ OUI
☐ NON

If yes, please specify

Only the subsidiary act (Act CXL of 2004 on General Rules of Public Proceedings and Services) provides that the head of the proceeding authority can extended procedure time limit with 30 days (in case of a minor with 15 days) in a justified case. (§33 (7)) This latter naturally includes cases of complexity, but any other situation too where the extension deems to be well-founded.

Q.43. B – What is the length of the extension?

30 days, in case of a minor 15 days (Act CXL of 2004 on General Rules of Public Proceedings and Services §33 (7))

Q.44 – If no decision is taken by the end of the 9 months period provided, what are the consequences for the applicant?

The authority is obliged to act in cases which are under its competence and its jurisdiction area. If the authority does not fulfill its obligation, the supervisor authority – upon request or ex officio – shall examine the cause of omission and order the authority to proceed within an appropriate deadline. In case this deadline runs out without avail, the supervisor authority will appoint another authority, which has the same competence as the defaulting authority. The supervisor authority shall inform the client regarding these measures and examines, whether the appointed authority fulfills its obligation. The appointed authority is obliged to act on the merit of the case and pass a resolution within the relevant deadline. In case, there is no supervisory authority in a particular case (which is not the case in family reunification) or the supervisory authority fails to proceed and take measures, the Metropolitan Court (or the competent County Court) will order the local authority to proceed, based on the demand of the client. (Act CXL of 2004 on General Rules of Public Proceedings and Services §20)

On the other aspect, there is no regulation if authorities fail to proceed and take any decision whatsoever.

Q.45 – Is the decision rejecting the application notified? Does this written notification contain the reasons of rejection?

☐ OUI
☐ NON

Specify if only one condition is not required

Q.46 – How is the best interest of minor children taken into account by your Member State’s legislation and authorities during examination of the application (article 5§5)?

Taking account the best interest of minor child is not specifically mentioned in legislation during examination of such application, however, it is a duty emanating from other international documents as well.
CONDITIONS REQUIRED (ARTICLES 6 AND OTHERS)

- Questions relating to accommodation and resources will be carefully examined to assess if Member States use them, either as a migration tool or as an integration tool.

- The same assessment applies regarding the option to set up a period of lawfully residence not exceeding two years before applying for family reunification.

- According to article 8, the Court of justice states: "That provision does not therefore have the effect of precluding any family reunification, but preserves a limited margin of appreciation for the Member States by permitting them to make sure that family reunification will take place in favourable conditions, after the sponsor has been residing in the host State for a period sufficiently long for it to be assumed that the family members will settle down well and display a certain level of integration. Accordingly, the fact that a Member State takes those factors into account and the power to defer family reunification for two or, as the case may be, three years do not run counter to the right to respect for family rights set out in particular in Article 8 of the ECHR as interpreted by the European Court of Human Rights.

- "It should, however, be remembered that, as is apparent from Article 17 of the Directive, duration of residence in the Member State is only one of the factors which must be taken into account by the Member State when considering an application and that a waiting period cannot be imposed without taking into account, in specific cases, all the relevant factors" (cons. 99). "The same is true of the criterion of the Member State’s reception capacity, which may be one of the factors taken into account when considering an application, but cannot be interpreted as authorising any quota system or a three-year waiting period imposed without regard to the particular circumstances of specific cases. Analysis of all the factors, as prescribed in Article 17 of the Directive, does not allow just this one factor to be taken into account and requires genuine examination of reception capacity at the time of the application" (cons. 100). "When carrying out that analysis, the Member States must, as is pointed out in paragraph 63 of the present judgment, also have due regard to the best interests of minor children" (cons. 101).

Q.47 – Can public policy, public security or public health grounds be taken into account to (a 6 §§1 et 2):

Q.47. A – Reject an application for family reunification?

☑ OUI
☐ NON

If yes, which ones?

A residence visa may be granted to those who do not constitute a threat to public security, national security or public health of Hungary. (AA §13(1)h)) Accordingly, issue (or renewal) of residence permit shall be turned down if those conditions prevail (AA §18(1)a)) and in case of an applicant who suffer from any disease that is considered to constitute a threat to public health, and who refuses to submit to the appropriate compulsory medical treatment, or who fails to abide by the Hungarian health regulations while staying in the territory of the Republic of Hungary. (AA §18(1)c))
Q.47. B – Withdraw an application residence permit? for family reunification?

☐ OUI
☐ NON

If necessary, please specify

The same grounds, same regulations apply in case of withdrawal of residence visa or residence permit. See under Q.47.A

Q.47. C – Refuse to renew a family member's residence permit?

☐ OUI
☐ NON

If necessary, please specify

The same grounds, same regulations apply in case of rejection of renewal of residence permit. See under Q.47.A. Only in case of an applicant who suffer from any disease that is considered to constitute a threat to public health, and who refuses to submit to the appropriate compulsory medical treatment, or who fails to abide by the Hungarian health regulations while staying in the territory of the Republic of Hungary. (AA §18(1)c))

Q.48 – Does national legislation take into account:

Q.48. A – The severity or type of offence against public policy or public security?

☐ OUI
☐ NON

There are no provisions in this respect.

Q.48. B – The solidity of family relationships regarding article 17 of the Directive?

☐ OUI
☐ NON

If necessary, please specify

Conditions of Article 17 are incorporated as ones to take into consideration in making removal decisions.
Q.49 – Does your Member State withdraw the residence permit or remove the third country national on the sole ground of illness or disability suffered after the issue of the residence permit (a 6 §3)?

☐ OUI

☒ NON

Only in case of an applicant who suffer from any disease that is considered to constitute a threat to public health, AND who refuses to submit to the appropriate compulsory medical treatment, or who fails to abide by the Hungarian health regulations while staying in the territory of the Republic of Hungary. (AA §18(1)c))

Q.50 – Are accommodation conditions required from the applicant (a7 §1a)?

☒ OUI

☐ NON

Those specific conditions mentioned in the Directive are not referred to.

Q.51 – If yes:

Q.51. A – What are those conditions?

Third country citizen commands proper accommodation conditions, who is registered in the real estate register as the owner of the property registered as dwelling or residential building, or he/she is entitled to use such property under any title. (AA §29(3))

In course of the procedure of applying for visa entitling longer residence than three months or for a residence permit, proper accommodation can be verified with, in particular:

(f) copy of a title deed not older than thirty days, which proves the applicant’s ownership in connection with its Hungarian dwelling;

(g) lease contract, which proves the rental relationship;

(h) letter of invitation with valid official endorsement;

(i) a document, which proves the existence of the reserved and paid lodging;

(j) a family member’s statement incorporated into a public notary document who possesses a residence visa, a residence permit, immigration or settlement permit, under specific other legislation in possession of a residence card or permanent residence card, or who has been granted refugee status, ensuring the proper accommodation of the applicant; or

(f) in any other genuine way. (AA §29(4))

Q.51. B – How are they assessed?

Procedures are carried out in a vast majority of cases based on documentary evidence. However, authorities have the authority to carry out examination of the spot if they deem it necessary.
Q.51 C – Are they comparable to the conditions required to a normal family living in the same region?

☐ OUI
☐ NON

Such aspect is not revealed in the regulation.

If not, please specify the differences

Q.52 – Is a sickness insurance required from the applicant (a. 7 §1b) ?

☐ OUI
☒ NON

Law stipulates that the third country national must have full healthcare insurance or sufficient financial resources to cover healthcare services.

Q.53 – Are stable resources required (a7 §1c) ?

☒ OUI
☐ NON

Specify their nature and content

Proper means of subsistence can be certified with, in particular:

(a) Hungarian payment instrument, or foreign payment instrument, which can be changed in a Hungarian bank;
(b) a document (bank account contract, deposit book), which entitles the third country citizen to take out money from a Hungarian bank, and a bank certificate regarding the existing money reserve;
(c) cashless payment instruments accepted in the Hungarian commercial market (check, credit card, etc.), and a bank certificate regarding the existing money reserve;
(d) letter of invitation with valid official endorsement;
(e) a document, which proves the existence of engaged and paid lodging;
(f) assets or valuable rights and interests ensuring the subsistence, or notarial document or private document with full probative value, which proves the existence of the valuable rights;
(g) certification on the incomes arisen from the applicant’s legal working activity pursued or intend to pursue in Hungary;
(h) certificates on the incomes granted from abroad;
(i) a family member’s statement incorporated into a public notary document who possesses a residence visa, a residence permit, immigration or settlement permit, under specific other legislation in possession of a residence card or permanent residence card, or who has been granted refugee status, ensuring the proper care and support of the applicant, and further documentary evidence on the support capacity of the family member;
(j) any other genuine way. (GD §29(6))
Q.54 – How is the condition "sufficient" assessed by your Member State? Is it in comparison with national wages?

The third country’s citizen shall have the sufficient means of subsistence for a longer residence than three month, if his/her subsistence, accommodation, leaving the country or, if necessary, his/her health care can be ensured by him/her or his/her family member from their own incomes or assets. (GD §29(5))
It is not in comparison with national wages.

Q.55 – Are integration criterions required to allow family reunification (a 7 §2)?

☐ OUI
☒ NON

Q.56 – If yes:

Q.56. A – What are those criterions?

Q.56. B – Do they apply indistinctly to all potential beneficiaries of reunification? (Spouse, dependant people, etc.)

Q.56. C – How are they evaluated by your Member State?

Q.56. D – Are refugees and their family members required to fulfil them (a 7 §2, second indent)?

no integration criterions exist, no specific criterions for refugees and their family members either.

☐ OUI
☒ NON

Q.57 – Is a minimal period of lawful reside is required before reunification (a 8 §1)?

☐ OUI
☒ NON

Q.58 – Does this period exceed two years?

Please specify

Q.59 – Does your Member State apply the derogation set up by article 8 § 2 allowing Member States to impose a waiting period of maximum three years due to reception capacities between the submission of the application and the issuance of a residence permit?

☐ OUI
☒ NON
Please specify

Q.60 – If yes, did this derogation exist in national law before the 22nd of September 2003?

☐ OUI
☐ NON

FAMILY REUNIFICATION OF REFUGEES

The legal regime applicable to refugees derogates from the one applicable to family reunification. The scope of those derogations (minimal lawful residence, members of the family, accommodation requirements) shall be assessed on the basis of national law.

Q.61 – Does your Member State allow family reunification of refugees on the basis of Directive 2003/86 (a 9 §1) ?

☒ OUI
☐ NON

Q.62 – Is this right limited to family relationships predating the entry on the territory (a 9 §2)?

☒ OUI
☐ NON

Q.63 – Does your Member State allow family reunification of family Members not quoted in article 4 of the Directive (a 10 §2) ?

☒ OUI
☐ NON

Which members of the family and under which conditions?

It has to be noted that it applies not exclusively to refugees, as it reveals:
The following relatives of the sponsor, the spouse of sponsor or of persons with refugee status may be granted a residence visa or a residence permit on the grounds of family reunification:

a) the parents of the sponsor if they are dependant parents

b) brothers and sisters and relatives in the direct line of the sponsor, if they are unable to provide for themselves due to health reasons. (AA § 19(4))
Q.64 – According to the specific case of unaccompanied minor refugees, does your Member State authorise family reunification of first degree relatives in the direct ascending line without applying the conditions laid down in article 4 § 2 (a10 § 3 a) ?

☐ OUI

☐ NON

What conditions are required?
No additional requirements are needed for the parents, in other words, the same conditions apply on them. (AA § 19(4))

Q. 65 – Does your Member State authorise entry and residence of the legal guardian or any member of the family where the unaccompanied minor refugee has no relatives in the direct ascending line or such relatives cannot be traced (a10 § 3 b) ?

☐ OUI

☐ NON

If yes, please specify who the member of the family targeted is and which proofs are required to prove family ties?

The legal guardian, and only the legal guardian (no other member of the family has been included) of the unaccompanied minor refugee may be granted a long-term visa or a residence permit on the basis of family reunification. No additional requirements are needed, in other words, the same conditions apply on them.

The family relationship can be justified with any authentic evidence in case of family reunification to a refugee. (GD §57(2)) Further, a decision rejecting an application for family reunification with a person with refugee status may not be based solely on the fact that documentary evidence of the family relationship is lacking. (AA §19(3))

Q.66 – Does your Member State take into account other evidence of family relationship where the refugee cannot provide official evidence (a 11 §2) ?

☐ OUI

☐ NON

Which ones?

The family relationship can be justified with any authentic evidence in case of family reunification to a refugee. (GD §57(2)) Further, a decision rejecting an application for family reunification with a person with refugee status may not be based solely on the fact that documentary evidence of the family relationship is lacking. (AA §19(3))
Q.67 – Does the examination of the refugee application take into account their specific situation:

Q.67. A – Are proofs regarding accommodation conditions, sickness insurance or resources required (a 12 §1)?

☐ OUI
☒ NON

If yes, are those requirements comparable to those imposed to other third country nationals?

Q.67. B – If one of the person concerned (sponsor or family member) has special links with a third country within which reunification is possible, does your member state require those proofs according to article 12 § 1 second indent.

☐ OUI
☒ NON

There are no provisions related to this issue.

If necessary specify

Q.67. C – If a refugee has introduced its application after a period of three months, does your Member State require the refugee to meet the conditions or one of them (accommodation, sickness insurance, resources (a 12 §1 alinea 3) ?

☒ OUI
☐ NON

If yes, which ones?

Proofs regarding accommodation conditions, sickness insurance and proper resources are required if more than six months passed after the refugee recognition and the application for family reunification.

Q.68 – Does your Member State apply the prohibition to impose a residence condition before reunification (a 12 §2)?

☒ OUI
☐ NON

Not applicable. Residence condition has not been introduced.
If not, what is the length of this period? Is it different from the one normally applied?

EXERCISE OF THE RIGHT TO FAMILY REUNIFICATION

The granting of an autonomous residence permit is one of the most sensitive issues of this part of the Directive.

Q.69 – Is entry and residence facilitated by your Member State, as soon as the application for family reunification has been accepted, including the issue of obtaining visas (a13 §1) ?

☐ OUI

☒ NON

If yes, how?

Facilitation of visa issuing is not really provided in legislation for the specific cases of family reunification. They fall under the default rules.

AA §13(2) envisages an exemption from the long term visa requirements in case of “urgent humanitarian reasons”, the meaning of the latter remains unclear.

Q.70 – Is a residence permit of at least one year’s duration granted to the family members (a 13 §2)?

☒ OUI

☐ NON

What is the duration of the residence permit?

The validity period for a residence visa shall be: maximum one year. (AA §14(2))

The validity period for a residence permit granted for the purpose of family reunification shall be three years, and it may be extended by three additional years at a time. (AA §19(9))

The validity period of a long-term visa or residence permit issued for the purpose of family reunification may not exceed the validity period of the sponsor’s long-term visa or residence permit. (AA §19(10))

Q.71 – Is this residence permit renewable?

☒ OUI

☐ NON

Q.72 – Is the duration of the residence permit aligned with the duration of sponsor’s residence permit (a 13 §3) ?

☒ OUI

☐ NON
Q.73 – Are the rights awarded to family members' equivalent to those granted to the sponsor (a14 §1):

Q.73. A – Regarding access to education?

☐ OUI
☐ NON

If no, please specify

Q.73. B – Regarding access to employment?

☐ OUI
☐ NON

Please specify the content of this access

Family members must have a labour permit according to the general rules, which is the same condition applied to sponsors holding residence visa or residence permit.

The spouse of refugees are entitled to work with a labour permit, which is issued without examination of the situation of labour market. It still doesn’t correspond to the situation of refugees who are exempted from labour permit, and further, it does not cover other family members at all.

Q.73. C – Regarding access to vocational guidance, initial and further training and retraining?

☐ OUI
☐ NON

If no, please specify

Q.74 – Does your Member State grant specific rights in social matters to reunified family members?

☐ OUI
☐ NON

If yes, please describe them and specify if a time limit is established to take advantage from them
Q.75 – Has Member State set up conditions regarding specific access to employment for family members (a 14 §2)?

☑ OUI
☐ NON

If yes, how?

Except for spouse of refugees, third country nationals need a labour permit, where the situation of the labour market is examined. Spouse of refugees also need a work permit, but without the prior examination of the labour market situation subject to a condition of at least one year stay in the country with the refugee. (Act on Job Assistance and Unemployment Benefits as amended §7 (2) a); Decree of the Minister of Social and Family Affairs on Work Permits Issued to Foreign Nationals in Hungary as amended §6 (1) h)

Q.76 – If yes, do those conditions exceed 12 months (a 14 §2)?

☑ OUI
☐ NON

Which ones?

There is no time limit set out in the conditions, the legal situation prevails as it has been set out under Q.73.B and Q.75

Q.77 – Is access to employment limited in your Member State

Q.77.A – Regarding first-degree relatives in the direct ascending line?

☐ OUI
☒ NON

If yes, how?

Q.77. B – Regarding adult unmarried children objectively unable to provide for their own needs on account of their state of health (a 14 §3)?

☐ OUI
☒ NON

If yes, how?
Q.78 – Are spouses, unmarried partners and child who has reached majority entitled to an autonomous residence permit at least five years after lawful residence on the basis of the residence permit issued for family reunification (a15 §1)?

☐ OUI

☐ NON

If yes, please specify when and how for each category

_All the family members_ are entitled to an autonomous residence permit five years after the first issue of residence permit on family reunification account. (AA §19(7)) This is slightly different than what is provided by the Directive, the period when the family member was holding a residence visa, prior to get his/her first residence permit, is not calculated in this way; therefore right for autonomous residence permit is opened later than five years of residence.

The family members are entitled to an autonomous residence permit in case of the sponsor’s death, if the requirements of stay are met. (AA §19(7))

Q.79 – Does your Member State limit the granting of the autonomous residence in cases of breakdown of the family relationship (a 15 §1 alinea 2)?

☐ OUI

☒ NON

Please explain

Granting of the autonomous residence is not limited in case of breakdown of the family relationship.

_All the family members_ are entitled to an autonomous residence permit five years after the first issue of residence permit on family reunification account. (AA §19(7)) This is slightly different than what is provided by the Directive, the period when the family member was holding a residence visa, prior to get his/her first residence permit, is not calculated in this way; therefore right for autonomous residence permit is opened later than five years of residence.

The family members are entitled to an autonomous residence permit in case of the sponsor’s death, if the requirements of stay are met. (AA §19(7))

Q.80 – Does your Member State grant autonomous residence permit:

Q.80. A – To first-degree relatives in the direct ascending line (a15 §2)

☒ OUI

☐ NON

If necessary specify
Q.80. B – To adult unmarried children objectively unable to provide for their own needs on account of their state of health (a15 §2) ?

☐ OUI
☐ NON

If necessary specify

Q.81 – Does your member State grant autonomous residence permit in the event of widowhood, divorce, separation or death of first first-degree relatives in the direct ascending or descending line (a 15 §3) ?

☐ OUI
☒ NON

If necessary specify

The family members are entitled to an autonomous residence permit in case of the sponsor’s death, if the requirements of stay are met. (AA §19(7))

Q.82 – Has your Member State adopted rules granting autonomous residence permit "in the event of particularly difficult circumstances" (a 15 §3)?

☐ OUI
☒ NON

If yes, how is this provision defined and transposed?

PENALTIES AND REDRESS

Those provisions must be read in parallel with those relating to the conditions to be fulfilled to obtain family reunification (articles 6, 7, 8)

Questions relating fraud, false or falsified documents are of importance to assess their impact.

Q.83 – What are the legal grounds to reject, withdraw or refuse to renew a family member's residence permit (a16 §1 et 2):

Q.83. A – Conditions required by the directive not satisfied?

☒ OUI
☐ NON
Q.83. B – Absence of real martial or family relationship?

☐ OUI

☐ NON

If yes, how is this hypothesis assessed?

Issue of residence permits or the extension of existing ones shall be refused, or if already issued shall be withdrawn from third-country nationals who established the family relationship solely for the purpose of obtaining a residence permit on the grounds of family reunification. (AA §18(1)d)

No further specification on this rule, no executive rules.

Q.83. C – Stable long term relationship with another person?

☐ OUI

 ☐ NON

If yes, how is this hypothesis assessed?

Q.83. D – False or falsified documents?

☐ OUI

 ☐ NON

Q.83. E – Marriage, partnership or adoption contracted for the sole purpose of enabling reunification?

☐ OUI

 ☐ NON

Q.83. F – If yes, how is this hypothesis assessed?

Issue of residence permits or the extension of existing ones shall be refused, or if already issued shall be withdrawn from third-country nationals who established the family relationship solely for the purpose of obtaining a residence permit on the grounds of family reunification. (AA §18(1)d)

No further specification on this rule, no executive rules.

Q.83. G – When the sponsor's residence comes to an end and the family member does not yet enjoy an autonomous right of residence (a 16 §3) ?

☐ OUI

 ☐ NON
Q.83. H – What type of control are organised thereof?

Please specify. No related specific provisions in the legal regulation. General administrative procedural means are available.

Q.84 – Are resources of the family taken into account when renewing residence permit where the sponsor does not have sufficient resources without recourse to the social assistance system of the member state?

☑ OUI
☐ NON

If yes, under which modalities?

The third country’s citizen shall have the sufficient means of subsistence for a longer residence than three month, if his/her subsistence, accommodation, leaving the country or, if necessary, his/her health care can be ensured by him/her or his/her family member from their own incomes or assets. (GD §29(5))

Details of means of proof are given under Q.53.

Q.85 – Does your Member State's legislation take into consideration (a. 17):

Q.85. A – The nature and solidity of the person's family relationships and the duration of his residence in the Member State?

☐ OUI
☒ NON

If yes, please specify how and on the basis of which norm (legislation, regulation, jurisprudence, …)

Legislation. But these consideration are only referred to in case of expulsion orders.

The AA has a provision explicitly dealing with the factors which have to be considered in the process of expulsion. When deciding on expulsion the authority is called upon to consider elements similar to (but not identical with) those listed in Article 17 of the Directive. (AA §45(1)a–d)). The criteria are: severity of the threat to national security, public security, public order or public health; length of previous stay; age, family circumstances of the person to be expelled and the consequences of the expulsion to her/his family members; his/her bonds to the Hungarian Republic and lack of contacts with the country of origin. AA §46 provides that the (reasoning of the) decision on expulsion must address the considered aspects.

Q.85. B - 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?

☒ OUI
☒ NON
If yes, please specify how and on the basis of which norm (legislation, regulation, jurisprudence, …)

Legislation. But these considerations are only referred to in case of expulsion orders.

The AA has a provision explicitly dealing with the factors which have to be considered in the process of expulsion. When deciding on expulsion the authority is called upon to consider elements similar to (but not identical with) those listed in Article 17 of the Directive. (AA §45(1a–d)). The criteria are: severity of the threat to national security, public security, public order or public health; length of previous stay; age, family circumstances of the person to be expelled and the consequences of the expulsion to her/his family members; his/her bonds to the Hungarian Republic and lack of contacts with the country of origin. AA §46 provides that the (reasoning of the) decision on expulsion must address the considered aspects.

Q.86 – Do the sponsor and/or members of his/her family have the right to mount a legal challenge where an application for family reunification is rejected (a18 §1)?

[ ] OUI
[ ] NON

Q.87 – Is this right to legal challenge considered as a right to a judicial review according to jurisprudence C-540/03 (a18 §1)?

[ ] OUI
[ ] NON
XX. IMPACT OF THE DIRECTIVE ON NATIONAL LAW

Q.88 A Did the transposition of the directive made the rules related to the best interest of minor children (a. 5 § 5) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

Please use one box per object and duplicate it if necessary

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Due regard to the best interest of minor children during examination of the application a. 5 § 5</td>
<td>Complete this box by keeping the right appreciation and deleting the two others:</td>
<td>Complete this box by keeping the right appreciation and deleting the other one:</td>
</tr>
<tr>
<td>Explain the situation after transposition (to evaluate the impact of the directive, take also into consideration national norms which have been adopted before the deadline for transposition or even before the adoption of the directive in cases of Member States having amended their national legislation in advance in view of the directive. Indicate the precise date of adoption of the change)</td>
<td>• Statu quo</td>
<td>• More favourable than previous national rules</td>
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<td></td>
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<td>• Less favourable than previous national rules</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• In line with the directive</td>
</tr>
</tbody>
</table>

Q.88 B Did the transposition of the directive made the rules related to the beneficiaries of the right to family reunification become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

Please use one box per object and duplicate it if necessary

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Definition of the beneficiaries of the right to family reunification a. 4 § 4</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

NATIONAL REPORTS: DIRECTIVE ON FAMILY REUNIFICATION
Q.88 C Did the transposition of the directive made the rules related to reunification of minor children between 12 (a. 4 § 1) and 15 (a. 4 § 6) years old become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

Please use one box per object and duplicate it if necessary

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Limitation of reunification of minor children of 12 and 15 years of age (a. 4 § 1 and 4 § 6)</td>
<td>Explain the situation after transposition (to evaluate the impact of the directive, take also into consideration national norms which have been adopted before the deadline for transposition or even before the adoption of the directive in cases of Member States having amended their national legislation in advance in view of the directive. Indicate the precise date of adoption of the change)</td>
<td>Complete this box by keeping the right appreciation and deleting the two others:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Statu quo</td>
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<tr>
<td></td>
<td></td>
<td>• More favourable than previous national rules</td>
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<td>• Less favourable than previous national rules</td>
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<td>Complete this box by keeping the right appreciation and deleting the other one:</td>
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<td></td>
<td></td>
<td>• More favourable than the directive</td>
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<tr>
<td></td>
<td></td>
<td>• In line with the directive</td>
</tr>
</tbody>
</table>

Q.88 D Did the transposition of the directive made the rules related to requirements to the exercice of family reunification (article 7) become...
from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

Please use one box per object and duplicate it if necessary

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
</table>
| Requirements for the exercise of family reunification (a. 7) | Explain the situation after transposition (to evaluate the impact of the directive, take also into consideration national norms which have been adopted before the deadline for transposition or even before the adoption of the directive in cases of Member States having amended their national legislation in advance in view of the directive. Indicate the precise date of adoption of the change) | Complete this box by keeping the right appreciation and deleting the two others:  
- Statu quo  
- More favourable than previous national rules  
- Less favourable than previous national rules | Complete this box by keeping the right appreciation and deleting the other one:  
- More favourable than the directive  
- In line with the directive |

Did the transposition of the directive made the rules related to margins of manoeuvre awarded to Member States (a. 5 § 5, 17, C-540/03) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

Please use one box per object and duplicate it if necessary

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
</table>
| Limitation of margins of manoeuvre (a. 17, a.5 §5, C-540/03) | Explain the situation after transposition (to evaluate the impact of the directive, take also into consideration national norms which have been adopted before the deadline for transposition or even before the adoption of the | Complete this box by keeping the right appreciation and deleting the two others:  
- Statu quo  
- More | Complete this box by keeping the right appreciation and deleting the other one:  
- More favourable |

Q.88 E
**Q.88 F** Did the transposition of the directive made the rules related to integration objectives and criterions more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

---

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Attention draw upon integration objectives (considérant 15) and criterions of integration (a.4 §1 dernier alinéa, a. 7 §2)</strong></td>
<td></td>
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<tr>
<td>Explain the situation after transposition (to evaluate the impact of the directive, take also into consideration national norms which have been adopted before the deadline for transposition or even before the adoption of the directive in cases of Member States having amended their national legislation in advance in view of the directive. Indicate the precise date of adoption of the change)</td>
<td>Complete this box by keeping the right appreciation and deleting the two others:</td>
<td>Complete this box by keeping the right appreciation and deleting the other one:</td>
</tr>
</tbody>
</table>
| Explain the situation before transposition | - Statu quo  
- More favourable than previous national rules  
- Less favourable than previous national rules | - More favourable than the directive  
- In line with the directive |

---

**Q.89** From your point of view, did the transposition of the directive imply other interesting changes for the third national country regarding other elements than the ones mentioned in the previous question. Make also a comparison with the standard of the directive in the last column of the table below

If they want to do so, the thematic coordinators should complete this question by indicating the number of examples that they ask the national reporter to give.
<table>
<thead>
<tr>
<th>OBJECT (to be precisely indicated by the national rapporteur)</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
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<tbody>
<tr>
<td>Explain the situation before transposition</td>
<td>Explain the situation after transposition (to evaluate the impact of the directive, take also into consideration national norms which have been adopted before the deadline for transposition or even before the adoption of the directive in cases of Member States having amended their national legislation in advance in view of the directive. Indicate the precise date of adoption of the change)</td>
<td>Complete this box by keeping the right appreciation and deleting the two others:</td>
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<td>• More favourable than previous national rules</td>
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<td>Complete this box by keeping the right appreciation and deleting the other one:</td>
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<td>• More favourable than the directive</td>
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<td></td>
<td>• In line with the directive</td>
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</tbody>
</table>

Q.89. A. Mention if there is a general tendency to just copy the provisions of the directive into national legislation without redrafting or adaptation them to national circumstances.

[ ] NO

[ ] YES

Q.89. B. If yes, please indicate if this general tendency may or not create problems (for example difficulties of implementation, risk that a provision remain unapplied).

[ ] NO

[ ] YES

Q.89. C. If yes, give some of examples:

Q.89. D. If only some provisions of the directive have been copied and if this may create any problem, please quote them and explain the problem.

Q.90. Quote interesting decisions of jurisprudence related to the directive, its transposition or implementation (so this question concerns in principle decisions later that the directive, but previous ones might be quoted if

NATIONAL REPORTS - DIRECTIVE ON FAMILY REUNIFICATION
relevant). Quote in particular decisions of supreme Courts; limit yourself to the appeal Courts and ignore the first resort if there are too many decisions at this level, unless there is a certain jurisprudence made of a group of decisions.

Please use one box per decision and duplicate it if necessary

<table>
<thead>
<tr>
<th>DECISION OF SUPREME COURTS</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
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</table>

<table>
<thead>
<tr>
<th>DECISION OF APPEAL COURTS</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
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</table>

<table>
<thead>
<tr>
<th>DECISION(S) IN FIRST RESORT</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
</tr>
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</table>

ANY SUPPLEMENTARY COMMENT ABOUT THE TREND OF THE JURISPRUDENCE:

Q.91 Specify if there are or not problems with the translation of the text of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated.

- There are no problems with the translation of the directive
- There are some problems with the translation of (indicate the number of the articles concerned) of the directive.

Explain the difficulties that this could create:

Q. 92 ANY OTHER INTERESTING ELEMENT

Q.92 A. Following your personal point of view, mention from the point of view of third country nationals and/or from the Member State any interesting or innovative practice in your Member State

Please use one table per practice and duplicate it if necessary

<table>
<thead>
<tr>
<th>OBJECT OF THE PRACTICE</th>
<th>EXPLANATIONS</th>
</tr>
</thead>
<tbody>
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</table>

Q.92 B. Please add here any other interesting element in your Member State which you did not had the occasion to mention in your previous answers
Note: In accordance with Articles 1 and 2 of the Protocol on the position of the UK and Ireland, annexed to the TEU and to the TEC, IRELAND did not participate in the adoption of the Family Reunification Directive and is not bound by or subject to its application.

Last amendments made between; 22nd and 31st October 2007

QUESTIONNAIRE FOR THE NATIONAL REPORT ON THE IMPLEMENTATION OF THE DIRECTIVE FAMILY REUNIFICATION OF 22 SEPTEMBRE 2003

IRELAND
by
SMYTH, Ciara
Ms., Lecturer in Law, National University of Ireland, Galway
Ciara.m.smyth@nuigalway.ie

IRELAND
15 May 2007

The person in the team of thematic coordination in charge of this directive that you can contact if you have a question or need help when completing this questionnaire is: Yves Pascouau, + 33 5 59 57 41 20, yves.pascouau@univ-pau.fr

COMMENTARIES

1. Council directive 2003/86 on the right to family reunification faced hard negotiations requiring the presentation of revised proposals from the Commission before final adoption in 2003. The European Court of Justice rejected in June 2007 an action for annulment introduced by the European Parliament against the Council directive (C-540/03).

2. Transposition of the directive must be assessed regarding the nature of the provision concerned. So as to help you, those provisions are coloured within the questionnaire as follows: obligatory provision (Q.XX), optional provision (Q.YY), provision which set up a derogation (Q.ZZ)

3. The Court of justice has defined the margins of discretion awarded to the member States even in situations where the directive allows the member States to depart from the directive. The Court states:

"Article 4(1) of the Directive imposes precise positive obligations, with corresponding clearly defined individual rights, on the Member States, since it requires them, in the cases determined by the Directive, to authorise family reunification of certain members of the sponsor’s family, without being left a margin of appreciation" (cons. 60).

"Note should also be taken of Article 17 of the Directive which requires Member States to 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 country of origin. As is apparent from paragraph 56 of the present judgment, such criteria correspond to those taken into consideration by the European Court of Human Rights when it reviews whether a State which has refused an
application for family reunification has correctly weighed the competing interests” (cons. 64)

The fact that the concept of integration is not defined cannot be interpreted as authorising the Member States to employ that concept in a manner contrary to general principles of Community law, in particular to fundamental rights. The Member States which wish to make use of the derogation cannot employ an unspecified concept of integration, but must apply the condition for integration provided for by their legislation existing on the date of implementation of the Directive in order to examine the specific situation of a child over 12 years of age arriving independently from the rest of his or her family” (cons. 70).

4. The main difficulty according to the transposition of the directive relies on the systematic opportunities offered to member States to depart from the provisions of the directive when applying it.

5. Article 19 indicates which themes where the most sensitive during the negotiations of the Directive (art. 3, 4, 7, 8 and 13).

**FIRST PART**

1. NORMS OF TRANSPOSITION AND JURISPRUDENCE

Q.1.A Identify the MAIN (because of its content) norm(s) of transposition and indicate its legal nature

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)
- About legal nature in the table below: legislative refers to a norm adopted in principle by the Parliament; regulation refers to a norm complementing the law and adopted in principle by the executive power; circular or instructions refer to practical rules about implementation of laws and regulations and adopted in principle by the administrative authorities

*Please duplicate the table below if there is more than one MAIN norm of transposition*

Note: In accordance with Articles 1 and 2 of the Protocol on the position of the UK and Ireland, annexed to the TEU and to the TEC, Ireland did not participate in the adoption of this Directive and is not bound by or subject to its application. Consequently there has been no transposition of this Directive. The following table indicates the main legislative text that relates to family reunification in Ireland.
This table is about: [X] a text already adopted [ ] a text which is still a project to be adopted

**TITLE:** Refugee Act 1996, as amended

**DATE:** 26 June 1996

**NUMBER:** No. 17 of 1996

**DATE OF ENTRY INTO FORCE:** 20 November 2000

**PROVISIONS CONCERNED:** Section 18

**REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:**

**LEGAL NATURE** (indicate a cross in the correct box):

- [X] LEGISLATIVE:
- [ ] REGULATION:
- [ ] CIRCULAR or INSTRUCTIONS:

---

**Q.1.B.** List the others norms of transposition by order of importance of their legal nature (first laws, secondly regulations; thirdly circulars or instructions):

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)

*Please use one table per norm and duplicate as much as necessary*

---

Note: Ireland has not opted into the Directive on Family Reunification. Consequently there has been no transposition of this Directive. The following tables list the current guidelines regarding the practice of family reunification in Ireland and the work entitlements of family members. These guidelines are for the benefit of those seeking family reunification, but since they are likely to reflect administrative practice, they are categorised as ‘Circular or Instructions’. There are no publicly available circulars or instructions.

**TITLE:** Guidelines regarding Family Reunification for Workers – Visa Requirements, provided by the Department of Justice, Equality and Law Reform

**DATE:** 24 January 2007

**NUMBER:** No number

**DATE OF ENTRY INTO FORCE:** No date specified

**PROVISIONS CONCERNED:** Document not divided into provisions (for example if the norm is not devoted only to the transposition of the concerned directive)

**REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:** No reference

**LEGAL NATURE** (indicate a cross in the right box):

- [X] LEGISLATIVE
- [ ] REGULATION
- [ ] CIRCULAR OR INSTRUCTIONS
Q.2. THIS QUESTION IS IN PRINCIPLE ONLY FOR FEDERAL OR ASSIMILATED MEMBER STATES LIKE AUSTRIA, BELGIUM, GERMANY, ITALY, SPAIN
Q.2.A. Explain which level of government is competent to adopt the norms of transposition.

Please include your answer in the tables below

<table>
<thead>
<tr>
<th>LEGISLATIVE RULES</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</td>
</tr>
<tr>
<td>COMPETENCES OF THE COMPONENTS:</td>
</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>REGULATIONS</th>
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</thead>
<tbody>
<tr>
<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</td>
</tr>
<tr>
<td>COMPETENCES OF THE COMPONENTS:</td>
</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
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</table>

<table>
<thead>
<tr>
<th>CIRCULAR OR INSTRUCTIONS</th>
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</thead>
<tbody>
<tr>
<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</td>
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</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
</tr>
</tbody>
</table>

Q.2.B. In case, explain if the federal structure and the distribution of competences between the different levels pose any problem or difficulty regarding the transposition and/or the implementation of the directive.

Q.3. Explain which authorities are competent for the practical implementation of the norm of transposition by taking the decisions in individual cases.

Note: Ireland has not opted into the Directive on Family Reunification. Consequently there has been no transposition of this Directive. The following tables list the authorities that make decisions relating to family reunification in Ireland.

Please use one table per competence concerned and duplicate it if necessary

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Immigration and Asylum</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Department of Justice, Equality and Law Reform</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>Irish Naturalisation and Immigration Service (INIS)</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td>Office of the Refugee Applications Commissioner (ORAC); Health Service Executive (HSE).</td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the)</td>
<td>-INIS is the service within the Department of Justice, Equality and Law Reform with responsibility for making decisions about family reunification of immigrants and refugees.</td>
</tr>
<tr>
<td></td>
<td>-ORAC is the first instance refugee status determination body, established under the auspices of the Department of Justice, Equality and Law Reform. It has the responsibility, under the</td>
</tr>
</tbody>
</table>
Refugee Act 1996, as amended, of investigating applications for family reunification from refugees. It reports to INIS, which takes the ultimate decision.

The HSE is an agency of the Department of Health and Children, with responsibility for running the country’s health and social services. It is responsible under the Refugee Act 1996, as amended, for the care of unaccompanied minors seeking asylum in the State. As part of this role, it informally reunites minors who arrive unaccompanied, with family members already in the State.

COMPETENCE CONCERNED:

Employment Permits for Third Country Nationals

CENTRAL MINISTRY OF:

Department of Enterprise, Trade and Employment

DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:

Employment Permits Section

OTHER LEVEL OF ADMINISTRATION:

- The Employment Permits Section of the Department of Enterprise, Trade and Employment makes decisions about the work entitlements of spouses and dependants of Employment Permit holders.

Q.4. A. Has the main regulation foreseen explicitly by the main norm of transposition already been adopted or not:

Note: Ireland has not opted into the Directive on Family Reunification. Consequently there has been no transposition of this Directive. This question is therefore irrelevant.

☐ YES

☐ NO

Q.4.B. If the main norm(s) of transposition foresees the adoption of one or several regulations, indicate if they have all been adopted:

Note: Ireland has not opted into the Directive on Family Reunification. Consequently there has been no transposition of this Directive. This question is therefore irrelevant.

☐ YES

☐ NO

If NO, please indicate the missing text(s) in the table below
Please use one line per missing text and duplicate it if necessary

<table>
<thead>
<tr>
<th>MISSING TEXTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>INDICATE HERE THE MISSING TEXTS</td>
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</tbody>
</table>

Add if necessary some explanations (specify in particular if the missing texts are at least under preparation or foreseen in the very near future):
AIM (ARTICLE 1)

The purpose of the Directive is to Determine the conditions for the exercise of the right to family reunification. In case C-540/03, the Court of justice recognizes that, in some cases, member States do not have any margin of appreciation to grant the right to family reunification.

Q.5 – Is family reunification considered as a right in your Member State?

☐ OUI  ☒ NON

Please explain

Refugees have a right to family reunification in the State under the terms of Section 18 of the Refugee Act 1996, as amended.

Third country nationals who are not refugees have no right to family reunification, although depending on their status, they may be eligible to apply for family reunification. The decision to grant family reunification in any given case is at the absolute discretion of the Minister for Justice, Equality and Law Reform. The rules relating to family reunification are not laid down in legislation but are rather to be deduced from the administrative practice of the Department of Justice, Equality and Law Reform. Some guidance is also provided by the administrative practice of the Department of Enterprise, Trade and Employment. The practice of these two government departments will be set out below.

While some pieces of legislation have a bearing on family reunification, they do not comprise a right to family reunification. Of note are the following:

- Section 4(10)(c) of the Immigration Act 2004 states that when considering applications for permission to land in the State, immigration officers shall ‘have regard to all of the circumstances of the non-national concerned known to the officer or represented to the officer by him or her and, in particular to…any family relationships (whether of blood or through marriage) of him or her with persons in the State’.

- Section 3(6) of the Immigration Act 1999 provides that when the Minister of Justice, Equality and Law Reform is deciding whether to make a deportation order in relation to a person, he/she must have regard to, inter alia, ‘the family and domestic circumstances of the person’.

On 27 April 2007, the government published an Immigration, Residence and Protection Bill 2007. This bill proposed to overhaul (consolidate, update and/or repeal) most existing legislation on the Statute Book dealing with immigration and asylum. However, two days later on 29 April 2007, the Dáil (the lower house of Parliament) was dissolved by the President of Ireland in preparation for a general election scheduled to take place on 24th May 2007. The dissolution of the Dáil means that all draft legislation lapsed on that date. According to the Department of Justice, Equality and Law Reform website, following the
formation of the new government a new Immigration, Residence and Protection Bill is in the process of being drafted but as yet it is unclear whether it will follow along the same lines as the former bill or contain new innovations. Notwithstanding this fact, the relevant provisions of the former bill will be described for the sake of completeness.

Prior to the publication of the bill, the Department of Justice, Equality and Law Reform published a scheme (preparatory draft) of the bill, which stated in the preamble that one of the aims of the bill was to ‘to facilitate the reunion in the State of Irish citizens and permanent residents with their close relatives from abroad…’ However, no provision of the bill as published provides for a right of family reunification (other than family reunification of refugees). Section 28 of the bill relating to the issuance of residence permits provides that the Minister may attach conditions to a residence permit, including conditions relating to the entitlement of the holder to family reunification. However, no further details on entitlement are provided. Section 33 of the bill relating to factors to be considered when issuing or renewing a residence permit, requires the Minister to have regard to, inter alia, any personal relationships the foreign national has with persons in the State and the nationality and immigration status of such persons. Finally, the bill provides for the making of ‘ministerial policy statements’ – statements of policy made by the Minister from time to time, whose precise legal status is as yet unknown. The intention may be for family reunification to be dealt with in these statements.

Q.5. A – Are there any figures available relating to the exercise of the right to family reunification between 2002 and 2006? If yes, what are the trends, including nationality assessment?

There are no publicly available figures regarding the exercise of family reunification by immigrants in general. Thus, there is no information on the number of applications (whether submitted by a ‘sponsor’ or third country national) for family reunification or the number of grants and refusals of such applications.

Limited figures are available, however, regarding the exercise of the right of family reunification by refugees. According to information published by the Office of the Refugee Applications Commissioner (the first instance refugee status determination body, also responsible for investigating and reporting on family reunification applications of refugees), the numbers of applications received for the purpose of family reunification are as follows:

Between 2001 and the end March 2007, 2,505 applications for family reunification were submitted by refugees in respect of 5,684 family members. The annual breakdown is as follows:

- Between January and March 2007, 131 applications for family reunification were submitted in respect of 265 family members;
- In 2006, 483 applications for family reunification were submitted in respect of 1,159 family members;
- In 2005, 556 applications for family reunification were submitted in respect of 1,338 family members;
- In 2004, 317 applications for family reunification were submitted in respect of 576 family members;
- In 2003, 529 applications for family reunification were submitted in respect of 1,093 family members;
- An annual breakdown is not available in respect of 2002 and 2001.

Figures for nationality breakdown of family reunification applications are available for 2005 and 2006 only.
In 2005 the breakdown was as follows: Somalia 11.5% (64), Nigeria 10.4% (58), DRC/Zaire 9.3% (52), Zimbabwe 7.7% (43), Romania 5.4% (30) and others 55.7% (311)

In 2006 the breakdown was as follows: Somalia 16.1% (78), Nigeria 10.6% (51), DRC/Zaire 6.6% (32), Zimbabwe 5.2% (25), Iraq 5% (24) and others 56.5% (273)

No figures are available regarding the number of grants and refusals of family reunification.

**DEFINITIONS (ARTICLE 2)**

**SCOPE (ARTICLE 3)**

The scope of the Directive is defined by article 3. We recall that:
- § 1 "reasonable prospect..." aims at excluding persons residing on a temporary basis (stagiaires, etc...)
- European citizens are excluded (§ 3)
- Comparison with existing legislation is of importance so as to assess the added value of the harmonization process (§ 5)

Note: In accordance with Articles 1 and 2 of the Protocol on the position of the UK and Ireland, annexed to the TEU and to the TEC, Ireland did not participate in the adoption of the Family Reunification Directive and is not bound by or subject to its application. Consequently there has been no transposition of this Directive. Where existing legislation or practice exists, this will be used to answer general questions. Where specific questions are asked about the transposition of particular provisions of the Directive, a response of 'not relevant' will be given.

**Q.6. Period of validity of the sponsor’s residence permit:**

**Q.6. A.** Is the period of validity of the sponsor’s residence permit of one year or more according to article 3 § 1 of the Directive?

[ ] OUI

[ ] NON

**Q.2.B. Quote precisely the period enshrined in national law:**

Period of validity for permits issued before 31st December 2006

Until 31st December 2006, the period of validity of a residence permit varied according to whether the holder had a Work Authorisation, Work Visa or Employment Permit. Work Authorisations and Visas were issued by the Department of Justice, Equality and Law Reform – these functions having been transferred from the Department of Foreign Affairs. Work Permits were issued by the Department of Trade, Enterprise and Employment. Following the introduction of the Employment Permits Act 2006, all permits are issued by the Department of Trade, Enterprise and Employment.

Work Authorisations and Work Visas were issued to non-EU/EEA nationals in high-skills sectors or areas of the economy in which there was a labour shortage. They were issued for two years on a renewable basis. Work Authorisations were issued to non-visa required nationals, and Work Visas to visa-required nationals. On the basis of administrative practice,
family members of the former were entitled to accompany the worker to Ireland, while family members of the latter had to wait three months before joining the worker in Ireland.

Employment Permits were issued to employers for non-EU/EEA employees on a one year renewable basis, in generally low killed sectors, regardless of whether they needed a visa to enter the State. On the basis of administrative practice, an application could only be made for immediate family members to join the sponsor after he/she been working in Ireland for twelve months. It appears that many such applications were refused. Multiple reasons for refusal in individual cases were usually given, including insufficient supporting documentation, insufficient finances and lack of previous immigration history.

Period of validity for permits issued after 1st January 2007

On the 1st January 2007, a new Employment Permits Act 2006 entered into force, and on the 1st February, new administrative arrangements came into operation in respect of all non EU/EEA nationals seeking employment in the State after that date. The new arrangements comprise a Green Card Permits system and a Work Permits system.

According to a Guide to Green Card Permits produced by the Department of Enterprise, Trade and Employment, these permits are issued to highly paid employees or to those who work in strategically important occupations. The Guide notes that Green Card Permits are issued for an initial period of two years, thereafter renewable indefinitely. Furthermore the Guide claims that an employee holding a Green Card Permit may apply ‘…for immediate family reunification and this will normally allow a pathway to permanent residency after two years.’

According to a Guide to Work Permits produced by the Department of Enterprise, Trade and Employment, Work Permits may be applied for by either employees or employers in generally lower paid sectors. They are issued for an initial period of two years, renewable for a further three years and after five years the Work Permit can be renewed indefinitely. The guide is silent on family reunification entitlements for Work Permit holders. However, from the Department of Justice, Equality and Law Reform’s Guidelines on Family Reunification for Workers, it appears that in order for the family members of a work permit holder to obtain a Visa for the purposes of family reunification, the sponsor must either have:

- A valid work permit and have been in employment for at least twelve months prior to the date of application. He/she must be in full time employment on the date of application and have an income above the threshold which would qualify the family for payment under the Family Income Supplement Scheme administered by the Department of Social and Family Affairs.

OR

- A valid work permit and have been in employment for at least thirty six months prior to the date of application. He/she must be in full time employment on the date of application.

Q.6.C. How does your Member State translate in national law the requirement for the sponsor to have "reasonable prospects of obtaining the right of permanent residence" (a 3 § 1)?

There is considerable confusion in Irish legislation and administrative practice about whether or not there is a right of permanent residence and the conditions of eligibility. Under current administrative arrangements, there is no possibility of applying for ‘permanent’ residence, other than by becoming naturalised pursuant to the provisions of the Irish Nationality and Citizenship Acts 1956-2004.
In late 2004, the Department of Justice, Equality and Law Reform introduced the possibility of applying for a long-term residence permit after completing five years residence under Work Permit/Visa/Authorisation conditions. If successful, the applicant was granted a stamp 4 (free access to the labour market) residence permit for a period of five years. There was also the possibility of applying for ‘indefinite leave to remain’ after eight years. Neither application was governed by statute, and consequently there was a lack of clarity about eligibility (e.g. was there a right or simply a right to apply? could the permit be revoked, and if so, under what circumstances and according to what procedure? was the permit holder required to remain in the State? etc.)

As the new employment schemes introduced under the Employment Permit Act 2006 have just become operational, it is not yet possible to indicate further whether there have been changes to previous administrative practice. As noted previously, the Department of Enterprise, Trade and Employment’s Guide to Green Card Permits claims that an employee holding a Green Card Permit may apply ‘for immediate family reunification and this will normally allow a pathway to permanent residency after two years.’ It remains to be seen whether a new form of permanent residency is envisaged by this statement.

The Immigration, Residence and Protection Bill 2007 (see answer to Q.5 for the status of this bill) provides in section 34 for a long-term residence permit, valid for a period of five years and renewable on conditions. The eligibility criteria are as follows:

- The person has been lawfully in the State for periods totalling at least 5 out of the 6 years prior to the time of application for a long term residence permit;
- The person is of good character;
- Such other requirements as may be prescribed including but not limited to the following:
  - The person is fully in compliance with his or her tax obligations;
  - The person can demonstrate a reasonable competence for communicating in the Irish or English language;
  - The person has satisfied the Minister of Justice, Equality and Law Reform that he/she has made reasonable efforts to integrate into Irish society;
  - The person has supported him/herself and any dependents during his/her presence in the State without recourse to publicly funded services.

Section 35 also sets out the rights of the holder of a long-term residence permit, although no mention is made of family reunification as an entitlement, while section 42 provides for a procedure to discontinue the permit, which obliges the Minister to have regard, inter alia, to the family and domestic circumstances of the person.

There is clearly a disparity between the intention stated in the Department of Enterprise, Trade and Employment’s Guide to Green Card Permits that Green Card holders will be eligible for permanent residence after two years, and the concept of long term residence after five years contained in the bill as published by the Department of Justice, Equality and Law Reform.

**Q.7.** – Members of the family concerned:

**Q7. A.** Are they third country nationals as required by article 3 § 1 of the Directive?

| □ OUI |
| ☒ NON |
If not, explain

The Employment Permits Act 2006 and new administrative practice, set out above, relate only to non EU/EEA nationals. Therefore the qualifying sponsor is a third country national. The guidelines of both the Department of Justice, Equality and Law Reform and the Department of Enterprise, Trade and Employment are silent on whether the family member in respect of whom an application is made must be a third country national. Is it theoretically possible for an EU national family member to be the subject of an application for family reunification by a third country national sponsor. This could be of relevance if that family member was unable to exercise free movement rights due to an inability to fulfil the conditions of the Citizenship Directive (2004/38/EC).

Q.7.B. How has your Member State translated in national law the wording of "whatever status” included in article 3 § 1 of the Directive?

Not relevant - directive not transposed.

Q.8 – Did the transposition of the Directive in your Member state breach provisions of international law more favourable to individuals (a 3 § 4)?

☐ OUI

☐ NON

Not relevant – directive not transposed.

Note: The law on family reunification in Ireland is largely discretionary. As such, it is not possible to assert that it conflicts with international law per se. It is possible that Ministerial discretion could be exercised in a manner contrary to Ireland’s international obligations and in particular, its obligations under Article 8 of the European Convention on Human Rights. However, any alleged breach would be subject to challenge in the Circuit or High Court pursuant to the provisions of the European Convention on Human Rights Act 2003 and/or by way of judicial review in the High Court. See answer to Q. 87 for a thorough description of the operation of these forms of legal challenge.

Q.9 – If yes, are those provisions based on:

Q.9.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?

☐ OUI

☐ NON

Specify which provisions

See answer to Q.8

Q.9.B - The European Social Charter of 18 October 1961 (a 3 § 4)?

☐ OUI
The preceding statement concerns Article(s) : 20

9.C. The amended European Social Charter of 3 May 1987 (a 3 § 4)?

☐ OUI
☐ NON

See answer to Q.8


☐ OUI
☐ NON

Specify which provisions

See answer to Q.8

Q.10 – Does the transposition of the Directive affect national provisions more favourable to individuals (a 3 § 5)?

☐ OUI
☐ NON

Not relevant - directive not transposed.

If yes, please specify which provisions

Beneficiaries (Article 4)

- Article 4 of the Directive contains numerous "may clauses". It is therefore important to pay attention on the way Member States use them and on the legal modalities adopted thereof.

- Article 4 § 1 a) and b) enacts a right to family reunification for some members of the sponsor's family. The Member State does not have any margin of discretion regarding those persons.
• Article 4 § 1 last indent foresee one derogation regarding child over 12 years on the basis of an integration criterion. This is one of the most sensitive questions encompassed by the directive beside the issue of the limit of age in § 6.

• Regarding article 4 § 6, the Court states ""It does not matter that the final sentence of the contested provision provides that the Member States which decide to apply the derogation are to authorise the entry and residence of children in respect of whom an application is submitted after they have reached 15 years of age ‘on grounds other than family reunification’. The term ‘family reunification’ must be interpreted in the context of the Directive as referring to family reunification in the cases where family reunification is required by the Directive. It cannot be interpreted as prohibiting a Member State which has applied the derogation from authorising the entry and residence of a child in order to enable the child to join his or her parents". (cons. 86) The Court adds " Article 4(6) of the Directive must, moreover, be read in the light of the principles set out in Article 5(5) thereof, which requires the Member States to have due regard to the best interests of minor children, and in Article 17, which requires them to take account of a number of factors, one of which is the person’s family relationships" (cons. 87)

Note: In accordance with Articles 1 and 2 of the Protocol on the position of the UK and Ireland, annexed to the TEU and to the TEC, Ireland did not participate in the adoption of the Family Reunification Directive and is not bound by or subject to its application. Consequently there has been no transposition of this Directive. No statutory provisions govern family reunification in Ireland. Applicants can theoretically be submitted by/ in respect of any family member and will be considered on a case-by-case basis at the absolute discretion of the Minister of Justice, Equality and Law Reform (although this discretion is fettered somewhat by Ireland’s obligations under the European Convention on Human Rights and the requirements of natural and constitutional justice as applied in the judicial review context). While most common practice relates to spouses and minor unmarried children, the Minister could, in principle, grant any family member permission to enter the State for family reunification purposes. However, there is little anecdotal evidence of successful applications by/ in respect of family members other than immediate family members (and even practice in relation to immediate family members is reported by NGOs, legal practitioners and immigrants to be inconsistent). Consequently, only the questions below relating to spouses and minor children can be answered with any degree of certainty. A standard response - ‘unclear, no official guidance’ - will be given to questions relating to other family members. Finally, where specific questions are asked about the transposition of particular provisions of the Directive, a response of ‘not relevant’ will be given.

Q.11 – Does your national law recognize the right to family reunification to:

Q.11. A – The sponsor's spouse (a. 4 § 1 a)?

☐ OUI
☐ NON

Q.11. B - Minor children of the sponsor and of his/her spouse (a. 4 § 1 b)?

☐ OUI
☐ NON
Note: The Department of Justice, Equality and Law Reform Guidelines state that ‘in applying for a Visa for the purposes of family reunification you must be able to show that:
You are the spouse of a qualifying sponsor whose marriage is subsisting on the date of (the) application.
OR
You are the dependent unmarried child of the sponsor under the age of 18 years’

**Q.11.C. Minor children adopted of the sponsor and of his/her spouse (a. 4 § 1 b)?**

- [X] OUI
- [ ] NON

The Department of Justice, Equality and Law Reform Guidelines state that where ‘the applicant is the dependent child (under 18 years) of a qualifying sponsor, you must provide evidence of the relationship such as a birth certificate, adoption papers or the like…’[emphasis added]. This suggest that adopted children may be considered as family members.

**Q.11.D. Minor children of the sponsor (a. 4 § 1 c)?**

- [X] OUI
- [ ] NON

In the Department of Justice, Equality and Law Reform Guidelines it is stated that ‘[w]here the other parent of this child has some custody or access rights, a sworn affidavit by this parent consenting to the child being removed from their home country is required.’

**Q.11. E. If yes, does your national law foresee that the sponsor shall have children custody and children are dependant on him or her?**

- [X] OUI
- [ ] NON

In the Guidelines from the Department of Justice, Equality and Law Reform it is stated that: ‘[i]f you wish a child (under 18 years) from a previous marriage or relationship to travel with you, or join you in Ireland, evidence that you have been given full custody and access rights to this child must be shown (Court Order).’

**Q.11 F. Minor children adopted of the sponsor (a 4 §1.c)?**

- [X] OUI
- [ ] NON

See answer to Q.11.C
Q.11. G. If yes:
How does your national law foresee that the sponsor shall have children custody and children are dependant on him or her?

☑ OUI
☐ NON

Specify if necessary the proofs required

See answer to Q.11.D

g.g. Does national law provide that those children shall be 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’.

☐ OUI
☐ NON

Unclear - no official guidance

Specify if necessary the proofs required

The Department of Justice, Equality and Law Reform Guidelines refer to the need to provide ‘adoption papers or the like’ by way of establishing a relationship with the qualifying sponsor.

Q.11. H. Minor children of the spouse (a 4 §1.d.)?

☐ OUI
☐ NON

Unclear – no official guidance.

In the opening section to the Department of Justice, Equality and Law Reform Guidelines, it is stated that it must be shown that the family member in question is the ‘dependent unmarried child of the sponsor…’. There is no mention of the spouse’s children.

Q.11. I. If yes, does your national law foresee that the spouse shall have children custody and children are dependant on him or her?

☐ OUI
☐ NON

Unclear – no official guidance.

Specify if necessary the proofs required
Q.11. J. Minor children adopted of the spouse (a 4 §1.d )?

☐ OUI

☐ NON

Unclear – no official guidance

Q.11. K. If yes, k. Does your national law foresee that the spouse shall have children custody and children are dependant on him or her?

☐ OUI

☐ NON

Unclear – no official guidance

Specify if necessary the proofs required

k.k. Does national law provide that those children shall be 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'”?

☐ OUI

☐ NON

Unclear - no official guidance.

Specify if necessary the proofs required

Q.12 – Has your Member State transposed the option opened by article 4 § 1 c:

Q.12A. To authorise reunification of minor children of the sponsor – including also adopted children – of whom custody is shared (a 4 §1.c)?

☐ OUI

☐ NON

Not relevant – directive not transposed.

Specify if necessary

Q.12.B. If yes, has your legislation transposed the condition that the other party sharing custody has given his or her agreement (a 4 §1. c)?

☐ OUI

☐ NON
Q.13 – Has your Member State transposed the option opened by article 4 § 1 d):

Q.13.A. to authorise reunification of minor children of the spouse – including also adopted children – of whom custody is shared (a 4.1.d. in fine)?

- OUI
- NON

Not relevant - directive not transposed

Specify if necessary

Q.13 B. If yes, has your legislation transposed the condition that the other party sharing custody has given his or her agreement (a 4. 1.d) ?

- OUI
- NON

Specify if necessary

Q.14 – In any case referred to in questions 7 to 9, is the age of the minor children below the age of majority set up by the law of your Member State (a.4 §1, second indent)?

- OUI
- NON

If yes, indicate the age required

Q.15 – In any case referred to in questions 7 to 9, has the prohibition of marriage of minor children been transposed (a.4 §1, second indent)?

- OUI
- NON

Not relevant - directive not transposed.

If not, explain

In the opening section of the Department of Justice, Equality and Law Reform Guidelines there is a reference to a ‘dependent unmarried child of the sponsor…’. The use of this formula is not consistent throughout the document. For example in the section entitled ‘Evidence of the Relationship to the Qualifying Sponsor’ reference is only made to a ‘dependent child (under 18years)’. No mention is made of the requirement for such a child to be unmarried.
Under the Family Law Act 1995, the age of consent to marry in Ireland is 18 years (section 31).

Q.16 – Is the derogation set up in article 4 § 1 last indent relating to the conditions for integration of children over 12 years arrived independently from the rest of the family used by your Member State?

☐ OUI

☐ NON

Not relevant - directive not transposed

How the criterion "arrives independently from the rest of his/her family" has been transposed in your national legislation?

Note: Children who arrive in Ireland independently of the rest of their families are dealt with pursuant to Section 8 of the Refugee Act 1996, as amended, regardless of whether either the children or their families are refugees or asylum seekers. The act refers to ‘a child under the age of 18 years, who has either arrived at the frontiers of the State or has entered the State [and] is not in the custody of any person…’ Therefore, only children who are totally alone are identified as unaccompanied; children who arrive with other adults are unlikely to be identified as arriving independently from the rest of their families.

Once a child is identified as being unaccompanied by an immigration officer at port or by an asylum officer, the child is referred to the Health Service Executive (HSE) - an agency of the Department of Health and Children. In practice, the HSE attempts to reunite the child with a family member in the State, if there is one. This is an informal reunification process: the child and supposed family member are interviewed separately about the family relationship and if their testimonies coincide, reunification proceeds. This process has been criticised as lacking in safeguards for the child.

If there is no family member in the State, or the child is not reunited with a supposed family member because of doubts about the relationship, then the child remains in the care of the HSE, and the provisions of the Child Care Act 1991 apply. The HSE is empowered under the Refugee Act 1996, as amended, to make an asylum application on behalf of the child where appropriate.

A number of new safeguards are proposed in the Immigration, Residence and Protection Bill 2007 (see Q. 5 for the status of this bill). Section 58 envisages that when the child is accompanied and the immigration officer considers it appropriate to do so, the latter may require the accompanying adult to verify that he/she is taking parental responsibility for the child. Where not satisfied, the immigration officer is to inform the HSE and thereafter the provisions of the Child Care Act 1991 are to apply in relation to the child. An earlier draft of the bill (i.e. the scheme of the bill) contained a proposal that, in these circumstances, the HSE should immediately appoint a responsible adult in respect of the child and that the child should be examined by an immigration officer the presence of the responsible adult in order to determine whether he or she should be given permission to enter the State. However, there is no equivalent provision in the bill as published. It is not clear whether this omission indicates that the child will automatically be granted an entry permit, or conversely, whether the child will only be granted an entry permit if the HSE decide to lodge an asylum application in respect of the child.
Q.17 – If yes, did this integration condition already exist in your national legislation before the date of transposition of the Directive?

☐ OUI

☐ NON

Not relevant – directive not transposed.

Note: There is no integration condition in current legislation or practice.

Q.18 – Describe briefly the content of this condition, the date of its creation and the conditions of its examination

Q.19 – Are the children of refugees required to an integration test by your Member State (in contradiction with article 10 § 1)?

☐ OUI

☒ NON

If yes, explain

Q.20 – Does your Member State authorise:

Q.20 A – Reunification of first-degree relatives in the direct ascending line of the sponsor (a 4§2 a)?

☐ OUI

☐ NON

Unclear - no official guidance.

However, it should be noted that the Guidelines of the Department of Justice, Equality and Law Reform refer only to spouses and children as family members entitled to family reunification with the sponsor. NGOs working in the area of immigration report that non-EU/EEA nationals face problems bringing elderly parents to Ireland, whether for short-term visits or for longer term family reunification purposes. This can happen even in circumstances where there is evidence of available finances and health insurance to ensure that the family member is not a burden on the State when in Ireland.

Consistent with this anecdotal evidence, in its sample document Explanations of Reasons for Refusal of Visa, the Department of Justice, Equality and Law Reform states that:

‘It is not general policy to grant a visa to dependant family members over the age of 18 to join or visit persons granted residency in the State. Your case has been fully examined, and you have not shown any compelling grounds as to why an exception to this policy should be made in your case.’

It should be noted that these reasons refer to dependent family members only.
Q.20 B – If yes, shall they be dependant and not enjoy proper family support in the country of origin?

☐ OUI
☐ NON

How each of those criterions is transposed and checked?

Q. 20.C. Reunification of first-degree relatives in the direct ascending line of the spouse (a 4§2 a)?

☐ OUI
☐ NON

Unclear - no official guidance. But see answer to Q. 20.A

Q.20.D. If yes, shall they be dependant and not enjoy proper family support in the country of origin?

☐ OUI
☐ NON

How each of those criterions is transposed and checked?

Q.20.E. Reunification of adult unmarried children of the sponsor? (a 4§2 b) ?

☐ OUI
☐ NON

Unclear - no official guidance. But see answer to Q. 20.A

If necessary, explain how this procedure is organised

Q.20.F. If yes, does the national legislation impose that those adult unmarried children of the sponsor are objectively unable to provide for their own needs on account of their state of health (a 4 §2 b) ?

☐ OUI
☐ NON

If necessary, specify how each of those criterions ("objectively" and "unable to provide for their own needs") is transposed and checked?

Q.20. G. Does your Member State authorise reunification of adult unmarried children of the spouse (a 4§2 b)?

☐ OUI
If necessary, specify how each of those criterions ("objectively" and "unable to provide for their own needs") is transposed and checked?

Not relevant – directive not transposed.

**Q.20. I.** Did your Member state use the by law or regulation norms to implement article 4 § 2 a et b?

☐ OUI
☐ NON

Not relevant - directive not transposed

**Q.21 –** Does your Member State authorise reunification of the unmarried partner of the sponsor, being a third country national (a 4 §3)?

☐ OUI
☐ NON

Unclear - no official guidance.

However, the Department of Justice, Equality and Law Reform Guidelines specify that: ‘You are the spouse of a qualifying sponsor whose marriage is subsisting on the date of your application…’ and requires that a marriage certificate be produced to prove this. In relation to by proxy marriages, a declaration from the Irish Courts is required to confirm that the marriage is recognized in Ireland.

Currently, unmarried couples are not legally recognized in Ireland.

In a preparatory Discussion Paper that preceded the publication of the Immigration, Residence and Protection Bill 2007, it was stated that it would be an ‘anomaly’ if the ‘immigration system recognised (unmarried relationships) while other areas of public service did not.’ However, it was equally acknowledged that other forms of relationship would have to be considered in the practical operation of the new bill, once enacted. Despite these concerns, the bill as published lacks a discrete provision on the right to family reunification. Therefore it is impossible to say whether the intention is to provide a right to unmarried partners.
Q.22 – If yes:
  
  Q.22 A – This partnership shall be based on a duly attested stable long term relationship?
  
  □ OUI
  □ NON
  
  If yes, specify how your Member State assess this situation.

Q.22 B – This partnership shall be registered?

  □ OUI
  □ NON

Q.23 – Does your national law consider the registered partner as the husband/spouse (a 4 §3 alinéa 2)?

  □ OUI
  X □ NON

Q.24 – Does your Member State authorise:

  Q.24. A – Reunification of minor children of the partner, including adopted children (a 4§3)?
  
  □ OUI
  □ NON
  
  Unclear - no official guidance.

  Q. 24. B – Reunification of adult unmarried children of the partner, including adopted children (a 4§3)?
  
  □ OUI
  □ NON
  
  Unclear - no official guidance. But see answer to Q. 20.A

Q.25 – Does your Member State allow reunification of adult unmarried children who are objectively unable to provide for their own needs on account of their state of health (a 4§3)?

  □ OUI
  □ NON
Unclear - no official guidance. But see answer to Q. 20.A

If yes, specify how the conditions, and more particularly the "objectivity", are assessed.

**Q.26** – Did your Member state use the by law or regulation norms to implement article 4 § 3?

Not relevant - directive not transposed.

**Q.27** – Is the prohibition of polygamous marriage enshrined in your national legislation (a. 4§4)?

☐ OUI
☒ NON

Although a polygamous marriages would not be recognised in Ireland, they are not banned.

In the Guidelines from the Department of Justice, Equality and Law Reform, it is stated that ‘[a] qualifying sponsor may only sponsor an application from one spouse’.

**Q.28** – Does your Member State limit family reunification of minor children of a further spouse and the sponsor (article 4§4 dernier alinéa)?

☐ OUI
☐ NON

Unclear - no official guidance.

**Q.29** – Does your Member State use the option set up by article 4 § 5 requiring the sponsor and his/her spouse to be of a minimum age of 21 years old before reunification?

☐ OUI
☐ NON

Not relevant - directive not transposed.

Note: No such requirement currently exists.

**Q.30** – If yes,

**Q.30 A** – What is the age required?

**Q.30 B** – Is the derogation founded on integration criteria and/or prevention of forced marriage?
Q.31 – Does your Member State use the derogation of article 4 § 6 by requesting that the applications concerning family reunification of minor children have to be submitted before the age of 15?

☐ OUI

☐ NON

Not relevant - directive not transposed.

Note: There is no distinction in current administrative practice between children under 15 and children over 15 years of age.

Explain

Q.32 – If yes, was it provided by existing legislation on the date of implementation of the directive?

Q.33 – If the application is not introduced before the age of 15, do Member States authorise entry and residence on grounds other than family reunification?

☐ OUI

☐ NON

Which grounds and which conditions?

PROCEDURE (ARTICLE 5)

We draw attention on the major importance given by the Court of justice regarding § 5 relating to the best interest of minor children.

Note: In accordance with Articles 1 and 2 of the Protocol on the position of the UK and Ireland, annexed to the TEU and to the TEC, Ireland did not participate in the adoption of the Family Reunification Directive and is not bound by or subject to its application. Consequently there has been no transposition of this Directive. Where existing legislation or practice exists, this will be used to answer general questions. Where specific questions are asked about the transposition of particular provisions of the Directive, a response of ‘not relevant’ will be given.

Q.34 – Did your Member State institute a procedure regarding family reunification (a 5 §1)?

☐ OUI

☐ NON

Q.35 – If yes,

Q.35. A – Which authorities are in charge of this issue?

The only legislative ‘right’ to family reunification exists in the refugee context. Section 18 of the Refugee Act 1996, as amended, specifies that the Office of the Refugee Applications...
Commissioner (the first instance refugee status determination body) is empowered to investigate and make a report on applications for family reunification by refugees. The report is transmitted to the Department of Justice, Equality and Law Reform for the ultimate decision.

As mentioned in response to Q.16, the Health Service Executive, an agency of the Department of Health and Children, is responsible for the care of unaccompanied minors, including their reunification with family members already in the State, where appropriate.

With regard to the procedure relating to family reunification of immigrants who are not refugees, the most important authority is the Department of Justice, Equality and Law Reform. This Department has overall responsibility for immigration and asylum in the State, and makes policy and operational decisions relating to family reunification. The unit within the Department responsible for processing family reunification applications is the Irish Naturalisation and Immigration Service (INIS).

Another relevant government department is the Department of Trade, Enterprise and Employment, and in particular, its Employment Permits Section. This section makes decisions about the work entitlements of spouses and dependants of Employment Permit holders. However, the Department of Trade, Enterprise and Employment has no direct responsibility for policy or procedures relating to family reunification.

Furthermore, the Department of Foreign Affairs is charged with issuing visas for visa-required family members who have been granted permission to reunite in Ireland. Again however, this department has no responsibility for policy or procedures relating to family reunification.

It is unclear whether the above procedures and division of responsibilities across different government departments will continue under the regime envisaged by the Immigration, Residence and Protection Bill 2007 (see answer to Q.5 for the status of this bill). The lack of clarity is due to the fact that the bill is silent on rules and procedures relating to family reunification. The bill does empower the Minister for Justice, Equality and Law Reform to make ‘ministerial policy statements’ from time to time, containing the detail of immigration policy. It seems likely that the rules and procedures relating to family reunification will be contained in these policy statements. However, the content and legal nature of these statements is as yet unknown.

Q.35. B – Are NGO's associated to this procedure?

☐ OUI

X NON

If yes, describe the procedure

Note, although NGOs play no formal role in the family reunification procedure or in decision-making, in practice they play an important part in the process particularly with regard to provision of information on family reunification, including the provision of assistance in making applications for family reunification, and lobbying for the rights of immigrants to family reunification. For example, the Immigrant Council of Ireland is a recognised Independent Law Centre and provides free legal advice and representation in immigration-related applications, including family reunification.
Q.35. C – Is the application submitted by the sponsor or by family members?

Either can apply for family reunification.

Pursuant to section 18 of the Refugee Act 1996, as amended, it is the refugee who applies for family reunification in respect of his/her family members.

Q.35. D – Is this procedure exclusive from other possibilities to grant family reunification?

☑ OUI
☐ NON

Other than the administrative systems described above, there is no other family reunification procedure. It is theoretically possible to directly request the Minister for Justice, Equality and Law Reform to exercise his executive discretion and permit the entry and residence in the State of a family member. However, there is no anecdotal evidence of this route ever being successfully exploited.

If other procedural possibilities exist, please describe them

Q. 35. E– Was this procedure existing before the adoption of Directive 2003/86?

☐ OUI
☐ NON

Q.36 – Which documentary evidence are required to prove (a 5 §2):

Q.36. A – Family relationships according to article 4?

According to the Department of Justice, Equality and Law Reform Guidelines, documentary evidence to certify marriage include: marriage certificates, full accounts of relationship history where, proof of face to face encounters as part of the relationship, declarations from the Irish Courts in the case of by proxy marriages, birth certificates for children and adoption papers for adopted children. There are also requirements in relation to parental consent and evidence of custody and access rights, for example in the case of sponsors trying to bring children from previous marriages into the country.

Q.36. B – Accommodation conditions laid down in article 7?

It appears to be administrative practice to require that there is sufficient/suitable accommodation for the number of family members with whom reunification is sought, although there is no reference to such a requirement in the Department’s Guidelines.

Q.36. C – Sickness insurance conditions?

Present administrative practice does not appear to require sickness insurance.

Q.36. D – Certified copies of family member(s)’ travel documents?
According to the Department of Justice, Equality and Law Reform Guidelines, the applicant’s passport must be valid for one year from the date application is received and previous passports should be submitted. A clear copy of the passport of the qualifying sponsor complete with their permission to be in the state should be provided and, where relevant, a copy of the sponsor’s registration with the police should also be included.

**Q.37** – Is the possibility foreseen to proceed to:

- Interviews:
  - OUI
  - NON

  Unclear - no official guidance.

However, interviews are not conducted as a matter of course.

- Investigations:
  - OUI
  - NON

  Unclear - no official guidance.

If yes, describe them briefly

The Department of Justice, Equality and Law Reform Guidelines state that sponsors and family members may be required to present DNA evidence at their own expense, although it is also stated that this evidence will not be sought unreasonably. Anecdotally, it is reported that the Department may also request Garda (police) National Immigration Bureau surveillance to establish the bona fides of the relationship if family members are already in Ireland when the application is lodged (as opposed to being made by way of visa application from outside the State).

**Q.38** – When examining an application concerning the unmarried partner of the sponsor, which evidences are taken into account by Member States on the basis of national law to prove family relationship (article 5§2 dernier alinea) ?

Unclear, no official guidance – this applies to all the following sub-questions.

- **Q.38. A** – Existence of family ties and other elements such as a common child?
  - OUI
  - NON

  Specify

- **Q.38. B** - Previous cohabitation?
Q.38. C - Registration of a partnership

☐ OUI

☐ NON

Q.38. D - Any other reliable means of proof foreseen in national law?

☐ OUI

☐ NON

If yes, specify which ones:

Q.39 – Are family members obliged to reside outside the territory of the Member State while the application is being examined (a5 §3)?

☐ OUI

☒ NON

It depends on the status of the applicant

Is this obligation sanctioned and how?

Non visa-required nationals may apply from within Ireland. Also, visa-required nationals who are already in the State, whether lawfully on some other status or even irregularly may apply from within the State. It is not an absolute requirement to leave the State and apply from overseas. However, if a visa-required national enters the State on a short-term visit and then seeks to extend the visit or change status (e.g. apply for permission to remain for family reasons) he/she informed that this is not possible and that he/she must leave the State.

Q.40 – If the answer is yes, is a derogation organised according to article 5 § 3 second indent?

☐ OUI

☐ NON

Not relevant - directive not transposed

Please specify

Q.41 – Does your national legislation include a maximum period of 9 month to answer to the application by way of written notification (a5 §4)?

☐ OUI

☒ NON
If necessary, please specify

The Department of Justice, Equality and Law Reform Guidelines state that processing of applications should take a minimum of eight weeks but warn that this period will vary depending on the workload of the Visa section and the time it takes for the application to reach Ireland from the country of origin. There is no outer limit set for applications to be processed and anecdotal evidence provides that it can take up to two years to have an application processed to completion.

**Q.42** – This time limit can be extended (a 5 §4 alinea 2) ?

- [ ] OUI
- [ ] NON

Not relevant - directive not transposed

**Q.43** – If yes,

**Q.43. A** – Because of the complexity of the examination of the application?

- [ ] OUI
- [ ] NON

If yes, please specify

**Q.43. B** – What is the length of the extension?

**Q.44** – If no decision is taken by the end of the 9 months period provided, what are the consequences for the applicant?

Not relevant - directive not transposed.

However, there are no consequences – adverse or favourable – for the applicant if a decision takes a long time.

**Q.45** – Is the decision rejecting the application notified? Does this written notification contain the reasons of rejection?

- [x] OUI
- [ ] NON

Specify if only one condition is not required

According to the Department of Justice, Equality and Law Reform’s guidelines, ‘…Visa decisions are published weekly on (their) website…’, as opposed to notifications being given in personalised form. Reasons for refusal are not given to the applicant automatically as a matter of course. Furthermore, NGOs working the area of family reunification have observed that the reasons for refusal are brief and given on a standard form. There are concerns that the
reasons provided are offered as a matter of rote and that no real attempt is made to link the reasons to the actual individual application being considered.

Where the application for family reunification is by a refugee, s/he is informed in writing of the decision.

Q.46 – How is the best interest of minor children taken into account by your Member State’s legislation and authorities during examination of the application (article 5§5)?

No reference is made to the concept of the best interests of the child in the Department of Justice, Equality and Law Reform’s Guidelines. NGOs working in the area of family reunification report that refusals of applications that involve minor children make no reference to the concept.

In the refugee context, although the Refugee Act 1996, as amended, makes provision for the situation of unaccompanied minors, it makes no reference to the concept of the best interests of the child.

In the Immigration, Residence and Protection Bill 2007 (see answer to Q. 5 for the status of this bill), there are a number of references to the ‘best interests of the child’, mainly with regard to unaccompanied minors and the application for protection on their behalf.

CONDITIONS REQUIRED (ARTICLES 6 AND OTHERS)

- Questions relating to accommodation and resources will be carefully examined to assess if Member States use them, either as a migration tool or as an integration tool.

- The same assessment applies regarding the option to set up a period of lawfully residence not exceeding two years before applying for family reunification.

- According to article 8, the Court of justice states: "That provision does not therefore have the effect of precluding any family reunification, but preserves a limited margin of appreciation for the Member States by permitting them to make sure that family reunification will take place in favourable conditions, after the sponsor has been residing in the host State for a period sufficiently long for it to be assumed that the family members will settle down well and display a certain level of integration. Accordingly, the fact that a Member State takes those factors into account and the power to defer family reunification for two or, as the case may be, three years do not run counter to the right to respect for family rights set out in particular in Article 8 of the ECHR as interpreted by the European Court of Human Rights"

- "It should, however, be remembered that, as is apparent from Article 17 of the Directive, duration of residence in the Member State is only one of the factors which must be taken into account by the Member State when considering an application and that a waiting period cannot be imposed without taking into account, in specific cases, all the relevant factors" (cons. 99). "The same is true of the criterion of the Member State’s reception capacity, which may be one of the factors taken into account when considering an application, but cannot be interpreted as authorising any quota system or a three-year waiting period imposed without regard to the particular circumstances of specific cases. Analysis of all the factors, as prescribed in Article 17 of the Directive, does not allow just this one factor to be taken into account and requires genuine examination of reception capacity at the time of the application" (cons. 100) "When carrying out that analysis, the Member States must, as is pointed out in
paragraph 63 of the present judgment, also have due regard to the best interests of minor children” (cons. 101).

Note: In accordance with Articles 1 and 2 of the Protocol on the position of the UK and Ireland, annexed to the TEU and to the TEC, Ireland did not participate in the adoption of the Family Reunification Directive and is not bound by or subject to its application. Consequently there has been no transposition of this Directive. Where existing legislation or practice exists, this will be used to answer general questions. Where specific questions are asked about the transposition of particular provisions of the Directive, a response of ‘not relevant’ will be given.

Q.47 – Can public policy, public security or public health grounds be taken into account to (a 6 §§1 et 2):

Q.47. A – Reject an application for family reunification?

[ ] OUI

[ ] NON

If yes, which ones?

On a sample document entitled Explanation of Reasons for Refusal of Visa, provided on the Department of Justice, Equality and Law Reform Website, there is a section which encompasses reasons for refusal on the basis that it is ‘Contrary to General Policy.’ The Department goes on to explain several scenarios which are contrary to general policy but public health or security are not mentioned. It could be argued, however, that the level of discretion afforded to visa officials and to the Minister would allow other situations to fall within the scope of this category of reasons for refusing an application.

Section 5(1)(a) of the Aliens Act 1935 empowers the Minister of Justice(as the post was then known; it has since been re-named the Minister of Justice, Equality and Law Reform) to issue an order preventing an alien from landing in or entering the State. No grounds for the issuance of such an order are specified in the Act. However, this provision of the Aliens Act is supplemented by section 4 of the Immigration Act 2004, which sets out the grounds on which an immigration officer may refuse to give a non-national (read ‘third country national’) permission to land or be in the State. Subsection (c) provides that permission may be refused if the non-national suffers from one of the following: a disease subject to the International Health Regulations for the time being adopted by the World Health Assembly of the World Health Organisation; TB; Syphilis; other infectious or parasitic diseases in respect of which special provisions are in operation to prevent the spread of such diseases from abroad; drug addiction; or profound mental disturbance. Subsection (f)(iii) provides that permission may be refused if the Minister determines that it is ‘conducive to the public good’ that the non-national remains outside the State. Finally, subsection (j) provides that permission may be refused if the non-national’s entry into, or presence in the State could pose a threat to national security or be contrary to public policy.

In relation to applications made by Refugees for family reunification, section 18(5) of the Refugee Act, 1996, as amended, provides that the Minister ‘may refuse to grant permission to enter and reside in the State to a person…or revoke any permission in the interest of national security or public policy.’

Q.47. B – Withdraw an application for family reunification?
It is presumed that this question is about withdrawal of a permit on the basis of family reunification, not withdrawal of an application for family reunification.

If necessary, please specify

This is no official guidance on the precise question of whether and if so, under what conditions, a permit issued on the basis of family reunification can be withdrawn. However, some legislative provisions relating to deportation may be of relevance. Section 5(1)(e) of the Aliens Act 1935 empowers the Minister of Justice (as the post was then known; it has since been re-named the Minister of Justice, Equality and Law Reform) to issue deportation orders, without specifying any grounds for the issuance of such orders. This provision of the Aliens Act is supplemented by section 3(1) of the Immigration Act 1999, which outlines nine grounds on which a deportation order can be issued. Ground (a) relates to a person who has served or is serving a term of imprisonment imposed on him or her by a court in the State; ground (b) relates to a person whose deportation has been recommended by a court in the State before which such person was indicted for or charged with any crime or offence; ground (i) relates to a person whose deportation would, in the opinion of the Minister, be conducive to the common good. Moreover, while section 3(6)(c) requires the Minister to take the person’s family and domestic circumstances into account in determining whether to make a deportation order, the Minister is also entitled to consider the common good (subsection (j)) and any considerations of nationality security and public policy (subsection (k)).

Q.47. C – Refuse to renew a family member's residence permit?

X OUI

□ NON

If necessary, please specify

See answer to Q. 47. B above.

Q.48 – Does national legislation take into account:

Q.48. A – The severity or type of offence against public policy or public security?

X OUI

□ NON

Although not specified in legislation or administrative guidelines, the Minister for Justice, Equality and Law Reform would be required to take proportionate decisions, subject to the judicial review requirements of natural and constitutional justice. See answer to Q.87 for further information on the standard of judicial review.
Q.48. B – The solidity of family relationships regarding article 17 of the Directive?

X OUI

☐ NON

If necessary, please specify

There is no legislation dealing with withdrawal of family reunification per se.

However, pursuant to Ireland’s obligations under Article 8 EHCR, the Minister of Justice, Equality and Law Reform would be required to undertake a balancing test between the seriousness of the offence or the threat, on the one hand, and the nature of the family relationships, including whether the family could relocate to the country of origin, on the other. This is broadly reflected in section 3(6)(c) of the Immigration Act 1999, which requires the Minister to take the person’s family and domestic circumstances into account in determining whether to make a deportation order. The Minister is also entitled to consider the common good (subsection (j)) and any considerations of nationality security and public policy (subsection (k)). For a thorough description of the legal status of the ECHR in Ireland, see answer to Q.87.

Q.49 – Does your Member State withdraw the residence permit or remove the third country national on the sole ground of illness or disability suffered after the issue of the residence permit (a 6 §3)?

☐ OUI

☐ NON

Unclear - no official guidance.

There is no legislation in Ireland which prevents the removal of third country nationals on the sole ground of illness or disability suffered after the issue of a residence permit.

However, a number of legislative provisions provide for the non-entry of certain persons on grounds of illness or disability. Section 5 (1) of the Aliens Act 1935 empowers the Minister of Justice (as the post was then known) to issue an order preventing an alien from landing in or entering the State. No grounds for the issuance of such an order are to be specified in the Act. However, this provision of the Aliens Act is supplemented by Section 4 of the Immigration Act 2004, which sets out the grounds on which an immigration officer may refuse to give a non-national (read ‘third country national’) permission to land or be in the State. Subsection (c) provides that permission may be refused if the non-national suffers from one of the following: a disease subject to the International Health Regulations for the time being adopted by the World Health Assembly of the World Health Organization; TB; Syphilis; other infectious or parasitic diseases in respect of which special provisions are in operation to prevent the spread of such diseases from abroad; drug addiction; or profound mental disturbance. Section (f) (iii) provides that permission may be refused if the Minister determines that it is ‘conducive to the public good’ that the non-national remains outside the State. Finally, subsection (j) provides that permission may be refused if the non-nationals entry into, or presence in the State could pose a threat to national security or be contrary to public policy.
Another legislative provision that may be of relevance is section 3 of the Immigration Act 1999. This states that the Minister for Justice may, subject to the prohibition on refoulement, make a deportation order requiring any non-national specified in the order to leave and remain outside the State within a specified timeframe and thereafter remain outside the State. Such an order may be made in relation to any person including when, in the opinion of the Minister for Justice, it would be conducive to the common good. It should be noted here that there is no mention made of 'public health'. When determining whether or not to make a deportation order the Minister will take into consideration factors including the age of the person concerned, family and domestic circumstances, representations made by or on behalf of the person, national security and public policy. Again 'public health' is not explicitly mentioned as one of the matters to which the Minister must have regard when he/she is deciding whether or not to make a deportation order.

The following sections are all part of the Immigration Residence and Protection Bill 2007. See answer to Question 5 for details on the current status of this bill.

Section 25 of the Immigration, Residence and Protection Bill 2007 states that an immigration officer may refuse to permit a third country national to enter and be present if the officer is satisfied that he/she suffers from a disease which is subject to International Health Regulations for the time adapted by the World Health Assembly of the World Health Organisation and other parasitic diseases in respect of which special provisions are in operation to prevent the spread of such diseases from abroad or if he or she has refused to undergo a medical examination with respect to such conditions. An immigration officer may also refuse a person permission to enter and remain if their entry into or presence in the State would pose a threat to public security or policy or run contrary to a relevant immigration policy statement. It could be argued that, given the discretion afforded to the Minister to make and adjust these immigration policy statements, it would be possible for a third country national to be refused permission to enter and reside on this basis.

Section 28 of the Immigration Residence and Protection Bill 2007 provides that the Minister for Justice can attach conditions to a residence permit at the time of issue or later and may at any time modify the conditions for example in relation to duration of the permit, its renewability and entitlement of the holder to family reunification. Permission is subject to the conditions attached to the permit in question and even when a residence permit is issued it remains the property of the Minister for Justice.

Section 33 of the Immigration Residence and Protection Bill 2007 states that when determining an application for issue or renewal of a residence permit other than a protection residence permit, the Minister will have regard to the circumstances of the third country national as they are known or represented to him/her including relevant immigration policy statements and whether the presence of the foreign national in question would pose a risk to public security, health or policy.

Pursuant to Section 40 of the Immigration Residence and Protection 2007 the Minister for Justice may discontinue entry permits, renewable and non-renewable residence permits or certain types of long-term residence permits where the Minister is satisfied that the presence in the State of the permit-holder would not conducive to the common good or where there are other reasons to justify the discontinuance. It should be noted that there is no mention made here of 'public health'. It is prescribed that the practice of discontinuing a permit is more restricted with respect to certain types of long-term residence permits, protection residence permits and protection residence permits issued to those who are determined to be refugees. Following the discontinuance of an entry or residence permit under Section 40 the Minister...
for Justice may in accordance with Section 44 of the Immigration Residence and Protection Bill 2007 the Minister may make an expulsion order requiring the foreign national to leave and remain outside the State for a period specified in the order. Notably the period of discontinuance must have a definite start date but may thereafter be indefinite.

Q.50 – Are accommodation conditions required from the applicant (a7 §1a) ?

☐ OUI
☐ NON
Unclear - no official guidance

As discussed previously in answer to Q. 36.B, accommodation conditions are not specified in the Department of Justice, Equality and Law Reform Guidelines. However, NGOs working in the area of family reunification note that in order to apply for a visa, it is necessary to provide proof of adequate accommodation in Ireland.

Q.51 – If yes:

Q.51. A – What are those conditions?
Unclear - no official guidance

Q.51 C – Are they comparable to the conditions required to a normal family living in the same region?

☐ OUI
☐ NON
Unclear - no official guidance

If not, please specify the differences

Q.52 – Is a sickness insurance required from the applicant (a. 7 §1b) ?

☐ OUI
☒ NON

Q.53 – Are stable resources required (a7 §1c) ?

☒ OUI
☐ NON

Specify their nature and content

In the Department of Justice, Equality and Law Reform Guidelines, it is stated that ‘…if the qualifying sponsor has been resident in Ireland for less than thirty six months, you (the family member) must show that you have sufficient funds to support yourself in Ireland without
recourse to the Family Income Supplement.’ The guidelines then go on to state that in all cases the following documents must be provided:

- A copy of the employment contract of the qualifying sponsor running for at least one year from the date of application and indicating the annual salary
- Where the qualifying sponsor is required to have been resident in the state before being eligible to be joined by his/her family members, a form P60 showing his/her taxable earnings in the most recent tax year and 3 recent consecutive payslips.’

Furthermore, in the sample document Explanation of Reasons for Refusal of Visa, ‘no evidence of finances’ or ‘insufficient or incomplete’ evidence are both deemed to be sufficient grounds for refusal of a visa application.

Q.54 – How is the condition "sufficient" assessed by your Member State? Is it in comparison with national wages?

The term ‘sufficient’ seems to be interpreted as meaning the ability ‘to support yourself in Ireland without recourse to the Family Income Supplement’, per the Department of Justice, Equality and Law Reform’s Guidelines.

Q.55 – Are integration criterions required to allow family reunification (a 7 §2)?

☐ OUI
X  NON

Q.56 – If yes:

Q.56. A – What are those criterions?

Q.56. B – Do they apply indistinctly to all potential beneficiaries of reunification? (Spouse, dependant people, etc.)

Q.56. C – How are they evaluated by your Member State?

Q.56. D – Are refugees and their family members required to fulfil them (a 7 §2, second indent)?

☐ OUI
X  NON

Q.57 – Is a minimal period of lawful reside is required before reunification (a 8 §1)?

☐ OUI

☐ NON

It depends on the status of the sponsor.

According to the Department of Justice, Equality and Law Reform Guidelines it appears that, in order to qualify as a sponsor, a holder of a Work Permit must either: have been in
‘...employment for at least twelve months prior to the date of application. He/she must be in full time employment on the date of application and have an income above the threshold which would qualify the family for payment under the Family Income Supplement Scheme... or have been in ‘... employment for at least thirty six months prior to the date of application. He/she must be in full time employment on the date of application.’

It appears that in order to qualify as a sponsor, a Green Card permit holder must only show that he/she ‘is either in full time employment in Ireland within the specific skills sectors outlined...on the date of application’ or have ‘...an offer of full-time employment in Ireland in the specific skills sectors outlined...’ There does not appear to be any requirement placed on Green Card permit holders to be resident in the State for a particular period of time prior to gaining eligibility to be considered as a qualifying sponsor. This is reinforced by the claim in the Department of Enterprise, Trade and Employment Guide that Green Card Permit holders are allowed to apply for immediate family reunification.

Q. 58 – Does this period exceed two years?

Yes

Please specify

For holders of Work Permits who do not earn above the threshold which would qualify them for payment under the Family Income Supplement Scheme, the sponsor is required to have been in employment for at least thirty six months prior to the date of application.

Q.59 – Does your Member State apply the derogation set up by article 8 § 2 allowing Member States to impose a waiting period of maximum three years due to reception capacities between the submission of the application and the issuance of a residence permit?

☐ OUI

☐ NON

Not relevant – directive not transposed.

Please specify

Q.60 – If yes, did this derogation exist in national law before the 22nd of September 2003?

☐ OUI

☐ NON

**FAMILY REUNIFICATION OF REFUGEES**

*The legal regime applicable to refugees derogates from the one applicable to family reunification. The scope of those derogations (minimal lawful residence, members of the family, accommodation requirements) shall be assessed on the basis of national law.*
Q.61 – Does your Member State allow family reunification of refugees on the basis of Directive 2003/86 (a 9 §1)?

☐ OUI
☒ NON

Directive not transposed.

A right to family reunification for refugees is contained in Section 18 of the Refugee Act 1996, as amended. A refugee is entitled to make an application for family reunification. Once the application is thoroughly investigated and reported on by the first instance status determination body, and the Minister of Justice, Equality and Law Reform is satisfied that the person the subject of the application is indeed a family member of the refugee, the Minister ‘shall’ grant permission to the person to enter and reside in the State (per section 18(3)(a)).

Q.62 – Is this right limited to family relationships predating the entry on the territory (a 9 §2)?

☒ OUI
☐ NON

Section 18(3)(b)(i) of the act refers to the fact that the marriage must be ‘subsisting on the date of the refugee’s application’.

Q.63 – Does your Member State allow family reunification of family Members not quoted in article 4 of the Directive (a 10 §2)?

☐ OUI
☒ NON

Section 18(4)(a) grants the Minister discretion to grant family reunification to dependent family members. These family members are defined in section 18(4)(b) as ‘any grandparent, parent, brother, sister, child, grandchild, ward or guardian of the refugee who is dependent on the refugee or is suffering from a mental or physical disability to such an extent that it is not reasonable for him or her to maintain himself or herself fully’. Anecdotal evidence provides that the Minister rarely exercises his discretion in favour of dependent family members, although a dearth of publicly available statistics makes it impossible to assess the accuracy of this evidence.

Q.64 – According to the specific case of unaccompanied minor refugees, does your Member State authorise family reunification of first degree relatives in the direct ascending line without applying the conditions laid down in article 4 § 2 (a10 §3 a)?

☒ OUI
☐ NON
Section 18(3)(b)(ii) provides that ‘in case the refugee is, on the date of his or her application [for family reunification], under the age of 18 years and is not married [he/she is entitled to reunify with] his or her parents’.

Q. 65 – Does your Member State authorise entry and residence of the legal guardian or any member of the family where the unaccompanied minor refugee has no relatives in the direct ascending line or such relatives cannot be traced (a10 §3 b) ?

☐ OUI
☒ NON

The right to family reunification is limited to spouses, parents of minor children who are refugees and minor children of refugees. Ministerial discretion is limited to dependent members of the family, including guardians (per section 18(4)(b)). This leads to the anomalous situation whereby the guardian of an unaccompanied minor would have to prove dependency on that minor (and not vice versa) in order to come within the purview of ministerial discretion.

Q. 66 – Does your Member State take into account other evidence of family relationship where the refugee cannot provide official evidence (a 11 §2) ?

☐ OUI
☒ NON

Unclear - no official guidance

Section 18(2) of the act empowers the Office of the Refugee Applications Commissioner (the first instance refugee status determination body) to undertake an investigation of the application for family reunification and ‘to submit a report in writing to the Minister and such a report shall set out the relationship between the refugee concerned and the person the subject of the application and the domestic circumstances of the person.’ However, the act is silent on what evidence is taken into account in proving the relationship. In practice, the applicant is required to fill in a questionnaire, requiring the applicant to prove family relationships e.g. by way of birth certs, marriage certs, evidence of how contact is maintained (letters, email, phone bills) etc., and also requiring the applicant to provide evidence of any financial support for family members e.g. evidence of monetary transfers, accounts, regularity of transactions etc.

Q. 67 – Does the examination of the refugee application take into account their specific situation:

Q. 67. A – Are proofs regarding accommodation conditions, sickness insurance or resources required (a 12 §1)?

☐ OUI
☒ NON

The Refugee Act, 1996, as amended, is silent on the need to fulfil such means of proof. In practice, there are no such requirements.
Q.67. B – If one of the person concerned (sponsor or family member) has special links with a third country within which reunification is possible, does your member state require those proofs according to article 12 § 1 second indent.

☐ OUI
☒ NON

If necessary specify

The Refugee Act, 1996, as amended, is silent on the need to provide such means of proof. In practice, there are no such requirements.

Q.67. C – If a refugee has introduced its application after a period of three months, does your Member State require the refugee to meet the conditions or one of them (accommodation, sickness insurance, resources (a 12 §1 alinea 3)?

☐ OUI
☒ NON

If yes, which ones?

The Refugee Act, 1996, as amended, is silent on the need to fulfil such conditions. In practice, there are no such requirements.

Q.68 – Does your Member State apply the prohibition to impose a residence condition before reunification (a 12 §2)?

☐ OUI
☒ NON

The Refugee Act, 1996, as amended, is silent on the need to meet such a condition. In practice, there are no such requirements.

If not, what is the length of this period? Is it different from the one normally applied?

EXERCISE OF THE RIGHT TO FAMILY REUNIFICATION

The granting of an autonomous residence permit is one of the most sensitive issues of this part of the Directive.

Note: In accordance with Articles 1 and 2 of the Protocol on the position of the UK and Ireland, annexed to the TEU and to the TEC, Ireland did not participate in the adoption of the Family Reunification Directive and is not bound by or subject to its application. Consequently there has been no transposition of this Directive. Where existing legislation or practice exists, this will be used to answer general questions. Where specific questions are asked about the transposition of particular provisions of the Directive, a response of ‘not relevant’ will be given.
Q.69 – Is entry and residence facilitated by your Member State, as soon as the application for family reunification has been accepted, including the issue of obtaining visas (a13 §1) ?

[X] OUI

[ ☐ ] NON

Once family reunification is approved, a visa application is made either at nearest Irish Embassy to the family member, or if there is no Embassy, at the Department of Foreign Affairs in Ireland on behalf of the family member. Once the visa application is approved, a visa is affixed to the passport of the family member, stating the dates between which the person may seek to enter the State. Usually such visas are issued for a three month period.

Possession of an Irish visa does not guarantee entry into the State and pursuant to the Immigration Act 2004, immigration officers retain considerable discretion to refuse a visa-holder permission to enter and be in the State.

Once the family member enters the State, the class of visa issued determines whether a separate application for residency is required or whether the visa itself comprises the residence permit. Clearly, for non visa-required applicants for family reunification, or applicants who are already in the State albeit on some other type of status, the application for family reunification is not a visa application but an application for a residence permit. This usually takes the form of a stamp in the passport along with a certificate of registration issued by the Garda (police) National Immigration Bureau.

Q.70 – Is a residence permit of at least one year's duration granted to the family members (a 13 §2) ?

[X] OUI

[ ☐ ] NON

In the case of family reunification in the refugee context, the family member of the refugee is entitled, under section 18(3)(a) of the Refugee Act 1996, as amended, to enter and reside in the State for such a period as the refugee is entitled to remain in the State. Pursuant to section 3 of the act, Refugees are entitled to remain in the State indefinitely.

Outside the refugee context, the duration of the residence permit depends on the type of stamp issued. The minimum period in the family reunification context is 12 months. Regardless of the duration of the stamp, the certificate of registration is issued for one year, renewable.

Q.71 – Is this residence permit renewable?

[X] OUI

[ ☐ ] NON

It depends on the type of stamp issued.
Q.72 – Is the duration of the residence permit aligned with the duration of sponsor's residence permit (a 13 §3)?

☐ OUI

☐ NON

If no, please specify

Q.73 – Are the rights awarded to family members equivalent to those granted to the sponsor (a14 §1):

Section 18(3)(a) of the Refugee Act 1996, as amended, provides that once permission for family reunification is granted, ‘the person shall be entitled to the rights and privileges specified in section 3 for such period as the refugee is entitled to remain in the State.’ Section 3 relates to refugee rights and entitlements, and will be dealt with under the sub-questions below.

The rights of family members of a non-refugee third country national are not specified in legislation. Current practice will be set out below.

Q.73. A – Regarding access to education?

☐ OUI

☐ NON

It depends.

Family members of refugees are entitled to access free primary and secondary education and State funded third level education. Family members of third country nationals who are not refugees are entitled to access free primary and secondary education, but as non-EU citizens are required to pay large fees in respect of third level education, which are generally prohibitive.

Q.73. B - Regarding access to employment?

☐ OUI

☐ NON

It depends.

Family members of refugees are entitled to access the labour market.

The right to work of family members of third country nationals who are not refugees depends on the status of the sponsor. Under the previous Employment Permit administrative arrangements (see answer to Q.2.B for more details), family members of Work Permit holders were not entitled to work. Conversely, family members of Work Visa and Work Authorisation holders benefited from a ‘spousal waiver scheme’, which allowed them to work if they successfully applied for a work permit. All that was required was an offer of
employment from an employer; the usual restrictions on the sectors of employment that were susceptible to applications for Work Permits (i.e. the ‘labour market test) did not apply.

Under the new administrative arrangements under the Employment Permits Act 2006, no distinctions are made between family members of different types of Employment Permit holder (whether the family member has a Work Visa/Authorisation or Work Permit issued under the old scheme, or a Green Card or Work Permit under the new scheme). Thus, a Department of Enterprise, Trade and Employment Guide to Work Permits for Spouses and Dependents of Employment Permit Holders states that family members of all types of Employment Permit holder are:

- Allowed to apply for a Work Permit in respect of all occupations;
- Not restricted to sectors of the economy that fulfil a labour market test;
- Exempted from paying a fee for the application.

**Q.73. C** – Regarding access to vocational guidance, initial and further training and retraining?

[X] OUI

☐ NON

If no, please specify

**Q.74** – Does your Member State grant specific rights in social matters to reunified family members?

[X] OUI

☐ NON

If yes, please describe them and specify if a time limit is established to take advantage from them.

Section 3(2)(a)(ii) of the Refugee Act 1996, as amended, provides that a refugee (and therefore also a family member per section 18(3)(a)) is entitled to receive ‘upon and subject to the terms and conditions applicable to Irish citizens, the same medical care and services and the same social welfare benefits as those to which Irish citizens are entitled’.

There are no legislative provisions governing the rights of family members of non-refugee third country nationals. In practice, social benefits are universally applicable, but are subject to a two-year habitual residence requirement, regardless of whether the applicant is a national or a non-national. In view of the length of time it takes to become recognised as a refugee, this does not tend to impact on refugees. However, it is reported that it has led to considerable hardship for non-refugee third country nationals as well as returned Irish emigrants.

**Q.75** – Has Member State set up conditions regarding specific access to employment for family members (a 14 §2)?

☐ OUI
Section 3(2)(a)(i) of the Refugee Act 1996, as amended, simply provides that a refugee (and family member) ‘shall be entitled to seek and enter employment, to carry on any business, trade or profession and to have access to education and training in the State in the like manner and to the like extent in all respect as an Irish citizen.’ Therefore, no conditions are envisaged.

Family members of Employment Permit holders are entitled to work in any sector of the economy provided they have a Work Permit. See answer to Q.73.B.

**Q.76** – If yes, do those conditions exceed 12 months (a 14 §2)

☐ OUI

☐ NON

Which ones?

**Q.77** – Is access to employment limited in your Member State

As previously indicated (see the Note inserted at the beginning of the section on BENEFICIARIES (ARTICLE 4)) non-immediate family members appear to have very little chance of being granted family reunification. However, if they were granted family reunification, they would be eligible to work on the same conditions as immediate family members. Eligibility conditions would depend on whether they were family members of a refugee or an Employment Permit holder. See answer to Q.73.B. This answer applies equally to Questions 77.A and B below.

**Q.77.A** – Regarding first-degree relatives in the direct ascending line?

☐ OUI

☐ NON

If yes, how?

**Q.77. B** – Regarding adult unmarried children objectively unable to provide for their own needs on account of their state of health (a 14 §3)?

☐ OUI

☐ NON

If yes, how?

**Q.78** – Are spouses, unmarried partners and child who has reached majority entitled to an autonomous residence permit at least five years after lawful residence on the basis of the residence permit issued for family reunification (a15 §1)?

☐ OUI

☐ NON
There are no legislative provisions on the granting of autonomous residence permits.

Q.79 – Does your Member State limit the granting of the autonomous residence in cases of breakdown of the family relationship (a 15 §1 alinea 2)?

☐ OUI
☐ NON

Unclear – no official guidance

Please explain

There are no legislative provisions on the granting of autonomous residence permits. If there is a change of circumstances, such as separation, death of the principal migrant or domestic violence, then the family member admitted under family reunification is supposed, as a matter of practice, to notify the Department of Justice, Equality and Law Reform in order to have the matter considered by the Minister at his absolute discretion.

Q.80 – Does your Member State grant autonomous residence permit:

Q.80. A – To first-degree relatives in the direct ascending line (a15 §2)

☐ OUI
☒ NON

As previously indicated (see the Note inserted at the beginning of the section on BENEFICIARIES (ARTICLE 4)) non-immediate family members appear to have very little chance of being granted family reunification. Even in the event of being granted family reunification, there is no provision in Irish law currently for the grant of an autonomous residence permit.

If necessary specify

Q.80. B – To adult unmarried children objectively unable to provide for their own needs on account of their state of health (a15 §2)?

☐ OUI
☒ NON

As above.

If necessary specify

Q.81 – Does your member State grant autonomous residence permit in the event of widowhood, divorce, separation or death of first first-degree relatives in the direct ascending or descending line (a 15 §3)?
Unclear – no official guidance. See answer to Q.79.

If necessary specify

Q.82 – Has your Member State adopted rules granting autonomous residence permit "in the event of particularly difficult circumstances" (a 15 §3)?

☐ OUI
☐ NON

As above.

If yes, how is this provision defined and transposed?

PENALTIES AND REDRESS

Those provisions must be read in parallel with those relating to the conditions to be fulfilled to obtain family reunification (articles 6, 7, 8)

Questions relating fraud, false or falsified documents are of importance to assess their impact.

Note: In accordance with Articles 1 and 2 of the Protocol on the position of the UK and Ireland, annexed to the TEU and to the TEC, Ireland did not participate in the adoption of the Family Reunification Directive and is not bound by or subject to its application. Consequently there has been no transposition of this Directive. Where existing legislation or practice exists, this will be used to answer general questions. Where specific questions are asked about the transposition of particular provisions of the Directive, a response of ‘not relevant’ will be given.

Q.83 – What are the legal grounds to reject, withdraw or refuse to renew a family member's residence permit (a16 §1 et 2):

Q.83. A – Conditions required by the directive not satisfied?

☐ OUI
☒ NON

The Directive has not been transposed. Therefore failure to meet the conditions required by the Directive is not a ground to reject, withdraw or refuse to renew a family member’s residence permit. However, there is some overlap between the conditions in domestic administrative practice and those laid down in the Directive. These will be set out under the sub-questions below.

Q.83. B – Absence of real martial or family relationship?
One of the categories on the standard visa application form is ‘Relationship History.’

The Department of Justice, Equality and Law Reform’s sample document Explanation of Reasons for Refusal of Visa contains some guidance on this heading. The explanation for refusal under this heading is ‘[h]ave not shown evidence of a relationship being in existence prior to visa application/marriage’. It is noted that ‘for immigration purposes… a relationship, must include a number of face to face meetings (excluding webcam) between the parties.’ The onus is on the applicant to demonstrate that the relationship is bona-fide. Although there is a lack of official clarity on the matter, it is likely that the same principles would apply in the context of withdrawing or refusing to renew a family member’s residence permit.

Section 4(k) of the Immigration Act 2004 provides that a non-national may be refused permission to enter or be in the State if there is reason to believe that the non-national intends to enter the State for purposes other than those expressed by the non-national.

**Q.83. C – Absence of a stable long term relationship with another person?**

X OUI

☐ NON

*See answer to Q 83.B above*

If yes, how is this hypothesis assessed?

**Q.83. D – False or falsified documents?**

X OUI

☐ NON

The Department of Justice, Equality and Law Reform’s information literature makes reference only to insufficient documentation and inconsistencies in the information supplied. However, in relation to the applicant’s right to appeal, the Guidelines state that, ‘there will be no appeal allowed if you are found to have given false or misleading information in any part of your application, or submitted false, forged or fraudulent documentation.’

**Q.83. E – Marriage, partnership or adoption contracted for the sole purpose of enabling reunification?**

X OUI

☐ NON

Marriages and other relationships of convenience, if detected, would likely result in a proposal to deport the person pursuant to section 3 of the Immigration Act 1999.
Q.83. F – If yes, how is this hypothesis assessed?

There are no formal mechanisms in place for monitoring the stability/veracity of family relationships once family reunification has been granted.

Q.83. G – When the sponsor's residence comes to an end and the family member does not yet enjoy an autonomous right of residence (a 16 §3) ?

☒ OUI
☐ NON

Note: there is no autonomous right of residence

Q.83. H – What type of control are organised thereof?

See answer to Q.83.F.

Q.84 – Are resources of the family taken into account when renewing residence permit where the sponsor does not have sufficient resources without recourse to the social assistance system of the member state?

☐ OUI
☒ NON

Unclear – no official guidance

If yes, under which modalities?

It is not clear whether resources are a consideration when renewing residence permits. They are certainly a factor when deciding whether to grant family reunification.

Q85 – Does your Member State's legislation take into consideration (a. 17):

Q.85. A – The nature and solidity of the person's family relationships and the duration of his residence in the Member State?

☐ OUI
☒ NON

If yes, please specify how and on the basis of which norm (legislation, regulation, jurisprudence, …)

There is nothing mentioned in national law on this point. However, according to section 3(6) of the Immigration Act 1999, when the Minister of Justice, Equality and Law Reform is deciding whether to make a deportation order in relation to a person, s/he must consider the following factors:

- The duration of residence in the State of the person;
- The family and domestic circumstances of the person;
- The nature of the person’s connection with the State.
Q.85. B - 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?

[X] OUI
[ ] NON

There is no legislative reference to these considerations. However, it should be noted that in 2003, Ireland incorporated the European Convention on Human Rights into domestic law. The incorporating legislation requires public decision-makers and judicial authorities to take due notice of the Convention and the jurisprudence on the European Court of Human Rights when making decisions. Therefore, Ireland is bound to consider Article 8 of the Convention and relevant jurisprudence. See answer to Q. 87 for a thorough account of the operation of the incorporating legislation and relevant case-law.

Q.86 – Do the sponsor and/or members if his/her family have the right to mount a legal challenge where an application for family reunification is rejected (a18 §1)?

[ ] OUI
[X] NON

There is no right to mount a legal challenge against a negative family reunification decision, in the sense of appealing the decision to an independent tribunal or court. There is a right to an internal review of the decision by a superior officer within the Department of Justice, Equality and Law Reform. Thus, according to the department’s Guidelines, applicants may appeal a refusal within 2 months and this must be submitted in writing and posted to the Visa Appeals Officer in the department. It is stated that the appeal should ‘…fully address all the reasons for which the application was refused and any additional supporting documentation should be submitted for consideration. There is no fee payable for appealing a visa refusal decision but there will be no appeal allowed if the applicant is found to have given false or misleading information in any part of the application, or submitted false, forged or fraudulent documentation.’

When a family member is denied permission to enter the State pursuant to the powers of immigration officers under section 4 of the Immigration Act 2004, there is no possibility of appealing this decision.

When a family member is threatened with deportation, pursuant to section 3(3) of the Immigration Act 1999, he/she has 15 days from the notification of the decision to make representations in writing to the Minister, and the Minister is obliged to take any such representations into account in reaching his decision.

The Immigration, Residence and Protection Bill 2007 (see answer to Q.5 for status of bill) contains no provision for an independent appeals mechanism, such as an immigration appeals tribunal. No changes are envisaged to the current visa refusal or permission to enter and be in the State refusal mechanism, as described above. Where an entry permit or non-renewable residence permit is denied, section 41(3) provides that the
Minister is not obliged to consider any request for a review of the decision, unless a court directs otherwise. However, where a renewable residence permit or long term residence permit is discontinued, section 42(3) provides that the applicant can make representations to the Minister as to why the permit should be continued. Pursuant to section 42(8), the Minister is not required to consider any such representations, however.

Q.87 – Is this right to legal challenge considered as a right to a judicial review according to jurisprudence C-540/03(a18 §1)?

☐ OUI

☐ NON

Not relevant – directive not transposed

Note: As the directive has not been transposed, it follows that there is no provision in Irish law transposing Article 18 of the directive on the right to mount a legal challenge and no obligation to follow the interpretation of such a right laid down in Case C-540/03. However, there are two avenues by which an unsuccessful applicant for family reunification could mount a legal challenge under Irish law: 1) an application pursuant to the European Convention on Human Rights Act 2003 to the Circuit or High Court to determine the compatibility of the decision with the ECHR; 2) an application for judicial review of the decision in the High Court. Both will be outlined in turn.

**Circuit or High Court challenge on ECHR grounds**

Ireland is a dualist country. Therefore, international law, such as the European Convention on Human Rights, has no domestic effect unless and until it is incorporated into the domestic legal sphere by way of an act of the Oireachtas (parliament). Ireland incorporated the European Convention on Human Rights into Irish law in 2003 by way of the European Convention on Human Rights Act. However, the mode of incorporation expressed in the act is generally perceived by commentators and practitioners to be weak and insubstantial.

The act places a statutory obligation on courts when interpreting and applying legislation or a rule of law to do so, ‘in so far as possible’, in a manner compatible with the ECHR and the jurisprudence of the ECtHR. It also obliges every organ of State to perform its functions in a manner compatible with the Convention and the Court’s jurisprudence ‘subject to any statutory provision or rule of law’. Thus both the courts and the other organs of State (including for example, the Minister of Justice, Equality and Law Reform) are required to take decisions in a manner that is compatible with the Convention and its jurisprudence, but this obligation is stated in qualified terms (note italicised text).

Where a court fails to interpret or apply a statutory provision or rule of law in a manner compatible with the ECHR, a litigant can apply, on appeal to the High Court or Supreme Court, for a ‘declaration of incompatibility’. The legal effect of this declaration is limited: it does not affect the validity or continuing operation of the statutory provision or rule of law, but merely obliges the Taoiseach (Prime Minister) to place a copy of the declaration before each house of the Oireachtas (Parliament). Following a declaration of incompatibility, the litigant can apply to the Attorney General for compensation for injury or loss suffered by him/her as a result of the incompatibility, but the resulting payment, if any, is discretionary and ex gratia.
Similarly, where an organ of State fails to act in a manner compatible with the Convention, there is no provision for the offending decision to be overturned. Where a person has suffered injury, loss or damage as a result of a failure by an organ of State to perform its functions in a manner compatible with the ECHR, he/she can institute proceedings to recover damages in the Circuit or High Court but only if no other remedies (i.e. statutory, common law, constitutional) are available.

In short, the Convention has some domestic effect in Ireland, but that effect is limited since any offending legislation or decision cannot be overturned. In the family reunification context, no case has been taken challenging a judicial or executive decision under the ECHR Act 2003 for failing to have due regard to the Convention or its jurisprudence. Thus, there have been no awards of damages, no declarations of incompatibility or compensatory payments in the family reunification context. However, where the act has had some impact is in requiring the courts in the judicial review context to have regard to the provisions of the Convention and the jurisprudence of the ECtHR in reviewing administrative decisions.

**Judicial review in the High Court**

It is always open to the subject of any public decision to apply for leave (permission) to seek a judicial review of that decision in the High Court. However, there are a number of factors that militate against successfully exploiting this option in the normal course of events, and these are compounded in the immigration context.

Judicial review is not an appeal on the merits, but rather a review of the decision-making process. Clearly, however, where a decision is manifestly unfounded, this casts doubt on the decision-making process, and to that extent it can be said that judicial review is concerned with the merits of the decision. However, the test for overturning a decision is very strict. In the leading modern case of The State (Keegan) v Stardust Victims’ Compensation Tribunal [1986] IR 642, Henchy J. laid down the test as follows:

I would myself consider that the test of unreasonableness or irrationality in judicial review lies in considering whether the impugned decision plainly and unambiguously flies in the face of fundamental reason and common sense.

This test was further narrowed in O’Keefe v An Bord Pleanala [1993] 1 IR 39, in which the Supreme Court, on appeal, said that it could not intervene in decisions unless there was ‘no relevant material’ on which the administrative authority could have arrived at the conclusion which it did. This case confines the concepts of irrationality or unreasonableness to situations where there is no material whatsoever on which the administrative authority could have relied in making its decision. Some judges have raised, obiter, the question of whether this test is appropriate in the immigration context, where serious questions of life, liberty and human rights may be at issue (see for example, the dissenting opinion of McGuinness J. and majority judgment of Denham J. in Lobe and Osayande v Minister of Justice, Equality and Law Reform [2003] 1 IR 1). However, the English ‘heightened scrutiny’ approach to different types of judicial review has been rejected by the Irish courts in favour of a single test, regardless of context (see Z v Minister of Justice, Equality and Law Reform [2002] 2 ILRM 215).

The implications of this strict test in the family reunification context are clear: the chances of successfully reviewing a decision to refuse, withdraw or fail to renew an application for family reunification are very slim.
The chances of success are further reduced because of strict statutory time-limits for the making of a judicial review application in the immigration context. Section 5 of the Illegal Immigrant Trafficking Act, 2000 sets out that an application for judicial review must be made within ‘...the period of 14 days commencing on the date on which the person was notified of the decision, determination, recommendation, refusal or making of the Order concerned unless the High Court considers that there is good and sufficient reason for extending the period...’. Before signing this bill into law, the President of Ireland referred section 5 to the Supreme Court for a prospective judicial review in order to test its compatibility with the Constitution (In the Matter of Article 26 of the Constitution and Section 5 and Section 10 of the Illegal Immigrants (Trafficking) Bill 1999 [2000] IESC 19). If section 5 had been found to be unconstitutional, the entire bill would have died. However, the Supreme Court upheld the provision’s constitutionality, the bill was passed and section 5 of the Act is now immune from further constitutional challenge.

Finally, while an applicant for family reunification can theoretically challenge a negative family reunification decision by way of judicial review, the legal costs involved tend to be prohibitive.

However, on a more positive note, since the entry into force of the ECHR Act 2003, the High Court is obliged to carry out its review functions with due regard for the ECHR and its jurisprudence. A sample of cases where Article 8 ECHR has been argued is now provided.

The case of Lobe and Osayande v Minister of Justice, Equality and Law Reform [2003] 1 IR 1, although heard before the entry into force of the ECHR Act 2003, set the tone for future judgments. This case arose in the so-called ‘Irish born child’ context – a context peculiar to Ireland which deserves a brief explanation. Prior to a constitutional referendum in 2004, anyone born on the island of Ireland had a constitutional right to Irish citizenship. As a result of a Supreme Court ruling in 1990 (Fajujonu v Minister of Justice [1990] 2 IR 151), non-national parents of ‘Irish born children’ automatically acquired a right of residence in the State. In Lobe, the litigants were non-national parents of Irish born children who had applied for asylum but were due to be transferred to the UK under the provisions of the Dublin Convention. They argued that this was contrary to the ruling in Fajujonu and in violation of the children’s constitutional and human right to family life. The Supreme Court distinguished Fajujonu on the facts (unlike the Lobes and Osayandees, the Fajujonuses had been in Ireland for a considerable length of time and were well integrated into Irish society), and held that there was no automatic right of residence for non-national parents of a child born in Ireland. On the family life question, the court decided the matter entirely on the basis of the constitutional argument, but the ECHR did receive limited analysis. Hardiman J., delivering the leading judgment of the court, referred to the dicta of Lord Phillips MR in the Court of Appeal in R v Secretary of State (ex parte Mahmood) as well as Abdulaziz v UK. Moustaquim v Belgium and Beldjoudi v France were also mentioned. More recent and arguably more progressive judgments of the ECtHR were overlooked.

This case was followed by Cirpaci and Cirpaci v Minister of Justice, Equality and Law Reform [2005] IESC 42, which arose after the ECHR Act 2003 entered into force. The litigant was an unsuccessful asylum seeker from Romania. While in Ireland, he had formed a relationship with an Irish woman. After he was deported, the couple married in Romania. His new wife returned to Ireland to care for her three children from a previous relationship, but Mr. Cirpaci was refused a visa to join her. He argued, inter alia, that this was in violation of his right to family life under Article 8 ECHR. The Supreme Court unanimously affirmed the approach of the majority in Lobe, as set out in the leading judgment of Hardiman J, while also referring to the case of Gül v Switzerland. The judgment can be criticised for a) failing to distinguish Lobe on the basis that the court in that case was not obliged to have due regard
for the provisions of the ECHR; and b) failing to engage with more recent cases such as Boultif v Switzerland, Sen v Netherlands and Amrollahi v Denmark.

The High Court case of Bode v Minister of Justice, Equality and Law Reform [2006] IEHC 341 arose the ‘Irish born child’ context. In June 2004, in the aftermath of Lobe and Osayande, a citizenship referendum was passed to remove the constitutional entitlement to citizenship by birth on the national territory. The minister introduced an application procedure for residency for non-national parents of children born in Ireland after Lobe but before the citizenship referendum. The Bodes applied for residence under this procedure but were refused on the basis of lack of continuous residence in the State since the birth of the child. They argued that this was a violation of their child’s right to respect for family life within the meaning of Article 8 ECHR. Finlay Geoghegan J. referred to Boultif v Switzerland in finding that the family enjoyed family life within the meaning of Article 8. However, without reference to any ECHR caselaw, she accepted the State’s argument that Article 8 is only engaged when a proposal to deport a family member is at issue, with negative consequences for the unity of the family. The instant case did not involve a proposal to deport, simply a refusal to grant residence. She held:

There is no physical interference in the family ties as a result of the decision taken. There is no interference in the ability of the individual members of the family to maintain relationships with each other as a result of the decision…the applicants did not refer me to any decision relating to article 8 of the Convention in which, in the absence of an interference in the ability of the family members to maintain or develop their family relationships an interference in the right to respect for family life was found.

Curiously, Finlay Geoghegan J. appeared unaware of the development of the ECtHR’s jurisprudence in the area of positive obligations under Article 8, and in particular, of such cases as Sen v Netherlands, Tuquabo-Tekle and others v Netherlands, and Rodrigues Da Silva and Hoogkamer v Netherlands.

In conclusion, although since 2003 the Irish courts have been under an obligation to interpret and apply the law in a manner consistent with the ECHR, the approach can be described as partial and selective.
XX. IMPACT OF THE DIRECTIVE ON NATIONAL LAW

Q.88 A Did the transposition of the directive made the rules related to the best interest of minor children (a. 5 § 5) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Due regard to the best interest of minor children during examination of the application a. 5 § 5</td>
<td></td>
<td></td>
</tr>
<tr>
<td>There is no legislation governing family reunification of TCN immigrants. Administrative guidelines make no mention of the concept of the BI and administrative practice does not appear to take the concept into consideration. As regards family reunification of refugees, the relevant legislation makes no mention of the concept of the BI.</td>
<td>No transposition of directive</td>
<td>Status quo</td>
</tr>
</tbody>
</table>

Q.88 B Did the transposition of the directive made the rules related to the beneficiaries of the right to family reunification become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

<table>
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</thead>
<tbody>
<tr>
<td>Definition of the beneficiaries of the right to family reunification a. 4 § 4</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Please use one box per object and duplicate it if necessary
No statutory provisions govern family reunification of TCN immigrants in Ireland. Applicants can theoretically be submitted by/in respect of any family member and will be considered on a case-by-case basis at the discretion of the Minister of Justice, Equality and Law Reform. While most common practice relates to spouses and minor children, the Minister could, in principle, grant any family member permission to enter the State for family reunification purposes. However, there is little anecdotal evidence of successful applications by/in respect of family members other than immediate family members (and even practice in relation to immediate family members is reported to be inconsistent).

Q.88 C Did the transposition of the directive made the rules related to reunification of minor children between 12 (a. 4 § 1) and 15 (a. 4 § 6) years old become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below.
Ireland does not distinguish between minor children according to age.

No transposition of directive

Status quo

More favourable than the directive

Q.88 D Did the transposition of the directive made the rules related to requirements to the exercise of family reunification (article 7) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

<table>
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</tr>
</thead>
<tbody>
<tr>
<td>Requirements for the exercise of family reunification (a. 7)</td>
<td>No transposition of directive</td>
<td>Status quo</td>
</tr>
</tbody>
</table>

Q.88 E Did the transposition of the directive made the rules related to margins of manoeuvre awarded to Member States (a. 5 § 5, 17, C-540/03) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

<table>
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<tr>
<th>OBJECT</th>
<th>EVALUATION</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tbody>
</table>
Limitation of margins of manoeuvre (a. 17, a.5 §5, C-540/03)  |  REGARDING THE EVOLUTION OF NATIONAL LAW  |  COMPARISON WITH THE STANDARD OF THE DIRECTIVE

| Ireland’s domestic obligations under the ECHR are weak due to a modest form of incorporation of the Convention into domestic law. While Irish courts and public decision-makers are required to have due regard to the Convention and the jurisprudence of the ECtHR when making decisions, in the brief period of time since incorporation (2003), the courts have demonstrated a lack of familiarity with the Convention and its jurisprudence. | No transposition of directive | Status quo | Less favourable than the directive |

Q.88 F  Did the transposition of the directive made the rules related to integration objectives and criterions more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

Please use one box per object and duplicate it if necessary

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attention draw upon integration objectives (considérant 15) and criterions of integration (a.4 §1 dernier alinéa, a. 7 §2)</td>
<td>No transposition of directive</td>
<td>Status quo</td>
</tr>
<tr>
<td>Integration conditions do not appear to be a feature of current administrative guidelines and practice</td>
<td></td>
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</tbody>
</table>

Q.89  From your point of view, did the transposition of the directive imply other interesting changes for the third national country regarding other
elements than the ones mentioned in the previous question. Make also a comparison with the standard of the directive in the last column of the table below

**Note:** This box is not relevant as Ireland has not transposed the directive.

If they want to do so, the thematic coordinators should complete this question by indicating the number of examples that they ask the national reporter to give.

<table>
<thead>
<tr>
<th>OBJECT (to be precisely indicated by the national rapporteur)</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
</table>

**Q.89. A.** Mention if there is a general tendency to just copy the provisions of the directive into national legislation without redrafting or adaptation them to national circumstances.

- [ ] NO
- [ ] YES

Not relevant – directive not transposed

**Q.89.B.** If yes, please indicate if this general tendency may or not create problems (for example difficulties of implementation, risk that a provision remain unapplied).

- [ ] NO
- [ ] YES

**Q.89.C.** If yes, give some of examples:

**Q.89.D.** If only some provisions of the directive have been copied and if this may create any problem, please quote them and explain the problem.

**Q.90.** Quote interesting decisions of jurisprudence related to the directive, its transposition or implementation (so this question concerns in principle decisions later that the directive, but previous ones might be quoted if relevant). Quote in particular decisions of supreme Courts; limit yourself to the appeal Courts and ignore the first resort if there are too many decisions at this level, unless there is a certain jurisprudence made of a group of decisions.

Note: this box is not relevant as Ireland has not transposed the directive
Please use one box per decision and duplicate it if necessary

<table>
<thead>
<tr>
<th>DECISION OF SUPREME COURTS</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
</tr>
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<tbody>
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<table>
<thead>
<tr>
<th>DECISION OF APPEAL COURTS</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
</tr>
</thead>
<tbody>
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</table>

<table>
<thead>
<tr>
<th>DECISION(S) IN FIRST RESORT</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
</tr>
</thead>
<tbody>
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<td></td>
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<td></td>
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</tbody>
</table>

ANY SUPPLEMENTARY COMMENT ABOUT THE TREND OF THE JURISPRUDENCE:

Q.91 Specify if there are or not problems with the translation of the text of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated.

- [ ] There are no problems with the translation of the directive
- [x] There are some problems with the translation of (indicate the number of the articles concerned) of the directive.

Not relevant – directive not transposed

Explain the difficulties that this could create:

Q. 92 ANY OTHER INTERESTING ELEMENT

Q.92 A. Following your personal point of view, mention from the point of view of third country nationals and/or from the Member State any interesting or innovative practice in your Member State

Please use one table per practice and duplicate it if necessary

<table>
<thead>
<tr>
<th>OBJECT OF THE PRACTICE</th>
<th>EXPLANATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Q.92 B. Please add here any other interesting element in your Member State which you did not had the occasion to mention in your previous answers

This questionnaire assumes that Ireland has transposed the directive. Not only is Ireland not bound by the directive and therefore has not transposed it, the state of Ireland’s family reunification procedures is much more rudimentary than this questionnaire assumes. It has been difficult to give concrete answers to many questions posed because there is currently no legislation on family reunification in Ireland (other than
in respect of refugees), administrative guidelines are basic, and administrative practice often unclear. The outgoing government (there was a general election in May 2007) drafted a bill to reform the entire immigration system, but this bill is silent on the issue of family reunification. The bill does empower the Minister for Justice, Equality and Law Reform to make ‘immigration policy statements’ from time to time, and it may be that the intention of the government was for family reunification to be dealt with by way of these statements. The precise legal standing and content of such statements is unknown at present. In any event, the bill has lapsed due to the dissolution of the lower house of Parliament in preparation for the election. It remains to be seen how the next government will deal with immigration, including family reunification.

In conclusion, Ireland’s approach to family reunification has developed in an ad hoc manner, with no legislative parameters and little by way of publicly available policy guidance. This situation is due to be reformed with the anticipated Immigration, Residence and Protection Bill which is supposed to build on the lapsed bill of the same name dating from 2007. However, it is impossible to say at this point whether the bill will materialise and if so, what impact the legislation will have on family reunification.
The person in the team of thematic coordination in charge of this directive that you can contact if you have a question or need help when completing this questionnaire is: Yves Pascouau, +33 5 59 57 41 20, yves.pascouau@univ-pau.fr

COMMENTARIES

1. Council directive 2003/86 on the right to family reunification faced hard negotiations requiring the presentation of revised proposals from the Commission before final adoption in 2003. The European Court of Justice rejected in June 2007 an action for annulment introduced by the European Parliament against the Council directive (C-540/03).

2. Transposition of the directive must be assessed regarding the nature of the provision concerned. So as to help you, those provisions are coloured within the questionnaire as follows: obligatory provision (Q.XX), optional provision (Q.YY), provision which set up a derogation (Q.ZZ)

3. The Court of justice has defined the margins of discretion awarded to the member States even in situations where the directive allows the member States to depart from the directive. The Court states:

"Article 4(1) of the Directive imposes precise positive obligations, with corresponding clearly defined individual rights, on the Member States, since it requires them, in the cases determined by the Directive, to authorise family reunification of certain members of the sponsor's family, without being left a margin of appreciation" (cons. 60).

"Note should also be taken of Article 17 of the Directive which requires Member States to 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 country of origin. As is apparent from paragraph 56 of the present judgment, such criteria correspond to those taken into consideration by the European Court of Human Rights when it reviews whether a State which has refused an application for family reunification has correctly weighed the competing interests" (cons. 64)

The fact that the concept of integration is not defined cannot be interpreted as authorising the Member States to employ that concept in a manner contrary to general principles of Community law, in particular to fundamental rights. The Member States which wish to make use of the derogation cannot employ an unspecified concept of integration, but must apply the condition for integration provided for by their legislation existing on the date of implementation of the Directive in order to examine...
the specific situation of a child over 12 years of age arriving independently from the rest of his or her family” (cons. 70).

4. The main difficulty according to the transposition of the directive relies on the systematic opportunities offered to member States to depart from the provisions of the directive when applying it.

5. Article 19 indicates which themes where the most sensitive during the negotiations of the Directive (art. 3, 4, 7, 8 and 13).

FIRST PART

1. NORMS OF TRANSPOSITION AND JURISPRUDENCE

Q.1.A Identify the MAIN (because of its content) norm(s) of transposition and indicate its legal nature

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)
- About legal nature in the table below: legislative refers to a norm adopted in principle by the Parliament; regulation refers to a norm complementing the law and adopted in principle by the executive power; circular or instructions refer to practical rules about implementation of laws and regulations and adopted in principle by the administrative authorities

Please duplicate the table below if there is more than one MAIN norm of transposition

<table>
<thead>
<tr>
<th>This table is about:</th>
<th>X</th>
<th>a text already adopted</th>
<th>☐</th>
<th>a text which is still a project to be adopted</th>
</tr>
</thead>
<tbody>
<tr>
<td>TITLE:</td>
<td>Legislative Decree implementing EC Directive 2003/86 concerning the right to family reunification</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>DATE:</td>
<td>8 January 2007</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>NUMBER:</td>
<td>5</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>DATE OF ENTRY INTO FORCE:</td>
<td>15 February 2007</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive):</td>
<td>The Legislative Decree is entirely devoted to implementing EC Directive 2003/86</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>LEGAL NATURE (indicate a cross in the correct box):</td>
<td>X</td>
<td>LEGISLATIVE: A legislative Decree is adopted by the Government pursuant to a specific mandate issued by the Parliament that sets forth the criteria to be followed by the Government. EC Directives are usually implemented in Italy through a Legislative Decree.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>☐</td>
<td>REGULATION:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>☐</td>
<td>CIRCULAR or INSTRUCTIONS:</td>
<td></td>
<td></td>
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</tbody>
</table>
Q.1.B. List the other norms of transposition by order of importance of their legal nature (first laws, secondly regulations; thirdly circulars or instructions):

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)

Please use one table per norm and duplicate as much as necessary

| TITLE: | Single Text of the provisions concerning immigration and the status of aliens (Testo Unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sull'condizione dello straniero) |
| DATE: | 25 July 1998 |
| NUMBER: | 286 |
| DATE OF ENTRY INTO FORCE: | 3 September 1998 |
| PROVISIONS CONCERNED: | 5, 28, 30, 31, 32 (for example if the norm is not devoted only to the transposition of the concerned directive) |
| LEGAL NATURE (indicate a cross in the right box): | X LEGISLATIVE |

| TITLE: | Regulation which sets forth the rules of enactment of the Single Text on immigration and on the status of aliens pursuant to section 1, para. 6, of Legislative Decree 25 July 1998, no. 286 |
| DATE: | 31 August 1999 |
| NUMBER: | 394 |
| DATE OF ENTRY INTO FORCE: | |
| PROVISIONS CONCERNED: | sections 6 and 9 (for example if the norm is not devoted only to the transposition of the concerned directive) |
| REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: | Official Journal no. 258 of 3 November 1999 |
| LEGAL NATURE (indicate a cross in the right box): | X REGULATION |
Q.2. THIS QUESTION IS IN PRINCIPLE ONLY FOR FEDERAL OR ASSIMILATED MEMBER STATES LIKE AUSTRIA, BELGIUM, GERMANY, ITALY, SPAIN

Q.2.A. Explain which level of government is competent to adopt the norms of transposition.

Please include your answer in the tables below

<table>
<thead>
<tr>
<th>LEGISLATIVE RULES</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</td>
</tr>
<tr>
<td>COMPETENCES OF THE COMPONENTS:</td>
</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
</tr>
</tbody>
</table>

<table>
<thead>
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<tr>
<td>COMPETENCES OF THE COMPONENTS:</td>
</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
</tr>
</tbody>
</table>
Q.2.B. In case, explain if the federal structure and the distribution of
competences between the different levels pose any problem or difficulty
regarding the transposition and/or the implementation of the directive.

Q.3. Explain which authorities are competent for the practical implementation
of the norm of transposition by taking the decisions in individual cases.

Please use one table per competence concerned and duplicate it if necessary

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Local police office (“Questura”)</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Home affairs Ministry</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>Department for civil freedoms and immigration (Dipartimento per le libertà civili e l’immigrazione)</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td>Local Government Authority (“Prefettura”)</td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister):</td>
<td>The permit of stay for family reunification is issued by the Questura, which is a territorial articulation depending directly on the Home Office.</td>
</tr>
</tbody>
</table>

Q.4.A. Has the main regulation foreseen explicitly by the main norm of transposition already been adopted or not:

☑ YES

☒ NO

Q.4.B. If the main norm(s) of transposition foresees the adoption of one or several regulations, indicate if they have all been adopted:

☑ YES

☒ NO

If NO, please indicate the missing text(s) in the table below

Please use one line per missing text and duplicate it if necessary
MISSING TEXTS

The Legislative Decree implementing the EC Directive has expressly stated that within six months upon the entry into force of the same Decree, a regulation shall be adopted in order to integrate and enforce the provisions contained therein. At the same time the provisions contained in the D.P.R. 1999/394 shall be reviewed and harmonised with the new provisions set forth in the Legislative Decree no. 5/2007

Add if necessary some explanations (specify in particular if the missing texts are at least under preparation or foreseen in the very near future):
SECOND PART

AIM (ARTICLE 1)

The purpose of the Directive is to determine the conditions for the exercise of the right to family reunification. In case C-540/03, the Court of justice recognizes that, in some cases, member States do not have any margin of appreciation to grant the right to family reunification.

Q.5 – Is family reunification considered as a right in your Member State?

☐ OUI
☐ NON

Please explain

Section 28 of the Single Text on immigration provides for the “right to family reunification”. More in details this section clearly mentions the right to family reunification stating that the right to maintain or acquire family unit in favour of third country nationals and in relation to foreign family members is acknowledged under the conditions set forth in the Single text on immigration.

It is important to underline that the right to family reunification in favour of third country nationals has been acknowledged by the Constitutional court in several decisions.

Q.5. A – Are there any figures available relating to the exercise of the right to family reunification between 2002 and 2006? If yes, what are the trends, including nationality assessment?

Figures are available from 2002 to 2005\(^{289}\) (figures related to the year 2006 are not yet available) and show the following increasing trend in family reunification: in 2002 (62,000), in 2003 (66,000), in 2004 (87,000), in 2005 (approximately 100,000).

DEFINITIONS (ARTICLE 2)

SCOPE (ARTICLE 3)

The scope of the Directive is defined by article 3. We recall that:

- § 1 “reasonable prospect...” aims at excluding persons residing on a temporary basis (stagiaires, etc...)
- European citizens are excluded (§ 3)
- Comparison with existing legislation is of importance so as to assess the added value of the harmonization process (§ 5)

Q.6. Period of validity of the sponsor’s residence permit:

Q.6. A. Is the period of validity of the sponsor’s residence permit of one year or more according to article 3 § 1 of the Directive?

☐ OUI
☐ NON

Q.2.B. Quote precisely the period enshrined in national law:
The sponsor must either hold a long-term residence permit or a permit of stay with a duration of not less than one year.

Q.6.C. How does your Member State translate in national law the requirement for the sponsor to have "reasonable prospects of obtaining the right of permanent residence" (a 3 § 1)?

Pursuant to section 28, para. 3, of the Single text on immigration (as amended by legislative Decree of 8 January 2007, no. 5), the right to family reunification is acknowledged in favour of third country nationals who hold a long-term residence permit or a permit of stay with a duration of at least one year issued for employment or self-employment, for asylum, for study, for religious or family reasons.” These grounds for the stay are considered as a symptom of a stable stay in Italy, whereas third country nationals who stay only temporary are excluded from the scope of application of family reunification.

Q.7. – Members of the family concerned:

Q7. A. Are they third country nationals as required by article 3 § 1 of the Directive?

☐ OUI
☐ NON

If not, explain

Q.7.B. How has your Member State translated in national law the wording of "whatever status” included in article 3 § 1 of the Directive?

This wording has not been transposed.

Q.8 – Did the transposition of the Directive in your Member state breached provisions of international law more favourable to individuals (a 3 § 4)?

☐ OUI
☐ NON

Q.9 – If yes, are those provisions based on:

Q.9.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?
Q.9.B - The European Social Charter of 18 October 1961 (a 3 § 4)?

☐ OUI
☐ NON

Specify which provisions

Q.9.C. The amended European Social Charter of 3 May 1987 (a 3 § 4)?

☐ OUI
☐ NON

Specify which provisions


☐ OUI
☐ NON

Specify which provisions

Q.10 – Does the transposition of the Directive affect national provisions more favourable to individuals (a 3 § 5)?

☐ OUI
☒ NON

If yes, please specify which provisions

**BENEFICIARIES (ARTICLE 4)**

- Article 4 of the Directive contains numerous "may clauses". It is therefore important to pay attention on the way Member States use them and on the legal modalities adopted thereof.

- Article 4 § 1 a) and b) enacts a right to family reunification for some members of the sponsor's family. The Member State does not have any margin of discretion regarding those persons.
Article 4 § 1 last indent foresee one derogation regarding child over 12 years on the basis of an integration criterion. This is one of the most sensitive questions encompassed by the directive beside the issue of the limit of age in § 6.

Regarding article 4 § 6, the Court states "It does not matter that the final sentence of the contested provision provides that the Member States which decide to apply the derogation are to authorise the entry and residence of children in respect of whom an application is submitted after they have reached 15 years of age 'on grounds other than family reunification'. The term 'family reunification' must be interpreted in the context of the Directive as referring to family reunification in the cases where family reunification is required by the Directive. It cannot be interpreted as prohibiting a Member State which has applied the derogation from authorising the entry and residence of a child in order to enable the child to join his or her parents". (cons. 86)

The Court adds "Article 4(6) of the Directive must, moreover, be read in the light of the principles set out in Article 5(5) thereof, which requires the Member States to have due regard to the best interests of minor children, and in Article 17, which requires them to take account of a number of factors, one of which is the person's family relationships" (cons. 87)

Q.11 – Does your national law recognize the right to family reunification to:

Q.11. A – The sponsor's spouse (a. 4 § 1 a)?

☐ OUI
☐ NON

Q.11. B - Minor children of the sponsor and of his/her spouse (a. 4 § 1 b)?

☐ OUI
☐ NON

Q.11.C. Minor children adopted of the sponsor and of his/her spouse (a. 4 § 1 b)?

☐ OUI
☐ NON

Q.11.D. Minor children of the sponsor (a. 4 § 1 c)?

☐ OUI
☐ NON

Q.11. E. If yes, does your national law foresee that the sponsor shall have children custody and children are dependant on him or her?

☐ OUI
Specify if necessary the proofs required

**Q.11 F.** Minor children adopted of the sponsor (a 4 §1.c) ?

☐ OUI  ☑ NON

**Q.11. G.** If yes:

h. does your national law foresee that the sponsor shall have children custody and children are dependant on him or her?

☐ OUI  ☑ NON

Specify if necessary the proofs required

**g.g.** Does national law provide that those children shall be 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'?

☐ OUI  ☑ NON

Specify if necessary the proofs required

**Q.11. H.** Minor children of the spouse (a 4 §1.d.)?

☐ OUI  ☑ NON

**Q.11. I.** If yes, does your national law foresee that the spouse shall have children custody and children are dependant on him or her?

☐ OUI  ☑ NON

Specify if necessary the proofs required

**Q.11. J.** Minor children adopted of the spouse (a 4 §1.d )?

☐ OUI  ☑ NON
Q.11. K. If yes, k. Does your national law foresee that the spouse shall have children custody and children are dependant on him or her?

☐ OUI
☒ NON

Specify if necessary the proofs required

k.k. Does national law provide that those children shall be 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"?

☐ OUI
☒ NON

Specify if necessary the proofs required

Q.12 – Has your Member State transposed the option opened by article 4 § 1 c:

Q.12A. To authorise reunification of minor children of the sponsor – including also adopted children – of whom custody is shared (a 4 §1.c)?

☐ OUI
☒ NON

Specify if necessary

The norm of transposition does not specify that custody must be shared, but requires that the other parent, where existing, has given his/her agreement

Q.12.B. If yes, has your legislation transposed the condition that the other party sharing custody has given his or her agreement (a 4 §1. c)?

☒ OUI
☐ NON

Specify if necessary

Please refer to the above remark

Q.13 – Has your Member State transposed the option opened by article 4 § 1 d):

Q.13.A. to authorise reunification of minor children of the spouse – including also adopted children – of whom custody is shared (a 4.1.d. in fine)?
The norm of transposition does not specify that custody must be shared, but requires that the other parent, where existing, has given his/her agreement.

**Q.13 B.** If yes, has your legislation transposed the condition that the other party sharing custody has given his or her agreement (a 4. 1.d) ?

☑ OUI

☐ NON

Specify if necessary

Please refer to the above remark.

**Q.14** – In any case referred to in questions 7 to 9, is the age of the minor children below the age of majority set up by the law of your Member State (a.4 §1, second indent)?

☑ OUI

☐ NON

If yes, indicate the age required

18 years

**Q.15** – In any case referred to in questions 7 to 9, has the prohibition of marriage of minor children been transposed (a.4 §1, second indent)?

☑ OUI

☐ NON

If not, explain Si non, expliquez

**Q.16** – Is the derogation set up in article 4 § 1 last indent relating to the conditions for integration of children over 12 years arrived independently from the rest of the family used by your Member State?

☐ OUI

☑ NON

How the criterion "arrives independently from the rest of his/her family" has been transposed in your national legislation?
Q.17 – If yes, did this integration condition already exist in your national legislation before the date of transposition of the Directive?

☐ OUI

☒ NON

Q.18 – Describe briefly the content of this condition, the date of its creation and the conditions of its examination

Q.19 – Are the children of refugees required to an integration test by your Member State (in contradiction with article 10 § 1)?

☐ OUI

☒ NON

If yes, explain

Q.20 – Does your Member State authorise:

Q.20 A – Reunification of first-degree relatives in the direct ascending line of the sponsor (a 4§2 a)?

☒ OUI

☐ NON

Q.20 B – If yes, shall they be dependant and not enjoy proper family support in the country of origin?

☒ OUI

☐ NON

How each of those criterions is transposed and checked?

No criterion is indicated in the Legislative Decree that has transposed the directive. The explanatory circular, that was adopted on February 15 2007 by the Ministry of Interior, has clarified that the Ministry of Foreign Affairs is identifying the relevant parameters that shall be taken into consideration when assessing if such conditions subsist.

Q. 20.C. Reunification of first-degree relatives in the direct ascending line of the spouse (a 4§2 a)?

☐ OUI

☒ NON
Q.20.D. If yes, shall they be dependant and not enjoy proper family support in the country of origin?

☐ OUI
☐ NON

How each of those criterions is transposed and checked?

Q.20.E. Reunification of adult unmarried children of the sponsor? (a 4§2 b) ?

X ☐ OUI
☐ NON

If necessary, explain how this procedure is organised

Q.20.F. If yes, does the national legislation impose that those adult unmarried children of the sponsor are objectively unable to provide for their own needs on account of their state of health (a 4 §2 b) ?

X ☐ OUI
☐ NON

If necessary, specify how each of those criterions ("objectively" and "unable to provide for their own needs") is transposed and checked?

Q.20. G. Does your Member State authorise reunification of adult unmarried children of the spouse (a 4§2 b)?

☐ OUI
X ☐ NON – Not specified in the law

If necessary, specify how this condition is assessed

Q.20.H. If yes, does the national legislation impose that those adult unmarried children of the sponsor are objectively unable to provide for their own needs on account of their state of health (a 4 §2 b) ?

☐ OUI
☐ NON

If necessary, specify how each of those criterions ("objectively" and "unable to provide for their own needs") is transposed and checked?

Q.20. I. Did your Member state use the by law or regulation norms to implement article 4 § 2 a et b?

X ☐ OUI
Q.21 – Does your Member State authorise reunification of the unmarried partner of the sponsor, being a third country national (a 4 §3)?

☐ OUI
☒ NON

Q.22 – If yes:

Q.22 A – This partnership shall be based on a duly attested stable long term relationship?

☐ OUI
☐ NON

If yes, specify how your Member State assess this situation

Q.22 B – This partnership shall be registered?

☐ OUI
☐ NON

Q.23 – Does your national law consider the registered partner as the husband/spouse (a 4 §3 alinéa 2)?

☐ OUI
☒ NON

Q.24 – Does your Member State authorise:

Q.24. A – Reunification of minor children of the partner, including adopted children (a 4§3)?

☐ OUI
☒ NON

Q. 24. B – Reunification of adult unmarried children of the partner, including adopted children (a 4§3)?

☐ OUI
☒ NON
Q.25 – Does your Member State allow reunification of adult unmarried children who are objectively unable to provide for their own needs on account of their state of health (a 4§3)?

☐ OUI

☒ NON

If yes, specify how the conditions, and more particularly the "objectivity", are assessed.

Q.26 – Did your Member state use the by law or regulation norms to implement article 4 § 3?

☐ OUI

☒ NON

Q.27 – Is the prohibition of polygamous marriage enshrined in your national legislation (a. 4§4)?

☒ OUI

☐ NON

Q.28 – Does your Member State limit family reunification of minor children of a further spouse and the sponsor (article 4§4 dernier alinéa,)?

☐ OUI

☒ NON

Q.29 – Does your Member State use the option set up by article 4 § 5 requiring the sponsor and his/her spouse to be of a minimum age of 21 years old before reunification?

☐ OUI

☒ NON

Q.30 – If yes,

Q.30 A – What is the age required?

Q.30 B – Is the derogation founded on integration criteria and/or prevention of forced marriage?

Q.31 – Does your Member State use the derogation of article 4 § 6 by requesting that the applications concerning family reunification of minor children have to be submitted before the age of 15?

☐ OUI
Q.32 – If yes, was it provided by existing legislation on the date of implementation of the directive?

Q.33 – If the application is not introduced before the age of 15, do Member States authorise entry and residence on grounds other than family reunification?

Which grounds and which conditions?

PROCEDURE (ARTICLE 5)

We draw attention on the major importance given by the Court of justice regarding § 5 relating to the best interest of minor children.

Q.34 – Did your Member State institute a procedure regarding family reunification (a 5 §1)?

Q.35 – If yes,

Q.35. A – Which authorities are in charge of this issue?

- Immigration desk at the local Government authority (“Sportello unico per l’immigrazione presso la prefettura-ufficio territoriale del Governo”);
- Italian diplomatic representation
- Police authority (“Questura”)

Q.35. B – Are NGO's associated to this procedure?

Q.35. C – Is the application submitted by the sponsor or by family members?

The application is submitted by the sponsor, also through an attorney.
Q.35. D – Is this procedure exclusive from other possibilities to grant family reunification?

X OUI

☐ NON

If other procedural possibilities exist, please describe them

Q. 35. E – Was this procedure existing before the adoption of Directive 2003/86?

X OUI

The procedure already existed. However it has been partially amended and simplified further to the implementation of the directive

☐ NON

Q.36 – Which documentary evidence are required to prove (a 5 §2):

Q.36. A – Family relationships according to article 4?

- Photocopy of passports of family members for which permits are requested;
- Marriage certificate and children birth certificate, issued by the competent national authorities, duly translated into Italian and legalized by the Italian Consulate/Embassy.

Q.36. B – Accommodation conditions laid down in article 7?

- Lease contract, or complete, registered notarial deed of the ownership of a house (original copy to be shown at the time of application. In case of lease, the receipt issued by the local competent Registry Office (Ufficio del Registro);
- In case the sponsor has a child who has not reached the age of 14, a statement signed by the owner of the house, in which he/she gives consent to lease the house;
- In case the sponsor is given hospitality, consent of the host to accommodate the members of the family;
- Certificate, to be issued by the competent township authorities where the sponsor and his family will reside in Italy, attesting that the house where they will live is compliant with the basic living parameters provided for by regional laws governing residential housing.

Q.36. C – Sickness insurance conditions?

Q.36. D – Certified copies of family member(s)’ travel documents?

Travel documents and sickness conditions are not requested

Q.37 – Is the possibility foreseen to proceed to:
Interviews:

☐ OUI

☒ NON

Investigations:

☒ OUI

☐ NON

If yes, describe them briefly

DNA tests are possible in Italy but subject to several conditions. They are performed by the IOM offices, but are carried out ONLY on a voluntary basis and as a final resource usually either by asylum seekers who can not get family certificates for safety reasons or by economic migrants who have never been registered in the Registry office in their country of origin or who prefer to shorten the appeal time in case of recourse against a decision issued by the Italian diplomatic representation attesting that the documents filed are not reliable.

Q.38 – When examining an application concerning the unmarried partner of the sponsor, which evidences are taken into account by Member States on the basis of national law to prove family relationship (article 5§2 dernier alinea) ?

Not applicable in Italy

Q.38. A – Existence of family ties and other elements such as a common child?

☐ OUI

☐ NON

Specify

Q.38. B - Previous cohabitation?

☐ OUI

☐ NON

Q.38. C - Registration of a partnership

☐ OUI

☐ NON

Q.38. D - Any other reliable means of proof foreseen in national law?

☐ OUI

☐ NON
If yes, specify which ones:

**Q.39** – Are family members obliged to reside outside the territory of the Member State while the application is being examined (a5 §3)?

- [x] OUI
- [ ] NON

Is this obligation sanctioned and how? Family members are not “obliged” to reside outside the territory of Italy, but the law is based upon the assumption that they are abroad and the procedure is organised in two phase, with the involvement of the Italian diplomatic representation. The possibility that they are in Italy is not provided by the law.

**Q.40** – If the answer is yes, is a derogation organised according to article 5 § 3 second indent?

- [x] OUI
- [ ] NON

Please specify

Pursuant to section 30, para. 1, of the Single text on immigration family members already legally residing on the national territory and who would be entitled to apply for family reunification with an Italian citizen, an EU citizen residing in Italy, or with a third country national legally residing in Italy, may have their permit of stay converted into a permit of stay for family reasons. Such application must be filed within a deadline of one year from the expiration of the original permit of stay. Refugees do not need to hold a regular permit of stay.

**Q.41** – Does your national legislation include a maximum period of 9 month to answer to the application by way of written notification (a5 §4)?

- [x] OUI
- [ ] NON

If necessary, please specify

**Q.42** – This time limit can be extended (a 5 §4 alinea 2)?

- [ ] OUI
- [x] NON

**Q.43** – If yes,
Q.43. A – Because of the complexity of the examination of the application?

☐ OUI

☒ NON

If yes, please specify

Q.43. B – What is the length of the extension?

Q.44 – If no decision is taken by the end of the 9 months period provided, what are the consequences for the applicant?

In the event that no decision is issued in relation to the *nulla osta* after expiration of a term of 90 days upon the filling of the application, the concerned third country national is entitled to request an entry visa directly from the Italian diplomatic representations.

Q.45 – Is the decision rejecting the application notified? Does this written notification contain the reasons of rejection?

☒ OUI

☐ NON

Specify if only one condition is not required

Q.46 – How is the best interest of minor children taken into account by your Member State’s legislation and authorities during examination of the application (article 5§5)?

Section 28, para. 3, already stated that in all administrative and judicial procedures which are aimed at enforcing the right to family unit and which concern minors, the superior interest of the child must come above everything, in accordance with the criteria set forth in the UN Treaty on child rights of 20 November 1989.

**CONDITIONS REQUIRED (ARTICLES 6 AND OTHERS)**

- Questions relating to accommodation and resources will be carefully examined to assess if Member States use them, either as a migration tool or as an integration tool.

- The same assessment applies regarding the option to set up a period of lawfully residence not exceeding two years before applying for family reunification.

- According to article 8, the Court of justice states: "That provision does not therefore have the effect of precluding any family reunification, but preserves a limited margin of appreciation for the Member States by permitting them to make sure that family reunification will take place in favourable conditions, after the sponsor has been residing in the host State for a period sufficiently long for it to be assumed that the family members will settle down well and display a certain level of integration."
Accordingly, the fact that a Member State takes those factors into account and the power to defer family reunification for two or, as the case may be, three years do not run counter to the right to respect for family rights set out in particular in Article 8 of the ECHR as interpreted by the European Court of Human Rights

- "It should, however, be remembered that, as is apparent from Article 17 of the Directive, duration of residence in the Member State is only one of the factors which must be taken into account by the Member State when considering an application and that a waiting period cannot be imposed without taking into account, in specific cases, all the relevant factors" (cons. 99). "The same is true of the criterion of the Member State’s reception capacity, which may be one of the factors taken into account when considering an application, but cannot be interpreted as authorising any quota system or a three-year waiting period imposed without regard to the particular circumstances of specific cases. Analysis of all the factors, as prescribed in Article 17 of the Directive, does not allow just this one factor to be taken into account and requires genuine examination of reception capacity at the time of the application" (cons. 100) "When carrying out that analysis, the Member States must, as is pointed out in paragraph 63 of the present judgment, also have due regard to the best interests of minor children" (cons. 101).

Q.47 – Can public policy, public security or public health grounds be taken into account to (a 6 §§1 et 2):

Q.47. A – Reject an application for family reunification?

X OUI

□ NON

If yes, which ones?

Public policy and public security

Q.47. B – Withdraw an application for family reunification?

X OUI

□ NON

If necessary, please specify

Q.47. C – Refuse to renew a family member's residence permit?

X OUI

□ NON

If necessary, please specify

Q.48 – Does national legislation take into account:

Q.48. A – The severity or type of offence against public policy or public security?
OUI

Q.48. B – The solidity of family relationships regarding article 17 of the Directive?

OUI

If necessary, please specify

Q.49 – Does your Member State withdraw the residence permit or remove the third country national on the sole ground of illness or disability suffered after the issue of the residence permit (a 6 §3)?

NON

Q.50 – Are accommodation conditions required from the applicant (a7 §1a) ?

OUI

If yes:

Q.51. A – What are those conditions?

The sponsor must have the availability of an accommodation corresponding to the minimum parameters set forth for public housing by applicable regional laws or complying with suitable hygienic-health requirements.

Q.51. B – How are they assessed?

As mentioned above the sponsor shall file a certificate, to be issued by the competent township authorities where the sponsor and his family will reside in Italy, attesting that the house where they will live is compliant with the basic living parameters provided for by regional laws governing residential housing.

As an alternative, suitability of the accommodation may be assessed by the competent local health office (Azienda sanitaria locale) that will issue a specific certificate.

Q.51 C – Are they comparable to the conditions required to a normal family living in the same region?

OUI
If not, please specify the differences

Q.52 – Is a sickness insurance required from the applicant (a. 7 §1b) ?

☐ OUI

☒ NON

It must be noted that pursuant to section 34 of the Single Text on immigration, third country nationals who regularly stay on the national territory must register to the National Healthy System and benefit from the same treatment as Italian citizens. Such assistance is granted also to the family members who regularly stay in Italy. This explains why the sickness insurance is not requested.

Q.53 – Are stable resources required (a7 §1c) ?

☒ OUI

☐ NON

Specify their nature and content

The sponsor must have a minimum annual income, deriving from lawful sources, not below the yearly amount of social allocation, if reunification concerns only a family member. (For ease of reference such amount is equal to Euro 5061,60).

This amount increases in accordance with the number of family members for whom family reunification is requested. In the event that family reunification is requested for two or three members such minimum annual income must be equal at least to twice the social allocation. In case it is requested in relation to 4 or more members of the family, the minimum annual income must be equal to at least the triple of the social allocation.

Moreover, if family reunification concerns two or more children aged below 14 years, an annual income not below the double of the yearly amount of the social allocation is required, independently of the number of children.

The total yearly income of the family members living with the sponsor is also taken into account in the calculation of the minimum yearly income.

Q.54 – How is the condition "sufficient" assessed by your Member State? Is it in comparison with national wages?

Please refer to question 53.

Q.55 – Are integration criterions required to allow family reunification (a 7 §2)?

☐ OUI

☒ NON
Q.56 – If yes:

Q.56. A – What are those criterions?

Q.56. B – Do they apply indistinctly to all potential beneficiaries of reunification? (Spouse, dependant people, etc.)

Q.56. C – How are they evaluated by your Member State?

Q.56. D – Are refugees and their family members required to fulfil them (a 7 §2, second indent)?

☐ OUI

☒ NON

Q.57 – Is a minimal period of lawful reside is required before reunification (a 8 §1)?

☐ OUI

☒ NON

Q.58 – Does this period exceed two years?

Please specify

Q.59 – Does your Member State apply the derogation set up by article 8 § 2 allowing Member States to impose a waiting period of maximum three years due to reception capacities between the submission of the application and the issuance of a residence permit?

☐ OUI

☒ NON

Please specify

Q.60 – If yes, did this derogation exist in national law before the 22nd of September 2003?

☐ OUI

☐ NON

**FAMILY REUNIFICATION OF REFUGEES**

*The legal regime applicable to refugees derogates from the one applicable to family reunification. The scope of those derogations (minimal lawful residence, members of the family, accommodation requirements) shall be assessed on the basis of national law.*
Q.61 – Does your Member State allow family reunification of refugees on the basis of Directive 2003/86 (a 9 §1) ?

☐ OUI
☐ NON

Q.62 – Is this right limited to family relationships predating the entry on the territory (a 9 §2)?

☐ OUI
☒ NON

Q.63 – Does your Member State allow family reunification of family Members not quoted in article 4 of the Directive (a 10 §2) ?

☐ OUI
☒ NON

Which members of the family and under which conditions?

Q.64 – According to the specific case of unaccompanied minor refugees, does your Member State authorise family reunification of first degree relatives in the direct ascending line without applying the conditions laid down in article 4 § 2 (a10 §3 a) ?

☒ OUI
☐ NON

What conditions are required?

No condition is required

Q.65 – Does your Member State authorise entry and residence of the legal guardian or any member of the family where the unaccompanied minor refugee has no relatives in the direct ascending line or such relatives cannot be traced (a10 §3 b) ?

☐ OUI
☒ NON

If yes, please specify who the member of the family targeted is and which proofs are required to prove family ties?

Q.66 – Does your Member State take into account other evidence of family relationship where the refugee cannot provide official evidence (a 11 §2) ?

☒ OUI
☐ NON
Which ones?

Pursuant to section 29-bis of the Single Text on immigration (added by Legislative Decree no. 5 of 2007), if a refugee is unable to provide official documents that may attest his/her family ties, the diplomatic or consular representations shall issue appropriate certificates, after carrying out the necessary assessments. It must be underlined that such investigations and checks are performed at the concerned person’s expenses. Moreover it is possible to use other suitable elements to prove the existence of family ties, including elements deriving from documents issued by international organisations, provided that they are considered as suitable by the Ministry of foreign affairs.

Q.67 – Does the examination of the refugee application take into account their specific situation:

The refugee’s specific situation is one of the grounds (along with lack of an acknowledged authority and unreliability of the documents issued by the local authority) that allow the use of alternative elements of proof, as described above.

Q.67. A – Are proofs regarding accommodation conditions, sickness insurance or resources required (a 12 §1)?

☐ OUI
☒ NON

If yes, are those requirements comparable to those imposed to other third country nationals?

Q.67. B – If one of the person concerned (sponsor or family member) has special links with a third country within which reunification is possible, does your member state require those proofs according to article 12 § 1 second indent.

☐ OUI
☒ NON

If necessary specify

Q.67. C – If a refugee has introduced its application after a period of three months, does your Member State require the refugee to meet the conditions or one of them (accommodation, sickness insurance, resources (a 12 §1 alinea 3)?

☐ OUI
☒ NON

If yes, which ones?
Q.68 – Does your Member State apply the prohibition to impose a residence condition before reunification (a 12 §2)?

☐ OUI
☐ NON

If not, what is the length of this period? Is it different from the one normally applied?

**EXERCISE OF THE RIGHT TO FAMILY REUNIFICATION**

The granting of an autonomous residence permit is one of the most sensitive issues of this part of the Directive.

Q.69 – Is entry and residence facilitated by your Member State, as soon as the application for family reunification has been accepted, including the issue of obtaining visas (a13 §1) ?

☐ OUI
☐ NON

If yes, how?
The procedure for the granting of a visa has been simplified by legislative Decree no. 5 of 2007. The obligations and tasks to be fulfilled respectively by the Sportello Unico and the Italian diplomatic and consular representations have been clarified. It is therefore stated that after the issuance of the nulla osta by the Sportello Unico, the task of the local Consulate shall be limited to assess the authenticity of the documents attesting the family ties, wedding, minor age and healthy status, which are filed by the family member.

Q.70 – Is a residence permit of at least one year's duration granted to the family members (a 13 §2)?

☐ OUI
☐ NON

What is the duration of the residence permit?
The permit of stay for family reasons has the same duration of the permit of stay granted to the sponsor and may be renewed with this latter.

Q.71 – Is this residence permit renewable?

☐ OUI
☐ NON

Q.72 – Is the duration of the residence permit aligned with the duration of sponsor’s residence permit (a 13 §3)?
Q.73 – Are the rights awarded to family members' equivalent to those granted to the sponsor (a14 §1):

Q.73. A – Regarding access to education?

☐ OUI
☐ NON

If no, please specify

Q.73. B - Regarding access to employment?

☐ OUI
☐ NON

Please specify the content of this access

Q.73. C – Regarding access to vocational guidance, initial and further training and retraining?

☐ OUI
☐ NON

If no, please specify

Q.74 – Does your Member State grant specific rights in social matters to reunified family members?

☐ OUI
☐ NON

If yes, please describe them and specify if a time limit is established to take advantage from them

Family members also benefit from health assistance (please refer to Q. 52) and social assistance. No time limit is established.

Q.75 – Has Member State set up conditions regarding specific access to employment for family members (a 14 §2)?

☐ OUI
If yes, how?

**Q.76** – If yes, do those conditions exceed 12 months (a 14 §2)?

- OUI
- NON

Which ones?

**Q.77** – Is access to employment limited in your Member State

**Q.77.A** – Regarding first-degree relatives in the direct ascending line?

- OUI
- NON

If yes, how?

**Q.77. B** – Regarding adult unmarried children objectively unable to provide for their own needs on account of their state of health (a 14 §3)?

- OUI
- NON

If yes, how?

**Q.78** – Are spouses, unmarried partners and child who has reached majority entitled to an autonomous residence permit at least five years after lawful residence on the basis of the residence permit issued for family reunification (a15 §1)?

- OUI
- NON

If yes, please specify when and how for each category

A specific deadline has not been set forth. Issuance of an autonomous residence permit is subject to occurrence of specific circumstances.

Spouses. They may be granted an autonomous permit of stay 1) upon renewal (should the spouse carried out an activity, the permit of stay for family reasons is converted into a permit of stay for purposes related to the activity which is actually carried out by her/him); 2) in case of death of the sponsor, or in case of legal separation or divorce.
Children. In the event that the child is not entitled to a long-term residence permit at the age of 18 years, his/her permit of stay may be converted into a residence permit for employment or self employment or for study.

**Q.79** – Does your Member State limit the granting of the autonomous residence in cases of breakdown of the family relationship (a 15 §1 alinea 2)?

- [ ] OUI
- [X] NON

Please explain

Pursuant to section 30, para. 5, of the Single Text on immigration, in case of death of the sponsor, or in case of legal separation or divorce, the permit of stay for family reasons may be converted into a residence permit for employment or self employment or for study, provided that in relation to a work activity minimum age requirements are met.

This provision is formulated in general terms and does not restrict its scope of application to specific members of the family.

**Q.80** – Does your Member State grant autonomous residence permit:

**Q.80. A** – To first-degree relatives in the direct ascending line (a15 §2)

- [X] OUI
- [ ] NON

If necessary specify

Upon renewal, in the event that they carry out a work activity, the permit of stay for family reasons is converted into a permit of stay for purposes related to the activity which is actually carried out.

**Q.80. B** – To adult unmarried children objectively unable to provide for their own needs on account of their state of health (a15 §2)?

- [X] OUI
- [ ] NON

If necessary specify

Since no specific restriction is established for issuance of a separate permit of stay upon renewal, it can also be issued in favour of adult married children. However, since the new permit of stay is issued in relation to the real activity which is carried out by the foreigner concerned, and adult children must be objectively unable to provide for their own needs on account of their state of health, the issuance will be limited to reasons different from work activity.
Q.81 – Does your member State grant autonomous residence permit in the event of widowhood, divorce, separation or death of first first-degree relatives in the direct ascending or descending line (a 15 §3) ?

[X] OUI
[ ] NON

If necessary specify

Death of the sponsor of family relationship breakdown are the only special circumstances that are taken into account.

Q.82 – Has your Member State adopted rules granting autonomous residence permit “in the event of particularly difficult circumstances” (a 15 §3)?

[ ] OUI
[X] NON

If yes, how is this provision defined and transposed?

**PENALTIES AND REDRESS**

*Those provisions must be read in parallel with those relating to the conditions to be fulfilled to obtain family reunification (articles 6, 7, 8)*

*Questions relating fraud, false or falsified documents are of importance to assess their impact.*

Q.83 – What are the legal grounds to reject, withdraw or refuse to renew a family member's residence permit (a16 §1 et 2):

Q.83. A – Conditions required by the directive not satisfied?

[X] OUI
[ ] NON

Q.83. B – Absence of real martial or family relationship?

[X] OUI
[ ] NON

If yes, how is this hypothesis assessed?

Residence permit granted to foreigners who have lawfully staid at another title on the national territory and who got married on the territory of the State with Italian citizens or of another EU member State citizens or with third country
national regularly staying, is immediately withdrawn in the event that it is assessed that wedding was not followed by actual cohabitation unless children were born after the wedding.

**Q.83. C –** Stable long term relationship with another person?

☐ OUI

☒ NON

If yes, how is this hypothesis assessed?

**Q.83. D –** False or falsified documents?

☐ OUI

☒ NON

This case is not specifically regulated as such. However, as a general rule under the Single text on immigration, the permit of stay is revoked if the conditions that allowed the issuance are lacking or do not subsist anymore. This could therefore also include the case of false or falsified documents.

**Q.83. E –** Marriage, partnership or adoption contracted for the sole purpose of enabling reunification?

☒ OUI

☐ NON

**Q.83. F –** If yes, how is this hypothesis assessed?

It is not specified how this assessment should be carried out and is therefore subject to wide administrative discretion.

**Q.83. G –** When the sponsor's residence comes to an end and the family member does not yet enjoy an autonomous right of residence (a 16 §3) ?

☒ OUI

☐ NON

**Q.83. H –** What type of control are organised thereof?

No specific controls are organised.

**Q.84 –** Are resources of the family taken into account when renewing residence permit where the sponsor does not have sufficient resources without recourse to the social assistance system of the member state?

☐ OUI
If yes, under which modalities?

As a general matter the total income of the family is taken into account in order to evaluate compliance with the income parameters set forth by the law upon issuance of the permit of stay for family reunification. This provision has not been repeated in case of renewal. It shall therefore be assessed in the practice whether it will be considered applicable also in case of renewal.

Q.85 – Does your Member State's legislation take into consideration (a. 17) :

Q.85. A – The nature and solidity of the person's family relationships and the duration of his residence in the Member State?

☐ OUI

☐ NON

If yes, please specify how and on the basis of which norm (legislation, regulation, jurisprudence, …)

This reference has been introduced by Legislative Decree no. 5 of 8 January 2007 that has added a new provision to section 5, para. 5 of the Single Text on Immigration.

Q.85. B - 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?

☐ OUI

☐ NON

If yes, please specify how and on the basis of which norm (legislation, regulation, jurisprudence, …)

Legislative Decree no. 3 of 2007 has added a new provision to the single text on immigration. Pursuant to section 5, para. 5, of the Single text on immigration it is therefore stated that when adopting the measure of reject of application, withdraw or refuse to renew the permit of stay of the sponsor or the family member, it shall also be taken into account the nature and effectiveness of the family and social with his/her country of origin.

Similarly, pursuant to section 13, para. 2-bis (added by Legislative Decree no. 5 of 2007), family, cultural and social ties with the country of origin shall be taken into account when adopting an expulsion measure.
Q.86 – Do the sponsor and/or members of his/her family have the right to mount a legal challenge where an application for family reunification is rejected (a18 §1)?

☐ OUI
☐ NON

Q.87 – Is this right to legal challenge considered as a right to a judicial review according to jurisprudence C-540/03 (a18 §1)?

☐ OUI
☐ NON
XX. IMPACT OF THE DIRECTIVE ON NATIONAL LAW

Q.88 A Did the transposition of the directive made the rules related to the best interest of minor children (a. 5 § 5) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below.

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Due regard to the best interest of minor children during examination of the application a. 5 § 5</td>
<td>Explain the situation before transposition</td>
<td>Explain the situation after transposition</td>
</tr>
<tr>
<td></td>
<td>The obligation to have due regard to the best interest of minor children had already been codified in the Single Text on immigration. More in details, pursuant to section 28, para. 3, of the Single Text on immigration, in all administrative and judicial procedures which are aimed at enforcing the right to family unit and which concern minors, the best interest of the child must come above everything, in accordance with the provisions contained in the UN Convention on child rights of 10 November 1989.</td>
<td>The situation has not remarkably changed after transposition of the directive, since this provision has remained unaffected by transposition. It is worth mentioning that in relation to income requirements to benefit from family reunification concerning children below 14 years, such minimum yearly income can not be less than twice the social allocation, independently of the number of children. The Government has pointed out that this provision is inspired to the best interest of the child.</td>
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<td>Complete this box by keeping the right appreciation and deleting the other one:</td>
</tr>
</tbody>
</table>
Q.88 B  Did the transposition of the directive made the rules related to the beneficiaries of the right to family reunification become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

Please use one box per object and duplicate it if necessary

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<th>OBJECT</th>
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<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Definition of the beneficiaries of the right to family reunification a. 4 § 4</td>
<td>Explain the situation after transposition</td>
<td>Complete this box by keeping the right appreciation and deleting the two others:</td>
</tr>
<tr>
<td></td>
<td>Further to transposition amendments have been brought to the requirements for family reunification: minor children do not need anymore to be dependent on their parents and children older than 18 years do not need to be totally invalid, but must be unable, on a permanent basis, to meet their fundamental needs due to health conditions. As far as parents are considered, it is no more necessary to assess whether the concerned person had other children in the country of origin, but they must only show that they do not have any other adequate family support in such country. Moreover, it has been indicated that minor age is determined at the time when the application is filed.</td>
<td>• More favourable than previous national rules</td>
</tr>
</tbody>
</table>

Q.88 C  Did the transposition of the directive made the rules related to reunification of minor children between 12 (a. 4 § 1) and 15 (a. 4 § 6) years old become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below
Q.88 D  Did the transposition of the directive made the rules related to requirements to the exercise of family reunification (article 7) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below.

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Limitation of reunification of minor children of 12 and 15 years of age (a. 4 § 1 and 4 § 6)</td>
<td>Explain the situation before transposition</td>
<td>Complete this box by keeping the right appreciation and deleting the two others:</td>
</tr>
<tr>
<td></td>
<td>No limitation was contained in the Single text on immigration</td>
<td>• Statu quo</td>
</tr>
<tr>
<td></td>
<td>Explain the situation after transposition</td>
<td>• More favourable than the directive</td>
</tr>
<tr>
<td></td>
<td>No change has been brought in this respect</td>
<td></td>
</tr>
</tbody>
</table>

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<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Requirements for the exercise of family reunification (a. 7)</td>
<td>Explain the situation before transposition</td>
<td>Complete this box by keeping the right appreciation and deleting the two others:</td>
</tr>
<tr>
<td></td>
<td>The legislation previously into force already required the sponsor to prove that he possessed suitable economic resources and appropriate accommodation</td>
<td>• More favourable than previous national rules</td>
</tr>
<tr>
<td></td>
<td>Further to transposition, some changes have been brought to the relevant rules:</td>
<td>• In line with the directive</td>
</tr>
<tr>
<td></td>
<td>- As far as accommodation is concerned, in addition to the prior requirement of compliance with the minimum parameters set forth by applicable laws, it is also possible to request an assessment of suitability to the local health authority. This change has acknowledged that under previous rules there could be differences between various regions that could</td>
<td></td>
</tr>
</tbody>
</table>

---

Please use one box per object and duplicate it if necessary.
Q.88 E Did the transposition of the directive made the rules related to margins of manoeuvre awarded to Member States (a. 5 § 5, 17, C-540/03) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
</table>
| Limitation of margins of manoeuvre (a. 17, a.5 §5, C-540/03) | Explain the situation after transposition: Personal circumstances of the sponsor and/or his/her family members must be taken into account before rejecting an application, withdrawing or refusing to renew a residence permit or deciding to order the removal. This is particularly important, because before transposition reject, refusal to renew, withdrawal or removal were automatically applied upon occurrence of certain situations considered as affecting public order or safety of the state or in case the requirements for family reunifications were lacking. | Complete this box by keeping the right appreciation and deleting the two others:  
• More favourable than previous national rules  
• In line with the directive |
Q.88  Did the transposition of the directive made the rules related to integration objectives and criterions more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

Please use one box per object and duplicate it if necessary

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attention draw upon integration objectives (considérant 15) and criterions of integration (a.4 §1 dernier alinéa, a. 7 §2)</td>
<td>Explain the situation after transposition</td>
<td>Complete this box by keeping the right appreciation and deleting the two others:</td>
</tr>
<tr>
<td></td>
<td>No change has been brought</td>
<td>• Statu quo</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• In line with the directive</td>
</tr>
</tbody>
</table>

Q.89  From your point of view, did the transposition of the directive imply other interesting changes for the third national country regarding other elements than the ones mentioned in the previous question. Make also a comparison with the standard of the directive in the last column of the table below

If they want to do so, the thematic coordinators should complete this question by indicating the number of examples that they ask the national reporter to give.

Family reunification of refugees

Please use one box per object and duplicate it if necessary

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>(to be precisely indicated by the national rapporteur)</td>
<td>Explain the situation after transposition</td>
<td>Complete this box by keeping the right appreciation and deleting the two others:</td>
</tr>
<tr>
<td></td>
<td>Transposition has added a new provision to the Single text on immigration that has expressly affirmed the</td>
<td>• Statu quo</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• In line with the directive</td>
</tr>
</tbody>
</table>
specifically regulated right to family reunification for refugees and established the conditions to exercise such right

- More favourable than previous national rules
- In line with the directive

Q.89. A. Mention if there is a general tendency to just copy the provisions of the directive into national legislation without redrafting or adaptation them to national circumstances.

[X] NO

☐ YES

Q.89.B. If yes, please indicate if this general tendency may or not create problems (for example difficulties of implementation, risk that a provision remain unapplied).

☐ NO

☐ YES

Q.89.C. If yes, give some of examples:

Q.89.D. If only some provisions of the directive have been copied and if this may create any problem, please quote them and explain the problem.

Q.90. Quote interesting decisions of jurisprudence related to the directive, its transposition or implementation (so this question concerns in principle decisions later that the directive, but previous ones might be quoted if relevant). Quote in particular decisions of supreme Courts; limit yourself to the appeal Courts and ignore the first resort if there are too many decisions at this level, unless there is a certain jurisprudence made of a group of decisions.

Please use one box per decision and duplicate it if necessary

<table>
<thead>
<tr>
<th>DECISION OF SUPREME COURTS</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
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<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>DECISION OF APPEAL COURTS</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
</tr>
</thead>
<tbody>
<tr>
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</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>DECISION(S) IN FIRST RESORT</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
ANY SUPPLEMENTARY COMMENT ABOUT THE TREND OF THE JURISPRUDENCE:

Since the norms of transposition have entered into force very recently, no relevant Court cases are available yet.

Q.91 Specify if there are or not problems with the translation of the text of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated.

☒ There are no problems with the translation of the directive

☐ There are some problems with the translation of (indicate the number of the articles concerned) of the directive.

In the first part of the Directive (whereas no. 10) the reference to the sponsor is missing: …in the event of a polygamous marriage, minor children of a further spouse [and the sponsor];

(Whereas 15) an additional sentence has been added in the Italian translation “The integration of family members should be promoted. For that purpose, after a period of residence in the member State, they should be granted a status independent of ……….

Article 2, “definition of “family reunification”, the reference to relationship arisen after the resident’s entry is missing “…whether the family relationship arose before [or after] the resident’s entry”.

Explain the difficulties that this could create:

The reference missing in the definition of family reunification appears as the most relevant since it changes the scope of application of the definition limiting its extent to family relationships that arose before the resident’s entry.
Q. 92 ANY OTHER INTERESTING ELEMENT

Q.92 A. Following your personal point of view, mention from the point of view of third country nationals and/or from the Member State any interesting or innovative practice in your Member State

Please use one table per practice and duplicate it if necessary

<table>
<thead>
<tr>
<th>OBJECT OF THE PRACTICE</th>
<th>EXPLANATIONS</th>
</tr>
</thead>
</table>

Q.92 B. Please add here any other interesting element in your Member State which you did not had the occasion to mention in your previous answers

In Italy, family reunification does not only concern the sponsor who is already on the national territory, but also the sponsor wishing to come to Italy. In this case he may apply for family reunification through an attorney in Italy. It is important to note that this option does not exempt the sponsor from complying with all the requirements concerning legal entry in Italy and family reunification.

Legislative Decree no. 5 of 2007 has introduced a more favourable provision in relation to family reunification with minors, concerning the possibility to issue a permit of stay for assistance to minors. In fact, family members were not entitled to carry out a work activity, whereas they are now entitled to do so for the duration of the permit of stay. It has to be noted, however, that such type of permit of stay can not be converted into a work permit. The duration of such permit is established in the decision issued by the Court of minors and is renewable.
QUESTIONNAIRE FOR THE NATIONAL REPORT
ON THE IMPLEMENTATION OF THE DIRECTIVE
FAMILY REUNIFICATION OF 22 SEPTEMBRE 2003
IN: LATVIA

by

Ieva Kalnina
Ph.D. cand., researcher at the European University Institute
kalnina@gmail.com

The person in the team of thematic coordination in charge of this directive that you can contact if you have a question or need help when completing this questionaire is: Yves Pascouau, + 33 5 59 57 41 20, yves.pascouau@univ-pau.fr

COMMENTARIES

1. Council directive 2003/86 on the right to family reunification faced hard negotiations requiring the presentation of revised proposals from the Commission before final adoption in 2003. The European Court of Justice rejected in June 2007 an action for annulment introduced by the European Parliament against the Council directive (C-540/03).

2. Transposition of the directive must be assessed regarding the nature of the provision concerned. So as to help you, those provisions are coloured within the questionnaire as follows: obligatory provision (Q.XX), optional provision (Q.YY), provision which set up a derogation (Q.ZZ)

3. The Court of justice has defined the margins of discretion awarded to the member States even in situations where the directive allows the member States to depart from the directive. The Court states:

"Article 4(1) of the Directive imposes precise positive obligations, with corresponding clearly defined individual rights, on the Member States, since it requires them, in the cases determined by the Directive, to authorise family reunification of certain members of the sponsor’s family, without being left a margin of appreciation” (cons. 60).

"Note should also be taken of Article 17 of the Directive which requires Member States to 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 country of origin. As is apparent from paragraph 56 of the present judgment, such criteria correspond to those taken into consideration by the European Court of Human Rights when it reviews whether a State which has refused an application for family reunification has correctly weighed the competing interests” (cons. 64)

The fact that the concept of integration is not defined cannot be interpreted as authorising the Member States to employ that concept in a manner contrary to general principles of Community law, in particular to fundamental rights. The Member States which wish to make use of the derogation cannot employ an unspecified concept of integration, but must apply the condition for integration provided for by their
legislation existing on the date of implementation of the Directive in order to examine the specific situation of a child over 12 years of age arriving independently from the rest of his or her family” (cons. 70).

4. The main difficulty according to the transposition of the directive relies on the systematic opportunities offered to member States to depart from the provisions of the directive when applying it.

5. Article 19 indicates which themes where the most sensitive during the negotiations of the Directive (art. 3, 4, 7, 8 and 13).

FIRST PART

1. NORMS OF TRANSPosition AND JURISPRUDENCE

Q.1.A. Identify the MAIN (because of its content) norm(s) of transposition and indicate its legal nature

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)
- About legal nature in the table below: legislative refers to a norm adopted in principle by the Parliament; regulation refers to a norm complementing the law and adopted in principle by the executive power; circular or instructions refer to practical rules about implementation of laws and regulations and adopted in principle by the administrative authorities

Please duplicate the table below if there is more than one MAIN norm of transposition

<table>
<thead>
<tr>
<th>This table is about:</th>
<th>x a text already adopted</th>
<th>a text which is still a project to be adopted</th>
</tr>
</thead>
<tbody>
<tr>
<td>TITLE:</td>
<td>Immigration Law (consolidated version)</td>
<td></td>
</tr>
<tr>
<td>DATE:</td>
<td>31.10.2002</td>
<td></td>
</tr>
<tr>
<td>NUMBER:</td>
<td>20.11.2002, nr. 169</td>
<td></td>
</tr>
<tr>
<td>DATE OF ENTRY INTO FORCE:</td>
<td>01.05.2003</td>
<td></td>
</tr>
<tr>
<td>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:</td>
<td>20.11.2002, nr. 169</td>
<td></td>
</tr>
<tr>
<td>LEGAL NATURE (indicate a cross in the correct box):</td>
<td>x LEGISLATIVE:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>REGULATION:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>CIRCULAR or INSTRUCTIONS:</td>
<td></td>
</tr>
<tr>
<td>This table is about:</td>
<td></td>
<td>a text already adopted</td>
</tr>
<tr>
<td>---------------------</td>
<td>-------------------</td>
<td>-------------------------</td>
</tr>
<tr>
<td><strong>TITLE:</strong> Amendments to Immigration Law</td>
<td><strong>DATE:</strong> 16.06.2005</td>
<td><strong>NUMBER:</strong> -</td>
</tr>
<tr>
<td><strong>PROVISIONS CONCERNED</strong> (for example if the norm is not devoted only to the transposition of the concerned directive):</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:</strong></td>
<td></td>
<td>30.06.2005, No. 101</td>
</tr>
<tr>
<td><strong>LEGAL NATURE</strong> (indicate a cross in the correct box):</td>
<td>[x] LEGISLATIVE:</td>
<td>[ ] REGULATION:</td>
</tr>
</tbody>
</table>

| This table is about: |  | a text already adopted |  | a text which is still a project to be adopted |
|---------------------|-------------------|-------------------------|-------------------|
| **TITLE:** Amendments to Immigration Law | **DATE:** 24.11.2005 | **NUMBER:** - | **DATE OF ENTRY INTO FORCE:** 27.12.2005 |
| **PROVISIONS CONCERNED** (for example if the norm is not devoted only to the transposition of the concerned directive): | | | |
| **REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:** | | 13.12.2005, No. 198 | |
| **LEGAL NATURE** (indicate a cross in the correct box): | [x] LEGISLATIVE: | [ ] REGULATION: | [ ] CIRCULAR or INSTRUCTIONS: |

| This table is about: |  | a text already adopted |  | a text which is still a project to be adopted |
|---------------------|-------------------|-------------------------|-------------------|
| **TITLE:** Regulations on Procedure of family reunification in the Republic of Latvia of refugee’s family as well as family reunification of a person which has been granted alternative status | **DATE:** 30.08.2005 | **NUMBER:** 652 | **DATE OF ENTRY INTO FORCE:** 02.09.2005 |
| **PROVISIONS CONCERNED** : | | | (for example if the norm is not devoted only to the transposition of the concerned directive) |
| **REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:** | | 01.09.2005, No. 138 | |
| **LEGAL NATURE** (indicate a cross in the right box): | [ ] LEGISLATIVE | [x] REGULATION | [ ] CIRCULAR or INSTRUCTIONS |
Q.1.B. List the other norms of transposition by order of importance of their legal nature (first laws, secondly regulations; thirdly circulars or instructions):

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)

Please use one table per norm and duplicate as much as necessary

<table>
<thead>
<tr>
<th>This table is about:</th>
<th>[x] a text already adopted</th>
<th>[-] a text which is still a project to be adopted</th>
</tr>
</thead>
<tbody>
<tr>
<td>TITLE: Administrative Procedure Law (consolidated version)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>DATE: 25.10.2001</td>
<td></td>
<td></td>
</tr>
<tr>
<td>NUMBER:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>DATE OF ENTRY INTO FORCE: 01.02.2004</td>
<td></td>
<td></td>
</tr>
<tr>
<td>PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive): Article 2-15</td>
<td></td>
<td></td>
</tr>
<tr>
<td>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: 14.11.2001 (164)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>LEGAL NATURE (indicate a cross in the correct box):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>[x] LEGISLATIVE:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>[ ] REGULATION:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>[ ] CIRCULAR or INSTRUCTIONS:</td>
<td></td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
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<th>[-] a text which is still a project to be adopted</th>
</tr>
</thead>
<tbody>
<tr>
<td>TITLE: Regulations on Residence Permits</td>
<td></td>
<td></td>
</tr>
<tr>
<td>DATE: 3.10.2006</td>
<td></td>
<td></td>
</tr>
<tr>
<td>NUMBER: 813</td>
<td></td>
<td></td>
</tr>
<tr>
<td>DATE OF ENTRY INTO FORCE: 27.10.2006</td>
<td></td>
<td></td>
</tr>
<tr>
<td>PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: 20.11.2002, nr. 169</td>
<td></td>
<td></td>
</tr>
<tr>
<td>LEGAL NATURE (indicate a cross in the correct box):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>[ ] LEGISLATIVE:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>[x] REGULATION:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>[ ] CIRCULAR or INSTRUCTIONS:</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Q.2. THIS QUESTION IS IN PRINCIPLE ONLY FOR FEDERAL OR ASSIMILATED MEMBER STATES LIKE AUSTRIA, BELGIUM, GERMANY, ITALY, SPAIN
Q.2.A. Explain which level of government is competent to adopt the norms of transposition.

Please include your answer in the tables below

<table>
<thead>
<tr>
<th>LEGISLATIVE RULES</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</td>
</tr>
<tr>
<td>COMPETENCES OF THE COMPONENTS:</td>
</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>REGULATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</td>
</tr>
<tr>
<td>COMPETENCES OF THE COMPONENTS:</td>
</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CIRCULAR OR INSTRUCTIONS</th>
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</thead>
<tbody>
<tr>
<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</td>
</tr>
<tr>
<td>COMPETENCES OF THE COMPONENTS:</td>
</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
</tr>
</tbody>
</table>

Q.2.B. In case, explain if the federal structure and the distribution of competences between the different levels pose any problem or difficulty regarding the transposition and/or the implementation of the directive.

Q.3. Explain which authorities are competent for the practical implementation of the norm of transposition by taking the decisions in individual cases.

Please use one table per competence concerned and duplicate it if necessary

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Implementation of all legislation on family reunification</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Ministry of Interior</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>Office of Citizenship and Migration Affairs (OCMA)</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td>Department of Migration Policy</td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
<td>OCMA is part of the structure of the Ministry of Interior.</td>
</tr>
<tr>
<td></td>
<td>In addition to the Ministry of Interior and the OCMA, in some cases the involvement of the State Border Guard may also be necessary. By the same token, the Ministry of Foreign Affairs and the Ministry of Justice may also sometimes get involved.</td>
</tr>
</tbody>
</table>
Q.4. A. Has the main regulation foreseen explicitly by the main norm of transposition already been adopted or not:

☐ YES  ☑ NO

Q.4.B. If the main norm(s) of transposition foresees the adoption of one or several regulations, indicate if they have all been adopted:

☐ YES  ☑ NO

If NO, please indicate the missing text(s) in the table below

<table>
<thead>
<tr>
<th>MISSING TEXTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>INDICATE HERE THE MISSING TEXTS</td>
</tr>
</tbody>
</table>

Add if necessary some explanations (specify in particular if the missing texts are at least under preparation or foreseen in the very near future):
AIM (ARTICLE 1)

The purpose of the Directive is to determine the conditions for the exercise of the right to family reunification. In case C-540/03, the Court of justice recognizes that, in some cases, member States do not have any margin of appreciation to grant the right to family reunification.

Q.5 – Is family reunification considered as a right in your Member State?

[ ] OUI

[ ] NON

Please explain:

Immigration Law explicitly provides that the sponsor’s spouse and minor children, including persons over whom guardianship has been established, have a right to claim a residence permit along with the sponsor (Article 23(4)). A recent decision (Nr. 2006-41-01, 28.02.207) of the Latvian Constitutional Court also noted the importance of taking into account the European Convention on Human Rights and the proportionality principle enshrined in the Latvian Administrative Procedure Law with respect to the entitlement to residence permits.

Q.5. A – Are there any figures available relating to the exercise of the right to family reunification between 2002 and 2006? If yes, what are the trends, including nationality assessment?

All available statistics mostly relate to the acquisition of residence permits more generally, and not specifically with respect to family reunification. However, the statistics by the Office of Citizenship and Migration Affairs (OCMA) have established that on 1.1.2004 there were 5308 persons with a permanent residence permit which was granted on the grounds of family reunification, while on 1.1.2005 this number had grown to 6111 and until 1.07.05 – to 6248.

DEFINITIONS (ARTICLE 2)

SCOPE (ARTICLE 3)

The scope of the Directive is defined by article 3. We recall that:

- § 1 "reasonable prospect..." aims at excluding persons residing on a temporary basis (stagiaires, etc...)
- European citizens are excluded (§ 3)
- Comparison with existing legislation is of importance so as to assess the added value of the harmonization process (§ 5)

Q.6. Period of validity of the sponsor’s residence permit:
Q.6. A. Is the period of validity of the sponsor’s residence permit of one year or more according to article 3 § 1 of the Directive?

X OUI
□ NON

Q.2.B. Quote precisely the period enshrined in national law:

A whole set of various different options exists, all described in Article 23 of the Immigration law, ranging from 1 to 5 years and more, except for the case where the permit is requested on the grounds of 3rd degree family ties with a Latvian citizen or non-citizen (a special category of Latvian residents defined under law); in such a case a permit is granted only for 6 months.

Q.6.C. How does your Member State translate in national law the requirement for the sponsor to have "reasonable prospects of obtaining the right of permanent residence" (a 3 § 1)?

*Immigration Law* does not explain this clause; it merely provides that family members, those being spouse, children, adopted children and persons who are dependent on sponsor, can apply for temporary residence permit for the same duration as sponsor (Article 23 (4)). Third country nationals can also re-apply for temporary residence if there are grounds for their residence as prescribed by law (Article 23(5)). One may thus conclude that family reunification is allowed even in cases when there are no reasonable prospects to acquire permanent residence permit.

Q.7. – Members of the family concerned:

Q7. A. Are they third country nationals as required by article 3 § 1 of the Directive?

X OUI
□ NON

If not, explain

Q.7.B. How has your Member State translated in national law the wording of "whatever status” included in article 3 § 1 of the Directive?

No specific definition is provided.

Q.8 – Did the transposition of the Directive in your Member state breached provisions of international law more favourable to individuals (a 3 § 4)?

□ OUI
X NON

Q.9 – If yes, are those provisions based on: N/A
Q.9.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?

☐ OUI

☐ NON

Specify which provisions

Q.9.B - The European Social Charter of 18 October 1961 (a 3 § 4)?

☐ OUI

☐ NON

Specify which provisions

Q.9.C. The amended European Social Charter of 3 May 1987 (a 3 § 4)?

☐ OUI

☐ NON

Specify which provisions


☐ OUI

☐ NON

Specify which provisions

Q.10 – Does the transposition of the Directive affect national provisions more favourable to individuals (a 3 § 5)?

☐ OUI

☒ NON

If yes, please specify which provisions

Beneficiaries (Article 4)

- Article 4 of the Directive contains numerous "may clauses". It is therefore important to pay attention on the way Member States use them and on the legal modalities adopted thereof.
• Article 4 § 1 a) and b) enacts a right to family reunification for some members of the sponsor's family. The Member State does not have any margin of discretion regarding those persons.

• Article 4 § 1 last indent foresee one derogation regarding child over 12 years on the basis of an integration criterion. This is one of the most sensitive questions encompassed by the directive beside the issue of the limit of age in § 6.

• Regarding article 4 § 6, the Court states "It does not matter that the final sentence of the contested provision provides that the Member States which decide to apply the derogation are to authorise the entry and residence of children in respect of whom an application is submitted after they have reached 15 years of age 'on grounds other than family reunification'. The term 'family reunification' must be interpreted in the context of the Directive as referring to family reunification in the cases where family reunification is required by the Directive. It cannot be interpreted as prohibiting a Member State which has applied the derogation from authorising the entry and residence of a child in order to enable the child to join his or her parents". (cons. 86) The Court adds "Article 4(6) of the Directive must, moreover, be read in the light of the principles set out in Article 5(5) thereof, which requires the Member States to have due regard to the best interests of minor children, and in Article 17, which requires them to take account of a number of factors, one of which is the person's family relationships" (cons. 87)

Q.11 – Does your national law recognize the right to family reunification to:

Q.11. A – The sponsor's spouse (a. 4 § 1 a)?

X OUI

☐ NON

Q.11. B - Minor children of the sponsor and of his/her spouse (a. 4 § 1 b)?

X OUI

☐ NON

Q.11.C. Minor children adopted of the sponsor and of his/her spouse (a. 4 § 1 b)?

X OUI

☐ NON

Q.11.D. Minor children of the sponsor (a. 4 § 1 c)?

X OUI

☐ NON
Q.11. E. If yes, does your national law foresee that the sponsor shall have children custody and children are dependant on him or her?

☑ OUI
☐ NON

Specify if necessary the proofs required:

If custody is exercised by the parent wishing to reunite with the child, and no restrictions as to the change of the child’s place of residence have been set, the parent must present a document as a proof thereof, i.e., that he/ she is the parent exercising the custody.

In all other cases - a notarized approval of the other parent permitting the child to reunite with the sponsor (Article 37(2) of the Immigration Law).

Q.11 F. Minor children adopted of the sponsor (a 4 §1.c) ?

☑ OUI
☐ NON

Q.11. G. If yes:

h. does your national law foresee that the sponsor shall have children custody and children are dependant on him or her?

☑ OUI
☐ NON

Specify if necessary the proofs required:

If custody is exercised by the parent wishing to reunite with the child, and no restrictions as to the change of the child’s place of residence have been set, the parent must present a document as a proof thereof, i.e., that he/ she is the parent exercising the custody.

In all other cases - a notarized approval of the other parent permitting the child to reunite with the sponsor (Article 37(2) of the Immigration Law).

g.g. Does national law provide that those children shall be 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'"

☐ OUI
☑ NON

Specify if necessary the proofs required
Q.11. H. Minor children of the spouse (a 4 §1.d.)?

☒ OUI
☐ NON

Q.11. I. If yes, does your national law foresee that the spouse shall have children custody and children are dependant on him or her?

☒ OUI
☐ NON

Specify if necessary the proofs required

If custody is exercised by the parent wishing to reunite with the child, and no restrictions as to the change of the child’s place of residence have been set, the parent must present a document as a proof thereof, i.e., that he/she is the parent exercising the custody.
In all other cases - a notarized approval of the other parent permitting the child to reunite with the other parent (Article 37(2) of the Immigration Law).

Q.11. J. Minor children adopted of the spouse (a 4 §1.d.)?

☒ OUI
☐ NON

Q.11. K. If yes, Does your national law foresee that the spouse shall have children custody and children are dependant on him or her?

☒ OUI
☐ NON

Specify if necessary the proofs required

If custody is exercised by the parent wishing to reunite with the child, and no restrictions as to the change of the child’s place of residence have been set, the parent must present a document as a proof thereof, i.e., that he/she is the parent exercising the custody.
In all other cases - a notarized approval of the other parent permitting the child to reunite with the other parent (Article 37(2) of the Immigration Law).

k.k. Does national law provide that those children shall be 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”?

[X] NON

Specify if necessary the proofs required

Q.12 – Has your Member State transposed the option opened by article 4 § 1 c:

Q.12A. To authorise reunification of minor children of the sponsor – including also adopted children – of whom custody is shared (a 4 §1.c)?

[X] OUI

Specify if necessary

Q.12.B. If yes, has your legislation transposed the condition that the other party sharing custody has given his or her agreement (a 4 §1. c)?

[X] OUI

Specify if necessary

Q.13 – Has your Member State transposed the option opened by article 4 § 1 d):

Q.13.A. to authorise reunification of minor children of the spouse – including also adopted children – of whom custody is shared (a 4.1.d. in fine)?

[X] OUI

Specify if necessary

Q.13 B. If yes, has your legislation transposed the condition that the other party sharing custody has given his or her agreement (a 4. 1.d) ?

[X] OUI

Specify if necessary
Q.14 – In any case referred to in questions 7 to 9, is the age of the minor children below the age of majority set up by the law of your Member State (a.4 § 1, second indent)?

☐ OUI
☒ NON

If yes, indicate the age required

Q.15 – In any case referred to in questions 7 to 9, has the prohibition of marriage of minor children been transposed (a.4 § 1, second indent)?

☒ OUI
☐ NON

If not, explain:

Q.16 – Is the derogation set up in article 4 § 1 last indent relating to the conditions for integration of children over 12 years arrived independently from the rest of the family used by your Member State?

☐ OUI
☒ NON

How the criterion "arrives independently from the rest of his/her family" has been transposed in your national legislation? N/A

Q.17 – If yes, did this integration condition already exist in your national legislation before the date of transposition of the Directive? N/A

☐ OUI
☐ NON

Q.18 – Describe briefly the content of this condition, the date of its creation and the conditions of its examination N/A

Q.19 – Are the children of refugees required to an integration test by your Member State (in contradiction with article 10 § 1)?

☐ OUI
☒ NON

If yes, explain

Q.20 – Does your Member State authorise:
Q.20 A – Reunification of first-degree relatives in the direct ascending line of the sponsor (a 4§2 a)?

☐ OUI

☒ NON, unless the sponsor has obtained a permanent residence permit.

Q.20 B – If yes, shall they be dependant and not enjoy proper family support in the country of origin? N/A

☐ OUI

☐ NON

How each of those criterions is transposed and checked?

Q. 20.C. Reunification of first-degree relatives in the direct ascending line of the spouse (a 4§2 a)?

☐ OUI

☒ NON

Q.20.D. If yes, shall they be dependant and not enjoy proper family support in the country of origin? N/A

☐ OUI

☐ NON

How each of those criterions is transposed and checked?

Q.20.E. Reunification of adult unmarried children of the sponsor? (a 4§2 b) ?

☒ OUI

☐ NON

If necessary, explain how this procedure is organised

Q.20.F. If yes, does the national legislation impose that those adult unmarried children of the sponsor are objectively unable to provide for their own needs on account of their state of health (a 4 §2 b) ?

☐ OUI

☒ NON

If necessary, specify how each of those criterions ("objectively" and "unable to provide for their own needs") is transposed and checked? N/A
Q.20. G. Does your Member State authorise reunification of adult unmarried children of the spouse (a 4§2 b)?

☐ OUI
☐ NON

If necessary, specify how this condition is assessed

Q.20.H. If yes, does the national legislation impose that those adult unmarried children of the sponsor are objectively unable to provide for their own needs on account of their state of health (a 4 §2 b) ?

☐ OUI
☐ NON

If necessary, specify how each of those criterions ("objectively" and "unable to provide for their own needs") is transposed and checked?

Q.20. I. Did your Member state use the by law or regulation norms to implement article 4 § 2 a et b? N/A

☐ OUI
☐ NON

Q.21 – Does your Member State authorise reunification of the unmarried partner of the sponsor, being a third country national (a 4 §3)?

☐ OUI
☐ NON

Q.22 – If yes: N/A

Q.22 A – This partnership shall be based on a duly attested stable long term relationship?

☐ OUI
☐ NON

If yes, specify how your Member State assess this situation

Q.22 B – This partnership shall be registered?

☐ OUI
☐ NON
Q.23 – Does your national law consider the registered partner as the husband/spouse (a 4 §3 alinéa 2)?

☐ OUI

☒ NON

Q.24 – Does your Member State authorise:

Q.24. A – Reunification of minor children of the partner, including adopted children (a 4§3)?

☐ OUI

☒ NON/ Not applicable

Q. 24. B – Reunification of adult unmarried children of the partner, including adopted children (a 4§3)?

☐ OUI

☒ NON/ Not applicable

Q.25 – Does your Member State allow reunification of adult unmarried children who are objectively unable to provide for their own needs on account of their state of health (a 4§3)?

☐ OUI

☒ NON

If yes, specify how the conditions, and more particularly the "objectivity", are assessed.

Q.26 – Did your Member State use the by law or regulation norms to implement article 4 § 3? N/A

Q.27 – Is the prohibition of polygamous marriage enshrined in your national legislation (a. 4§4)?

☒ OUI

☐ NON

Q.28 – Does your Member State limit family reunification of minor children of a further spouse and the sponsor (article 4§4 dernier alinéa,)?

☐ OUI

☒ NON, assuming that the question refers to the sponsor’s own minor children
Q.29 – Does your Member State use the option set up by article 4 § 5 requiring the sponsor and his/her spouse to be of a minimum age of 21 years old before reunification?

☐ OUI

☒ NON

Q.30 – If yes,

Q.30 A – What is the age required?

Q.30 B – Is the derogation founded on integration criteria and/or prevention of forced marriage?

Q.31 – Does your Member State use the derogation of article 4 § 6 by requesting that the applications concerning family reunification of minor children have to be submitted before the age of 15?

☐ OUI

☒ NON

Explain

Q.32 – If yes, was it provided by existing legislation on the date of implementation of the directive? N/A

Q.33 – If the application is not introduced before the age of 15, do Member States authorise entry and residence on grounds other than family reunification? N/A

☐ OUI

☐ NON

Which grounds and which conditions?

PROCEDURE (ARTICLE 5)

We draw attention on the major importance given by the Court of justice regarding § 5 relating to the best interest of minor children.

Q.34 – Did your Member State institute a procedure regarding family reunification (a 5 §1) ?

☐ OUI

☒ NON, there is no special procedure with respect to family reunification, the regular procedures for obtaining residence permits apply.
Q.35 – If yes

Q.35. A – Which authorities are in charge of this issue?
Officials of the Office of Citizenship and Migration Affairs (OCMA)

Q.35. B – Are NGO's associated to this procedure?
☐ OUI
☒ NON

If yes, describe the procedure

Q.35. C – Is the application submitted by the sponsor or by family members?

By sponsor

Q.35. D – Is this procedure exclusive from other possibilities to grant family reunification?
☒ OUI
☐ NON

If other procedural possibilities exist, please describe them

Q. 35. E – Was this procedure existing before the adoption of Directive 2003/86?

☒ OUI
☐ NON

Q.36 – Which documentary evidence are required to prove (a 5 §2):

Q.36. A – Family relationships according to article 4? Marriage certificate

Q.36. B – Accommodation conditions laid down in article 7? Any documentation proving the existence of such accommodation

Q.36. C – Sickness insurance conditions? A document proving the existence of a health insurance

Q.36. D – Certified copies of family members' travel documents? YES, copies of the family member travel documents

Q.37 – Is the possibility foreseen to proceed to:

Interviews:

☒ OUI
Article 33(6) of the Immigration Law provides that officials may conduct interview with a foreigner, sponsor, to require additional information and documents which confirm the purpose and aim of the residence as well as validity of the information submitted.

Q.38 – When examining an application concerning the unmarried partner of the sponsor, which evidences are taken into account by Member States on the basis of national law to prove family relationship (article 5§2 dernier alinea) ?

N/A (Latvia does not recognize partnerships of unmarried couples)

Q.38. A – Existence of family ties and other elements such as a common child?

☐ OUI

☐ NON

Specify

Q.38. B - Previous cohabitation?

☐ OUI

☐ NON

Q.38. C - Registration of a partnership

☐ OUI

☐ NON

Q.38. D - Any other reliable means of proof foreseen in national law?

☐ OUI

☐ NON

If yes, specify which ones:

Q.39 – Are family members obliged to reside outside the territory of the Member State while the application is being examined (a5 §3) ?
OUI, but many exceptions exist.

NON

Is this obligation sanctioned and how?

As a general rule, documents have to be submitted at consular department outside Latvia (Article 32 of Immigration Law). However, according to Article 32(2), the Cabinet of Ministers may determine the groups of persons entitled to submit documents to the Office of Citizenship and Migration Affairs (OCMA). According to Article 32(3), also the Head of OCMA or a person authorised by him/her can allow submitting documents to OCMA if this is in compliance with international legal norms, interests of Latvia or required by humanitarian considerations.

Further procedure is set in Cabinet of Ministers Regulations No. 813 on Residence Permits. Regulations identify a number of groups with very specific designations who can apply for residence permit while in Latvia, such as persons who possess a residence permit (Section 2); persons who possess valid visa or are not required visa and the sponsor falls under category of persons listed under Section 4, i.e., he/she is teacher, scientist, project consultant for Latvia, coach of Latvian team, sportsmen, student, parent of Latvian citizen and non-citizen, minor child (Section 6); persons who do not need a visa, if sponsor falls under category of persons listed under Section 5, i.e., he is individual businessman, founder of an undertaking, self-employed person, expert in atomic energy, holds specific positions in commercial entity (Section 6).

Section 6 of Regulations No. 813 providing for rights of family members to apply for residence permit when in Latvia is applicable only if they apply for residence permit together with sponsor.

According to Section 7.15 there are also exceptional groups of family members which do not require invitation letter. However, this exception is applicable only if family members and sponsor apply for residence permits at the same time.

**Q.40** – If the answer is yes, is a derogation organised according to article 5 § 3 second indent?

OUI

NON

Please specify:

As a general rule, documents have to be submitted at consular department outside Latvia (Article 32 of Immigration Law). However, according to Article 32(2), the Cabinet of Ministers may determine the groups of persons entitled to submit documents to the Office of Citizenship and Migration Affairs (OCMA). According to Article 32(3), also the Head of OCMA or a person authorised by him/her can allow submitting documents to OCMA if this is in compliance with international legal norms, interests of Latvia or required by humanitarian considerations.

Further procedure is set in Cabinet of Ministers Regulations No. 813 on Residence Permits. Regulations identify a number of groups with very specific designations who can apply for residence permit while in Latvia, such as persons who possess a residence permit (Section 2);
persons who possess valid visa or are not required visa and the sponsor falls under category of persons listed under Section 4, i.e., he/she is teacher, scientist, project consultant for Latvia, coach of Latvian team, sportsmen, student, parent of Latvian citizen and non-citizen, minor child (Section 6); persons who do not need a visa, if sponsor falls under category of persons listed under Section 5, i.e., he is individual businessman, founder of an undertaking, self-employed person, expert in atomic energy, holds specific positions in commercial entity (Section 6).

Section 6 of Regulations No. 813 providing for rights of family members to apply for residence permit when in Latvia is applicable only if they apply for residence permit together with sponsor.

Q.41 – Does your national legislation include a maximum period of 9 month to answer to the application by way of written notification (a5 §4)?

☐ OUI, although the time permitted is even shorter.

☐ NON

If necessary, please specify:

The OCMA officials are obliged to review documents only once the applicant has paid the relevant fees. Decisions on granting visa are made within 7 working days. In case if additional information is requested maximum duration for review of application is 30 days. Decisions on temporary residence permit are made within 30 days, on permanent resident permits – 90 days. A fast-track procedure in exceptional cases is also possible. (Article 33 of Immigration Law).

Q.42 – This time limit can be extended (a 5 §4 alinea 2)? N/A

☐ OUI

☒ NON

Q.43 – If yes, N/A

Q.43. A – Because of the complexity of the examination of the application?

☐ OUI

☐ NON

If yes, please specify

Q.43. B – What is the length of the extension?
Q.44 – If no decision is taken by the end of the 9 months period provided, what are the consequences for the applicant?

There are no cases where this would have been the case, according to the OMC it is simply impossible. There are no specific rules regulating such hypothetical case, it would have to be solved in practise on a case-by-case basis.

Q.45 – Is the decision rejecting the application notified? Does this written notification contain the reasons of rejection?

[X] OUI
[ ] NON

Specify if only one condition is not required

Q.46 – How is the best interest of minor children taken into account by your Member State’s legislation and authorities during examination of the application (article 5§5)?

The best interests of the child, according to OCMA, are always taken into consideration. References is made to both UN Convention on the Rights of the Child as well as the Law on Protection of the Rights of the Child, providing in Article 6: “(1) In legal relationships, which concern a child, rights and interests of the child is a priority.(2) All actions which concern child irrespective whether those are carried out by state, local or social organisations or other individuals and legal persons, as well as courts and other law enforcement institutions, the priority is to ensure rights and interests of the child. ” The fact that the Republic of Latvia has ratified the UN Convention on the Rights of the Child, alongside with the existent practise, is entirely sufficient to ensure the best interests of minors and any additional more specific mention in the context of the transposition of the directive is not necessary.

CONDITIONS REQUIRED (ARTICLES 6 AND OTHERS)

• Questions relating to accommodation and resources will be carefully examined to assess if Member States use them, either as a migration tool or as an integration tool.

• The same assessment applies regarding the option to set up a period of lawfully residence not exceeding two years before applying for family reunification.

• According to article 8, the Court of justice states: "That provision does not therefore have the effect of precluding any family reunification, but preserves a limited margin of appreciation for the Member States by permitting them to make sure that family reunification will take place in favourable conditions, after the sponsor has been residing in the host State for a period sufficiently long for it to be assumed that the family members will settle down well and display a certain level of integration. Accordingly, the fact that a Member State takes those factors into account and the power to defer family reunification for two or, as the case may be, three years do not run counter to the right to respect for family rights set out in particular in Article 8 of the ECHR as interpreted by the European Court of Human Rights"

• "It should, however, be remembered that, as is apparent from Article 17 of the Directive, duration of residence in the Member State is only one of the factors which must be taken into account by the Member State when considering an application and that a waiting period cannot be imposed without taking into account, in specific cases,
all the relevant factors" (cons. 99). "The same is true of the criterion of the Member State’s reception capacity, which may be one of the factors taken into account when considering an application, but cannot be interpreted as authorising any quota system or a three-year waiting period imposed without regard to the particular circumstances of specific cases. Analysis of all the factors, as prescribed in Article 17 of the Directive, does not allow just this one factor to be taken into account and requires genuine examination of reception capacity at the time of the application" (cons. 100) "When carrying out that analysis, the Member States must, as is pointed out in paragraph 63 of the present judgment, also have due regard to the best interests of minor children" (cons. 101).

Q.47 – Can public policy, public security or public health grounds be taken into account to (a 6 §§1 et 2):

Q.47. A – Reject an application for family reunification?

☐ OUI
☐ NON

If yes, which ones?

Q.47. B – Withdraw an application for family reunification?

☐ OUI
☐ NON

If necessary, please specify

Q.47. C – Refuse to renew a family member's residence permit?

☐ OUI
☐ NON

If necessary, please specify

Q.48 – Does national legislation take into account:

Q.48. A – The severity or type of offence against public policy or public security?

☐ OUI
☐ NON

Q.48. B – The solidity of family relationships regarding article 17 of the Directive?

☐ OUI
Generally, *Immigration Law* does not contain explicit reference to the specific elements mentioned in Article 17 of the Directive. However, in the specific case, the OCMA would take into account Article 2 of the *Administrative Procedure Law*, referring to the need to ensure human rights in relations between State and individual. In addition, Article 4 of the APL also recalls a number of important principles to be observed when institutions take decisions in relation to individuals like, for example, the principle of proportionality. Similarly, Article 5 places an obligation on all institutions within administrative procedure to apply the law by taking into account protection and promotion of the rights and interests of individual.

A recent decision (Nr. 2006-41-01, 28.02.207) of the Latvian Constitutional Court also noted the importance of taking into account the European Convention on Human Rights and the proportionality principle enshrined in the Latvian Administrative Procedure Law with respect to the respective matters. Therefore, it can be concluded that there is no need for an even more explicit mention in the national legislation to take into account the aspects mentioned by Article 17, as they are taken care of by other laws as well as the existent practise.

**Q.49** – Does your Member State withdraw the residence permit or remove the third country national on the sole ground of illness or disability suffered after the issue of the residence permit (a 6 §3)?

☐ OUI

☐ NON

**Q.50** – Are accommodation conditions required from the applicant (a7 §1a)?

☐ OUI

☐ NON

**Q.51** – If yes:

**Q.51. A** – What are those conditions?

According to Section 25.6 of Regulations No. 813 on *Residence Permits* applicants shall provide information on intended place of residence in Latvia and prove that they have the right to reside there by submitting, for instance, documents testifying ownership or rent agreement. There are no other checks on suitability of housing for the family.

Documents concerning accommodation are considered valid for three months after they have been issued to the person. However, OCMA is not applying this rule in cases when person submits documents testifying ownership or rent agreement. Three months term is applied only in cases when written confirmation by owner is submitted on permission to live in respective apartment or house.
Q.51. B – How are they assessed?

According to Section 25.6 of Regulations No. 813 on Residence Permits applicants shall provide information on intended place of residence in Latvia and prove that they have the right to reside there by submitting, for instance, documents testifying ownership or rent agreement. There are no other checks on suitability of housing for the family.

Documents concerning accommodation are considered valid for three months after they have been issued to the person. However, OCMA is not applying this rule in cases when person submits documents testifying ownership or rent agreement. Three months term is applied only in cases when written confirmation by owner is submitted on permission to live in respective apartment or house.

Q.51 C – Are they comparable to the conditions required to a normal family living in the same region?

☐ OUI
☐ NON

If not, please specify the differences

Q.52 – Is a sickness insurance required from the applicant (a. 7 §1b) ?

☐ OUI
☐ NON

Q.53 – Are stable resources required (a7 §1c) ?

☐ OUI
☐ NON

Specify their nature and content

If a person applies for a visa minimum subsistence is set at 10 LVL (15 EUR) per day if accommodation expenses are covered, and 30 LVL (45 EUR) if accommodation should be paid by foreigner (Regulations No. 515, Section 5). The minimum subsistence amount can be reduced because of humanitarian considerations (Section 6).

If a person applies for residence permit, he should provide proof of his salary or income being equal to (Section 11):
- double average monthly salary before taxes as calculated annually by Statistical Bureau (average salary per month is currently bruto LVL 246 or 351 EUR, neto LVL 177 or 253 EUR\(^{290}\), if person applies for residence permit not exceeding five years and is a registered businessman or member of company in different capacities or self-employed for duration not exceeding one year;
- average monthly salary if foreigner is requesting residence permit for any other reason that is related to employment not mentioned above;

\(^{290}\) Information on average salary available at home page of Central Statistical Bureau, at http://www.csb.gov.lv/csp/preview/?action=print&cat=2304
- average subsistence minimum, as established by Statistical Bureau annually in all other cases (120.7 LVL or 171 EUR for December 2006).\(^{291}\)

In case if minor children apply for the residence permit, the required monthly income is in amount of 60% of average subsistence minimum, as established by Statistical Bureau annually.

**Q.54** – How is the condition "sufficient" assessed by your Member State? Is it in comparison with national wages?

Yes it is.

If a person applies for residence permit, he should provide proof of his salary or income being equal to (Regulations No. 515, Section 11):
- double average monthly salary before taxes as calculated annually by Statistical Bureau (average salary per month is currently bruto LVL 246 or 351 EUR, neto LVL 177 or 253 EUR\(^{292}\) ), if person applies for residence permit not exceeding five years and is a registered businessman or member of company in different capacities or self-employed for duration not exceeding one year;
- average monthly salary if foreigner is requesting residence permit for any other reason that is related to employment not mentioned above;
- average subsistence minimum, as established by Statistical Bureau annually in all other cases (120.7 LVL or 171 EUR for December 2006).\(^{293}\)

In case if minor children apply for the residence permit, the required monthly income is in amount of 60% of average subsistence minimum, as established by Statistical Bureau annually.

**Q.55** – Are integration criterions required to allow family reunification (a 7 §2)?

- [x] OUI, in some specific cases.
- [ ] NON

**Q.56** – If yes:

**Q.56. A** – What are those criterions?

No integration measures are provided by the *Immigration Law* in cases when persons apply for temporary residence permit. However, all of those who apply for permanent residence permits are required to pass a Latvian language test. There are exceptions to this general rule, for instance, in relation to disabled persons. Therefore it all depends on whether the person applying for family reunification is requesting a temporary or a permanent residence permit.

**Q.56. B** – Do they apply indistinctly to all potential beneficiaries of reunification? (Spouse, dependant people, etc.)


\(^{293}\) Subsistence minimums is set by Central Statistical Bureau, updates available at [http://www.csb.gov.lv/csp/content/?cat=2646](http://www.csb.gov.lv/csp/content/?cat=2646).
Yes, as long as they apply for permanent residence permits.

**Q.56. C** – How are they evaluated by your Member State?

The level of knowledge required is set by the Cabinet of Ministers. This was done by adopting Regulations No. 252 on the Level of Knowledge of State Language and Procedure for Testing Proficiency in State Language for Foreigners, who are eligible to apply for permanent residence permit.\(^{294}\) Section 3 of these Regulations provide that applicants for permanent residence shall pass language exam attesting that they have the lowest level of language proficiency. The requirements for achieving category 1B are explained in Section 12.2. of the Regulations No.296 on the level of knowledge of State language required for performance of professional duties and procedure for verification of command of State language.\(^{295}\)

**Q.56. D** – Are refugees and their family members required to fulfil them (a 7 §2, second indent)?

[X] OUI, as long as they apply for permanent residence permits.

[ ] NON

**Q.57** – Is a minimal period of lawful reside is required before reunification (a 8 §1)?

[ ] OUI

[X] NON

**Q. 58** – Does this period exceed two years? N/A

Please specify

**Q.59** – Does your Member State apply the derogation set up by article 8 § 2 allowing Member States to impose a waiting period of maximum three years due to reception capacities between the submission of the application and the issuance of a residence permit?

[ ] OUI

[X] NON

Please specify: the national legislation contains no reference permitting one to infer that any such derogation from the general rule would have been taken up by the Republic of Latvia.

**Q.60** – If yes, did this derogation exist in national law before the 22nd of September 2003? N/A

[ ] OUI

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\(^{294}\) Adopted on 04.04.2006, OG 57, 07.04.2006.

\(^{295}\) Adopted on 22.08.2000, protocol 39, paragraph 51.
FAMILY REUNIFICATION OF REFUGEES

The legal regime applicable to refugees derogates from the one applicable to family reunification. The scope of those derogations (minimal lawful residence, members of the family, accommodation requirements) shall be assessed on the basis of national law.

Q.61 – Does your Member State allow family reunification of refugees on the basis of Directive 2003/86 (a 9 §1) ?

X OUI

Q.62 – Is this right limited to family relationships predating the entry on the territory (a 9 §2)?

X OUI

Q.63 – Does your Member State allow family reunification of family Members not quoted in article 4 of the Directive (a 10 §2) ?

OUI

Which members of the family and under which conditions?

Q.64 – According to the specific case of unaccompanied minor refugees, does your Member State authorise family reunification of first degree relatives in the direct ascending line without applying the conditions laid down in article 4 §2 (a10 §3 a) ?

X OUI

What conditions are required?

Article 29 of the Asylum Law merely provides that unmarried minors are entitled to invite and reunite with their parents (including adoptive parents).

Q.65 – Does your Member State authorise entry and residence of the legal guardian or any member of the family where the unaccompanied minor refugee has no relatives in the direct ascending line or such relatives cannot be traced (a10 §3 b) ?

OUI
If yes, please specify who the member of the family targeted is and which proofs are required to prove family ties?

Q.66 – Does your Member State take into account other evidence of family relationship where the refugee cannot provide official evidence (a 11 §2)?

☑️ OUI

☐ NON

Which ones?

According to Article 29 of Asylum law the procedure of family reunification of refugees should be provided in the Cabinet of Ministers Regulations. Cabinet adopted Regulations No.652 on Procedure according to which family reunification of refugees family and family of person who has been granted alternative status is taking place in the Republic of Latvia. Strict requirements in relation to documents to be submitted are included in Sections 4-6. However, Section 7 provides that in cases when family members are unable to submit marriage certificate or birth certificate and provide valid reasons Latvian diplomatic and consular representations can accept documents for family reunification without those documents. Applications can be considered even if no documents on the fact of marriage and child-birth are submitted neither by sponsor nor family members. The same holds true also for persons with alternative status in accordance with Section 12 of the Regulations No.652.

Q.67 – Does the examination of the refugee application take into account their specific situation:

Q.67. A – Are proofs regarding accommodation conditions, sickness insurance or resources required (a 12 §1)?

☐ OUI

☑️ NON

If yes, are those requirements comparable to those imposed to other third country nationals?

Q.67. B – If one of the person concerned (sponsor or family member) has special links with a third country within which reunification is possible, does your member state require those proofs according to article 12 § 1 second indent.

☐ OUI

☑️ NON

If necessary specify
Q.67. C – If a refugee has introduced its application after a period of three months, does your Member State require the refugee to meet the conditions or one of them (accommodation, sickness insurance, resources (a 12 §1 alinea 3) ?

☐ OUI

☒ NON

If yes, which ones?

Q.68 – Does your Member State apply the prohibition to impose a residence condition before reunification (a 12 §2)?

☒ OUI

☐ NON

If not, what is the length of this period? Is it different from the one normally applied?

EXERCISE OF THE RIGHT TO FAMILY REUNIFICATION

The granting of an autonomous residence permit is one of the most sensitive issues of this part of the Directive.

Q.69 – Is entry and residence facilitated by your Member State, as soon as the application for family reunification has been accepted, including the issue of obtaining visas (a13 §1) ?

☒ OUI

☐ NON

If yes, how?

Article 12 of the Immigration law setting out general guidelines for visas does not contain provisions on exceptional procedures for sponsor’s family members. There are also no specific provisions in Regulations on Visas and Instruction on Visas. Thus, in their case no facilitation seems to be envisaged. However, according to OCMA such possibility exists in practice. Under facilitated procedure no regular checks are made on, for instance, sufficient financial means, accommodation and alike. Visa is issued as formality and is based on decision by OCMA.

297 Ministry of Interior Instruction No.3 01.08.2003, OG 113 13.08.2003.
298 Email from Ilze Briede, Head of Migration Policy Division, OCMA, 23.11.2006.
Q.70 – Is a residence permit of at least one year's duration granted to the family members (a 13 §2)?

☐ OUI
☐ NON

What is the duration of the residence permit?
The duration of the family member’s residence permit is contingent on the one of the sponsor. If the sponsor has obtained a permanent residence permit, the family members are first granted a permit for a year, which is then further extended to 4 years and then, eventually, to a permanent one.

Q.71 – Is this residence permit renewable?

☐ OUI
☐ NON

Q.72 – Is the duration of the residence permit aligned with the duration of sponsor's residence permit (a 13 §3) ?

☐ OUI
☐ NON

If no, please specify

Q.73 – Are the rights awarded to family members' equivalent to those granted to the sponsor (a14 §1):

Q.73. A – Regarding access to education?

☐ OUI
☐ NON

If no, please specify

Q.73. B - Regarding access to employment?

☐ OUI
☐ NON

Please specify the content of this access:

There are no provisions in the Immigration law which would differentiate family members in relation to access to employment and self-employment in comparison with sponsor. However, they would have to follow the same procedures as sponsor, i.e., they have to get work permit. In addition they would have to inform OCMA that basis of their residence have changed.
Q.73. C – Regarding access to vocational guidance, initial and further training and retraining?

☒ OUI
☐ NON

If no, please specify

Q.74 – Does your Member State grant specific rights in social matters to reunified family members?

☐ OUI
☒ NON

If yes, please describe them and specify if a time limit is established to take advantage from them

Q.75 – Has Member State set up conditions regarding specific access to employment for family members (a 14 §2)?

☐ OUI
☒ NON

If yes, how?

Q.76 – If yes, do those conditions exceed 12 months (a 14 §2)? N/A

☐ OUI
☐ NON

Which ones?

Q.77 – Is access to employment limited in your Member State

Q.77.A – Regarding first-degree relatives in the direct ascending line?

☐ OUI
☒ NON

If yes, how?
Q.77. B – Regarding adult unmarried children objectively unable to provide for their own needs on account of their state of health (a 14 §3)?

☐ OUI

☒ NON

If yes, how?

Q.78 – Are spouses, unmarried partners and child who has reached majority entitled to an autonomous residence permit at least five years after lawful residence on the basis of the residence permit issued for family reunification (a15 §1)?

☒ OUI

☐ NON

If yes, please specify when and how for each category

Generally, spouses and children can re-apply for temporary residence permit on other basis at any time, for instance, by becoming employed or self-employed in Latvia. In those cases residence becomes autonomous from spouse. Moreover, after 5 years of residence on basis of temporary residence permit they can rely on point 7, paragraph 1 of Article 24 of Immigration law which provides that foreigner who has resided in Latvia on basis of temporary residence permit for at least five years has a right to apply for permanent residence permit. Rights of unmarried partners are not provided in national law because Latvia does not recognise rights of unregistered partners to enter and reside in Latvia.

Q.79 – Does your Member State limit the granting of the autonomous residence in cases of breakdown of the family relationship (a 15 §1 alinea 2)?

☒ OUI

☐ NON

According to paragraph 2 of Article 26 of the Immigration Law in cases of divorce before spouse has been granted permanent residence, temporary residence permit is withdrawn. Therefore, divorced spouse cannot reside in Latvia. Similar consequences are envisaged in Article 28 in cases of death of sponsor who is permanent residence holder. In those cases if spouse is residing in Latvia on basis of temporary residence permit he/she will not qualify for new residence permit and existing permit will not be registered. Only if there are minor children who are Latvian citizens or Latvian non-citizens spouses can apply for permanent residence permit.

Q.80 – Does your Member State grant autonomous residence permit:

Q.80. A – To first-degree relatives in the direct ascending line (a15 §2)

☒ OUI

☐ NON
If necessary specify:

**Q.80. B** – To adult unmarried children objectively unable to provide for their own needs on account of their state of health (a15 §2) ?

- [ ] OUI
- [X] NON

If necessary specify:

**Q.81** – Does your member State grant autonomous residence permit in the event of widowhood, divorce, separation or death of first first-degree relatives in the direct ascending or descending line (a 15 §3) ?

- [X] OUI
- [ ] NON

If necessary specify

According to paragraph 2 of Article 26 of the Immigration Law in cases of divorce before spouse has been granted permanent residence, temporary residence permit is withdrawn. Therefore, divorced spouse cannot reside in Latvia. Similar consequences are envisaged in Article 28 in cases of death of sponsor who is permanent residence holder. In those cases if spouse is residing in Latvia on basis of temporary residence permit he/she will not qualify for new residence permit and existing permit will not be registered. Only if there are minor children who are Latvian citizens or Latvian non-citizens spouses can apply for permanent residence permit.

**Q.82** – Has your Member State adopted rules granting autonomous residence permit "in the event of particularly difficult circumstances" (a 15 §3)?

- [X] OUI
- [ ] NON

If yes, how is this provision defined and transposed?

In exceptional circumstances recourse is made to paragraph 3 of Article 23 Immigration Law, providing that in cases not envisaged by Immigration Law temporary residence permit can be granted by Minister of Interior if it is required by norms of international law, interests of Latvia or humanitarian considerations.
**PENALTIES AND REDRESS**

Those provisions must be read in parallel with those relating to the conditions to be fulfilled to obtain family reunification (articles 6, 7, 8).

Questions relating fraud, false or falsified documents are of importance to assess their impact.

Q.83 – What are the legal grounds to reject, withdraw or refuse to renew a family member's residence permit (a16 §1 et 2):

**Q.83. A** – Conditions required by the directive not satisfied?

- [x] OUI
- [ ] NON

**Q.83. B** – Absence of real marital or family relationship?

- [x] OUI
- [ ] NON

If yes, how is this hypothesis assessed?

According to points 13 - 15 of paragraph 1 of Article 34 of *Immigration Law* residence permit can be refused if there are grounds to consider that foreigner has concluded fictitious marriage in order to receive residence permit or foreigner is under custody, guardianship of a person, who has been refused to enter in Latvia or adoption is fictitious and is organised in order to receive residence permit in Latvia. The marriage shall be monogamous and a couple shall have common household to receive residence permit in accordance with Article 26 paragraph 3 of *Immigration Law*. Otherwise in accordance with Article 34, paragraph 1, point 25 residence permit can be refused.

*Immigration Law* also provides for possibility to withdraw residence permit in cases if there are reasonable grounds to believe that foreigner concluded fictitious marriage in order to obtain residence permit in Latvia (Article 35(1)(6)).

According to *Regulations on Residence Permits*, OCMA checks the documents submitted for residence permit, conducts interviews and verifies data on applicant (Section 63). No further details on procedures to be followed by OCMA appear in Regulations.

**Q.83. C** – Stable long term relationship with another person?

- [ ] OUI
- [x] NON, unless the couple no longer lives together at all – then this would be contrary to Article 26(3) of the Immigration Law discussed above.

If yes, how is this hypothesis assessed?
Q.83. D – False or falsified documents?

☐ OUI
☐ NON

Q.83. E – Marriage, partnership or adoption contracted for the sole purpose of enabling reunification?

☐ OUI
☐ NON

Q.83. F – If yes, how is this hypothesis assessed?

According to points 13 - 15 of paragraph 1 of Article 34 of Immigration Law residence permit can be refused if there are grounds to consider that foreigner has concluded fictitious marriage in order to receive residence permit.

According to Section 63 of Regulations on Residence Permits OCMA checks the documents submitted for residence permit, conducts interviews and verifies data on applicant. No further details on procedures to be followed by OCMA appear in Regulations.

Q.83. G – When the sponsor's residence comes to an end and the family member does not yet enjoy an autonomous right of residence (a 16 §3)?

☐ OUI, the residence permit is withdrawn.
☐ NON

Q.83. H – What type of control are organised thereof?

The State Registry of Inhabitants exercises control over these matters in that it contains data on all persons that have obtained any type of residence permits and ensures the necessary compatibility.

Q.84 – Are resources of the family taken into account when renewing residence permit where the sponsor does not have sufficient resources without recourse to the social assistance system of the member state?

☐ OUI
☐ NON

If yes, under which modalities?

A sponsor needs to comply with the requirement of adequate resources, and it does not matter how he does it or whose resources he produces as proof thereof. It is not, however, permissible that the sponsor would need to rely on the social assistance. In such a case his permit would be annulled.
Q.85 – Does your Member State's legislation take into consideration (a. 17) :

Q.85. A – The nature and solidity of the person's family relationships and the duration of his residence in the Member State?

☐ OUI
☐ NON

If yes, please specify how and on the basis of which norm (legislation, regulation, jurisprudence, …)

Generally, *Immigration Law* does not contain explicit reference to the specific elements mentioned in Article 17 of the Directive. However, in the specific case, the OCMA would take into account Article 2 of the *Administrative Procedure Law*, referring to the need to ensure human rights in relations between State and individual. In addition, Article 4 of the APL also recalls a number of important principles to be observed when institutions take decisions in relation to individuals like, for example, the principle of proportionality. Similarly, Article 5 places an obligation on all institutions within administrative procedure to apply the law by taking into account protection and promotion of the rights and interests of individual.

Q.85. B - 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?

☐ OUI
☐ NON

If yes, please specify how and on the basis of which norm (legislation, regulation, jurisprudence, …)

Generally, *Immigration Law* does not contain explicit reference to the specific elements mentioned in Article 17 of the Directive. A person’s ties with his country of origin are generally only taken into account in the cases of expulsion. In addition, in the specific case, the OCMA would take into account Article 2 of the *Administrative Procedure Law*, referring to the need to ensure human rights in relations between State and individual. In addition, Article 4 of the APL also recalls a number of important principles to be observed when institutions take decisions in relation to individuals like, for example, the principle of proportionality. Similarly, Article 5 places an obligation on all institutions within administrative procedure to apply the law by taking into account protection and promotion of the rights and interests of individual.

Q.86 – Do the sponsor and/or members if his/her family have the right to mount a legal challenge where an application for family reunification is rejected (a18 §1)?

☐ OUI
☐ NON
Q.87 – Is this right to legal challenge considered as a right to a judicial review according to jurisprudence C-540/03 (a18 §1)?

☑️ OUI

☐ NON

Article 17 of *Immigration Law* does not provide for the right of individual to challenge refusal to issue visa or decision on withdrawal of visa. Foreigner, however, according to Article 20, has a right to challenge the decision on refusal of the right to enter Latvia. He/she can complain to Latvian consular and diplomatic representatives on negative decision. The request is reviewed by the State Border Guard and their decision is without appeal.

According to Article 40 sponsor or foreigner who does not need invitation letter to apply for residence permit, has a right to challenge decision on refusal to issue residence permit or withdrawal of residence permit to Head of OCMA within 30 days after decision has entered into force. In case if decision of Head of OCMA on refusal to issue residence permit on withdrawal of permit is negative it can be further challenged in the court. This, however, does not give a right for foreigner to reside in Latvia if she/he has been included in the Blacklist. Foreigner can remain in Latvia if he/she has been refused temporary or permanent residence permit as spouse or minor children of Latvian citizen, non-citizen or foreigner with permanent residence permit or minor children of their spouses, as well as former Latvian citizen or non-citizen.

In accordance with Article 42 of *Immigration Law* foreigner can challenge expulsion order and prohibition to enter within seven days after decision became effective. During review foreigners can reside in Latvia. Decision of Head of OCMA can be further challenged in Court. Appeal in Court does not stop execution of expulsion decision.
XX. IMPACT OF THE DIRECTIVE ON NATIONAL LAW

Q.88 A Did the transposition of the directive made the rules related to the best interest of minor children (a. 5 § 5) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

Please use one box per object and duplicate it if necessary

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Due regard to the best interest of minor children during examination of the application a. 5 § 5</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Explain the situation before transposition</td>
<td>Explain the situation after transposition</td>
<td>Complete this box by keeping the right appreciation and deleting the two others:</td>
</tr>
<tr>
<td>The best interests of minor children have always been given</td>
<td>(to evaluate the impact of the directive, take also into consideration national norms which have been adopted before the deadline for transposition or even before the adoption of the directive in cases of Member States having amended their national legislation <strong>in advance in view of the directive.</strong> Indicate the precise date of adoption of the change)</td>
<td>• More favourable than the directive</td>
</tr>
<tr>
<td>consideration and, besides The Immigration Law, are also protected by:</td>
<td>The directive introduced no changes with respect to the treatment of minor children.</td>
<td></td>
</tr>
<tr>
<td>1) Constitution (Article 96), providing that everyone has the right to</td>
<td></td>
<td></td>
</tr>
<tr>
<td>respect for his/her private life. Furthermore, State protects and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>supports marriage – union between men and women, family, rights of</td>
<td></td>
<td></td>
</tr>
<tr>
<td>parents and child. State especially supports disabled children,</td>
<td></td>
<td></td>
</tr>
<tr>
<td>children left without support of parents or victims of violence</td>
<td></td>
<td></td>
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<tr>
<td>(Article 110).</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2) Law on the Protection of the Rights of the Child(^{299})</td>
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</tr>
</tbody>
</table>

which in Article 5 provides that not only rights of the child but also family shall be protected within the framework of the Law. Article 27 further provides that a child can be separated from the family only if (1) child’s life, health or development are seriously threatened because of lack of care or social environment; (2) child has seriously threatened his/her life or development by using alcohol, narcotic or toxic means; (3) child has committed a crime.

**Q.88 B**

Did the transposition of the directive made the rules related to the beneficiaries of the right to family reunification become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

Please use one box per object and duplicate it if necessary

<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td>Definition of the beneficiaries of the right to family reunification a. 4 § 4</td>
<td>Explain the situation before transposition:</td>
<td>Complete this box by keeping the right appreciation and deleting the two others:</td>
</tr>
<tr>
<td>Explain the situation after transposition (to evaluate the impact of the directive, take also into consideration national norms which have been adopted before the deadline for transposition or even before the adoption of the directive in cases of Member States having amended their national legislation in advance in view of the directive.</td>
<td>• Statu quo</td>
<td>• In line with the directive</td>
</tr>
</tbody>
</table>

Before the transposition, just like afterwards, the scope of rights of beneficiaries of family reunification has remained the same.
Q.88 C  Did the transposition of the directive made the rules related to reunification of minor children between 12 (a. 4 § 1) and 15 (a. 4 § 6) years old become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

Please use one box per object and duplicate it if necessary

<table>
<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>Limitation of reunification of minor children of 12 and 15 years of age (a. 4 § 1 and 4 § 6)</td>
<td>Explain the situation after transposition (to evaluate the impact of the directive, take also into consideration national norms which have been adopted before the deadline for transposition or even before the adoption of the directive in cases of Member States having amended their national legislation in advance in view of the directive. Indicate the precise date of adoption of the change)</td>
<td>Complete this box by keeping the right appreciation and deleting the two others:</td>
</tr>
<tr>
<td>Explain the situation before transposition</td>
<td>No change</td>
<td>• More favourable than the directive</td>
</tr>
</tbody>
</table>

Q.88 D  Did the transposition of the directive made the rules related to requirements to the exercice of family reunification (article 7) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

Please use one box per object and duplicate it if necessary

<table>
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</thead>
<tbody>
<tr>
<td>Requirements for the exercice of family reunification (a. 7)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
**Explain the situation before transposition**

All persons applying for residence permits have always been required to meet the set or requirements mentioned in Article 7 of the Directive, in line with the *Regulations on the Residence Permits* (Nr. 813, 3.10.2003). The only exception is that integration measures, i.e., the knowledge of the Latvian language, only comes into play if a person is applying for a permanent residence permit.

**Explain the situation after transposition**

(to evaluate the impact of the directive, take also into consideration national norms which have been adopted before the deadline for transposition or even before the adoption of the directive in cases of Member States having amended their national legislation in advance in view of the directive. Indicate the precise date of adoption of the change)

No change

**Complete this box by keeping the right appreciation and deleting the two others:**

- **Statu quo**

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**Q.88 E**

**Did the transposition of the directive made the rules related to margins of manoeuvre awarded to Member States (a. 5 § 5, 17, C-540/03) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below**

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<tr>
<td>Limitation of margins of manoeuvre (a. 17, a.5 §5, C-540/03)</td>
<td>Explain the situation after transposition (to evaluate the impact of the directive, take also into consideration national norms which have been adopted before the deadline for transposition or even before the adoption of the directive in cases of Member States having amended their national legislation in advance in view of the directive. Indicate the precise date of adoption of the change)</td>
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</tr>
<tr>
<td></td>
<td></td>
<td>• <strong>Statu quo</strong></td>
</tr>
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<td></td>
<td></td>
<td>Complete this box by keeping the right appreciation and deleting the other one:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• More favourable than the directive</td>
</tr>
</tbody>
</table>

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**NATIONAL REPORTS - DIRECTIVE ON FAMILY REUNIFICATION**
Q.88 Did the transposition of the directive made the rules related to integration objectives and criterions more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

<table>
<thead>
<tr>
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<td>Complete this box by keeping the right appreciation and deleting the two others:</td>
<td>Complete this box by keeping the right appreciation and deleting the other one:</td>
</tr>
<tr>
<td>The only integration measures relevant in this respect is the requirement of a basic knowledge of the Latvian language, however, it only applies if a person is applying for a permanent residence permit.</td>
<td>• Statu quo</td>
<td>• More favourable than the directive</td>
</tr>
<tr>
<td>No change</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Q.89 From your point of view, did the transposition of the directive imply other interesting changes for the third national country regarding other elements than the ones mentioned in the previous question. Make also a comparison with the standard of the directive in the last column of the table below:

No, not really.

If they want to do so, the thematic coordinators should complete this question by indicating the number of examples that they ask the national reporter to give.
**Explain the situation before transposition**

(to evaluate the impact of the directive, take also into consideration national norms which have been adopted before the deadline for transposition or even before the adoption of the directive in cases of Member States having amended their national legislation in advance in view of the directive. Indicate the precise date of adoption of the change)

<table>
<thead>
<tr>
<th>NATIONAL LAW</th>
<th>STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Complete this box by keeping the right appreciation and deleting the two others:</td>
<td>Complete this box by keeping the right appreciation and deleting the other one:</td>
</tr>
<tr>
<td>• Statu quo</td>
<td>• More favourable than previous national rules</td>
</tr>
<tr>
<td>• More favourable than previous national rules</td>
<td>• Less favourable than previous national rules</td>
</tr>
<tr>
<td>• In line with the directive</td>
<td></td>
</tr>
</tbody>
</table>

**Q.89. A.** Mention if there is a general tendency to just copy the provisions of the directive into national legislation without redrafting or adaptation them to national circumstances.

[X] NO

[ ] YES

**Q.89.B.** If yes, please indicate if this general tendency may or not create problems (for example difficulties of implementation, risk that a provision remain unapplied).

[ ] NO

[ ] YES

**Q.89.C.** If yes, give some of examples:

**Q.89.D.** If only some provisions of the directive have been copied and if this may create any problem, please quote them and explain the problem.

**Q.90.** Quote interesting decisions of jurisprudence related to the directive, its transposition or implementation (so this question concerns in principle decisions later that the directive, but previous ones might be quoted if relevant). Quote in particular decisions of supreme Courts; limit yourself to the appeal Courts and ignore the first resort if there are too many decisions at this level, unless there is a certain jurisprudence made of a group of decisions.
So far there have been no relevant decisions by any Latvian courts, except for the Constitutional Court decision mentioned below.

**Please use one box per decision and duplicate it if necessary**

<table>
<thead>
<tr>
<th>DECISION OF CONSTITUTIONAL COURT</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>DECISION OF APPEAL COURTS</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
</tr>
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<tbody>
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<table>
<thead>
<tr>
<th>DECISION(S) IN FIRST RESORT</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</table>

**ANY SUPPLEMENTARY COMMENT ABOUT THE TREND OF THE JURISPRUDENCE:**

**Q.91** Specify if there are or not problems with the translation of the text of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated.

- [X] There are no problems with the translation of the directive
- [ ] There are some problems with the translation of (indicate the number of the articles concerned) of the directive.

**Explain the difficulties that this could create:**


Q. 92 ANY OTHER INTERESTING ELEMENT

Q.92 A. Following your personal point of view, mention from the point of view of third country nationals and/or from the Member State any interesting or innovative practice in your Member State

Please use one table per practice and duplicate it if necessary

<table>
<thead>
<tr>
<th>OBJECT OF THE PRACTICE</th>
<th>EXPLANATIONS</th>
</tr>
</thead>
</table>

There exists no relevant practice so far.

Q.92 B. Please add here any other interesting element in your Member State which you did not had the occasion to mention in your previous answers

In general, the directive has not introduced any changes in the Latvian immigration policy. Latvia has not opted for strict integration conditions in Immigration law and has not introduced differentiation on basis of age of children. Therefore, in Latvia the situation is peculiar, i.e., Immigration Law is liberal in relation to family reunification (if not strictly in law then in practice) but other laws related to language or access to employment remain fairly strict.

The peculiarity is that in Latvia Directive 2003/86 as well as 2003/109 are viewed as belonging solely to immigration sector. However, the issues addressed by Directives are falling within competence of not only Ministry of Interior but also Ministry of Welfare, Special Assignment Ministry of Integration and Ministry of Justice.

The most problematic is the transposition of Articles in relation to expulsion and transposition of principles or criteria to be considered in those cases. Immigration Law would have to be amended to include at least an Article on general principles to be taken into account when deciding on cases of family reunification. However, for now the Law on Administrative Procedure partially replaces any such specific reference.
QUESTIONNAIRE FOR THE NATIONAL REPORT
ON THE IMPLEMENTATION OF THE DIRECTIVE
FAMILY REUNIFICATION OF 22 SEPTEMBRE 2003

LITHUANIA

by

Biekša Laurynas
Lecturer, Mykolas Romeris University
laurynas@redcross.lt

The person in the team of thematic coordination in charge of this directive that you can contact if you have a question or need help when completing this questionnaire is: Yves Pascouau, +33 5 59 57 41 20, yves.pascouau@univ-pau.fr

COMMENTARIES

1. Council directive 2003/86 on the right to family reunification faced hard negotiations requiring the presentation of revised proposals from the Commission before final adoption in 2003. The European Court of Justice rejected in June 2007 an action for annulment introduced by the European Parliament against the Council directive (C-540/03).

2. Transposition of the directive must be assessed regarding the nature of the provision concerned. So as to help you, those provisions are coloured within the questionnaire as follows: obligatory provision (Q.XX), optional provision (Q.YY), provision which set up a derogation (Q.ZZ)

3. The Court of justice has defined the margins of discretion awarded to the member States even in situations where the directive allows the member States to depart from the directive. The Court states:

"Article 4(1) of the Directive imposes precise positive obligations, with corresponding clearly defined individual rights, on the Member States, since it requires them, in the cases determined by the Directive, to authorise family reunification of certain members of the sponsor’s family, without being left a margin of appreciation" (cons. 60).

"Note should also be taken of Article 17 of the Directive which requires Member States to 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 country of origin. As is apparent from paragraph 56 of the present judgment, such criteria correspond to those taken into consideration by the European Court of Human Rights when it reviews whether a State which has refused an application for family reunification has correctly weighed the competing interests" (cons. 64)

The fact that the concept of integration is not defined cannot be interpreted as authorising the Member States to employ that concept in a manner contrary to general principles of Community law, in particular to fundamental rights. The Member States which wish to make use of the derogation cannot employ an unspecified concept of integration, but must apply the condition for integration provided for by their legislation existing on the date of implementation of the Directive in order to examine the specific situation of a child over 12 years of age arriving independently from the rest of his or her family" (cons. 70).
4. The main difficulty according to the transposition of the directive relies on the systematic opportunities offered to member States to depart from the provisions of the directive when applying it.

5. Article 19 indicates which themes where the most sensitive during the negotiations of the Directive (art. 3, 4, 7, 8 and 13).

FIRST PART

1. NORMS OF TRANSPOSITION AND JURISPRUDENCE

Q.1.A. Identify the MAIN (because of its content) norm(s) of transposition and indicate its legal nature

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)
- About legal nature in the table below: legislative refers to a norm adopted in principle by the Parliament; regulation refers to a norm complementing the law and adopted in principle by the executive power; circular or instructions refer to practical rules about implementation of laws and regulations and adopted in principle by the administrative authorities

A.1.A.

Please duplicate the table below if there is more than one MAIN norm of transposition

<p>| This table is about: ☒ a text already adopted ☐ a text which is still a project to be adopted |
| TITLE: Law on Legal Status of Aliens of the Republic of Lithuania (further – Aliens Law) |
| DATE: 29 April 2004, as amended on 28 November 2006 |
| NUMBER: IX-2206 |
| DATE OF ENTRY INTO FORCE: 30 April 2004 |
| PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive): Articles: 2, 7, 16, 22, 26, 28, 35, 40, 43, 50, 53, 58, 122, 123, 128, 136, 146 of the Law |
| REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: „State News“ No. 73-2539, 2004 |
| LEGAL NATURE (indicate a cross in the correct box): ☒ LEGISLATIVE |
| ☐ REGULATION |
| ☐ CIRCULAR or INSTRUCTIONS: |</p>
<table>
<thead>
<tr>
<th>This table is about:</th>
<th>a text already adopted</th>
<th>a text which is still a project to be adopted</th>
</tr>
</thead>
</table>

**TITLE:** Order of the Minister of Interior on Approval of the rules for issuance of temporary residence permits to foreigners and assessment of the marriages of convenience (further – Order on Temporary Residence Permits),

**DATE:** 12 October 2005, as amended on 28 June 2007

**NUMBER:** 1V-329, 1V-242

**DATE OF ENTRY INTO FORCE:** 23 October 2005

**REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:** «State News» No. 126-4509, 2005; No. 75-2981, 07/07/2007

**LEGAL NATURE** (indicate a cross in the correct box):

- [ ] LEGISLATIVE:
- [ ] REGULATION:
- [x] CIRCULAR or INSTRUCTIONS:

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<table>
<thead>
<tr>
<th>This table is about:</th>
<th>a text already adopted</th>
<th>a text which is still a project to be adopted</th>
</tr>
</thead>
</table>

**TITLE:** Order of the Minister of Interior on Approval of the rules for issuance of permanent residence permits to foreigners and assessment of the marriages of convenience (further – Order on Permanent Residence Permits), title amended in June 2007 to include instead of “permanent residence permits”, “the permit of a long-term resident”. The title now reads as follows: “on Approval of the rules for issuance of long-term residents permits to foreigners in the European Community and the assessment of marriages, registered partnerships and guardianship of convenience”

**DATE:** 21 December 2005, as amended on 14 June 2007

**NUMBER:** 1V-445, 1V-219

**DATE OF ENTRY INTO FORCE:** -

**REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:** «State News» No. 5-157, 2006; No. 68-2700, 21/06/2007

**LEGAL NATURE** (indicate a cross in the correct box):

- [ ] LEGISLATIVE:
- [ ] REGULATION:
- [x] CIRCULAR or INSTRUCTIONS:
This table is about: [X] a text already adopted [ ] a text which is still a project to be adopted

| TITLE | Order of the Minister of Social Security and Labour on Social Integration Support to Foreigners Granted Asylum in the Republic of Lithuania (further – Order on Social Integration) |
| DATE | 11 January 2006, as amended on 16 January 2007 |
| NUMBER | A1-13 |
| DATE OF ENTRY INTO FORCE | 15 January 2006 |
| PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive): | entire text |
| LEGAL NATURE (indicate a cross in the correct box): | [X] CIRCULAR or INSTRUCTIONS: |

Q.1.B. List the others norms of transposition by order of importance of their legal nature (first laws, secondly regulations; thirdly circulars or instructions):

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)


[^300]: State News, No. 15-570, 03 02 2007

Please use one table per norm and duplicate as much as necessary

| TITLE |  |
| DATE |  |
| NUMBER |  |
| DATE OF ENTRY INTO FORCE |  |
| PROVISIONS CONCERNED: | (for example if the norm is not devoted only to the transposition of the concerned directive) |
| REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: |  |
| LEGAL NATURE (indicate a cross in the right box): |  |
Q.2. **THIS QUESTION IS IN PRINCIPLE ONLY FOR FEDERAL OR ASSIMILATED MEMBER STATES LIKE AUSTRIA, BELGIUM, GERMANY, ITALY, SPAIN**

Q.2.A. **Explain which level of government is competent to adopt the norms of transposition.**

*Please include your answer in the tables below*

<table>
<thead>
<tr>
<th>LEGISLATIVE RULES</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</td>
</tr>
<tr>
<td>COMPETENCES OF THE COMPONENTS:</td>
</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>REGULATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</td>
</tr>
<tr>
<td>COMPETENCES OF THE COMPONENTS:</td>
</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CIRCULAR OR INSTRUCTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</td>
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<tr>
<td>COMPETENCES OF THE COMPONENTS:</td>
</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
</tr>
</tbody>
</table>

Q.2.B. **In case, explain if the federal structure and the distribution of competences between the different levels pose any problem or difficulty regarding the transposition and/or the implementation of the directive.**

A.2. **Not applicable for Lithuania.**

Q.3. **Explain which authorities are competent for the practical implementation of the norm of transposition by taking the decisions in individual cases.**

A.3. *Please use one table per competence concerned and duplicate it if necessary*

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Examination of applications and first instance decisions on family reunification</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Ministry of Interior</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>Migration Department to the Ministry</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td>-</td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister):</td>
<td>The authority is a body attached to the Ministry, but not falling under the structure of the Ministry</td>
</tr>
</tbody>
</table>
Q.4. A. Has the main regulation foreseen explicitly by the main norm of transposition already been adopted or not:

X YES

☐ NO

Q.4.B. If the main norm(s) of transposition foresees the adoption of one or several regulations, indicate if they have all been adopted:

☐YES

X NO

If NO, please indicate the missing text(s) in the table below

Please use one line per missing text and duplicate it if necessary

<table>
<thead>
<tr>
<th>MISSING TEXTS</th>
</tr>
</thead>
</table>

Add if necessary some explanations (specify in particular if the missing texts are at least under preparation or foreseen in the very near future):

SECOND PART

AIM (ARTICLE 1)

The purpose of the Directive is to determine the conditions for the exercise of the right to family reunification. In case C-540/03, the Court of justice recognizes that, in some cases, member States do not have any margin of appreciation to grant the right to family reunification.

Q.5 – Is family reunification considered as a right in your Member State?

X OUI

☐ NON

Please explain

The Aliens Law (Art. 2(27)) describes that family reunification means the entry into and residence in the Republic of Lithuania by family members of an alien who is not a national of the European Union residing lawfully in the Republic of Lithuania in order to preserve the family unity, whether the family relationship arose before or after the alien’s entry.

Q.5. A – Are there any figures available relating to the exercise of the right to family reunification between 2002 and 2006? If yes, what are the trends, including nationality assessment?

According to the statistics supplied by the Migration Department to the Ministry of Interior of the Republic of Lithuania, the following figures can be presented for 2002-2006 in connection with the exercise of the foreigner’s right to family reunification:
<table>
<thead>
<tr>
<th>Basis of entry</th>
<th>Positive decisions to issue/extend temporary residence permit in Lithuania on the basis of family reunification</th>
</tr>
</thead>
<tbody>
<tr>
<td>Family reunification total</td>
<td>2382</td>
</tr>
<tr>
<td>Joining spouse</td>
<td>1629</td>
</tr>
<tr>
<td>Joining parents</td>
<td>294</td>
</tr>
<tr>
<td>Joining children</td>
<td>459</td>
</tr>
</tbody>
</table>

* This includes positive decisions of EU/EEA nationals adopted by 30 April 2004.

The statistics provided by the authorities does not allow to analyse nationality trends.

**DEFINITIONS (ARTICLE 2)**

**SCOPE (ARTICLE 3)**

The scope of the Directive is defined by article 3. We recall that:

- § 1 "reasonable prospect..." aims at excluding persons residing on a temporary basis (stagiaires, etc…)
- European citizens are excluded (§ 3)
- Comparison with existing legislation is of importance so as to assess the added value of the harmonization process (§ 5)

**Q.6.** Period of validity of the sponsor’s residence permit:

**Q.6. A.** Is the period of validity of the sponsor’s residence permit of one year or more according to article 3 § 1 of the Directive?

- OUI
- NON

**Q.2.B.** Quote precisely the period enshrined in national law:

Art. 43(6) of the Aliens Law requires a sponsor to hold a residence permit of one or more years.

**Q.6.C.** How does your Member State translate in national law the requirement for the sponsor to have "reasonable prospects of obtaining the right of permanent residence" (a 3 § 1)?

This requirement is explicitly mentioned by Art. 43(6) of the Aliens Law, however it is not clear how it will be translated in practice. The calculation of the periods for permanent residence will be regulated by the Order on Permanent Residence Permits once supplemented by adequate provisions.

**Q.7.** – Members of the family concerned:

**Q7. A.** Are they third country nationals as required by article 3 § 1 of the Directive?

- OUI
If not, explain

The provisions of the Aliens Law on family reunification (Art. 43) also include Lithuanian citizens.

Q.7.B. How has your Member State translated in national law the wording of "whatever status" included in article 3 § 1 of the Directive?

This provision has not been included in the national legislation.

Q.8 – Did the transposition of the Directive in your Member state breached provisions of international law more favourable to individuals (a 3 § 4)?

☐ OUI
☒ NON

Q.9 – If yes, are those provisions based on: N/a

Q.9.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? N/a

☐ OUI
☐ NON

Specify which provisions N/a

Q.9.B - The European Social Charter of 18 October 1961 (a 3 § 4)? N/a

☐ OUI
☐ NON

Specify which provisions N/a

Q.9.C. The amended European Social Charter of 3 May 1987 (a 3 § 4)? N/a

☐ OUI
☐ NON

Specify which provisions N/a


☐ OUI
☐ NON
Specify which provisions **N/a**

**Q.10**  – Does the transposition of the Directive affect national provisions more favourable to individuals (a 3 § 5)?

☑️ **OUI**

☐ **NON**

If yes, please specify which provisions

*For instance, the requirements of integration were introduced (Art. 7(2) of the Directive), increasing the minimum age for marriage to 21 years of age in comparison with 18 years of age on the basis of national law (Art. 4(5) of the Directive) and others.*

**Beneficiaries (Article 4)**

- Article 4 of the Directive contains numerous “may clauses”. It is therefore important to pay attention on the way Member States use them and on the legal modalities adopted thereof.

- Article 4 § 1 a) and b) enacts a right to family reunification for some members of the sponsor's family. The Member State does not have any margin of discretion regarding those persons.

- Article 4 § 1 last indent foresee one derogation regarding child over 12 years on the basis of an integration criterion. This is one of the most sensitive questions encompassed by the directive beside the issue of the limit of age in § 6.

- Regarding article 4 § 6, the Court states “”It does not matter that the final sentence of the contested provision provides that the Member States which decide to apply the derogation are to authorise the entry and residence of children in respect of whom an application is submitted after they have reached 15 years of age ‘on grounds other than family reunification’. The term ‘family reunification’ must be interpreted in the context of the Directive as referring to family reunification in the cases where family reunification is required by the Directive. It cannot be interpreted as prohibiting a Member State which has applied the derogation from authorising the entry and residence of a child in order to enable the child to join his or her parents”. (cons. 86) The Court adds ”Article 4(6) of the Directive must, moreover, be read in the light of the principles set out in Article 5(5) thereof, which requires the Member States to have due regard to the best interests of minor children, and in Article 17, which requires them to take account of a number of factors, one of which is the person’s family relationships” (cons. 87)

**Q.11**  – Does your national law recognize the right to family reunification to:

**Q.11. A**  – The sponsor's spouse (a. 4 § 1 a)?

☑️ **OUI**

☐ **NON**
Q.11. B. - Minor children of the sponsor and of his/her spouse (a. 4 § 1 b)?

☐ OUI
☐ NON

Q.11.C. Minor children adopted of the sponsor and of his/her spouse (a. 4 § 1 b)?

☐ OUI
☐ NON

Q.11.D. Minor children of the sponsor (a. 4 § 1 c)?

☐ OUI
☐ NON

Q.11. E. If yes, does your national law foresee that the sponsor shall have children custody and children are dependant on him or her?

☐ OUI
☐ NON

Specify if necessary the proofs required

No specific proof is required by the legislation of these circumstances.

Q.11 F. Minor children adopted of the sponsor (a 4 §1.c) ?

☐ OUI
☐ NON

Q.11. G. If yes:
h. does your national law foresee that the sponsor shall have children custody and children are dependant on him or her?

☐ OUI
☐ NON

Specify if necessary the proofs required

No specific proof is required by the legislation of these circumstances.

g.g. Does national law provide that those children shall be 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'
Specify if necessary the proofs required

Q.11. H. Minor children of the spouse (a 4 §1.d.)?

X OUI

□ NON

Q.11. I. If yes, does your national law foresee that the spouse shall have children custody and children are dependant on him or her?

X OUI

□ NON

Specify if necessary the proofs required

No specific proof is required by the legislation of these circumstances.

Q.11. J. Minor children adopted of the spouse (a 4 §1.d.)?

X OUI

□ NON

Q.11. K. If yes,

k. Does your national law foresee that the spouse shall have children custody and children are dependant on him or her?

X OUI

□ NON

Specify if necessary the proofs required

k.k. Does national law provide that those children shall be 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"?

□ OUI

X NON

Specify if necessary the proofs required
Q.12 – Has your Member State transposed the option opened by article 4 § 1 c:

Q.12A. To authorise reunification of minor children of the sponsor – including also adopted children – of whom custody is shared (a 4 §1.c)?

☐ OUI
☒ NON

Specify if necessary

Q.12B. If yes, has your legislation transposed the condition that the other party sharing custody has given his or her agreement (a 4 §1. c)? N/a

☐ OUI
☐ NON

Specify if necessary

Q.13 – Has your Member State transposed the option opened by article 4 § 1 d):

Q.13A. to authorise reunification of minor children of the spouse – including also adopted children – of whom custody is shared (a 4.1.d. in fine)?

☐ OUI
☒ NON

Specify if necessary

Q.13B. If yes, has your legislation transposed the condition that the other party sharing custody has given his or her agreement (a 4. 1.d)? N/a

☐ OUI
☐ NON

Specify if necessary

Q.14 – In any case referred to in questions 7 to 9, is the age of the minor children below the age of majority set up by the law of your Member State (a.4 §1, second indent)?

☒ OUI
☐ NON

If yes, indicate the age required

**Below 18 years of age.**
Q.15 – In any case referred to in questions 7 to 9, has the prohibition of marriage of minor children been transposed (a.4 §1, second indent)?

☒ OUI
☐ NON

If not, explain Si non, expliquez N/a

Q.16 – Is the derogation set up in article 4 § 1 last indent relating to the conditions for integration of children over 12 years arrived independently from the rest of the family used by your Member State?

☐ OUI
☒ NON

How the criterion "arrives independently from the rest of his/her family" has been transposed in your national legislation?

The Aliens Law mentions the term unaccompanied minors (Art. 2(16)), meaning the person below 18 years of age who arrived to Lithuania without being accompanied by parents or other representatives, or arrived accompanied, but was left in Lithuanian without custody.

Q.17 – If yes, did this integration condition already exist in your national legislation before the date of transposition of the Directive? N/a

☐ OUI
☐ NON

Q.18 – Describe briefly the content of this condition, the date of its creation and the conditions of its examination N/a

Q.19 – Are the children of refugees required to an integration test by your Member State (in contradiction with article 10 § 1)?

☒ OUI
☐ NON

If yes, explain N/a

Q.20 – Does your Member State authorise:

Q.20 A – Reunification of first-degree relatives in the direct ascending line of the sponsor (a 4§2 a)?

☒ OUI
☐ NON
Q.20 B – If yes, shall they be dependant and not enjoy proper family support in the country of origin?

☑ OUI

☐ NON

How each of those criterions is transposed and checked?

This is not regulated by the legislation, while the practice is not clear.

Q. 20.C. Reunification of first-degree relatives in the direct ascending line of the spouse (a 4§2 a)?

☑ OUI

☐ NON

Q.20.D. If yes, shall they be dependant and not enjoy proper family support in the country of origin?

☑ OUI

☐ NON

How each of those criterions is transposed and checked?

This is not regulated by the legislation, while the practice is not clear.

Q.20.E. Reunification of adult unmarried children of the sponsor? (a 4§2 b) ?

☐ OUI

☒ NON

If necessary, explain how this procedure is organised N/a

Q .20.F. If yes, does the national legislation impose that those adult unmarried children of the sponsor are objectively unable to provide for their own needs on account of their state of health (a 4 §2 b)? N/a

☐ OUI

☐ NON

If necessary, specify how each of those criterions ("objectively" and "unable to provide for their own needs") is transposed and checked? N/a
Q.20. G. Does your Member State authorise reunification of adult unmarried children of the spouse (a 4§2 b)?

☐ OUI
☒ NON

If necessary, specify how this condition is assessed N/a

Q.20.H. If yes, does the national legislation impose that those adult unmarried children of the sponsor are objectively unable to provide for their own needs on account of their state of health (a 4 §2 b)? N/a

☐ OUI
☐ NON

If necessary, specify how each of those criterions ("objectively" and "unable to provide for their own needs") is transposed and checked? N/a

Q.20. I. Did your Member state use the by law or regulation norms to implement article 4 § 2 a et b?

☐ OUI
☒ NON

The right to reunify with the first-degree relatives is specified by the Aliens Law and implemented by the circular of the Minister of Interior.

Q.21 – Does your Member State authorise reunification of the unmarried partner of the sponsor, being a third country national (a 4 §3)?

☒ OUI
☐ NON

Q.22 – If yes:

Q.22 A – This partnership shall be based on a duly attested stable long term relationship?

☐ OUI
☒ NON

If yes, specify how your Member State assess this situation

Q.22 B – This partnership shall be registered?

☒ OUI
☐ NON
Q.23 – Does your national law consider the registered partner as the husband/spouse (a 4 §3 alinéa 2)?

[ ] OUI

[ ] NON

Q.24 – Does your Member State authorise:

Q.24. A – Reunification of minor children of the partner, including adopted children (a 4§3)?

[ ] OUI

[ ] NON

Q.24. B – Reunification of adult unmarried children of the partner, including adopted children (a 4§3)?

[ ] OUI

[ X ] NON

Q.25 – Does your Member State allow reunification of adult unmarried children who are objectively unable to provide for their own needs on account of their state of health (a 4§3)?

[ ] OUI

[ X ] NON

If yes, specify how the conditions, and more particularly the "objectivity", are assessed. N/a

Q.26 – Did your Member state use the by law or regulation norms to implement article 4 § 3? **No, it is regulated by the law.**

Q.27 – Is the prohibition of polygamous marriage enshrined in your national legislation (a. 4§4)?

[ ] OUI

[ X ] NON
Q.28 – Does your Member State limit family reunification of minor children of a further spouse and the sponsor (article 4§4 dernier alinéa,)? It is not possible to ascertain from the legislation or the bylaws, but it is likely that no such limitation exists. However, given that polygamous marriages are forbidden in general legislation it is likely that children of further spouses would not be recognised.

☐ OUI
☒ NON

Q.29 – Does your Member State use the option set up by article 4 § 5 requiring the sponsor and his/her spouse to be of a minimum age of 21 years old before reunification?
Yes, Article 43(7) of the Aliens Law.

☒ OUI
☐ NON

Q.30 – If yes,

Q.30 A – What is the age required?
Minimum age of 21 years.

Q.30 B – Is the derogation founded on integration criteria and/or prevention of forced marriage?
It is not clear from the legislation.

Q.31 – Does your Member State use the derogation of article 4 § 6 by requesting that the applications concerning family reunification of minor children have to be submitted before the age of 15?

☐ OUI
☒ NON

Explain N/a

Q.32 – If yes, was it provided by existing legislation on the date of implementation of the directive?
N/a

Q.33 – If the application is not introduced before the age of 15, do Member States authorise entry and residence on grounds other than family reunification? N/a

☐ OUI
☐ NON

Which grounds and which conditions? N/a
PROCEDURE (ARTICLE 5)

We draw attention on the major importance given by the Court of justice regarding § 5 relating to the best interest of minor children.

Q.34 – Did your Member State institute a procedure regarding family reunification (a 5 §1) ?

X OUI
☐ NON

Q.35 – If yes,

Q.35. A – Which authorities are in charge of this issue?
Migration Department, local migration services and embassies of Lithuania abroad. The application has to be submitted to the diplomatic or consular representation of Lithuania abroad (Art. 28(2) of the Aliens Law). Foreigner legally in the country may submit the application to an institution authorised by the Ministry of the Interior (Art. 28(3) of the Aliens Law). Migration Department is issuing decisions.

Q.35. B – Are NGO's associated to this procedure?

☐ OUI
X NON

If yes, describe the procedure
They are associated only informally. The NGOs are assisting persons who were granted refugee status and wish to bring in their family members (e.g. Lithuanian Red Cross provides legal assistance in some of these cases).

Q.35. C – Is the application submitted by the sponsor or by family members?
Family members

Q.35. D – Is this procedure exclusive from other possibilities to grant family reunification?

X OUI
☐ NON

If other procedural possibilities exist, please describe them N/a

Q. 35. E – Was this procedure existing before the adoption of Directive 2003/86?

X OUI
☐ NON
Q.36 – Which documentary evidence are required to prove (a 5 §2):

Q.36. A – Family relationships according to article 4?
According to the Order on Temporary Residence Permits (paragraph 18), the persons concerned need to submit documents certifying their marriage, partnership relations or that they are unmarried children below 18, or that they are direct ascending line relatives who have been dependent for at least one year and unable to make use of the support of other family members residing in a foreign country. The Order was supplemented by paragraph 181 on 14 June 2007, which refers to alternative documents in case the foreigner’s family members are not able to submit required documents and includes: free format written obligation to guarantee means of subsistence for family members, provide accommodation for the period of residence permit and pay the issuance of insurance documents. Such a letter shall be confirmed by notary or by the migration service official who is receiving the letter.

According to existing rules, all documents issued by foreign states have to be legalized or approved with „Apostille“, unless the international agreements or EU legal acts provide otherwise, as well as translated to Lithuanian language (paragraph 24 of the abovementioned Order). If existing family relationship cannot be proved in any other manner, a DNR test can be carried out in family reunification cases. The foreigner has to cover the cost of this test (Art. 122 of the Aliens Law). Also, age assessment may be carried out in case of doubt (Art. 123 of the Law).

Q.36. B – Accommodation conditions laid down in article 7?
Documents proving that the foreigner has a living premise in Lithuania, which he/she owns or uses it on the basis of rent. Agreement of rent would need to be submitted in this case and there is a requirement that the agreement must be for a period not shorter than the period of residence permit validity, as well as this agreement must be registered in accordance with the laws. Instead of agreement, a written certified commitment of the natural or legal person to provide him/her with accommodation for the period of validity of the residence permit (paragraph 13.4 of the Order on Temporary Residence Permit).

Q.36. C – Sickness insurance conditions?
Document proving that such insurance was issued for the duration of foreigner’s stay in Lithuania if he/she is not insured with compulsory health insurance, or a written commitment of the Lithuanian national or a foreigner to cover the costs of health care provided during the period of residence in Lithuania (paragraph 2 of Art. 26(1) of the Aliens Law).

Q.36. D – Certified copies of family member(s)’ travel documents?
Neither legislation nor the bylaws specify the documentary evidence in this respect.

Q.37 – Is the possibility foreseen to proceed to:

Interviews:

[ ] OUI  
[ ] NON

Investigations:
If yes, describe them briefly

There is a possibility of interviews in case of unclarities in respect of submitted documents. The consular authorities or migration authorities may also request the foreigner to provide additional explanation or additional documents in this case (paragraph 16 of the Order on Temporary Residence Permits). DNR or age assessment test can be also carried out as described above to prove family relationship or the age.

**Q.38** – When examining an application concerning the unmarried partner of the sponsor, which evidences are taken into account by Member States on the basis of national law to prove family relationship (article 5§2 dernier alinea)?

In case of application concerning the unmarried partner, registered partnership agreement would need to be submitted.

**Q.38. A** – Existence of family ties and other elements such as a common child?

☐ OUI

☒ NON

Specify The legislation does not refer to it as a proof, while the practice is not clear in this respect.

**Q.38. B** - Previous cohabitation?

☒ OUI

☐ NON

This could be implied from the bylaws, but is not explicitly mentioned as a proof.

**Q.38. C** - Registration of a partnership

☒ OUI

☐ NON

**Q.38. D** - Any other reliable means of proof foreseen in national law?

☒ OUI

☐ NON

If yes, specify which ones: **DNR and age tests as mentioned above.**
Q.39 – Are family members obliged to reside outside the territory of the Member State while the application is being examined (a5 §3)?

[X] OUI

It is also possible to submit the application within a country (only for those who entered legally), but it does not guarantee the right of stay on the territory while application is pending (Art. 28(3) of the Aliens Law).

[ ] NON

Is this obligation sanctioned and how?

No particular sanctions are provided, but in practice, as there is no right to stay in the country until the decision on the application is reached, it may happen that the applicant might be ordered departure from the country or even expulsion if his/her visa expires.

Q.40 – If the answer is yes, is a derogation organised according to article 5 § 3 second indent?

[X] OUI

[ ] NON

Please specify

Q.41 – Does your national legislation include a maximum period of 9 month to answer to the application by way of written notification (a5 §4)?

[X] OUI

[ ] NON

If necessary, please specify

Such time limit is established by the Aliens Law (Art. 33. The decision to grant temporary residence permit has to be taken not later than within 6 months from the receipt of the application by the competent institution.

Q.42 – This time limit can be extended (a 5 §4 alinea 2) ?

[X] OUI

[ ] NON

Q.43 – If yes,

Q.43. A – Because of the complexity of the examination of the application?

[X] OUI

[ ] NON
If yes, please specify Art. 33(2) of the Aliens Law allows to extend the time limits for examination of the application for a period of not more than 3 months, if this is needed depending on the complexity of the examination of the application.

Q.43. B – What is the length of the extension?  
Up to three months.

Q.44 – If no decision is taken by the end of the 9 months period provided, what are the consequences for the applicant?

No consequences are specifically provided in such a case by the legislation, however in case of lack of action on the side of the authorities, the applicant can appeal this to the court.

Q.45 – Is the decision rejecting the application notified? Does this written notification contain the reasons of rejection?

☐ OUI
☐ NON

Specify if only one condition is not required

Q.46 – How is the best interest of minor children taken into account by your Member State’s legislation and authorities during examination of the application (article 5§5)?

The principle itself is not specifically mentioned in the aliens legislation while dealing with foreigners, but it is mentioned in the international agreements to which Lithuania is a party, e.g. Convention on the Rights of the Child, and which have prevailance over national laws. In practice the Migration Department claims to take this principle, as well as the principle of family unity and humanitarian considerations, in consideration while examining applications with the aim to ensure maintenance of family relationship and the right of the child to grow up in a family (information of the Department of 16 April 2007).

CONDITIONS REQUIRED (ARTICLES 6 AND OTHERS)

• Questions relating to accommodation and resources will be carefully examined to assess if Member States use them, either as a migration tool or as an integration tool.

• The same assessment applies regarding the option to set up a period of lawfully residence not exceeding two years before applying for family reunification.

• According to article 8, the Court of justice states: “That provision does not therefore have the effect of precluding any family reunification, but preserves a limited margin of appreciation for the Member States by permitting them to make sure that family reunification will take place in favourable conditions, after the sponsor has been residing in the host State for a period sufficiently long for it to be assumed that the family members will settle down well and display a certain level of integration. Accordingly, the fact that a Member State takes those factors into account and the power to defer family reunification for two or, as the case may be, three years do not run counter to the right to respect for family rights set out in particular in Article 8 of the ECHR as interpreted by the European Court of Human Rights
"It should, however, be remembered that, as is apparent from Article 17 of the Directive, duration of residence in the Member State is only one of the factors which must be taken into account by the Member State when considering an application and that a waiting period cannot be imposed without taking into account, in specific cases, all the relevant factors" (cons. 99). "The same is true of the criterion of the Member State’s reception capacity, which may be one of the factors taken into account when considering an application, but cannot be interpreted as authorising any quota system or a three-year waiting period imposed without regard to the particular circumstances of specific cases. Analysis of all the factors, as prescribed in Article 17 of the Directive, does not allow just this one factor to be taken into account and requires genuine examination of reception capacity at the time of the application" (cons. 100) "When carrying out that analysis, the Member States must, as is pointed out in paragraph 63 of the present judgment, also have due regard to the best interests of minor children” (cons. 101).

Q.47 – Can public policy, public security or public health grounds be taken into account to (a 6 §§1 et 2):

Q.47. A – Reject an application for family reunification?

☑ OUI

☐ NON

If yes, which ones?

All three grounds can be a basis for rejection of application for family reunification on the basis of paragraph 1 of Art. 35(1) of the Aliens Law. The application can be rejected also on other grounds, e.g. if there are good reasons to believe that the marriage concluded is a marriage of convenience, or if the foreigner and his/her family member who arrived to Lithuania on the basis of family reunification no longer lives in real family relationship.

Q.47. B – Withdraw an application for family reunification?

☑ OUI

☐ NON

If necessary, please specify

Paragraph 14 of Art. 50(1) of the Aliens Law specifies the general clause that the temporary residence permit may be withdrawn in case the residence of the foreigner in Lithuania poses a threat to state security, public order or health of the population. This clause is also applicable for residence permits issued on family reunification basis. No direct relationship with Art. 6(3) of the Directive grounds can be established. The application of para 1 of Art. 35(1) of the Aliens Law is related to situations when foreigner’s presence could cause danger to the health of population (e.g. particularly infectious deceases).
Q.47. C – Refuse to renew a family member's residence permit?

☐ OUI
☐ NON

If necessary, please specify
This possibility is based also on paragraph 1 of Art. 35(1) of the Aliens Law as mentioned above.

Q.48 – Does national legislation take into account:

Q.48. A – The severity or type of offence against public policy or public security?

☐ OUI  However only to a certain extent, as this is required to be taken into account only when a decision on expulsion is being considered (paragraph 4 of Art. 128(1) of the Aliens Law).
☐ NON

Q.48. B – The solidity of family relationships regarding article 17 of the Directive?

☐ OUI
☐ NON

If necessary, please specify
The Aliens Law lists situations, which shall be taken into account while adopting a decision on expulsion. Among these circumstances, Art. 128 (1) includes:
- period of legal residence in Lithuania;
- family relations with persons living in Lithuania;
- existing social, economic and other relations with Lithuania;
- the scope and nature of dangerousness of the offence committed.

Q.49 – Does your Member State withdraw the residence permit or remove the third country national on the sole ground of illness or disability suffered after the issue of the residence permit (a 6 §3)?

☐ OUI
☐ NON

Q.50 – Are accommodation conditions required from the applicant (a7 §1a) ?

☐ OUI
☐ NON

Q.51 – If yes:
Q.51. A – What are those conditions?
Accommodation requirement is specified in paragraph 4 of Art. 26(1) of the Aliens Law. No further requirements as to the space (square meters) are specified in the laws. The Migration Department has not responded to this question as concerns their practice, when asked by the author of the Report.

Q.51. B – How are they assessed?
The foreigner has to submit the document confirming that he/she has accommodation, e.g. rent agreement or certified written commitment of the legal or natural person concerning accommodation for him/her for the duration of temporary residence permit (Paragraph 4 of Art. 26(1) of the Aliens Law).

Q.51 C – Are they comparable to the conditions required to a normal family living in the same region?
It is not possible to assess because there are no special conditions required to a normal family living in the same region.
☐ OUI
☐ NON

If not, please specify the differences

Q.52 – Is a sickness insurance required from the applicant (a. 7 §1b) ?
☒ OUI
☐ NON

Q.53 – Are stable resources required (a7 §1c) ?
☒ OUI
☐ NON

Specify their nature and content
The Aliens Law requires the foreigner to prove either sufficient resources (refer below to Q.54) or/and that he/she receives regular income, sufficient to reside in Lithuania. No other specifications are given by the legislation, while practice is not clear.

Q.54 – How is the condition "sufficient" assessed by your Member State? Is it in comparison with national wages?
The monthly amount that is considered sufficient for living within the context of residence permit, is fixed at one minimal monthly salary, while for minors the requirement is fixed at 50% of one minimal monthly salary. The minimal salary in Lithuania constituted 600 Litas (approx. 174 euros) in May 2007.

Q.55 – Are integration criterions required to allow family reunification (a 7 §2)?
☐ OUI
☒ NON
Q.56 – If yes:

Q.56. A – What are those criterions? N/a

Q.56. B – Do they apply indistinctly to all potential beneficiaries of reunification? (Spouse, dependant people, etc.) N/a

Q.56. C – How are they evaluated by your Member State? N/a

Q.56. D – Are refugees and their family members required to fulfil them (a 7 §2, second indent)?

☐ OUI

☒ NON

Q.57 – Is a minimal period of lawful residence is required before reunification (a 8 §1)?

☒ OUI

☐ NON

Q. 58 – Does this period exceed two years? No

Please specify
Requirement of 2 recent years of residence before reunification is applied according to Art. 43(6) of the Aliens Law.

Q.59 – Does your Member State apply the derogation set up by article 8 § 2 allowing Member States to impose a waiting period of maximum three years due to reception capacities between the submission of the application and the issuance of a residence permit?

☐ OUI

☒ NON

Please specify The derogation is not applied in Lithuania.

Q.60 – If yes, did this derogation exist in national law before the 22nd of September 2003? n/a

☐ OUI

☐ NON

FAMILY REUNIFICATION OF REFUGEES

The legal regime applicable to refugees derogates from the one applicable to family reunification. The scope of those derogations (minimal lawful residence, members of the family, accommodation requirements) shall be assessed on the basis of national law.
Q.61 – Does your Member State allow family reunification of refugees on the basis of Directive 2003/86 (a 9 §1)?

☑ OUI

☐ NON

Q.62 – Is this right limited to family relationships predating the entry on the territory (a 9 §2)?

☐ OUI

☑ NON

Q.63 – Does your Member State allow family reunification of family Members not quoted in article 4 of the Directive (a 10 §2)?

☐ OUI

☑ NON

Which members of the family and under which conditions? N/a

Q.64 – According to the specific case of unaccompanied minor refugees, does your Member State authorise family reunification of first degree relatives in the direct ascending line without applying the conditions laid down in article 4 § 2 (a10 §3 a)?

☐ OUI

☑ NON

What conditions are required? According to Art. 2(26) of the Aliens Law, these relatives need to be dependent for a period of at least one year and not able to enjoy the support of other family members living abroad. There are no other rules that would take the situation of unaccompanied minor into account in this case.

Q.65 – Does your Member State authorise entry and residence of the legal guardian or any member of the family where the unaccompanied minor refugee has no relatives in the direct ascending line or such relatives cannot be traced (a10 §3 b)?

☐ OUI

☑ NON

If yes, please specify who the member of the family targeted is and which proofs are required to prove family ties? N/a
Q.66 – Does your Member State take into account other evidence of family relationship where the refugee cannot provide official evidence (a 11 §2) ?

☐ OUI

☐ NON

Which ones? No alternatives to official documents in case of lack of official documents proving the family relationship are explicitly provided in the legislation. However, according to the Order on Temporary Residence Permits if questions concerning the issue of documents arise, the consular officer or authorised representatives of the Migration Department or migration service may invite the foreigner for an interview, request to submit additional explanations and additional documents (paragraph 16 of the Order). Furthermore, the Migration Department may oblige to perform a DNA test to confirm kinship. According to the Aliens Law, the performance of a DNA test may be requested only in case the foreigner is not able to prove the kinship relationship otherwise (Art. 122 of the Aliens Law). The expenses related to the performance of the DNA test shall be covered by the foreigner except for refugees whose DNA test expenses shall be covered by the state.

Q.67 – Does the examination of the refugee application take into account their specific situation:

Q.67. A – Are proofs regarding accommodation conditions, sickness insurance or resources required (a 12 §1)?

☐ OUI

☒ NON But only if the application for family reunification is submitted within 3 months from granting of refugee status (Art. 26(3) of the Aliens Law).

If yes, are those requirements comparable to those imposed to other third country nationals? N/a

Q.67. B – If one of the person concerned (sponsor or family member) has special links with a third country within which reunification is possible, does your member state require those proofs according to article 12 § 1 second indent.

☐ OUI

☒ NON

If necessary specify Nothing is specified in the legislation, while practice in this respect is not clear.
Q.67. C – If a refugee has introduced its application after a period of three months, does your Member State require the refugee to meet the conditions or one of them (accommodation, sickness insurance, resources (a 12 §1 alinea 3)?

☐ OUI
☐ NON

If yes, which ones? According to the legislation, all the mentioned conditions have to be met, however only for the members of the family of a refugee (Art. 26(3) of the Aliens Law).

Q.68 – Does your Member State apply the prohibition to impose a residence condition before reunification (a 12 §2)?

☐ OUI
☐ NON

If not, what is the length of this period? Is it different from the one normally applied? N/a

EXERCISE OF THE RIGHT TO FAMILY REUNIFICATION

The granting of an autonomous residence permit is one of the most sensitive issues of this part of the Directive.

Q.69 – Is entry and residence facilitated by your Member State, as soon as the application for family reunification has been accepted, including the issue of obtaining visas (a13 §1)?

☐ OUI
☐ NON

If yes, how? The only provision on facilitation of visa issuance refers to issuance of single long-term visa by the consulate to a foreigner who was granted residence permit (including on family reunification grounds) (Art. 16(3) of the Aliens Law and para 57 of the Order on Temporary Residence Permits). No other facilitation is provided by the legislation. The Rules on Visa issuance of 2 September 2004 do not mention any specific facilitation rules or actions apart from issuance of visa on the basis of decision to issue residence permit.

Q.70 – Is a residence permit of at least one year's duration granted to the family members (a 13 §2)?

☐ OUI
☐ NON
What is the duration of the residence permit? The duration is the same as the duration of the residence permit of a family member (one year) (paragraph 3 of Art. 40(1) of the Aliens Law).

Q.71 – Is this residence permit renewable?

☑ OUI
☐ NON

Q.72 – Is the duration of the residence permit aligned with the duration of sponsor’s residence permit (a 13 §3) ?

☑ OUI
☐ NON

If no, please specify N/a

Q.73 – Are the rights awarded to family members’ equivalent to those granted to the sponsor (a14 §1):

Q.73. A – Regarding access to education?

☑ OUI
☐ NON

If no, please specify N/a

Q.73. B - Regarding access to employment?

☑ OUI
☐ NON

Please specify the content of this access

According to paragraph 1 of Art. 58(1) of the Aliens Law, family members are not required work permits in order to engage in employment.

Q.73. C – Regarding access to vocational guidance, initial and further training and retraining?

☑ OUI
☐ NON

If no, please specify N/a

Q.74 – Does your Member State grant specific rights in social matters to reunified family members?
For refugee family members only

If yes, please describe them and specify if a time limit is established to take advantage from them.

No time limit is established, the family members of a refugee may enjoy the same social integration as applicable to the refugee (Paragraph 3.1.1. of Social Integration Order).

Q.75 – Has Member State set up conditions regarding specific access to employment for family members (a 14 §2)?

☐ OUI
☒ NON

If yes, how? N/a

Q.76 – If yes, do those conditions exceed 12 months (a 14 §2)?

☐ OUI
☒ NON

Which ones? N/a

Q.77 – Is access to employment limited in your Member State?

Q.77.A – Regarding first-degree relatives in the direct ascending line?

☐ OUI
☒ NON

If yes, how? N/a

Q.77. B – Regarding adult unmarried children objectively unable to provide for their own needs on account of their state of health (a 14 §3)?

☐ OUI
☒ NON

If yes, how? N/a

Q.78 – Are spouses, unmarried partners and child who has reached majority entitled to an autonomous residence permit at least five years after lawful residence on the basis of the residence permit issued for family reunification (a15 §1)?

☒ OUI
If yes, please specify when and how for each category

Permanent residence permit may be issued to a family member after five years of legal residence with the family in Lithuania (Art. 53(5) of the Aliens Law).

Q.79 – Does your Member State limit the granting of the autonomous residence in cases of breakdown of the family relationship (a 15 §1 alinea 2)?

☐ OUI
☐ NON

Please explain

Autonomous residence permit is issued after five years or residence and refers to permanent residence. There is no specific limitation in the Aliens Law as to issuance of autonomous residence permit if the required conditions are fulfilled, but it is ambiguous with regard to withdrawal of residence permit. Art. 54(3) of the Aliens Law states that in case a residence permit is withdrawn for the foreigner, residence permits of the family members are also withdrawn unless they have other grounds to reside in Lithuania (thus not clear if autonomous residence permit obtained on the basis of 5 years residence with the family would be considered as “other ground” to reside).

Q.80 – Does your Member State grant autonomous residence permit:

Q.80. A – To first-degree relatives in the direct ascending line (a15 §2)

☐ OUI
☐ NON

If necessary specify

All foreigners are entitled to apply for permanent residence permit after 5 years of legal residence with the family, including first-degree relatives.

Q.80. B – To adult unmarried children objectively unable to provide for their own needs on account of their state of health (a15 §2) ?

☐ OUI
☐ NON

If necessary specify

All foreigners are entitled to apply for permanent residence permit after 5 years of legal residence with the family, including first-degree relatives.

Q.81 – Does your member State grant autonomous residence permit in the event of widowhood, divorce, separation or death of first first-degree relatives in the direct ascending or descending line (a 15 §3) ?

☐ OUI
If necessary specify

Temporary residence permit may be granted if particularly serious circumstances arise with regard to divorce or death of the family member. In this case the application for residence permit should have been submitted before the termination of marriage or partnership agreement or death of the family member, provided the residence permit on family reunification basis has not yet been issued; or not later than within 6 months from divorce or termination of partnership agreement or death of the family member, provided that before that the foreigner had a residence permit issued on the basis of family reunification (paragraph 8 of Art. 43(1) of the Aliens Law).

Q.82 – Has your Member State adopted rules granting autonomous residence permit "in the event of particularly difficult circumstances" (a 15 §3)?

☐ OUI
☐ NON

If yes, how is this provision defined and transposed?
 Particularly difficult circumstances are specifically defined in the Aliens Law as those related to divorce, termination of partnership or death. In such situations autonomous residence permit is issued for a period of one year.

**PENALTIES AND REDRESS**

*Those provisions must be read in parallel with those relating to the conditions to be fulfilled to obtain family reunification (articles 6, 7, 8)*

*Questions relating fraud, false or falsified documents are of importance to assess their impact.*

Q.83 – What are the legal grounds to reject, withdraw or refuse to renew a family member's residence permit (a16 §1 et 2):

Q.83. A – Conditions required by the directive not satisfied?

☐ OUI
☐ NON

Q.83. B – Absence of real martial or family relationship?

☐ OUI
☐ NON

If yes, how is this hypothesis assessed?
The only guidelines given by the legislation in this respect is that the persons do not live maintaining family relationships (paragraph 10 of Art. 35(1) of the Aliens Law).

Q.83. C – Stable long term relationship with another person?

☐ OUI  ☒ NON

If yes, how is this hypothesis assessed? N/a

Q.83. D – False or falsified documents?

☒ OUI  ☐ NON

Q.83. E – Marriage, partnership or adoption contracted for the sole purpose of enabling reunification?

☒ OUI  ☐ NON  But only in respect of temporary residence permits.

Q.83. F – If yes, how is this hypothesis assessed?

National legislation contains provisions on marriages of convenience. These situations amount to the establishment of valid grounds for termination of a residence permit (paragraph 4 of Art. 35 (1), paragraph 3 of Art. 50 (1)). The definition of a marriage of convenience is provided in the Aliens Law (Art. 2(6)). It is defined as a marriage concluded between a national of the Republic of Lithuania or a foreigner legally resident in the Republic of Lithuania and a foreigner who is not a national of an EU Member State with the sole aim of obtaining for the foreigner a residence permit or authority to reside in the Republic of Lithuania and not seeking to create other legal consequences of marriage prescribed by the legal acts of the Republic of Lithuania. Assessment of the marriages of convenience is regulated by the Order on Temporary Residence Permits. According to this Order (paragraph 32, as well as paragraph 27 of the Order on Permanent Residence Permits), all marriages, entered into during the recent 5 year period before submission of application and raising reasonable suspicion should be scrutinized. One of the circumstances leading to recognition of a marriage as of convenience is that family members have never met before (paragraph 33.4 of the Order). However, such requirement may run counter certain traditional practices prevailing in some countries of origin and thus be considered as too wide definition of a marriage of convenience. Information on practical application of checks is not available to the author of this Report. Hypothesis is being assessed on the basis of information collected through the interviews of spouses in written form, interviews of neighbours, other persons, from information received from state or municipal institutions, etc.
Q.83. G – When the sponsor’s residence comes to an end and the family member does not yet enjoy an autonomous right of residence (a 16 §3) ?

☒ OUI

☐ NON

Q.83. H – What type of control are organised thereof?
According to the legislation, residence permit is terminated along with termination of family member’s residence permit (provided there are no grounds to obtain the permit on individual grounds) (Art. 50(3) and 53(3) of the Aliens Law).

Q.84 – Are resources of the family taken into account when renewing residence permit where the sponsor does not have sufficient resources without recourse to the social assistance system of the member state?

☒ OUI

☐ NON

If yes, under which modalities?
The legislation only states the requirement that the foreigner who applies for extension of residence permit should have sufficient resources (Art. 40(3) read together with paragraph 3 of Art. 26(1) of the Aliens Law).

Q.85 – Does your Member State's legislation take into consideration (a. 17) :
Q.85. A – The nature and solidity of the person's family relationships and the duration of his residence in the Member State?

☒ OUI N.B. partial transposition (ensured only in removal procedures)

☐ NON

If yes, please specify how and on the basis of which norm (legislation, regulation, jurisprudence, …)
Specific elements, such as family relations with the persons in the Republic of Lithuania, the period of lawful residence in Lithuania, social, economic and other connections with Lithuania, etc., are taken into consideration under the Aliens Law only in the removal procedures. Article 128 (1) of the Law envisages that these circumstances should be taken into account before adopting a decision on deportation of the foreigner from Lithuania. Though in this case the family relations can be taken into account, the Law fails to specify how foreigner’s family relations may prevent deportation.
Q.85. B - 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?

☐ OUI
☒ NON

If yes, please specify how and on the basis of which norm (legislation, regulation, jurisprudence, …)

Only the relations with Lithuania are being analysed and taken into account under Article 128(1) of the Aliens Law.

Q.86 – Do the sponsor and/or members if his/her family have the right to mount a legal challenge where an application for family reunification is rejected (a18 §1)?

☒ OUI
☐ NON

Q.87 – Is this right to legal challenge considered as a right to a judicial review according to jurisprudence C-540/03 (a18 §1) ?

☒ OUI The legislation refers to review of legal issues, but in practice no cases are decided by appeal courts without looking into the merits of the appeal.
☐ NON
XX. IMPACT OF THE DIRECTIVE ON NATIONAL LAW

Q.88 A Did the transposition of the directive made the rules related to the best interest of minor children (a. 5 § 5) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Due regard to the best interest of minor children during examination of the application a. 5 § 5</td>
<td>No specific provisions concerning this principle were introduced with the transposition of the directive. The legislation on the status of foreigners does not contain provisions to this effect, while the practice on how the principle of best interests of the child is applied in family reunification cases is not clear.</td>
<td>• Status quo</td>
</tr>
</tbody>
</table>

Q.88 B Did the transposition of the directive made the rules related to the beneficiaries of the right to family reunification become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

Please use one box per object and duplicate it if necessary
### Definition of the beneficiaries of the right to family reunification a. 4 § 4

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>No rules on dealing with situations of polygamous marriages have existed before the transposition.</td>
<td>No new rules have been introduced in this respect.</td>
<td>Status quo</td>
</tr>
</tbody>
</table>

#### Q.88 C

Did the transposition of the directive made the rules related to reunification of minor children between 12 (a. 4 § 1) and 15 (a. 4 § 6) years old become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below.

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Limitation of reunification of minor children of 12 and 15 years of age (a. 4 § 1 and 4 § 6)</td>
<td>No new rules have been introduced in this respect with the transposition.</td>
<td>Status quo</td>
</tr>
</tbody>
</table>

#### Q.88 D

Did the transposition of the directive made the rules related to requirements to the exercise of family reunification (article 7) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below.

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>No limitations of family reunification for children between 12-15 years of age existed in national legislation before the transposition of the directive.</td>
<td>Status quo</td>
<td>More favourable than the directive</td>
</tr>
<tr>
<td>OBJECT</td>
<td>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</td>
<td>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</td>
</tr>
<tr>
<td>----------------</td>
<td>-----------------------------------------------</td>
<td>------------------------------------------------</td>
</tr>
<tr>
<td>Requirements mentioned in Art. 7(1) of the Directive were present in Lithuanian legislation even before the transposition of the Directive. No integration requirement existed.</td>
<td>No new rules have been introduced in this respect with transposition of the Directive.</td>
<td>• Status quo</td>
</tr>
</tbody>
</table>

**Q.88 E**

Did the transposition of the directive made the rules related to margins of manoeuvre awarded to Member States (a. 5 § 5, 17, C-540/03) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below.

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Limitation of margins of manoeuvre (a. 17, a.5 §5, C-540/03)</td>
<td>No changes have been introduced with transposition in this respect.</td>
<td>• Status quo</td>
</tr>
</tbody>
</table>
Q.88 F Did the transposition of the directive made the rules related to integration objectives and criterions more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

*Please use one box per object and duplicate it if necessary*

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
</table>
| Possibility to apply for permanent residence permit existed before the transposition, as well as termination of residence in case of family breakdown. No integration condition was required for persons who reunified with their family members and applied for permanent residence permits. | Possibility of granting residence permit in particularly difficult circumstances was introduced to Art. 43 of the Aliens Law (with amendments to the Law made on 28 November 2006). Secondly, integration requirement was introduced for foreigners who arrived on family reunification grounds when applying for permanent residence permit. | • More favourable than previous national rules (with regard to new residence permits)  
• Less favourable than previous national rules (integration condition) |

Q.89 From your point of view, did the transposition of the directive imply other interesting changes for the third national country regarding other elements than the ones mentioned in the previous question. Make also a comparison with the standard of the directive in the last column of the table below

If they want to do so, the thematic coordinators should complete this question by indicating the number of examples that they ask the national reporter to give.
**OBJECT:** marriages of convenience (Art. 16(2b) of the Directive); integration condition (Art. 7(2)); minimum age of marriage (Art. 4(5)); exemption from requirements for refugees (Art. 12(1)); right to reunification for parents of unaccompanied minor (Art. 10(3)) (to be precisely indicated by the national rapporteur)

**EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW**

As a result of transposition, the norms concerning marriages of convenience were introduced on 12 October 2005, as well as some restrictive provisions concerning the time limits for applying for family reunification for refugees as a condition to exempt them from certain requirements to be fulfilled (through Amendments to the Aliens Law of 28 November 2006). With amendments to the mentioned Aliens Law the young families will be able to reunite only after they reach the age of 21 years. Right for parents to reunify with their unaccompanied child in Lithuania was introduced, as well as special treatment of family members of refugees as concerns fulfilment of requirements for reunification were introduced by

<table>
<thead>
<tr>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Less favourable than previous national rules (with regard to limitations for refugees and marriages of convenience), but more favourable as concerns exemption of refugees from specific requirements, introduction of right to family reunification for parents of unaccompanied minor.</td>
</tr>
<tr>
<td>• In line with the directive</td>
</tr>
</tbody>
</table>

No rules on assessment of marriages of convenience existed before the transposition. No special rules concerning exemption of refugees from specific requirements in case of family reunification existed. Refugees were subject to the same conditions as all other foreigners applying for family reunification.

Spouses as young as 18 years of age were able to reunify in Lithuania according to previous legislation. No right of parents to reunify with unaccompanied minor granted refugee status was provided by the legislation.
Q.89. A. Mention if there is a general tendency to just copy the provisions of the directive into national legislation without redrafting or adaptation them to national circumstances.

☑ NO
☒ YES

Q.89.B. If yes, please indicate if this general tendency may or not create problems (for example difficulties of implementation, risk that a provision remain unapplied).

☐ NO
☒ YES

Q.89.C. If yes, give some of examples: N/a

Q.89.D. If only some provisions of the directive have been copied and if this may create any problem, please quote them and explain the problem.

N/a

Q.90. Quote interesting decisions of jurisprudence related to the directive, its transposition or implementation (so this question concerns in principle decisions later that the directive, but previous ones might be quoted if relevant). Quote in particular decisions of supreme Courts; limit yourself to the appeal Courts and ignore the first resort if there are too many decisions at this level, unless there is a certain jurisprudence made of a group of decisions.

Please use one box per decision and duplicate it if necessary

<table>
<thead>
<tr>
<th>DECISION OF SUPREME COURTS</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Higher Administrative Court</td>
<td>21.07.2005</td>
<td>Administrative Case No. N6-1556/2005</td>
<td>The Court analysed the definition of national security and public order in a case of a Chechen applicant who was asking for the application of alternative measure to detention pending his expulsion and who had a minor child residing in Lithuania. The National Security Department was claiming in the case that the applicant poses a threat to national security of Lithuania, because he was maintaining relations with persons suspected in terrorist</td>
</tr>
</tbody>
</table>
activities, against whom investigations have been going on. Concerning the public order, the argument was that the applicant was charged with several administrative offences and thus it allegedly proves that he is not abiding by the laws of Lithuania and thus shows disrespect to the society and poses danger to the public order. The Court in its decision was of the opinion that the lower court by stating that the applicant poses danger to national security, relied only on the letter of the National Security Department, while it should have verified the information. Therefore, the Court repealed the decision of the first instance court and returned the case for reconsideration.

<table>
<thead>
<tr>
<th>DECISION OF APPEAL COURTS</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nothing to report</td>
<td></td>
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<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>DECISION(S) IN FIRST RESORT</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vilnius District Administrative Court</td>
<td>19.12.2005</td>
<td>Decision of the Court in the Case No. 1-2-17/2005 (unpublished)</td>
<td>Decision adopted in a highly politicized case concerning the appeal of a Russian national against refusal by the Migration Department to issue him with a residence permit. In adopting the decision, the court took into consideration the existing family relationship of the applicant in Lithuania, i.e. his wife, minor daughter, son and parents were residing in Lithuania, as well as economic relations of the applicant to this country. The Court came to the conclusion that there is no ground to restrict the human right of the applicant to respect of his personal and family life, right of the child not to be separated from the parent against his will, unless necessary for the interest of the child. The Court was of the opinion that in case of the expulsion of the</td>
</tr>
</tbody>
</table>
applicant allegedly on the basis of threat to constitutional setup, Article 8(1) of the ECHR and Article 9(1) of the UN Convention on the Rights of the Child would be violated, as restrictive measures are not proportional to applicant’s actions, a crime committed by him and purpose sought.

Vilnius District Administrative Court 15.07.2005 Decision of the Court in the Case No. III-27-20/2005 The Court balanced the foreigner’s family relations in Lithuania against his threat to national security and public order and concluded that the refusal to issue him residence permit was not necessary in a democratic society.

ANY SUPPLEMENTARY COMMENT ABOUT THE TREND OF THE JURISPRUDENCE:
None of the administrative courts approached by the author of this Report mentioned any case under their examination currently or earlier where the Directive would be applied. There are a few decisions that deal with family unity or/and family reunification issues, but without a reference to the Directive.

Q.91 Specify if there are or not problems with the translation of the text of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated.

There are no problems with the translation of the directive

There are some problems with the translation of (indicate the number of the articles concerned) of the directive.

Explain the difficulties that this could create: N/a
Q. 92 ANY OTHER INTERESTING ELEMENT

Q.92 A. Following your personal point of view, mention from the point of view of third country nationals and/or from the Member State any interesting or innovative practice in your Member State

Please use one table per practice and duplicate it if necessary

<table>
<thead>
<tr>
<th>OBJECT OF THE PRACTICE</th>
<th>EXPLANATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nothing to report</td>
<td></td>
</tr>
</tbody>
</table>

Q.92 B. Please add here any other interesting element in your Member State which you did not had the occasion to mention in your previous answers

Family reunification issue raised a debate in the Parliament and the media in 2007 concerning the rule of 2 years residence before family reunification can be requested. This was inspired by the sport clubs that faced problems with regard to families of sportsmen arriving to Lithuania with the purpose of playing in national teams. The debate intensified during 2007 also in respect to family members of foreign investors who come to work to Lithuania and are not able to bring their families.
QUESTIONNAIRE POUR LE RAPPORT NATIONAL
SUR
LA TRANSPPOSITION DE LA DIRECTIVE 2003/86
SUR LE DROIT AU REGROUPEMENT FAMILIAL DU 22 SEPTEMBRE 2003

LUXEMBOURG

par

Audrey Bertolotti
Avocat
Audrey.bertolotti@barreau.lu

Le coordinateur thématique en charge de cette directive que vous pouvez contacter si vous avez des questions ou besoin d'aide au cours du "remplissage" du questionnaire est : Yves PASCOUAU, 00 335 59 57 41 20; yves.pascouau@univ-pau.fr

COMMENTAIRES

1. La directive 2003/86 relative au droit au regroupement familial a fait l'objet d'une élaboration particulièrement difficile nécessitant une nouvelle proposition de la Commission avant d'aboutir en 2003. Elle vient de faire l'objet d'un arrêt de la Cour de justice, le 27 juin 2006, dans l'affaire Parlement contre Conseil, rejetant le recours en annulation déposé par le Parlement (C-540/03).

2. La transposition de la directive doit être évaluée au regard de la nature de la disposition en cause. Afin de guider le rapporteur, celle-ci vous est indiquée par un code couleur : disposition obligatoire (Q.XX), disposition optionnelle (Q.YY), disposition dérogatoire (Q.ZZ).

3. La Cour a strictement délimité la marge d'appréciation des États membres, y compris lorsque la directive leur offre des possibilités de dérogation. Elle déclare ainsi :

   " l’article 4, paragraphe 1, de la directive impose aux États membres des obligations positives précises, auxquelles correspondent des droits subjectifs clairement définis, puisqu’il leur impose, dans les hypothèses déterminées par la directive, d’autoriser le regroupement familial de certains membres de la famille du regroupant sans pouvoir exercer leur marge d’appréciation" (cons. 60).

   "Il convient en outre de tenir compte de l’article 17 de la directive qui impose aux États membres de prendre dûment en considération la nature et la solidité des liens familiaux de la personne et sa durée de résidence dans l’État membre ainsi que l’existence d’attaches familiales, culturelles ou sociales avec son pays d’origine. Ainsi qu’il ressort du point 56 du présent arrêt, de tels critères correspondent à ceux pris en considération par la Cour européenne des droits de l’homme lorsqu’elle vérifie si un État, qui a refusé une demande de regroupement familial, a correctement mis en balance les intérêts en présence" (cons. 65).

   "L’absence de définition de la notion d’intégration ne saurait être interprétée comme une autorisation conférée aux États membres d’utiliser cette notion d’une manière contraire aux principes généraux du droit communautaire et, plus particulièrement, aux droits fondamentaux. En effet, les États membres qui souhaitent faire usage de la dérogation ne peuvent utiliser une notion indéterminée d’intégration, mais doivent appliquer le critère d’intégration prévu par leur législation existant à la date de la mise..."
4. La clause de rendez-vous de l'article 19 indique quels ont été les thèmes les plus sensibles de la négociation (3, 4, 7, 8 et 13).

PREMIÈRE PARTIE

1. NORMES DE TRANSPOSITION ET JURISPRUDENCE

Q.1.A. Identifiez la ou les PRINCIPALE(S) norme(s) de transposition (en raison de leur contenu) et indiquez leur nature juridique

- Cette question inclut aussi les normes adoptées avant l'adoption de la directive mais assurant sa transposition (ce qui est qualifié de "pre-existing norm" dans la table de correspondance).
- Citez la norme de transposition et pas seulement la disposition modifiée par celle-ci (cela vaut également dans le cas où il existe un code des étrangers).
- Au sujet de la nature juridique dans la table ci-après : legislative se réfère à une norme adoptée en principe par le parlement ; regulation correspond à une norme complétant la loi et adoptée en principe par le pouvoir exécutif ; circular or instructions correspond à des règles pratiques d'application de la loi et aux réglementations adoptées en principes par les autorités administratives.

**Dupliquez la table ci-dessous s'il existe plus d'une norme principale de transposition**

Cette table concerne : [ ] un texte déjà adopté [X] un texte qui est un projet à adopter

**TITRE**: Loi sur la libre circulation des personnes et l'immigration

**DATE**: Déposé le 7 novembre 2007

**NUMBER**: projet n° 5802

**DATE D'ENTREE EN VIGUEUR** :

**DISPOSITIONS CONCERNEES** (par exemple si la norme ne concerne pas uniquement la transposition de la directive) : articles 68 à 77

**REFERENCES DE PUBLICATION AU JOURNAL OFFICIEL** :

- [X] LEGISLATIVE:
- [ ] REGULATION:
- [ ] CIRCULAR or INSTRUCTIONS:

Q.1.B. Listez les autres normes de transposition par ordre d'importance juridique (en premier lieu les lois, ensuite les réglements, et enfin les circulaires et instructions):

- Cette question inclut aussi les normes adoptées avant l'adoption de la directive mais assurant sa transposition (ce qui est qualifié de "pre-existing norm" dans la table de correspondance).
- Citez la norme de transposition et pas seulement la disposition modifiée par celle-ci (cela vaut également dans le cas où il existe un code des étrangers).
<table>
<thead>
<tr>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>DATE: 7 novembre 1996</td>
</tr>
<tr>
<td>NUMBER: Les lois luxembourgeoises ne revêtent pas de numéro.</td>
</tr>
<tr>
<td>DATE D'ENTREE EN VIGUEUR: 1er janvier 1997</td>
</tr>
<tr>
<td>DISPOSITIONS CONCERNEES (par exemple si la norme ne concerne pas uniquement la transposition de la directive): antérieure à la transposition de la directive – article 2 (1) de la loi</td>
</tr>
<tr>
<td>REFERENCES DE PUBLICATION AU JOURNAL OFFICIEL: Mémorial A - n° 79 du 19 novembre 1996</td>
</tr>
<tr>
<td>NATURE JURIDIQUE (cochez la case correspondante):</td>
</tr>
<tr>
<td>[x] LEGISLATIVE</td>
</tr>
<tr>
<td>[ ] REGULATION</td>
</tr>
<tr>
<td>[ ] CIRCULAR OR INSTRUCTIONS</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>TITRE: Loi du 20 décembre 1993 portant</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) approbation de la Convention relative aux droits de l’enfant, adoptée par l’Assemblée générale des Nations Unies le 20 novembre 1989,</td>
</tr>
<tr>
<td>2) modification de certaines dispositions du code civil.</td>
</tr>
<tr>
<td>DATE: 20 décembre 1993</td>
</tr>
<tr>
<td>NUMBER: Les lois luxembourgeoises ne revêtent pas de numéro (projet de loi n° 3608 )</td>
</tr>
<tr>
<td>DATE D'ENTREE EN VIGUEUR: 1er janvier 1994</td>
</tr>
<tr>
<td>DISPOSITIONS CONCERNEES (par exemple si la norme ne concerne pas uniquement la transposition de la directive): antérieure à la transposition de la directive – article 3 de la Convention</td>
</tr>
<tr>
<td>REFERENCES DE PUBLICATION AU JOURNAL OFFICIEL: Mémorial A - n° 104 du 29 décembre 2006</td>
</tr>
<tr>
<td>NATURE JURIDIQUE (cochez la case correspondante):</td>
</tr>
<tr>
<td>[x] LEGISLATIVE</td>
</tr>
<tr>
<td>[ ] REGULATION</td>
</tr>
<tr>
<td>[ ] CIRCULAR OR INSTRUCTIONS</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>TITRE: Projet de règlement grand-ducal définissant les critères de ressources et de logement prévus par la loi sur la libre circulation des personnes et de l’immigration</th>
</tr>
</thead>
<tbody>
<tr>
<td>DATE: non encore déposé</td>
</tr>
<tr>
<td>NUMBER:</td>
</tr>
<tr>
<td>DATE D'ENTREE EN VIGUEUR:</td>
</tr>
<tr>
<td>DISPOSITIONS CONCERNEES (par exemple si la norme ne concerne pas uniquement la transposition de la directive)</td>
</tr>
<tr>
<td>REFERENCES DE PUBLICATION AU JOURNAL OFFICIEL:</td>
</tr>
<tr>
<td>NATURE JURIDIQUE (cochez la case correspondante):</td>
</tr>
<tr>
<td>[ ] LEGISLATIVE</td>
</tr>
<tr>
<td>[x] REGULATION</td>
</tr>
<tr>
<td>[ ] CIRCULAR OR INSTRUCTIONS</td>
</tr>
</tbody>
</table>
TITRE: Règlement grand-ducal modifié du 25 février 1979 déterminant les critères de location, de salubrité ou d’hygiène auxquels doivent répondre les logements destinés à la location.

DATE: 25 février 1979

NUMBER: Les règlements grand-ducaux ne revêtent pas de numéro.

DATE D'ENTREE EN VIGUEUR: 2 mars 1979

DISPOSITIONS CONCERNEES (par exemple si la norme ne concerne pas uniquement la transposition de la directive): antérieure à la transposition de la directive – articles 1 à 8

REFERENCES DE PUBLICATION AU JOURNAL OFFICIEL: Mémorial A - n° 16 du 27 février 1979, pp. 320s

NATURE JURIDIQUE (cochez la case correspondante):

- [ ] LEGISLATIVE
- [x] REGULATION
- [ ] CIRCULAR OR INSTRUCTIONS

Q.2. CETTE QUESTION NE CONCERNE EN PRINCIPE QUE LES ETATS FEDERAUX OU ASSIMILES TELS QUE L'AUTRICHE, LA BELGIQUE, L'ALLEMAGNE, L'ITALIE ET L'ESPAGNE

Q.2.A. Expliquez quel niveau de gouvernement est compétent pour adopter les normes de transposition.

*Insérez vos réponses dans le tableau ci-dessous*

<table>
<thead>
<tr>
<th>LEGISLATIVE RULES</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</td>
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<tr>
<td>COMPETENCES OF THE COMPONENTS:</td>
</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
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<th>REGULATIONS</th>
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<td>EXPLANATIONS IF NECESSARY:</td>
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<td>COMPETENCES OF THE COMPONENTS:</td>
</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
</tr>
</tbody>
</table>

Q.2.B. In case, explain if the federal structure and the distribution of competences between the different levels pose any problem or difficulty regarding the transposition and/or the implementation of the directive.

Q.3. Expliquez quelles autorités sont compétentes pour l'application pratique des normes de transposition par l'adoption de decisions individuelles Explain which authorities are competent for the practical implementation of the norm of transposition by taking the decisions in individual cases.
Please use one table per competence concerned and duplicate it if necessary

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNEE:</th>
<th>Asile et immigration</th>
</tr>
</thead>
<tbody>
<tr>
<td>MINISTERE DE:</td>
<td>Ministère des Affaires étrangères et de l’Immigration</td>
</tr>
<tr>
<td>DIRECTION OU SERVICE DANS L'ADMINISTRATION PRECITEE:</td>
<td>Direction de l’Immigration, Service des Etrangers</td>
</tr>
<tr>
<td>AUTRES NIVEAUX D'ADMINISTRATION:</td>
<td></td>
</tr>
<tr>
<td>SI NECESSAIRE, PORTEZ UN COMMENTAIRE SUR LA NATURE DE L'AUTORITE CONCERNEE (par exemple si elle est indépendante du ministère compétent)</td>
<td>Le Service des Étrangers de la Direction de l’Immigration dépend du ministère des Affaires étrangères et de l’Immigration.</td>
</tr>
</tbody>
</table>

Q.4. A. Est ce que la principale règle d'exécution prévue par la norme principale de transposition a été adoptée ou non (autrement dit le décret d'application principal prévu par la loi a-t-il été adopté)

☐ OUI

☒ NON

Il est question d’un projet de règlement grand-ducal. Cependant, son contenu n’a pas encore été rendu public.

Q.4.B. Si la ou les principale(s) norme(s) de transposition prévoient l’adoption d’une ou plusieurs réglementation (au sens de regulation), indiquez si elles ont toutes été adoptées:

☐ OUI

☐ NON

Si non, indiquez les textes manquant dans la table ci dessous

Utilisez une ligne par texte faisant défaut et dupliquez autant que nécessaire

<table>
<thead>
<tr>
<th>TEXTES MANQUANTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>INDIQUEZ ICI LES TEXTES MANQUANTS</td>
</tr>
</tbody>
</table>

Ajoutez si nécessaire des explications (spécifiez en particulier si les textes manquant sont en cours de préparation ou prévus dans un future proche):
SECONDE PARTIE

BUT (ARTICLE 1)

L’objectif de la directive est de fixer les modalités d'exercice du droit au regroupement familial. Dans son arrêt C-540/03, la Cour reconnaît que, dans certains cas, les États membres n'ont pas de marge d'appréciation pour accorder le droit au regroupement familial.

Q.5 – Le regroupement familial est-il un droit dans l'État membre ?

[ ] OUI
[ ] NON

Expliquez ou illustrez

On comprend de l’exposé des motifs de l’article 70 du Projet que le regroupement familial est un droit pour le conjoint ou le partenaire du regroupant ainsi que les enfants mineurs.

Par contre, concernant le regroupement familial des autres personnes listées à l’article 70 (5) du Projet (ascendants en ligne directe, enfants majeurs célibataires, tuteur légal du réfugié mineur), le ministre dispose d’un pouvoir discrétionnaire lui permettant d’accorder ou non le regroupement sur base d’une appréciation au cas par cas, et ce en dépit des dispositions des articles 4.2 et 4.3 de la Directive (« Les États membres peuvent, par voie législative ou réglementaire, autoriser l’entrée et le séjour […] »).

Commentaire article 70 :

« Les personnes qui bénéficient du regroupement familial sont les membres de la famille proche, c’est-à-dire le conjoint ou le partenaire et les enfants mineurs, à condition qu’ils n’aient pas encore fondé leur propre foyer. La polygamie étant interdite, seuls un conjoint et ses enfants peuvent bénéficier du droit au regroupement familial.

Le paragraphe (5) tend à assouplir la règle déterminant le cercle des bénéficiaires du regroupement familial établie au paragraphe (1). Il donne au ministre une compétence discrétionnaire qui lui permet d’accorder le droit au regroupement familial aux enfants majeurs incapables de subvenir à leurs propres besoins en raison de leur état de santé et aux ascendants qui sont à la charge du regroupant, de même qu’au tuteur ou à d’autres membres de la famille du réfugié mineur non accompagné. Ce regroupement familial élargi n’étant qu’exceptionnel, il laisse au ministre un pouvoir d’appréciation qui s’exerce au cas par cas. Il convient à cet égard de noter que le fait d’objectiver toute une série de critères applicables dans certaines situations n’enlève par ailleurs rien au pouvoir discrétionnaire du ministre, dans les autres situations. Par ailleurs, il y a lieu de préciser que le droit au regroupement familial est subordonné impérativement au respect de la sécurité et de l’ordre publics. »
Q.5. A – L’exercice du droit au regroupement familial dans votre Etat membre entre 2002 et 2006 donne-t-il matière à évaluation chiffrée et laquelle, y compris par nationalité ?

Nous ne disposons pas de cette information et au vu du court délai entre l’élaboration de ce rapport et la date pour le soumettre, nous n’avons pas été en mesure d’obtenir des autorités compétentes ces informations.

DEFINITIONS (ARTICLE 2)

CHAMP D'APPLICATION (ARTICLE 3)

La détermination du champ d'application du texte est fixée par l'article 3. On signalera que :
- le §1 "perspective fondée..."a pour fonction d’écarter les personnes séjournant temporairement (stagiaire, etc…)
- les citoyens de l’Union sont exclus (§3)
- la comparaison avec l'état du droit national existant est importante afin de déterminer la valeur ajoutée ou non de l'harmonisation (§5)

Q.6. La durée de validité du titre de séjour du regroupant :

Q.6. A. La durée de validité du titre de séjour dont le regroupant doit être titulaire est-elle supérieure ou égale à un an conformément à l’article 3. 1 ?

☑ OUI

☐ NON

Q.6.B. Indiquez précisément la durée prévue par votre législation nationale :

L’article 69 (1) du Projet n’indique pas une durée précise et mentionne simplement : « Le ressortissant d’un pays tiers qui est titulaire d’une autorisation de séjour d’une durée de validité d’au moins un an […] peut demander le regroupement familial […] ».

Q.6.C. Comment votre Etat a-t-il traduit-il dans son droit interne l’exigence pour le regroupant d’avoir « une perspective fondée d’obtenir un droit de séjour permanent” (a3 §1) ?

L’expression n’a pas été reprise littéralement en droit luxembourgeois. Ainsi, le projet de loi mentionne « une perspective fondée d’obtenir un droit de séjour de longue durée. »

L’article 81 du Projet précise que « Pour l’obtention du statut de résident de longue durée, le ressortissant de pays tiers doit remplir les conditions suivantes :
1. il rapporte la preuve qu’il dispose de ressources stables, régulières et suffisantes pour subvenir à ses propres besoins et à ceux des membres de sa famille qui sont à sa charge, sans recourir au système d’assistance sociale, conformément aux conditions et modalités définies par règlement grand-ducal ;
2. il dispose d’un logement approprié ;
3. il dispose de la couverture d’une assurance maladie pour lui-même et les membres de sa famille ;
4. *il ne représente pas un danger pour l’ordre public ou la sécurité publique.*

Il ressort du prédit article que les conditions pour obtenir le statut de résident de longue durée sont les mêmes que celles requises pour formuler une demande de regroupement familial, exception faite de la condition de la durée de séjour.

**Q.7.** – Les membres de la famille concernés :

**Q7. A.** Sont-ils des ressortissants de pays tiers conformément à l’article 3 §1 ?

☐ OUI

☐ NON

L’article 69 (1) du Projet dispose que « *Le ressortissant de pays tiers [...] peut demander le regroupement familial des membres de sa famille définis à l’article 70 [...]* ».

L’article 70 liste les membres de famille susceptibles de bénéficier du regroupement tout en précisant que « […] l’entrée et le séjour est autorisé aux membres de famille *ressortissants de pays tiers [...]* ».

Expliquez si non

**Q.7.B.** Comment votre Etat a-t-il traduit dans son droit interne la mention « indépendamment de leur statut juridique" qui figure à l’article 3.1 ?

Cette notion n’a pas été reprise par le droit interne luxembourgeois.

**Q.8** – La transposition de la directive porte-t-elle atteinte à des dispositions internationales plus favorables pour les individus (a.3 §4)?

☐ OUI

☐ NON

L’article 38 mentionne en effet que les dispositions du Projet s’appliquent sans préjudice des dispositions plus favorables adoptées par le biais d’accords bilatéraux ou multilatéraux avec des pays tiers.

**Q.9** – Si oui, ces dispositions sont-elles issues de :

**Q.9.A** - des accords bilatéraux et multilatéraux entre la Communauté ou la Communauté et ses États membres, d’une part, et des pays tiers ?

☐ OUI

☐ NON

Précisez lesquelles
Q.9.B - de la Charte sociale européenne du 18 octobre 1961 (a.3 §4)?

☐ OUI
☐ NON

Précisez lesquelles

Q.9.C. De la Charte sociale européenne modifiée du 3 mai 1987 (a.3 §4)?

☐ OUI
☐ NON

Précisez lesquelles

Q.9.D. De la Convention européenne relative au statut juridique du travailleur migrant du 24 novembre 1977 (a.3 §4)?

☐ OUI
☐ NON

Précisez lesquelles

Q.10 – La transposition de la directive met-elle fin à des dispositions nationales plus favorables pour les individus (a.3 §5) ?

☒ OUI
☐ NON

Si oui, précisez lesquelles

Quant au critère des ressources suffisantes : Auparavant, il n’existait pas de dispositions spécifiques concernant le regroupement familial, qui était exclusivement basé sur l’article 8 de la CEDH.

Dans la pratique, on exigeait parfois du requérant au regroupement familial qu’il remplisse les conditions de l’article 2 de la loi modifiée du 28 mars 1972 concernant 1. l’entrée et le séjour des étrangers, 2. le contrôle médical des étrangers et 3. l’emploi de la main d’œuvre étrangère. Sur base de l’article 2 précité, la demande en regroupement familial était refusée si le requérant « ne dispose pas de moyens personnels suffisants pour supporter les frais de voyage et de séjour » (Tribunal administratif, 12 décembre 2002, n° 14789 ; Tribunal administratif, 13 juillet 2006, n° 20957). Cependant, la jurisprudence n’était pas tranchée sur ce point et on trouvait également des décisions dans lesquelles la question de la situation financière du demandeur n’était pas examinée.

Quant aux personnes pouvant bénéficier du regroupement familial : Auparavant, il n’existait pas de dispositions spécifiques concernant le regroupement familial, qui était exclusivement basé sur l’article 8 de la CEDH.
Ainsi, le regroupement familial n’était pas limité à certaines catégories de personnes. Toute personne pouvait présenter une demande et théoriquement bénéficier du regroupement familial si les critères suivants étaient remplis :
- existence d’une vie familiale, et
- vie familiale interrompue par l’immigration d’une de ces personnes, et
- la personne demandant le regroupement ne tombe pas dans le champ d’application de l’article 8 §2 de la CEDH.

La CEDH étant une norme supérieure au droit national et partant à la future loi de transposition de la Directive, son application et les critères s’y rattachant devraient toujours pouvoir être invoqués malgré la Directive.

**BENEFICIAIRES (ARTICLE 4)**

- L'article 4 ne présente pas de difficultés particulières si ce n'est les nombreuses facultés (les Etats "peuvent"...) offertes aux États membres. Il convient donc de bien s'assurer de l'utilisation ou non de ces facultés par les États et des modalités juridiques de cette utilisation.

- L'article 4 §1 a) à d) formule un droit au regroupement familial pour une série de membres de la famille destinataires de ce droit. L'État ne dispose d'aucune marge d'appréciation à leur égard.

- L'article 4 §1 dernier alinéa formule une dérogation concernant les enfants de 12 ans sur la base d'un critère d'intégration. Il s'agit de l'une des questions les plus sensibles tout comme celle de l'âge limite de quinze ans du §6.

- En ce qui concerne l'article 4 §6, la Cour de justice indique : "il importe peu que la dernière phrase de la disposition attaquée prévoie que les États membres qui décident de faire usage de la dérogation autorisent l’entrée et le séjour des enfants au sujet desquels la demande est introduite après qu’ils ont atteint l’âge de 15 ans «pour d’autres motifs que le regroupement familial». L’expression «regroupement familial» doit en effet être interprétée dans le contexte de la directive comme visant le regroupement familial dans les hypothèses où il est imposé par cette directive. Elle ne saurait être interprétée comme interdisant à un État membre, qui a fait usage de la dérogation, d’autoriser l’entrée et le séjour d’un enfant afin de lui permettre de rejoindre ses parents" (cons.86). Elle ajoute : "l'article 4, paragraphe 6, de la directive doit en outre être lu à la lumière des principes figurant aux articles 5, paragraphe 5, de la même directive, qui impose aux États membres de prendre dûment en considération l’intérêt supérieur de l’enfant mineur, et 17 de cette directive, qui leur impose de prendre en considération un ensemble d’éléments parmi lesquels figurent les liens familiaux de la personne" (cons.87).

**Q.11** – Le droit national reconnaît-il le droit au regroupement familial pour :

**Q.11. A - Le conjoint du regroupant (a.4 §1,a) ?**

☐ OUI

☐ NON
Q.11. B - Les enfants mineurs du regroupant et de son conjoint (a.4 §1 b) ?

☐ OUI
☐ NON

Q.11.C. Les enfants mineurs adoptés du regroupant et de son conjoint (a 4 §1 b) ?

☐ OUI
☒ NON

La disposition visant expressément les enfants adoptés n’a pas été reprise par le Projet.

Q.11.D. Les enfants mineurs du regroupant (a 4 §1.c.) ?

☒ OUI
☐ NON

Q.11. E. Si oui, votre législation nationale prévoit-elle bien que le regroupant doit avoir la garde et la charge de ces enfants ?

☒ OUI
☐ NON

Précisez éventuellement quelles preuves sont exigées du demandeur

Le Projet ne précise pas davantage que la Directive quelles sont les preuves exigées du demandeur pour établir qu’il a bien la garde et la charge de ses enfants. L’article 73 reprend en effet mot pour mot les dispositions de l’article 5.2 paragraphes 1 et 2 de la Directive.

Les commentaires du Projet de loi n’apportent pas plus de précision quant aux documents attendus du regroupant.

Q.11 F. Les enfants mineurs adoptés du regroupant (a 4 §1.c ) ?

☐ OUI
☒ NON

La disposition visant expressément les enfants adoptés n’a pas été reprise par le Projet.

Q.11. G. Si oui :

h. Votre législation nationale prévoit-elle que le regroupant doit avoir la garde et la charge de ces enfants ?

☒ OUI
Précisez éventuellement quelles preuves sont exigées du demandeur.

Voir commentaire sous question 11E.

La législation de votre État prévoit-elle que ces enfants sont adoptés "conformément à une décision prise par l'autorité compétente de l'État membre concerné ou à une décision exécutoire de plein droit en vertu d'obligations internationales dudit État membre ou qui doit être reconnue conformément à des obligations internationales"?

☐ OUI  ☑ NON

Cette mention n'a pas été reprise par le Projet, d'autant plus que, comme mentionné plus haut, les enfants adoptés ne sont visés expressément nulle part.

Précisez éventuellement quelles preuves sont exigées du demandeur.

Q.11. H. Les enfants mineurs du conjoint du regroupant (a 4 §1.d) ?

☐ OUI  ☑ NON

Q.11. I. Si oui, votre législation nationale prévoit-elle bien que le conjoint doit avoir la garde et la charge de ces enfants ?

☐ OUI  ☑ NON

Précisez éventuellement quelles preuves sont exigées du demandeur.

Voir commentaire sous question 11E.

Q.11. J. Les enfants mineurs adoptés du conjoint (a 4 §1.d) ?

☐ OUI  ☑ NON

La disposition visant expressément les enfants adoptés n’a pas été reprise par le Projet.

Q.11. K. Si oui

k Votre législation nationale prévoit-elle bien que le conjoint doit avoir la garde et la charge de ces enfants ?
Précisez éventuellement quelles preuves sont exigées du demandeur

Voir commentaire sous question 11E.

**k.k.** La législation de votre Etat prévoit-elle que ces enfants sont adoptés "conformément à une décision prise par l'autorité compétente de l'État membre concerné ou à une décision exécutoire de plein droit en vertu d'obligations internationales dudit État membre ou qui doit être reconnue conformément à des obligations internationales"?

☐ OUI
☒ NON

Cette mention n'a pas été reprise par le Projet, d’autant plus que, comme mentionné plus haut, les enfants adoptés ne sont visés expressément nulle part.

Précisez quelles preuves sont exigées du demandeur

**Q.12** – L’Etat membre a-t-il transposé la faculté offerte par l'article 4 §1 c :

**Q.12A.** d’autoriser le regroupement des enfants mineurs du regroupant - y compris les enfants adoptés - quand le droit de garde est partagé (a 4 §1.c) ?

☒ OUI
☐ NON

Préciser si nécessaire

**Réserve** : Cette faculté a été prévue à l’article 70 (1) c du Projet mais ne concerne que les enfants légitimes et naturels. Les enfants adoptés n’y sont pas mentionnés.

**Q.12.B.** Si oui, la législation de votre Etat a-t-elle transposé la condition que l’autre titulaire du droit de garde ait donné son accord (a 4 §1. c) ?

☒ OUI
☐ NON

Préciser si nécessaire

**Q.13** – L’Etat membre a-t-il transposé la faculté offerte par l'article 4 §1 d) :
Q.13.A. d’autoriser le regroupement des enfants mineurs du conjoint - y compris les enfants adoptés- quand le droit de garde est partagé (a 4.1.d. in fine) ?

[X] OUI
[ ] NON

Préciser si nécessaire

Réserve : Cette faculté a été prévue à l’article 70 (1) c du Projet mais ne concerne que les enfants légitimes et naturels. Les enfants adoptés n’y sont pas mentionnés.

Q.13 B. Si oui, la législation de votre Etat a-t-elle transposé la condition que l’autre titulaire du droit de garde ait donné son accord (a 4. 1.d) ?

[X] OUI
[ ] NON

Préciser si nécessaire

Q.14 – Dans tous les cas visés aux Q 7 à Q 9, l’âge de minorité des enfants est-il inférieur à la majorité légale dans l’Etat membre (a.4 §1 alinea 2) ?

[X] OUI
[ ] NON

Si oui, indiquez quel est l’âge requis

Moins de 18 ans.

Q.15 – Dans tous les cas visés aux Q 7 à Q 9, l’interdiction de mariage des enfants mineurs est-elle transposée (a.4 §1 alinea 2) ?

[X] OUI
[ ] NON

Si non, expliquez

Q.16 – La dérogation de l'article 4§1 dernier alinéa relative à la satisfaction d'un critère d'intégration des enfants de plus de 12 ans arrivés indépendamment du reste de la famille est-elle utilisée par l'Etat membre ?

[ ] OUI
[X] NON
Comment le critère de l'arrivée "indépendamment du reste de la famille" est-il transposé ?

Q.17 – Si oui, ce critère d'intégration existait-il en droit interne à la date de la transposition de la directive ?

☐ OUI

☒ NON

Q.18 – Décrivez brièvement en quoi consiste ce critère, sa date de création et ses modalités d'examen

Q.19 – Les enfants de réfugiés sont-ils soumis à un test d'intégration par l'Etat membre (en contradiction avec l'article 10§1) ?

☐ OUI

☒ NON

Le Projet n’a pas transposé l’article 10§1 de la Directive. Aucune disposition du présent projet ne prévoit par ailleurs un tel test pour qui que ce soit.

N.B. : il est envisagé de modifier, voire de remplacer la loi du 27 juillet 1993 concernant l’intégration des étrangers au Grand-Duché de Luxembourg. Nous ignorons encore quelle sera la teneur de ces modifications mais préférons souligner l’éventualité que des critères d’intégration dans le cadre du regroupement familial y soient intégrés.

Si oui, expliquez

Q.20 – L'Etat membre autorise-t-il :

Q.20 A - le regroupement des ascendants en ligne directe au premier degré du regroupant (a 4§2 a) ?

☒ OUI

☐ NON

Cette autorisation est prévue à l’article 70 (5) du Projet mais relève d’un pouvoir discrétionnaire du ministre.

Q.20 B - Si oui, doivent-ils être à charge et dépourvu du soutien familial nécessaire dans le pays d'origine ?

☒ OUI

☐ NON

Comment chacun de ces deux critères est-il transposé et vérifié ?
Ces deux critères ont été transposés littéralement à l’article 70 (5) du Projet et n’ont pas été précisé plus avant.

Cette absence de précision s’explique peut-être en partie que ces critères sont de toute façon appréciés de manière discrétionnaire par le ministre. En effet, les commentaires de l’article 70 (5) nous indiquent que « Il convient à cet égard de noter que le fait d'objectiver toute une série de critères applicables dans certaines situations n’enlèvera par ailleurs rien au pouvoir discrétionnaire du ministre, dans les autres situations. Par ailleurs, il y a lieu de préciser que le droit au regroupement familial est subordonné impérativement au respect de la sécurité et de l'ordre publics. »

Q. 20.C. Le regroupement des ascendants en ligne directe au premier degré du conjoint du regroupant (a 4§2 a) ?

☐ OUI
☐ NON

Q.20.D. Si oui, doivent-ils être à charge et dépourvu du soutien familial nécessaire dans le pays d'origine ?

☐ OUI
☐ NON

Comment chacun de ces deux critères est-il transposé et vérifié ?

Idem que réponse 20B.

Q.20.E. autorise-t-il le regroupement des enfants majeurs célibataires du regroupant (a 4§2 b) ?

☐ OUI
☐ NON

Si nécessaire, précisez de quelle manière est aménagé cette procédure

Q .20.F. Si oui, la législation nationale de votre Etat impose-t-elle que ces enfants majeurs célibataires du regroupant soient objectivement dans l'incapacité de subvenir à leurs propres besoins en raison de leur état de santé (a 4 §2 b) ?

☐ OUI
☐ NON

Si nécessaire, précisez comment chacun de ces deux critères ("objectivement" et incapacité de subvenir à leurs besoins…” est-il transposé et vérifié ?

Idem que réponse 20B.
Q.20. G. L'État membre autorise-t-il le regroupement des enfants majeurs célibataires du conjoint du regroupant (a 4§2 b) ?

☑ OUI

☐ NON

Si nécessaire, précisez comment cette condition est appréciée

Q.20.H. Si oui, la législation nationale de votre État impose-t-elle que ces enfants majeurs célibataires du conjoint du regroupant soient objectivement dans l'incapacité de subvenir à leurs propres besoins en raison de leur état de santé (a 4 §2 b) ?

☑ OUI

☐ NON

Si nécessaire, précisez comment chacun de ces deux critères ("objectivement" et incapacité de subvenir à leurs besoins…” est-il transposé et vérifié ?

Idem que réponse 20B.

Q.20. I. L’État membre a-t-il utilisé la voie législative ou réglementaire pour mettre en œuvre l’article 4 §2 a et b ?

☐ OUI

☑ NON

Selon l’article 70 (5), c’est le ministre qui peut accorder l’entrée et le séjour aux personnes susvisées. Le regroupement familial dans ce contexte n’est régi par aucun texte mais relève du pouvoir discrétionnaire du ministre.

Commentaire article 70 (5) :

« Le paragraphe (5) tend à assouplir la règle déterminant le cercle des bénéficiaires du regroupement familial établie au paragraphe (1). Il donne au ministre une compétence discrétionnaire qui lui permet d’accorder le droit au regroupement familial aux enfants majeurs incapables de subvenir à leurs propres besoins en raison de leur état de santé et aux ascendants qui sont à la charge du regroupant, de même qu’au tuteur ou à d’autres membres de la famille du réfugié mineur non accompagné. Ce regroupement familial élargi n’étant qu’exceptionnel, il laisse au ministre un pouvoir d’appréciation qui s’exerce au cas par cas. Il convient à cet égard de noter que le fait d’objectiver toute une série de critères applicables dans certaines situations n’enlèве par ailleurs rien au pouvoir discrétionnaire du ministre, dans les autres situations. »
Q.21 – L’État membre autorise-t-il le regroupement du partenaire ressortissant d’un État tiers non marié du regroupant (a 4 §3)?

☐ OUI

☐ NON

Réserve : il convient cependant de nuancer cette réponse. En effet, l’article 70 (1) b du Projet dispose que « […] l’entrée et le séjour du est autorisé aux membres de famille ressortissants de pays tiers suivants : […]

b) le partenaire non marié qui est lié au regroupant par un partenariat enregistré, dans le respect des conditions prévues par la loi du 9 juillet 2004 relative aux effets légaux de certains partenariats ; […] ».

Il en ressort que l’exercice du regroupement familial de cette catégorie de personnes est subordonné à l’enregistrement préalable du partenariat selon la loi du 9 juillet 2004 relative aux effets légaux de certains partenariats. Or, il est difficilement envisageable, sinon impossible pour un partenaire non marié se trouvant dans l’État tiers d’origine de faire enregistrer son partenariat alors que l’article 4.4. la loi du 9 juillet 2004 exige que les deux partenaires résident légalement sur le territoire luxembourgeois pour pouvoir se faire enregistrer.

Cette condition d’enregistrement a par conséquent pour effet concret de priver de toute efficacité la disposition de l’article 70 (1) b.

A noter encore qu’au-delà de cette restriction procédurale, l’article 70 (5) b limite la notion de partenaire non marié à celle exclusivement définie par la loi luxembourgeoise, avec pour conséquence le risque de nier les particularités propres à certaines cultures.

Q.22 – Si oui :

Q.22 A - Ce partenariat doit-il fondé sur une relation durable et stable dûment prouvé ?

☐ OUI

☐ NON

Cette condition n’a pas été transposée par le droit national, certainement du fait que, ainsi que mentionné plus haut, le regroupement familial du partenaire n’est dans les faits, pas possible.

Si oui, précisez comment l’État apprécie cette situation

Q.22 B - Ce partenariat doit-il être enregistré ?

☐ OUI

☐ NON

Or, ainsi que mentionné à la question 21, un problème pratique relatif à la formalité de l’enregistrement se pose : l’article 4.4. la loi du 9 juillet 2004 exige en effet que les
deux partenaires résident légalement sur le territoire luxembourgeois pour pouvoir se faire enregistrer. Or par définition, le partenaire non marié du regroupant n’est pas encore sur le territoire luxembourgeois lorsqu’est formulée la demande en regroupement familial.

**Q.23** – Le droit de l'Etat membre assimile-t-il le partenaire enregistré au conjoint (a 4 §3 alinéa 2) ?

☐ OUI

☒ NON

Exposé des motifs du projet de loi concernant la loi du 9 juillet 2004 relative aux effets légaux de certains partenariats :

« Faut-il dès lors prévoir pour ces unions de fait des dispositions détaillées qui se rapprochent de celles du mariage? Le Gouvernement répond à cette question par la négative. Il estime que ceux qui refusent de se lier juridiquement par un mariage civil refuseront de même de se lier juridiquement par un contrat similaire, quel que soit le nom donné à ce dernier. »

**Q.24** – L'Etat membre autorise-t-il :

**Q.24. A** – Le regroupement des enfants mineurs du partenaire, y compris les enfants adoptés (a 4§3)?

☒ OUI

☐ NON

**Réserve** : Cette faculté a été prévue à l’article 70 (1) c du Projet mais ne concerne que les enfants légitimes et naturels. Les enfants adoptés n’y sont pas mentionnés.

**Q.24. B** – Le regroupement des enfants majeurs non mariés du partenaire, y compris les enfants adoptés (a 4§3)

☒ OUI

☐ NON

**Réserve** : Cette faculté a été prévue à l’article 70 (1) c du Projet mais ne concerne que les enfants légitimes et naturels. Les enfants adoptés n’y sont pas mentionnés.
Q.25 – L’État membre autorise-t-il le regroupement des enfants majeurs célibataires du partenaire qui sont objectivement dans l’incapacité de subvenir à leurs propres besoins en raison de leur état de santé (a 4§3)?

☒ OUI
☐ NON

Si oui, précisez notamment la condition "objective"

Aucune précision quant à la notion de « condition objective. »

Q.26 – L’État membre a-t-il utilisé la voie législative ou réglementaire pour mettre en œuvre l’article 4 §3) ?

Selon l’article 70 (5), c’est le ministre qui peut accorder l’entrée et le séjour aux personnes susvisées. Partant, le regroupement familial dans ce contexte n’est régi par aucun texte mais relève du pouvoir discrétionnaire du ministre.

Commentaire article 70 (5) :

« Le paragraphe (5) tend à assouplir la règle déterminant le cercle des bénéficiaires du regroupement familial établie au paragraphe (1). Il donne au ministre une compétence discrétionnaire qui lui permet d’accorder le droit au regroupement familial aux enfants majeurs incapables de subvenir à leurs propres besoins en raison de leur état de santé et aux ascendants qui sont à la charge du regroupant, de même qu’au tuteur ou à d’autres membres de la famille du réfugié mineur non accompagné. Ce regroupement familial élargi n’étant qu’exceptionnel, il laisse au ministre un pouvoir d’appréciation qui s’exerce au cas par cas. Il convient à cet égard de noter que le fait d’objectiver toute une série de critères applicables dans certaines situations n’enlève par ailleurs rien au pouvoir discrétionnaire du ministre, dans les autres situations. »

Q.27 – L’interdiction du regroupement polygame est-elle formulée par le droit interne de l’État membre (a. 4§4)?

☒ OUI
☐ NON

Article 70 (3) du Projet.

Q.28 – L’État membre impose-t-il des restrictions concernant le regroupement familial des enfants mineurs d’un autre conjoint auprès du regroupant (article 4§4 dernier alinéa,) ?

☒ OUI
☐ NON
L’article 4§4 dernier alinéa n’a pas été transposé en droit interne. Cependant, selon les commentaires de l’article 70 (2), « la polygamie étant interdite, seuls un conjoint et ses enfants peuvent bénéficier du droit au regroupement familial. »

Q.29 – L’Etat membre utilise-t-il l’option de l’article 4§5 relative à un âge minimal de 21 ans concernant le regroupement du conjoint ?

☐ OUI
☐ NON

Selon l’article 70 (2) du Projet, le conjoint ou partenaire doit être âgé d’au moins 18 ans.

Q.30 – Si oui

Q.30 A - Quel âge est retenu ?

18 ans

Q.30 B - La dérogation est-elle fondée sur le critère d’intégration et/ou la prévention des mariages forcés ?

L’âge de 18 ans n’est pas justifié dans le texte du projet de loi.

Q.31 – L’Etat membre fait-il usage de la dérogation de l’article 4§6 en demandant que la demande de regroupement d’un enfant mineur soit introduite avant l’âge de 15 ans ?

☐ OUI
☒ NON

Expliquez

La disposition n’a pas été transposée en droit luxembourgeois.

Q.32 – Si oui, la législation nationale en vigueur le prévoyait-elle à la date de la transposition et de quelle manière ?

Q.33 – Si la demande n’est pas introduite avant l’âge de 15 ans, les Etats membres autorisent-ils l’entrée et le séjour pour d'autres motifs que le regroupement ?

☐ OUI
☐ NON

Lesquels et à quelles conditions ?

PROCEDURE (ARTICLE 5)

On attire l'attention sur l'importance du §5 relativ à l’intérêt supérieur de l’enfant dont l’arrêt C-540/03 souligne le caractère déterminant
Q.34 – L’Etat membre a-t-il institué une procédure relative au regroupement familial (a 5 §1) ?

☑ OUI
☐ NON

Article 73 (1) du Projet.

Q.35 – Si oui,

Q.35. A – Quelles autorités de l’Etat en traitent ?

Le Ministre ayant l’asile et l’immigration dans ses fonctions.

Q.35. B – Les ONG sont-elles associées à cette procédure ?

☐ OUI
☑ NON

Si oui, décrivez la procédure

Q.35. C – La demande est-elle à l’initiative du regroupant ou/et des membres de la famille ?

Il ressort du libellé du Projet que seul le regroupant peut formuler une demande de regroupement.

Q.35. D – Cette procédure est-elle exclusive de toute autre possibilité de regroupement familial ?

☐ OUI
☑ NON

S’il existe d’autres possibilités procédurales de regroupement familial, décrivez-les

L’article 78 du Projet prévoit que « […] le ressortissant de pays tiers qui ne remplit pas les conditions du regroupement familial, mais dont les liens personnels et familiaux, appréciés notamment au regard de leur intensité, de leur ancienneté et de leur stabilité, sont tels que le refus d’autoriser son séjour porterait à son droit au respect de sa vie privée et familiale une atteinte disproportionnée au regard des motifs de refus » peut tout de même bénéficier d’une autorisation de séjour pour des raisons privées.

Q. 35. E – Cette procédure existait-elle avant la directive 2003/86 ?

☐ OUI
☑ NON
Q.36 – Quelles pièces justificatives (a 5 §2) sont exigées pour prouver :

Q.36. A – Les liens familiaux de l'article 4 ?
Q.36. B – Le respect des conditions de logement de l'article 7 ?
Q.36. C – Le respect de la condition d'assurance maladie ?
Q.36. D – La copie certifiée des documents de voyage ?

Ni le Projet ni les commentaires ne précisent plus avant quelle est la nature des pièces justificatives exigées. Un règlement grand-ducal fixant les critères de ressources et de logement est prévu mais n’a pas encore été publié.

A l’heure actuelle (ie. sur base du droit existant, purement jurisprudentiel en la matière), des listes des documents exigés sont publiées par le Ministère des Affaires étrangères mais elles ne donnent guère de précisions. En voici deux exemples :
Documents à produire auprès de l'ambassade, par un ascendant ressortissant de pays tiers lors de la demande de visa dans le cadre d'un regroupement familial avec un descendant ressortissant de pays tiers séjournant régulièrement au Luxembourg

1. la copie du passeport intégral de l'ascendant, valable encore au moins six mois ;
2. un extrait de l'état civil de l'ascendant ;
3. un extrait du casier judiciaire de l'ascendant, établi depuis moins de trois mois ;
4. un extrait de l'acte de naissance du descendant ;
5. la preuve que l'ascendant n'a pas d'autres personnes à sa charge et qu'il n'a pas d'autres parents dans son pays d'origine qui pourraient le prendre en charge ;
6. la preuve d'un soutien matériel, rapportée par tout moyen approprié, établissant l'existence d'une situation de dépendance de l'ascendant avant sa demande de regroupement familial avec le descendant ;
7. l'original dûment légalisé d'une déclaration de prise en charge à durée illimitée en faveur de l'ascendant, signée par le descendant ;
8. la preuve que le descendant dispose d'un logement adéquat pour héberger l'ascendant (pièces à l'appui) ;
9. la preuve que le descendant dispose de moyens d'existence personnels suffisants pour supporter les frais de séjour de l'ascendant :
   - pour les travailleurs salariés : copie des trois dernières fiches de salaire ;
   - pour les travailleurs indépendants : dernier décompte sur les revenus délivré par l'administration des contributions ;
   - pour les retraités : copie de la dernière fiche de pension.

N.B. Les documents à produire doivent être authentifiés par l'autorité locale compétente du pays d'origine de l'ascendant et légalisés par l'ambassade. Si les documents ne sont pas rédigés dans les langues allemande, française ou anglaise, une traduction conforme par un traducteur assermenté doit être jointe.
Q.37 - Existe-t-il une possibilité :

D’entretien :

- [ ] OUI
- [X] NON

D’enquête :

- [X] OUI
- [ ] NON

Documents à produire auprès de l’ambassade par un descendant mineur ressortissant de pays tiers lors de la demande de visa dans le cadre d’un regroupement familial avec un ascendant ressortissant de pays tiers séjournant régulièrement au Luxembourg

1. la copie du passeport intégral du descendant, valable encore au moins six mois ;
2. un extrait de l’acte de naissance du descendant ;
3. en cas de divorce :
   - la copie du jugement conférant la garde de l’enfant à la partie parentale séjournant au Luxembourg ;
   - l’autorisation notariée de l’autre partie parentale attestant de son accord que l’enfant puisse s’établir à l’étranger ;
4. la preuve que l’ascendant dispose d’un logement approprié pour héberger le descendant (pièces à l’appui) ;
5. la preuve que l’ascendant dispose de moyens d’existence personnels suffisants pour supporter les frais de séjour du descendant :
   - pour les travailleurs salariés : copie des trois dernières fiches de salaire ;
   - pour les travailleurs indépendants : dernier décompte sur les revenus délivré par l’administration des contributions ;
   - pour les retraités : copie de la dernière fiche de pension .

N.B. Les documents à produire doivent être authentifiés par l’autorité locale compétente du pays d’origine du descendant et légalisés par l’ambassade. Si les documents ne sont pas rédigés dans les langues allemande, française ou anglaise, une traduction conforme par un traducteur assermenté doit être jointe.
Si oui, décrivez-les sommairement

**Q.38** – Lors de l'examen de la demande du partenaire non marié, quels éléments d'appréciation sont pris en compte sur la base du droit de l'Etat membre afin d'établir les liens familiaux (article 5§2 dernier alinéa) ?

Cette disposition n'ayant pas été transposée en droit luxembourgeois, aucun des critères listés à l’article 5§2 dernier alinéa n’est examiné par le ministre lors de l’instruction de la demande de regroupement concernant le partenaire non marié.

**Q.38. A** - L'existence de liens familiaux et d'éléments tels qu'un enfant commun ?

☐ OUI
☐ NON

Précisez

**Q.38. B** - une cohabitation préalable ?

☐ OUI
☐ NON

**Q.38. C** - l'enregistrement du partenariat ?

☐ OUI
☐ NON

Or, ainsi que mentionné aux questions 21 et 22B, un problème pratique relatif à la formalité de l'enregistrement se pose : l'article 4.4. la loi du 9 juillet 2004 exige en effet que les deux partenaires résident légalement sur le territoire luxembourgeois pour pouvoir se faire enregistrer. Or par définition, le partenaire non marié du regroupant n’est pas encore sur le territoire luxembourgeois lorsqu’est formulée la demande en regroupement familial.

**Q.38. D** - D’autres éléments sont-ils prévus par votre droit national ?

☐ OUI
☐ NON

Si oui, précisez lesquels :

**Q.39** - Les membres de la famille sont-ils tenus de résider à l'extérieur durant l'instruction de la demande (a5 §3) ?

☐ OUI
☐ NON
Article 73 (4) du Projet.

Cette obligation est-elle sanctionnée et comment ?

Aucune sanction n’est prévue par le texte.

**Q.40** – Si la réponse est oui, existe-t-il néanmoins une dérogation à cette situation et laquelle (a 5 §3 alinea 2)?

☐ OUI
☐ NON

Précisez

L’article 73 (5) prévoit que des cas exceptionnels dûment motivés, le ministre peut accepter que les membres de la famille se trouvent sur le territoire luxembourgeois lors de l’introduction de la demande.

L’article 71 du Projet prévoit quant à lui que : « *Sont autorisés à accompagner le ressortissant de pays tiers, lors de son entrée sur le territoire, s’il remplit les conditions fixées [...] : a) les enfants mineurs du regroupant dont il assume seul le droit de garde ; b) les membres de famille définis à l’article 70, paragraphe (1) du travailleur salarié visé aux articles 45 et 47 [il s’agit des travailleurs salariés hautement qualifiés et des travailleurs salariés transférés], ainsi que du chercheur visé à l’article 64. »

Enfin, sur base de l’article 72 du Projet, « *les membres de famille sont autorisés à accompagner le résident de longue durée qui a obtenu son statut dans un autre État membre de l’Union et qui exerce son droit de séjour au Grand-Duché de Luxembourg en conformité avec l’article 86, lorsque la famille est déjà constituée dans le premier État membre. »

**Q.41** – Le droit national prévoit-il une durée maximale de neuf mois pour répondre après la demande précédant la notification écrite (a5 §4)?

☐ OUI
☐ NON

Précisez si nécessaire

**Q.42** – Le délai initial peut-il être prorogé (a 5 §4 alinea 2) ?

☐ OUI
☐ NON

Article 73 (6) du Projet.

**Q.43** – Si oui :
Q.43. A - Ces possibilités sont-elles liées à la complexité de l’examen de la demande ?

☐ OUI

☐ NON

Si oui, précisez

Q.43. B - Quelle est la durée de la prorogation ?

Aucune mention à ce sujet dans le Projet.

Q.44 – En cas d'absence de décision à l'expiration du délai initialement prévu, quelle conséquence en résulte pour le demandeur ?

Selon les règles de droit commun régissant la matière administrative, le silence de l'administration tenu pendant un délai de trois mois suite à l'introduction de la demande auprès d’elle vaut rejet (article 4 (1) de la loi du 7 novembre 1996 portant organisation des juridictions de l’ordre administratif).

Q.45 – La décision de rejet est-elle notifiée par écrit et est-elle motivée ?

☐ OUI

☐ NON

Articles 109 (2) (motifs) et 110 (1) (notification) par application de l’article 75 dernier alinéa.

A noter qu’en ce qui concerne les motifs, ceux-ci ne seront pas communiqués lorsqu’ils ont trait à la sûreté de l’Etat.

Précisez si une seule de ces conditions n’est pas exigée

Q.46 – Comment l'intérêt supérieur de l'enfant est-il pris en compte par la législation de l'Etat membre et ses autorités durant l'examen de la demande (article 5§5) ?

Cette disposition n’a pas été transposée en droit national. Le tableau de transposition nous indique quant à lui que c’est le droit commun qui s’applique en la matière.

La convention internationale du 20 novembre 1989 sur les droits de l’enfant (« la Convention ») a été approuvée par le Luxembourg par une loi du 20 décembre 1993, sans aucune réserve quant à l’article 3 de la Convention, qui fait donc désormais partie intégrante du droit national.

Cependant, en pratique, nous ignorons encore comment sera pris en compte l’intérêt supérieur de l’enfant lors de l’examen de la demande.

CONDITIONS REQUISES (ARTICLES 6 ET SUIVANTS)
Les questions relatives au logement et aux ressources seront attentivement examinées afin de permettre d'en cerner l'utilisation par les autorités de l'État membre, soit à des fins de meilleure insertion soit à des fins de régulation des flux migratoires.

Il en va de même à propos de la faculté de fixer une durée de séjour minimal nécessaire préalable au dépôt d'une demande de regroupement.

La Cour de justice indique à propos de l'article 8 : "Cette disposition n'a donc pas pour effet d'empêcher tout regroupement familial, mais maintient au profit des États membres une marge d'appréciation limitée en leur permettant de s'assurer que le regroupement familial aura lieu dans de bonnes conditions, après que le regroupant a séjourné dans l'État d'accueil pendant une période suffisamment longue pour présumer une installation stable et un certain niveau d'intégration. Dès lors, le fait, pour un État membre, de prendre ces éléments en considération et la faculté de différer le regroupement familial de deux ans ou, selon le cas, de trois ans ne vont pas à l'encontre du droit au respect de la vie familiale exprimé notamment à l'article 8 de la CEDH tel qu'interprété par la Cour européenne des droits de l'homme" (cons. 98).

"Il convient cependant de rappeler que, ainsi qu'il résulte de l'article 17 de la directive, la durée de résidence dans l'État membre n'est que l'un des éléments qui doivent être pris en compte par ce dernier lors de l'examen d'une demande et qu'un délai d'attente ne peut être imposé sans prendre en considération, dans des cas spécifiques, l'ensemble des éléments pertinents" (cons.99). "Il en est de même du critère de la capacité d'accueil de l'État membre, qui peut être l'un des éléments pris en considération lors de l'examen d'une demande, mais ne saurait être interprété comme autorisant un quelconque système de quotas ou un délai d'attente de trois ans imposé sans égard aux circonstances particulières des cas spécifiques. En effet, l'analyse de l'ensemble des éléments telle que prévue à l'article 17 de la directive ne permet pas de ne prendre que ce seul élément en considération et impose de procéder à un examen réel de la capacité d'accueil au moment de la demande" (cons.100). " Lors de cette analyse, les États membres doivent en outre, ainsi qu'il est rappelé au point 63 du présent arrêt, veiller à prendre dûment en considération l'intérêt supérieur de l'enfant mineur" (cons.101).

Q.47 – Des motifs d'ordre public, sécurité ou de santé publique peuvent-il fonder (a §6 1 et 2) :

Q.47. A – Le rejet de la demande de regroupement ?

☐ OUI
☐ NON

Si oui, lesquels ?

Article 101 (1) : ordre public, sécurité et santé publiques.

Q.47. B - le retrait de la demande de regroupement ?

☐ OUI
☒ NON
Précisez si nécessaire

Par contre, le retrait du titre de séjour est prévu dans de telles circonstances (article 101 du Projet).

**Q.47. C** - le refus de renouvellement du titre de séjour du membre de la famille ?

- **X** OUI
- **X** NON

Précisez si nécessaire

Disposition non transposée par le Projet.

**Q.48** – Le droit de l'Etat membre prend-il en compte ;

**Q.48. A** – La gravité de l'atteinte à l'ordre public ?

- **X** OUI
- **□** NON

Selon l'article 101 (2), « les mesures d’ordre public ou de sécurité public doivent être fondées exclusivement sur le comportement personnel de la personne concernée qui en fait l’objet. Ce comportement doit représenter une menace réelle, actuelle et suffisamment grave pour un intérêt fondamental de la société, sans que des justifications non directement liées au cas individuel concerné ou tenant à des raisons de prévention générales ne puissent être retenues. »

**Q.48. B** – L'importance des liens familiaux visés à l'article 17 ?

- **X** OUI
- **□** NON

Article 77 (1).

Précisez si nécessaire

**Q.49** – La survenance de maladie ou d'infirmité après l'octroi de l'autorisation peut-elle à elle seule justifier un retrait ou un éloignement (a 6 §3)?

- **□** OUI
- **X** NON

Ceci est prévu aux articles 77 (2) et 102 (3) du Projet.
Q.50 – Des conditions de logement sont-elles exigées du demandeur (a7 §1a) ?

☐ OUI
☐ NON

Article 69 (1) 2. et projet de règlement grand-ducal.

Q.51 – Si oui :

Q.51. A - Quelles sont ces conditions ?

Sur base d’un communiqué de presse annonçant l’adoption du projet de règlement grand-ducal définissant les critères de ressources et de logement prévus par la loi sur la libre circulation des personnes et de l’immigration dont nous n’avons pas encore eu communication, il semblerait que la condition de logement approprié soit apprécié par rapport aux dispositions du règlement grand-ducal du 25 février 1979 déterminant les critères de location, de salubrité ou d’hygiène auxquels doivent répondre les logements destinés à la location.

Ces critères sont notamment :

- Les logements doivent être construits et aménagés suivant les normes généralement appliquées au Grand-Duché et présenter une habitabilité normale ;
- L’accès à l’immeuble doit être aménagé en dur, être non inflammable et suffisamment éclairé la nuit. La circulation verticale à l’intérieur de l’immeuble ne peut se faire que par des escaliers fixes ;
- Les logements doivent satisfaire aux conditions normales de sécurité contre les risques d’incendie, de gaz et d’électricité.

Ils doivent en outre :
° être éclairés par des fenêtres ouvrantes mesurant au moins 1/10 de la surface du plancher et fermant hermétiquement ;
° être pourvus de courant électrique, d’eau potable et d’une installation d’évacuation des eaux résiduaires ;
° être pourvus d’une installation de chauffage prévenant contre les risques d’intoxication et d’incendie ;
° avoir des murs en briques ou en béton offrant une protection thermique et acoustique suffisante ; sont prohibées les cloisons en contreplaqué, bois, éternit et autres matières facilement inflammables ;
° avoir un plafond étanche ;
° être munis d’une porte étanche et fermant à clé si celle-ci donne sur l’extérieur ;
- La surface au sol ne peut être inférieure à 12 m2 pour le premier occupant et 9 m2 par occupant additionnel. La hauteur des pièces d’habitation ne doit pas être inférieure à 2,20 m ;
- Les pièces d’habitation doivent être situées sur cave ou sur vide sanitaire ;
- Le locataire doit avoir libre accès à des installations sanitaires - lavabo, WC et douche - situées à l’intérieur de l’immeuble dans des locaux chauffés ;
- Le locataire doit avoir la possibilité de cuisiner librement ainsi que de sécher son linge en dehors de sa chambre.
Au cas où une personne seule occupe une chambre unique, la possibilité de cuisiner peut être située dans celle-ci pourvu qu’elle ait 15 m² de surface au sol et qu’elle dispose d’une aération correspondante.

**Q.51. B** - Comment sont-elles évaluées ?

Voir réponse question 51A.

**Q.51 C** - Sont-elles comparables à celles d'une famille normale habitant dans la même région de l'Etat membre ?

- [X] OUI
- [ ] NON

Si non, précisez en quoi elles sont différentes

**Q.52** – Une assurance maladie est-elle exigée du demandeur (a. 7 §1b) ?

- [X] OUI
- [ ] NON

**Article 69 (1) 3.**

**Q.53** – Des conditions de ressources "stables" sont-elles fixées (a7 §1c) ?

- [X] OUI
- [ ] NON

**Article 69 (1) 1. et projet de règlement grand-ducal.**

Expliquez leur nature et leur montant

Il ressort d’un communiqué de presse annonçant l’adoption du projet de règlement grand-ducal définissant les critères de ressources et de logement prévus par la loi sur la libre circulation des personnes et de l’immigration dont nous n’avons pas encore eu communication que le niveau des ressources du ressortissant de pays tiers qui sollicite le regroupement familial s’apprécie par référence à la moyenne du taux mensuel du salaire social minimum d’un travailleur non qualifié sur un durée de 12 mois.

Il n’est rien précisé quant à la nature de ces ressources. Les commentaires de l’article 69 du Projet mentionnent simplement que « les ressources prises en compte sont celles qui présentent un caractère de stabilité. »
Q.54 – Comment leur caractère "suffisant" est-il évalué par l'Etat membre, est-ce par comparaison avec le niveau national ?

Il semble que oui, le communiqué de presse susvisé indiquant que « […] En ce qui concerne les ressources exigées pour les citoyens de l’Union et les personnes y assimilées, la directive afférente défend aux États membres de fixer un montant déterminé pour les ressources qu’ils considèrent comme suffisantes. Le texte précise dès lors que les ressources suffisantes sont appréciées en tenant compte de la situation personnelle de la personne concernée, mais qu’en aucun cas, le montant exigé ne peut excéder le montant du revenu minimum garanti. »

Q.55 – Des critères d’intégration sont-ils fixés pour permettre le regroupement familial (a 7 §2)?

☐ OUI
☒ NON

Cette disposition n’a pas été transposée par le Projet.

N.B. : il est envisagé de modifier, voire de remplacer la loi du 27 juillet 1993 concernant l’intégration des étrangers au Grand-Duché de Luxembourg. Nous ignorons encore quelle sera la teneur de ces modifications mais préférons souligner l’éventualité que des critères d’intégration dans le cadre du regroupement familial y soient intégrés.

Q.56 – Si oui :

Q.56. A – Quels sont ces critères ?

Q.56. B – S’appliquent-ils indifféremment à tous les bénéficiaires potentiels du regroupement (conjoint, personnes dépendantes, etc…) ?

Q.56. C – Comment sont-ils évalués par l’Etat membre ?

Q.56. D – Les réfugiés et leur famille y sont-ils soumis (a 7 §2 alinea 2) ?

☐ OUI
☐ NON

Q.57 – Un délai de séjour minimal est-il opposable avant de procéder au regroupement (a 8 §1)?

☒ OUI
☐ NON

Article 69 (1).
Q. 58 – Cette durée est-elle supérieure à deux ans ?  
Précisez

Non, la durée de séjour minimal exigée est d'une année.

Q. 59 – L'État membre fait-il usage de la dérogation de l'article 8 § 2 autorisant un délai de trois ans au maximum entre le dépôt de la demande de regroupement familial et la délivrance d'un titre de séjour aux membres de la famille en raison de sa "capacité d'accueil" ?

☐ OUI

☒ NON

Expliquez

Q. 60 – Si oui, cette possibilité existait-elle avant le 22 septembre 2003 ?

☐ OUI

☐ NON

REGROUPEMENT FAMILIAL DES REFUGIES

Le régime applicable aux réfugiés est un régime dérogatoire au droit commun du regroupement familial. L'étendue de ces dérogations (séjour minimal, membres de la famille, conditions de logement et autres) doit être vérifiée dans le droit de l'État membre.

Q. 61 – L'État membre autorise-t-il le regroupement familial des réfugiés sur la base de la directive 2003/86 (a 9 § 1) ?

☒ OUI

☐ NON

Article 69 (2).

A noter que l'article 69 (2) transposant l’article 9§1 du projet vise « les bénéficiaires d’une protection internationale », élargissant ainsi le champ d’application aux bénéficiaires de la protection subsidiaires, en plus des réfugiés.

Q. 62 – Ce droit est-il restreint aux liens familiaux antérieurs à l'entrée sur le territoire (a 9 § 2)?

☐ OUI

☒ NON

Cette disposition n’a pas été transposée en droit luxembourgeois.

Q. 63 – L'État membre autorise-t-il le regroupement de membres de la famille non visés à l'article 4 de la directive (a 10 § 2) ?
Lesquels et quelles conditions sont requises ?

Cependant cette autorisation ne relève plus de l’autorisation de séjour au titre du regroupement familial mais de l’autorisation de séjour pour des raisons privées (titre de séjour valable 1 an maximum, renouvelable sur demande si les conditions continuent d’être remplies.)

Article 78 (1) c :
« […] le ressortissant de pays tiers qui ne remplit pas les conditions du regroupement familial, mais dont les liens personnels et familiaux, appréciés notamment au regard de leur intensité, de leur ancienneté et de leur stabilité, sont tels que le refus d’autoriser son séjour porterait à son droit au respect de sa vie privée et familiale une atteinte disproportionnée au regard des motifs de refus. »

Q.64 – L’Etat membre autorise-t-il le regroupement familial des ascendants directs au premier degré d’un mineur réfugié non accompagné sans que les conditions fixées à l’article 4§2 a soient exigées (a10 §3 a) ?

[ ] OUI
[ ] NON

Article 70 (4).
Quelles conditions sont requises ?
Aucune condition n’est mentionnée.

Q. 65 – L’Etat membre autorise-t-il l’entrée et le séjour du tuteur légal ou de tout autre membre de la famille lorsque le réfugié mineur non accompagné n’a pas d’ascendants directs ou que ceux-ci ne peuvent être retrouvés (a10 §3 b) ?

[ ] OUI
[ ] NON

Si oui, précisez de qui il s’agit et précisez quelles sont les preuves requises pour justifier du lien de parenté

L’article 10§3 b de la Directive a été littéralement transposé par l’article 70 (5) c du Projet. Ainsi les personnes concernées sont le tuteur légal ou tout autre membre de la famille du réfugié mineur. Aucune indication quant à la nature des preuves exigées si ce n’est qu’il doit s’agir de pièces officielles (article 73 (3)).
Q.66 – L'Etat membre prend-il en compte d'autres preuves de l'existence de liens familiaux lorsque le réfugié ne peut fournir de pièces justificatives (a 11 §2) ?

☐ OUI

☐ NON

Lesquelles ?

Dans cette hypothèse, la possibilité est laissée au réfugié de prouver ses liens familiaux par tout moyen.

Q.67 – L'examen de la demande du réfugié tient-elle compte de la particularité de sa situation :

Q.67. A – Exige-t-on qu'il fournisse les preuves relatives au logement, à l'assurance, aux ressources (a 12 §1) ?

☐ OUI

☐ NON

Réserve : l'article 69 (2) exonère le réfugié de fournir les preuves relatives au logement, à l’assurance et aux ressources lorsqu’il présente sa demande dans un délai maximum de trois mois suivant l’octroi de son statut de réfugié.

Si oui, les conditions requises sont-elles comparables à celles demandées aux autres ressortissants de pays tiers

Passé ce délai de trois mois, les conditions requises seront identiques à celles exigées des autres ressortissants de pays tiers.

Q.67. B – Si l'une des personnes concernées (regroupant ou membre de la famille) a des liens particuliers avec un Etat tiers avec lequel le regroupement familial est possible, l'Etat membre exige-t-il ces preuves ?

☐ OUI

☐ NON

Cette disposition n'a pas été transposée en droit luxembourgeois.

Précisez si nécessaire

Q.67. C – Si le réfugié a introduit sa demande plus de trois mois après l'octroi du statut de réfugié, l'Etat membre exige-t-il la satisfaction de ces trois conditions ou d'une de ses trois conditions (logement, assurance, ressources) (a 12 §1 alinea 3) ?

☐ OUI

☐ NON
Si oui, lesquelles ?

Les trois (article 69 (2)).

**Q.68** – L’Etat membre respecte-t-il l’interdiction d’imposer une condition de séjour préalable aux réfugiés (a 12 §2)?

- [ ] OUI
- [x] NON

A condition que le réfugié introduise sa demande dans un délai de trois mois suivant l’octroi de son statut. Passé ce délai, la condition de séjour préalable s’impose également à lui (article 69 (2)).

Si non quelle est cette durée ? Diffère-t-elle de la durée normalement exigée ?

Lorsque la demande est introduite après l’expiration du délai de trois mois, la durée du séjour minimal est la même que pour les autres ressortissants de pays tiers, ie. une année.

**EXERCICE DU DROIT AU REGROUPEMENT**

L’autonomie du droit de séjour découlant du regroupement familial est la question la plus délicate de cette partie de la directive.

**Q.69** – L’entrée et le séjour des membres de la famille sont-ils facilités par l’Etat membre après acceptation de la demande, y compris en matière de visa (a13 §1) ?

- [ ] OUI
- [x] NON

Selon le tableau de correspondance, l’article 13§1 de la Directive a été transposé par l’article 38 du Projet. Or il ne nous semble pas évident en quoi ce texte facilite l’entrée et le séjour des membres de la famille :

« Sous réserve de l’application des conditions de l’article 34, paragraphes (1) et (2), et sans préjudice des dispositions plus favorables adoptées par le biais d’accords bilatéraux ou multilatéraux avec des pays tiers, le ressortissant de pays tiers a le droit de séjourner sur le territoire pour une période supérieure à trois mois si, dans les conditions fixées par la présente loi :
1. il est muni d’une autorisation de séjour temporaire à titre de :
   a) travailleur salarié ;
   b) travailleur indépendant ;
   c) sportif ;
   d) étudiant, élève, stagiaire ou volontaire ;
   e) chercheur ;
   f) membre de la famille ;
   g) sinon pour des raisons d’ordre privé ou particulier, ou
2. il est muni d’une autorisation de séjour de résident de longue durée. »
Si oui, comment ?

**Q.70** – Un titre de séjour minimal d’un an est-il délivré aux membres de la famille (a 13 §2) ?

- OUI
- NON

Quelle en est la durée ?

Un an (article 74 (1)).

**Q.71** – Ce titre de séjour est-il renouvelable ?

- OUI
- NON

Article 74 (1).

**Q.72** – La durée du titre de séjour est-elle alignée le titre de séjour du regroupant (a 13 §3) ?

- OUI
- NON

Article 74 (1).

Si non, précisez

**Q.73** – Les droits des membres de la famille sont-ils équivalents à ceux du regroupant (a14 §1) :

- **Q.73. A** - En matière d’accès à l’éducation ?
  - OUI
  - NON

  Ceci n’est pas clairement précisé par le libellé de l’article 74 (1) mais les commentaires précisent que « [...] les membres de la famille concernés obtiennent accès à l’éducation, à un emploi et à la formation professionnelle au même titre que le regroupant [...] ».

Si non, précisez

- **Q.73. B** - En matière d’accès à l’emploi ?
  - OUI
Précisez le contenu de cet accès

Les commentaires de l’article 74 indiquent qu’« […] il n’a pas été fait usage de la possibilité accordée par la directive d’instaurer un délai d’attente pour l’entrée sur le marché du travail ou de la possibilité de limiter cet accès à certains des membres de la famille. »

Q.73. C – En matière d’accès à l’orientation à la formation, au perfectionnement et au recyclage professionnel ?

☐ OUI
☐ NON

Si non, précisez

Q.74 – Le droit de l’Etat membre reconnaît-il des droits spécifiques en matière sociale aux membres de la famille regroupée ?

☐ OUI
☐ NON

Le Projet ne prévoit aucun droit spécifique à leur égard. Ainsi, le droit commun en la matière leur est applicable. A titre d’exemple, concernant l’indemnisation des chômeurs partiels, le code des assurances sociales dispose que les travailleurs étrangers sont assimilés aux travailleurs luxembourgeois (article 9 de la loi du 26 juillet 1975 autorisant le gouvernement à prendre des mesures destinées à prévenir des licenciements pour des causes conjoncturelles et assurer le maintien de l’emploi).

Si oui, décrivez et précisez si une condition de délai est fixée pour en profiter

Q.75 – Le droit de l’Etat membre règle-t-il spécifiquement les conditions d’accès des membres de la famille au marché du travail national (a 14 §2) ?

☐ OUI
☐ NON

Ainsi que mentionné à la question 73B, les commentaires de l’article 74 indiquent qu’« […] il n’a pas été fait usage de la possibilité accordée par la directive d’instaurer un délai d’attente pour l’entrée sur le marché du travail ou de la possibilité de limiter cet accès à certains des membres de la famille. »

Si oui, comment ?

Q.76 – Si oui, les restrictions excèdent-elles douze mois (a 14 §2) ?

☐ OUI
Lesquelles ?

Q.77 – L'accès à l'emploi est-il restreint dans l'État membre

Q.77.A - Pour ce qui concerne les ascendants en ligne directe et du premier degré ?
☐ OUI
☒ NON

Si oui, comment ?

Q.77. B - Pour ce qui concerne les enfants majeurs célibataires objectivement dans l'incapacité de subvenir à leurs propres besoins en raison de leur état de santé (a 14 §3) ?
☐ OUI
☒ NON

Si oui, comment ?

Q.78 – Les conjoints, le partenaire non marié et l'enfant devenu majeur ont-ils droit à un titre de séjour autonome au plus tard passé cinq ans de résidence régulière sur la base d'un titre de séjour pour regroupement familial (a15 §1) ?
☒ OUI
☐ NON

Si oui, précisez quand et comment pour chaque catégorie

Ceci est prévu par l’article 80 du Projet. Les conditions sont les mêmes pour toutes les catégories sus énoncées.

A la lecture de l’article 80 et des commentaires dudit article, il ressort que les conditions sont les suivantes :

« […] Le statut de résident de longue durée est reconnu au ressortissant de pays après cinq années de résidence légale et ininterrompue, démontrant l'ancrage de la personne dans le pays. Le statut n'est accordé que sur demande de l'intéressé. Les absences du territoire pour des périodes inférieures à six mois consécutifs et ne totalisant pas plus de dix mois dans les cinq ans ou pour des raisons spécifiques prévues par le présent article ne sont pas comptabilisées dans le calcul de la durée de résidence. Certaines catégories de personnes sont exclues du champ d'application en raison de la précarité de leur situation ou de la brièveté de leur séjour (réfugiés, demandeurs d'asile en attente de décision, travailleurs saisonniers ou détachés afin de fournir des services transfrontaliers, personnes titulaires d'une protection temporaire ou d'une forme subsidiaire de protection, résidents aux fins d'études ou de formation professionnelle). »
Q.79 – L'Etat membre prévoit-il l'hypothèse de la rupture du lien familial pour le conjoint ou le partenaire non marié (a 15 §1 alinea 2)?

☐ OUI

☐ NON

Expliquez

L'article 76 prévoit qu’en cas de rupture de la vie commune qui résulte d’un changement de la situation familiale (décès du regroupant et en cas de divorce ou de séparation ou de rupture d’un partenariat), le conjoint ou le partenaire non marié peut demander un statut autonome qui lui permettra ainsi de ne plus dépendre du titre de séjour du regroupant et lui assurera aussi une sécurité juridique. Ce droit de séjour autonome est accordé après un délai de trois ans de séjour régulier.

Q.80 – L'Etat membre prévoit-il un titre de séjour autonome :

Q.80. A - Pour les ascendants en ligne directe et du premier degré (a15 §2)

☐ OUI

☒ NON

Précisez si nécessaire

Cette disposition n’a pas été transposée en droit national luxembourgeois.

Q.80. B – Pour les enfants majeurs célibataires objectivement dans l'incapacité de subvenir à leurs propres besoins en raison de leur état de santé (a15 §2) ?

☐ OUI

☒ NON

Précisez si nécessaire

Cette disposition n’a pas été transposée en droit national luxembourgeois. Cependant, au vu des commentaires du projet de loi, on pourrait s’interroger sur l’applicabilité de l’article 76 à cette catégorie de personnes du fait qu’il y est mentionné que « […] La disposition peut également viser la situation de personnes qui seraient soumises à des situations particulièrement pénibles, si elles étaient obligées de retourner dans leur pays d’origine. »

Q.81 – L'Etat membre prévoit-il un titre de séjour autonome pour les situations de veuvage, de divorce, de séparation ou de décès d'ascendants ou de descendants directs au premier degré (a 15 §3) ?

☒ OUI

☐ NON
Précisez si nécessaire

L’article 76 du Projet dispose que :
« Dans la mesure où les membres de la famille n’ont pas reçu de titre de séjour pour d’autres motifs que le regroupement familial, un titre de séjour autonome peut leur être délivré dans les conditions de l’article 79, lorsqu’une rupture de la vie commune survient et résulte :
 a) du décès du regroupant ou du divorce, de l’annulation du mariage ou de la rupture du partenariat intervenus au moins trois ans suivant l’accord de l’autorisation de séjour sur le territoire au titre du regroupement familial, ou
 b) lorsque des situations particulièrement difficiles l’exigent, notamment lorsque la communauté de vie a été rompue à l’initiative du membre de famille en raison de violences conjugales qu’il a subies. »

Q.82 – L’Etat membre a-t-il arrêté des dispositions garantissant un titre de séjour autonome "en cas de situation particulièrement difficile" (a 15 §3) ?

☐ OUI

☐ NON

Si oui, comment cette disposition est-elle définie et transposée ?

L’article 76 b du Projet dispose que : « Dans la mesure où les membres de la famille n’ont pas reçu de titre de séjour pour d’autres motifs que le regroupement familial, un titre de séjour autonome peut leur être délivré dans les conditions de l’article 79, lorsqu’une rupture de la vie commune survient et résulte :
 b) lorsque des situations particulièrement difficiles l’exigent, notamment lorsque la communauté de vie a été rompue à l’initiative du membre de famille en raison de violences conjugales qu’il a subies. »

L’article 76 ne définit pas plus avant ce qu’il faut entendre par « situation particulièrement difficile ». Les commentaires de cet article apportent les précisions suivantes : « […] Ces règles ad hoc ont été établies également afin de protéger les catégories de personnes vulnérables qui se trouvent dans une situation particulièrement difficile: rupture traumatisante des liens familiaux provoquée par la violence domestique, une répudiation ou des circonstances analogues. Cette disposition vise notamment à protéger les victimes de violences dans leur famille qui ne peuvent pas être pénalisées par le retrait de leur titre de séjour si elles décident de quitter leur foyer. La disposition peut également viser la situation de personnes qui seraient soumises à des situations particulièrement pénibles, si elles étaient obligées de retourner dans leur pays d’origine. »

SANCTIONS ET VOIES DE RECOURS

Ces dispositions sont à lire en parallèle de celles relatives aux conditions à remplir pour obtenir le droit au regroupement (articles 6, 7, 8)

Les questions relatives aux fraudes et autres moyens illicites sont importantes à traiter afin d’en délimiter la portée.
Q.83 – Quels sont les motifs légaux de rejet, de retrait ou de refus de renouvellement d’une autorisation de regroupement familial (a16 §1 et 2) ?

**Q.83. A** – L’absence de conditions requises par la directive ?

☐ OUI

☐ NON

**Q.83. B** – L’absence de vie familiale ou conjugale effective ?

☐ OUI

☐ NON

Si oui, comment cette hypothèse est-elle appréciée ?

Aucune précision à ce sujet dans le Projet.

Sous la jurisprudence antérieure, la notion de vie familiale effective supposait l’existence d’une famille résultant non seulement d’un lien de parenté mais aussi d’un lien de fait réel et suffisamment étroit entre les différents membres. De plus, la jurisprudence précisait, dans le contexte du regroupement familial, que la vie familiale devait avoir existé avant l’immigration. Ainsi, l’absence de contact d’un père avec sa fille de 11 ans pendant 15 mois a été considéré comme une absence de vie familiale (Tribunal administratif, 18 décembre 2002, rôle n° 15209, confirmé en appel).

Elle précisait encore que « *La simple contribution pécuniaire en vue de la satisfaction de besoins matériels d’un enfant, en l’absence d’un quelconque autre élément documentant une vie familiale effective ne saurait suffire pour justifier un droit au regroupement familial.* » (Tribunal administratif, 13 décembre 1999, rôle n° 10887 ; Tribunal administratif, 16 janvier 2002, rôle n° 13859).

**Q.83. C** – Des relations durables avec un autre partenaire ?

☐ OUI

☐ NON

Si ou, comment cette hypothèse est-elle appréciée ?

Aucune précision à ce sujet.

**Q.83. D** – Des falsifications de pièces ?

☐ OUI

☐ NON
Q.83. E – La conclusion d'une union aux seules fins du regroupement ?

☑ OUI
☐ NON

Q.83. F – Si oui, comment cette hypothèse est-elle appréciée ?

Aucune précision à ce sujet.

Q.83. G – Le terme du séjour du regroupant en cas d'absence de titre de séjour autonome (a 16 §3) ?

☐ OUI
☑ NON

Disposition non transposée.

Q.83. H – Quels types de contrôle sont-ils opérés ?

Rien de très précis pour le moment. Le pouvoir de décider d'opérer des contrôles est dévolu au ministre par l’article 134 (3) du Projet. Selon les commentaires du Projet, celui-ci peut ordonner des enquêtes spécifiques afin d'établir la tromperie ou la fraude.

Q.84 – Les ressources du ménage sont-elles prises en compte à l'occasion d'un renouvellement du titre de séjour si le regroupant ne dispose pas de ressources suffisantes sans recourir au système d'aide sociale de l'État membre ?

☒ OUI
☑ NON

L’article 16.1.a) deuxième alinéa n’a pas été transposé en droit luxembourgeois.

Si oui selon quelles modalités

Q.85 – Le droit de l'État membre prend-il en considération (a. 17) :

Q.85. A - la nature et la solidité des liens familiaux de la personne et sa durée de résidence dans l'État membre ?

☑ OUI
☐ NON

Si oui précisez comment et par quel type de norme (textuelle, jurisprudentielle…)
Aucune précision dans le Projet. L’article 8 de la CEDH et la jurisprudence y relative ont cependant toujours vocation à s’appliquer.

Exemples de jurisprudence quant à la nature et à la solidité des liens familiaux :

« Pour justifier la subsistance d’une vie familiale effective entre eux-mêmes malgré l’éloignement géographique ayant existé depuis 10 ans, les demandeurs renvoient essentiellement au soutien financier dont Monsieur ... a fait bénéficier sa mère par le biais de transferts réguliers d’argent. Or, la contribution financière afin de couvrir les besoins matériels d’une autre personne ne suffit pas à elle seule à établir l’existence d’une vie familiale effective avec cette dernière en l’absence d’autres éléments concrets documentant la subsistance de contacts personnels » (Cour adm., 16 mars 2000, n° 11777C, Pas. adm. 2003, V° Etrangers, n° 157, p. 213, et autres décisions y citées),

« L’exercice du droit au respect de la vie familiale suppose pour le moins l’existence d’un exercice effectif de ce droit qui doit avoir une assise concrète, allant au-delà de simples rapports entretenus à travers des visites périodiques de la personne vis-à-vis de laquelle cette unité est revendiquée. » (Cour adm., 7 novembre 2002, n° 15061C),

« L’étranger qui invoque l’article 8 de la Convention pour accéder et séjourner sur le territoire national pour y vivre ensemble avec sa famille, vise à voir reconstituer son unité familiale. Dans une telle hypothèse, le tribunal est appelé à vérifier la préexistence à l’immigration d’une vie familiale effective et à examiner si le but légitime poursuivi par l’administration est proportionné ou non à la gravité de l’éventuelle atteinte au droit du demandeur au respect de sa vie privée et familiale. » (TA, 18 février 1999, n° 10687),

« Constitue une ingérence intolérable dans la vie familiale de façon à rendre impossible la continuation d’une vie familiale effective la décision de refus ministérielle d’une autorisation de séjour en présence d’une personne qui peut faire valoir une relation affective qui existait déjà avant son arrivée au Luxembourg avec une personne vivant au Luxembourg, avec laquelle elle y vit en concubinage depuis son arrivée, qui fut autorisée à travailler au Luxembourg et qui projette de se marier avec son concubin également titulaire d’un permis de travail. » (TA, 12 décembre 2002, n° 15377)

« Le ministre peut valablement refuser l’autorisation de séjour sans méconnaître la protection accordée par l’article 8 de la Convention européenne des droits de l’homme au demandeur qui vit séparé de sa fille âgée de 11 ans et avec laquelle il n’est plus entré en contact depuis plus de 15 mois. » (Cour adm., 8 mai 2003, n° 15919C).

Q.85. B - l'existence d'attaches familiales, culturelles ou sociales avec son pays d'origine, dans les cas de rejet d'une demande, de retrait ou de non-renouvellement du titre de séjour, ainsi qu'en cas d'adoption d'une mesure d'éloignement du regroupant ou des membres de sa famille ?

☐ OUI

☐ NON

Si oui, précisez comment et par quel type de norme (textuelle, jurisprudentielle…)

NATIONAL REPORTS - DIRECTIVE ON FAMILY REUNIFICATION 948
Aucune précision dans le Projet. L’article 8 de la CEDH et la jurisprudence y relative ont cependant toujours vocation à s’appliquer.

« S’il est vrai qu’un parent veuf, dont les maladies ne lui permettent plus de s’adonner à un travail rémunéré lui permettant de subvenir à ses propres besoins, a le droit d’être pris en charge et le cas échéant d’habiter auprès de l’un de ses descendants, sur base notamment de l’article 8 de la Convention européenne des droits de l’homme, il n’en demeure pas moins que ce droit ne lui permet de s’installer auprès de l’un de ses descendants résidant dans un autre Etat que celui dont il est originaire qu’à partir du moment où, dans son pays d’origine, il n’existe aucun descendant ou proche parent qui soit en mesure de prendre en charge ledit parent en lui fournissant notamment un logement approprié. » (TA, 12 décembre 2002, n° 14789).

Q.86 – Le regroupant et les membres de la famille ont-ils un droit de recours contre la décision négative les concernant (a18 §1)?

☐ OUI
☐ NON

Ceci est prévu aux articles 75 alinéa 2 et 109 et suivants du Projet.

Q.87 – Ce droit de recours est-il un recours en justice, conformément à la jurisprudence C-540/03 (a18 §1) ?

☐ OUI
☐ NON

Oui, il s’agit d’un recours en annulation devant le Tribunal administratif, prévu à l’article 113 du Projet et de manière générale par l’article 2 (1) de la loi du 7 novembre 1996 portant organisation des juridictions de l’ordre administratif.

La procédure administrative en droit luxembourgeois se déroule comme suit : dans le délai de trois mois qui suit la notification de la décision négative, la personne concernée (ou toute autre personne ayant un intérêt direct et actuel) peut demander au Ministre qui a pris la décision de la revoir. Si le Ministre confirme sa première décision, un nouveau délai de trois mois commence à courir au jour de la notification de la nouvelle décision pendant lequel la personne concernée pourra saisir le Tribunal administratif d’un recours en annulation. Contre la décision du Tribunal, la personne concernée peut relever appel dans un délai de 40 jours. Les délais ne sont pas suspensifs. En ce qui concerne les informations quant aux voies et délais de recours, celles-ci doivent apparaître dans la décision, à défaut de quoi, aucun délai de forclusion ne pourra être opposé au demandeur, même si son recours intervient après les trois mois qui ont suivi la notification de la décision attaquée.

Il est à noter que le recours administratif gracieux n’est que facultatif et qu’au cas où la personne concernée choisit de saisir directement le Tribunal administratif, elle devra le faire dans le délai de 3 mois qui suit la notification de la décision.
Impact de la directive sur le droit national

Q.88 A. Est ce que la transposition de la directive au sujet de la garantie de l'intérêt supérieur des enfants (a.5 §5) a rendu l'évolution du droit national plus ou moins favorable du point de vue du ressortissant de pays tiers. Comparez également avec les standards de la directive dans la dernière colonne de la table ci-dessous.

<table>
<thead>
<tr>
<th>OBJET</th>
<th>EVALUATION DE L'ÉVOLUTION DU DROIT NATIONAL</th>
<th>EVALUATION EN COMPARAISON DES STANDARDS DE LA DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prise en considération de l'intérêt supérieur des enfants dans l'examen de la demande (a. 5§5)</td>
<td>Disposition non transposée, application du droit commun luxembourgeois, ie. article 3 de la Convention internationale du 20 novembre 1989</td>
<td>Complétez cette case en conservant l'appréciation correcte et en supprimant les deux autres: • Statu quo</td>
</tr>
</tbody>
</table>
Q.88 B. Est ce que la transposition de la directive au sujet de la définition des bénéficiaires du droit au regroupement familial a rendu l'évolution du droit national plus ou moins favorable du point de vue du ressortissant de pays tiers. Comparez également avec les standards de la directive dans la dernière colonne de la table ci-dessous.

<table>
<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>Délimitation des bénéficiaires du droit au regroupement familial (a. 4)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Auparavant, il n’existait pas de dispositions spécifiques concernant le regroupement familial, qui était exclusivement basé sur l’article 8 de la CEDH.</td>
<td>Complétez cette case en conservant l'appréciation correcte et en supprimant les deux autres: • Moins favorable que les règles nationales antérieures</td>
<td>Complétez cette case en conservant l'appréciation correcte et en supprimant l'autre: • Conforme à la directive</td>
</tr>
<tr>
<td>Ainsi, le regroupement familial n’était pas limité à certaines catégories de personnes. Toute personne pouvait présenter une demande et théoriquement bénéficier du regroupement familial si les critères suivants étaient remplis :  - existence d’une vie familiale, et  - vie familiale interrompue par l’immigration d’une de ces personnes, et  - la personne demandant le regroupement ne tombe pas dans le champ d’application de l’article 8 §2 de la CEDH.</td>
<td>Date de la modification : projet de loi déposé le 7 novembre 2007.</td>
<td></td>
</tr>
<tr>
<td>Désormais, des bénéficiaires bien déterminés sont fixés par le projet de loi.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Q.88 C  Est ce que la transposition de la directive en matière de regroupement des enfants de 12 (a. 4§1) et 15 ans (a. 4§6) a rendu l’évolution du droit national plus ou moins favorable du point de vue du ressortissant de pays tiers. Comparez également avec les standards de la directive dans la dernière colonne de la table ci-dessous.

<table>
<thead>
<tr>
<th>OBJET</th>
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</tr>
</thead>
</table>
| Limitations du regroupement des enfants de 12 et de 15 ans | Limitations non transposées | Complétez cette case en conservant l'appréciation correcte et en supprimant les deux autres:  
  • Statu quo | Complétez cette case en conservant l'appréciation correcte et en supprimant l'autre:  
  • Plus favorable que la directive |
Est-ce que la transposition de la directive au sujet des conditions matérielles mises au regroupement (a. 7) a rendu l'évolution du droit national plus ou moins favorable du point de vue du ressortissant de pays tiers. Comparez également avec les standards de la directive dans la dernière colonne de la table ci-dessous.

<table>
<thead>
<tr>
<th>OBJET</th>
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</tr>
</thead>
</table>
| Conditions d'exercice du droit au regroupement (a. 7) | On exige désormais que le regroupant subvienne personnellement et durablement aux besoins de ses proches. Ainsi, il doit disposer de ressources stables, régulières et suffisantes pour subvenir à ses propres besoins et ceux des membres de sa famille qui sont à sa charge, sans recourir au système d'aide sociale, conformément aux conditions et modalités prévues par règlement grand-ducal. | Complétez cette case en conservant l'appréciation correcte et en supprimant les deux autres:  
- **Moins favorable que les règles nationales antérieures**  
Date de la modification : projet de loi déposé le 7 novembre 2007. Projet de règlement grand-ducal non encore déposé. |
| Pas de base légale auparavant, pratique jurisprudentielle essentiellement. Auparavant, dans la pratique, on exigeait parfois du requérant au regroupement familial qu’il remplisse les conditions de l’article 2 de la loi modifiée du 28 mars 1972 concernant 1. l’entrée et le séjour des étrangers, 2. le contrôle médical des étrangers et 3. l’emploi de la main d’œuvre étrangère. Sur base de l’article 2 précité, la demande en regroupement familial était refusée si le requérant « ne dispose pas de moyens personnels suffisants pour supporter les frais de voyage et de séjour » (Tribunal administratif, 12 décembre 2002, n° 14789 ; Tribunal administratif, 13 juillet 2006, n° 20957). Cependant, la jurisprudence n’était pas tranchée sur ce point et on trouvait également | | Complétez cette case en conservant l'appréciation correcte et en supprimant l'autre:  
- **Conforme à la directive** |
| des décisions dans lesquelles la question de la situation financière du demandeur n’était pas examinée. |   |   |
Est ce que la transposition de la directive au sujet de la marge d'appréciation des États membres (a. 5 §5, a. 17, C-540/03) a rendu l'évolution du droit national plus ou moins favorable du point de vue du ressortissant de pays tiers. Comparez également avec les standards de la directive dans la dernière colonne de la table ci-dessous.

<table>
<thead>
<tr>
<th>OBJET</th>
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<th>EVALUATION EN COMPARAISON DES STANDARDS DE LA DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Encadrement de la marge d'appréciation des États membres (a. 17, a.5 §5, C-540/03)</td>
<td>Complétez cette case en conservant l'appréciation correcte et en supprimant les deux autres:</td>
<td>Complétez cette case en conservant l'appréciation correcte et en supprimant l'autre:</td>
</tr>
<tr>
<td>Rien auparavant</td>
<td>Rien de précisé dans le Projet</td>
<td>• <em>Statu quo</em></td>
</tr>
</tbody>
</table>
Q.88 F. Est ce que la transposition de la directive au sujet des objectifs et des critères d’intégration poursuivis par la directive a rendu l’évolution du droit national plus ou moins favorable du point de vue du ressortissant de pays tiers. Comparez également avec les standards de la directive dans la dernière colonne de la table ci – dessous.

<table>
<thead>
<tr>
<th>OBJET</th>
<th>EVALUATION DE L’EVOLUTION DU DROIT NATIONAL</th>
<th>EVALUATION EN COMPARAISON DES STANDARDS DE LA DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prise en considération de l'objectif d'intégration (considérant 15) et des critères d'intégration (a.4 §1 dernier alinéa, a. 7 §2)</td>
<td>Complétez cette case en conservant l'appréciation correcte et en supprimant l'autre:</td>
<td></td>
</tr>
<tr>
<td>Rien auparavant Dispositions non transposées.</td>
<td>Complétez cette case en conservant l'appréciation correcte et en supprimant les deux autres:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Statu quo</td>
<td></td>
</tr>
</tbody>
</table>

Q.89 Est ce que la transposition de la directive au sujet de (partie à completer précisément par les coordinateurs thématiques pour chaque question jugée importante) a rendu l’évolution du droit national plus ou moins favorable du point de vue du ressortissant de pays tiers. Comparez également avec les standards de la directive dans la dernière colonne de la table ci – dessous.

Q.89. A. Mention if there is a general tendency to just copy the provisions of the directive into national legislation without redrafting or adaptation them to national circumstances.

☐ NO
☒ YES

Q.89.B. If yes, please indicate if this general tendency may or not create problems (for example difficulties of implementation, risk that a provision remain unapplied).
Q.89.C. If yes, give some of examples:

Article 4 § 3 de la Directive :

La condition de partenariat enregistré prévue à cet article a été reprise par le Projet. Or ainsi que mentionné plus haut, ceci a pour effet de priver d’effet l’article 70 1 (b) alors que l’article 4.4. de la loi du 9 juillet 2004 exige que les deux partenaires résident légalement sur le territoire luxembourgeois pour pouvoir se faire enregistrer.

Article 5 § 2 de la Directive :

L’article 73 du Projet est une copie presque parfaite de l’article 5 § 2 de la Directive. Cependant, ni le Projet ni les commentaires ne précisent plus avant quelle est la nature des pièces justificatives exigées. Un règlement grand-ducal abordant uniquement les critères de ressources et de logement est normalement prévu mais n’a pas encore été publié.

Q.89.D. If only some provisions of the directive have been copied and if this may create any problem, please quote them and explain the problem.

Q.90. Quote interesting decisions of jurisprudence related to the directive, its transposition or implementation (so this question concerns in principle decisions later that the directive, but previous ones might be quoted if relevant). Quote in particular decisions of supreme Courts; limit yourself to the appeal Courts and ignore the first resort if there are too many decisions at this level, unless there is a certain jurisprudence made of a group of decisions.

ANY SUPPLEMENTARY COMMENT ABOUT THE TREND OF THE JURISPRUDENCE:

Q.91 Specify if there are or not problems with the translation of the text of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated.

X There are no problems with the translation of the directive

X There are some problems with the translation of (indicate the number of the articles concerned) of the directive.

Explain the difficulties that this could create:

Il n’existe aucun problème de traduction, alors qu’une des langues officielles administratives est le français.
QUESTIONNAIRE FOR THE NATIONAL REPORT
ON THE IMPLEMENTATION OF THE DIRECTIVE
FAMILY REUNIFICATION OF 22 SEPTEMBRE 2003

IN

MALTA

By

ZAMMIT APAP Aaron
Dr., Advocate
aaronzammitapap@hotmail.com
[last amended 26 August 2007]

The person in the team of thematic coordination in charge of this directive that you can contact if you have a question or need help when completing this questionnaire is: Yves Pascouau, + 33 5 59 57 41 20, yves.pascouau@univ-pau.fr

COMMENTARIES

1. Council directive 2003/86 on the right to family reunification faced hard negotiations requiring the presentation of revised proposals from the Commission before final adoption in 2003. The European Court of Justice rejected in June 2007 an action for annulment introduced by the European Parliament against the Council directive (C-540/03).

2. Transposition of the directive must be assessed regarding the nature of the provision concerned. So as to help you, those provisions are coloured within the questionnaire as follows: obligatory provision (Q.XX), optional provision (Q.YY), provision which set up a derogation (Q.ZZ)

3. The Court of justice has defined the margins of discretion awarded to the member States even in situations where the directive allows the member States to depart from the directive. The Court states:

"Article 4(1) of the Directive imposes precise positive obligations, with corresponding clearly defined individual rights, on the Member States, since it requires them, in the cases determined by the Directive, to authorise family reunification of certain members of the sponsor’s family, without being left a margin of appreciation” (cons. 60).

"Note should also be taken of Article 17 of the Directive which requires Member States to 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 country of origin. As is apparent from paragraph 56 of the present judgment, such criteria correspond to those taken into consideration by the European Court of Human Rights when it reviews whether a State which has refused an application for family reunification has correctly weighed the competing interests” (cons. 64)

The fact that the concept of integration is not defined cannot be interpreted as authorising the Member States to employ that concept in a manner contrary to general principles of Community law, in particular to fundamental rights. The Member States which wish to make use of the derogation cannot employ an unspecified concept of integration, but must apply the condition for integration provided for by their legislation existing on the date of implementation of the Directive in order to examine
the specific situation of a child over 12 years of age arriving independently from the rest of his or her family" (cons. 70).

4. The main difficulty according to the transposition of the directive relies on the systematic opportunities offered to member States to depart from the provisions of the directive when applying it.

5. Article 19 indicates which themes where the most sensitive during the negotiations of the Directive (art. 3, 4, 7, 8 and 13).

FIRST PART

1. NORMS OF TRANSPOSITION AND JURISPRUDENCE

Q.1.A. Identify the MAIN (because of its content) norm(s) of transposition and indicate its legal nature

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)
- About legal nature in the table below: legislative refers to a norm adopted in principle by the Parliament; regulation refers to a norm complementing the law and adopted in principle by the executive power; circular or instructions refer to practical rules about implementation of laws and regulations and adopted in principle by the administrative authorities

Please *duplicate* the table below if there is more than one MAIN norm of transposition

<table>
<thead>
<tr>
<th>This table is about:</th>
<th>☑ a text already adopted ☐ a text which is still a project to be adopted</th>
</tr>
</thead>
<tbody>
<tr>
<td>TITLE: Family Reunification Regulations, 2007</td>
<td></td>
</tr>
<tr>
<td>DATE: 2007</td>
<td></td>
</tr>
<tr>
<td>NUMBER: Legal Notice 150 of 2007</td>
<td></td>
</tr>
<tr>
<td>DATE OF ENTRY INTO FORCE: 5 June 2007</td>
<td></td>
</tr>
<tr>
<td>PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive): ALL</td>
<td></td>
</tr>
<tr>
<td>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:</td>
<td>Government Gazette of Malta No. 18, 084 (5 June 2007)</td>
</tr>
<tr>
<td>LEGAL NATURE (indicate a cross in the correct box):</td>
<td></td>
</tr>
<tr>
<td>☑ LEGISLATIVE:</td>
<td></td>
</tr>
<tr>
<td>☐ REGULATION:</td>
<td></td>
</tr>
<tr>
<td>☐ CIRCULAR or INSTRUCTIONS:</td>
<td></td>
</tr>
</tbody>
</table>

Q.1.B. List the others norms of transposition by order of importance of their legal nature (first laws, secondly regulations; thirdly circulars or instructions):
This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).

Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)

Please use one table per norm and duplicate as much as necessary

<table>
<thead>
<tr>
<th>TITLE: Immigration Act, 1970</th>
</tr>
</thead>
<tbody>
<tr>
<td>DATE: 21 September 1970</td>
</tr>
<tr>
<td>NUMBER: Act IX of 1970</td>
</tr>
<tr>
<td>DATE OF ENTRY INTO FORCE: 21 September 1970</td>
</tr>
<tr>
<td>PROVISIONS CONCERNED: Article 36 (enabling provision)</td>
</tr>
<tr>
<td>(for example if the norm is not devoted only to the transposition of the concerned directive)</td>
</tr>
<tr>
<td>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: Chapter 217 of the Laws of Malta</td>
</tr>
<tr>
<td>LEGAL NATURE (indicate a cross in the right box):</td>
</tr>
<tr>
<td>☑ LEGISLATIVE</td>
</tr>
<tr>
<td>☑ REGULATION</td>
</tr>
<tr>
<td>☑ CIRCULAR OR INSTRUCTIONS</td>
</tr>
</tbody>
</table>

Q.2. THIS QUESTION IS IN PRINCIPLE ONLY FOR FEDERAL OR ASSIMILATED MEMBER STATES LIKE AUSTRIA, BELGIUM, GERMANY, ITALY, SPAIN

Q.2.A. Explain which level of government is competent to adopt the norms of transposition.

Please include your answer in the tables below

<table>
<thead>
<tr>
<th>LEGISLATIVE RULES</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</td>
</tr>
<tr>
<td>COMPETENCES OF THE COMPONENTS:</td>
</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>REGULATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</td>
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<td>COMPETENCES OF THE COMPONENTS:</td>
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<td>EXPLANATIONS IF NECESSARY:</td>
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</table>

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<thead>
<tr>
<th>CIRCULAR OR INSTRUCTIONS</th>
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</thead>
<tbody>
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</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
</tr>
</tbody>
</table>

Q.2.B. In case, explain if the federal structure and the distribution of competences between the different levels pose any problem or difficulty regarding the transposition and/or the implementation of the directive.
Q.3. Explain which authorities are competent for the practical implementation of the norm of transposition by taking the decisions in individual cases.

Please use one table per competence concerned and duplicate it if necessary

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Authorisation of entry and residence of family members.</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Ministry of Justice and Home Affairs (MJHA)</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>Director for Citizenship and Expatriate Affairs - Family Reunification Regulations, 2007: Regulation 4</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td></td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister):</td>
<td></td>
</tr>
</tbody>
</table>

Please use one table per competence concerned and duplicate it if necessary

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Acceptance of applications for entry and residence.</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
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</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>Director for Citizenship and Expatriate Affairs - Family Reunification Regulations, 2007: Regulation 5</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
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</tr>
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<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister):</td>
<td></td>
</tr>
<tr>
<td>COMPETENCE CONCERNED:</td>
<td>Interviewing sponsors and family members and conducting investigations to collect evidence of family membership.</td>
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<tr>
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<td>Director for Citizenship and Expatriate Affairs - Family Reunification Regulations, 2007: Regulation 7</td>
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### Limiting granting of an autonomous residence permit

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<tr>
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<td>COMPETENCE CONCERNED:</td>
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<th>COMPETENCE CONCERNED:</th>
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<td>Director for Citizenship and Expatriate Affairs - Family Reunification Regulations, 2007: Regulation 18</td>
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<th>COMPETENCE CONCERNED:</th>
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<th>COMPETENCE CONCERNED:</th>
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<tr>
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<td>Minister responsible for Immigration – Immigration Act, 1970: Article 36</td>
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</table>
Q.4. A. Has the main regulation foreseen explicitly by the main norm of transposition already been adopted or not:

☑️ YES

☐ NO

Q.4.B. If the main norm(s) of transposition foresees the adoption of one or several regulations, indicate if they have all been adopted:

☐ YES

☐ NO

If NO, please indicate the missing text(s) in the table below

Please use one line per missing text and duplicate it if necessary

<table>
<thead>
<tr>
<th>MISSING TEXTS</th>
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<tbody>
<tr>
<td>INDICATE HERE THE MISSING TEXTS</td>
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</table>

Add if necessary some explanations (specify in particular if the missing texts are at least under preparation or foreseen in the very near future):
AIM (ARTICLE 1)

The purpose of the Directive is to determine the conditions for the exercise of the right to family reunification. In case C-540/03, the Court of justice recognizes that, in some cases, member States do not have any margin of appreciation to grant the right to family reunification.

Q.5 – Is family reunification considered as a right in your Member State?

☐ OUI
☐ NON

Please explain

Maltese Regulations specifically state that they are implementing the provisions of Directive 2003/86/EC, which gives the right to family reunification.

Q.5. A – Are there any figures available relating to the exercise of the right to family reunification between 2002 and 2006? If yes, what are the trends, including nationality assessment?

Regulations published in June 2007. No figures available.

DEFINITIONS (ARTICLE 2)

SCOPE (ARTICLE 3)

The scope of the Directive is defined by article 3. We recall that:
- § 1 “reasonable prospect…” aims at excluding persons residing on a temporary basis (stagiaires, etc…)
- European citizens are excluded (§ 3)
- Comparison with existing legislation is of importance so as to assess the added value of the harmonization process (§ 5)

Q.6. Period of validity of the sponsor’s residence permit:

Q.6. A. Is the period of validity of the sponsor’s residence permit of one year or more according to article 3 § 1 of the Directive?

☐ OUI
☐ NON
Q.6.B. Quote precisely the period enshrined in national law:

*The sponsor may apply for family reunification if he is holding a residence permit valid for a minimum period of one year.*

Q.6.C. How does your Member State translate in national law the requirement for the sponsor to have "reasonable prospects of obtaining the right of permanent residence" (a 3 § 1)?

*The same terminology is used in the English version – we have English and Maltese versions of the Maltese Regulations.*

Q.7. – Members of the family concerned:

Q7. A. Are they third country nationals as required by article 3 § 1 of the Directive?

- [ ] OUI
- [x] NON

If not, explain

Q.7.B. How has your Member State translated in national law the wording of "whatever status" included in article 3 § 1 of the Directive?

*Maltese law simply refers to ‘third country nationals’ and does not add ‘of whatever status’.*

Q.8 – Did the transposition of the Directive in your Member state breached provisions of international law more favourable to individuals (a 3 § 4)?

- [ ] OUI
- [x] NON

*Not aware of such breaches.*

Q.9 – If yes, are those provisions based on:

Q.9.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?

- [ ] OUI
- [ ] NON

Specify which provisions
Q.9.B - The European Social Charter of 18 October 1961 (a 3 § 4)?

☐ OUI
☐ NON

Specify which provisions

Q.9.C. The amended European Social Charter of 3 May 1987 (a 3 § 4)?

☐ OUI
☐ NON

Specify which provisions


☐ OUI
☐ NON

Specify which provisions

Q.10 – Does the transposition of the Directive affect national provisions more favourable to individuals (a 3 § 5)?

☐ OUI
☒ NON

If yes, please specify which provisions

Not aware of such breaches.

Beneficiaries (Article 4)

- Article 4 of the Directive contains numerous "may clauses". It is therefore important to pay attention on the way Member States use them and on the legal modalities adopted thereof.

- Article 4 § 1 a) and b) enacts a right to family reunification for some members of the sponsor’s family. The Member State does not have any margin of discretion regarding those persons.

- Article 4 § 1 last indent foresee one derogation regarding child over 12 years on the basis of an integration criterion. This is one of the most sensitive questions encompassed by the directive beside the issue of the limit of age in § 6.

- Regarding article 4 § 6, the Court states ""It does not matter that the final sentence of the contested provision provides that the Member States which decide to apply the derogation are to authorise the entry and residence of children in respect of whom an
application is submitted after they have reached 15 years of age ‘on grounds other than family reunification’. The term ‘family reunification’ must be interpreted in the context of the Directive as referring to family reunification in the cases where family reunification is required by the Directive. It cannot be interpreted as prohibiting a Member State which has applied the derogation from authorising the entry and residence of a child in order to enable the child to join his or her parents". (cons. 86) The Court adds " Article 4(6) of the Directive must, moreover, be read in the light of the principles set out in Article 5(5) thereof, which requires the Member States to have due regard to the best interests of minor children, and in Article 17, which requires them to take account of a number of factors, one of which is the person’s family relationships" (cons. 87)

Q.11 – Does your national law recognize the right to family reunification to:

Q.11. A – The sponsor's spouse (a. 4 § 1 a)?

☑️ OUI
☒ NON

Q.11. B - Minor children of the sponsor and of his/her spouse (a. 4 § 1 b)?

☑️ OUI
☒ NON

Q.11.C. Minor children adopted of the sponsor and of his/her spouse (a. 4 § 1 b)?

☑️ OUI
☒ NON

Q.11.D. Minor children of the sponsor (a. 4 § 1 c)?

☑️ OUI
☒ NON

Q.11. E. If yes, does your national law foresee that the sponsor shall have children custody and children are dependant on him or her?

☑️ OUI
☒ NON

Specify if necessary the proofs required
Q.11 F. Minor children adopted of the sponsor (a 4 §1.c) ?

☑ OUI
☐ NON

Q.11. G. If yes:

h. does your national law foresee that the sponsor shall have children custody and children are dependant on him or her?

☑ OUI
☐ NON

Specify if necessary the proofs required

g.g. Does national law provide that those children shall be 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'?

☐ OUI
☑ NON

Specify if necessary the proofs required

Q.11. H. Minor children of the spouse (a 4 §1.d.)?

☑ OUI
☐ NON

Q.11. I. If yes, does your national law foresee that the spouse shall have children custody and children are dependant on him or her?

☑ OUI
☐ NON

Specify if necessary the proofs required

Q.11. J. Minor children adopted of the spouse (a 4 §1.d)?

☑ OUI
☐ NON
Q.11. K. If yes,
k. Does your national law foresee that the spouse shall have children custody and children are dependant on him or her?

☐ OUI
☐ NON

Specify if necessary the proofs required

k.k. Does national law provide that those children shall be 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"?

☐ OUI
☐ NON

Specify if necessary the proofs required

Q.12 – Has your Member State transposed the option opened by article 4 § 1 c:

Q.12A. To authorise reunification of minor children of the sponsor – including also adopted children – of whom custody is shared (a 4 §1.c)?

☐ OUI
☐ NON

Specify if necessary

Q.12.B. If yes, has your legislation transposed the condition that the other party sharing custody has given his or her agreement (a 4 §1. c)?

☐ OUI
☐ NON

Specify if necessary

Q.13 – Has your Member State transposed the option opened by article 4 § 1 d):

Q.13.A. to authorise reunification of minor children of the spouse – including also adopted children – of whom custody is shared (a 4.1.d. in fine)?

☐ OUI
☐ NON

Specify if necessary
Q.13 B. If yes, has your legislation transposed the condition that the other party sharing custody has given his or her agreement (a 4. 1.d) ?

☐ OUI
☐ NON
Specify if necessary

Q.14 – In any case referred to in questions 7 to 9, is the age of the minor children below the age of majority set up by the law of your Member State (a.4 §1, second indent)?

☐ OUI
☐ NON
If yes, indicate the age required

18 years of age.

Q.15 – In any case referred to in questions 7 to 9, has the prohibition of marriage of minor children been transposed (a.4 §1, second indent)?

☐ OUI
☐ NON
If not, explain Si non, expliquez

Q.16 – Is the derogation set up in article 4 § 1 last indent relating to the conditions for integration of children over 12 years arrived independently from the rest of the family used by your Member State?

☐ OUI
☒ NON

How the criterion "arrives independently from the rest of his/her family" has been transposed in your national legislation?

Q.17 – If yes, did this integration condition already exist in your national legislation before the date of transposition of the Directive?

☐ OUI
☐ NON

N/A

Q.18 – Describe briefly the content of this condition, the date of its creation and the conditions of its examination
Q.19 – Are the children of refugees required to an integration test by your Member State (in contradiction with article 10 § 1)?

☐ OUI
☑ NON

If yes, explain

Q.20 – Does your Member State authorise:

Q.20 A – Reunification of first-degree relatives in the direct ascending line of the sponsor (a 4§2 a)?

☐ OUI
☑ NON

Q.20 B – If yes, shall they be dependant and not enjoy proper family support in the country of origin?

☐ OUI
☐ NON

How each of those criterions is transposed and checked?

Q. 20.C. Reunification of first-degree relatives in the direct ascending line of the spouse (a 4§2 a)?

☐ OUI
☑ NON

Q.20.D. If yes, shall they be dependant and not enjoy proper family support in the country of origin?

☐ OUI
☐ NON

How each of those criterions is transposed and checked?

Q.20.E. Reunification of adult unmarried children of the sponsor? (a 4§2 b) ?

☐ OUI
☑ NON

If necessary, explain how this procedure is organised
Q.20.F. If yes, does the national legislation impose that those adult unmarried children of the sponsor are objectively unable to provide for their own needs on account of their state of health (a 4 §2 b) ?

☐ OUI

☐ NON

If necessary, specify how each of those criterions ("objectively" and "unable to provide for their own needs") is transposed and checked?

Q.20. G. Does your Member State authorise reunification of adult unmarried children of the spouse (a 4§2 b)?

☐ OUI

✓ NON

If necessary, specify how this condition is assessed

Q.20.H. If yes, does the national legislation impose that those adult unmarried children of the sponsor are objectively unable to provide for their own needs on account of their state of health (a 4 §2 b) ?

☐ OUI

☐ NON

If necessary, specify how each of those criterions ("objectively" and "unable to provide for their own needs") is transposed and checked?

Q.20. I. Did your Member state use the by law or regulation norms to implement article 4 § 2 a et b?

☐ OUI

✓ NON

Article 4 § 2 a and b NOT implemented.

Q.21 – Does your Member State authorise reunification of the unmarried partner of the sponsor, being a third country national (a 4 §3)?

☐ OUI

✓ NON

Q.22 – If yes:

Q.22 A – This partnership shall be based on a duly attested stable long term relationship?

☐ OUI
☐ NON

If yes, specify how your Member State assess this situation

Q.22 B – This partnership shall be registered?

☐ OUI

☐ NON

Q.23 – Does your national law consider the registered partner as the husband/spouse (a 4 §3 alinéa 2)?

☐ OUI

☑ NON

Q.24 – Does your Member State authorise:

Q.24. A – Reunification of minor children of the partner, including adopted children (a 4§3)?

☐ OUI

☑ NON

Q. 24. B – Reunification of adult unmarried children of the partner, including adopted children (a 4§3)?

☐ OUI

☑ NON

Q.25 – Does your Member State allow reunification of adult unmarried children who are objectively unable to provide for their own needs on account of their state of health (a 4§3)?

☐ OUI

☑ NON

If yes, specify how the conditions, and more particularly the "objectivity", are assessed.

Q.26 – Did your Member state use the by law or regulation norms to implement article 4 § 3?

*Article 4 § 3 NOT implemented.*
Q.27 – Is the prohibition of polygamous marriage enshrined in your national legislation (a. 4§4)?

☑️ OUI  
☐ NON

Q.28 – Does your Member State limit family reunification of minor children of a further spouse and the sponsor (article 4§4 dernier alinéa,)?

☐ OUI  
☑️ NON

There is no mention of such a limitation. A limitation exists in relation to further spouses, but not to children of further spouses.

Q.29 – Does your Member State use the option set up by article 4 § 5 requiring the sponsor and his/her spouse to be of a minimum age of 21 years old before reunification?

☑️ OUI  
☐ NON

Q.30 – If yes,

Q.30 A – What is the age required?

21 years of age or over.

Q.30 B – Is the derogation founded on integration criteria and/or prevention of forced marriage?

No indications given.

Q.31 – Does your Member State use the derogation of article 4 § 6 by requesting that the applications concerning family reunification of minor children have to be submitted before the age of 15?

☐ OUI  
☑️ NON

Explain

Q.32 – If yes, was it provided by existing legislation on the date of implementation of the directive?

N/A
Q.33 – If the application is not introduced before the age of 15, do Member States authorise entry and residence on grounds other than family reunification?

☐ OUI
☐ NON

Which grounds and which conditions?

N/A

PROCEDURE (ARTICLE 5)

We draw attention on the major importance given by the Court of justice regarding § 5 relating to the best interest of minor children.

Q.34 – Did your Member State institute a procedure regarding family reunification (a §1)?

☐ OUI
☐ NON

Q.35 – If yes,

Q.35. A – Which authorities are in charge of this issue?

The Director for Citizenship and Expatriate Affairs is in charge of receiving applications from the sponsor.

Q.35. B – Are NGO's associated to this procedure?

☐ OUI
☐ NON

If yes, describe the procedure

Q.35. C – Is the application submitted by the sponsor or by family members?

The application is submitted by the sponsor.

Q.35. D – Is this procedure exclusive from other possibilities to grant family reunification?

☐ OUI
☐ NON

If other procedural possibilities exist, please describe them
The Regulations do not state that they present the sole method of obtaining family reunification. For instance, there is the possibility of family reunification under the temporary protection regulations; however, this procedure is covered by the Temporary Protection Directive.

**Q. 35. E** – Was this procedure existing before the adoption of Directive 2003/86?

☐ OUI

☐ NON

**Q.36** – Which documentary evidence are required to prove (a 5 §2):

**Q.36. A** – Family relationships according to article 4?

No specific documentation is mentioned: the regulations simply speak of ‘documentary evidence’. It is understood that any document that proves to be of sufficient evidence to the satisfaction of the Director for Citizenship and Expatriate Affairs would suffice. However, this documentation must show that the family members are family members for the purposes of family reunification.

**Q.36. B** – Accommodation conditions laid down in article 7?

No specific documentation is mentioned: the regulations simply speak of ‘documentary evidence’. It is understood that any document that proves to be of sufficient evidence to the satisfaction of the Director for Citizenship and Expatriate Affairs would suffice. However, this documentation must show that the sponsor has accommodation regarded as normal for a comparable family in Malta and which meets the general health and safety standards in force in Malta.
Q.36. C – Sickness insurance conditions?

No specific documentation is mentioned: the regulations simply speak of ‘documentary evidence’. It is understood that any document that proves to be of sufficient evidence to the satisfaction of the Director for Citizenship and Expatriate Affairs would suffice. However, this documentation must show that the sponsor has sickness insurance in respect of all risks for himself and the members of his family.

Q.36. D – Certified copies of family member(s)’ travel documents?

No specific documentation is mentioned: the regulations simply speak of ‘documentary evidence’. It is understood that any document that proves to be of sufficient evidence to the satisfaction of the Director for Citizenship and Expatriate Affairs would suffice. In this case, the Director would need certified copies of documents which the country generally accepts as travel documents.

Q.37 – Is the possibility foreseen to proceed to:

Interviews:

☑ OUI

☐ NON

Investigations:

☑ OUI

☐ NON

If yes, describe them briefly

Regulations give no further details, but simply state that the Director of Citizenship and Expatriate Affairs may decide to carry out interviews with the sponsor and his family members and conduct other investigations that may be necessary.

Q.38 – When examining an application concerning the unmarried partner of the sponsor, which evidences are taken into account by Member States on the basis of national law to prove family relationship (article 5§2 dernier alinea) ?

Q.38. A – Existence of family ties and other elements such as a common child?

☐ OUI

☐ NON

Specify

N/A
Q.38. B - Previous cohabitation?

☐ OUI  ☐ NON  N/A

Q.38. C - Registration of a partnership

☐ OUI  ☐ NON  N/A

Q.38. D - Any other reliable means of proof foreseen in national law?

☐ OUI  ☐ NON  N/A

If yes, specify which ones:

N/A

Q.39 – Are family members obliged to reside outside the territory of the Member State while the application is being examined (a5 §3)?

☐ OUI  ☐ NON

Is this obligation sanctioned and how?

It is understood that unless the proviso is applied, then the application will not be accepted if the family members are already in Malta.

Q.40 – If the answer is yes, is a derogation organised according to article 5 § 3 second indent?

☐ OUI  ☐ NON

Please specify

As a general principle, family members should reside outside Malta pending the application procedure. However, the Director may accept the application whilst family members are already in Malta by way of an exception ‘in appropriate circumstances’.
Q.41 – Does your national legislation include a maximum period of 9 month to answer to the application by way of written notification (a5 §4)?

☐ OUI
☐ NON

If necessary, please specify

Q.42 – This time limit can be extended (a 5 §4 alinea 2)?

☐ OUI
☐ NON

Q.43 – If yes,

Q.43. A – Because of the complexity of the examination of the application?

☐ OUI
☐ NON

If yes, please specify

The Regulations do not elaborate further.

Q.43. B – What is the length of the extension?

The length of the extension is not specified.

Q.44 – If no decision is taken by the end of the 9 months period provided, what are the consequences for the applicant?

In the event that a decision is not laid down within 9 months, the application shall automatically be passed on for appeal to the Immigration Appeals Board in terms of regulation 22.

Q.45 – Is the decision rejecting the application notified? Does this written notification contain the reasons of rejection?

☐ OUI
☐ NON

Specify if only one condition is not required

Both conditions are required.
Q.46 – How is the best interest of minor children taken into account by your Member State’s legislation and authorities during examination of the application (article 5§5)?

No specific criteria are mentioned. However, it is also a general principle in Maltese family legislation that the best interests of minors are always taken into consideration when minors are involved.

CONDITIONS REQUIRED (ARTICLES 6 AND OTHERS)

- Questions relating to accommodation and resources will be carefully examined to assess if Member States use them, either as a migration tool or as an integration tool.

- The same assessment applies regarding the option to set up a period of lawfully residence not exceeding two years before applying for family reunification.

- According to article 8, the Court of justice states: "That provision does not therefore have the effect of precluding any family reunification, but preserves a limited margin of appreciation for the Member States by permitting them to make sure that family reunification will take place in favourable conditions, after the sponsor has been residing in the host State for a period sufficiently long for it to be assumed that the family members will settle down well and display a certain level of integration. Accordingly, the fact that a Member State takes those factors into account and the power to defer family reunification for two or, as the case may be, three years do not run counter to the right to respect for family rights set out in particular in Article 8 of the ECHR as interpreted by the European Court of Human Rights

- "It should, however, be remembered that, as is apparent from Article 17 of the Directive, duration of residence in the Member State is only one of the factors which must be taken into account by the Member State when considering an application and that a waiting period cannot be imposed without taking into account, in specific cases, all the relevant factors" (cons. 99). "The same is true of the criterion of the Member State’s reception capacity, which may be one of the factors taken into account when considering an application, but cannot be interpreted as authorising any quota system or a three-year waiting period imposed without regard to the particular circumstances of specific cases. Analysis of all the factors, as prescribed in Article 17 of the Directive, does not allow just this one factor to be taken into account and requires genuine examination of reception capacity at the time of the application" (cons. 100) "When carrying out that analysis, the Member States must, as is pointed out in paragraph 63 of the present judgment, also have due regard to the best interests of minor children" (cons. 101).

Q.47 – Can public policy, public security or public health grounds be taken into account to (a 6 §§1 et 2):

Q.47. A – Reject an application for family reunification?

☑ OUI

☐ NON

If yes, which ones?

Public policy, public security and public health.
Q.47. B – Withdraw an application for family reunification?

☑ OUI
☐ NON

If necessary, please specify

Q.47. C – Refuse to renew a family member's residence permit?

☑ OUI
☐ NON

If necessary, please specify

Q.48 – Does national legislation take into account:

Q.48. A – The severity or type of offence against public policy or public security?

☑ OUI
☐ NON

Q.48. B – The solidity of family relationships regarding article 17 of the Directive?

☑ OUI
☐ NON

If necessary, please specify

Q.49 – Does your Member State withdraw the residence permit or remove the third country national on the sole ground of illness or disability suffered after the issue of the residence permit (a6 §3)?

☐ OUI
☑ NON

Q.50 – Are accommodation conditions required from the applicant (a7 §1a)?

☑ OUI
☐ NON

Q.51 – If yes:

Q.51. A – What are those conditions?
The sponsor should have an accommodation that is regarded as normal for a comparable family in Malta and which meets the general health and safety standards in force in Malta.

Q.51. B – How are they assessed?

*No indication given in the Regulations, and the Regulations have not as yet been put into practice.*

Q.51 C – Are they comparable to the conditions required to a normal family living in the same region?

☐ OUI

☐ NON

If not, please specify the differences

Q.52 – Is a sickness insurance required from the applicant (a. 7 §1b)?

☐ OUI

☐ NON

Q.53 – Are stable resources required (a7 §1c)?

☐ OUI

☐ NON

Specify their nature and content

*The sponsor should have stable and regular resources which are sufficient to maintain himself and the members of his family without recourse to the social assistance system in Malta and which would be equivalent to, at least, the average wage in Malta with an addition of another twenty percent income or resources for each member of the family who will be the subject of the family reunification application.*

Q.54 – How is the condition "sufficient" assessed by your Member State? Is it in comparison with national wages?

*“Sufficient” is equated to the average wage in Malta with an addition of another twenty percent income resources or resources for each member of the family who will be the subject of the family reunification application.*

Q.55 – Are integration criterions required to allow family reunification (a 7 §2)?

☐ OUI

☑ NON
Q.56 – If yes:

Q.56. A – What are those criterions?

Q.56. B – Do they apply indistinctly to all potential beneficiaries of reunification? (Spouse, dependant people, etc.)

Q.56. C – How are they evaluated by your Member State?

Q.56. D – Are refugees and their family members required to fulfil them (a 7 §2, second indent)?

☐ OUI
☐ NON

Q.57 – Is a minimal period of lawful reside is required before reunification (a 8 §1)?

☐ OUI
☐ NON

Q. 58 – Does this period exceed two years?

Please specify

No, the Regulations specify that reunification of family members is only allowed if the sponsor has resided in Malta for two years.

Q.59 – Does your Member State apply the derogation set up by article 8 § 2 allowing Member States to impose a waiting period of maximum three years due to reception capacities between the submission of the application and the issuance of a residence permit?

☐ OUI
☐ NON

Please specify

Q.60 – If yes, did this derogation exist in national law before the 22nd of September 2003?

☐ OUI
☐ NON

N/A
FAMILY REUNIFICATION OF REFUGEES

The legal regime applicable to refugees derogates from the one applicable to family reunification. The scope of those derogations (minimal lawful residence, members of the family, accommodation requirements) shall be assessed on the basis of national law.

Q.61 – Does your Member State allow family reunification of refugees on the basis of Directive 2003/86 (a 9 §1) ?

☐ OUI
☐ NON

Q.62 – Is this right limited to family relationships predating the entry on the territory (a 9 §2)?

☐ OUI
☐ NON

Q.63 – Does your Member State allow family reunification of family Members not quoted in article 4 of the Directive (a 10 §2)?

☐ OUI
☐ NON

Which members of the family and under which conditions?

N/A

Q.64 – According to the specific case of unaccompanied minor refugees, does your Member State authorise family reunification of first degree relatives in the direct ascending line without applying the conditions laid down in article 4 § 2 (a10 §3 a) ?

☐ OUI
☐ NON

What conditions are required?

First degree relatives in the direct ascending line are not considered to be family members for purposes of the family reunification.

Q. 65 – Does your Member State authorise entry and residence of the legal guardian or any member of the family where the unaccompanied minor refugee has no relatives in the direct ascending line or such relatives cannot be traced (a10 §3 b) ?

☐ OUI
☐ NON
If yes, please specify who the member of the family targeted is and which proofs are required to prove family ties?

**Q.66** – Does your Member State take into account other evidence of family relationship where the refugee cannot provide official evidence (a 11 §2)?

- [ ] OUI
- [x] NON

Which ones?

N/A

**Q.67** – Does the examination of the refugee application take into account their specific situation:

- [x] OUI
- [ ] NON

If yes, are those requirements comparable to those imposed to other third country nationals?

*Equivalent – no distinction is made between refugees and third country nationals in the family reunification Regulations.*

**Q.67. A** – Are proofs regarding accommodation conditions, sickness insurance or resources required (a 12 §1)?

- [x] OUI
- [ ] NON

If yes, are those requirements comparable to those imposed to other third country nationals?

*No distinction is made between refugees and third country nationals in the family reunification Regulations.*

**Q.67. B** – If one of the person concerned (sponsor or family member) has special links with a third country within which reunification is possible, does your member state require those proofs according to article 12 § 1 second indent.

- [x] OUI
- [ ] NON

If necessary specify

*No distinction is made between refugees and third country nationals in the family reunification Regulations.*

**Q.67. C** – If a refugee has introduced its application after a period of three months, does your Member State require the refugee to meet the conditions or one of them (accommodation, sickness insurance, resources (a 12 §1 alinea 3)?

- [x] OUI
- [ ] NON

If yes, which ones?
No distinction is made between refugees and third country nationals in the family reunification Regulations – all requirements should be satisfied.

**Q.68** – Does your Member State apply the prohibition to impose a residence condition before reunification (a 12 §2)?

☐ OUI

☐ NON

If not, what is the length of this period? Is it different from the one normally applied?

The sponsor must have resided in Malta LAWFULLY for at least two years in order to apply for family reunification. However, the Director for Citizenship and Expatriate Affairs may allow for exceptions in ‘exceptional circumstances’.

**EXERCISE OF THE RIGHT TO FAMILY REUNIFICATION**

The granting of an autonomous residence permit is one of the most sensitive issues of this part of the Directive.

**Q.69** – Is entry and residence facilitated by your Member State, as soon as the application for family reunification has been accepted, including the issue of obtaining visas (a13 §1)?

☐ OUI

☐ NON

If yes, how?

The Regulations state that as soon as the application for family reunification has been accepted, the Director for Citizenship and Expatriate Affairs shall authorize the entry of the family member or members who were the subject of the application, and every facility for obtaining the required visas shall be given to the persons concerned.

**Q.70** – Is a residence permit of at least one year's duration granted to the family members (a 13 §2)?

☐ OUI

☐ NON

What is the duration of the residence permit?

At least for one year.
Q.71 – Is this residence permit renewable?

☑ OUI
☐ NON

Q.72 – Is the duration of the residence permit aligned with the duration of sponsor’s residence permit (a 13 §3)?

☑ OUI
☐ NON

If no, please specify

Q.73 – Are the rights awarded to family members' equivalent to those granted to the sponsor (a14 §1):

Q.73. A – Regarding access to education?

☑ OUI
☐ NON

If no, please specify

Q.73. B - Regarding access to employment?

☑ OUI
☐ NON

Please specify the content of this access

No further details given in the Regulations, although it is mentioned that it is the same access rights that the sponsor enjoys. Family members also enjoy the right of access to self-employed activities.

Q.73. C – Regarding access to vocational guidance, initial and further training and retraining?

☑ OUI
☐ NON

If no, please specify

Q.74 – Does your Member State grant specific rights in social matters to reunified family members?

☐ OUI
☑ NON
If yes, please describe them and specify if a time limit is established to take advantage from them

**Q.75** – Has Member State set up conditions regarding specific access to employment for family members (a 14 §2)?

☐ OUI

☐ NON

If yes, how?

When the sponsor has access to employment and self-employment without the need for an assessment of the situation of the labour market, the said family members shall not be entitled to access in the same way as the sponsor for the first twelve months following their arrival in Malta and for such period of twelve months after their arrival, their access to employment or self-employment shall be subject to an assessment of the situation of the labour market in Malta and the requirement of an employment licence.

**Q.76** – If yes, do those conditions exceed 12 months (a 14 §2)?

☐ OUI

☑ NON

Which ones?

**Q.77** – Is access to employment limited in your Member State

**Q.77.A** – Regarding first-degree relatives in the direct ascending line?

☐ OUI

☐ NON

If yes, how?

*These relatives are not considered as family members for family reunification purposes.*

**Q.77. B** – Regarding adult unmarried children objectively unable to provide for their own needs on account of their state of health (a 14 §3)?

☑ OUI

☐ NON

If yes, how?

*These relatives are not considered as family members for family reunification purposes.*
Q.78 – Are spouses, unmarried partners and child who has reached majority entitled to an autonomous residence permit at least five years after lawful residence on the basis of the residence permit issued for family reunification (a15 §1)?

☐ OUI
☐ NON

If yes, please specify when and how for each category

Unmarried partners are not considered as family members under Maltese legislation, therefore the Regulations here make no mention of this category. For spouses and children who have reached majority, autonomous residence permits can be obtained upon the expiry of a period of five years’ residence in Malta and provided that the family member has not been granted a residence permit for reasons other than family reunification.

Q.79 – Does your Member State limit the granting of the autonomous residence in cases of breakdown of the family relationship (a 15 §1 alinea 2)?

☐ OUI
☐ NON

Please explain

Maltese regulations grant an autonomous residence permit in the case of the breakdown of the marriage to the spouses only. Unmarried partners are not considered as family members under Maltese legislation for family reunification purposes.

Q.80 – Does your Member State grant autonomous residence permit:

Q.80. A – To first-degree relatives in the direct ascending line (a15 §2)

☐ OUI
☐ NON

If necessary specify

These relatives are not considered as family members for family reunification purposes.

Q.80. B – To adult unmarried children objectively unable to provide for their own needs on account of their state of health (a15 §2)?

☐ OUI
☐ NON

If necessary specify
These relatives are not considered as family members for family reunification purposes.

Q.81 – Does your member State grant autonomous residence permit in the event of widowhood, divorce, separation or death of first first-degree relatives in the direct ascending or descending line (a 15 §3) ?

☐ OUI

☐ NON

If necessary specify

*In the corresponding Maltese Regulations, no mention is made of divorced or separated spouses, only widows.*

*On the other hand, autonomous residence permits are issued to the minor child and to the child who has reached the age of majority in the event of the death of the sponsor after having obtained a residence permit for reasons of family reunification.*

Q.82 – Has your Member State adopted rules granting autonomous residence permit "in the event of particularly difficult circumstances" (a 15 §3)?

☐ OUI

☐ NON

If yes, how is this provision defined and transposed?

*The Maltese Regulations have interpreted "in the event of particularly difficult circumstances" in the following manner:*

"17. (1) The Director shall issue an autonomous residence permit to the widow, to the minor child and to the child who has reached the age of majority in the event of the death of the sponsor after having obtained a residence permit for reasons of family reunification.

(2) The Director shall issue an autonomous residence permit to a person who, having entered Malta on the basis of a family reunification permit, such person is subsequently found to be in particularly difficult circumstances following a breakdown of the marriage."

Therefore, in these cases, autonomous residence permits are granted to:

a. widows, minor children and children who have reached the age of majority in the event of the death of the sponsor after having obtained a residence permit for reasons of family reunification; and

b. persons who, having entered Malta on the basis of family reunification permit are subsequently found to be in particularly difficult circumstances following a breakdown of their marriage.
**PENALTIES AND REDRESS**

*Those provisions must be read in parallel with those relating to the conditions to be fulfilled to obtain family reunification (articles 6, 7, 8)*

*Questions relating fraud, false or falsified documents are of importance to assess their impact.*

**Q.83** – What are the legal grounds to reject, withdraw or refuse to renew a family member's residence permit (a16 §1 et 2):

- **Q.83. A** – Conditions required by the directive not satisfied?
  - OUI
  - NON

- **Q.83. B** – Absence of real marital or family relationship?
  - OUI
  - NON

  *If yes, how is this hypothesis assessed?*

  *The Maltese Regulations maintain a general line, where it is stated that where the sponsor and his family members do not, or no longer live, in a real marital or family relationship, permits may be withdrawn, refused or applications rejected.*

- **Q.83. C** – Stable long term relationship with another person?
  - OUI
  - NON

  *If yes, how is this hypothesis assessed?*

  *Only when it is found that the sponsor is already married.*

- **Q.83. D** – False or falsified documents?
  - OUI
  - NON

- **Q.83. E** – Marriage, partnership or adoption contracted for the sole purpose of enabling reunification?
  - OUI
  - NON
Only marriage and adoption are mentioned in the Regulations since no other forms of personal partnerships are currently recognised under Maltese law.

**Q.83. F** – If yes, how is this hypothesis assessed?

No known record of such a case – regulations are very recent, and probably the same line of action of the Courts would be taken, where a number of different pieces of evidence would be considered to corroborate the existence of such a state of affairs or not.

**Q.83. G** – When the sponsor's residence comes to an end and the family member does not yet enjoy an autonomous right of residence (a 16 §3)?

☑ OUI

☐ NON

**Q.83. H** – What type of control are organised thereof?

The Director for Citizenship and Expatriate Affairs may conduct specific checks and inspections where there is reason to suspect that there is fraud or a marriage or adoption of convenience. Specific checks may also be undertaken on the occasion of the renewal of residence permits of family members.

**Q.84** – Are resources of the family taken into account when renewing residence permit where the sponsor does not have sufficient resources without recourse to the social assistance system of the member state?

☑ OUI

☐ NON

If yes, under which modalities?

*When renewing the residence permit, the contributions of the family members to the household income shall be taken into account where the sponsor fails to prove that he has the sufficient resources without recourse to the social assistance system.*

**Q.85** – Does your Member State's legislation take into consideration (a. 17):

**Q.85. A** – The nature and solidity of the person's family relationships and the duration of his residence in the Member State?

☑ OUI's

☐ NON

If yes, please specify how and on the basis of which norm (legislation, regulation, jurisprudence, …)
The Maltese Regulations repeat the wording of the Directive in terms of the general principles of taking into consideration ‘the person’s family relationships and the duration of his residence in Malta’.
This Directive has as yet not been put into practice.

Q.85. B - 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?

☐ OUI
☐ NON

If yes, please specify how and on the basis of which norm (legislation, regulation, jurisprudence, …)

The Maltese Regulations repeat the wording of the Directive in terms of the general principles of taking into consideration ‘the existence of family, cultural and social ties with his/her country of origin, etc’.
This Directive has as yet not been put into practice.

Q.86 – Do the sponsor and/or members if his/her family have the right to mount a legal challenge where an application for family reunification is rejected (a18 §1)?

☐ OUI
☐ NON

Q.87 – Is this right to legal challenge considered as a right to a judicial review according to jurisprudence C-540/03 (a18 §1)?

☐ OUI
☐ NON
XX. IMPACT OF THE DIRECTIVE ON NATIONAL LAW

Q.88 A  Did the transposition of the directive made the rules related to the best interest of minor children (a. 5 § 5) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

Please use one box per object and duplicate it if necessary

<table>
<thead>
<tr>
<th>OBJECT</th>
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<tbody>
<tr>
<td>Due regard to the best interest of minor children during examination of the application a. 5 § 5</td>
<td>Explain the situation after transposition (to evaluate the impact of the directive, take also into consideration national norms which have been adopted before the deadline for transposition or even before the adoption of the directive in cases of Member States having amended their national legislation in advance in view of the directive. Indicate the precise date of adoption of the change)</td>
<td>Complete this box by keeping the right appreciation and deleting the two others:</td>
</tr>
<tr>
<td>Explain the situation before transposition</td>
<td>This obligation to have due regard to the best interests of minors has been introduced and therefore goes in favour of both the sponsor and the minor.</td>
<td>• Status quo</td>
</tr>
<tr>
<td>This is a new norm and hence any introduction of such a consideration goes to the benefit of the third country national.</td>
<td>Complete this box by keeping the right appreciation and deleting the other one:</td>
<td>• More favourable than previous national rules</td>
</tr>
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<tr>
<td></td>
<td></td>
<td>• In line with the directive</td>
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</tbody>
</table>
Q.88 B  Did the transposition of the directive made the rules related to the beneficiaries of the right to family reunification become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

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| Definition of the beneficiaries of the right to family reunification a. 4 § 4 | Explain the situation after transposition (to evaluate the impact of the directive, take also into consideration national norms which have been adopted before the deadline for transposition or even before the adoption of the directive in cases of Member States having amended their national legislation in advance in view of the directive. Indicate the precise date of adoption of the change)  

This right has been recently introduced and therefore goes in favour of the beneficiaries since they did not enjoy such right prior to the transposition. | Complete this box by keeping the right appreciation and deleting the two others:  
• Statu quo  
• More favourable than previous national rules  
• Less favourable than previous national rules  

Complete this box by keeping the right appreciation and deleting the other one:  
• More favourable than the directive  
• In line with the directive |

Explain the situation before transposition  

This is a new norm and hence any introduction of such a consideration goes to the benefit of the third country national.
Did the transposition of the directive made the rules related to reunification of minor children between 12 (a. 4 § 1) and 15 (a. 4 § 6) years old become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below.

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</table>
| Limitation of reunification of minor children of 12 and 15 years of age (a. 4 § 1 and 4 § 6) | Explain the situation after transposition (to evaluate the impact of the directive, take also into consideration national norms which have been adopted before the deadline for transposition or even before the adoption of the directive in cases of Member States having amended their national legislation in advance in view of the directive. Indicate the precise date of adoption of the change) No references made to these age thresholds. All unmarried children under the age of 18 would qualify. | Complete this box by keeping the right appreciation and deleting the two others:  
- Status quo  
- More favourable than previous national rules  
- Less favourable than previous national rules |
| Explain the situation before transposition | Complete this box by keeping the right appreciation and deleting the other one:  
- More favourable than the directive  
- In line with the directive | |
Did the transposition of the directive made the rules related to requirements to the exercice of family reunification (article 7) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

Please use one box per object and duplicate it if necessary

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| Requirements for the exercice of family reunification (a. 7) | Explain the situation after transposition  
(to evaluate the impact of the directive, take also into consideration national norms which have been adopted before the deadline for transposition or even before the adoption of the directive in cases of Member States having amended their national legislation in advance in view of the directive. Indicate the precise date of adoption of the change)  
This right has been recently introduced and therefore goes in favour of the beneficiaries since they did not enjoy such right prior to the transposition. | Complete this box by keeping the right appreciation and deleting the two others:  
- **Statu quo**  
- **More favourable than previous national rules**  
- **Less favourable than previous national rules** | Complete this box by keeping the right appreciation and deleting the other one:  
- **More favourable than the directive**  
- **In line with the directive** |

**Q.88 D**
Q.88 E  Did the transposition of the directive made the rules related to margins of manoeuvre awarded to Member States (a. 5 § 5, 17, C-540/03) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

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</thead>
</table>
| Limitation of margins of manoeuvre (a. 17, a.5 §5, C-540/03) | Explain the situation after transposition (to evaluate the impact of the directive, take also into consideration national norms which have been adopted before the deadline for transposition or even before the adoption of the directive in cases of Member States having amended their national legislation in advance in view of the directive. Indicate the precise date of adoption of the change) This right has been recently introduced and therefore goes in favour of the beneficiaries since they did not enjoy such right prior to the transposition. | Complete this box by keeping the right appreciation and deleting the two others:  
- **Statu quo**  
- More favourable than previous national rules  
- Less favourable than previous national rules |

Complete this box by keeping the right appreciation and deleting the other one:

- **More favourable than the directive**  
- **In line with the directive**
Q.88 F Did the transposition of the directive made the rules related to integration objectives and criterions more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below.

**Please use one box per object and duplicate it if necessary**

<table>
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<tr>
<td>Attention draw upon integration objectives (considérant 15) and criterions of integration (a.4 §1 dernier alinéa, a. 7 §2)</td>
<td>Explain the situation after transposition (to evaluate the impact of the directive, take also into consideration national norms which have been adopted before the deadline for transposition or even before the adoption of the directive in cases of Member States having amended their national legislation in advance in view of the directive. Indicate the precise date of adoption of the change)</td>
<td>Complete this box by keeping the right appreciation and deleting the two others:</td>
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<tr>
<td></td>
<td></td>
<td>• Statu quo</td>
</tr>
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<td></td>
<td></td>
<td>• More favourable than previous national rules</td>
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<tr>
<td></td>
<td>No such norm has been transposed.</td>
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<tr>
<td></td>
<td></td>
<td>• Less favourable than previous national rules</td>
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<tr>
<td></td>
<td></td>
<td>• In line with the directive</td>
</tr>
</tbody>
</table>

Explain the situation before transposition

No such norm has been transposed.
Q.89 From your point of view, did the transposition of the directive imply other interesting changes for the third national country regarding other elements than the ones mentioned in the previous question. Make also a comparison with the standard of the directive in the last column of the table below.

If they want to do so, the thematic coordinators should complete this question by indicating the number of examples that they ask the national reporter to give.

Please use one box per object and duplicate it if necessary

<table>
<thead>
<tr>
<th>OBJECT (to be precisely indicated by the national rapporteur)</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Explain the situation before transposition</td>
<td>Explain the situation after transposition (to evaluate the impact of the directive, take also into consideration national norms which have been adopted before the deadline for transposition or even before the adoption of the directive in cases of Member States having amended their national legislation in advance in view of the directive. Indicate the precise date of adoption of the change)</td>
<td>Complete this box by keeping the right appreciation and deleting the two others:</td>
</tr>
<tr>
<td>No such norms in existence.</td>
<td>All norms are new, therefore benefit the third country nationals.</td>
<td>• Statu quo</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• More favourable than previous national rules</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Less favourable than previous national rules</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• In line with the directive</td>
</tr>
</tbody>
</table>

Q.89.A. Mention if there is a general tendency to just copy the provisions of the directive into national legislation without redrafting or adaptation them to national circumstances.

☐ NO

☒ YES

Q.89.B. If yes, please indicate if this general tendency may or not create problems (for example difficulties of implementation, risk that a provision remain unapplied).

☐ NO

☒ YES
Q.89.C. If yes, give some of examples:

N/A.

Q.89.D. If only some provisions of the directive have been copied and if this may create any problem, please quote them and explain the problem.

N/A.

Q.90. Quote interesting decisions of jurisprudence related to the directive, its transposition or implementation (so this question concerns in principle decisions later that the directive, but previous ones might be quoted if relevant). Quote in particular decisions of supreme Courts; limit yourself to the appeal Courts and ignore the first resort if there are too many decisions at this level, unless there is a certain jurisprudence made of a group of decisions.

Please use one box per decision and duplicate it if necessary

<table>
<thead>
<tr>
<th>DECISION OF SUPREME COURTS</th>
<th>DATE: N/A</th>
<th>REFERENCE OF PUBLICATIONS: N/A</th>
<th>SUMMARY OF CONTENT: N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>DECISION OF APPEAL COURTS</td>
<td>DATE:</td>
<td>REFERENCE OF PUBLICATIONS:</td>
<td>SUMMARY OF CONTENT:</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>DECISION(S) IN FIRST RESORT</td>
<td>DATE:</td>
<td>REFERENCE OF PUBLICATIONS:</td>
<td>SUMMARY OF CONTENT:</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

ANY SUPPLEMENTARY COMMENT ABOUT THE TREND OF THE JURISPRUDENCE:

Q.91 Specify if there are or not problems with the translation of the text of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated.

☑ There are no problems with the translation of the directive

☐ There are some problems with the translation of (indicate the number of the articles concerned) of the directive.

Explain the difficulties that this could create:

N/A.
**Q. 92 ANY OTHER INTERESTING ELEMENT**

**Q.92 A.** Following your personal point of view, mention from the point of view of third country nationals and/or from the Member State any interesting or innovative practice in your Member State

*Please use one table per practice and duplicate it if necessary*

<table>
<thead>
<tr>
<th>OBJECT OF THE PRACTICE</th>
<th>EXPLANATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>N/A</td>
<td><em>This is a very recent transposition and there are no innovative practices to my knowledge.</em></td>
</tr>
</tbody>
</table>

**Q.92 B.** Please add here any other interesting element in your Member State which you did not had the occasion to mention in your previous answers

N/A
The person in the team of thematic coordination in charge of this directive that you can contact if you have a question or need help when completing this questionnaire is: Yves Pascouau, +33 5 59 57 41 20, yves.pascouau@univ-pau.fr

COMMENTARIES

1. Council directive 2003/86 on the right to family reunification faced hard negotiations requiring the presentation of revised proposals from the Commission before final adoption in 2003. The European Court of Justice rejected in June 2007 an action for annulment introduced by the European Parliament against the Council directive (C-540/03).

2. Transposition of the directive must be assessed regarding the nature of the provision concerned. So as to help you, those provisions are coloured within the questionnaire as follows: obligatory provision (Q.XX), optional provision (Q.YY), provision which set up a derogation (Q.ZZ)

3. The Court of justice has defined the margins of discretion awarded to the member States even in situations where the directive allows the member States to depart from the directive. The Court states:

"Article 4(1) of the Directive imposes precise positive obligations, with corresponding clearly defined individual rights, on the Member States, since it requires them, in the cases determined by the Directive, to authorise family reunification of certain members of the sponsor's family, without being left a margin of appreciation" (cons. 60).

"Note should also be taken of Article 17 of the Directive which requires Member States to 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 country of origin. As is apparent from paragraph 56 of the present judgment, such criteria correspond to those taken into consideration by the European Court of Human Rights when it reviews whether a State which has refused an application for family reunification has correctly weighed the competing interests" (cons. 64)

The fact that the concept of integration is not defined cannot be interpreted as authorising the Member States to employ that concept in a manner contrary to general principles of Community law, in particular to fundamental rights. The Member States
which wish to make use of the derogation cannot employ an unspecified concept of integration, but must apply the condition for integration provided for by their legislation existing on the date of implementation of the Directive in order to examine the specific situation of a child over 12 years of age arriving independently from the rest of his or her family" (cons. 70).

4. The main difficulty according to the transposition of the directive relies on the systematic opportunities offered to member States to depart from the provisions of the directive when applying it.

5. Article 19 indicates which themes where the most sensitive during the negotiations of the Directive (art. 3, 4, 7, 8 and 13).

FIRST PART

1. NORMS OF TRANSPOSITION AND JURISPRUDENCE

Q.1.A. Identify the MAIN (because of its content) norm(s) of transposition and indicate its legal nature

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)
- About legal nature in the table below: legislative refers to a norm adopted in principle by the Parliament; regulation refers to a norm complementing the law and adopted in principle by the executive power; circular or instructions refer to practical rules about implementation of laws and regulations and adopted in principle by the administrative authorities.

Please duplicate the table below if there is more than one MAIN norm of transposition.

This table is about: [X] a text already adopted [ ] a text which is still a project to be adopted

| DATE: 29 September 2004 |
| NUMBER: Stb. 2004, 496 |
| DATE OF ENTRY INTO FORCE: 1 November 2004 |
| PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive): all |

LEGAL NATURE (indicate a cross in the correct box):

[ ] LEGISLATIVE: [X] REGULATION: [ ] CIRCULAR or INSTRUCTIONS:
<table>
<thead>
<tr>
<th>This table is about:</th>
<th>X a text already adopted □ a text which is still a project to be adopted</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>TITLE:</strong></td>
<td>Aliens Act 2000</td>
</tr>
<tr>
<td><strong>DATE:</strong></td>
<td>23 November 2000</td>
</tr>
<tr>
<td><strong>NUMBER:</strong></td>
<td>Stb. 2000, 495</td>
</tr>
<tr>
<td><strong>DATE OF ENTRY INTO FORCE:</strong></td>
<td></td>
</tr>
<tr>
<td><strong>PROVISIONS CONCERNED</strong> (for example if the norm is not devoted only to the transposition of the concerned directive):</td>
<td>Article 15, Article 16 paragraph 1 sub a, Article 16 paragraph 1 sub h, Article 16a</td>
</tr>
<tr>
<td><strong>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:</strong></td>
<td>Bulletin of Acts, Orders and Decrees 2000, no. 495 (Staatsblad 2000, 495)</td>
</tr>
<tr>
<td><strong>LEGAL NATURE</strong> (indicate a cross in the correct box):</td>
<td>☑ LEGISLATIVE:</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>This table is about:</th>
<th>X a text already adopted □ a text which is still a project to be adopted</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>TITLE:</strong></td>
<td>Decree of 23 November 2000 to implement the Aliens’ Act 2000 (Aliens Decree 2000)</td>
</tr>
<tr>
<td><strong>DATE:</strong></td>
<td>23 November 2000</td>
</tr>
<tr>
<td><strong>NUMBER:</strong></td>
<td>Stb. 2000, 497</td>
</tr>
<tr>
<td><strong>DATE OF ENTRY INTO FORCE:</strong></td>
<td></td>
</tr>
<tr>
<td><strong>PROVISIONS CONCERNED</strong> (for example if the norm is not devoted only to the transposition of the concerned directive):</td>
<td>Article 3.4, Articles 3.13 until 3.28</td>
</tr>
<tr>
<td><strong>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:</strong></td>
<td>Bulletin of Acts, Orders and Decrees 2000 no. 497</td>
</tr>
<tr>
<td><strong>LEGAL NATURE</strong> (indicate a cross in the correct box):</td>
<td>☑ LEGISLATIVE:</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>This table is about:</th>
<th>X a text already adopted □ a text which is still a project to be adopted</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>TITLE:</strong></td>
<td>Aliens Circular</td>
</tr>
<tr>
<td><strong>DATE:</strong></td>
<td>1 January 2007</td>
</tr>
<tr>
<td><strong>NUMBER:</strong></td>
<td>Not applicable</td>
</tr>
<tr>
<td><strong>DATE OF ENTRY INTO FORCE:</strong></td>
<td>1 January 2007</td>
</tr>
<tr>
<td><strong>PROVISIONS CONCERNED</strong> (for example if the norm is not devoted only to the transposition of the concerned directive):</td>
<td>Chapter B2 ‘Family reunification and family formation’</td>
</tr>
<tr>
<td><strong>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:</strong></td>
<td>Not applicable</td>
</tr>
<tr>
<td><strong>LEGAL NATURE</strong> (indicate a cross in the correct box):</td>
<td>☑ LEGISLATIVE:</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Q.1.B. List the others norms of transposition by order of importance of their legal nature (first laws, secondly regulations; thirdly circulars or instructions):

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)

Please use one table per norm and duplicate as much as necessary

<table>
<thead>
<tr>
<th>TITLE:</th>
<th>DATE:</th>
<th>NUMBER:</th>
</tr>
</thead>
<tbody>
<tr>
<td>DATE OF ENTRY INTO FORCE:</td>
<td>PROVISIONS CONCERNED:</td>
<td></td>
</tr>
<tr>
<td>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:</td>
<td>LEGAL NATURE (indicate a cross in the right box):</td>
<td></td>
</tr>
<tr>
<td>LEGISLATIVE</td>
<td>REGULATION</td>
<td>CIRCULAR OR INSTRUCTIONS</td>
</tr>
</tbody>
</table>

Q.2.

This question is in principle only for federal or assimilated member states like Austria, Belgium, Germany, Italy, Spain

Q.2.A. Explain which level of government is competent to adopt the norms of transposition.

Please include your answer in the tables below

<table>
<thead>
<tr>
<th>LEGISLATIVE RULES</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</td>
</tr>
<tr>
<td>COMPETENCES OF THE COMPONENTS:</td>
</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>REGULATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</td>
</tr>
<tr>
<td>COMPETENCES OF THE COMPONENTS:</td>
</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CIRCULAR OR INSTRUCTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</td>
</tr>
<tr>
<td>COMPETENCES OF THE COMPONENTS:</td>
</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
</tr>
</tbody>
</table>
Q.2.B. In case, explain if the federal structure and the distribution of competences between the different levels pose any problem or difficulty regarding the transposition and/or the implementation of the directive.

Q.3. Explain which authorities are competent for the practical implementation of the norm of transposition by taking the decisions in individual cases.

Please use one table per competence concerned and duplicate it if necessary

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Immigratie Naturalisatie Dienst (Immigration Naturalisation Service)</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Justice</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>Directie Vreemdelingenbeleid (Direction Alien Policy)</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td></td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister):</td>
<td></td>
</tr>
</tbody>
</table>

Please use one table per competence concerned and duplicate it if necessary

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Afdeling Vreemdelingen- en Visumzaken (DPV/VV)</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Department Alien- and Visa affairs</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>Directie Personenverkeer, Migratie en Vreemdelingenzaken (Direction Free Movement of Persons, Migrations and Alien affairs)</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td>Embassies</td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister):</td>
<td></td>
</tr>
</tbody>
</table>
Q.4. A. Has the main regulation foreseen explicitly by the main norm of transposition already been adopted or not:

[ ] YES

[ ] NO

Q.4.B. If the main norm(s) of transposition foresees the adoption of one or several regulations, indicate if they have all been adopted:

[ ] YES

[ ] NO

If NO, please indicate the missing text(s) in the table below

Please use one line per missing text and duplicate it if necessary

<table>
<thead>
<tr>
<th>MISSING TEXTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>INDICATE HERE THE MISSING TEXTS</td>
</tr>
</tbody>
</table>

Add if necessary some explanations (specify in particular if the missing texts are at least under preparation or foreseen in the very near future):
AIM (ARTICLE 1)

The purpose of the Directive is to determine the conditions for the exercise of the right to family reunification. In case C-540/03, the Court of justice recognizes that, in some cases, member States do not have any margin of appreciation to grant the right to family reunification.

Q.5 – Is family reunification considered as a right in your Member State?

☐ OUI  ☐ NON

If the conditions are fulfilled, the Aliens Decree provides that a residence permit on the grounds of Family Reunification shall be granted (article 3.13 paragraph 1 Aliens Decree).

Q.5. A – Are there any figures available relating to the exercise of the right to family reunification between 2002 and 2006? If yes, what are the trends, including nationality assessment?

Table 1
Applications for temporary stay for the purpose of family formation/reunification

<table>
<thead>
<tr>
<th>Year</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td>43.368</td>
</tr>
<tr>
<td>2003</td>
<td>35.771</td>
</tr>
<tr>
<td>2004</td>
<td>40.588</td>
</tr>
<tr>
<td>2005</td>
<td>30.525</td>
</tr>
<tr>
<td>2006</td>
<td>22.652</td>
</tr>
</tbody>
</table>

Source: IND

Table 2
Applications for family formation/reunification as a percentage of total number of applications for authorisation for temporary stay

<table>
<thead>
<tr>
<th>Year</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td>67%</td>
</tr>
<tr>
<td>2003</td>
<td>55%</td>
</tr>
<tr>
<td>2004</td>
<td>73%</td>
</tr>
<tr>
<td>2005</td>
<td>66%</td>
</tr>
<tr>
<td>2006</td>
<td>56%</td>
</tr>
</tbody>
</table>

Source: IND
Table 3
Percentages of applications for temporary stay that are granted

<table>
<thead>
<tr>
<th>Year</th>
<th>Total</th>
<th>Family formation/reunification</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td>62%</td>
<td>60%</td>
</tr>
<tr>
<td>2003</td>
<td>60%</td>
<td>55%</td>
</tr>
<tr>
<td>2004</td>
<td>52%</td>
<td>53%</td>
</tr>
<tr>
<td>2005</td>
<td>59%</td>
<td>49%</td>
</tr>
<tr>
<td>2006</td>
<td>59%</td>
<td>51%</td>
</tr>
</tbody>
</table>

Source: IND

From table 1 it becomes apparent that the number of applications for temporary stay for the purpose of family reunification and family formation has been decreasing since 2005. In 2005 there were 25% less applications for family reunification than in 2004. This decrease continues in 2006 where there were 44% less applications compared to 2004.

Also, the number of applications for family formation or family reunification as a percentage of the total number of applications for temporary stay is diminishing. In 2004, 73% of all applications for temporary stay consisted of applications for temporary stay for the purpose of family reunification or family formation. In 2006, only 56% of all applications for temporary stay originate from immigrants that want to stay in the Netherlands for the purpose of family reunification or family formation. This becomes apparent from table 2.

The decrease in the number of applications for temporary stay for family reunification and formation possibly is the result of the stricter requirements for family formation that were introduced 1 November 2004 as a result of the implementation of the Directive on family reunification. As of that date, sponsors that want to benefit from family formation have to earn 120% of the minimum wage for 23 year old workers and have to be at least 21 years old. This means that a sponsor who is 18 years old will have to earn almost 280% and a person aged 21 will have to earn more than 160% of the minimum wage for workers of his age. The decrease in the number of applications for family reunification and formation might also be a consequence of the introduction of the integration exam abroad that was introduced 15 March 2006. As of that date, family members of 16 years and older have to pass an integration test in the country of origin before they are admitted in the Netherlands. This integration tests consist of an oral language test and questions regarding the Dutch society. It is especially hard to pass the test for persons in countries where there is hardly any Dutch teaching material. Taking the exam costs € 350. The test will have to be taken again, which will cost another € 350. The price might also constitute a barrier for taking the test.

From table 3 it becomes apparent that the number of applications for family formation/reunification that is granted is also decreasing. Whereas 60% of all applications for family reunification and formation was granted in 2002, only 49% was granted in 2005 and 51% in 2006. So not only is the number of applications for family reunification/formation diminishing, the number of applications that is granted is also decreasing. Compared to the total number of applications that is granted the number of applications that is granted on the basis of family reunification/formation is decreasing in the years 2005 and 2006 compared to the years before. In 2005, 59% of all applications is granted, against 49% of all applications for family reunification/formation. In 2006, 51% of the applications for family reunification/formation is granted, against 59% of the total number of applications. Before 2005, there was a difference of maximum 5% between the total number of application for temporary stay that are granted and the number of applications for temporary stay for the purpose of family reunification/formation that are granted.
DEFINITIONS (ARTICLE 2)

SCOPE (ARTICLE 3)

The scope of the Directive is defined by article 3. We recall that:
- § 1 "reasonable prospect..." aims at excluding persons residing on a temporary basis (stagiaires, etc…)
- European citizens are excluded (§ 3)
- Comparison with existing legislation is of importance so as to assess the added value of the harmonization process (§ 5)

Q.6. Period of validity of the sponsor’s residence permit:
   Q.6. A. Is the period of validity of the sponsor’s residence permit of one year or more according to article 3 § 1 of the Directive?

   [X] OUI
   [ ] NON

Q.6.B. Quote precisely the period enshrined in national law:

The Dutch Aliens Decree does not provide for a specific period of validity of a residence permit. In article 3.15, it is stated that stated that a residence permit on family reunification grounds will be issued to the (unmarried) partner or minor child of an alien holding a residence permit which is issued for a non-temporary goal. Non-temporary is specified in article 3.5 Aliens Decree, where the temporary reasons of residence are exhaustively summed up in paragraph 2. Temporary grounds of residence are for instance stay for the purpose of a visit to relatives, stay as au pair, stay for reasons of study, stay for the purpose of a medical treatment. Paragraph 3 of article 3.5 states that all other reasons of residence are of a non-temporary nature. In general a residence permit is granted for the period of one year (3.57 Aliens Decree). A residence permit on grounds of asylum is granted for a period of five years (3.105 Aliens Decree).

Q.6.C. How does your Member State translate in national law the requirement for the sponsor to have "reasonable prospects of obtaining the right of permanent residence" (a 3 § 1)?

See answer to Q.6.B.

Q.7. – Members of the family concerned:

   Q7. A. Are they third country nationals as required by article 3 § 1 of the Directive?

   [X] OUI
   [ ] NON

   If not, explain

   A remark needs to be made here concerning the right to family reunification of Dutch nationals. In the Netherlands, the rules that apply to family reunification
with third country nationals also apply to family reunification with Dutch nationals. However, according to a judgment of the Dutch Council of State, the highest administrative Court, Dutch nationals can not rely on the directly applicable provisions of the Directive by virtue of Article 3(3) (JV 2006/172).

Q.7.B. How has your Member State translated in national law the wording of "whatever status" included in article 3 § 1 of the Directive?

There are no extra demands concerning the status of the family members.

Q.8 – Did the transposition of the Directive in your Member state breach provisions of international law more favourable to individuals (a 3 § 4)?

☐ OUI
☒ NON

The transposition of the Directive did not breach the provisions of international law mentioned in the agreements of Article 3 paragraph 4 sub a and b.

Q.9 – If yes, are those provisions based on:

Q.9.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?

☐ OUI
☒ NON

Specify which provisions

Q.9.B - The European Social Charter of 18 October 1961 (a 3 § 4)?

☐ OUI
☒ NON

Specify which provisions

Q.9.C. The amended European Social Charter of 3 May 1987 (a 3 § 4)?

☐ OUI
☒ NON

Specify which provisions

☐ OUI

☐ NON

Specify which provisions

Q.10 – Does the transposition of the Directive affect national provisions more favourable to individuals (a 3 § 5)?

☒ OUI

☐ NON

The Dutch Royal Decree pretending to implement the Directive introduced several new restrictions. It raised the age requirement for family formation from 18 to 21 years and the income requirement for family formation from the level of social security for married couples to 120% of the minimum wage for persons aged 23 and up. Also, the implementation of the Directive has led to the introduction of the integration exam abroad as a condition for family reunification. All three changes deteriorated the situation of third country nationals and their family members.

The Decree that implemented the Directive also deteriorated the situation of Dutch nationals, who are generally treated in the same way as third country nationals when it comes to family reunification, by abolishing the more favourable public order exception for Dutch nationals.

BENEFICIARIES (ARTICLE 4)

• Article 4 of the Directive contains numerous "may clauses". It is therefore important to pay attention on the way Member States use them and on the legal modalities adopted thereof.

• Article 4 § 1 a) and b) enacts a right to family reunification for some members of the sponsor's family. The Member State does not have any margin of discretion regarding those persons.

• Article 4 § 1 last indent foresee one derogation regarding child over 12 years on the basis of an integration criterion. This is one of the most sensitive questions encompassed by the directive beside the issue of the limit of age in § 6.

• Regarding article 4 § 6, the Court states ""It does not matter that the final sentence of the contested provision provides that the Member States which decide to apply the derogation are to authorise the entry and residence of children in respect of whom an application is submitted after they have reached 15 years of age ‘on grounds other than family reunification’. The term ‘family reunification’ must be interpreted in the context of the Directive as referring to family reunification in the cases where family reunification is required by the Directive. It cannot be interpreted as prohibiting a Member State which has applied the derogation from authorising the entry and residence of a child in order to enable the child to join his or her parents". (cons. 86)

The Court adds " Article 4(6) of the Directive must, moreover, be read in the light of
the principles set out in Article 5(5) thereof, which requires the Member States to have due regard to the best interests of minor children, and in Article 17, which requires them to take account of a number of factors, one of which is the person’s family relationships” (cons. 87)

Q.11 – Does your national law recognize the right to family reunification to:

Q.11. A – The sponsor's spouse (a. 4 § 1 a)?

X OUI

□ NON

Q.11. B - Minor children of the sponsor and of his/her spouse (a. 4 § 1 b)?

X OUI

□ NON

Q.11.C. Minor children adopted by the sponsor and his/her spouse (a. 4 § 1 b)?

X OUI

□ NON

Q.11.D. Minor children of the sponsor (a. 4 § 1 c)?

X OUI

□ NON

Q.11. E. If yes, does your national law foresee that the sponsor shall have children custody and children are dependant on him or her?

X OUI

□ NON

The sponsor shall have custody over the children. This needs to be proven by legalised documents relating to the parental authority in respect of the child. The child of a single mother is assumed to be under her custody. In this case, no further proof of custody is required.

It is not required that the children are dependent on the sponsor.

Q.11 F. Minor children adopted of the sponsor (a 4 §1.c) ?

X OUI

□ NON
Q.11. G. If yes:
h. does your national law foresee that the sponsor shall have children custody and children are dependant on him or her?

[X] OUI

[] NON

The national law foresees that the sponsor has custody over the children. This has to be proven with legalised documents. It is not required that the children are dependent on the sponsor.

g.g. Does national law provide that those children shall be 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'?

[X] OUI

[] NON

Specify if necessary the proofs required

A foreign adoption will be acknowledged when the adoption has taken place in conformity with the Hague Adoption Treaty. A declaration needs to be submitted that the adoption has taken place in conformity with the provisions of the Treaty in a country that is party to the Treaty. In case of an adoption that has taken place in a state not party of the Hague Adoption Treaty, the legalised foreign adoption decision and the decision of a Dutch judge regarding the fulfilment of the requirements of acknowledgment of the adoption decision are required as proof a real family relationship between the adoptive parent (in casu the sponsor) and the child.

Q.11. H. Minor children of the spouse (a 4 §1.d.)?

[X] OUI

[] NON

Q.11. I. If yes, does your national law foresee that the spouse shall have children custody and children are dependant on him or her?

[X] OUI

[] NON

The Dutch law foresees that the spouse has legal custody over the children. This needs to be proven with legalised documents. The child of a single mother is assumed to be under her custody. In this case, no further proof of custody is required. It is not required that the minor children are dependent on the spouse.
Q.11. J. Minor children adopted of the spouse (a 4 §1.d)?

[ ] OUI
[ ] NON

Q.11. K. If yes, k. Does your national law foresee that the spouse shall have children custody and children are dependant on him or her?

[X] OUI
[ ] NON

The Dutch law foresees that the spouse has legal custody over the children. This needs to be proven with legalised documents. The child of a single mother is assumed to be under her custody. In this case, no further proof of custody is required. It is not required that the children are dependent on the spouse.

k.k. Does national law provide that those children shall be 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"?

[X] OUI
[ ] NON

See Q. 11 g.g.

Q.12 – Has your Member State transposed the option opened by article 4 § 1 c:

Q.12A. To authorise reunification of minor children of the sponsor – including also adopted children – of whom custody is shared (a 4 §1.c)?

[X] OUI
[ ] NON

Specify if necessary

Q.12.B. If yes, has your legislation transposed the condition that the other party sharing custody has given his or her agreement (a 4 §1. c)?

[X] OUI
[ ] NON
Specify if necessary

In case custody is shared, and in case this is required by the legal system of the country of residence of the other parent, a declaration of consent from the remaining parent regarding the child’s departure from the country of origin needs to be submitted with the request for temporary stay. Also, a copy of the other parent’s ID to verify the autograph needs to be submitted. In case the parent whose consent is required refuses to give this consent, can not be found or has deceased, a competent foreign authority can give the necessary consent. (Aliens Circular B2/5.2)

**Q.13** – Has your Member State transposed the option opened by article 4 § 1 d):

**Q.13.A.** to authorise reunification of minor children of the spouse – including also adopted children – of whom custody is shared (a 4.1.d. in fine)?

☐ OUI

☐ NON

Specify if necessary

**Q.13 B.** If yes, has your legislation transposed the condition that the other party sharing custody has given his or her agreement (a 4.1.d) ?

☐ OUI

☐ NON

Specify if necessary

In case this is required by the legal system of the country of residence of the other parent with whom custody is shared.

**Q.14** – In any case referred to in questions 7 to 9, is the age of the minor children below the age of majority set up by the law of your Member State (a.4 §1, second indent)?

☐ OUI

☐ NON

Children must be below the age of 18.

**Q.15** – In any case referred to in questions 7 to 9, has the prohibition of marriage of minor children been transposed (a.4 §1, second indent)?

☐ OUI

☐ NON

If not, explain.
Q.16 – Is the derogation set up in article 4 § 1 last indent relating to the conditions for integration of children over 12 years arrived independently from the rest of the family used by your Member State?

[X] OUI

[ ] NON

How the criterion "arrives independently from the rest of his/her family" has been transposed in your national legislation?

This criterion has not been implemented in Dutch legislation.

Q.17 – If yes, did this integration condition already exist in your national legislation before the date of transposition of the Directive?

[ ] OUI

[X] NON

Q.18 – Describe briefly the content of this condition, the date of its creation and the conditions of its examination

In case they no longer have to go to school, 16 and 17 year old children need to pass an integration test as a requirement for family reunification before admission in the Netherlands. The criterion that the children have to arrive in the Netherlands independently from the rest of the family has not been implemented. The test consists of a language test (level A1 in the Council of Europe’s Common Framework of Reference (CEF)) and questions regarding the Dutch society. This condition applies since 15 March 2006.

For more information see Q. 56 A-C.

Q.19 – Are the children of refugees required to an integration test by your Member State (in contradiction with article 10 § 1)?

[ ] OUI

[X] NON

If yes, explain

Q.20 – Does your Member State authorise:

Q.20 A – Reunification of first-degree relatives in the direct ascending line of the sponsor (a 4§2 a)?

[X] OUI

[ ] NON
Q.20 B – If yes, shall they be dependant and not enjoy proper family support in the country of origin?

[ ] OUI
[ ] NON

How each of those criterions is transposed and checked?

Parents of a sponsor may be granted a residence permit on the ground of family reunification if the following requirements are fulfilled:

- The parent needs to be 65 years or older
- The parent needs to be single. This needs to be proven with legalised documents, for example a death certificate or a divorce certificate.
- Almost all children have an unlimited right to reside in the Netherlands, have been granted a residence permit on asylum grounds or have Dutch nationality (so no family reunification in case the children have a residence permit which is limited in time)
- There are no children in the country of origin that can take care of the parent.

Q. 20.C. Reunification of first-degree relatives in the direct ascending line of the spouse (a 4§2 a)?

[ ] OUI
[ ] NON

Q.20.D. If yes, shall they be dependant and not enjoy proper family support in the country of origin?

[ ] OUI
[ ] NON

How each of those criterions is transposed and checked?

See Q. 20 B. Spouse must have residence permit which is issued on asylum grounds or have a residence permit of unlimited duration.

Q.20.E. Reunification of adult unmarried children of the sponsor? (a 4§2 b) ?

[ ] OUI
[ ] NON

If necessary, explain how this procedure is organised
Q.20.F. If yes, does the national legislation impose that those adult unmarried children of the sponsor are objectively unable to provide for their own needs on account of their state of health (a 4 §2 b) ?

☑ OUI

☐ NON

If necessary, specify how each of those criterions ("objectively" and "unable to provide for their own needs") is transposed and checked?

In the Aliens Circular it is specified that there needs to be a ‘real family relationship’ between the parent and the adult child. This means that the family relationship must already have existed in the country of origin (or the country of permanent residence), that the adult child must come to live with his parents, and that the adult child must be morally and financially dependent on the parents. This dependency must also have existed in the country of origin.

The real family relationship between parent and child is deemed no longer to exist in case:

- A period of more than one year has passed between the date the parent has left the adult child in the country of origin and a request for family reunification with the child has been filed. In case of a good reason for not having submitted an application for family reunification in the year after abandonment of the child, the child may still have a right to be reunited with the sponsor. An example of a good reason is the fact a child has been untraceable due to a war situation.

- The adult child has been permanently included in another family (or has been sheltered in a home) and the person with whom residence is intended no longer has custody or is no longer responsible for the costs of upbringing and maintenance. Custody in this sense means actual custody, which means that the parent must have been involved in important decisions regarding the adult child’s upbringing and care. The sponsor needs to convince the authorities that during the period of separation, he or she had actual custody or was responsible for the costs of upbringing and maintenance and that the child has not been included in another family.

- The adult child goes to live on his/her own and is self-supporting.

- The adult child forms his/her own family by getting married or by starting a relationship with someone.

- The adult child has a duty to care for a (extramarital) child, a foster or adoptive child or other dependent family members.

Another condition is that the fact that the adult child is left behind must constitute a ‘disproportionate harshness’. A disproportionate harshness is only constituted in extraordinary situations and does for example not lay in general circumstances in the country of origin or in the fact that the adult child will remain in the country of origin as the sole member of the family.

Both conditions will have to be fulfilled. It is highly questionable whether the Dutch rules regarding family reunification with adult unmarried children is in conformity with the Directive, since the Directive only allows as condition for family reunification that the adult unmarried children are ‘objectively unable to provide for their own needs on account of their state of health.’
Q.20. G. Does your Member State authorise reunification of adult unmarried children of the spouse (a 4§2 b)?

☐ OUI
☐ NON

Article 3.24 of the Aliens Decree provides for family reunification with other family members than spouses, partners and unmarried children with persons who are legally residing in the Netherlands. Required is that there is a ‘real family relationship’ between the family member and the person who is legally residing in the Netherlands (see Q. 20F) and that the fact that the family member is left behind constitutes a ‘disproportionate harshness.’

Q.20.H. If yes, does the national legislation impose that those adult unmarried children of the sponsor are objectively unable to provide for their own needs on account of their state of health (a 4 §2 b) ?

☐ OUI
☐ NON

If necessary, specify how each of those criterions ("objectively" and "unable to provide for their own needs") is transposed and checked?

Q.20. I. Did your Member state use the by law or regulation norms to implement article 4 § 2 a et b?

☐ OUI
☐ NON

Q.21 – Does your Member State authorise reunification of the unmarried partner of the sponsor, being a third country national (a 4 §3)?

☐ OUI
☐ NON

Q.22 – If yes:

Q.22 A – This partnership shall be based on a duly attested stable long term relationship?

☐ OUI
☐ NON

If yes, specify how your Member State assess this situation
Unmarried partners must be at least 18 years (21 years for family formation) and be in a permanent and exclusive relationship with the sponsor (article 3.14 paragraph 1 sub b Aliens Decree). A sustainable and exclusive relationship exists in case the relationship is sufficiently comparable to a marriage. The partners must live together and share the same household or must start to do so once the partner has entered the Netherlands. The partners must be registered on the same address in the Municipal Base Administration (GBA). The existence of a sustainable and exclusive relationship can be demonstrated by the signing of a declaration of relationship by both partners. By signing such a declaration, the partners declare that they (will) live together and that they have a permanent and exclusive relationship. The declaration however does not constitute absolute proof of the existence of a permanent and exclusive relationship. The application for family reunification will be denied in case it can be assumed the relationship is one of convenience.

Q.22 B – This partnership shall be registered?

☐ OUI
☐ NON

Q.23 – Does your national law consider the registered partner as the husband/spouse (a 4 §3 alinéa 2)?

☐ OUI
☐ NON

Q.24 – Does your Member State authorise:

Q. 24. A – Reunification of minor children of the partner, including adopted children (a 4§3)?

☐ OUI
☐ NON

Q. 24. B – Reunification of adult unmarried children of the partner, including adopted children (a 4§3)?

☐ OUI
☐ NON

Q.25 – Does your Member State allow reunification of adult unmarried children who are objectively unable to provide for their own needs on account of their state of health (a 4§3)?

☐ OUI
☐ NON
See Q. 20 G.

Q.26 – Did your Member state use the by law or regulation norms to implement article 4 § 3?

Yes.

Q.27 – Is the prohibition of polygamous marriage enshrined in your national legislation (a. 4§4)?

☑ OUI

☐ NON

Q.28 – Does your Member State limit family reunification of minor children of a further spouse and the sponsor (article 4§4 dernier alinéa,)?

☑ OUI

☐ NON

Q.29 – Does your Member State use the option set up by article 4 § 5 requiring the sponsor and his/her spouse to be of a minimum age of 21 years old before reunification?

☑ OUI

☐ NON

Q.30 – If yes,

Q.30 A – What is the age required? 21 years. The requirement only applies in case of family formation. It applies to both spouse (or partner) and sponsor. The Aliens Circular contains no obligation for the authorities to take all relevant considerations into account. In practice this means that an application for family formation will be denied in any case in case spouse or sponsor has not yet reached the age of 21. This is not in conformity with the Directive.

Q.30 B – Is the derogation founded on integration criteria and/or prevention of forced marriage?

Q.31 – Does your Member State use the derogation of article 4 § 6 by requesting that the applications concerning family reunification of minor children have to be submitted before the age of 15?

☐ OUI

☒ NON

Explain

Children of 15 years and older are required to prove that they are not responsible for the care of children by signing a declaration.

Q.32 – If yes, was it provided by existing legislation on the date of implementation of the directive?

Q.33 – If the application is not introduced before the age of 15, do Member States authorise entry and residence on grounds other than family reunification?

☐ OUI

☐ NON

Which grounds and which conditions?

PROCEDURE (ARTICLE 5)

We draw attention on the major importance given by the Court of justice regarding § 5 relating to the best interest of minor children.

Q.34 – Did your Member State institute a procedure regarding family reunification (a 5 §1)?

☒ OUI

☐ NON

Q.35 – If yes,

Q.35. A – Which authorities are in charge of this issue?
The Immigration and Naturalisation Service.

Q.35. B – Are NGO's associated to this procedure?

☐ OUI

☒ NON

If yes, describe the procedure
Q.35. C – Is the application submitted by the sponsor or by family members?

The family member needs to apply for obtaining an advice with regard to granting an authorisation of temporary stay (visa) in the country of origin or of permanent residence. The sponsor can also submit an application for an advice concerning an authorisation for temporary stay, but there will be no possibility of appealing a negative advice in this case. If the immigration authorities in the Netherlands advice negatively, the family member will have to submit an application for an authorisation of temporary stay in his or her country of origin or of permanent residence. This request will be followed by a negative decision (in accordance with the negative advice). This decision can be appealed. Once admitted to the Netherlands, the family member still needs to make an application for a residence permit on family reunification grounds.

Q.35. D – Is this procedure exclusive from other possibilities to grant family reunification?

☐ OUI
☐ NON

If other procedural possibilities exist, please describe them

Q. 35. E – Was this procedure existing before the adoption of Directive 2003/86?

☐ OUI
☐ NON

Q.36 – Which documentary evidence are required to prove (a 5 §2):

Q.36. A – Family relationships according to article 4?

For spouses and registered partners:
- Copy of the registration of the marriage or registered partnership in the Municipal Base Administration (GBA)
  - In case of marriage: a copy of the marriage certificate
  - In case of registered partnership: a copy of the registered partnership deed. The partnership needs to be registered in the Netherlands.

For minor children:
- Copy of child’s birth certificate
In the case of a child from a previous relationship of sponsor or his/her spouse or partner:
- Documents relating to the parental authority in respect of the child
- Declaration of consent from the remaining parent regarding the child’s departure from the country of origin.

For adult children:
- Copy of child’s birth certificate
- Copy of child’s unmarried status declaration (certificate have been issued in the country of origin or of permanent residence)
- Proof that leaving the child in the country of origin would cause disproportionate hardship (for instance documentary evidence showing that there are no other relatives in the country of origin, that the child is dependent on the sponsor or his/her spouse or partner and/or that the child is not able to support himself/herself in the country of origin)
- Documents relating to the legal family relationship between child and sponsor or the sponsor’s spouse/partner (only if the relationship is not clear from the birth certificate)
- Documentary evidence relating to the contributions to the costs of the child’s upbringing and living expenses since sponsor’s arrival in the Netherlands
- Documents relating to the legal custody of the child
- Documents relating to the actual authority with respect to child (for instance documentary evidence showing that the sponsor or his/her spouse or partner are/have been involved in important decisions regarding the child’s upbringing or care, including decisions regarding the choice of school, housing and social development)
- Documents relating to the relatives with whom the child resides or can reside in the country of origin

For unmarried partners:
- Copy of unmarried status declaration (in case immigrant does not possess Dutch nationality or a permanent residence permit, this declaration must have been issued in the country of origin)
- Copy of unmarried status declaration of the partner (certificate must have been issued in country of origin or country of permanent residence)

Q.36. B – Accommodation conditions laid down in article 7?

There is no housing requirement in force in the Netherlands.

Q.36. C – Sickness insurance conditions?

As a condition for the granting of a residence permit on regular grounds, the alien has to prove he or she is sufficiently insured against sickness by submitting a written document (B2/2.6.1 Aliens Circular).

Q.36. D – Certified copies of family member(s)’ travel documents?

Yes.

Q.37 – Is the possibility foreseen to proceed to:

Interviews:

☒ OUI
☐ NON
Investigations:

[ ] OUI

[ ] NON

In case of a marriage, the municipal official of the Registry of Births, Deaths and Marriages can in case one or both spouses or registered partners hold another nationality than the Dutch nationality only cooperate with the conclusion or registration of a marriage if a declaration of the Superintendent of the police is submitted. In this declaration, information regarding the residence of the immigrant is contained as well as an advice of the Superintendent for the municipal official whether he should or should not cooperate in concluding or registering the marriage. The Superintendent bases the advice on indications whether the marriage may or may not be one of convenience. A negative advice of the Superintendent needs to be justified and accompanied by a completed questionnaire with possible observations by the Superintendent that can indicate that a marriage/partnership is one of convenience. The questionnaire contains information regarding facts and circumstances regarding residence and other observations that may indicate that the marriage is one of convenience. The judgment whether a marriage is a marriage of convenience always needs to be based on more than one observation. The sole fact that there is a large difference in age between the spouses for example is not enough to draw the conclusion that the marriage is one of convenience.

In case the family relationship between a parent and a child can not be proven with legalised documents, they can revert to a DNA test.

For the investigation and interviews that may take place in case of family reunification with unmarried partners see Q. 38 C.

Q.38 – When examining an application concerning the unmarried partner of the sponsor, which evidences are taken into account by Member States on the basis of national law to prove family relationship (article 5§2 dernier alinea) ?

Q.38. A – Existence of family ties and other elements such as a common child?

[ ] OUI

[ ] NON

Specify

Q.38. B - Previous cohabitation?

[ ] OUI

[ ] NON
Q.38. C - Registration of a partnership

X OUI

[] NON

The evidence mentioned above is only relevant in case there is serious doubt whether the relationship is genuine. Unmarried partners must prove their relationship is sustainable and exclusive. To this end the partners must prove that they are not married to someone else. Furthermore, they can sign a declaration that their relationship is exclusive and sustainable and that they will live together and share a common household after admission in the Netherlands. However, the application will still be rejected if there are grounds to believe that the application is asked for the sole purpose of granting a residence permit. This assumption can be based on contradictory declarations of the partners, declarations of other persons and other evidence, such as the finding that the partners are not living together or do not share a common household.

Q.38. D - Any other reliable means of proof foreseen in national law?

X OUI

[] NON

If yes, specify which ones: See answer to Q.38.C,

Q.39 – Are family members obliged to reside outside the territory of the Member State while the application is being examined (a5 §3) ?

X OUI

[] NON

Is this obligation sanctioned and how?

The application may be denied.

Q.40 – If the answer is yes, is a derogation organised according to article 5 § 3 second indent?

X OUI

[] NON

Please specify

In case demanding for an authorisation for temporary stay (visa) constitutes an unreasonable harshness, than this condition will not be applies (Article 3.71(4) Aliens Decree).
Q.41 – Does your national legislation include a maximum period of 9 month to answer to the application by way of written notification (a5 §4)?

☐ OUI
☐ NON

If necessary, please specify

Article 25 of the Dutch Aliens Act declares that all decisions regarding the issuing and renewal of a temporary residence permit are to be taken within 6 months after the application has been submitted. This period can be extended with another 6 months at most, if the Minister deems an advice of the public prosecutor or an investigation by a third party necessary for the decision on the application.

Note has to be taken to the fact that most immigrants have to apply for an authorisation for temporary stay. In the Aliens Circular it is mentioned that the reasonable term for deciding on a request for an authorisation for temporary stay is three months (Vc B1/1.1.1).

Q.42 – This time limit can be extended (a 5 §4 alinea 2) ?

☐ OUI
☐ NON

Q.43 – What is the length of the extension?

6 months

Q.43. A – Because of the complexity of the examination of the application?

☐ OUI
☐ NON

If yes, please specify

The time limit can be extended in case the Minister deems an advice of the public prosecutor or an investigation by a third party necessary for the decision on the application (Article 25 Aliens Act).

Q.44 – If no decision is taken by the end of the 9 months period provided, what are the consequences for the applicant?

In case a decision is not taken within the time limit, the Administrative Act (Awb) provides that a ‘virtual decision’ is taken (article 6:2 Administrative Act) against which a possibility of appeal exists.
Q.45 – Is the decision rejecting the application notified? Does this written notification contain the reasons of rejection?

X OUI
□ NON

Specify if only one condition is not required

Q.46 – How is the best interest of minor children taken into account by your Member State’s legislation and authorities during examination of the application (article 5§5)?

This clause is not implemented. The Royal Decree implementing the Directive refers to the general rules in the Dutch Administrative Act (articles 3:2 and 3:4 Awb) that prescribe the public authorities to take into account all relevant circumstances when making a decision is applied. Furthermore, mention is made of Article 8 ECHR. The minister also mentions the UN-Convention on the Rights of the Child, but states that this Convention does not create extra obligations than article 8 ECHR. According to a judgment of the Dutch Council of State, the UN Convention on the Rights of the Child has no direct effect in the Netherlands.

The biggest problem in the transposition of the Directive in the Netherlands appears to be the fact that the national requirements for family reunification are applied very strictly, and that the authorities are not obliged to assess on an individual basis if certain circumstances justify that a requirement is not applied. The authorities normally do not explain in their rejecting decision why the rules are strictly applied in that certain case, even if the applicant has brought up special circumstances and reasons that could justify a decision to make an exception to the rules.

This strict application of the rules is shown with regard to the age limit, the income requirement, the requirement to pass an integration exam abroad, the three months period for refugees and the requirement of an authorisation for temporary stay.

CONDITIONS REQUIRED (ARTICLES 6 AND OTHERS)

• Questions relating to accommodation and resources will be carefully examined to assess if Member States use them, either as a migration tool or as an integration tool.

• The same assessment applies regarding the option to set up a period of lawfully residence not exceeding two years before applying for family reunification.

• According to article 8, the Court of justice states: "That provision does not therefore have the effect of precluding any family reunification, but preserves a limited margin of appreciation for the Member States by permitting them to make sure that family reunification will take place in favourable conditions, after the sponsor has been residing in the host State for a period sufficiently long for it to be assumed that the family members will settle down well and display a certain level of integration.

Accordingly, the fact that a Member State takes those factors into account and the power to defer family reunification for two or, as the case may be, three years do not run counter to the right to respect for family rights set out in particular in Article 8 of the ECHR as interpreted by the European Court of Human Rights.

• "It should, however, be remembered that, as is apparent from Article 17 of the Directive, duration of residence in the Member State is only one of the factors which
must be taken into account by the Member State when considering an application and that a waiting period cannot be imposed without taking into account, in specific cases, all the relevant factors” (cons. 99). "The same is true of the criterion of the Member State’s reception capacity, which may be one of the factors taken into account when considering an application, but cannot be interpreted as authorising any quota system or a three-year waiting period imposed without regard to the particular circumstances of specific cases. Analysis of all the factors, as prescribed in Article 17 of the Directive, does not allow just this one factor to be taken into account and requires genuine examination of reception capacity at the time of the application" (cons. 100) "When carrying out that analysis, the Member States must, as is pointed out in paragraph 63 of the present judgment, also have due regard to the best interests of minor children” (cons. 101).

Q.47 – Can public policy, public security or public health grounds be taken into account to (a 6 §§1 et 2):

**Q.47. A – Reject an application for family reunification?**

- [x] OUI
- [ ] NON

If yes, which ones?
Public policy and public security. Public health is only a ground for a rejection if the person isn’t prepared to cooperate with a medical assessment or a medical treatment.

**Q.47. B – Withdraw an application for family reunification?**

- [x] OUI
- [ ] NON

If necessary, please specify
(I interpret this question as “withdraw the permit”.)
Only the public policy and public security grounds.

**Q.47. C – Refuse to renew a family member's residence permit?**

- [x] OUI
- [ ] NON

If necessary, please specify
Only the public policy and public security grounds
Q.48 – Does national legislation take into account:

Q.48. A – The severity or type of offence against public policy or public security?

☐ OUI
☐ NON

Q.48. B – The solidity of family relationships regarding article 17 of the Directive?

☒ OUI, but only partially
☐ NON

If necessary, please specify

There is no provision for an obligatory assessment on the circumstances mentioned in article 17. In the explanation of the Royal Decree implementing the Directive (nr. 496, Staatsblad 2004, p. 15), the minister only states that during the examination of the individual circumstances, the administration shall assess whether a rejection, a withdrawal or a refusal to renew the permit on the grounds of public policy or public security, is in accordance with article 8 ECHR. (The minister also mentions the UN-Convention on the Rights of the Child, but states that this Convention does not create extra obligations than article 8 ECHR.) In B2/10 Aliens Circular, guidelines on how to interpret the jurisprudence on article 8 ECHR are laid down.

However, recently, a new paragraph was added to Articles 3.77 (concerning the rejection of an application for a residence permit on public order grounds) and 3.86 (concerning the refusal to renew a residence permit on public order grounds), saying that in case the Minister wants to deny an application, or, in case of Article 3.86, refuse to renew a residence permit, on public order grounds, he will, in case of family reunification, at least have to take into account the nature and solidity of the family relationship, the duration of the stay of the family member and the existence of family, cultural or social ties with the country of origin. An explicit obligation to take the family relationship into account with regard to decisions on other than public order grounds, does not exist. However, in lower rules (the Aliens Circular) it is prescribed that the circumstances also have to be taken into account when taking a decision to reject or refuse to renew a permit on other than public order grounds.

Q.49 – Does your Member State withdraw the residence permit or remove the third country national on the sole ground of illness or disability suffered after the issue of the residence permit (a 6 §3)?

☐ OUI
☒ NON

Q.50 – Are accommodation conditions required from the applicant (a7 §1a)?

☐ OUI
☒ NON
Q.51 – If yes:

Q.51. A – What are those conditions?

Q.51. B – How are they assessed?

Q.51 C – Are they comparable to the conditions required to a normal family living in the same region?

☐ OUI

☐ NON

If not, please specify the differences

Q.52 – Is a sickness insurance required from the applicant (a. 7 §1b) ?

☐ OUI

☒ NON

Q.53 – Are stable resources required (a7 §1c) ?

☒ OUI

☐ NON

Specify their nature and content

It is required that the sponsor permanently and independently disposes of a certain income (see the answer to question 54). The income is regarded as permanent if it will be available for at least one year from the moment of the application or of the decision on the application. If this requirement is not fulfilled, the permit will also be granted when the sponsor has had an employment contract over the last three years before the date of the application.

An income based on own property is regarded as permanent if the income was available for at least one year before the date of application or decision and will be available for at least one year after that date.

Q.54 – How is the condition "sufficient" assessed by your Member State? Is it in comparison with national wages?

When the marriage was already concluded before the sponsor was admitted to the Netherlands, the sponsor must permanently and independently dispose of an income at the level of social security for a married couple. The current level is 1236, 86 euros.

In case of family formation required income is 120 % of the legal minimum wage of a worker of 23 years (1484,23 €), also if the sponsor is younger than 23 years. The statutory minimum wage of workers younger than 23 years is considerably lower. This means that a sponsor who is 18 years old will have to earn almost 280% and a person aged 21 will have to earn more than 160% of the minimum wage for workers of his age.

If the sponsor has reached the age of 65, or is permanently and completely unable to work, he is exempted from the income requirement, for family reunification as well as for family formation.
Q.55 – Are integration criterions required to allow family reunification (a 7 §2)?

☐ OUI

☐ NON

Q.56 – If yes:

Q.56. A – What are those criterions?
Family members (adults and children of 16 and 17 years old who no longer have to go to school) need to pass an integration test as a requirement for family reunification before admission in the Netherlands. The test consists of a language test (level A1 in the Council of Europe’s Common Framework of Reference (CEF)) and questions regarding the Dutch society.

Q.56. B – Do they apply indistinctly to all potential beneficiaries of reunification? (Spouse, dependant people, etc.)

To all potential beneficiaries, except for minor children below the age of 16, family members who have reached the age of 65 and persons who are permanently unable to pass an integration exam on the ground of a physical or mental handicap. This has to be proved by a medical attest.

Persons with a certain nationality (besides nationality of EU Member State: Surinamese, Australian, Canadian, US, Swiss, New Zealand, Iceland) are equally exempt from the integration abroad requirement and so are family members of knowledge migrants.

Q.56. C – How are they evaluated by your Member State?
The test has to be taken at a Dutch embassy or consulate general abroad. The way of examination is oral. The candidate answers the questions by phone, after which a computer based in the US judges whether the candidate has passed the exam. The only preparation that is provided for by the Dutch government is an education pack which can be purchased for €63,90. The education pack includes a CD with all the questions that may come up during the part of the exam that tests knowledge of society, three mock Dutch language tests and a film about the Netherlands on DVD or video. Taking the exam costs €350. If a candidate fails the test, there is no possibility of challenging this decision. The test will have to be taken again, which will cost another €350.

Q.56. D – Are refugees and their family members required to fulfil them (a 7 §2, second indent)?

☐ OUI

☐ NON

In case of family formation they are required to fulfil them. In case of family reunification, family members of holders of a residence permit on asylum related grounds are exempted from this requirement. In case an asylum seeker has been granted a permit on regular grounds, his family members will have to comply with the integration abroad condition.
Q.57 – Is a minimal period of lawful reside is required before reunification (a 8 §1)?

☐ OUI
☒ NON

Q. 58 – Does this period exceed two years?

Please specify

In principle no, but the requirement to pass the integration exam abroad can be seen as an indirect waiting period, just like the requirement of the minimum age of 21 years and the income requirement (see answer to the question concerning 7(1)(c)) for family formation. The accumulation of these conditions particularly causes a waiting period. If a sponsor marries at the age of 19, he will firstly have to wait until he or she has reached the age of 21 before an application for family formation can be filed. However, since the income requirement for family formation is set at 120% of the minimum wage of persons aged 23 and up, he or she might have to wait an extra 2 years before he or she will comply with the income requirement. In this case, a waiting period of no less than 4 years applies.

Q.59 – Does your Member State apply the derogation set up by article 8 § 2 allowing Member States to impose a waiting period of maximum three years due to reception capacities between the submission of the application and the issuance of a residence permit?

☐ OUI
☒ NON

Please specify

Q.60 – If yes, did this derogation exist in national law before the 22nd of September 2003?

☐ OUI
☐ NON

FAMILY REUNIFICATION OF REFUGEES

The legal regime applicable to refugees derogates from the one applicable to family reunification. The scope of those derogations (minimal lawful residence, members of the family, accommodation requirements) shall be assessed on the basis of national law.

Q.61 – Does your Member State allow family reunification of refugees on the basis of Directive 2003/86 (a 9 §1)?

☒ OUI
☐ NON
Q.62 – Is this right limited to family relationships predating the entry on the territory (a 9 §2)?

☐ OUI

☐ NON

Q.63 – Does your Member State allow family reunification of family Members not quoted in article 4 of the Directive (a 10 §2) ?

☐ OUI

☒ NON

Which members of the family and under which conditions?

No other family members are mentioned but spouse and minor children, and unmarried partner and adult children who depend on the sponsor. To benefit from these provisions the sponsor does not have to be a refugee, but can also have another residence permit on grounds of asylum. In the Netherlands, the residence permit on asylum grounds can also be based on humanitarian reasons or on the situation in the country of origin. This means that, amongst other categories, persons enjoying subsidiary protection, who are ruled out from the scope of application of the directive by article 3(2)(c), in the Netherlands profit from Chapter V of the Directive.

The application for family reunification is rejected if there are reasonable grounds to believe that the sponsor or the family members are guilty to acts meant in article 1F of the Refugee Convention.

If the family members apply for a residence permit within three months after the residence permit on asylum grounds has been issued to the sponsor, they will be exempted from the income requirement. Upon implementation of the family reunification Directive in the Dutch law, the possibility for family members who have another nationality than the sponsor to be exempt from the income requirement was introduced (article 3.22 paragraph 4 Aliens Decree). Before implementation of the Directive, family members with a different nationality had to fulfil the income requirement. An extra condition for family reunification with family members with a different nationality is that family reunification is not possible in a third country with which the sponsor or a family member has special ties. This last condition does not apply in case the family members have the same nationality as the sponsor. An extra advantage in this case is that the family members are entitled to a residence permit on asylum grounds, which means that they do not have to apply for a visa to enter the Netherlands. For the permit on asylum grounds the family members do not have to pay a fee. Family members with another nationality will only be entitled to a residence permit on regular grounds. Since April 2007 they are, however, exempt form paying the high fee (€830) for the visa.

In all other conditions the family members have to fulfil all the regular conditions before they are entitled to a residence permit on regular (not asylum) grounds, which means that the sponsor will need to have sufficient income and that the family member will have to apply for a visa. In order to obtain a visa, family members of refugees that have a residence permit on asylum grounds are exempt from the requirement to pass the integration exam abroad. It has to be noted that a number of refugees will eventually be awarded a residence permit on regular and not asylum grounds. This means that the family members have to rely on the
regular procedure for family reunification and that, even if they apply for family reunification within three months after the residence permit has been granted to the refugee, they will have to fulfil all the requirements (income, integration abroad).

Q.64 – According to the specific case of unaccompanied minor refugees, does your Member State authorise family reunification of first degree relatives in the direct ascending line without applying the conditions laid down in article 4 § 2 (a10 §3 a) ?

☑ OUI
☐ NON

What conditions are required?

The Royal Decree implementing the directive provides for family reunification for family members in the ascending line of unaccompanied refugees who are minors. These family members, legal guardians are not mentioned, are entitled to a residence permit if they apply for family reunification within three months after the residence permit has been issued to the unaccompanied minor and if family reunification is not possible in a third country with which the unaccompanied minor or the family member has special ties. Furthermore, they have to fulfil the following conditions:

- they have an authorisation for temporary stay (visa)
- a valid document to cross the border
- they are willing to undergo an examination regarding tuberculosis
- they do not constitute a threat to public order or public security

If the application for family reunification is issued later than three months after the residence permit has been issued to the unaccompanied minor, the minor will have to prove to permanently and independently dispose of an income at social security level for single persons (€618,43).

Q. 65 – Does your Member State authorise entry and residence of the legal guardian or any member of the family where the unaccompanied minor refugee has no relatives in the direct ascending line or such relatives cannot be traced (a10 §3 b) ?

☐ OUI
☑ NON

If yes, please specify who the member of the family targeted is and which proofs are required to prove family ties?

Q.66 – Does your Member State take into account other evidence of family relationship where the refugee cannot provide official evidence (a 11 §2) ?

☑ OUI
☐ NON
Which ones?

In case the refugee is unable to show the necessary documents proving the family relationship, the Dutch Alien’s Circular stipulates that the refugee must show that the fact that he cannot submit the documents can not be ascribed to him. If the applicants fails to show that the lack of documents can not be ascribed to him, the application for family reunification can be turned down. It is highly questionable whether the Dutch policy in this area is reconcilable with the Directive, which stipulates in article 11(2) that ‘a decision rejecting an application may not be based solely on the fact that documentary evidence is lacking.’

In case the applicant is able to show that the lacking of documentary evidence can not be ascribed to him, he or she can revert to the possibility of a DNA-investigation. A DNA-investigation will only take place to establish the relationship between parent and child and only after it has been determined that it is impossible to provide documentary evidence. The refugee has to pay a part of the costs of the DNA research in advance. If the results are positive, the money will be returned. In case of family reunification between spouses without children or with foster children, an identification interview will be held at the Dutch embassy abroad. The questions for this interview will be prepared by the Immigration Service in the Netherlands and will be based on the dossier of the refugee, which is composed during the asylum procedure.

Q.67 – Does the examination of the refugee application take into account their specific situation:

Q.67. A – Are proofs regarding accommodation conditions, sickness insurance or resources required (a 12 §1)?

☐ OUI
☒ NON

If yes, are those requirements comparable to those imposed to other third country nationals?

Q.67. B – If one of the person concerned (sponsor or family member) has special links with a third country within which reunification is possible, does your member state require those proofs according to article 12 § 1 second indent.

☒ OUI
☐ NON

If necessary specify
This condition only applies when family members of a refugee with another nationality apply for family reunification, even in case the application has been made within three moths after the residence permit has been granted to the sponsor. In case the sponsor or the family member has special ties with a third country, the income requirement will have to be fulfilled. In case no special ties exist, the income requirement will not be applied (see Q. 63).

But that is not the only distinction. Family members of refugees with the same nationality are granted a stronger residence permit, while it offers more protection and more
rights than the permit granted to family members with another nationality than the refugee. The differences are: if the family members with the same nationality separate within three years, the family members keep their permit. The family members with another nationality would loose their permit in that case. Family members with the same nationality do not need an authorisation for temporary stay and do not need to have a passport. Family members with another nationality need both authorisation and passport. Family members with the same nationality can lodge their application in an asylum procedure, the others ca not. Family members with the same nationality are better supported in their integration and housing than those with another nationality.

With these different rights, the Dutch authorities discriminate on the ground of nationality. The Directive doesn’t allow them to do so, and therefore there is a breach of article 12 EC-Treaty.

**Q.67. C** – If a refugee has introduced its application after a period of three months, does your Member State require the refugee to meet the conditions or one of them (accommodation, sickness insurance, resources (a 12 §1 alinea 3)?

☐ OUI
☐ NON

If yes, which ones?

The requirement to apply for family reunification within three months after the refugee status has been granted is applied very strictly by the Dutch government. With the adoption of this rule in the Aliens Law 2000, the government argued that this requirement was based on the Final Act of the UN Conference that adopted the Refugee Convention (see paragraph 182 Handbook) and paragraph 186 Handbook. These paragraphs intend to protect the unity of a family after being temporarily disrupted. The three months criterion however, turns out to be a threat for the family unity. In practice there appear to be several reasons, such as errors in communication between the authorities and the refugee or between the refugee and his family, the family member stays in a hospital, family members are missing due to war circumstances, etc., why family members fail to apply for family reunification in time. The authorities do not take these circumstances into account while assessing the request to make an exception on the three months requirement. Therefore, situations of family members living separately in vulnerable and unsafe circumstances are created and maintained.

Two other aspects that even worsen this rule and its application: if the refugee has asked for family reunification, he has no right to appeal because the decision is seen as an advice of the Minister of Foreign Affairs. So in order to have an effective remedy, the family members have to make the request abroad, which is not always possible because there is no Dutch embassy in all countries.

After three months, the refugee has to fulfil all normal conditions, such as sufficient income, public order. One of these conditions is that the family members first apply for an authorisation for temporary stay before being allowed to travel to the Netherlands. The possibility of article 3 second paragraph, to allow a request after the arrival in the Netherlands, is rarely used. So if the regular rules are applied, there is no special attention anymore for the vulnerable and difficult situation of family members of refugees. This practice seems to violate nr 8 of the preamble.
Q.68 – Does your Member State apply the prohibition to impose a residence condition before reunification (a 12 §2)?

☐ OUI
☐ NON

If not, what is the length of this period? Is it different from the one normally applied?

EXERCISE OF THE RIGHT TO FAMILY REUNIFICATION

The granting of an autonomous residence permit is one of the most sensitive issues of this part of the Directive.

Q.69 – Is entry and residence facilitated by your Member State, as soon as the application for family reunification has been accepted, including the issue of obtaining visas (a13 §1)?

☐ OUI
☐ NON

If yes, how?
In the Dutch system, an applicant for family reunification will first have to apply for a visa (authorisation for temporary stay) which will allow him or her to travel to the Netherlands before he or she can apply for family reunification in the Netherlands. This is different from the assumption in article 13 that first an application for family reunification has to be accepted, after which member states authorise the entry of the family members, granting them every facility for obtaining the required visas. The Dutch system requires a double test whether the requirements for family reunification are met, namely once when at the application for the authorisation for temporary stay and then again at the application for a residence permit. Recently, the Court of The Hague ruled that the Dutch system of double checking whether the requirements for family reunification are met is indeed not in conformity with the Directive (Court of The Hague 16 November 2006, LJN: AZ7350).

Furthermore, the requirement that a visa (authorisation for temporary stay) needs to be applied for in the country of origin or the country of permanent residence can be considered contrary to the obligation of article 13(1) to grant every facility for obtaining required visas. The Netherlands introduce an extra requirement for family reunification, since an application for a visa will be denied in case it is applied for in another country than the country of origin or permanent residence.

Q.70 – Is a residence permit of at least one year's duration granted to the family members (a 13 §2)?

☐ OUI
☐ NON

What is the duration of the residence permit?
One year
Q.71 – Is this residence permit renewable?

☐ OUI  ☑ NON

Q.72 – Is the duration of the residence permit aligned with the duration of sponsor's residence permit (a 13 §3)?

☐ OUI  ☑ NON

If no, please specify

The family members are granted a permit for a year, after which the administration will assess whether all conditions for family reunification are still fulfilled. If that is the case, the family member will grant a permit for five years. Minor children of a Dutch national, a knowledge migrant with a permanent employment contract or a holder of a permanent residence permit can receive a permit for five years immediately after admission.

Q.73 – Are the rights awarded to family members' equivalent to those granted to the sponsor (a14 §1):

Q.73. A – Regarding access to education?

☑ OUI  ☐ NON

If no, please specify

Q.73. B - Regarding access to employment?

☑ OUI  ☐ NON

Please specify the content of this access
The access depends on the right to work of the sponsor.
It can consist of: free access to the labour market; access if the employer has granted a working permit; only specific work permitted if the employer has granted a working permit; no access.

Q.73. C – Regarding access to vocational guidance, initial and further training and retraining?

☑ OUI  ☐ NON
Q.74 – Does your Member State grant specific rights in social matters to reunified family members?

☐ OUI
☐ NON

If yes, please describe them and specify if a time limit is established to take advantage from them

They have access to rights such as child benefit. They can also request for social security. However the administration will regard this as a proof that the sponsor doesn’t have sufficient income, so it will lead to a considerable chance that the permit will not be renewed.

Q.75 – Has Member State set up conditions regarding specific access to employment for family members (a 14 §2)?

☐ OUI
☐ NON

If yes, how?

Q.76 – If yes, do those conditions exceed 12 months (a 14 §2)?

☐ OUI
☐ NON

Which ones?

Q.77 – Is access to employment limited in your Member State

Q.77.A – Regarding first-degree relatives in the direct ascending line?

☐ OUI
☐ NON

If yes, how?

Q.77. B – Regarding adult unmarried children objectively unable to provide for their own needs on account of their state of health (a 14 §3)?

☐ OUI
☐ NON
If yes, how?

On the same way as spouses and minor children (question 73 b), it depends on the right to work of the sponsor.

**Q.78** – Are spouses, unmarried partners and child who has reached majority entitled to an autonomous residence permit at least five years after lawful residence on the basis of the residence permit issued for family reunification (a15 §1)?

- [x] OUI
- [ ] NON

If yes, please specify when and how for each category

Spouses and unmarried partners of a sponsor who has a permit for the purpose of non-temporary stay (study, medical treatment, but also a permit on asylum grounds is regarded as temporary stay), can be granted an autonomous residence permit after three years of residence with the sponsor (Article 3.51 paragraph 1 sun a Aliens Decree).

Children, who were minor when they were admitted, of a sponsor who has a permit for the purpose of non-temporary stay (study, medical treatment, but also a permit on asylum grounds is regarded as temporary stay), can be granted an autonomous residence permit after at least one year residence with the sponsor (Article 3.50 paragraph 1 sub a Aliens Decree).

**Q.79** – Does your Member State limit the granting of the autonomous residence in cases of breakdown of the family relationship (a 15 §1 alinea 2)?

- [ ] OUI
- [x] NON

Please explain

The granting of an autonomous residence permit is not limited to cases of breakdown of the family relationship. Every partner is entitled to an autonomous residence permit after a legal stay of three years on the ground of family reunification. In cases of a breakdown of the family relationship within these three years, the rules described in answer 81 apply.

**Q.80** – Does your Member State grant autonomous residence permit:

**Q.80. A** – To first-degree relatives in the direct ascending line (a15 §2)

- [x] OUI
- [ ] NON

If necessary specify
First-degree relatives of a sponsor who has a permit for non-temporary stay (study, medical treatment, but also a permit on asylum grounds is regarded as temporary stay), can grant an autonomous residence permit after three years of residence with the sponsor.

**Q.80. B** – To adult unmarried children objectively unable to provide for their own needs on account of their state of health (a15 §2) ?

- [x] OUI
- [ ] NON

If necessary specify

Children who were admitted when they had already reached majority, of a sponsor who has a permit for non-temporary stay (study, medical treatment, but also a permit on asylum grounds is regarded as temporary stay), can grant an autonomous residence permit after three years of residence with the sponsor.

**Q.81** – Does your member State grant autonomous residence permit in the event of widowhood, divorce, separation or death of first first-degree relatives in the direct ascending or descending line (a 15 §3) ?

- [x] OUI
- [ ] NON

If necessary specify

If the sponsor, who had a permit for the purpose of non-temporary stay, dies within the first three years, an autonomous permit will be granted to the spouse or unmarried partner, the children or the parent.

In other cases of breaking down the marriage or family life within the first three years (for minor children: within the first year), an autonomous permit will be granted if there are humanitarian grounds. Therefore the individual circumstances will be assessed. In the Aliens Circular some specific circumstances that have to be taken into account are mentioned: the situation of single women in the country of origin; the social position of women in the country of origin; the availability of reception capacity in the country of origin; the responsibility for a child born in the Netherlands or enjoying education; evidence of (sexual) violence in the family.

The level of integration in the Netherlands and the possibility of continuing the family life elsewhere are also important aspects of the assessment. All circumstances will be considered in connection with each other. There always has to be a combination of humanitarian grounds, except in case of domestic violence. It is the family member who has to state and found these circumstances.

Since October 2003 a person who shows evidence of having been victim of (sexual) violence, doesn’t have to fulfil additional humanitarian conditions anymore. The evidence of (sexual) violence is only recognized by a declaration of a doctor and the proof of a report of the violence.
Q.82 – Has your Member State adopted rules granting autonomous residence permit "in the event of particularly difficult circumstances" (a 15 §3)?

☐ OUI
☐ NON

If yes, how is this provision defined and transposed?

In all other cases than the cases mentioned under question 81, there will be an assessment to consider if there are special individual circumstances that make that leaving the Netherlands cannot be required from the person. Therefore the alien must proof that there are special individual circumstances, and that he/she cannot be required to leave the Netherlands. Also family members of a sponsor with a permit for non-temporary purpose can apply for an autonomous residence permit on these grounds.

The decision is at the discretion of the Minister.

PENALTIES AND REDRESS

Those provisions must be read in parallel with those relating to the conditions to be fulfilled to obtain family reunification (articles 6, 7, 8)

Questions relating fraud, false or falsified documents are of importance to assess their impact.

Q.83 – What are the legal grounds to reject, withdraw or refuse to renew a family member's residence permit (a16 §1 et 2):

Q.83. A – Conditions required by the directive not satisfied?

☐ OUI
☐ NON

Q.83. B – Absence of real martial or family relationship?

☐ OUI
☐ NON

If yes, how is this hypothesis assessed?

If the administration doesn’t recognise the marriage or registered partnership on grounds of public policy, the family members will not be granted family reunification. If the partners are not married and not have registered their partnership, the relation must be sustainable and exclusive. To this end, the partners must prove that they are not married. They can sign a declaration to prove that their relationship is exclusive and sustainable and that they will live together and share a common household after admission in the Netherlands. However, the application will still be rejected if there are grounds to believe that the application is asked for the sole purpose of granting a residence permit (based on declaration of the partners or other persons or other evidence).
If the administration finds that the partners do not live together after admission or do not share a common household, the permit will be withdrawn.

Q.83. C – Stable long term relationship with another person?

☐ OUI

☐ NON

If yes, how is this hypothesis assessed?

If one of the partners gets married with another person or concludes a registered partnership with another person.

Q.83. D – False or falsified documents?

☐ OUI

☐ NON

Q.83. E – Marriage, partnership or adoption contracted for the sole purpose of enabling reunification?

☐ OUI

☐ NON

(I think “of enabling a residence permit” is meant)

Q.83. F – If yes, how is this hypothesis assessed?

See also the answer under question 83b. Acting on information received by the partners or others or by acts of the partners (they don’t live together, they nearly know each other etc.) the administration can determine it is a marriage of convenience.


According to Article 44 paragraph 1 sub k of Book I of the Civil Code, the municipal official of the Registry of Births, Deaths and Marriages can in case one or both spouses or registered partners hold another nationality than the Dutch nationality only conclude a marriage if a declaration of the Superintendent of the aliens police is submitted. In this declaration, information regarding the residence of the immigrant is contained as well as an advice of the Superintendent for the municipal official whether he should or should not cooperate in the marriage. The Superintendent bases his advice on indications whether the marriage may or may not be one of convenience. A negative advice of the Superintendent needs to be justified and accompanied by a completed questionnaire with possible observations by the Superintendent that can indicate a marriage/partnership of convenience. In case of doubt vis-à-vis the marriage, the municipal officer can decide not to conclude or register the marriage or registered partnership.
Q.83. G – When the sponsor's residence comes to an end and the family member does not yet enjoy an autonomous right of residence (a 16 §3) ?

- OUI
- NON

Q.83. H – What type of control are organised thereof?

If there authorities are informed about a change in circumstances that undermines the grounds on which the permit was granted, the authorities can withdraw the permit. But there are no active controls in the meantime, there is an assessment at the time of renewal. If something changes in the permit of the sponsor, the position of the family members will be assessed at the same time. But the sponsor and the family members are obliged to inform the Alien Police about any relevant change in circumstances. If the change of circumstances will appear in a latter stage, this can have consequences for the residence permit because the failure to inform is seen as fraud.

In the meantime the Alien Police can start an assessment at any time when it receives indications that something has changed in the circumstances that might have consequences for the permits of the family members. The most relevant source of information comes from other administrative organs, such as Social Affairs. These organs have to inform the Alien Police if acts of the sponsor or family members could have consequences for the residence permit (i.e. an application for social benefits). Other sources can be declaration of the persons involved or reliable declarations of others.

Q.84 – Are resources of the family taken into account when renewing residence permit where the sponsor does not have sufficient resources without recourse to the social assistance system of the member state?

- OUI
- NON

If yes, under which modalities?

The common income of the sponsor and the spouse or unmarried partner has to reach the level of the social security income for a married couple.

Q.85 – Does your Member State's legislation take into consideration (a. 17) :

Q.85. A – The nature and solidity of the person's family relationships and the duration of his residence in the Member State?

- OUI
- NON

If yes, please specify how and on the basis of which norm (legislation, regulation, jurisprudence, …)

The biggest problem in the transposition of the Directive in the Netherlands appears to be the fact that the national requirements for family reunification are applied very strictly, and that the authorities are not obliged to assess on an individual basis if certain circumstances justify
that a requirement is not applied. The authorities normally do not explain in their rejecting decision why the rules are strictly applied in that certain case, even if the applicant has brought up special circumstances and reasons that could justify a decision to make an exception to the rules.

This strict application of the rules is shown with regard to the age limit, the income requirement, the requirement to pass an integration exam abroad, the three months period for refugees and the requirement of an authorisation for temporary stay.

Initially, the Royal Decree intending to implement the Directive only referred to the general rule in the Dutch Administrative Act that prescribes the public authorities to take into account all relevant circumstances when making a decision is applied. Furthermore, Article 8 ECHR is mentioned in the Royal Decree. However, recently a new paragraph was added to Articles 3.77 (concerning the rejection of an application for a residence permit on public order grounds) and 3.86 (concerning the refusal to renew a residence permit on public order grounds), saying that in case the Minister wants to deny an application, or, in case of Article 3.86, refuse to renew an application for renewal of a residence permit, on public order grounds, he will, in case of family reunification, at least have to take into account the nature and solidity of the family relationship, the duration of the stay of the family member and the existence of family, cultural or social ties with the country of origin (see also answer to the question regarding Article 17 directive). Although the Decree limits the obligation to take these circumstances into account in cases of a decision in relation to public order grounds, the Alien Circular describes how these circumstances have to be taken into account if a residence permit can be rejected or refused to renew on other than public order grounds. These guidelines are based on the jurisprudence on article 8 ECHR.

**Q.85. B** - 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?

- [X] OUI
- [ ] NON

If yes, please specify how and on the basis of which norm (legislation, regulation, jurisprudence, …)

See answer 85 A

**Q.86** – Do the sponsor and/or members if his/her family have the right to mount a legal challenge where an application for family reunification is rejected (a18 §1)?

- [X] OUI
- [ ] NON

Only the alien concerned can have a negative decision reviewed. This means that only the family member and not the sponsor can commence proceedings.
Q.87 – Is this right to legal challenge considered as a right to a judicial review according to jurisprudence C-540/03 (a18 §1) ?

☑ OUI
☐ NON

A negative decision regarding the application or the renewal of a residence permit on the basis of family reunification can be reviewed by an independent administrative Court, after administrative review by the Integration and naturalisation Service (IND) that made the decision. The decision will be fully reviewed. A negative decision by the administrative Court can be reviewed by the Dutch Council of State, the highest Dutch administrative Court. However, the establishments of the facts is only reviewed marginally by the courts. A possibility of judicial review by an independent administrative court (the Court of the Hague) equally exists in case of rejection of an application of an authorisation for temporary stay. However, also in this case administrative review has to have taken place by the Minister of Foreign Affairs.
**XX. IMPACT OF THE DIRECTIVE ON NATIONAL LAW**

Q.88 A Did the transposition of the directive make the rules related to the best interest of minor children (a. 5 § 5) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below.

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
</table>
| Due regard to the best interest of minor children during examination of the application a. 5 § 5 | | · More favourable than the directive
| | | · In line with the directive |

*Please use one box per object and duplicate it if necessary*

Explain the situation before transposition:
As provided for in the Administrative Act, the public authorities are required to take account of all relevant circumstances when making a decision. The same general principles that are consolidated in the Administrative Act apply to decisions regarding family reunification with minor children.

Explain the situation after transposition:
The Royal Decree pretending to implement the Directive considers the general clauses of the Administrative Act as sufficiently adequate and that there is no need for further implementation measures. The Royal Decree furthermore refers to Article 8 ECHR. Neither of the appreciations above is correct. Article 5(5) has not been transposed in Dutch legislation. The Royal Decree pretending to implement the Directive refers to the general rule in the Dutch Administrative Act that prescribes the public authorities to take into account all relevant circumstances when making a decision is applied. Furthermore, mention is made of Article 8 ECHR.
### Q.88 B

Did the transposition of the directive make the rules related to the beneficiaries of the right to family reunification become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below.

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Definition of the beneficiaries of the right to family reunification a. 4 § 4</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Explain the situation before transposition: In case a sponsor is married to more than one person, or has more than one unmarried partners, the right to family reunification is awarded only to one of the spouses or unmarried partners and the children of that spouse or unmarried partner.</td>
<td>Explain the situation after transposition: The Royal Decree implementing the Directive did not amend the Aliens Decree to implement Article 4(4) Directive, since it already was implemented correctly in Dutch legislation.</td>
<td>• Statu quo • In line with the directive</td>
</tr>
</tbody>
</table>

### Q.88 C

Did the transposition of the directive make the rules related to reunification of minor children between 12 (a. 4 § 1) and 15 (a. 4 § 6) years old become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below.

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Limitation of reunification of minor children of 12 and 15 years of age (a. 4 § 1 and 4 § 6)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Explain the situation before transposition: Minor children of the sponsor have a right to family reunification in case there is a real family relationship and the sponsor has custody</td>
<td>Explain the situation after transposition: According to the Royal Decree pretending to implement the Directive, the limitations to family reunification of</td>
<td>• Less favourable than previous national rules • More favourable</td>
</tr>
<tr>
<td>Complete this box by keeping the right appreciation and deleting the other one:</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Over the children. children aged 12 and up (Article 4(1) third paragraph) and children aged 15 and up (Article 4(6)) were not implemented in Dutch legislation. However, the Integration Abroad Act, that came into force 15 March 2006, obliges children aged 16 and 17 that no longer have to go to school to pass the integration abroad exam as a condition for admission for the purpose of family reunification. The standstill clause of Article 4(1) paragraph 3 prohibits this limitation.

Neither of the appreciations above applies. Because the obligation for 16 and 17 year olds that no longer have to go to school are obliged to pass the integration exam before they are admitted to the Netherlands was introduced after the date of implementation of the Directive (3 October 2005), the Dutch implementation measures are not in line with the Directive. Furthermore, the clause that the minor child has to arrive in the Netherlands independently from the rest of the family has not been implemented.

Q.88 D  Did the transposition of the directive make the rules related to requirements to the exercise of family reunification (article 7) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

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<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Requirenments for the exercise of family reunification (a. 7)</td>
<td>Explain the situation before transposition: The income requirement for</td>
<td>Complete this box by keeping the right appreciation and deleting the other</td>
</tr>
<tr>
<td>Explain the situation after transposition: The Royal Decree implementing the</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Less favourable</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
```
family reunification and family formation was the level of social assistance for married couples. directive has however set the level of income for family formation at 120% of the legal minimum wage of a worker of 23 years. than previous national rules

one:
• More favourable than the directive
• In line with the directive

None of the appreciations above apply. It is highly questionable whether the high income requirement is in line with the Directive, as it creates such a high obstacle for some categories that family reunification might become unattainable.

Q.88 E

Did the transposition of the directive make the rules related to margins of manoeuvre awarded to Member States (a. 5 § 5, 17, C-540/03) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Limitation of margins of manœuvre (a. 17, a.5 §5, C-540/03)</td>
<td>Explain the situation after transposition: The Royal Decree implementing the Directive refers to the same general principles that provide for the consideration of all relevant circumstances when taking a decision with regard to Article 5(5) and 17. The Royal Decree furthermore refers to Article 8 ECHR. Complete this box by keeping the right appreciation and deleting the other one: • More favourable than the directive • In line with the directive</td>
<td>None of the appreciations above applies. Article 5(5) has not been</td>
</tr>
</tbody>
</table>

Please use one box per object and duplicate it if necessary
reunification with minor children (Article 5(5)) and regarding decisions regarding the rejection of an application, the withdrawal or refusal to renew a residence permit or the decision to order the removal of the sponsor or his/her family members (Article 17).

Furthermore, Article 8 ECHR is mentioned in the Royal Decree. However, recently, new paragraphs were introduced in the Aliens Decree saying that in case the Minister wants to deny an application, or refuse to renew a residence permit, on public order grounds, he will, in case of family reunification, at least have to take into account the nature and solidity of the family relationship, the duration of the stay of the family member and the existence of family, cultural or social ties with the country of origin. The obligation to take these circumstances into account in decisions concerning the application for or the renewal of a residence permit on other than public order grounds is laid down in the Aliens circular. However, this obligation is limited to an interpretation of the jurisprudence of Article 8 ECHR.

<table>
<thead>
<tr>
<th>Q.88 F</th>
<th>Did the transposition of the directive make the rules related to integration objectives and criterions more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below</th>
</tr>
</thead>
<tbody>
<tr>
<td>transposed correctly in national law. Article 17 has only been transposed partially (see column two)</td>
<td></td>
</tr>
<tr>
<td>OBJECT</td>
<td>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</td>
</tr>
<tr>
<td>--------</td>
<td>-------------------------------------------------</td>
</tr>
</tbody>
</table>
| Attention draw upon integration objectives (considérant 15) and criterions of integration (a.4 §1 dernier alinéa, a. 7 §2) | Explain the situation after transposition: On 15 March 2006, the Integration Abroad Act came into force. This Act obliges family members between 16 and 65 years old to pass an integration exam before they are admitted in the Netherlands for the purpose of family reunification/formation. | • More favourable than the directive  
• In line with the directive  
None of the appreciations above applies. The Integration Abroad Act obliges minors of 16 and 17 years old who no longer have to go to school to pass the integration exam before admission to the Netherlands. This integration requirement was introduced after the date of implementation of the Directive and is therefore inadmissible regarding the standstill clause of Article 4(1) paragraph 3 Directive. Also, it is questionable whether the requirement to pass an integration exam abroad before admission to the Netherlands for other family members than children of 16 and 17 years old will be granted is in line with the Directive. The Dutch version of |
the Directive contains an apparent mistranslation of Article 7(2). Where other versions of the Directive speak of ‘integration measures’, the Dutch version contains the wording ‘integration conditions’. ‘Integration conditions’ has another meaning than ‘integration measures’, see Articles 5(2) and 15(3) Council Directive 2003/109/EC of 25 November 2003. The Directive allows for family members to comply with integration measures, such as the participation in a language course in the country of origin, but does not allow for the obligation to pass a test. Therefore, it questionable whether the Dutch requirement to pass a test consisting of a language test (level A1 in the Council of Europe’s Common Framework of Reference (CEF)) and questions regarding the Dutch society before admission to the Netherlands is granted is in line with the Directive.

Even if the requirement to pass an exam as a condition for
admission would be allowed under Article 7(2), it is highly questionable whether the Dutch rules are in compliance with basic principles of Community law. There is no possibility of appeal against a decision which is taken by a computer which judges the candidate’s answers that a candidate has failed the exam. The exam can be taken again, but only after another €350 have been paid. Without proof that an applicant has passed the exam, an authorisation for temporary stay will be denied, except in case of medical impediments. It is questionable whether the Community principle of effective legal protection is guaranteed since there are no actual possibilities of judgment of a family member’s individual circumstances by the IND or a Court. Also, the express obligations laid down in Article 5(5) and 17 of the Directive to take into account the concerns and circumstances mentioned in those Articles when taking a decision concerning the admission of a
Q.89 From your point of view, did the transposition of the directive imply other interesting changes for the third national country regarding other elements than the ones mentioned in the previous question. Make also a comparison with the standard of the directive in the last column of the table below

Please use one box per object and duplicate it if necessary

<table>
<thead>
<tr>
<th>OBJECT (to be precisely indicated by the national rapporteur)</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
</table>
| Explain the situation before transposition: The Netherlands demand the existence of a ‘real family relationship’ between the child and its parent(s). Until 25 September 2006 it was stipulated in the Alien’s Circular that a real family relationship was deemed no longer to exist if parent and child had been separated for more than five years, the so-called ‘period of reference’. | Explain the situation after transposition: By letter of 25 September 2006, the Minister of Alien Affairs and Integration abolished the requirement of a ‘real family relationship’ for family reunification with minor children. In the letter, she stated that for the interpretation of the requirement of a ‘real family relationship’ more connection needed to be made with Article 8 EVRM and that, consequently, the period of reference will no longer be applied. The Minister did not refer to the Directive. However, the fact that the period of reference was abolished can be ascribed to the Directive. | Complete this box by keeping the right appreciation and deleting the two others:  
  - More favourable than previous national rules | Complete this box by keeping the right appreciation and deleting the other one:  
  - In line with the directive |
<table>
<thead>
<tr>
<th>Explain the situation before transposition:</th>
<th>Explain the situation after transposition:</th>
<th>Complete this box by keeping the right appreciation and deleting the two others:</th>
</tr>
</thead>
<tbody>
<tr>
<td>The application for a residence permit for a family member of Dutch nationals will only be refused on public order grounds in case the family member has been sentenced to long-term imprisonment or community service for a crime against which at least three years of imprisonment is demanded.</td>
<td>Family members of Dutch nationals are treated in the same way as family members of third-country nationals when it comes to rejection of an application on public order grounds. An application may be denied in case the family member has been sentenced to imprisonment or a fine.</td>
<td><strong>Less favourable than previous national rules</strong></td>
</tr>
<tr>
<td>Explain the situation before transposition:</td>
<td>Explain the situation after transposition:</td>
<td>Complete this box by keeping the right appreciation and deleting the two others:</td>
</tr>
<tr>
<td>The age requirement for family reunification and family formation was 18 years for both spouses and partners.</td>
<td>The age requirement for family reunification has been raised from 18 to 21 years for sponsor and spouse and for sponsor and unmarried partner.</td>
<td><strong>Less favourable than previous national rules</strong></td>
</tr>
<tr>
<td>Explain the situation before transposition:</td>
<td>Explain the situation after transposition:</td>
<td>Complete this box by keeping the right appreciation and deleting the two others:</td>
</tr>
<tr>
<td>(to evaluate the impact of the directive, take also into consideration national norms which have been adopted before the deadline for transposition or even before the adoption of the directive in cases of Member States having amended their national legislation in advance)</td>
<td>Complete this box by keeping the right appreciation and deleting the two others:</td>
<td><strong>Statu quo</strong></td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>More favourable than previous national rules</strong></td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Less favourable than previous national rules</strong></td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>In line with the directive</strong></td>
</tr>
<tr>
<td>Complete this box by keeping the right appreciation and deleting the other one:</td>
<td>Complete this box by keeping the right appreciation and deleting the other one:</td>
<td>Complete this box by keeping the right appreciation and deleting the other one:</td>
</tr>
<tr>
<td></td>
<td><strong>In line with the directive</strong></td>
<td><strong>More favourable than the directive</strong></td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>In line with the directive</strong></td>
</tr>
</tbody>
</table>
Q.89. A. Mention if there is a general tendency to just copy the provisions of the directive into national legislation without redrafting or adaptation them to national circumstances.

☐ NO
☐ YES

Q.89.B. If yes, please indicate if this general tendency may or not create problems (for example difficulties of implementation, risk that a provision remain unapplied).

☐ NO
☐ YES

Q.89.C. If yes, give some of examples:

Q.89.D. If only some provisions of the directive have been copied and if this may create any problem, please quote them and explain the problem.

Q.90. Quote interesting decisions of jurisprudence related to the directive, its transposition or implementation (so this question concerns in principle decisions later that the directive, but previous ones might be quoted if relevant). Quote in particular decisions of supreme Courts; limit yourself to the appeal Courts and ignore the first resort if there are too many decisions at this level, unless there is a certain jurisprudence made of a group of decisions.

Please use one box per decision and duplicate it if necessary

<table>
<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>DECISION OF APPEAL</td>
<td>DATE: 15 May</td>
<td>REFERENCE OF PUBLICATIONS:</td>
<td>SUMMARY OF CONTENT: The requirement that the level of</td>
</tr>
<tr>
<td>COURTS</td>
<td>2006</td>
<td>AWB 05/36788</td>
<td>Income of the sponsor that wants to benefit from family formation needs to be 120% of the legal minimum wage of a worker of 23 years is not incompatible with the Directive.</td>
</tr>
<tr>
<td>-------------------------------</td>
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<td>--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>DECISION OF APPEAL COURTS</td>
<td>DATE: 17 July 2006</td>
<td>REFERENCE OF PUBLICATIONS: AWB 05/35721</td>
<td>SUMMARY OF CONTENT: ‘Social assistance system’ in Article 7(1)(c) does not refer to social assistance only. The inclusion of other income-related benefits is not incompatible with the Directive.</td>
</tr>
<tr>
<td>DECISION OF APPEAL COURTS</td>
<td>DATE: 18 October 2006</td>
<td>REFERENCE OF PUBLICATIONS: JV 2006/462</td>
<td>SUMMARY OF CONTENT: The Directive applies to third country nationals also possessing Dutch nationality. The Court used the preamble and the goal described in article 1 of the Directive to state that the wording of the Directive does not exclude application to dual nationals. According to the Court, no account has been taken of the position of persons having both the nationality of the country of origin and of a Member State during the negotiations of the Directive. If the Court would decide to rule out dual nationals of the scope of application of the Directive, it would create the possibility that the Directive would have a different effect in each Member State. This would also imply that third country nationals, who have resided in a Member State long enough to apply for naturalisation, would lose their right to family reunification under the Directive if they become a Dutch national. This would constitute a discrimination on grounds of nationality, which is explicitly prohibited by article 12 of the EU Treaty.</td>
</tr>
<tr>
<td>DECISION OF APPEAL COURTS</td>
<td>DATE: 16 November 2006</td>
<td>REFERENCE OF PUBLICATIONS: LJN: AZ7350</td>
<td>SUMMARY OF CONTENT: The Dutch system which requires a double test whether the requirements for family reunification are met, namely once when at the application for the authorisation for temporary stay and then again at the application for a residence permit, is contradictory to the Directive, which provides only for one test regarding the right to a residence permit (article 5(1)).</td>
</tr>
<tr>
<td>DECISION(S) IN FIRST RESORT</td>
<td>DATE:</td>
<td>REFERENCE OF PUBLICATIONS:</td>
<td>SUMMARY OF CONTENT:</td>
</tr>
</tbody>
</table>
Q.91 Specifying if there are or not problems with the translation of the text of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated.

☐ There are no problems with the translation of the directive

☒ There are some problems with the translation of (indicate the number of the articles concerned) of the directive.

Explain the difficulties that this could create:

There is an apparent mistranslation in the Dutch translation of the Directive in the first sentence of paragraph 1 of article 12. Where the French and English versions of the Directive mention the conditions of article of article 7 as conditions refugees and their family members referred to in article 4(1) do not have to fulfil, the Dutch version only refers to the conditions of article 4(1) as conditions refugees and their family members do not have to fulfil. The only condition mentioned in article 4(1) is an integration requirement for children over 12 years who arrive independently from the rest of the family. However, the Dutch legislation does provide for the possibility for family reunification with refugees without compliance with the income requirement, in case the application is made within three months after the sponsor has been granted a temporary residence permit on asylum grounds. In case the family member has another nationality, an extra condition is that family reunification is not possible in another country. In case the family member has the same nationality as the refugee, he or she will be granted a residence permit on asylum grounds too. In case the family member has another nationality, he or she will have to apply for a regular residence permit, which means that the family member will need an authorisation for temporary stay (mvv) before admission to the Netherlands will be granted.

Furthermore, in English, German and French versions of the Directive, article 7(2) gives Member States the possibility to require from family members that they comply with “measures” “Maßnahmen”, and “mesures”. In the Dutch version this term is translated as “voorwaarden”, which means conditions. Therefore the Dutch version allows a test on integration, while the other versions allow the obligation to attend a course, for instance. Council Directive 2003/109/EC of 25 November 2003 clearly distinguishes these different terms (see article 5(2) and article 15 (3). Therefore it is possible that, due to a wrong translation, the Dutch transposition appears to be in line with the Directive, but in fact breaches it.

Q. 92 ANY OTHER INTERESTING ELEMENT

Q.92 A. Following your personal point of view, mention from the point of view of third country nationals and/or from the Member State any interesting or innovative practice in your Member State

Please use one table per practice and duplicate it if necessary

<table>
<thead>
<tr>
<th>OBJECT OF THE PRACTICE</th>
<th>EXPLANATIONS</th>
</tr>
</thead>
</table>

NATIONAL REPORTS- DIRECTIVE ON FAMILY REUNIFICATION 1067
Q.92 B. Please add here any other interesting element in your Member State which you did not had the occasion to mention in your previous answers

It is highly questionable whether article 13 (1) of the Directive allows the Dutch procedure in which each application for family reunification is examined twice, namely first with the application for an authorisation for temporary stay, and after admission to the Dutch territory, again with the application for the residence permit. Furthermore we want to draw attention on the high amount that applicants have to pay for fees and the costs of the integration exam. The total amount of fees to be paid for a residence permit for family reunion is €1600. These fees include:

- Request for the issue of the authorisation for temporary stay: € 830
- Civic integration examination abroad: € 350
- Legalisation of documents: € 248
- Issue of a residence permit for temporary stay: € 188+
  € 1.616

In case more family members ask to be admitted at the same time, an extra €188 per family member is charged.\textsuperscript{302} If the children are 16 years of older, this amount will increase with 350 or 700 euros. This amount can cause an extra obstacle for the exercise of the right to family reunification. As the Directive allows a limited number of requirements and does not explicitly allow Member States to require such high fees, it is questionable whether the Dutch government is allowed to do so.

\textsuperscript{301} TK 30308, No. 7, p. 72.

\textsuperscript{302} Art. 3.34c sub b and c Aliens Instruction.
QUESTIONNAIRE FOR THE NATIONAL REPORT ON THE IMPLEMENTATION OF THE DIRECTIVE FAMILY REUNIFICATION OF 22 SEPTEMBRE 2003

REPUBLIC OF POLAND

By

Ilona Topa
Master of Law, PhD Candidate, University of Silesia
ilonatopa@gmail.com


The person in the team of thematic coordination in charge of this directive that you can contact if you have a question or need help when completing this questionnaire is: Yves Pascouau, +33 5 59 57 41 20, yves.pascouau@univ-pau.fr

COMMENTARIES

1. Council directive 2003/86 on the right to family reunification faced hard negotiations requiring the presentation of revised proposals from the Commission before final adoption in 2003. The European Court of Justice rejected in June 2007 an action for annulment introduced by the European Parliament against the Council directive (C-540/03).

2. Transposition of the directive must be assessed regarding the nature of the provision concerned. So as to help you, those provisions are coloured within the questionnaire as follows: obligatory provision (Q.XX), optional provision (Q.YY), provision which set up a derogation (Q.ZZ)

3. The Court of justice has defined the margins of discretion awarded to the member States even in situations where the directive allows the member States to depart from the directive. The Court states:

"Article 4(1) of the Directive imposes precise positive obligations, with corresponding clearly defined individual rights, on the Member States, since it requires them, in the cases determined by the Directive, to authorise family reunification of certain members of the sponsor’s family, without being left a margin of appreciation" (cons. 60).

"Note should also be taken of Article 17 of the Directive which requires Member States to 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 country of origin. As is apparent from paragraph 56 of the present judgment, such criteria correspond to those taken into consideration by the European Court of Human Rights when it reviews whether a State which has refused an application for family reunification has correctly weighed the competing interests" (cons. 64)

The fact that the concept of integration is not defined cannot be interpreted as authorising the Member States to employ that concept in a manner contrary to general principles of Community law, in particular to fundamental rights. The Member States which wish to make use of the derogation cannot employ an unspecified concept of integration, but must apply the condition for integration provided for by their
legislation existing on the date of implementation of the Directive in order to examine the specific situation of a child over 12 years of age arriving independently from the rest of his or her family” (cons. 70).

4. The main difficulty according to the transposition of the directive relies on the systematic opportunities offered to member States to depart from the provisions of the directive when applying it.

5. Article 19 indicates which themes where the most sensitive during the negotiations of the Directive (art. 3, 4, 7, 8 and 13).

FIRST PART

1. NORMS OF TRANSPOSITION AND JURISPRUDENCE

Q.1.A. Identify the MAIN (because of its content) norm(s) of transposition and indicate its legal nature

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)
- About legal nature in the table below: legislative refers to a norm adopted in principle by the Parliament; regulation refers to a norm complementing the law and adopted in principle by the executive power; circular or instructions refer to practical rules about implementation of laws and regulations and adopted in principle by the administrative authorities

Please duplicate the table below if there is more than one MAIN norm of transposition

<table>
<thead>
<tr>
<th>This table is about:</th>
<th>X</th>
<th>a text already adopted</th>
<th>□</th>
<th>a text which is still a project to be adopted</th>
</tr>
</thead>
<tbody>
<tr>
<td>TITLE:</td>
<td>Act amending the Act on Aliens and the Act on granting protection to aliens within the territory of the Republic of Poland and some other acts</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>DATE:</td>
<td>22 April 2005</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>NUMBER:</td>
<td>N/A</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>DATE OF ENTRY INTO FORCE:</td>
<td>1 October 2005</td>
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<td>PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive):</td>
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<tr>
<td>Journal of Laws 2005, No. 94, item 788</td>
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<tr>
<td>LEGAL NATURE (indicate a cross in the correct box):</td>
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<td>X</td>
<td>LEGISLATIVE:</td>
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<tr>
<td>Title</td>
<td>Date</td>
<td>Number</td>
<td>Date of Entry Into Force</td>
<td>Provisions Concerned</td>
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**Legal Nature**

- **Legislative**
- **Regulation**
- **Circular or Instructions**
This table is about: [X] a text already adopted [ ] a text which is still a project to be adopted

<table>
<thead>
<tr>
<th>TITLE: Act on the Promotion of Employment and on the Labour Market Institutions</th>
<th>DATE: 20 April 2004</th>
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<tbody>
<tr>
<td>NUMBER: N/A</td>
<td>DATE OF ENTRY INTO FORCE: 1 June 2004</td>
</tr>
<tr>
<td>PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive): Art. 1(3)(2), Art. 87-88</td>
<td>REFERENCES OF PUBLICATION</td>
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</table>

**LEGAL NATURE** (indicate a cross in the right box):

[X] LEGISLATIVE  
[ ] REGULATION  
[ ] CIRCULAR OR INSTRUCTIONS

This table is about: [X] a text already adopted [ ] a text which is still a project to be adopted

<table>
<thead>
<tr>
<th>TITLE: Act on Freedom of Self-Employment</th>
<th>DATE: 2 July 2004</th>
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<tbody>
<tr>
<td>NUMBER: N/A</td>
<td>DATE OF ENTRY INTO FORCE: 21 August 2004</td>
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<tr>
<td>PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive): Art. 13(2)</td>
<td>REFERENCES OF PUBLICATION</td>
</tr>
<tr>
<td>IN THE OFFICIAL JOURNAL: Journal of Laws 2004, No. 173, item 1807 as amended</td>
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</tbody>
</table>

**LEGAL NATURE** (indicate a cross in the right box):

[X] LEGISLATIVE  
[ ] REGULATION  
[ ] CIRCULAR OR INSTRUCTIONS

**Q.1.B.**

List the others norms of transposition by order of importance of their legal nature (first laws, secondly regulations; thirdly circulars or instructions):

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)

*Please use one table per norm and duplicate as much as necessary*

<table>
<thead>
<tr>
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<tbody>
<tr>
<td>NUMBER: N/A</td>
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<tr>
<td>PROVISIONS CONCERNED (for example if the norm is not devoted only</td>
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<tr>
<td><strong>REFERENCES OF PUBLICATION</strong></td>
<td><strong>IN THE OFFICIAL JOURNAL:</strong> Journal of Laws of 2007, No 120, item 818</td>
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<tr>
<td>CIRCULAR OR INSTRUCTIONS</td>
<td></td>
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<tr>
<td><strong>TITLE:</strong> Constitution of the Republic of Poland</td>
<td></td>
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<tr>
<td><strong>DATE:</strong> 2 April 1997</td>
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<td><strong>NUMBER:</strong> N/A</td>
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<td><strong>DATE OF ENTRY INTO FORCE:</strong> 17 October 1997</td>
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<td><strong>PROVISIONS CONCERNED</strong> (for example if the norm is not devoted only to the transposition of the concerned directive): Art. 72</td>
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<td><strong>IN THE OFFICIAL JOURNAL:</strong> Journal of Laws of 1997, No. 78, item 483 as amended</td>
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<tr>
<td><strong>TITLE:</strong> Code of Administration Procedure</td>
<td></td>
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<tr>
<td><strong>DATE:</strong> 14 June 1960</td>
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</tr>
<tr>
<td><strong>NUMBER:</strong> N/A</td>
<td></td>
</tr>
<tr>
<td><strong>DATE OF ENTRY INTO FORCE:</strong> 1 January 1961</td>
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</tr>
<tr>
<td><strong>PROVISIONS CONCERNED</strong> (for example if the norm is not devoted only to the transposition of the concerned directive): Although the Code of Administrative Procedure cannot be described as a norm of transposition of the Directive on Family Reunification, it should be pointed out that the Code applies to procedure on granting, refusal or withdrawal residence permit for a specified period in order to reunite unless the Act on Aliens provides otherwise (Art. 7(1) of the Act on Aliens).</td>
<td></td>
</tr>
<tr>
<td><strong>REFERENCES OF PUBLICATION</strong></td>
<td><strong>IN THE OFFICIAL JOURNAL:</strong> Journal of Laws of 2000, No. 98, item 1071 as amended (consolidated text)</td>
</tr>
<tr>
<td><strong>LEGAL NATURE</strong> (indicate a cross in the right box):</td>
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</tr>
<tr>
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<td></td>
</tr>
<tr>
<td><strong>TITLE:</strong> Law on Procedure at Administrative Courts</td>
<td></td>
</tr>
<tr>
<td><strong>DATE:</strong> 30 August 2002</td>
<td></td>
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<tr>
<td><strong>NUMBER:</strong> N/A</td>
<td></td>
</tr>
<tr>
<td><strong>DATE OF ENTRY INTO FORCE:</strong> 1 January 2004</td>
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<tr>
<td><strong>PROVISIONS CONCERNED</strong> (for example if the norm is not devoted only to the transposition of the concerned directive): Although the Law on Procedure at Administrative Courts cannot be described as a norm of transposition of the Directive on Family Reunification, it should be pointed out that it applies if an appeal to an administrative court is lodged</td>
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<td><strong>REFERENCES OF PUBLICATION</strong></td>
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</table>
Q.2. THIS QUESTION IS IN PRINCIPLE ONLY FOR FEDERAL OR ASSIMILATED MEMBER STATES LIKE AUSTRIA, BELGIUM, GERMANY, ITALY, SPAIN

Q.2.A. Explain which level of government is competent to adopt the norms of transposition.

*Please include your answer in the tables below*

<table>
<thead>
<tr>
<th>LEGISLATIVE RULES</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</td>
</tr>
<tr>
<td>COMPETENCES OF THE COMPONENTS:</td>
</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
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</table>

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<th>REGULATIONS</th>
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<td>COMPETENCES OF THE COMPONENTS:</td>
</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
</tr>
</tbody>
</table>
Q.2.B. In case, explain if the federal structure and the distribution of competences between the different levels pose any problem or difficulty regarding the transposition and/or the implementation of the directive.

Q.3. Explain which authorities are competent for the practical implementation of the norm of transposition by taking the decisions in individual cases.

Please use one table per competence concerned and duplicate it if necessary

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>issuing the decision on granting, refusal or withdrawal the residence permit for a specified period in order to reunite in the first instance</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td></td>
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<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td></td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td>Voivod competent with respect to the place of the alien's intended residence</td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
<td>Voivod (wojewoda) is a local representative of government; Poland is divided into 16 regions named voivodships (województwo)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>appellate authority from a decision taken in the first instance by a voivod</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td></td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td></td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td>Head of the Office for Aliens</td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
<td>Head of the Office for Aliens is an independent organ of administration. Although the Minister of Interior and Administration has the general competence to coordinate, control and supervise its activities and to give binding orders and guidelines, they cannot concern decisions taken in individual cases.</td>
</tr>
</tbody>
</table>
Since 1 January 2004 and following the reform of the Polish administrative judicial system the administrative judicial procedure consists of two instances. Administrative courts are not entitled to make decisions on the merits of a case. Procedure at Administrative Courts is regulated in Law of 30 August 2002.

Q.4. A. Has the main regulation foreseen explicitly by the main norm of transposition already been adopted or not:

- YES
- NO

Q.4.B. If the main norm(s) of transposition foresees the adoption of one or several regulations, indicate if they have all been adopted:

- YES
- NO

If NO, please indicate the missing text(s) in the table below

Please use one line per missing text and duplicate it if necessary

<table>
<thead>
<tr>
<th>MISSING TEXTS</th>
</tr>
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<tbody>
<tr>
<td>INDICATE HERE THE MISSING TEXTS</td>
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</table>

Add if necessary some explanations (specify in particular if the missing texts are at least under preparation or foreseen in the very near future):
SECOND PART

AIM (ARTICLE 1)

The purpose of the Directive is to determine the conditions for the exercise of the right to family reunification. In case C-540/03, the Court of justice recognizes that, in some cases, member States do not have any margin of appreciation to grant the right to family reunification.

Q.5 – Is family reunification considered as a right in your Member State?

□ OUI

□ NON

Please explain

Although family reunification is not explicitly mentioned as a right in statutory provisions, it is considered as such due to its legal character. Family reunification is put into effect by applying for the residence permit in order to reunite. A person who meets the relevant criteria has the right to be granted the residence permit (Art. 53(1) AA).

Q.5. A – Are there any figures available relating to the exercise of the right to family reunification between 2002 and 2006? If yes, what are the trends, including nationality assessment?

No such figures are available.

DEFINITIONS (ARTICLE 2)

SCOPE (ARTICLE 3)

The scope of the Directive is defined by article 3. We recall that:

- § 1 "reasonable prospect..." aims at excluding persons residing on a temporary basis (stagiaires, etc...)
- European citizens are excluded (§ 3)
- Comparison with existing legislation is of importance so as to assess the added value of the harmonization process (§ 5)

Q.6. Period of validity of the sponsor’s residence permit:

Q.6. A. Is the period of validity of the sponsor’s residence permit of one year or more according to article 3 § 1 of the Directive?

□ OUI

□ NON
Q.6.B. Quote precisely the period enshrined in national law:

According to Art. 54(4) Act on Aliens (hereafter referred to as: AA), two-year waiting period is provided for before the sponsor holding temporary residence permit (in form of the residence permit for a specified period) becomes eligible to reunite. Moreover the sponsor’s residence permit is to be issued for a minimum period of one year.

However, according to Art. 54(5) AA as amended by the Act Amending the Act of Aliens and some other acts of 24 May 2007 (hereafter referred to as : 2007 AAA) the waiting period does not apply to the sponsor holding residence permit under Art. 53(17-18) AA as a researcher in the meaning of the Directive 2005/71/EC of 12 October 2005 as well as of the Regulation (EC) No. 1030/2002 of 13 June 2002 (concerning researchers holding a residence permit issued by another Member State).

In addition, it should be noted that also the sponsors holding a permanent residence permit (in form of the settlement permit or the long-term resident’s EC residence permit) and enjoying refugee status are eligible to reunite (Art. 54(1-3) AA. In the mentioned cases no special waiting periods have been provided for due to the permanent character of the former and the specificity of the latter.

Q.6.C. How does your Member State translate in national law the requirement for the sponsor to have "reasonable prospects of obtaining the right of permanent residence" (a 3 § 1)?

No explicit reference to the mentioned phrase exists. However, prospects for renewal of the sponsor’s residence permit for a specified period are taken into account in the decision process by the relevant authority.

Q.7. – Members of the family concerned:

Q7. A. Are they third country nationals as required by article 3 § 1 of the Directive?

☐ OUI
☐ NON

If not, explain

Q.7.B. How has your Member State translated in national law the wording of "whatever status” included in article 3 § 1 of the Directive?

No explicit reference to the mentioned phrase exists. Family reunification is regulated under the Act on Aliens which is generally applicable to all aliens being third country nationals (granting international protection to aliens is regulated separately).
Q.8 – Did the transposition of the Directive in your Member state breached provisions of international law more favourable to individuals (a 3 § 4)?

☐ OUI  
☒ NON

Q.9 – If yes, are those provisions based on:

Q.9.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?

☐ OUI  
☒ NON

Specify which provisions

Q.9.B - The European Social Charter of 18 October 1961 (a 3 § 4)?

☐ OUI  
☒ NON

Specify which provisions

Q.9.C. The amended European Social Charter of 3 May 1987 (a 3 § 4)?

☐ OUI  
☒ NON

Specify which provisions


☐ OUI  
☒ NON

Specify which provisions

Q.10 – Does the transposition of the Directive affect national provisions more favourable to individuals (a 3 § 5)?

☐ OUI  
☒ NON

If yes, please specify which provisions
**Beneficiaries (Article 4)**

- Article 4 of the Directive contains numerous "may clauses". It is therefore important to pay attention on the way Member States use them and on the legal modalities adopted thereof.

- Article 4 § 1 a) and b) enacts a right to family reunification for some members of the sponsor’s family. The Member State does not have any margin of discretion regarding those persons.

- Article 4 § 1 last indent foresee one derogation regarding child over 12 years on the basis of an integration criterion. This is one of the most sensitive questions encompassed by the directive beside the issue of the limit of age in § 6.

- Regarding article 4 § 6, the Court states ""It does not matter that the final sentence of the contested provision provides that the Member States which decide to apply the derogation are to authorise the entry and residence of children in respect of whom an application is submitted after they have reached 15 years of age 'on grounds other than family reunification'. The term 'family reunification' must be interpreted in the context of the Directive as referring to family reunification in the cases where family reunification is required by the Directive. It cannot be interpreted as prohibiting a Member State which has applied the derogation from authorising the entry and residence of a child in order to enable the child to join his or her parents". (cons. 86) The Court adds "Article 4(6) of the Directive must, moreover, be read in the light of the principles set out in Article 5(5) thereof, which requires the Member States to have due regard to the best interests of minor children, and in Article 17, which requires them to take account of a number of factors, one of which is the person’s family relationships" (cons. 87)

**Q.11** – Does your national law recognize the right to family reunification to:

**Q.11. A** – The sponsor's spouse (a. 4 § 1 a)?

- [ ] OUI
- [x] NON

**Q.11. B** - Minor children of the sponsor and of his/her spouse (a. 4 § 1 b)?

- [ ] OUI
- [x] NON

**Q.11.C**. Minor children adopted of the sponsor and of his/her spouse (a. 4 § 1 b)?

- [ ] OUI
- [x] NON
Q.11.D. Minor children of the sponsor (a. 4 § 1 c)?

☐ OUI
☐ NON

Q.11. E. If yes, does your national law foresee that the sponsor shall have children custody and children are dependant on him or her?

☐ OUI
☐ NON

Specify if necessary the proofs required

Q.11 F. Minor children adopted of the sponsor (a 4 §1.c)?

☐ OUI
☐ NON

Q.11. G. If yes:

h. does your national law foresee that the sponsor shall have children custody and children are dependant on him or her?

☐ OUI
☐ NON

Specify if necessary the proofs required

g.g. Does national law provide that those children shall be 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'"

☐ OUI
☐ NON

Specify if necessary the proofs required

Q.11. H. Minor children of the spouse (a 4 §1.d.)?

☐ OUI
☐ NON
Q.11. I. If yes, does your national law foresee that the spouse shall have children custody and children are dependant on him or her?

X OUI

□ NON

Specify if necessary the proofs required

Q.11. J. Minor children adopted of the spouse (a 4 §1.d)?

□ OUI

□ NON

Q.11. K. If yes, k. Does your national law foresee that the spouse shall have children custody and children are dependant on him or her?

X OUI

□ NON

Specify if necessary the proofs required

k.k. Does national law provide that those children shall be 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”?

□ OUI

X NON

Specify if necessary the proofs required

Q.12 – Has your Member State transposed the option opened by article 4 § 1 c:

Q.12A. To authorise reunification of minor children of the sponsor – including also adopted children – of whom custody is shared (a 4 §1.c)?

X OUI

□ NON

It should be noted that no direct transposition of Art. 4 §1(c) has been done. AA is silent with regard to the shared parental custody of the child who is entitled to family reunification. Therefore it should be assessed that the family reunification of under-age child of the sponsor, including adopted children, also under parental custody of another person is ensured.
Q.12.B. If yes, has your legislation transposed the condition that the other party sharing custody has given his or her agreement (a 4 §1. c)?

[X] OUI

[ ] NON

In accordance with Article 60(2) AA, in order to grant a residence permit to the minor child it is necessary to obtain the consent of the person who has parental custody over the child.

Q.13 – Has your Member State transposed the option opened by article 4 § 1 d):

Q.13.A. to authorise reunification of minor children of the spouse – including also adopted children – of whom custody is shared (a 4.1.d. in fine)?

[X] OUI

[ ] NON

It should be noted that no direct transposition of Art. 4 §1(c) has been done. However, family reunification of under-age child of the spouse, including adopted children, also under parental custody of another person is ensured.

Q.13 B. If yes, has your legislation transposed the condition that the other party sharing custody has given his or her agreement (a 4. 1.d) ?

[X] OUI

[ ] NON

In accordance with Article 60(2) AA, in order to grant a residence permit to the minor child it is necessary to obtain the consent of the person who has parental custody over the child.

Q.14 – In any case referred to in questions 7 to 9, is the age of the minor children below the age of majority set up by the law of your Member State (a.4 §1, second indent)?

[X] OUI

[ ] NON

If yes, indicate the age required

Under 18.
**Q.15** – In any case referred to in questions 7 to 9, has the prohibition of marriage of minor children been transposed (a.4 §1, second indent)?

- [x] OUI
- [ ] NON

If not, explain Si non, expliquez

**Q.16** – Is the derogation set up in article 4 § 1 last indent relating to the conditions for integration of children over 12 years arrived independently from the rest of the family used by your Member State?

- [ ] OUI
- [x] NON

How the criterion "arrives independently from the rest of his/her family" has been transposed in your national legislation?

**Q.17** – If yes, did this integration condition already exist in your national legislation before the date of transposition of the Directive?

- [ ] OUI
- [ ] NON

**Q.18** – Describe briefly the content of this condition, the date of its creation and the conditions of its examination

**Q.19** – Are the children of refugees required to an integration test by your Member State (in contradiction with article 10 § 1)?

- [ ] OUI
- [x] NON

If yes, explain

**Q.20** – Does your Member State authorise:

**Q.20 A** – Reunification of first-degree relatives in the direct ascending line of the sponsor (a 4§2 a)?

- [ ] OUI
- [x] NON
**Q.20 B** – If yes, shall they be dependant and not enjoy proper family support in the country of origin?

☐ OUI

☐ NON

How each of those criterions is transposed and checked?

**Q. 20.C.** Reunification of first-degree relatives in the direct ascending line of the spouse (a 4§2 a)?

☐ OUI

☒ NON

**Q.20.D.** If yes, shall they be dependant and not enjoy proper family support in the country of origin?

☐ OUI

☐ NON

How each of those criterions is transposed and checked?

**Q.20.E.** Reunification of adult unmarried children of the sponsor? (a 4§2 b) ?

☐ OUI

☒ NON

If necessary, explain how this procedure is organised

**Q.20.F.** If yes, does the national legislation impose that those adult unmarried children of the sponsor are objectively unable to provide for their own needs on account of their state of health (a 4 §2 b) ?

☐ OUI

☐ NON

If necessary, specify how each of those criterions ("objectively" and "unable to provide for their own needs") is transposed and checked?

**Q.20. G.** Does your Member State authorise reunification of adult unmarried children of the spouse (a 4§2 b)?

☐ OUI

☒ NON

If necessary, specify how this condition is assessed
Q.20.H. If yes, does the national legislation impose that those adult unmarried children of the sponsor are objectively unable to provide for their own needs on account of their state of health (a 4 §2 b) ?

☐ OUI
☐ NON

If necessary, specify how each of those criterions ("objectively" and "unable to provide for their own needs") is transposed and checked?

Q.20. I. Did your Member state use the by law or regulation norms to implement article 4 § 2 a et b?

☐ OUI
☒ NON

Q.21 – Does your Member State authorise reunification of the unmarried partner of the sponsor, being a third country national (a 4 §3)?

☐ OUI
☒ NON

Q.22 – If yes:

Q.22 A – This partnership shall be based on a duly attested stable long term relationship?

☐ OUI
☐ NON

If yes, specify how your Member State assess this situation

Q.22 B – This partnership shall be registered?

☐ OUI
☐ NON

Q.23 – Does your national law consider the registered partner as the husband/spouse (a 4 §3 alinéa 2)?

☐ OUI
☒ NON

Q.24 – Does your Member State authorise:
Q.24. A – Reunification of minor children of the partner, including adopted children (a 4§3)?
- OUI
- NON

Q. 24. B – Reunification of adult unmarried children of the partner, including adopted children (a 4§3)?
- OUI
- NON

Q.25 – Does your Member State allow reunification of adult unmarried children who are objectively unable to provide for their own needs on account of their state of health (a 4§3)?
- OUI
- NON

If yes, specify how the conditions, and more particularly the "objectivity", are assessed.

Q.26 – Did your Member state use the by law or regulation norms to implement article 4 § 3?

Q.27 – Is the prohibition of polygamous marriage enshrined in your national legislation (a. 4§4)?
- OUI
- NON

Q.28 – Does your Member State limit family reunification of minor children of a further spouse and the sponsor (article 4§4 dernier alinéa,)?
- OUI
- NON

Q.29 – Does your Member State use the option set up by article 4 § 5 requiring the sponsor and his/her spouse to be of a minimum age of 21 years old before reunification?
- OUI
- NON

Q.30 – If yes,
Q.30 A – What is the age required?

Q.30 B – Is the derogation founded on integration criteria and/or prevention of forced marriage?

Q.31 – Does your Member State use the derogation of article 4 § 6 by requesting that the applications concerning family reunification of minor children have to be submitted before the age of 15?

☐ OUI

☒ NON

Explain

Q.32 – If yes, was it provided by existing legislation on the date of implementation of the directive?

Q.33 – If the application is not introduced before the age of 15, do Member States authorise entry and residence on grounds other than family reunification?

☐ OUI

☐ NON

Which grounds and which conditions?

PROCEDURE (ARTICLE 5)

We draw attention on the major importance given by the Court of justice regarding § 5 relating to the best interest of minor children.

Q.34 – Did your Member State institute a procedure regarding family reunification (a 5 §1) ?

☐ OUI

☒ NON

No separate family reunification procedure exists. Family reunification is ensured through the procedure for granting the residence permit for a specified period.

Q.35 – If yes,

Q.35. A – Which authorities are in charge of this issue?

Voivod competent with respect to the place of the alien's intended residence and the Head of the Office for Aliens which is an appellate authority from a decision taken in the first instance by a voivod.

303 L'équipe thématique a modifié la réponse et coché la case NON contrairement à la réponse initiale du rapporteur national.
Q.35. B – Are NGO's associated to this procedure?

☐ OUI

☒ NON

If yes, describe the procedure

Q.35. C – Is the application submitted by the sponsor or by family members?

The application is submitted by the sponsor.

Q.35. D – Is this procedure exclusive from other possibilities to grant family reunification?

☒ OUI

☐ NON

If other procedural possibilities exist, please describe them

Q.35. E – Was this procedure existing before the adoption of Directive 2003/86?

☐ OUI

☒ NON

Q.36 – Which documentary evidence are required to prove (a 5 §2):

Q.36. A – Family relationships according to article 4?

Art. 60(4) AA states that the application for residence permit includes: the alien’s personal data as well as personal data of children covered by the application and other persons covered by the alien’s travel document with respect to issuance of residence permit; place of intended residence in Poland; personal data of the alien’s family members residing in Poland including the level of consanguinity; information on visits and stays abroad within previous five years, as well as on previous stays in Poland; and indication of maintenance means.

Q.36. B – Accommodation conditions laid down in article 7?

Yes, Art. 60(5a)(1) AA demands providing information on legal title to the current or intended place of housing as well as documents confirming the costs of housing.

Q.36. C – Sickness insurance conditions?

Yes, to be granted residence permit the applicant is obliged to have sickness insurance (Art. 53b(1)(1) AA) and under Art. 60(5) the applicant is – among
others – obliged to attach to the application all relevant documents confirming data included in the application.

**Q.36. D** – Certified copies of family member(s)’ travel documents?

Yes, under Art. 60(5) AA the applicant is obliged to justify the application, provide valid travel document, as well as to attach to the application photos of persons covered by the application and all relevant documents confirming data included in the application as well as circumstances on which the application is based.

**Q.37** – Is the possibility foreseen to proceed to:

- Interviews:
  - [ ] OUI
  - [x] NON

- Investigations:
  - [ ] OUI
  - [x] NON

If yes, describe them briefly

No special interview or investigation procedures exist. However, a competent administrative authority is to take all steps necessary for establishing facts and taking a decision (see Art. 7 of the Code of Administrative Procedure), which may include interviews or/and investigations.

**Q.38** – When examining an application concerning the unmarried partner of the sponsor, which evidences are taken into account by Member States on the basis of national law to prove family relationship (article 5§2 dernier alinea) ?

**Q.38. A** – Existence of family ties and other elements such as a common child?

- [ ] OUI
- [ ] NON

Specify

**Q.38. B** - Previous cohabitation?

- [ ] OUI
- [ ] NON
Q.38. C - Registration of a partnership

☐ OUI
☐ NON

Q.38. D - Any other reliable means of proof foreseen in national law?

☐ OUI
☐ NON

If yes, specify which ones:

Q.39 – Are family members obliged to reside outside the territory of the Member State while the application is being examined (a5 §3)?

☐ OUI
☒ NON

Is this obligation sanctioned and how?

Art. 53(1)(7) provides that the residence permit for specified period of time is granted to an alien who intends arrive on the territory of Poland or already resides on that territory. Consequently, an application submitted by a family member concerned who already resides on the territory of Poland cannot be regarded as an exception. However, it should be added that the “appropriate circumstances” (mentioned in Art. 5 §3 second intent of the Directive) are examined in the decision-making process.

Q.40 – If the answer is yes, is a derogation organised according to article 5 § 3 second indent?

☐ OUI
☐ NON

Please specify

Q.41 – Does your national legislation include a maximum period of 9 month to answer to the application by way of written notification (a5 §4)?

☒ OUI
☐ NON

If necessary, please specify

General rules on length of the administrative procedure apply. A decision should be taken with no delay within one month in regular cases and within two months in complex cases in the first instance and within one month in the second instance (Art. 35 of the Code of Administrative Procedure).
Q.42 – This time limit can be extended (a 5 §4 alinea 2)?

☐ OUI
☐ NON

Q.43 – If yes,

Q.43. A – Because of the complexity of the examination of the application?

☐ OUI
☐ NON

In general, the decisions should be taken within the period of time established in Art. 35 CAP. However, Art. 36 CAP lays down the possibility of not closing a case within the timeframes specified in Art. 35. The decision to extend the procedure is passed each time by the body examining the case.

Q.43. B – What is the length of the extension?

It is not specified in the CAP.

Q.44 – If no decision is taken by the end of the 9 months period provided, what are the consequences for the applicant?

If is a departure from the rules of CAP, following rules apply:
First of all, the organ of administration shall inform the applicant of any failure to deal with a case within the deadline, setting out the reasons for the delay and setting a new deadline for dealing with the case. Moreover, the applicant shall have the right to lodge an objection to the appellate authority. In response, if the organ accepts the validity of the complaint, it shall set an additional deadline for dealing with the case, clarify the reasons for the delay and identify the parties responsible for the delay (Art. 36–38 CAP).

Q.45 – Is the decision rejecting the application notified? Does this written notification contain the reasons of rejection?

☐ OUI
☐ NON

Specify if only one condition is not required

Q.46 – How is the best interest of minor children taken into account by your Member State’s legislation and authorities during examination of the application (article 5 §5)?

The principle of the best interest of the child is established in the very foundations of the Polish legal system including the 1997 Constitution. Art. 72(1) of the 1997 Polish Constitution states that the Republic of Poland shall ensure protection of the rights of the child. Furthermore, Art. 72(3) provides that organs of public authority and persons
responsible for children, in the course of establishing the rights of a child, shall consider and, insofar as possible, give priority to the views of the child.

Also, Poland is a state-party to the 1989 Convention on the Rights of the Child. Thus, the clause of Art. 5§5 of the Directive has not demanded explicit introduction to the Act on Aliens.

CONDITIONS REQUIRED (ARTICLES 6 AND OTHERS)

- Questions relating to accommodation and resources will be carefully examined to assess if Member States use them, either as a migration tool or as an integration tool.

- The same assessment applies regarding the option to set up a period of lawfully residence not exceeding two years before applying for family reunification.

- According to article 8, the Court of justice states: “That provision does not therefore have the effect of precluding any family reunification, but preserves a limited margin of appreciation for the Member States by permitting them to make sure that family reunification will take place in favourable conditions, after the sponsor has been residing in the host State for a period sufficiently long for it to be assumed that the family members will settle down well and display a certain level of integration. Accordingly, the fact that a Member State takes those factors into account and the power to defer family reunification for two or, as the case may be, three years do not run counter to the right to respect for family rights set out in particular in Article 8 of the ECHR as interpreted by the European Court of Human Rights

- “It should, however, be remembered that, as is apparent from Article 17 of the Directive, duration of residence in the Member State is only one of the factors which must be taken into account by the Member State when considering an application and that a waiting period cannot be imposed without taking into account, in specific cases, all the relevant factors” (cons. 99). “The same is true of the criterion of the Member State’s reception capacity, which may be one of the factors taken into account when considering an application, but cannot be interpreted as authorising any quota system or a three-year waiting period imposed without regard to the particular circumstances of specific cases. Analysis of all the factors, as prescribed in Article 17 of the Directive, does not allow just this one factor to be taken into account and requires genuine examination of reception capacity at the time of the application” (cons. 100) “When carrying out that analysis, the Member States must, as is pointed out in paragraph 63 of the present judgment, also have due regard to the best interests of minor children” (cons. 101).

Q.47 – Can public policy, public security or public health grounds be taken into account to (a 6 §§1 et 2):

Q.47. A – Reject an application for family reunification?

☐ OUI
☐ NON

If yes, which ones?

State’s defence or security; protection of public security and order; interest of Poland, public health.
To be precise, Art. 57(1)5 AA provides that an alien should be refused the residence permit for a specified period of time if it is demanded by reasons regarding state defence and security or public security and policy or the interest of the Republic of Poland. In turn, Art. 57(1)7 AA states that the application shall be reject if an alien has been diagnosed the illness or infection that is the subject of obligatory medical treatment according to the Act on diseases and infections of 6 September 2001, or there is a suspicion of such disease and an alien refuses to undergo medical treatment.

**Q.47. B – Withdraw an application for family reunification?**

- [x] OUI
- [ ] NON

If necessary, please specify

State’s defence or security; protection of public security and order; interest of Poland, (Art. 58(1)2 AA in connection with Art. 57(1) AA)

**Q.47. C – Refuse to renew a family member's residence permit?**

- [x] OUI
- [ ] NON

If necessary, please specify

State’s defence or security; protection of public security and order; interest of Poland (Art. 57(1)5 AA);

**Q.48 – Does national legislation take into account:**

**Q.48. A – The severity or type of offence against public policy or public security?**

- [x] OUI
- [ ] NON

The case-law of administrative courts should be taken into account in this context. According to the case-law of the Supreme Administrative Court on public security clauses in law of aliens, the concrete premises justifying the real danger caused by an alien must be identified and not every breach of law constitutes the danger for public order. Note that the mentioned case-law did not refer directly to the family reunification cases.
Q.48. B – The solidity of family relationships regarding article 17 of the Directive?

☐ OUI
☐ NON

If necessary, please specify

Although there is no provision in the Act on Aliens directly transposing Art. 17 of the Directive, it seems that the Act on Aliens creates a legal framework in which due account of the solidity of family relationships is ensured. Also, general rules of administrative procedure apply (Art. 7 of the Code of Administrative Procedure obliges the relevant authorities to take all necessary steps to clarify the facts and decide on the case with due account of public interest as well as of legitimate interest of individuals). However, direct transposition of Art. 17 of the Directive would eliminate some ambiguity.

Q.49 – Does your Member State withdraw the residence permit or remove the third country national on the sole ground of illness or disability suffered after the issue of the residence permit (a 6 §3)?

☐ OUI
☐ NON

Q.50 – Are accommodation conditions required from the applicant (a7 §1a) ?

☐ OUI
☐ NON

Q.51 – If yes:

Q.51. A – What are those conditions?

Art. 60(5a)(1) AA provides that the information on legal title to the current or intended place of housing and documents confirming the costs of housing must be included in the application. No other conditions such as minimum surface of accommodation are specified.

Q.51. B – How are they assessed?

Relevant documents must be included in the application.

Q.51 C – Are they comparable to the conditions required to a normal family living in the same region?\(^\text{304}\)

☐ OUI

\(^\text{304}\) There is no possibility to answer this question as the only requirement concerns a legal title to the place of housing. Polish law does not contain any provision with regard to both aliens and Polish nationals on the subject of the standard of housing.
If not, please specify the differences

Q.52 – Is a sickness insurance required from the applicant (a. 7 §1b) ?

☐ OUI ☐ NON

Q.53 – Are stable resources required (a7 §1c) ?

☐ OUI ☐ NON

Specify their nature and content

Art. 53b(1)(2) AA states that the resources are to be sufficient for the person’s concerned maintenance as well as for his or her dependant family members. Costs of maintenance may be covered by a family member of the person concerned on whom he or she is dependant if such a person resides in Poland and is able to do so (Art. 53b(2) AA).

Q.54 – How is the condition "sufficient" assessed by your Member State? Is it in comparison with national wages?

According to Art. 53b(5) AA, the level of the monthly income required, after deduction of housing costs and calculated per person including all dependant family members, must extend the income which forms a basis for granting social assistance in accordance with relevant regulations (i.e. Act of 12 March 2004 on social assistance (Journal of Laws 2004, No. 64 item 593 as amended). Since 1 October 2006 the net monthly income forming a basis for granting social assistance is 477 PLN (approximately 120 Euro) per single person or 351 PLN (approximately 90 Euro) per each family member.

Q.55 – Are integration criterions required to allow family reunification (a 7 §2)?

☐ OUI ☒ NON

Q.56 – If yes:

Q.56. A – What are those criterions?

Q.56. B – Do they apply indistinctly to all potential beneficiaries of reunification? (Spouse, dependant people, etc.)

Q.56. C – How are they evaluated by your Member State?
Q.56. D – Are refugees and their family members required to fulfil them (a 7 §2, second indent)?

☐ OUI
☐ NON

Q.57 – Is a minimal period of lawful reside is required before reunification (a 8 §1)?

☐ OUI
☐ NON

Q. 58 – Does this period exceed two years?

Please specify

No, the Act on Aliens requires the sponsor - save a person holding residence permit under Art. 53(17-18) AA as a researcher in the meaning of the Directive 2005/71/EC of 12 October 2005 as well as of the Regulation (EC) No. 1030/2002 of 13 June 2002 (concerning researchers holding a residence permit issued by another Member State), a person granted refugee status, as well as persons granted permanent residence permits - before becoming entitled to reunite with family members to have stayed in the territory on the basis of residence permits for a period of at least two years. Directly before submitting the application for family reunification the sponsor is required to reside on the residence permit issued for minimum period of one year (Art. 54(4) AA).

Q.59 – Does your Member State apply the derogation set up by article 8 § 2 allowing Member States to impose a waiting period of maximum three years due to reception capacities between the submission of the application and the issuance of a residence permit?

☐ OUI
☐ NON

Please specify

Q.60 – If yes, did this derogation exist in national law before the 22nd of September 2003?

☐ OUI
☐ NON

FAMILY REUNIFICATION OF REFUGEES

The legal regime applicable to refugees derogates from the one applicable to family reunification. The scope of those derogations (minimal lawful residence, members of the family, accommodation requirements) shall be assessed on the basis of national law.
Q.61 – Does your Member State allow family reunification of refugees on the basis of Directive 2003/86 (a 9 §1) ?

☐ OUI
☐ NON

Q.62 – Is this right limited to family relationships predating the entry on the territory (a 9 §2) ?

☐ OUI
☐ NON

Q.63 – Does your Member State allow family reunification of family Members not quoted in article 4 of the Directive (a 10 §2) ?

☐ OUI
☐ NON

Which members of the family and under which conditions?

Q.64 – According to the specific case of unaccompanied minor refugees, does your Member State authorise family reunification of first degree relatives in the direct ascending line without applying the conditions laid down in article 4 § 2 (a10 §3 a) ?

☐ OUI
☐ NON

What conditions are required?

According to Art. 53(3) AA the scope of family members eligible to reunite is extended to relatives in direct ascending line (not only of first-degree ones as it is required by the Directive).

Q.65 – Does your Member State authorise entry and residence of the legal guardian or any member of the family where the unaccompanied minor refugee has no relatives in the direct ascending line or such relatives cannot be traced (a10 §3 b) ?

☐ OUI
☐ NON

If yes, please specify who the member of the family targeted is and which proofs are required to prove family ties?
Q.66 – Does your Member State take into account other evidence of family relationship where the refugee cannot provide official evidence (a 11 §2) ?

☐ OUI
☐ NON

Which ones?

The situation is unclear as there was no transposition of Art. 11 §2 of the Directive, which results in the lack of statutory rules in the Act on Aliens concerning alternatives to situations in which official documentary evidence cannot be provided by a refugee. However, according to Art 60(6) AA, if an alien does not have any valid travel document and is unable to obtain it, he or she may deliver other document confirming his or her identity. This is a more liberal standard than the one provided for in Art. 5.2 of the Directive which requires the application for reunification to be accompanied by certified copies of family member(s)’ travel documents. Moreover, it should be noted that general rules of administrative procedure apply, which demand from administrative authorities to take into account all legal evidence which may help in the decision process. It may be added that, pursuant to Article 75(1) and (2) of CAP, everything that can help to clarify the case, and is not at variance with the binding law, shall be allowed as evidence. Especially documents, testimony of witnesses, opinions of experts and medical examinations can serve as evidence.

Q.67 – Does the examination of the refugee application take into account their specific situation:

Q.67. A – Are proofs regarding accommodation conditions, sickness insurance or resources required (a 12 §1)?

☐ OUI
☐ NON

If yes, are those requirements comparable to those imposed to other third country nationals?

General rules apply to refugees save exemptions on stable and regular resources and sickness insurance if the application for the residence permit in order to reunite is submitted within a period of three months after the granting of the refugee status (Art. 53b(4) AA). However, the exemption omits accommodation conditions and in consequence the standard of Art. 12 §1 first indent is not met.

Q.67. B – If one of the person concerned (sponsor or family member) has special links with a third country within which reunification is possible, does your member state require those proofs according to article 12 § 1 second indent.

☐ OUI
☐ NON
If necessary specify

**Q.67. C** – If a refugee has introduced its application after a period of three months, does your Member State require the refugee to meet the conditions or one of them (accommodation, sickness insurance, resources (a 12 §1 alinea 3)?

- [x] OUI
- [ ] NON

If yes, which ones?

All of them, as regular rules apply (see answer to Q.67.A).

**Q.68** – Does your Member State apply the prohibition to impose a residence condition before reunification (a 12 §2)?

- [x] OUI
- [ ] NON

If not, what is the length of this period? Is it different from the one normally applied?

**EXERCISE OF THE RIGHT TO FAMILY REUNIFICATION**

*The granting of an autonomous residence permit is one of the most sensitive issues of this part of the Directive.*

**Q.69** – Is entry and residence facilitated by your Member State, as soon as the application for family reunification has been accepted, including the issue of obtaining visas (a13 §1)?

- [x] OUI
- [ ] NON

If yes, how?

Family reunification is ensured through the process of applying for the residence permit for a specified period. The person concerned is granted the residence visa if only he or she is granted the residence permit in order to reunite (Art. 26(4)(o) AA, as amended by 2007 AAA). However, he or she is not exempted from consular fees for issuing the entry visa, which seems not in conformity with the Directive’s requirement to grant every facility for obtaining the required visa.
Q.70 – Is a residence permit of at least one year's duration granted to the family members (a 13 §2)?

☐ OUI
☐ NON

What is the duration of the residence permit?

Family reunification is ensured through the process of applying for the residence permit for a specified period. If the sponsor resides in Poland under permanent residence permits or is a refugee, according to Art. 56(2) AA, the residence permit for a specified period is granted to the family member for two years. If the sponsor resides in Poland under the residence permit for a specified period, the residence permit for a specified period is granted to the family member for the period specified in the sponsor's residence permit. In the last case the minimum one year's duration is not guaranteed (the residence permit for a specified period is generally granted for a period not exceeding 2 years, see Art. 56(1) of the Act on Aliens and may be shorter than one year). Thus, the Directive standard is not met in the Act on aliens. However, the standard will be met in practice.

Q.71 – Is this residence permit renewable?

☐ OUI
☐ NON

Q.72 – Is the duration of the residence permit aligned with the duration of sponsor's residence permit (a 13 §3)?

☐ OUI
☐ NON

If no, please specify

Q.73 – Are the rights awarded to family members' equivalent to those granted to the sponsor (a14 §1):

Q.73. A – Regarding access to education?

☐ OUI
☐ NON

If no, please specify
Q.73. B - Regarding access to employment?

[X] OUI
[ ] NON

Please specify the content of this access
Art. 1(3)2 of The Act on Promotion of Employment and on the Labour Market Institutions of 20 April 2004 states that this act applies to the holders of the residence permit for a specified period of time granted in order to reunite on the same terms as to the Polish nationals. Furthermore Art. 87(1) provides that they are allowed to carry out work without a work permit.

Art. 13(2) of The Act on Freedom of Self-Employment of 2 July 2004 provides that abovementioned aliens have the access to economic activity on the same terms as Polish nationals.

Q.73. C – Regarding access to vocational guidance, initial and further training and retraining?

[X] OUI
[ ] NON

If no, please specify

Q.74 – Does your Member State grant specific rights in social matters to reunified family members?

[ ] OUI
[X] NON

If yes, please describe them and specify if a time limit is established to take advantage from them

Q.75 – Has Member State set up conditions regarding specific access to employment for family members (a 14 §2)?

[ ] OUI
[X] NON

If yes, how?

Q.76 – If yes, do those conditions exceed 12 months (a 14 §2)?

[ ] OUI
[ ] NON

Which ones?
Q.77 – Is access to employment limited in your Member State

Q.77.A – Regarding first-degree relatives in the direct ascending line?

☐ OUI
☐ NON

If yes, how?

Firstly, it must be noted that Poland did not introduce Article 4(2) of the Directive, and therefore excluded the first-degree relatives in the direct ascending line and adult children from family reunification. However, they may be granted a residence permit for a specified period of time on the basis of Art. 53a(4) AA (see answer to Q.80). In such a case the access to employment is limited. They are allowed to work in Poland after obtaining a work permit issued by the voivode appropriate for the location of the employer’s seat (in accordance with Art. 87(1) of the Act on Promotion of Employment and on the Labour Market Institutions of 20 April 2004).

Q.77. B – Regarding adult unmarried children objectively unable to provide for their own needs on account of their state of health (a 14 §3)?

☐ OUI
☐ NON

If yes, how?

They are allowed to work in Poland after obtaining a work permit issued by the voivode appropriate for the location of the employer’s seat (in accordance with Art. 87(1) of the Act on Promotion of Employment and on the Labour Market Institutions of 20 April 2004). See also answer to Q.77.A.

Q.78 – Are spouses, unmarried partners and child who has reached majority entitled to an autonomous residence permit at least five years after lawful residence on the basis of the residence permit issued for family reunification (a15 §1)?

☐ OUI
☐ NON

If yes, please specify when and how for each category

The spouse and the child who has reached majority are entitled to an autonomous residence permit after five years of residence on the basis of the reunification residence permits (Art. 53(1)9 AA).
Q.79 – Does your Member State limit the granting of the autonomous residence in cases of breakdown of the family relationship (a 15 §1 alinea 2)?

☐ OUI

☒ NON

Please explain

Q.80 – Does your Member State grant autonomous residence permit:

Q.80. A – To first-degree relatives in the direct ascending line (a15 §2)

☒ OUI

☐ NON

It should be clarified that Poland did not explicitly introduced Art. 4(2) of the Directive. However, a residence permit for a specified period of time may be granted to an alien on the basis of art. 53a(4) AA which provide for such a possibility with regard to the alien who demonstrates that some other circumstances justify his/her residence on the territory of Poland for a period longer than 3 months.

It should be also added that Art. 53a(4) AA is of discretional character; however, the scope of discretion is limited by the rules of administrative procedure and the case-law of administrative courts. The latter demands, among others, that a discretional administrative decision must be properly justified by referring to public interest. Furthermore, the obligations of Poland under Art. 8 of the European Convention on Human Rights must be taken into account in this regard.

Q.80. B – To adult unmarried children objectively unable to provide for their own needs on account of their state of health (a15 §2) ?

☒ OUI

☐ NON

Poland does not explicitly introduce Art. 4(2) of the Directive. However, a residence permit for a specified period of time may be granted to an alien on the basis of art. 53a(4) AA which provide for such a possibility with regard to the alien who demonstrates that some other circumstances justify his/her residence on the territory of Poland for a period longer than 3 months.

It should be also added that Art. 53a(4) AA is of discretion character; however, the scope of discretion is limited by the rules of administrative procedure and the case-law of administrative courts. The latter demands, among others, that a discretion administrative decision must be properly justified by referring to public interest. Furthermore, the obligations of Poland under Art. 8 of the European Convention on Human Rights must be taken into account in this regard.
Q.81 – Does your member State grant autonomous residence permit in the event of widowhood, divorce, separation or death of first first-degree relatives in the direct ascending or descending line (a 15 §3)?

☐ OUI

☐ NON

If necessary specify

According to Art. 53(1)(10) AA, an autonomous residence permit is to be granted, even before the normally required period of five years, in case of widowhood, divorce, separation or death of first-degree relatives in the direct ascending or descending line. However, granting such an autonomous residence permit is conditioned on special interest of an alien concerned.

Q.82 – Has your Member State adopted rules granting autonomous residence permit "in the event of particularly difficult circumstances" (a 15 §3)?

☐ OUI

☑ NON

If yes, how is this provision defined and transposed?

There is no direct transposition. However, the framework of granting an autonomous residence permit in case of widowhood, divorce, separation or death of first-degree relatives in the direct ascending or descending line (see answer to Q.81) seems to ensure this standard. Moreover, the family member may apply for the residence permit on regular basis for reasons other than family reunification.

PENALTIES AND REDRESS

Those provisions must be read in parallel with those relating to the conditions to be fulfilled to obtain family reunification (articles 6, 7, 8)

Questions relating fraud, false or falsified documents are of importance to assess their impact.

Q.83 – What are the legal grounds to reject, withdraw or refuse to renew a family member's residence permit (a16 §1 et 2):

Q.83. A – Conditions required by the directive not satisfied?

☑ OUI

☐ NON
Q.83. B – Absence of real martial or family relationship?

☐ OUI
☒ NON

If yes, how is this hypothesis assessed?

Q.83. C – Stable long term relationship with another person?

☐ OUI
☒ NON

If yes, how is this hypothesis assessed?

Q.83. D – False or falsified documents?

☒ OUI
☐ NON

Q.83. E – Marriage, partnership or adoption contracted for the sole purpose of enabling reunification?

☒ OUI
☐ NON

Q.83. F – If yes, how is this hypothesis assessed?

The residence permit is to be refused or withdrawn if marriage was contracted for the sole purpose to be granted the residence permit. Art. 55 AA provides that the relevant authority competent for granting the residence permit is to establish whether the marriage is of convenience if circumstances demonstrate that: a) one of the spouses has derived material benefit from his or her consent to contract marriage if this is not a consequence of an established custom in the state or a social group concerned; b) spouses neglect their martial duties based on law; c) spouses do not live in one household; d) spouses had met never before getting married; e) spouses do not speak a language understandable for both; f) spouses are not unanimous in presenting their personal data and other important circumstances which regard them; g) one or both spouses have previously contracted marriages of convenience.

Q.83. G – When the sponsor's residence comes to an end and the family member does not yet enjoy an autonomous right of residence (a 16 §3) ?

☒ OUI
☐ NON
Under the AA the sponsor eligible to reunite must hold a permanent residence permit (settlement permit or long-term EC resident permit), refugee status or temporary residence permit (residence permit for a specified period). In the last case validity of the family member’s residence permit (for a specified period) equals validity of the sponsor’s residence permit. In former cases the family member’s residence permit (for a specified period) is granted for two years (Art. 56(2)1 AA) and it is to be withdrawn when the sponsor residence comes to an end (under Art. 58(1) AA which states that residence permit for a specified period is to be withdrawn if the cause for which it was granted ceased to exist).

**Q.83. H** – What type of control are organised thereof?

The relevant authority pursues the evidence procedure in accordance with relevant provisions of the 1960 Code of Administration Procedure.

**Q.84** – Are resources of the family taken into account when renewing residence permit where the sponsor does not have sufficient resources without recourse to the social assistance system of the member state?

- [X] OUI
- [ ] NON

If yes, under which modalities?

When the sponsor is required to possess stable and regular resources, they may be covered by his or her family member on whom he or she is dependant if such a person resides in Poland and is able to do so (according to Art. 53b(2) AA).

**Q.85** – Does your Member State's legislation take into consideration (a. 17) :

**Q.85. A** – The nature and solidity of the person's family relationships and the duration of his residence in the Member State?

- [X] OUI
- [ ] NON

If yes, please specify how and on the basis of which norm (legislation, regulation, jurisprudence, …)

This is safeguarded through the legal framework of family reunification provided in the Act on Aliens and general rules of administrative procedure (Art. 7 of the Code of Administrative Procedure obliges the relevant authorities to take all necessary steps to clarify the facts and decide on the case with due account of public interest as well as of legitimate interest of individuals). However, direct transposition of Art. 17 of the Directive would eliminate some ambiguity.
Q.85. B - 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?

☐ OUI
☐ NON

If yes, please specify how and on the basis of which norm (legislation, regulation, jurisprudence, …)

This is safeguarded through the legal framework of family reunification provided in the Act on Aliens and general rules of administrative procedure (Art. 7 of the Code of Administrative Procedure obliges the relevant authorities to take all necessary steps to clarify the facts and decide on the case with due account of public interest as well as of legitimate interest of individuals). However, direct transposition of Art. 17 of the Directive would eliminate some ambiguity.

Q.86 – Do the sponsor and/or members if his/her family have the right to mount a legal challenge where an application for family reunification is rejected (a18 §1)?

☐ OUI
☐ NON

Q.87 – Is this right to legal challenge considered as a right to a judicial review according to jurisprudence C-540/03 (a18 §1) ?

☐ OUI
☐ NON
XX. IMPACT OF THE DIRECTIVE ON NATIONAL LAW

It should be noted that due to the recent origins of Polish migration regulations (the first comprehensive migration regulation was adopted in 1997 only) and their strict connections (through adjustment process) with development of EU migration policy, it is hardly possible to assess whether the Directive on family reunification improved or deteriorated the legal status of the third-country nationals in Poland. It is impossible to assess what Polish regulations on family reunification would be like without the transposition of the Directive as the very first provisions on family reunification introduced to the Polish migration law were modelled on the then draft Directive.

Q.88 A
Did the transposition of the directive made the rules related to the best interest of minor children (a. 5 § 5) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
</table>
| Due regard to the best interest of minor children during examination of the application a. 5 § 5 | Explain the situation before transposition: 
the principle of the best interest of the child established in the very foundations of the Polish legal system | Explain the situation after transposition: 
no direct transposition necessary | Complete this box by keeping the right appreciation and deleting the two others:
- Statu quo | Complete this box by keeping the right appreciation and deleting the other one:
- In line with the directive |

Q.88 B
Did the transposition of the directive made the rules related to the beneficiaries of the right to family reunification become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below
Q.88 C Did the transposition of the directive made the rules related to reunification of minor children between 12 (a. 4 § 1) and 15 (a. 4 § 6) years old become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Definition of the beneficiaries of the right to family reunification a. 4 § 4</td>
<td>Explain the situation before transposition: prohibition of polygamous marriage; no reunification possible</td>
<td>Explain the situation after transposition: prohibition of polygamous marriage; no reunification possible</td>
</tr>
</tbody>
</table>

Q.88 D Did the transposition of the directive made the rules related to requirements to the exercise of family reunification (article 7) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Limitation of reunification of minor children of 12 and 15 years of age (a. 4 § 1 and 4 § 6)</td>
<td>Explain the situation before transposition: no regulations in this respect</td>
<td>Explain the situation after transposition: limitations have not been introduced</td>
</tr>
</tbody>
</table>

Please use one box per object and duplicate it if necessary.
**Q.88 E** Did the transposition of the directive made the rules related to margins of manoeuvre awarded to Member States (a. 5 § 5, 17, C-540/03) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Requirements for the exercise of family reunification (a. 7)</td>
<td>Explain the situation before transposition: no such requirements were provided for</td>
<td>Complete this box by keeping the right appreciation and deleting the two others: <strong>Less favourable than previous national rules</strong></td>
</tr>
<tr>
<td></td>
<td>Explain the situation after transposition: the requirements (stable and regular resources; sickness insurance and information on housing) introduced</td>
<td></td>
</tr>
</tbody>
</table>

**Q.88 F** Did the transposition of the directive made the rules related to integration objectives and criterions more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Limitation of margins of manoeuvre (a. 17, a.5 §5, C-540/03)</td>
<td>Explain the situation before transposition: limitations could be derived from existing regulations</td>
<td>Complete this box by keeping the right appreciation and deleting the two others: <strong>Statu quo</strong></td>
</tr>
<tr>
<td></td>
<td>Explain the situation after transposition: no direct transposition necessary</td>
<td></td>
</tr>
</tbody>
</table>
### OBJECT

Attention draw upon integration objectives (considérant 15) and criterions of integration (a.4 §1 dernier alinéa, a. 7 §2)

### EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW

Complete this box by keeping the right appreciation and deleting the two others:

- **Statu quo**

### EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE

Complete this box by keeping the right appreciation and deleting the other one:

- **In line with the directive**

---

#### Q.89

From your point of view, did the transposition of the directive imply other interesting changes for the third national country regarding other elements than the ones mentioned in the previous question. Make also a comparison with the standard of the directive in the last column of the table below

If they want to do so, the thematic coordinators should complete this question by indicating the number of examples that they ask the national reporter to give.

---

### OBJECT

(possibility to apply while already within the territory a. 5§3)

### EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW

Complete this box by keeping the right appreciation and deleting the two others:

- **More favourable than previous national rules**

### EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE

Complete this box by keeping the right appreciation and deleting the other one:

- **In line with the directive**

---

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Explain the situation before transposition: no such possibility</td>
<td>Explain the situation after transposition: such possibility introduced</td>
<td>Complete this box by keeping the right appreciation and deleting the two others:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- <strong>More favourable than previous national rules</strong></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Complete this box by keeping the right appreciation and deleting the other one:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- <strong>In line with the directive</strong></td>
</tr>
<tr>
<td>OBJECT (waiting period a. 8)</td>
<td>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</td>
<td>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</td>
</tr>
<tr>
<td>------------------------------</td>
<td>--------------------------------------------------</td>
<td>---------------------------------------------------------</td>
</tr>
</tbody>
</table>
| Explain the situation before transposition: three years | Explain the situation after transposition: two years | Complete this box by keeping the right appreciation and deleting the two others:  
• More favourable than previous national rules |
|                                |                                                  | Complete this box by keeping the right appreciation and deleting the other one:  
• In line with the directive |

<table>
<thead>
<tr>
<th>OBJECT (equal treatment a. 14)</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
</table>
| Explain the situation before transposition: no such guarantees | Explain the situation after transposition: relevant guarantees introduced; in some cases admitted family members enjoy even more favourable treatment than the sponsor | Complete this box by keeping the right appreciation and deleting the two others:  
• More favourable than previous national rules |
|                                |                                                  | Complete this box by keeping the right appreciation and deleting the other one:  
• More favourable than the directive |

Q.89. A. Mention if there is a general tendency to just copy the provisions of the directive into national legislation without redrafting or adaptation them to national circumstances.

[X] NO

[ ] YES
Q.89.B. If yes, please indicate if this general tendency may or not create problems (for example difficulties of implementation, risk that a provision remains unapplied).

☐ NO

☐ YES

Q.89.C. If yes, give some of examples:

Q.89.D. If only some provisions of the directive have been copied and if this may create any problem, please quote them and explain the problem.

Q.90. Quote interesting decisions of jurisprudence related to the directive, its transposition or implementation (so this question concerns in principle decisions later that the directive, but previous ones might be quoted if relevant). Quote in particular decisions of supreme Courts; limit yourself to the appeal Courts and ignore the first resort if there are too many decisions at this level, unless there is a certain jurisprudence made of a group of decisions.

Please use one box per decision and duplicate it if necessary

<table>
<thead>
<tr>
<th>DECISION OF SUPREME COURTS</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
</tr>
</thead>
<tbody>
<tr>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>DECISION OF APPEAL COURTS</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
</tr>
</thead>
<tbody>
<tr>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>DECISION(S) IN FIRST RESORT</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
</tr>
</thead>
<tbody>
<tr>
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</tbody>
</table>

ANY SUPPLEMENTARY COMMENT ABOUT THE TREND OF THE JURISPRUDENCE:

Q.91 Specify if there are or not problems with the translation of the text of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated.

☐ There are no problems with the translation of the directive

☐ There are some problems with the translation of (indicate the number of the articles concerned) of the directive.

Explain the difficulties that this could create:
Q. 92 ANY OTHER INTERESTING ELEMENT

Q.92 A. Following your personal point of view, mention from the point of view of third country nationals and/or from the Member State any interesting or innovative practice in your Member State

*Please use one table per practice and duplicate it if necessary*

<table>
<thead>
<tr>
<th>OBJECT OF THE PRACTICE</th>
<th>EXPLANATIONS</th>
</tr>
</thead>
</table>

Q.92 B. Please add here any other interesting element in your Member State which you did not had the occasion to mention in your previous answers
QUESTIONNAIRE FOR THE NATIONAL REPORT
ON THE IMPLEMENTATION OF THE DIRECTIVE
FAMILY REUNIFICATION OF 22 SEPTEMBRE 2003

IN: PORTUGAL

By
Francisco Pereira Coutinho, Phd Student, Faculdade de Direito da Universidade Nova de Lisboa, fpcoutinho@hotmail.com (24/09/2007)

The person in the team of thematic coordination in charge of this directive that you can contact if you have a question or need help when completing this questionnaire is: Yves Pascouau, + 33 5 59 57 41 20, yves.pascouau@univ-pau.fr

COMMENTARIES

1. Council directive 2003/86 on the right to family reunification faced hard negotiations requiring the presentation of revised proposals from the Commission before final adoption in 2003. The European Court of Justice rejected in June 2007 an action for annulment introduced by the European Parliament against the Council directive (C-540/03).

2. Transposition of the directive must be assessed regarding the nature of the provision concerned. So as to help you, those provisions are coloured within the questionnaire as follows: obligatory provision (Q.XX), optional provision (Q.YY), provision which set up a derogation (Q.ZZ)

3. The Court of justice has defined the margins of discretion awarded to the member States even in situations where the directive allows the member States to depart from the directive. The Court states:

"Article 4(1) of the Directive imposes precise positive obligations, with corresponding clearly defined individual rights, on the Member States, since it requires them, in the cases determined by the Directive, to authorise family reunification of certain members of the sponsor’s family, without being left a margin of appreciation" (cons. 60).

"Note should also be taken of Article 17 of the Directive which requires Member States to 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 country of origin. As is apparent from paragraph 56 of the present judgment, such criteria correspond to those taken into consideration by the European Court of Human Rights when it reviews whether a State which has refused an application for family reunification has correctly weighed the competing interests" (cons. 64)

The fact that the concept of integration is not defined cannot be interpreted as authorising the Member States to employ that concept in a manner contrary to general principles of Community law, in particular to fundamental rights. The Member States which wish to make use of the derogation cannot employ an unspecified concept of integration, but must apply the condition for integration provided for by their legislation existing on the date of implementation of the Directive in order to examine the specific situation of a child over 12 years of age arriving independently from the rest of his or her family" (cons. 70).

4. The main difficulty according to the transposition of the directive relies on the systematic opportunities offered to member States to depart from the provisions of the directive when applying it.

5. Article 19 indicates which themes where the most sensitive during the negotiations of the Directive (art. 3, 4, 7, 8 and 13).
FIRST PART

1. NORMS OF TRANSPOSITION AND JURISPRUDENCE

Q.1.A Identify the MAIN (because of its content) norm(s) of transposition and indicate its legal nature

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)
- About legal nature in the table below: legislative refers to a norm adopted in principle by the Parliament; regulation refers to a norm complementing the law and adopted in principle by the executive power; circular or instructions refer to practical rules about implementation of laws and regulations and adopted in principle by the administrative authorities.

Please duplicate the table below if there is more than one MAIN norm of transposition

<table>
<thead>
<tr>
<th>This table is about:</th>
<th></th>
<th>X</th>
<th>a text already adopted</th>
<th></th>
<th>a text which is still a project to be adopted</th>
</tr>
</thead>
<tbody>
<tr>
<td>TITLE:</td>
<td></td>
<td></td>
<td>Law</td>
<td></td>
<td></td>
</tr>
<tr>
<td>DATE:</td>
<td>4 July 2007</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>NUMBER:</td>
<td>23/2007</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>DATE OF ENTRY INTO FORCE:</td>
<td>3 of August</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive):</td>
<td>Articles 64.º and 98.º to 108.º</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:</td>
<td>Diário da República, 1ª Série, n.º 127, of 4 of July 2007</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>LEGAL NATURE (indicate a cross in the correct box):</td>
<td></td>
<td>X</td>
<td>LEGISLATIVE:</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Q.1.B List the others norms of transposition by order of importance of their legal nature (first laws, secondly regulations; thirdly circulars or instructions):

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)
**Q.2.**  THIS QUESTION IS IN PRINCIPLE ONLY FOR FEDERAL OR ASSIMILATED MEMBER STATES LIKE AUSTRIA, BELGIUM, GERMANY, ITALY, SPAIN

**Q.2.A.**  Explain which level of government is competent to adopt the norms of transposition.

*Please include your answer in the tables below*

<table>
<thead>
<tr>
<th>LEGISLATIVE RULES</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</td>
</tr>
<tr>
<td>COMPETENCES OF THE COMPONENTS:</td>
</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>REGULATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</td>
</tr>
<tr>
<td>COMPETENCES OF THE COMPONENTS:</td>
</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CIRCULAR OR INSTRUCTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</td>
</tr>
<tr>
<td>COMPETENCES OF THE COMPONENTS:</td>
</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
</tr>
</tbody>
</table>

**Q.2.B.**  In case, explain if the federal structure and the distribution of competences between the different levels pose any problem or difficulty regarding the transposition and/or the implementation of the directive.

**Q.3.**  Explain which authorities are competent for the practical implementation of the norm of transposition by taking the decisions in individual cases.
<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Administrative decisions on family reunification</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Home Affairs</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>Immigration and Borders Service</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td></td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
<td>The Immigration and Borders Service is dependent of the competent minister</td>
</tr>
</tbody>
</table>

Q.4. A. Has the main regulation foreseen explicitly by the main norm of transposition already been adopted or not:

- YES
- NO

Q.4.B. If the main norm(s) of transposition foresees the adoption of one or several regulations, indicate if they have all been adopted:

- YES
- NO

If NO, please indicate the missing text(s) in the table below

<table>
<thead>
<tr>
<th>MISSING TEXTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>INDICATE HERE THE MISSING TEXTS</td>
</tr>
</tbody>
</table>

Add if necessary some explanations (specify in particular if the missing texts are at least under preparation or foreseen in the very near future):
SECOND PART

AIM (ARTICLE 1)

The purpose of the Directive is to determine the conditions for the exercise of the right to family reunification. In case C-540/03, the Court of justice recognizes that, in some cases, member States do not have any margin of appreciation to grant the right to family reunification.

Q.5 – Is family reunification considered as a right in your Member State?

☐ OUI
☐ NON

Any citizen with a valid residence permit has the right to family reunification (art. 98.º of the Law n.º 23/2007).

Q.5. A – Are there any figures available relating to the exercise of the right to family reunification between 2002 and 2006? If yes, what are the trends, including nationality assessment?
No.

DEFINITIONS (ARTICLE 2)

SCOPE (ARTICLE 3)

The scope of the Directive is defined by article 3. We recall that:
- § 1 "reasonable prospect..." aims at excluding persons residing on a temporary basis (stagiaires, etc...)
- European citizens are excluded (§ 3)
- Comparison with existing legislation is of importance so as to assess the added value of the harmonization process (§ 5)

Q.6. Period of validity of the sponsor’s residence permit:

Q.6. A. Is the period of validity of the sponsor’s residence permit of one year or more according to article 3 § 1 of the Directive?

☐ OUI
☐ NON

Q.2.B. Quote precisely the period enshrined in national law:
Art. 98.º, n.º 1, of the Law n.º 23/2007 states that “the citizen with a residence permit has the right to family reunification”. According to art. 75.º of the same Proposal, a temporary residence permit is valid for one year. Therefore, this is the minimum period of any residence permit.
Q.6.C. How does your Member State translate in national law the requirement for the sponsor to have "reasonable prospects of obtaining the right of permanent residence" (art. 3 § 1)?

The Portuguese law does not have any mandatory requirement concerning the need for the sponsor to have “reasonable prospects of obtaining the right of permanent residence”.

Q.7. – Members of the family concerned:

Q7. A. Are they third country nationals as required by article 3 § 1 of the Directive?

☒ OUI
☐ NON

If not, explain

Q7.B. How has your Member State translated in national law the wording of "whatever status" included in article 3 § 1 of the Directive?
Art. 4.º of the Law n.º 23/2007 refers that its scope only comprehends foreign nationals and persons without nationality. Art. 98.º of the same proposal, concerning the right to family reunification, does not include any reference to the status of the sponsor family members.

Q.8 – Did the transposition of the Directive in your Member state breached provisions of international law more favourable to individuals (art. 3 § 4)?

☐ OUI
☒ NON

Q.9 – If yes, are those provisions based on:

Q9.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?

☐ OUI
☐ NON

Specify which provisions

Q9.B - The European Social Charter of 18 October 1961 (art. 3 § 4)?

☐ OUI
☐ NON

Specify which provisions
Q.9.C. The amended European Social Charter of 3 May 1987 (a 3 § 4)?

☐ OUI  ☐ NON

Specify which provisions


☐ OUI  ☐ NON

Specify which provisions

Q.10 – Does the transposition of the Directive affect national provisions more favourable to individuals (a 3 § 5)?

☐ OUI  ☒ NON

If yes, please specify which provisions

**Beneficiaries (Article 4)**

- Article 4 of the Directive contains numerous "may clauses". It is therefore important to pay attention on the way Member States use them and on the legal modalities adopted thereof.

- Article 4 § 1 a) and b) enacts a right to family reunification for some members of the sponsor's family. The Member State does not have any margin of discretion regarding those persons.

- Article 4 § 1 last indent foresee one derogation regarding child over 12 years on the basis of an integration criterion. This is one of the most sensitive questions encompassed by the directive beside the issue of the limit of age in § 6.

- Regarding article 4 § 6, the Court states "It does not matter that the final sentence of the contested provision provides that the Member States which decide to apply the derogation are to authorise the entry and residence of children in respect of whom an application is submitted after they have reached 15 years of age ‘on grounds other than family reunification’. The term ‘family reunification’ must be interpreted in the context of the Directive as referring to family reunification in the cases where family reunification is required by the Directive. It cannot be interpreted as prohibiting a Member State which has applied the derogation from authorising the entry and residence of a child in order to enable the child to join his or her parents”. (cons. 86) The Court adds "Article 4(6) of the Directive must, moreover, be read in the light of the principles set out in Article 5(5) thereof, which requires the Member States to have due regard to the best interests of minor children, and in Article 17, which requires them to take account of a number of factors, one of which is the person’s family relationships" (cons. 87)
Q.11 – Does your national law recognize the right to family reunification to:

Q.11. A – The sponsor's spouse (a. 4 § 1 a)?

☒ OUI
☐ NON

Q.11. B - Minor children of the sponsor and of his/her spouse (a. 4 § 1 b)?

☒ OUI
☐ NON

Q.11.C. Minor children adopted of the sponsor and of his/her spouse (a. 4 § 1 b)?

☒ OUI
☐ NON

Q.11.D. Minor children of the sponsor (a. 4 § 1 c)?

☒ OUI
☐ NON

Q.11. E. If yes, does your national law foresee that the sponsor shall have children custody and children are dependant on him or her?

☒ OUI
☐ NON

Specify if necessary the proofs required .

Q.11 F. Minor children adopted of the sponsor (a 4 §1.c) ?

☒ OUI
☐ NON

Q.11. G. If yes:  

h. does your national law foresee that the sponsor shall have children custody and children are dependant on him or her?

☐ OUI
Specify if necessary the proofs required

g.g. Does national law provide that those children shall be 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'?

Specify if necessary the proofs required
The adoption must result from a decision of the country of origin competent authorities. The law of the country of origin must also recognize equal rights and duties to those resulting from natural children and that decision must also be recognized by Portugal (art. 99.º, n.º, c), of Law n.º 23/2007).

Q.11. H. Minor children of the spouse (a 4 §1.d.)?

Specify if necessary the proofs required

Q.11. I. If yes, does your national law foresee that the spouse shall have children custody and children are dependant on him or her?

Specify if necessary the proofs required

Q.11. J. Minor children adopted of the spouse (a 4 §1.d.)?

Specify if necessary the proofs required

Q.11. K. If yes, does your national law foresee that the spouse shall have children custody and children are dependant on him or her?

Specify if necessary the proofs required
k.k. Does national law provide that those children shall be 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"?

☑ OUI
☐ NON

Specify if necessary the proofs required
The adoption must result from a decision of the country of origin competent authorities. The law of the country of origin must also recognize equal rights and duties to those resulting from natural children and that decision must also be recognized by Portugal (art. 99.º, n.º, c), of Law n.º 23/2007).

Q.12 – Has your Member State transposed the option opened by article 4 § 1 c:

Q.12A. To authorise reunification of minor children of the sponsor – including also adopted children – of whom custody is shared (a 4 §1.c)?

☑ OUI
☐ NON

Specify if necessary

Q.12.B. If yes, has your legislation transposed the condition that the other party sharing custody has given his or her agreement (a 4 §1. c)?

☑ OUI
☐ NON

Specify if necessary
Family reunification with this children is dependent on authorization from the other parent or a decision granting custody from the competent authorities (art. 98.º, n.º 4, of Law n.º 23/2007).

Q.13 – Has your Member State transposed the option opened by article 4 § 1 d):

Q.13.A. to authorise reunification of minor children of the spouse – including also adopted children – of whom custody is shared (a 4.1.d. in fine)?

☑ OUI
☐ NON

Specify if necessary
Q.13 B. If yes, has your legislation transposed the condition that the other party sharing custody has given his or her agreement (a 4. 1.d) ?

☐ OUI
☐ NON

Specify if necessary
Family reunification with this children is dependent on authorization from the other parent or a decision granting custody from the competent authorities (art. 98.º, n.º 4, of Law n.º 23/2007).

Q.14 – In any case referred to in questions 7 to 9, is the age of the minor children below the age of majority set up by the law of your Member State (a.4 §1, second indent)?

☐ OUI
☐ NON

If yes, indicate the age required
Below 18 years old (art. 99.º, n.º 5, of Law n.º 23/2007).

Q.15 – In any case referred to in questions 7 to 9, has the prohibition of marriage of minor children been transposed (a.4 §1, second indent)?

☐ OUI
☒ NON

If not, explain Si non, expliquez
Art. 99.º, n.º 5, of Law n.º 23/2007 did not transpose the requirement that the minor children should not be married. However, according to the Portuguese Civil Code marriage automatically produces the emancipation of the minor (art. 132.º of the Civil Code).

Q.16 – Is the derogation set up in article 4 § 1 last indent relating to the conditions for integration of children over 12 years arrived independently from the rest of the family used by your Member State?

☐ OUI
☒ NON

How the criterion "arrives independently from the rest of his/her family" has been transposed in your national legislation?
Art. 99.º, n.º 5, of Law n.º 23/2007 considers a minor, the foreigner with an age below 18 that entered the national territory alone and is not under a legal or customary custody of an adult or that was abandoned after the entry in national territory.
Q.17 – If yes, did this integration condition already exist in your national legislation before the date of transposition of the Directive?

☐ OUI
☐ NON

Q.18 – Describe briefly the content of this condition, the date of its creation and the conditions of its examination

Q.19 – Are the children of refugees required to an integration test by your Member State (in contradiction with article 10 § 1)?

☐ OUI
☒ NON

If yes, explain

Q.20 – Does your Member State authorise:

Q.20 A – Reunification of first-degree relatives in the direct ascending line of the sponsor (a 4§2 a)?

☒ OUI
☐ NON

Q.20 B – If yes, shall they be dependant and not enjoy proper family support in the country of origin?

☒ OUI
☐ NON

How each of those criterions is transposed and checked?
Art. 99.º, n.º 1, al. e) of Law n.º 23/2007 simply requires that first-degree relatives in the direct ascending line of the sponsor must be dependent.

Q. 20.C. Reunification of first-degree relatives in the direct ascending line of the spouse (a 4§2 a)?

☒ OUI
☐ NON

Q.20.D. If yes, shall they be dependant and not enjoy proper family support in the country of origin?

☒ OUI
☐ NON
How each of those criterions is transposed and checked?
Art. 99.º, n.º 1, al. e) of Law n.º 23/2007 simply requires that first-degree relatives in the direct ascending line of the sponsor must be dependent.

Q.20.E. Reunification of adult unmarried children of the sponsor? (a 4§2 b) ?

☐ OUI

☐ NON

If necessary, explain how this procedure is organised
Art. 99.º, n.º 1, al. d) of Law n.º 23/2007 simply requires that adult unmarried children must be studying in Portugal.

Q.20.F. If yes, does the national legislation impose that those adult unmarried children of the sponsor are objectively unable to provide for their own needs on account of their state of health (a 4 §2 b) ?

☐ OUI

☒ NON

If necessary, specify how each of those criterions ("objectively" and "unable to provide for their own needs") is transposed and checked?

Q.20. G. Does your Member State authorise reunification of adult unmarried children of the spouse (a 4§2 b)?

☒ OUI

☐ NON

If necessary, specify how this condition is assessed
Art. 99.º, n.º 1, al. d) of Law n.º 23/2007 simply requires that adult unmarried children must be studying in Portugal.

Q.20.H. If yes, does the national legislation impose that those adult unmarried children of the sponsor are objectively unable to provide for their own needs on account of their state of health (a 4 §2 b) ?

☐ OUI

☒ NON

If necessary, specify how each of those criterions ("objectively" and "unable to provide for their own needs") is transposed and checked?
Q.20. Did your Member state use the by law or regulation norms to implement article 4 § 2 a et b?

☐ OUI

☒ NON

Q.21 – Does your Member State authorise reunification of the unmarried partner of the sponsor, being a third country national (a 4 §3)?

☒ OUI

☐ NON

Q.22 – If yes:

Q.22 A – This partnership shall be based on a duly attested stable long term relationship?

☒ OUI

☐ NON

If yes, specify how your Member State assess this situation.

Art. 100.º of Law n.º 23/2007 requires that the relationship with the unmarried couple should be duly proved according to the Portuguese law. Moreover, art. 103.º, n.º 1, of the same proposal requires that the request of family reunification must be attached with documents that testify the existence of an unmarried relationship. Finally, when examining a family reunification request the Border and Immigration Service must take into consideration the existence of a common child, previous cohabitation, registration or other proof elements (art. 104.º, n.º 2, of Law n.º 23/2007).

Q.22 B – This partnership shall be registered?

☐ OUI

☒ NON

Q.23 – Does your national law consider the registered partner as the husband/spouse (a 4 §3 alinéa 2)?

☐ OUI

☒ NON
Q.24 – Does your Member State authorise:

Q.24. A – Reunification of minor children of the partner, including adopted children (a 4§3)?

☒ OUI
☐ NON

Q.24. B – Reunification of adult unmarried children of the partner, including adopted children (a 4§3)?

☐ OUI
☒ NON

Q.25 – Does your Member State allow reunification of adult unmarried children who are objectively unable to provide for their own needs on account of their state of health (a 4§3)?

☐ OUI
☒ NON

If yes, specify how the conditions, and more particularly the "objectivity", are assessed.

Q.26 – Did your Member state use the by law or regulation norms to implement article 4 § 3?

No.

Q.27 – Is the prohibition of polygamous marriage enshrined in your national legislation (a. 4§4)?

☒ OUI
☐ NON

Q.28 – Does your Member State limit family reunification of minor children of a further spouse and the sponsor (article 4§4 dernier alinéa,)?

☐ OUI
☒ NON

Q.29 – Does your Member State use the option set up by article 4 § 5 requiring the sponsor and his/her spouse to be of a minimum age of 21 years old before reunification?

☐ OUI
☒ NON
Q.30 – If yes,

Q.30 A – What is the age required?

Q.30 B – Is the derogation founded on integration criteria and/or prevention of forced marriage?

Q.31 – Does your Member State use the derogation of article 4 § 6 by requesting that the applications concerning family reunification of minor children have to be submitted before the age of 15?

☐ OUI  □ NON

Explain

Q.32 – If yes, was it provided by existing legislation on the date of implementation of the directive?

Q.33 – If the application is not introduced before the age of 15, do Member States authorise entry and residence on grounds other than family reunification?

☐ OUI  ☒ NON

Which grounds and which conditions?

PROCEDURE (ARTICLE 5)

We draw attention on the major importance given by the Court of justice regarding § 5 relating to the best interest of minor children.

Q.34 – Did your Member State institute a procedure regarding family reunification (a 5 §1) ?

☒ OUI  ☐ NON

Q.35 – If yes,

Q.35. A – Which authorities are in charge of this issue? The Borders and Immigration Service. If the family reunification request is denied, the High Commissioner for Ethnic Minorities and a Consultive Committee are informed.
Q.35. B – Are NGO's associated to this procedure?

☐ OUI

☒ NON

If yes, describe the procedure

Q.35. C – Is the application submitted by the sponsor or by family members?
The applicant must me submitted by the sponsor if its family is outside Portugal (art. 103.º, n.º 1, of Law n.º 23/2007). If they are already in Portugal, the request is submitted by the sponsor or the family members (art. 103.º, n.º 2, of Law n.º 23/2007).

Q.35. D – Is this procedure exclusive from other possibilities to grant family reunification?

☒ OUI

☐ NON

If other procedural possibilities exist, please describe them

According to art. 17.º of the Law n.º 67/2003, regarding temporary protection in cases of mass influx of immigrants, family reunification is granted by the Ministry of Home Affairs, under a proposal of an Inter-ministerial Commission.

Q.35. E – Was this procedure existing before the adoption of Directive 2003/86?

☒ OUI

☐ NON

Q.36 – Which documentary evidence are required to prove (a 5 §2):

Q.36. A – Family relationships according to article 4?

Yes (art. 103.º, n.º 3, al. a), of Law n.º 23/2007).

Q.36. B – Accommodation conditions laid down in article 7?

Yes (art. 103.º, n.º 3, al. b), and 101.º, n.º 1, al. a), of Law n.º 23/2007)

Q.36. C – Sickness insurance conditions?

No

Q.36. D – Certified copies of family member(s)' travel documents?

Yes (art. 103.º, n.º 3, al. c), of Law n.º 23/2007)
Q.37 – Is the possibility foreseen to proceed to:

Interviews:

☐ OUI
☒ NON

Investigations:

☒ OUI
☐ NON

If yes, describe them briefly

According to art. 104.º of Law n.º 23/2007, the Borders and Immigration service can interview the applicant and proceed to further investigations.

Q.38 – When examining an application concerning the unmarried partner of the sponsor, which evidences are taken into account by Member States on the basis of national law to prove family relationship (article 5§2 dernier alinea) ?

Q.38. A – Existence of family ties and other elements such as a common child?

☒ OUI
☐ NON

Specify

When verifying the request of an unmarried partner of the sponsor, the Borders and Immigration Service should take in consideration the existence of a common child (art. 104.º, n.º 2, of Law n.º 23/2007).

Q.38. B - Previous cohabitation?

☒ OUI
☐ NON

Q.38. C - Registration of a partnership

☒ OUI
☐ NON

Q.38. D - Any other reliable means of proof foreseen in national law?

☒ OUI
☐ NON

If yes, specify which ones:
When verifying the request of an unmarried partner of the sponsor, the Borders and Immigration Service should take in consideration any other reliable means. Art. 104.º, n.º 2, of Law n.º 23/2007 does not specify the means in question.

Q.39 – Are family members obliged to reside outside the territory of the Member State while the application is being examined (a5 §3)?

☐ OUI

☒ NON

Is this obligation sanctioned and how?

Q.40 – If the answer is yes, is a derogation organised according to article 5 § 3 second indent?

☐ OUI

☐ NON

Please specify

Q.41 – Does your national legislation include a maximum period of 9 month to answer to the application by way of written notification (a5 §4)?

☐ OUI

☒ NON

If necessary, please specify
The application must be answered as soon as possible and within a maximum period of 3 months (105.º, n.º 1, of Law n.º 23/2007).

Q.42 – This time limit can be extended (a 5 §4 alinea 2)?

☒ OUI

☐ NON

Q.43 – If yes,

Q.43. A – Because of the complexity of the examination of the application?

☒ OUI

☐ NON

If yes, please specify
The complexity of the application may extend the time limit. This extension must be notified to the applicant (art. 105.º, n.º 2, of Law n.º 23/2007).
Q.43. B – What is the length of the extension?
Three months.

Q.44 – If no decision is taken by the end of the 9 months period provided, what are the consequences for the applicant?
If no decision is taken by the end of the 6 months period provided, the request is automatically approved and is certified by the Borders and Immigration Services and notified to Portuguese Communities and Consulate General Direction in order to grant the applicant a residence permit (arts. 105.º, n.º 3 and 4, of Law n.º 23/2007).

Q.45 – Is the decision rejecting the application notified? Does this written notification contain the reasons of rejection?

☐ OUI
☐ NON

Specify if only one condition is not required
The written notification must contain the reasons of the rejection and also the details of the judicial remedies available to the applicant.

Q.46 – How is the best interest of minor children taken into account by your Member State’s legislation and authorities during examination of the application (article 5§5) ?
Art. 106.º, n.º 3, of Law n.º 23/2007, does not mention the best interest of minor children as a factor to be taken in consideration before denying the application. Only the nature and strength of the family ties with Portugal and with the origin country and referred.

CONDITIONS REQUIRED (ARTICLES 6 AND OTHERS)

- Questions relating to accommodation and resources will be carefully examined to assess if Member States use them, either as a migration tool or as an integration tool.

- The same assessment applies regarding the option to set up a period of lawfully residence not exceeding two years before applying for family reunification.

- According to article 8, the Court of justice states: "That provision does not therefore have the effect of precluding any family reunification, but preserves a limited margin of appreciation for the Member States by permitting them to make sure that family reunification will take place in favourable conditions, after the sponsor has been residing in the host State for a period sufficiently long for it to be assumed that the family members will settle down well and display a certain level of integration. Accordingly, the fact that a Member State takes those factors into account and the power to defer family reunification for two or, as the case may be, three years do not run counter to the right to respect for family rights set out in particular in Article 8 of the ECHR as interpreted by the European Court of Human Rights"

- "It should, however, be remembered that, as is apparent from Article 17 of the Directive, duration of residence in the Member State is only one of the factors which must be taken into account by the Member State when considering an application and
that a waiting period cannot be imposed without taking into account, in specific cases, all the relevant factors" (cons. 99). "The same is true of the criterion of the Member State's reception capacity, which may be one of the factors taken into account when considering an application, but cannot be interpreted as authorising any quota system or a three-year waiting period imposed without regard to the particular circumstances of specific cases. Analysis of all the factors, as prescribed in Article 17 of the Directive, does not allow just this one factor to be taken into account and requires genuine examination of reception capacity at the time of the application" (cons. 100) "When carrying out that analysis, the Member States must, as is pointed out in paragraph 63 of the present judgment, also have due regard to the best interests of minor children" (cons. 101).

Q.47 – Can public policy, public security or public health grounds be taken into account to (a 6 §§1 et 2):

Q.47. A – Reject an application for family reunification?

☑ OUI
☐ NON

If yes, which ones?
All (art. 106.º, n.º1, al. c), Law n.º 23/2007)

Q.47. B – Withdraw an application for family reunification?

☑ OUI
☐ NON

If necessary, please specify
Art.º 85.º, n.º 1, of Law n.º 23/2007, though a remission from Art. 108.º, n.º 1, mentions that a family member's residence permit may be cancelled for reasons of public or safety security, in case of expulsion or if the permit was granted based in false declarations. Art. 108.º, n.º 1, of Law n.º 23/2007, also mentions as motives for cancellation the fact that the marriage, unmarried status or the adoption had the sole purpose of guaranteeing the entry and residence in the country.

Q.47. C – Refuse to renew a family member's residence permit?

☑ OUI
☐ NON

If necessary, please specify
A family member's residence permit renewal may not be granted for public and safety reasons (art. 78.º, n.º 3, of Law n.º 23/2007). A disease contracted after the first residence permit is not a ground for a refusal of renewal (art. 78.º, n.º 4, of Law n.º 23/2007).
Q.48 – Does national legislation take into account:

Q.48. A – The severity or type of offence against public policy or public security?

☐ OUI

☐ NON

Q.48. B – The solidity of family relationships regarding article 17 of the Directive?

☐ OUI

☐ NON

If necessary, please specify
Art. 106.º, n.º 3, of Law n.º 23/2007, mentions the nature and strength of the family ties with Portugal and with the origin country as factor to be taken into account before denying a family reunification request.

Q.49 – Does your Member State withdraw the residence permit or remove the third country national on the sole ground of illness or disability suffered after the issue of the residence permit (a 6 §3)?

☐ OUI

☒ NON

Q.50 – Are accommodation conditions required from the applicant (a7 §1a)?

☒ OUI

☐ NON

Q.51 – If yes:

Q.51. A – What are those conditions?
Art. 101.º, n.º 1, al. a), of Law n.º 23/2007, does not contain any further reference to the conditions of accommodations.

Q.51. B – How are they assessed?
Art. 101.º, n.º 1, al. a), of Law n.º 23/2007, does not contain any further reference to the conditions of accommodations.

Q.51 C – Are they comparable to the conditions required to a normal family living in the same region?

☐ OUI

☒ NON
Q.52 – Is a sickness insurance required from the applicant (a. 7 §1b) ?

☐ OUI

☒ NON

Q.53 – Are stable resources required (a7 §1c) ?

☒ OUI

☐ NON

Specify their nature and content

Art. 101.º, n.º 1, al. b), of Law n.º 23/2007, makes reference to a regulation that will be enacted after the entry into force of this law. In this regulation the nature and content of the resources will be specified.

Q.54 – How is the condition "sufficient" assessed by your Member State? Is it in comparison with national wages?

Art. 101.º, n.º 1, al. b), of Law n.º 23/2007, makes reference to a regulation that will only be enacted after the entry into force of this law. In this regulation the nature and content of the resources will be specified.

Q.55 – Are integration criterions required to allow family reunification (a 7 §2)?

☐ OUI

☒ NON

Q.56 – If yes:

Q.56. A – What are those criterions?

Q.56. B – Do they apply indistinctly to all potential beneficiaries of reunification? (Spouse, dependant people, etc.)

Q.56. C – How are they evaluated by your Member State?

Q.56. D – Are refugees and their family members required to fulfil them (a 7 §2, second indent)?

☐ OUI

☐ NON

Q.57 – Is a minimal period of lawful reside is required before reunification (a 8 §1)?

☐ OUI

☒ NON
Q. 58 – Does this period exceed two years?

Please specify

Q. 59 – Does your Member State apply the derogation set up by article 8 § 2 allowing Member States to impose a waiting period of maximum three years due to reception capacities between the submission of the application and the issuance of a residence permit?

☐ OUI

X NON

Please specify

Q. 60 – If yes, did this derogation exist in national law before the 22nd of September 2003?

☐ OUI

☐ NON

FAMILY REUNIFICATION OF REFUGEES

The legal regime applicable to refugees derogates from the one applicable to family reunification. The scope of those derogations (minimal lawful residence, members of the family, accommodation requirements) shall be assessed on the basis of national law.

Q. 61 – Does your Member State allow family reunification of refugees on the basis of Directive 2003/86 (a 9 §1) ?

X OUI

☐ NON

Q. 62 – Is this right limited to family relationships predating the entry on the territory (a 9 §2)?

☐ OUI

X NON

Q. 63 – Does your Member State allow family reunification of family Members not quoted in article 4 of the Directive (a 10 §2)?

X OUI

☐ NON
Which members of the family and under which conditions?
Art. 99.º, n.º 1, f), of Law n.º 23/2007, allows reunification with the minors brothers that are dependent on the sponsor, in harmony with a decision from the origin country competent authorities and as long as this decision is recognized in Portugal.

Q.64 – According to the specific case of unaccompanied minor refugees, does your Member State authorise family reunification of first degree relatives in the direct ascending line without applying the conditions laid down in article 4 § 2 (a10 §3 a) ?

[ ] OUI
[ ] NON

What conditions are required?
Art. 99.º, n.º 2, a), of Law n.º 23/2007, allows reunification with first degree relatives, without establishing any other conditions.

Q. 65 – Does your Member State authorise entry and residence of the legal guardian or any member of the family where the unaccompanied minor refugee has no relatives in the direct ascending line or such relatives cannot be traced (a10 §3 b) ?

[ ] OUI
[ ] NON

If yes, please specify who the member of the family targeted is and which proofs are required to prove family ties?
Art. 99.º, n.º 2, al. b), of Law n.º 23/2007, authorizes the entry and residence of the legal guardian or any member of the family when the unaccompanied minor refugee has no relatives in the direct ascending line or such relatives cannot be traced. Under art. 103.º, n.º 3, al. a), of Law n.º 23/2007, the request must be processed with the documents that prove the existence of relevant family ties.

Q.66 – Does your Member State take into account other evidence of family relationship where the refugee cannot provide official evidence (a 11 §2) ?

[ ] OUI
[ ] NON

Which ones?
Under art. 103.º, n.º 3, al. a), of Law n.º 23/2007, if the refugee is unable to present official documents that proof the family relationship, other kind of evidence of that relationship can be taken in consideration.

Q.67 – Does the examination of the refugee application take into account their specific situation:

Q.67. A – Are proofs regarding accommodation conditions, sickness insurance or resources required (a 12 §1)?
If yes, are those requirements comparable to those imposed to other third country nationals?

**Q.67. B** – If one of the person concerned (sponsor or family member) has special links with a third country within which reunification is possible, does your member state require those proofs according to article 12 § 1 second indent.

☐ OUI  
☒ NON

If necessary specify

**Q.67. C** – If a refugee has introduced its application after a period of three months, does your Member State require the refugee to meet the conditions or one of them (accommodation, sickness insurance, resources (a 12 §1 alinea 3)?

☐ OUI  
☒ NON

If yes, which ones?

**Q.68** – Does your Member State apply the prohibition to impose a residence condition before reunification (a 12 §2)?

☒ OUI  
☐ NON

If not, what is the length of this period? Is it different from the one normally applied?

**Exercise of the right to family reunification**

*The granting of an autonomous residence permit is one of the most sensitive issues of this part of the Directive.*

**Q.69** – Is entry and residence facilitated by your Member State, as soon as the application for family reunification has been accepted, including the issue of obtaining visas (a13 §1)?

☒ OUI  
☐ NON
If yes, how?
According to art. 107.º, n.º 1, of Law n.º 23/2007, a residence permit is granted to the applicant that as a residence visa for the purpose of family reunification or that is currently in Portugal.

**Q.70** – Is a residence permit of at least one year's duration granted to the family members (a 13 §2)?

- [x] OUI
- [ ] NON

What is the duration of the residence permit?
The duration of the residence permit is two years if the sponsor has a permanent residence permit (art. 107.º, n.º 2, of Law n.º 23/2007) or equal do the period of the sponsor temporary residence permit (art. 107.º, n.º 1, of Law n.º 23/2007).

**Q.71** – Is this residence permit renewable?

- [x] OUI
- [ ] NON

**Q.72** – Is the duration of the residence permit aligned with the duration of sponsor's residence permit (a 13 §3)?

- [ ] OUI
- [x] NON

If no, please specify
The duration of the residence permit is two years (renewable) if the sponsor has a permanent residence permit (art. 107.º, n.º 2, of Law n.º 23/2007) or equal do the period of the temporary residence permit of the sponsor (art. 107.º, n.º 1, of Law n.º 23/2007). In both cases, after the two year residence permit, the family member can apply for an autonomous permit (art. 107.º, n.º 3, of Law n.º 23/2007).

**Q.73** – Are the rights awarded to family members' equivalent to those granted to the sponsor (a14 §1):

**Q.73. A** – Regarding access to education?

- [x] OUI
- [ ] NON

If no, please specify
Q.73. B - Regarding access to employment?

☒ OUI
☐ NON

Please specify the content of this access

Q.73. C – Regarding access to vocational guidance, initial and further training and retraining?

☒ OUI
☐ NON

If no, please specify

Q.74 – Does your Member State grant specific rights in social matters to reunified family members?

☐ OUI
☒ NON

If yes, please describe them and specify if a time limit is established to take advantage from them

Q.75 – Has Member State set up conditions regarding specific access to employment for family members (a 14 §2)?

☐ OUI
☒ NON

If yes, how?

Q.76 – If yes, do those conditions exceed 12 months (a 14 §2)?

☐ OUI
☐ NON

Which ones?

Q.77 – Is access to employment limited in your Member State

Q.77.A – Regarding first-degree relatives in the direct ascending line?

☑ OUI
☐ NON
If yes, how?

**Q.77. B** – Regarding adult unmarried children objectively unable to provide for their own needs on account of their state of health (a 14 §3)?

☐ OUI

☒ NON

If yes, how?

**Q.78** – Are spouses, unmarried partners and child who has reached majority entitled to an autonomous residence permit at least five years after lawful residence on the basis of the residence permit issued for family reunification (a15 §1)?

☒ OUI

☐ NON

If yes, please specify when and how for each category

Two years after the first residence permit, and if the family ties remain or, regardless of that period, whenever the family member has minor children in Portugal, an autonomous residence permit will be granted to the family member (107.º, n.º 2, of Law n.º 23/2007). Unmarried partners are included, ex vi art. 100.º, n.º 2, of Law n.º 23/2007.

Moreover, an autonomous permit may be granted to a child who has reached majority before the two year period of the residence permit issued for family reunification (art. 107.º, n.º 4, of Law n.º 23/2007). Spouses are also entitled to an automatic and autonomous residence permit if the marriage last for at least five years (art. 107.º, n.º 5, of Law n.º 23/2007).

**Q.79** – Does your Member State limit the granting of the autonomous residence in cases of breakdown of the family relationship (a 15 §1 alinea 2)?

☒ OUI

☐ NON

Please explain

After the two year period of the residence permit issued for family reunification an autonomous residence permit will be granted only if family ties remain (art. 107.º, n.º 3, of Law n.º 23/2007).

**Q.80** – Does your Member State grant autonomous residence permit:

**Q.80. A** – To first-degree relatives in the direct ascending line (a15 §2)

☒ OUI

☐ NON

If necessary specify
Q.80. B – To adult unmarried children objectively unable to provide for their own needs on account of their state of health (a15 §2) ?

☐ OUI

☒ NON

If necessary specify
An autonomous residence permit will only be granted to adult unmarried children who are still studying in Portugal.

Q.81 – Does your member State grant autonomous residence permit in the event of widowhood, divorce, separation or death of first first-degree relatives in the direct ascending or descending line (a 15 §3) ?

☒ OUI

☐ NON

If necessary specify
In the event of judicial goods and persons separation, divorce, death of an ascendant or descendent, an autonomous permit may be granted before the two year period of the initial residence permit (art. 107.º, n.º 4, of Law n.º 23/2007).

Q.82 – Has your Member State adopted rules granting autonomous residence permit "in the event of particularly difficult circumstances" (a 15 §3)?

☒ OUI

☐ NON

If yes, how is this provision defined and transposed?
In the event of conviction for a crime of domestic violence, an autonomous permit may be granted to the family member before the two year period of the initial residence permit (art. 107.º, n.º 4, of Law n.º 23/2007).
**PENALTIES AND REDRESS**

*Those provisions must be read in parallel with those relating to the conditions to be fulfilled to obtain family reunification (articles 6, 7, 8)*

*Questions relating fraud, false or falsified documents are of importance to assess their impact.*

**Q.83** – What are the legal grounds to reject, withdraw or refuse to renew a family member's residence permit (a16 §1 et 2):

**Q.83. A** – Conditions required by the directive not satisfied?

- [ ] OUI
- [x] NON

**Q.83. B** – Absence of real martial or family relationship?

- [x] OUI
- [ ] NON

If yes, how is this hypothesis assessed?

The nature and the strength of the family relationship are a factor to be taken into account before rejecting a request for family reunification or revoking a residence permit (art. 106.º, n.º 3, of Law n.º 23/2007 and 108.º, n.º 3, of Law n.º 23/2007). Moreover, an autonomous residence permit can only be granted if the family ties remain (art. 107.º, n.º 3, of Law n.º 23/2007).

**Q.83. C** – Stable long term relationship with another person?

- [x] OUI
- [ ] NON

If yes, how is this hypothesis assessed?

See previous answer.

**Q.83. D** – False or falsified documents?

- [x] OUI
- [ ] NON

**Q.83. E** – Marriage, partnership or adoption contracted for the sole purpose of enabling reunification?

- [x] OUI
- [ ] NON
Q.83. F – If yes, how is this hypothesis assessed?
Art. 108.º, n.º 2, of Law n.º 23/2007 mentions that specific inquiries and controls may be conducted to assess the existence of marriage, partnership or adoption contracted for the sole purpose of enabling reunification.

Q.83. G – When the sponsor's residence comes to an end and the family member does not yet enjoy an autonomous right of residence (a 16 §3) ?

☐ OUI
☒ NON

Q.83. H – What type of control are organised thereof?

Q.84 – Are resources of the family taken into account when renewing residence permit where the sponsor does not have sufficient resources without recourse to the social assistance system of the member state?

☒ OUI
☐ NON

If yes, under which modalities?
According to art. 78.º of Law n.º 23/2007 a residence permit will only be renewed if the foreigner continues to have sufficient resources. Therefore, this seems to be a condition to the renewal of the family member residence permit.

Q.85 – Does your Member State's legislation take into consideration (a. 17) :

Q.85. A – The nature and solidity of the person's family relationships and the duration of his residence in the Member State?

☒ OUI
☐ NON

If yes, please specify how and on the basis of which norm (legislation, regulation, jurisprudence, …)
Art. 108.º, n.º 3, of Law n.º 23/2007 mentions that nature and solidity of the person's family relationships and the duration of his residence in the Member State are taken into consideration.

Q.85. B - 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?

☒ OUI
☐ NON
If yes, please specify how and on the basis of which norm (legislation, regulation, jurisprudence, …)
Art. 108.º, n.º 3, of Law n.º 23/2007 mentions that family relationships, cultural and social ties with the origin country are taken into consideration before ordering the removal of the sponsor or members of his family.

Q.86 – Do the sponsor and/or members if his/her family have the right to mount a legal challenge where an application for family reunification is rejected (a18 §1)?

[ ] OUI

[ ] NON

Q.87 – Is this right to legal challenge considered as a right to a judicial review according to jurisprudence C-540/03 (a18 §1)?

[ ] OUI

[ ] NON
XX. IMPACT OF THE DIRECTIVE ON NATIONAL LAW

Q.88 A Did the transposition of the directive made the rules related to the best interest of minor children (a. 5 § 5) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Due regard to the best interest of minor children during examination of the application a. 5 § 5</td>
<td>Explain the situation after transposition. Family reunification with minor children of the sponsor is dependent on authorization from the other parent or a decision granting custody from the competent authorities (art. 98.º, n.º 4, of Law n.º 23/2007). Art. 106.º, n.º 3, of Law n.º 23/2007, does not mention the best interest of minor children as a factor to be taken in consideration during examination of the application.</td>
<td>Complete this box by keeping the right appreciation and deleting the two others: • Statu quo</td>
</tr>
</tbody>
</table>

Explain the situation before transposition

In this regard, art. 57, n.º 2, of Decree-Law n.º 244/98 simply mentioned that the existence of minor children could not lead to family reunification unless the sponsor is the legal guardian.

Complete this box by keeping the right appreciation and deleting the other one:
Q.88 B

Did the transposition of the directive made the rules related to the beneficiaries of the right to family reunification become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

Please use one box per object and duplicate it if necessary

<table>
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<tr>
<th>OBJECT</th>
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</tr>
</thead>
<tbody>
<tr>
<td><strong>Definition of the beneficiaries of the right to family reunification a. 4 § 4</strong></td>
<td>Explain the situation before transposition</td>
<td>Explain the situation after transposition</td>
</tr>
<tr>
<td>In this regard, art. 57, n.º 2, of the Decree-Law n.º 244/98 granted the right to family reunification: a) the spouse, b) dependent children under 21 or incapable, which are under the guardian of the couple or one of the parents; c) minor children adopted d) first-degree relatives in the direct ascending line of the sponsor or its spouse, as long as they dependent on them; e) minor brothers under legal guardian of the sponsor.</td>
<td>The Law n.º 23/2007 maintained the previous beneficiaries of the right to family reunification (see art. 99.º of the Law n.º 23/2007). Nonetheless, adult children also became entitled to family reunification, as well as the first-degree relatives or legal guardians of minor children refugees. Under certain conditions, reunification of the unmarried partner of the sponsor also became possible.</td>
<td>Complete this box by keeping the right appreciation and deleting the two others: • <strong>More favourable than previous national rules</strong> Complete this box by keeping the right appreciation and deleting the other one: • <strong>In line with the directive</strong></td>
</tr>
</tbody>
</table>

Q.88 C

Did the transposition of the directive made the rules related to reunification of minor children between 12 (a. 4 § 1) and 15 (a. 4 § 6) years old become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below
**Q.88 D** Did the transposition of the directive made the rules related to the exercice of family reunification (article 7) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below.

<table>
<thead>
<tr>
<th><strong>OBJECT</strong></th>
<th><strong>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</strong></th>
<th><strong>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</strong></th>
</tr>
</thead>
</table>
| **Limitation of reunification of minor children of 12 and 15 years of age (a. 4 § 1 and 4 § 6)** | Explain the situation after transposition: Portuguese law does not have any specific rules concerning the reunification of minor children of 12 and 15 years of age. | Complete this box by keeping the right appreciation and deleting the two others:  
  - Statu quo  
  - In line with the directive |
| **Explain the situation before transposition** | Portuguese law did not have any specific rules concerning the reunification of minor children of 12 and 15 years of age. | |

**Q.88 E** Did the transposition of the directive made the rules related to margins of manœuvre awarded to Member States (a. 5 § 5, 17, C-540/03) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below.

<table>
<thead>
<tr>
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<th><strong>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</strong></th>
</tr>
</thead>
</table>
| **Requirements for the exercice of family reunification (a. 7)** | Explain the situation after transposition: Art. 101.º, n.º 1, of the Law n.º 23/2007 also mentions survival means and proper accommodations. | Complete this box by keeping the right appreciation and deleting the two others:  
  - Statu quo  
  - In line with the directive |
| **Explain the situation before transposition** | These conditions were generally stated in article 56.º, n.º 4, of Decreto-Lei n.º 244/98 and art. 42.º, n.º 2, c), of Decreto Regulamentar n.º 6/2004, and concerned survival means and proper accommodations. | Complete this box by keeping the right appreciation and deleting the other one:  
  - In line with the directive |
**Q.88 F**

Did the transposition of the directive make the rules related to integration objectives and criterions more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

<table>
<thead>
<tr>
<th>OBJECT</th>
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</thead>
</table>
| Attention draw upon integration objectives (considérant 15) and criterions of integration (a.4 §1 dernier alinéa, a. 7 §2) | Explain the situation after transposition The transposition law did not introduce any requirement on integration of the family members. | Complete this box by keeping the right appreciation and deleting the two others:  
• **Statu quo** |

Please use one box per object and duplicate it if necessary
Q.89 From your point of view, did the transposition of the directive imply other interesting changes for the third national country regarding other elements than the ones mentioned in the previous question. Make also a comparison with the standard of the directive in the last column of the table below

If they want to do so, the thematic coordinators should complete this question by indicating the number of examples that they ask the national reporter to give.

*Please use one box per object and duplicate it if necessary*

<table>
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</tr>
</thead>
</table>
| Right to family reunification | Explain the situation after transposition: Right to family reunification can be exercised not only by those family members that are in the origin country (as now), but also by those who are already in the Portugal (art. 98.º, of Law n.º 23/2007). | Complete this box by keeping the right appreciation and deleting the two others:  
  - *More favourable than previous national rules* |
| Family Reunification and Residence Permits Process | Explain the situation after transposition: The residence permit and family reunification requests will be treated jointly, thereby avoiding multiple requests | Complete this box by keeping the right appreciation and deleting the other one:  
  - *More favourable than the directive* |
Q.89. A. Mention if there is a general tendency to just copy the provisions of the directive into national legislation without redrafting or adaptation them to national circumstances.

☐ NO

☐ YES

Q.89.B. If yes, please indicate if this general tendency may or not create problems (for example difficulties of implementation, risk that a provision remain unapplied).

☐ NO

☐ YES

Q.89.C. If yes, give some of examples:

Q.89.D. If only some provisions of the directive have been copied and if this may create any problem, please quote them and explain the problem.

Q.90. Quote interesting decisions of jurisprudence related to the directive, its transposition or implementation (so this question concerns in principle decisions later that the directive, but previous ones might be quoted if relevant). Quote in particular decisions of supreme Courts; limit yourself to the appeal Courts and ignore the first resort if there are too many decisions at this level, unless there is a certain jurisprudence made of a group of decisions.

Please use one box per decision and duplicate it if necessary

<table>
<thead>
<tr>
<th>DECISION OF SUPREME COURTS</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
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<tr>
<th>DECISION OF APPEAL COURTS</th>
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<th>SUMMARY OF CONTENT:</th>
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<tr>
<th>DECISION(S) IN FIRST RESORT</th>
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</tr>
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</table>

ANY SUPPLEMENTARY COMMENT ABOUT THE TREND OF THE JURISPRUDENCE:
Q.91 Specify if there are or not problems with the translation of the text of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated.

[ ] There are no problems with the translation of the directive

[ ] There are some problems with the translation of (indicate the number of the articles concerned) of the directive.

**Explain the difficulties that this could create:**

Q. 92 ANY OTHER INTERESTING ELEMENT

Q.92 A. Following your personal point of view, mention from the point of view of third country nationals and/or from the Member State any interesting or innovative practice in your Member State

*Please use one table per practice and duplicate it if necessary*

<table>
<thead>
<tr>
<th>OBJECT OF THE PRACTICE</th>
<th>EXPLANATIONS</th>
</tr>
</thead>
</table>

Q.92 B. Please add here any other interesting element in your Member State which you did not had the occasion to mention in your previous answers
IN: ROMANIA

by

National Rapporteur: Ruxandra COSTACHE -
Ph.D. candidate in Law, Assistant Professor - University of Bucharest, Faculty of Law
ruxandracos@yahoo.com

Corapporteur and National Coordinator: Corneliu-Liviu POPESCU-
Professor, University of Bucharest - Faculty of Law

The person in the team of thematic coordination in charge of this directive that you can contact if you have a question or need help when completing this questionnaire is: Yves Pascouau, + 33 5 59 57 41 20, yves.pascouau@univ-pau.fr

COMMENTARIES

1. Council directive 2003/86 on the right to family reunification faced hard negotiations requiring the presentation of revised proposals from the Commission before final adoption in 2003. The European Court of Justice rejected in June 2007 an action for annulment introduced by the European Parliament against the Council directive (C-540/03).

2. Transposition of the directive must be assessed regarding the nature of the provision concerned. So as to help you, those provisions are coloured within the questionnaire as follows: obligatory provision (Q.XX), optional provision (Q.YY), provision which set up a derogation (Q.ZZ)

3. The Court of justice has defined the margins of discretion awarded to the member States even in situations where the directive allows the member States to depart from the directive. The Court states:

"Article 4(1) of the Directive imposes precise positive obligations, with corresponding clearly defined individual rights, on the Member States, since it requires them, in the cases determined by the Directive, to authorise family reunification of certain members of the sponsor’s family, without being left a margin of appreciation" (cons. 60).

"Note should also be taken of Article 17 of the Directive which requires Member States to 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 country of origin. As is apparent from paragraph 56 of the present judgment, such criteria correspond to those taken into consideration by the European Court of Human Rights when it reviews whether a State which has refused an application for family reunification has correctly weighed the competing interests” (cons. 64)

The fact that the concept of integration is not defined cannot be interpreted as authorising the Member States to employ that concept in a manner contrary to general principles of Community law, in particular to fundamental rights. The Member States which wish to make use of the derogation cannot employ an unspecified concept of integration, but must apply the condition for integration provided for by their legislation existing on the date of implementation of the Directive in order to examine the specific situation of a child over 12 years of age arriving independently from the rest of his or her family" (cons. 70).
4. The main difficulty according to the transposition of the directive relies on the systematic opportunities offered to member States to depart from the provisions of the directive when applying it.

5. Article 19 indicates which themes where the most sensitive during the negotiations of the Directive (art. 3, 4, 7, 8 and 13).

December 1st, 2007

FIRST PART

1. NORMS OF TRANSPOSITION AND JURISPRUDENCE

Q.1.A. Identify the MAIN (because of its content) norm(s) of transposition and indicate its legal nature

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)
- About legal nature in the table below: legislative refers to a norm adopted in principle by the Parliament; regulation refers to a norm complementing the law and adopted in principle by the executive power; circular or instructions refer to practical rules about implementation of laws and regulations and adopted in principle by the administrative authorities

Please duplicate the table below if there is more than one MAIN norm of transposition

| This table is about: [X] a text already adopted [ ] a text which is still a project to be adopted |
| TITLE: GOVERNMENT EMERGENCY ORDINANCE REGARDING THE LEGAL STATUS OF ALIENS IN ROMANIA |
| DATE: December 12, 2002 |
| NUMBER: 194 |
| DATE OF ENTRY INTO FORCE: January 27, 2003 |
| PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive): general legal status of aliens |
| REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: OFFICIAL GAZETTE OF ROMANIA, SECTION I, NO. 955/December 27, 2002, republished in no. 201/March 8, 2004 |
| LEGAL NATURE (indicate a cross in the correct box): [X] LEGISLATIVE: |
| [ ] REGULATION: |
| [ ] CIRCULAR or INSTRUCTIONS:
<table>
<thead>
<tr>
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<th>☐ a text which is still a project to be adopted</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>TITLE:</strong></td>
<td>LAW AMENDING THE GOVERNMENT EMERGENCY ORDINANCE NO. 194/2002 REGARDING THE LEGAL STATUS OF ALIENS IN ROMANIA</td>
<td></td>
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<tr>
<td><strong>DATE:</strong></td>
<td>November 10, 2004</td>
<td></td>
</tr>
<tr>
<td><strong>NUMBER:</strong></td>
<td>482</td>
<td></td>
</tr>
<tr>
<td><strong>DATE OF ENTRY INTO FORCE:</strong></td>
<td>January 1st, 2007 - date of Romania’s adhesion to EU</td>
<td></td>
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<tr>
<td><strong>PROVISIONS CONCERNED</strong> (for example if the norm is not devoted only to the transposition of the concerned directive):</td>
<td>general legal status of aliens</td>
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<tr>
<td><strong>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:</strong></td>
<td>OFFICIAL GAZETTE OF ROMANIA, SECTION I, NO. 1116/November 27, 2004</td>
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<td><strong>LEGAL NATURE</strong> (indicate a cross in the correct box):</td>
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<tr>
<td><strong>DATE:</strong></td>
<td>July 14, 2005</td>
<td></td>
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<tr>
<td><strong>NUMBER:</strong></td>
<td>113</td>
<td></td>
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<tr>
<td><strong>DATE OF ENTRY INTO FORCE:</strong></td>
<td>date of publication in the Official Gazette of Romania</td>
<td></td>
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<tr>
<td><strong>PROVISIONS CONCERNED</strong> (for example if the norm is not devoted only to the transposition of the concerned directive):</td>
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<td>OFFICIAL GAZETTE OF ROMANIA, SECTION I, NO. 658/July 25, 2005</td>
<td></td>
</tr>
<tr>
<td><strong>LEGAL NATURE</strong> (indicate a cross in the correct box):</td>
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</tbody>
</table>
### This table is about:

- **X** a text already adopted
- [ ] a text which is still a project to be adopted

| TITLE | LAW AMENDING THE GOVERNMENT EMERGENCY ORDINANCE NO. 194/2002 REGARDING THE LEGAL STATUS OF ALIENS IN ROMANIA |
| DATE | March 13, 2007 |
| NUMBER | 56 |
| DATE OF ENTRY INTO FORCE | 3 days from the publication in the Official Gazette of Romania |
| PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive) | general legal status of aliens |
| REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: | OFFICIAL GAZETTE OF ROMANIA, SECTION I, NO. 201/March 26, 2007 |

**LEGAL NATURE** (indicate a cross in the correct box):

- [X] LEGISLATIVE:
- [ ] REGULATION:
- [ ] CIRCULAR or INSTRUCTIONS:

### This table is about:

- **X** a text already adopted
- [ ] a text which is still a project to be adopted

| TITLE | GOVERNMENT DECISION REGARDING THE ORGANIZATIONAL STRUCTURE AND THE TASKS OF THE AUTHORITY FOR ALIENS |
| DATE | May 21, 2003 |
| NUMBER | 577 |
| DATE OF ENTRY INTO FORCE | 30 days from the publication in the Official Gazette of Romania |
| PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive) | legal status of aliens |

**LEGAL NATURE** (indicate a cross in the correct box):

- [ ] LEGISLATIVE:
- [X] REGULATION:
- [ ] CIRCULAR or INSTRUCTIONS:

### Q.1.B.

List the others norms of transposition by order of importance of their legal nature (first laws, secondly regulations; thirdly circulars or instructions):

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)
Q.2. THIS QUESTION IS IN PRINCIPLE ONLY FOR FEDERAL OR ASSIMILATED MEMBER STATES LIKE AUSTRIA, BELGIUM, GERMANY, ITALY, SPAIN

Q.2.A. Explain which level of government is competent to adopt the norms of transposition.

Please include your answer in the tables below

<table>
<thead>
<tr>
<th>LEGISLATIVE RULES</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</td>
</tr>
<tr>
<td>COMPETENCES OF THE COMPONENTS:</td>
</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
</tr>
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</table>

<table>
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<tr>
<th>REGULATIONS</th>
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<th>CIRCULAR OR INSTRUCTIONS</th>
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</tr>
<tr>
<td>EXPLANATIONS IF NECESSARY:</td>
</tr>
</tbody>
</table>

Q.2.B. In case, explain if the federal structure and the distribution of competences between the different levels pose any problem or difficulty regarding the transposition and/or the implementation of the directive.

Q.3. Explain which authorities are competent for the practical implementation of the norm of transposition by taking the decisions in individual cases.
Please use one table per competence concerned and duplicate it if necessary

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>ALL COMPETENCES IN THE FIELD</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>MINISTRY OF INTERNAL AFFAIRES AND ADMINISTRATIVE REFORMS</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>AUTHORITY FOR ALIENS</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td>The Authority for Aliens is organized at central and territorial levels</td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
<td>The Authority for Aliens is organized under the subordination of the Ministry of Internal Affairs and Administrative Reforms</td>
</tr>
</tbody>
</table>

**Q.4. A.** Has the main regulation foreseen explicitly by the main norm of transposition already been adopted or not:

- [ ] YES
- [ ] NOT APPLICABLE
- [ ] NO

**Q.4.B.** If the main norm(s) of transposition foresees the adoption of one or several regulations, indicate if they have all been adopted:

- [ ] YES
- [ ] NOT APPLICABLE
- [ ] NO

If NO, please indicate the missing text(s) in the table below.

Please use one line per missing text and duplicate it if necessary

<table>
<thead>
<tr>
<th>MISSING TEXTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>INDICATE HERE THE MISSING TEXTS</td>
</tr>
</tbody>
</table>

Add if necessary some explanations (specify in particular if the missing texts are at least under preparation or foreseen in the very near future):
AIM (ARTICLE 1)

The purpose of the Directive is to determine the conditions for the exercise of the right to family reunification. In case C-540/03, the Court of justice recognizes that, in some cases, member States do not have any margin of appreciation to grant the right to family reunification.

Q.5 – Is family reunification considered as a right in your Member State?

☑ OUI
☐ NON

Please explain: Family reunification is approved if the conditions provided by the law are fulfilled.

Q.5. A – Are there any figures available relating to the exercise of the right to family reunification between 2002 and 2006? If yes, what are the trends, including nationality assessment? NOT APPLICABLE – Romania became EU member starting with January 1st, 2007.

DEFINITIONS (ARTICLE 2)

SCOPE (ARTICLE 3)

The scope of the Directive is defined by article 3. We recall that:
- § 1 "reasonable prospect..." aims at excluding persons residing on a temporary basis (stagiaires, etc...)
- European citizens are excluded (§ 3)
- Comparison with existing legislation is of importance so as to assess the added value of the harmonization process (§ 5)

Q.6. Period of validity of the sponsor’s residence permit:
   Q.6. A. Is the period of validity of the sponsor’s residence permit of one year or more according to article 3 § 1 of the Directive?

☑ OUI
☐ NON

Q.2.B. Quote precisely the period enshrined in national law: 1 year

Q.6.C. How does your Member State translate in national law the requirement for the sponsor to have "reasonable prospects of obtaining the right of permanent residence" (a 3 § 1)? There is no such requirement.
Q.7. – Members of the family concerned:

Q7. A. Are they third country nationals as required by article 3 § 1 of the Directive?

[X] OUI
[ ] NON

If not, explain

Q7.B. How has your Member State translated in national law the wording of "whatever status" included in article 3 § 1 of the Directive?

There is no condition required by the law.

Q.8 – Did the transposition of the Directive in your Member state breached provisions of international law more favourable to individuals (a 3 § 4)?

[ ] OUI
[X] NON

There is no explicit norm of transposition.

Q.9 – If yes, are those provisions based on:

Q9.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?

[ ] OUI
[ ] NON

NOT APPLICABLE

Specify which provisions

Q9.B - The European Social Charter of 18 October 1961 (a 3 § 4)?

[ ] OUI
[ ] NON

NOT APPLICABLE

Specify which provisions

Q9.C. The amended European Social Charter of 3 May 1987 (a 3 § 4)?

[ ] OUI
[ ] NON

NOT APPLICABLE

Specify which provisions

☐ OUI

☒ NOT APPLICABLE

☐ NON

Specify which provisions

Q.10 – Does the transposition of the Directive affect national provisions more favourable to individuals (a 3 § 5)?

☐ OUI

☒ NON

If yes, please specify which provisions

**Beneficiaries (Article 4)**

- Article 4 of the Directive contains numerous "may clauses". It is therefore important to pay attention on the way Member States use them and on the legal modalities adopted thereof.

- Article 4 § 1 a) and b) enacts a right to family reunification for some members of the sponsor's family. The Member State does not have any margin of discretion regarding those persons.

- Article 4 § 1 last indent foresee one derogation regarding child over 12 years on the basis of an integration criterion. This is one of the most sensitive questions encompassed by the directive beside the issue of the limit of age in § 6.

- Regarding article 4 § 6, the Court states "It does not matter that the final sentence of the contested provision provides that the Member States which decide to apply the derogation are to authorise the entry and residence of children in respect of whom an application is submitted after they have reached 15 years of age 'on grounds other than family reunification'. The term 'family reunification' must be interpreted in the context of the Directive as referring to family reunification in the cases where family reunification is required by the Directive. It cannot be interpreted as prohibiting a Member State which has applied the derogation from authorising the entry and residence of a child in order to enable the child to join his or her parents". (cons. 86) The Court adds "Article 4(6) of the Directive must, moreover, be read in the light of the principles set out in Article 5(5) thereof, which requires the Member States to have due regard to the best interests of minor children, and in Article 17, which requires them to take account of a number of factors, one of which is the person's family relationships" (cons. 87)
Q.11 – Does your national law recognize the right to family reunification to:

Q.11. A – The sponsor's spouse (a. 4 § 1 a)?

☐ OUI

☐ NON

Q.11. B - Minor children of the sponsor and of his/her spouse (a. 4 § 1 b)?

☐ OUI

☐ NON

Q.11.C. Minor children adopted of the sponsor and of his/her spouse (a. 4 § 1 b)?

☐ OUI

☐ NON

Q.11.D. Minor children of the sponsor (a. 4 § 1 c)?

☐ OUI

☐ NON

Q.11. E. If yes, does your national law foresee that the sponsor shall have children custody and children are dependant on him or her?

☐ OUI

☒ NON

Specify if necessary the proofs required ------

Q.11 F. Minor children adopted of the sponsor (a 4 §1.c) ?

☐ OUI

☒ NON

Q.11. G. If yes:

h. does your national law foresee that the sponsor shall have children custody and children are dependant on him or her?

☐ OUI

☒ NON

Specify if necessary the proofs required ------
g.g. Does national law provide that those children shall be 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'?

☐ OUI
☐ NON

Specify if necessary the proofs required: The law does not explicitly require

Q.11. H. Minor children of the spouse (a 4 §1.d.)?

☐ OUI
☐ NON

Q.11. I. If yes, does your national law foresee that the spouse shall have children custody and children are dependant on him or her?

☐ OUI
☐ NON

Specify if necessary the proofs required -------

Q.11. J. Minor children adopted of the spouse (a 4 §1.d )?

☐ OUI
☐ NON

Q.11. K. If yes, k. Does your national law foresee that the spouse shall have children custody and children are dependant on him or her?

☐ OUI
☐ NON

Specify if necessary the proofs required -------

k.k. Does national law provide that those children shall be 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'"?

☐ OUI
☐ NON
Specify if necessary the proofs required: **The law does not explicitly require**

**Q.12** – Has your Member State transposed the option opened by article 4 § 1 c:

**Q.12A.** To authorise reunification of minor children of the sponsor – including also adopted children – of whom custody is shared (a 4 §1.c)?

☐ OUI

☒ NON

Specify if necessary: **There is no explicit provision regarding the right of protected custody**

**Q.12.B.** If yes, has your legislation transposed the condition that the other party sharing custody has given his or her agreement (a 4 §1. c)?

☐ OUI

☒ NON

Specify if necessary -------

**Q.13** – Has your Member State transposed the option opened by article 4 § 1 d):

**Q.13.A.** to authorise reunification of minor children of the spouse – including also adopted children – of whom custody is shared (a 4.1.d. in fine)?

☒ OUI

☐ NON

Specify if necessary: **There is no explicit provision regarding the right of protected custody.**

**Q.13 B.** If yes, has your legislation transposed the condition that the other party sharing custody has given his or her agreement (a 4. 1.d) ?

☐ OUI

☒ NON

Specify if necessary

**Q.14** – In any case referred to in questions 7 to 9, is the age of the minor children below the age of majority set up by the law of your Member State (a.4 §1, second indent)?

☒ OUI

☐ NON
If yes, indicate the age required: **18 years old**

**Q.15** – In any case referred to in questions 7 to 9, has the prohibition of marriage of minor children been transposed (a.4 §1, second indent)?

[X] OUI

[ ] NON

If not, explain Si non, expliquez : -------

**Q.16** – Is the derogation set up in article 4 § 1 last indent relating to the conditions for integration of children over 12 years arrived independently from the rest of the family used by your Member State?

[ ] OUI

[X] NON

How the criterion "arrives independently from the rest of his/her family" has been transposed in your national legislation? **NOT APPLICABLE**

**Q.17** – If yes, did this integration condition already exist in your national legislation before the date of transposition of the Directive?

[ ] OUI

**NOT APPLICABLE**

[ ] NON

**Q.18** – Describe briefly the content of this condition, the date of its creation and the conditions of its examination **NOT APPLICABLE**

**Q.19** – Are the children of refugees required to an integration test by your Member State (in contradiction with article 10 § 1)?

[ ] OUI

[X] NON

If yes, explain ------

**Q.20** – Does your Member State authorise:

**Q.20 A** – Reunification of first-degree relatives in the direct ascending line of the sponsor (a 4§2 a)?

[X] OUI

[ ] NON
Q.20 B – If yes, shall they be dependant and not enjoy proper family support in the country of origin?

[X] OUI  
☐ NON

How each of those criterions is transposed and checked? **There are no additional legal provisions.**

Q. 20.C. Reunification of first-degree relatives in the direct ascending line of the spouse (a 4§2 a)?

[X] OUI  
☐ NON

Q.20.D. If yes, shall they be dependant and not enjoy proper family support in the country of origin?

[X] OUI  
☐ NON

How each of those criterions is transposed and checked? **There are no additional legal provisions.**

Q.20.E. Reunification of adult unmarried children of the sponsor? (a 4§2 b) ?

[X] OUI  
☐ NON

If necessary, explain how this procedure is organised **He/she is unable to provide for his/her own needs due to medical reasons.**

Q.20.F. If yes, does the national legislation impose that those adult unmarried children of the sponsor are objectively unable to provide for their own needs on account of their state of health (a 4 §2 b) ?

[X] OUI  
☐ NON

If necessary, specify how each of those criterions ("objectively" and "unable to provide for their own needs") is transposed and checked? **There are no additional legal provisions.**
Q.20. G. Does your Member State authorise reunification of adult unmarried children of the spouse (a 4§2 b)?

X OUI

☐ NON

If necessary, specify how this condition is assessed **He/she is unable to provide for his/her own needs due to medical reasons.**

Q.20.H. If yes, does the national legislation impose that those adult unmarried children of the sponsor are objectively unable to provide for their own needs on account of their state of health (a 4 §2 b) ?

X OUI

☐ NON

If necessary, specify how each of those criterions ("objectively" and "unable to provide for their own needs") is transposed and checked? **There are no additional legal provisions.**

Q.20. I. Did your Member state use the by law or regulation norms to implement article 4 § 2 a et b?

X OUI

☐ NON

Q.21 – Does your Member State authorise reunification of the unmarried partner of the sponsor, being a third country national (a 4 §3)?

☐ OUI

X NON

Q.22 – If yes:

Q.22 A – This partnership shall be based on a duly attested stable long term relationship?

☐ OUI

NOT APPLICABLE

☐ NON

If yes, specify how your Member State assess this situation

Q.22 B – This partnership shall be registered?

☐ OUI

NOT APPLICABLE

☐ NON
Q.23 – Does your national law consider the registered partner as the husband/spouse (a 4 §3 alinéa 2)?

☐ OUI
☐ NOT APPLICABLE
☐ NON

Q.24 – Does your Member State authorise:

Q.24. A – Reunification of minor children of the partner, including adopted children (a 4§3)?

☐ OUI
☐ X NON

Q. 24. B – Reunification of adult unmarried children of the partner, including adopted children (a 4§3)?

☐ OUI
☐ X NON

Q.25 – Does your Member State allow reunification of adult unmarried children who are objectively unable to provide for their own needs on account of their state of health (a 4§3)?

☐ OUI
☐ X NON

If yes, specify how the conditions, and more particularly the "objectivity", are assessed. ------

Q.26 – Did your Member state use the by law or regulation norms to implement article 4 § 3? NO.

Q.27 – Is the prohibition of polygamous marriage enshrined in your national legislation (a. 4§4)?

☐ X OUI
☐ NON

Q.28 – Does your Member State limit family reunification of minor children of a further spouse and the sponsor (article 4§4 dernier alinéa,)?

☐ X OUI
☐ NON
Q.29 – Does your Member State use the option set up by article 4 § 5 requiring the sponsor and his/her spouse to be of a minimum age of 21 years old before reunification?

☐ OUI

X NON

Q.30 – If yes,

Q.30 A – What is the age required? NOT APPLICABLE

Q.30 B – Is the derogation founded on integration criteria and/or prevention of forced marriage?

Q.31 – Does your Member State use the derogation of article 4 § 6 by requesting that the applications concerning family reunification of minor children have to be submitted before the age of 15?

☐ OUI

X NON

Explain -------

Q.32 – If yes, was it provided by existing legislation on the date of implementation of the directive? NOT APPLICABLE

Q.33 – If the application is not introduced before the age of 15, do Member States authorise entry and residence on grounds other than family reunification?

X OUI

☐ NON

Which grounds and which conditions? NOT APPLICABLE

PROCEDURE (ARTICLE 5)

We draw attention on the major importance given by the Court of justice regarding § 5 relating to the best interest of minor children.

Q.34 – Did your Member State institute a procedure regarding family reunification (a 5 §1) ?

X OUI

☐ NON
Q.35 – If yes,

Q.35. A – Which authorities are in charge of this issue? The Authority for Aliens.

Q.35. B – Are NGO's associated to this procedure?

☐ OUI

☒ NON

If yes, describe the procedure ------

Q.35. C – Is the application submitted by the sponsor or by family members? The application is submitted by the sponsor.

Q.35. D – Is this procedure exclusive from other possibilities to grant family reunification?

☒ OUI

☐ NON

If other procedural possibilities exist, please describe them -------

Q. 35. E – Was this procedure existing before the adoption of Directive 2003/86?

☐ OUI

NOT APPLICABLE – Romania became EU member starting with January 1st, 2007.

☒ NON

Q.36 – Which documentary evidence are required to prove (a 5 §2):

Q.36. A – Family relationships according to article 4? Yes.

Q.36. B – Accommodation conditions laid down in article 7? Yes.

Q.36. C – Sickness insurance conditions? Yes.

Q.36. D – Certified copies of family member(s)' travel documents? No.

Q.37 – Is the possibility foreseen to proceed to:

Interviews:

☐ OUI

☒ NON

Investigations:
If yes, describe them briefly: **The law allows only the request of additional documentary evidence.**

**Q.38** – When examining an application concerning the unmarried partner of the sponsor, which evidences are taken into account by Member States on the basis of national law to prove family relationship (article 5§2 dernier alinea) ?

**Q.38. A** – Existence of family ties and other elements such as a common child?

☐ OUI

☐ NON

Specify

**Q.38. B** - Previous cohabitation?

☐ OUI

☐ NON

**Q.38. C** - Registration of a partnership

☐ OUI

☐ NON

**Q.38. D** - Any other reliable means of proof foreseen in national law?

☐ OUI

☐ NON

If yes, specify which ones:

**Q.39** – Are family members obliged to reside outside the territory of the Member State while the application is being examined (a5 §3) ?

☐ X OUI

☐ NON

Is this obligation sanctioned and how? **There is no sanction.**
Q.40 – If the answer is yes, is a derogation organised according to article 5 § 3 second indent?

☐ OUI

☒ NON

Please specify ------

Q.41 – Does your national legislation include a maximum period of 9 month to answer to the application by way of written notification (a5 §4)?

☒ OUI

☐ NON

If necessary, please specify: **3 months**

Q.42 – This time limit can be extended (a 5 §4 alinea 2) ?

☐ OUI

☒ NON

Q.43 – If yes,

Q.43. A – Because of the complexity of the examination of the application?

☐ OUI

☒ NOT APPLICABLE

☐ NON

If yes, please specify **NOT APPLICABLE**

Q.43. B – What is the length of the extension? **NOT APPLICABLE**

Q.44 – If no decision is taken by the end of the 9 months period provided, what are the consequences for the applicant? **He/she can initiate a law action in front of a court.**

Q.45 – Is the decision rejecting the application notified? Does this written notification contain the reasons of rejection?

☒ OUI

☐ NON

Specify if only one condition is not required – **The decision is notified in writing and must contain the reasons.**
Q.46 – How is the best interest of minor children taken into account by your Member State’s legislation and authorities during examination of the application (article 5§5) ?

The law provides for the obligation of taking into consideration the superior interest of the child, without providing other details.

**CONDITIONS REQUIRED (ARTICLES 6 AND OTHERS)**

- Questions relating to accommodation and resources will be carefully examined to assess if Member States use them, either as a migration tool or as an integration tool.

- The same assessment applies regarding the option to set up a period of lawfully residence not exceeding two years before applying for family reunification.

- According to article 8, the Court of justice states: "That provision does not therefore have the effect of precluding any family reunification, but preserves a limited margin of appreciation for the Member States by permitting them to make sure that family reunification will take place in favourable conditions, after the sponsor has been residing in the host State for a period sufficiently long for it to be assumed that the family members will settle down well and display a certain level of integration. Accordingly, the fact that a Member State takes those factors into account and the power to defer family reunification for two or, as the case may be, three years do not run counter to the right to respect for family rights set out in particular in Article 8 of the ECHR as interpreted by the European Court of Human Rights"

- "It should, however, be remembered that, as is apparent from Article 17 of the Directive, duration of residence in the Member State is only one of the factors which must be taken into account by the Member State when considering an application and that a waiting period cannot be imposed without taking into account, in specific cases, all the relevant factors" (cons. 99). "The same is true of the criterion of the Member State’s reception capacity, which may be one of the factors taken into account when considering an application, but cannot be interpreted as authorising any quota system or a three-year waiting period imposed without regard to the particular circumstances of specific cases. Analysis of all the factors, as prescribed in Article 17 of the Directive, does not allow just this one factor to be taken into account and requires genuine examination of reception capacity at the time of the application" (cons. 100) "When carrying out that analysis, the Member States must, as is pointed out in paragraph 63 of the present judgment, also have due regard to the best interests of minor children" (cons. 101).

Q.47 – Can public policy, public security or public health grounds be taken into account to (a 6 §§1 et 2):

Q.47. A – Reject an application for family reunification?

[X] OUI

[ ] NON

If yes, which ones? – national defence, national security, public order, public health, public morality
Q.47. B – Withdraw an application for family reunification?

X OUI

□ NON

If necessary, please specify: national defence, national security, public order, public health, public morality

Q.47. C – Refuse to renew a family member's residence permit?

X OUI

□ NON

If necessary, please specify: national defence, national security, public order, public health, public morality

Q.48 – Does national legislation take into account:

Q.48. A – The severity or type of offence against public policy or public security?

□ OUI

X NON

Q.48. B – The solidity of family relationships regarding article 17 of the Directive?

□ OUI

X NON

If necessary, please specify: The law takes into consideration: 1) the fact that the members of the family have a common residence and 2) the absence of fictive (sham) marriage.

Q.49 – Does your Member State withdraw the residence permit or remove the third country national on the sole ground of illness or disability suffered after the issue of the residence permit (a 6 §3)?

□ OUI

X NON – ONLY if the alien refuses to let himself/herself medically cared by the authorities.

Q.50 – Are accommodation conditions required from the applicant (a7 §1a)?

X OUI

□ NON
Q.51 – If yes:

Q.51. A – What are those conditions? – to legally have an accommodation

Q.51. B – How are they assessed? - the accommodation normally considered for a similar family in Romania

Q.51 C – Are they comparable to the conditions required to a normal family living in the same region?

☐ OUI
☐ NON

If not, please specify the differences -------

Q.52 – Is a sickness insurance required from the applicant (a. 7 §1b)?

☐ OUI
☐ NON

Q.53 – Are stable resources required (a7 §1c)?

☐ OUI
☐ NON

Specify their nature and content: It is required a documentary evidence of the means of living.

Q.54 – How is the condition "sufficient" assessed by your Member State? Is it in comparison with national wages? At the level of minimum salary per national economy per each member of family

Q.55 – Are integration criterions required to allow family reunification (a 7 §2)?

☐ OUI
☒ NON

Q.56 – If yes:

Q.56. A – What are those criterions? NOT APPLICABLE

Q.56. B – Do they apply indistinctly to all potential beneficiaries of reunification? (Spouse, dependant people, etc.) NOT APPLICABLE

Q.56. C – How are they evaluated by your Member State? NOT APPLICABLE
Q.56. D – Are refugees and their family members required to fulfil them (a 7 §2, second indent)?

☐ OUI
☐ NOT APPLICABLE
☐ NON

Q.57 – Is a minimal period of lawful reside is required before reunification (a 8 §1)?

☐ OUI
☒ NON

Q.58 – Does this period exceed two years?

Please specify NOT APPLICABLE

Q.59 – Does your Member State apply the derogation set up by article 8 § 2 allowing Member States to impose a waiting period of maximum three years due to reception capacities between the submission of the application and the issuance of a residence permit?

☐ OUI
☐ NOT APPLICABLE
☒ NON

Please specify

Q.60 – If yes, did this derogation exist in national law before the 22nd of September 2003?

☐ OUI
☐ NOT APPLICABLE
☐ NON

FAMILY REUNIFICATION OF REFUGEES

The legal regime applicable to refugees derogates from the one applicable to family reunification. The scope of those derogations (minimal lawful residence, members of the family, accommodation requirements) shall be assessed on the basis of national law.

Q.61 – Does your Member State allow family reunification of refugees on the basis of Directive 2003/86 (a 9 §1) ?

☒ OUI
☐ NON
Q.62 – Is this right limited to family relationships predating the entry on the territory (a 9 §2)?

☐ OUI
☐ NON

Q.63 – Does your Member State allow family reunification of family Members not quoted in article 4 of the Directive (a 10 §2) ?

☐ OUI
☒ NON

Which members of the family and under which conditions? -------

Q.64 – According to the specific case of unaccompanied minor refugees, does your Member State authorise family reunification of first degree relatives in the direct ascending line without applying the conditions laid down in article 4 § 2 (a10 §3 a) ?

☐ OUI
☒ NON

What conditions are required?
The law regulates that, in this case, the family reunification follows the child’s interest. Also, it is taken into account the unaccompanied minor’s opinion. There are no other conditions provided for this case of family reunification.

Q. 65 – Does your Member State authorise entry and residence of the legal guardian or any member of the family where the unaccompanied minor refugee has no relatives in the direct ascending line or such relatives cannot be traced (a10 §3 b) ?

☐ OUI
☒ NON

If yes, please specify who the member of the family targeted is and which proofs are required to prove family ties? Any relatives, any evidence of family ties.

Q.66 – Does your Member State take into account other evidence of family relationship where the refugee cannot provide official evidence (a 11 §2) ?

☐ OUI
☐ NON

Which ones? Any kind of evidence.
Q.67 – Does the examination of the refugee application take into account their specific situation:

Q.67. A – Are proofs regarding accommodation conditions, sickness insurance or resources required (a 12 §1)?

☐ OUI

☒ NON

If yes, are those requirements comparable to those imposed to other third country nationals? ------

Q.67. B – If one of the person concerned (sponsor or family member) has special links with a third country within which reunification is possible, does your member state require those proofs according to article 12 § 1 second indent.

☐ OUI

☒ NON

If necessary specify -------

Q.67. C – If a refugee has introduced its application after a period of three months, does your Member State require the refugee to meet the conditions or one of them (accommodation, sickness insurance, resources (a 12 §1 alinea 3) ?

☐ OUI

☒ NON

If yes, which ones? ------

Q.68 – Does your Member State apply the prohibition to impose a residence condition before reunification (a 12 §2)?

☒ OUI – there is no explicit provision imposing a condition of residence.

☐ NON

If not, what is the length of this period? Is it different from the one normally applied?
EXERCISE OF THE RIGHT TO FAMILY REUNIFICATION

The granting of an autonomous residence permit is one of the most sensitive issues of this part of the Directive.

Q.69 – Is entry and residence facilitated by your Member State, as soon as the application for family reunification has been accepted, including the issue of obtaining visas (a13 §1)?

☐ OUI
☐ NON

If yes, how?

According to art. 46 par. 11 and par. 13 as modified by the Law no. 56/2007:
(11) The approval of the application shall be notified in writing to the applicant, in order to have it transmitted to the interested family members that shall show it to the diplomatic or consular mission together with the application for granting a visa for Romania.
(13) The visa shall be issued by the Romanian diplomatic or consular missions from the country where the family members have their domicile or residence.

Q.70 – Is a residence permit of at least one year's duration granted to the family members (a 13 §2)?

☐ OUI
☐ NON

What is the duration of the residence permit? 1 year

Q.71 – Is this residence permit renewable?

☐ OUI
☐ NON

Q.72 – Is the duration of the residence permit aligned with the duration of sponsor's residence permit (a 13 §3)?

☐ OUI
☐ NON

If no, please specify ------
Q.73 – Are the rights awarded to family members' equivalent to those granted to the sponsor (a14 §1):

Q.73. A – Regarding access to education?

☐ OUI
☐ NON

If no, please specify There are no explicit norms. However, in Romania, this provision is implemented by the general principle of domestic law concerning the equality and non-discrimination.

Q.73. B - Regarding access to employment?

☐ OUI
☐ NON

Please specify the content of this access. The family members have access to employment, but there are no additional explicit law provisions. However, in Romania, this provision is implemented by the general principle of domestic law concerning the equality and non-discrimination.

Q.73. C – Regarding access to vocational guidance, initial and further training and retraining?

☐ OUI
☐ NON

If no, please specify There are no explicit norms. However, in Romania, this provision is implemented by the general principle of domestic law concerning the equality and non-discrimination.

Q.74 – Does your Member State grant specific rights in social matters to reunified family members?

☐ OUI
☐ NON

If yes, please describe them and specify if a time limit is established to take advantage from them  

Q.75 – Has Member State set up conditions regarding specific access to employment for family members (a 14 §2)?

☐ OUI
☐ NON
If yes, how? -------

Q.76 – If yes, do those conditions exceed 12 months (a 14 §2)?

☐ OUI

☐ NON

Which ones?

OUI

NOT APPLICABLE

NON

Q.77 – Is access to employment limited in your Member State

Q.77.A – Regarding first-degree relatives in the direct ascending line?

☐ OUI

There are no explicit norms, therefore, there are no legal grounds to establish whether equivalent rights exist.

☐ NON

If yes, how?

Q.77. B – Regarding adult unmarried children objectively unable to provide for their own needs on account of their state of health (a 14 §3)?

☐ OUI

There are no explicit norms, therefore, there are no legal grounds to establish whether equivalent rights exist.

☐ NON

If yes, how?

Q.78 – Are spouses, unmarried partners and child who has reached majority entitled to an autonomous residence permit at least five years after lawful residence on the basis of the residence permit issued for family reunification (a15 §1)?

☒ OUI

☐ NON

If yes, please specify when and how for each category – This right is recognized: (i) when the minor becomes adult (18 years old); (ii) if the sponsor demised (for any other person) or (iii) in case of divorce (for the husband/wife).

Q.79 – Does your Member State limit the granting of the autonomous residence in cases of breakdown of the family relationship (a 15 §1 alinea 2)?

☐ OUI

☒ NON
Please explain – The right shall be granted in case of divorce to all family members.

Q.80 – Does your Member State grant autonomous residence permit:

Q.80. A – To first-degree relatives in the direct ascending line (a15 §2)

☐ OUI
☒ NON

If necessary specify

Q.80. B – To adult unmarried children objectively unable to provide for their own needs on account of their state of health (a15 §2)?

☐ OUI
☒ NON

If necessary specify

Q.81 – Does your member State grant autonomous residence permit in the event of widowhood, divorce, separation or death of first first-degree relatives in the direct ascending or descending line (a 15 §3)?

☒ OUI
☐ NON

If necessary specify - This right is recognized if the minor has reached majority; the sponsor demised; or in case of divorce.

Q.82 – Has your Member State adopted rules granting autonomous residence permit "in the event of particularly difficult circumstances" (a 15 §3)?

☐ OUI
☒ NON

If yes, how is this provision defined and transposed? ------
Penalties and Redress

Those provisions must be read in parallel with those relating to the conditions to be fulfilled to obtain family reunification (articles 6, 7, 8)

Questions relating fraud, false or falsified documents are of importance to assess their impact.

Q.83 – What are the legal grounds to reject, withdraw or refuse to renew a family member's residence permit (a16 §1 et 2):

Q.83. A – Conditions required by the directive not satisfied?

☐ OUI
☐ NON

Q.83. B – Absence of real martial or family relationship?

☐ OUI
☐ NON

If yes, how is this hypothesis assessed? – If the spouses or the minor child do not live together.

Q.83. C – Stable long term relationship with another person?

☐ OUI
☐ NON

If yes, how is this hypothesis assessed? -------

Q.83. D – False or falsified documents?

☐ OUI
☐ NON

Q.83. E – Marriage, partnership or adoption contracted for the sole purpose of enabling reunification?

☐ OUI
☐ NON

Q.83. F – If yes, how is this hypothesis assessed?

According to art. 64, as provided by the Law no. 56/2007:

(1) The Authority for Aliens refuses the extension of the right of stay approved before if, following the controls, it results that the marriage is a sham marriage.

(2) The elements based on which it can be ascertained that a marriage is a sham marriage may be the following:

(a) there is no marital cohabitation;
(b) the spouses did not know each other before marriage;
(c) the lack of an effective contribution to the fulfilment of the obligations arising out of marriage;
(d) the spouses do not speak a language known by both of them;
(e) there are data that before one spouse concluded a sham marriage;
(f) the spouses showed inconsistency in declaring the personal data, the circumstances in which they have met and other relevant information about them;
(g) the conclusion of marriage was conditioned by payment of an amount of money between the spouses, except for the amounts as dowry.
(3) The acknowledgement of the elements set forth under par. 2 shall be done by the officer in front of who the interview was done. These elements may result from:
(a) data obtained following the interview;
(b) documents;
(c) statement of the persons involved or of the third parties;
(d) controls at the marital domicile or other additional verifications.

Q.83. G – When the sponsor's residence comes to an end and the family member does not yet enjoy an autonomous right of residence (a 16 §3) ?

☐ OUI
☐ NON

Q.83. H – What type of control are organised thereof?
The verification shall be done at the moment of applying for the extension of the right, by documentary evidence, and for the sham marriage also by interviews, controls and witnesses.

Q.84 – Are resources of the family taken into account when renewing residence permit where the sponsor does not have sufficient resources without recourse to the social assistance system of the member state?

☐ OUI
☐ NON

If yes, under which modalities? Means for living equivalent to at least the minimum salary per national economy.

Q.85 – Does your Member State's legislation take into consideration (a. 17) :

Q.85. A – The nature and solidity of the person's family relationships and the duration of his residence in the Member State?

☐ OUI
☐ NON

If yes, please specify how and on the basis of which norm (legislation, regulation, jurisprudence, …)
The only criteria taken into account is the nature and solidity of the family relationships and only in the case of marriage. A mock marriage may be established based on this criteria having as consequence the rejection of the extension of the residence right in Romania.

According to art. 64, as provided by the Law no. 56/2007:
(1) The Authority for Aliens refuses the extension of the right of stay approved before if, following the controls, it results that the marriage is a sham marriage.
(2) The elements based on which it can be ascertained that a marriage is a sham marriage may be the following:
(a) there is no marital cohabitation;
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(3) The acknowledgement of the elements set forth under par. 2 shall be done by the officer in front of who the interview was done. These elements may result from:
(a) data obtained following the interview;
(b) documents;
(c) statement of the persons involved or of the third parties;
(d) controls at the marital domicile or other additional verifications.

Q.85. B - 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?

☐ OUI
☒ NON

If yes, please specify how and on the basis of which norm (legislation, regulation, jurisprudence, …)

Q.86 – Do the sponsor and/or members if his/her family have the right to mount a legal challenge where an application for family reunification is rejected (a18 §1)?

☒ OUI
☐ NON

Q.87 – Is this right to legal challenge considered as a right to a judicial review according to jurisprudence C-540/03 (a18 §1) ?

☒ OUI
☐ NON
**XX. IMPACT OF THE DIRECTIVE ON NATIONAL LAW**

**Q.88 A**  
Did the transposition of the directive made the rules related to the best interest of minor children (a. 5 § 5) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below.

Romania became EU member starting with January 1st, 2007.

*Please use one box per object and duplicate it if necessary*

<table>
<thead>
<tr>
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| Explain the situation before transposition | Explain the situation after transposition (to evaluate the impact of the directive, take also into consideration national norms which have been adopted before the deadline for transposition or even before the adoption of the directive in cases of Member States having amended their national legislation in advance in view of the directive. Indicate the precise date of adoption of the change) | Complete this box by keeping the right appreciation and deleting the two others:  
- More favourable than previous national rules  
- In line with the directive |

**Q.88 B**  
Did the transposition of the directive made the rules related to the beneficiaries of the right to family reunification become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below.

Romania became EU member starting with January 1st, 2007.
Q.88 C  Did the transposition of the directive made the rules related to reunification of minor children between 12 (a. 4 § 1) and 15 (a. 4 § 6) years old become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

Romania became EU member starting with January 1\textsuperscript{st}, 2007.

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<tr>
<td>Definition of the beneficiaries of the right to family reunification a. 4 § 4</td>
<td>Explain the situation after transposition: (to evaluate the impact of the directive, take also into consideration national norms which have been adopted before the deadline for transposition or even before the adoption of the directive in cases of Member States having amended their national legislation in advance in view of the directive. Indicate the precise date of adoption of the change)</td>
<td>Complete this box by keeping the right appreciation and deleting the two others: \begin{itemize} \item \textit{More favourable than previous national rules} \end{itemize} Complete this box by keeping the right appreciation and deleting the other one: \begin{itemize} \item \textit{In line with the directive} \end{itemize}</td>
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<td>Limitation of reunification of minor children of 12 and 15 years of age (a. 4 § 1 and 4 § 6)</td>
<td>Explain the situation after transposition: (to evaluate the impact of the directive, take also into consideration national norms which have been adopted before the deadline for transposition or even before the adoption of the directive in cases of Member States having amended their national legislation in advance in view of the directive. Indicate the precise date of adoption of the change)</td>
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</table>
Q.88 D Did the transposition of the directive made the rules related to requirements to the exercise of family reunification (article 7) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

Romania became EU member starting with January 1st, 2007.

*Please use one box per object and duplicate it if necessary*

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<td>Requirements for the exercise of family reunification (a. 7)</td>
<td>Explain the situation after transposition (to evaluate the impact of the directive, take also into consideration national norms which have been adopted before the deadline for transposition or even before the adoption of the directive in cases of Member States having amended their national legislation in advance in view of the directive. Indicate the precise date of adoption of the change)</td>
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</tr>
<tr>
<td>Explain the situation before transposition</td>
<td></td>
<td>• More favourable than previous national rules</td>
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Q.88 E Did the transposition of the directive made the rules related to margins of manoeuvre awarded to Member States (a. 5 § 5, 17, C-540/03) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below
Romania became EU member starting with January 1st, 2007.

Please use one box per object and duplicate it if necessary

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</table>
| Limitation of margins of manœuvre (a. 17, a.5 §5, C-540/03) | Explain the situation after transposition (to evaluate the impact of the directive, take also into consideration national norms which have been adopted before the deadline for transposition or even before the adoption of the directive in cases of Member States having amended their national legislation in advance in view of the directive. Indicate the precise date of adoption of the change) | Complete this box by keeping the right appreciation and deleting the two others:  
- More favourable than previous national rules |
| Explain the situation before transposition | Complete this box by keeping the right appreciation and deleting the other one:  
- In line with the directive |

Q.88 F Did the transposition of the directive made the rules related to integration objectives and criterions more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below
Romania became EU member starting with January 1\textsuperscript{st}, 2007.

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<tr>
<td>Attention draw upon integration objectives (considérant 15) and criterions of integration (a.4 §1 dernier alinéa, a. 7 §2)</td>
<td>Explain the situation after transposition (to evaluate the impact of the directive, take also into consideration national norms which have been adopted before the deadline for transposition or even before the adoption of the directive in cases of Member States having amended their national legislation in advance in view of the directive. Indicate the precise date of adoption of the change)</td>
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- More favourable than previous national rules
- In line with the directive

Q.89 From your point of view, did the transposition of the directive imply other interesting changes for the third national country regarding other elements than the ones mentioned in the previous question. Make also a comparison with the standard of the directive in the last column of the table below
Romania became EU member starting with January 1st, 2007.

If they want to do so, the thematic coordinators should complete this question by indicating the number of examples that they ask the national reporter to give.

Please use one box per object and duplicate it if necessary

<table>
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<tr>
<th>OBJECT (to be precisely indicated by the national rapporteur)</th>
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<td></td>
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</tr>
</tbody>
</table>

Q.89. A. Mention if there is a general tendency to just copy the provisions of the directive into national legislation without redrafting or adaptation them to national circumstances.

☐ NO

X YES

Q.89.B. If yes, please indicate if this general tendency may or not create problems (for example difficulties of implementation, risk that a provision remain unapplied).

X NO

☐ YES

Q.89.C. If yes, give some of examples: ---------

Q.89.D. If only some provisions of the directive have been copied and if this may create any problem, please quote them and explain the problem.

-----------
Q.90. Quote interesting decisions of jurisprudence related to the directive, its transposition or implementation (so this question concerns in principle decisions later that the directive, but previous ones might be quoted if relevant). Quote in particular decisions of supreme Courts; limit yourself to the appeal Courts and ignore the first resort if there are too many decisions at this level, unless there is a certain jurisprudence made of a group of decisions.

There is no relevant jurisprudence - Romania became EU member starting with January 1st, 2007.

Please use one box per decision and duplicate it if necessary

<table>
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<tr>
<th>DECISION OF SUPREME COURTS</th>
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<tr>
<td>DECISION(S) IN FIRST RESORT</td>
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<td>SUMMARY OF CONTENT:</td>
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ANY SUPPLEMENTARY COMMENT ABOUT THE TREND OF THE JURISPRUDENCE:

Q.91 Specify if there are or not problems with the translation of the text of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated.

[X] There are no problems with the translation of the directive

[ ] There are some problems with the translation of (indicate the number of the articles concerned) of the directive.

Explain the difficulties that this could create: ---------
Q. 92 ANY OTHER INTERESTING ELEMENT

Q.92 A. Following your personal point of view, mention from the point of view of third country nationals and/or from the Member State any interesting or innovative practice in your Member State

*Please use one table per practice and duplicate it if necessary*

<table>
<thead>
<tr>
<th>OBJECT OF THE PRACTICE</th>
<th>EXPLANATIONS</th>
</tr>
</thead>
</table>

Q.92 B. Please add here any other interesting element in your Member State which you did not had the occasion to mention in your previous answers

Observation: The evolution of the legislation, the jurisprudence and the practical aspects are not relevant, as Romania became an EU member only from January 1st, 2007.
The person in the team of thematic coordination in charge of this directive that you can contact if you have a question or need help when completing this questionnaire is: Yves Pascouau, + 33 5 59 57 41 20, yves.pascouau@univ-pau.fr

COMMENTARIES

1. Council directive 2003/86 on the right to family reunification faced hard negotiations requiring the presentation of revised proposals from the Commission before final adoption in 2003. The European Court of Justice rejected in June 2007 an action for annulment introduced by the European Parliament against the Council directive (C-540/03).

2. Transposition of the directive must be assessed regarding the nature of the provision concerned. So as to help you, those provisions are coloured within the questionnaire as follows: obligatory provision (Q.XX), optional provision (Q.YY), provision which set up a derogation (Q.ZZ)

3. The Court of justice has defined the margins of discretion awarded to the member States even in situations where the directive allows the member States to depart from the directive. The Court states: 
   "Article 4(1) of the Directive imposes precise positive obligations, with corresponding clearly defined individual rights, on the Member States, since it requires them, in the cases determined by the Directive, to authorise family reunification of certain members of the sponsor’s family, without being left a margin of appreciation" (cons. 60). 
   "Note should also be taken of Article 17 of the Directive which requires Member States to 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 country of origin. As is apparent from paragraph 56 of the present judgment, such criteria correspond to those taken into consideration by the European Court of Human Rights when it reviews whether a State which has refused an application for family reunification has correctly weighed the competing interests" (cons. 64) 
   The fact that the concept of integration is not defined cannot be interpreted as authorising the Member States to employ that concept in a manner contrary to general principles of Community law, in particular to fundamental rights. The Member States which wish to make use of the derogation cannot employ an unspecified concept of integration, but must apply the condition for integration provided for by their legislation existing on the date of implementation of the Directive in order to examine the specific situation of a child over 12 years of age arriving independently from the rest of his or her family" (cons. 70).

4. The main difficulty according to the transposition of the directive relies on the systematic opportunities offered to member States to depart from the provisions of the directive when applying it.

5. Article 19 indicates which themes where the most sensitive during the negotiations of the Directive (art. 3, 4, 7, 8 and 13).
1. NORMS OF TRANSPOSITION AND JURISPRUDENCE

Q.1.A. Identify the MAIN (because of its content) norm(s) of transposition and indicate its legal nature

This table is about: [X] a text already adopted [ ] a text which is still a project to be adopted

| TITLE: The Act on the Stay of Aliens and on Amendments and Modifications to Some Other Acts |
| DATE: 13 December 2001 |
| NUMBER: 48/2002 |
| DATE OF ENTRY INTO FORCE: 1 April 2002 |
| PROVISIONS CONCERNED: Articles 14, 18, 23, 24(2)(3)(4)c, 25, 35, 36, 43 (1)f, 43 (5), 45, 45b, |
| LEGAL NATURE: |
| [X] LEGISLATIVE: |
| [ ] REGULATION: |
| [ ] CIRCULAR or INSTRUCTIONS: |

This table is about: [X] a text already adopted [ ] a text which is still a project to be adopted

| TITLE: The Act Amending the Act on Stay of Aliens and on Amendments of Some Acts as Amended, and on Amendments of Some Acts |
| DATE: 8 November 2005 |
| NUMBER: 558/2005 |
| DATE OF ENTRY INTO FORCE: 12 December 2005 |
| PROVISIONS CONCERNED: Article I. Points 4, 24, 25, 28, 46, 65 |
| LEGAL NATURE: |
| [X] LEGISLATIVE: |
| [ ] REGULATION: |
| [ ] CIRCULAR or INSTRUCTIONS: |

Q.1.B. List the others norms of transposition by order of importance of their legal nature (first laws, secondly regulations; thirdly circulars or instructions):

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)
| TITLE: The Act on Services of Employment (as amended) |
| DATE: 4 December 2003 |
| NUMBER: 5/2004 |
| DATE OF ENTRY INTO FORCE: 1 February 2004 |
| PROVISIONS CONCERNED: Articles 22 (7)b) |
| LEGAL NATURE (indicate a cross in the right box): |
| ☑ LEGISLATIVE |
| ☑ REGULATION |
| ☑ CIRCULAR OR INSTRUCTIONS |

| TITLE: The Act on Administrative Charges (as amended) |
| DATE: 22 June 1995 |
| NUMBER: 145/1995 |
| DATE OF ENTRY INTO FORCE: 1 August 1995 |
| PROVISIONS CONCERNED: The Scale of Administrative Charges: Part II – Point 24 a) 5 and c) 5; Part XVIII. Point. 422 a) 5 |
| REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: 49/1995 p. 1410 |
| LEGAL NATURE (indicate a cross in the right box): |
| ☑ LEGISLATIVE |
| ☑ REGULATION |
| ☑ CIRCULAR OR INSTRUCTIONS |

| TITLE: The Act on Socio-legal Protection of Children and on Social Tutelage and on Amendments of Some Acts |
| DATE: 25 May 2005 |
| NUMBER: 305/2005 |
| DATE OF ENTRY INTO FORCE: 1 September 2005 |
| PROVISIONS CONCERNED: Articles 50(5) |
| LEGAL NATURE (indicate a cross in the right box): |
| ☑ LEGISLATIVE |
| ☑ REGULATION |
| ☑ CIRCULAR OR INSTRUCTIONS |

| TITLE: Administrative Procedure Code (as amended) |
| DATE: 29 June 1967 |
| NUMBER: 71/1967 |
| DATE OF ENTRY INTO FORCE: 1 January 1968 |
| PROVISIONS CONCERNED: all provisions are relating to the procedure after appeal |
| REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: 27/1967, page 284 |
| LEGAL NATURE (indicate a cross in the correct box): |
| ☑ LEGISLATIVE: |
| ☑ REGULATION: |
| ☑ CIRCULAR or INSTRUCTIONS: |
Q.2. THIS QUESTION IS IN PRINCIPLE ONLY FOR FEDERAL OR ASSIMILATED MEMBER STATES LIKE AUSTRIA, BELGIUM, GERMANY, ITALY, SPAIN

Q.2.A. Explain which level of government is competent to adopt the norms of transposition.

Please include your answer in the tables below

<table>
<thead>
<tr>
<th>LEGISLATIVE RULES</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</td>
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<td>COMPETENCES OF THE COMPONENTS:</td>
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<td>EXPLANATIONS IF NECESSARY:</td>
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</table>

Q.2.B. In case, explain if the federal structure and the distribution of competences between the different levels pose any problem or difficulty regarding the transposition and/or the implementation of the directive.

Q.3. Explain which authorities are competent for the practical implementation of the norm of transposition by taking the decisions in individual cases.

Please use one table per competence concerned and duplicate it if necessary

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Procedure on granting the residence permit (permanent residence/ temporary residence/ tolerated stay) based on the family reunification</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Ministry of Interior of the Slovak Republic</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td>Local Departments of the Alien Police</td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister):</td>
<td>All of them are State Authorities under the subordinations of the Ministry of Interior.</td>
</tr>
<tr>
<td>COMPETENCE CONCERNED:</td>
<td>Procedure on granting visas or residence permits in the third country</td>
</tr>
<tr>
<td>----------------------</td>
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</tr>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Ministry of Foreign Affairs of the Slovak republic</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>Embassies or Consulates of the Slovak Republic</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td></td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
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<th>COMPETENCE CONCERNED:</th>
<th>Procedure on evidence of the temporary residence</th>
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<tr>
<th>COMPETENCE CONCERNED:</th>
<th>Asylum Procedure (where it is determined, whether any kind of international protection is needed)</th>
</tr>
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<td>CENTRAL MINISTRY OF:</td>
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</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>Migration Office of the Ministry of Interior</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td></td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
<td></td>
</tr>
<tr>
<td>COMPETENCE CONCERNED:</td>
<td>Appeal procedure (2nd instance procedure)</td>
</tr>
<tr>
<td>----------------------</td>
<td>------------------------------------------</td>
</tr>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Ministry of Interior of the Slovak republic</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td>The Directory of the Alien and Border Police</td>
</tr>
</tbody>
</table>

**Q.4.A.** Has the main regulation foreseen explicitly by the main norm of transposition already been adopted or not:

- [ ] YES
- [x] NO

There is no central regulation foreseen by the central norm of transposition.

**Q.4.B.** If the main norm(s) of transposition foresees the adoption of one or several regulations, indicate if they have all been adopted:

- [ ] YES
- [ ] NO

If NO, please indicate the missing text(s) in the table below

*Please use one line per missing text and duplicate it if necessary*

<table>
<thead>
<tr>
<th>MISSING TEXTS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>INDICATE HERE THE MISSING TEXTS</strong></td>
</tr>
</tbody>
</table>

Add if necessary some explanations (specify in particular if the missing texts are at least under preparation or foreseen in the very near future):
AIM (ARTICLE 1)

The purpose of the Directive is to determine the conditions for the exercise of the right to family reunification. In case C-540/03, the Court of justice recognizes that, in some cases, member States do not have any margin of appreciation to grant the right to family reunification.

Q.5 – Is family reunification considered as a right in your Member State?

☐ OUI  ☐ NON

Please explain

According to the Article 19 (2) of the Constitution of the Slovak Republic everyone shall have the right to be free from unjustified interference in his or her privacy and family life.

For the purposes of family reunification with a foreigner it is possible to apply for different types of residence permit.

1. In the case, that Slovak citizen or a foreigner with permanent residence in Slovakia asks for family reunification, under fulfilling other conditions he/she can receive the permanent residence permit;
2. Granting the temporary residence permit in accordance to this Directive;
3. Also a permit for tolerated stay for the purpose of family reunification can be issued if it is required to respect his/her private or family life (with the reference to Article 8 of the European Convention on Protection of Human Rights and Fundamental Freedoms);

Q.5. A – Are there any figures available relating to the exercise of the right to family reunification between 2002 and 2006? If yes, what are the trends, including nationality assessment? no

DEFINITIONS (ARTICLE 2)

SCOPE (ARTICLE 3)

The scope of the Directive is defined by article 3. We recall that:

- § 1 "reasonable prospect..." aims at excluding persons residing on a temporary basis (stagiaires, etc...)
- European citizens are excluded (§ 3)
- Comparison with existing legislation is of importance so as to assess the added value of the harmonization process (§ 5)

Q.6. Period of validity of the sponsor’s residence permit:
Q.6. A. Is the period of validity of the sponsor’s residence permit of one year or more according to article 3 § 1 of the Directive?

☐ OUI

☐ NON

Q.2.B. Quote precisely the period enshrined in national law:

As it is stated in the provision of Article 17 § 3 of the Aliens Act upon an alien’s request, a police department may grant a temporary stay permit for the time necessary for achieving the purpose of stay, however maximally for two years, unless otherwise stipulated by this Act.

Rem. According to the provision above you can see that there is no minimum time limit for the temporary residence permit enacted only an maximum limit which is 2 years.

The second part of the Article 17 § 3 of the Aliens Act sequentially enacts that in the case of an alien with a residence in the European Economic Area to whom the stay under Article 38 (1) b) (hereinafter “the long-term stay”) applies, upon his/her request, the police department shall grant a temporary stay permit for the time necessary for achieving the purpose of stay, however maximally for five years, provided that the requirements under this Act have been fulfilled.

The provision of the Article 38 (1) b) enshrines the period of validity of the sponsor’s residence permit that is 5 years.

According to the Article 38 (1) b) “upon request a police department shall grant a subsequent permit to an alien, who

1. was granted a temporary stay permit for the purpose of employment, provided that his/her previous continuous temporary stay immediately before the application’s filing has lasted for at least five years,
2. was granted a temporary stay permit for the purpose of undertaking business, provided that his/her previous continuous temporary stay immediately before the application’s filing has lasted for at least five years,
3. is a family member in the extent determined in Section 23 Paragraph 1 Subparagraphs b) - e) (→ a single child younger than 18 years, an unprovided-for child older than 18 years, a direct relative younger than 18 years or single parent dependent on the care of an alien with a temporary stay permit) of an alien with a temporary stay permit for the purpose of employment or undertaking business and who was granted a temporary stay permit for at least five years immediately before the application’s filing,
4. is a spouse of an alien with a permanent residence permit and who was granted a temporary stay permit for at least five years immediately before the application’s filing, or who
5. is a single parent dependent on the care of an alien with a permanent residence permit and was granted a temporary stay permit for at least five years immediately before the application’s filing.

Q.6.C. How does your Member State translate in national law the requirement for the sponsor to have "reasonable prospects of obtaining the right of permanent residence" (a 3 § 1)?
In national law the wording was not transposed exactly in that form. It was transposed into the text and sense of the provision the Article 17 § 3 of the Aliens Act (see above) according to which in the case of an alien with a residence in the European Economic Area to whom the stay under Article 38 § 1 b) applies (hereinafter “the long-term stay”), upon his/her request, the police department shall grant a temporary stay permit for the time necessary for achieving the purpose of stay, however maximally for five years, provided that the requirements under this Act have been fulfilled.

According to the Article 38 § 1 b) of the Act on the Stay of Aliens Upon request a police department shall grant a subsequent permit to an alien who

1. was granted a temporary stay permit for the purpose of employment, provided that his/her previous continuous temporary stay immediately before the application’s filing has lasted for at least five years,
2. was granted a temporary stay permit for the purpose of undertaking business, provided that his/her previous continuous temporary stay immediately before the application’s filing has lasted for at least five years,
3. is a family member of an alien with a temporary stay permit for the purpose of undertaking business of employment and who was granted a temporary stay permit for at least five years immediately before the application’s filing,
4. is a spouse of an alien with a permanent residence permit and who was granted a temporary stay permit for at least five years immediately before the application’s filing, or who
5. is a single parent dependent on the care of an alien with a permanent residence permit and was granted a temporary stay permit for at least five years immediately before the application’s filing.

As I mentioned in Q.5 there are different types of residence permit for the purpose of family reunification. One of them is a permanent residence permit. According to the Article 34 § 2 upon request, a police department may first grant a permanent residence permit for five years (hereinafter "the first permit"). After the lapse of five years, a police department may grant, upon another request, a permanent residence permit for an unlimited period of time (hereinafter "the subsequent permit").

First Permit (– modified by the Article 35 of the Aliens Act) might be granted by a police department to an alien

a) who is a spouse of a citizen of the Slovak Republic with permanent residence on the territory of the Slovak Republic or a dependent direct relative of a citizen of the Slovak Republic with permanent residence on the territory of the Slovak Republic,
b) who is a child younger than 18 years placed in custody of an alien, who is a spouse of a citizen of the Slovak Republic with permanent residence on the territory of the Slovak Republic,
c) who is a single child younger than 18 years of an alien with a permanent residence permit or who is a child younger than 18 years placed in custody of an alien with a permanent residence permit,
d) who is an unprovided-for child older than 18 years of an alien with a permanent residence permit, or
e) when it is in the interest of the Slovak Republic.

A police department shall grant the first permit to an alien who is a single child younger than 18 years placed in custody of an alien who is a spouse of a citizen of the Slovak Republic with permanent residence on the territory of the Slovak Republic, or who is a single child younger than 18 years placed in custody of an alien with a permanent residence permit, provided that a consent to the maintaining of family unity is given also by the parent to whose custody this child was not placed and who is entitled to meet with this child.

Subsequent Permit (- modified by Article 38 of the Aliens Act)

Upon request a police department shall grant a subsequent permit to an alien, a) who was granted the first permit,
b) who
5. was granted a temporary stay permit for the purpose of employment, provided that his/her previous continuous temporary stay immediately before the application’s filing has lasted for at least five years,
6. was granted a temporary stay permit for the purpose of undertaking business, provided that his/her previous continuous temporary stay immediately before the application’s filing has lasted for at least five years,
7. is a family member in the extent determined in Article 23 Paragraph 1 Subparagraphs b) - e)305 of an alien with a temporary stay permit under Article 19 (undertaking business) or Section 20 Paragraph 1 (Employment) and who was granted a temporary stay permit for at least five years immediately before the application’s filing.
8. is a spouse of an alien with a permanent residence permit and who was granted a temporary stay permit for at least five years immediately before the application’s filing, or who
5. is a single parent dependent on the care of an alien with a permanent residence permit and was granted a temporary stay permit for at least five years immediately before the application’s filing.

d) who is a child younger than 18 years of an alien with a subsequent permit;

Rem. In all cases there are more conditions noted that must be fulfilled to receive a permanent residence permit.

Q.7. – Members of the family concerned:

Q7. A. Are they third country nationals as required by article 3 § 1 of the Directive ?

☐ OUI
☐ NON

If not, explain

Q.7.B. How has your Member State translated in national law the wording of "whatever status" included in article 3 § 1 of the Directive?

In national law the wording was not translated exactly in that form but into the text and sense of the provision the Article 17 § 3 of the Act on the Stay of Aliens. See above.

Q.8 – Did the transposition of the Directive in your Member state breached provisions of international law more favourable to individuals (a 3 § 4)?

☐ OUI
☐ NON

305 According to Article 23 § 1 of the Aliens Act a police department may grant a temporary stay permit for the purpose of maintaining family unity to an alien who is
b) a single child younger than 18 years of aliens with a temporary stay permit or of an alien with a temporary stay permit or his/her spouse or of a person granted asylum, or of a spouse of a person granted asylum, who takes care of the child based on law or based on a decision of the competent authority,
c) an unprovided-for child older than 18 years of an alien with a temporary stay permit or his/her spouse,
d) a direct relative of a person granted asylum younger than 18 years,
e) a single parent dependent on the care of an alien with a temporary stay permit under Section 19 (undertaking business) or Section 20 Paragraph 1 (employment) or on the care of an alien with a permanent residence permit;
Q.9 – If yes, are those provisions based on:

Q.9.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?

☐ OUI
☐ NON

Specify which provisions

Q.9.B - The European Social Charter of 18 October 1961 (a 3 § 4)?

☐ OUI
☐ NON

Specify which provisions

Q.9.C. The amended European Social Charter of 3 May 1987 (a 3 § 4)?

☐ OUI
☐ NON

Specify which provisions


☐ OUI
☐ NON

Specify which provisions

Q.10 – Does the transposition of the Directive affect national provisions more favourable to individuals (a 3 § 5)?

☒ OUI
☐ NON

If yes, please specify which provisions

Firstly, the provision modifying the period of the temporary residence is more favourable to the individual. According to the national provisions before the transposition of the Directive the permit for the temporary residence should be issued for the time necessary for achieving the purpose of stay, however maximum for one year, unless otherwise stipulated by that Act.
Before the transposition of the Directive there also was a condition of the duration of marriage before submitting an application for family reunification. According to the Aliens Act the marriage had to last for at least one year but there were some exceptions for example in a case of foreigner with a temporary residence permit for the purpose of studies, etc.

It also should be mentioned that in the case of family reunification of the spouse, a child or parents of a foreigner with the residence permit in Slovakia before submitting the application for family reunification he/she had to have a residence permit in Slovakia in duration for more than one year which should continue for another 2 years.

**Beneficiaries (Article 4)**

- Article 4 of the Directive contains numerous "may clauses". It is therefore important to pay attention on the way Member States use them and on the legal modalities adopted thereof.

- Article 4 § 1 a) and b) enacts a right to family reunification for some members of the sponsor's family. The Member State does not have any margin of discretion regarding those persons.

- Article 4 § 1 last indent foresee one derogation regarding child over 12 years on the basis of an integration criterion. This is one of the most sensitive questions encompassed by the directive beside the issue of the limit of age in § 6.

- Regarding article 4 § 6, the Court states "It does not matter that the final sentence of the contested provision provides that the Member States which decide to apply the derogation are to authorise the entry and residence of children in respect of whom an application is submitted after they have reached 15 years of age 'on grounds other than family reunification'. The term 'family reunification' must be interpreted in the context of the Directive as referring to family reunification in the cases where family reunification is required by the Directive. It cannot be interpreted as prohibiting a Member State which has applied the derogation from authorising the entry and residence of a child in order to enable the child to join his or her parents". (cons. 86) The Court adds " Article 4(6) of the Directive must, moreover, be read in the light of the principles set out in Article 5(5) thereof, which requires the Member States to have due regard to the best interests of minor children, and in Article 17, which requires them to take account of a number of factors, one of which is the person’s family relationships" (cons. 87)

**Q.11** – Does your national law recognize the right to family reunification to:

**Q.11. A** – The sponsor's spouse (a. 4 § 1 a)?

- OUI
- NON

**Q.11. B** - Minor children of the sponsor and of his/her spouse (a. 4 § 1 b)?

- OUI
Q.11.C. Minor children adopted of the sponsor and of his/her spouse (a. 4 § 1 b)?

☐ OUI

□ NON

Q.11.D. Minor children of the sponsor (a. 4 § 1 c)?

☐ OUI

□ NON

Q.11. E. If yes, does your national law foresee that the sponsor shall have children custody and children are dependant on him or her?

☐ OUI

□ NON

The provision of Article 23 of the Act on the Stay of Aliens providing the transposition of the Article 4 of the Directive mentions that the sponsor shall have children custody but it did not exactly involve the condition of “being dependant of the sponsor”.

On the other hand the national law presumes such a condition as financial dependence – according to the Article 25 of the Act on the Stay of Aliens an alien with a long-term residence permit with whom an alien requests maintaining of family unity must prove fulfilment of the requirements as financial coverage of the stay and secured accommodation in the course of the temporary stay.

Q.11 F. Minor children adopted of the sponsor (a 4 §1.c)?

☐ OUI

□ NON

Q.11. G. If yes:

h. does your national law foresee that the sponsor shall have children custody and children are dependant on him or her?

☐ OUI

□ NON

See the point Q.11E

g.g. Does national law provide that those children shall be 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"
Q.11. H. Minor children of the spouse (a 4 §1.d.)?

☐ OUI
☐ NON

Specify if necessary the proofs required

Q.11. I. If yes, does your national law foresee that the spouse shall have children custody and children are dependant on him or her?

☐ OUI
☐ NON

See the point Q.11E

Q.11. J. Minor children adopted of the spouse (a 4 §1.d.)?

☐ OUI
☐ NON

Q.11. K. If yes, does your national law foresee that the spouse shall have children custody and children are dependant on him or her?

☐ OUI
☐ NON

Specify if necessary the proofs required

k. Does national law provide that those children shall be 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"?

☐ OUI
☐ NON

Specify if necessary the proofs required

Q.12 – Has your Member State transposed the option opened by article 4 § 1 c:
Q.12A. To authorise reunification of minor children of the sponsor – including also adopted children – of whom custody is shared (a 4 §1.c)?

☐ OUI
☐ NON

The exact version of the Article 23 (2) of the Act on Asylum in which the option opened by article 4 § 1 c/ is transposed “A police department shall grant a temporary stay permit for the purpose of maintaining family unity to an alien who is a single child younger than 18 years of an alien with a temporary stay permit or his/her spouse, provided that a consent to the maintaining of family unity is given also by the parent to whose custody this child was not placed and who is entitled to meet with this child.”

Q.12.B. If yes, has your legislation transposed the condition that the other party sharing custody has given his or her agreement (a 4 §1.c)?

☐ OUI
☐ NON

See above.

Q.13 – Has your Member State transposed the option opened by article 4 § 1 d):

Q.13.A. to authorise reunification of minor children of the spouse – including also adopted children – of whom custody is shared (a 4.1.d. in fine)?

☐ OUI
☐ NON

See point Q.12A

Q.13 B. If yes, has your legislation transposed the condition that the other party sharing custody has given his or her agreement (a 4.1.d)?

☐ OUI
☐ NON

See point Q.12A

Q.14 – In any case referred to in questions 7 to 9, is the age of the minor children below the age of majority set up by the law of your Member State (a.4 §1, second indent)?

☐ OUI
☐ NON
According to a national law the age of majority is 18 years. If the minor reaches the age of 16 years he/she can get married under a condition of a Court’s approval. In such cases it leads to consider the minors as adults.

**Q.15** – In any case referred to in questions 7 to 9, has the prohibition of marriage of minor children been transposed (a.4 §1, second indent)?

[ ] OUI
[ ] NON

With an exception in the case on minors who reach an age of 16 years. Such a minor can apply for a permit to get marry on the Court and after the Court approve it and issue the permit the minor can get married. The consequence of the minor’s marriage is that the minor is considered as an adult person.

**Q.16** – Is the derogation set up in article 4 § 1 last indent relating to the conditions for integration of children over 12 years arrived independently from the rest of the family used by your Member State?

[ ] OUI
[ ] NON

How the criterion "arrives independently from the rest of his/her family" has been transposed in your national legislation?

**Q.17** – If yes, did this integration condition already exist in your national legislation before the date of transposition of the Directive?

[ ] OUI
[ ] NON

**Q.18** – Describe briefly the content of this condition, the date of its creation and the conditions of its examination

**Q.19** – Are the children of refugees required to an integration test by your Member State (in contradiction with article 10 § 1)?

[ ] OUI
[ ] NON

If yes, explain

**Q.20** – Does your Member State authorise:

**Q.20 A** – Reunification of first-degree relatives in the direct ascending line of the sponsor (a 4§2 a)?

[ ] OUI
[ ] NON
Q.20 B – If yes, shall they be dependant and not enjoy proper family support in the country of origin?

☐ OUI

☒ NON

Those criterions are transposed into the Article 23 (1) e) of the Act on the Stay of Aliens. According to this Article a police department may grant a temporary stay permit for the purpose of maintaining family unity to an alien who is a single parent dependent on the care of an alien with a temporary stay permit for the purpose of employment or undertaking business or on the care of an alien with a permanent residence permit.

According to that provision the parent must be single what he shall prove by a Death Certificate of his/her spouse, confirmation on divorce or statutory declaration of his/hers. Also the parent shall attach any documents proving his/her dependence on the sponsor (for example a confirmation on health condition)

Q. 20.C. Reunification of first-degree relatives in the direct ascending line of the spouse (a 4§2 a)?

☐ OUI

☒ NON

Q.20.D. If yes, shall they be dependant and not enjoy proper family support in the country of origin?

☐ OUI

☐ NON

Q.20.E. Reunification of adult unmarried children of the sponsor? (a 4§2 b) ?

☒ OUI

☐ NON

According to the Article 23 (1) c) of the Act on the Stay of Aliens a police department may grant a temporary stay permit for the purpose of maintaining family unity to an alien who is an unprovided-for child older than 18 years of an alien with a temporary stay permit or his/her spouse.

Q.20.F. If yes, does the national legislation impose that those adult unmarried children of the sponsor are objectively unable to provide for their own needs on account of their state of health (a 4 §2 b) ?

☒ OUI

☐ NON
Criterions as "objectively" and "unable to provide for their own needs" were united in the wording “unprovided-for”. The concerned provision refers to the Article 3 of the Act No. 600/2003 on the Child Allowance that states the definition of “unprovided-for child”. According to this Act an unprovided-for child is a child until finishing compulsory school attendance; or not older than 25 years, if

1. The child is continuously preparing for the profession by study,
2. The child who can not continuously prepare his/herself for the profession by study or be gainfully employed because of sickness or injury.

An unprovided-for child according to that Act also is a child that is not able to prepare him/herself for the profession by running study or be gainfully employed because his/her state of health is adverse for a long-term, not older than 18 years (which is the age of majority).

Q.20. G. Does your Member State authorise reunification of adult unmarried children of the spouse (a 4§2 b)?

☐ OUI
☐ NON

The statement mentioned above concerns.

Q.20.H. If yes, does the national legislation impose that those adult unmarried children of the sponsor are objectively unable to provide for their own needs on account of their state of health (a 4 §2 b) ?

☐ OUI
☐ NON

The statement mentioned above concerns.

Q.20. I. Did your Member state use the by law or regulation norms to implement article 4 § 2 a et b?

☐ OUI
☐ NON

Q.21 – Does your Member State authorise reunification of the unmarried partner of the sponsor, being a third country national (a 4 §3)?

☐ OUI
☒ NON

Q.22 – If yes:

Q.22 A – This partnership shall be based on a duly attested stable long term relationship?

☐ OUI
If yes, specify how your Member State assess this situation

Q.22 B – This partnership shall be registered?

☐ OUI
☐ NON

Q.23 – Does your national law consider the registered partner as the husband/spouse (a 4 §3 alinéa 2)?

☐ OUI
☐ NON

Q.24 – Does your Member State authorise:

Q.24. A – Reunification of minor children of the partner, including adopted children (a 4§3)?

☐ OUI
☐ NON

Q. 24. B – Reunification of adult unmarried children of the partner, including adopted children (a 4§3)?

☐ OUI
☐ NON

Q.25 – Does your Member State allow reunification of adult unmarried children who are objectively unable to provide for their own needs on account of their state of health (a 4§3)?

☐ OUI
☐ NON

If yes, specify how the conditions, and more particularly the "objectivity", are assessed.

Q.26 – Did your Member state use the by law or regulation norms to implement article 4 § 3?

Q.27 – Is the prohibition of polygamous marriage enshrined in your national legislation (a. 4§4)?

☐ OUI
Q.28 – Does your Member State limit family reunification of minor children of a further spouse and the sponsor (article 4§4 dernier alinéa,)?

☐ OUI
☒ NON

Q.29 – Does your Member State use the option set up by article 4 § 5 requiring the sponsor and his/her spouse to be of a minimum age of 21 years old before reunification?

☐ OUI
☒ NON

Please

Q.30 – If yes,

Q.30 A – What is the age required?
This is regulated in the Article 1 (1) a) of the Act on the Stay of Aliens and the required age is 18 years old (the age of majority in the Slovak republic)

Q.30 B – Is the derogation founded on integration criteria and/or prevention of forced marriage?

Q.31 – Does your Member State use the derogation of article 4 § 6 by requesting that the applications concerning family reunification of minor children have to be submitted before the age of 15?

☐ OUI
☒ NON

There is not such derogation in the transposed norm – Act on the Stay of Aliens. The applications concerning family reunification of minor children can be submitted before the age of majority which is the age of 18 years.

Q.32 – If yes, was it provided by existing legislation on the date of implementation of the directive?

Q.33 – If the application is not introduced before the age of 15, do Member States authorise entry and residence on grounds other than family reunification?

☐ OUI
☒ NON

Which grounds and which conditions?
PROCEDURE (ARTICLE 5)

We draw attention on the major importance given by the Court of justice regarding § 5 relating to the best interest of minor children.

Q.34 – Did your Member State institute a procedure regarding family reunification (a 5 §1) ?

☐ OUI
☐ NON

Q.35 – If yes,

Q.35. A – Which authorities are in charge of this issue?

The Ministry of Interior of the Slovak Republic - Departments of the Aliens Police - if the application of an alien is filed in Slovakia.

Ministry of Foreign Affairs of the Slovak republic - Embassies and Consulates of the Slovak Republic – if the application is filed at a foreign mission of the Slovak Republic in foreign.

Q.35. B – Are NGO’s associated to this procedure?

☐ OUI
☒ NON

Rem. On behalf of the foreigner some of NGO’s could be involved in the procedure regarding family reunification. The right on taking part in the procedure is outgoing from the full power given by a foreigner to the NGO’s member (mostly a lawyer) so the NGO’s member becomes a party to the procedure.

Q.35. C – Is the application submitted by the sponsor or by family members?

An application for a temporary stay permit shall be filed by an alien personally. There is an exception if the alien cannot file the application personally due to being paralyzed. In case like that the application for a temporary stay permit may be filed by an alien’s family member with whom an alien requests maintaining of family unity (a sponsor).

In the case the applicant is a minor under 18 years on behalf of the minor his/her legal representative is acting in the procedure; on behalf of a minor who has no legal representative an established guardian is acting.

Q.35. D – Is this procedure exclusive from other possibilities to grant family reunification?

☒ OUI
☐ NON
Q. 35. E – Was this procedure existing before the adoption of Directive 2003/86?

[ ] OUI
[ ] NON

Q.36 – Which documentary evidence are required to prove (a 5 §2):

According to the Article 25 of the Act on Aliens the foreigner shall be obliged to attach to an application for a temporary stay permit

1. two current photographs of the size 3 x 3.5 cm made of the same negative;
2. documents not older than 90 days confirming
   a) the purpose of stay;
   b) his/her integrity; this shall not apply in the case of a foreigner younger than 14 years;

The foreigner/ the sponsor with whom a foreigner requests maintaining of family unity (the sponsor) must prove fulfilment of these conditions:

   c) financial coverage of the stay; the financial coverage of his/her stay shall be proven in the amount of the minimum wage per each month of stay;

As a document proving the financial coverage it is considered:

1) a state of bank account of the foreigner’s name or
2) an affidavit of the applicant that he would provide this financial and material support to the family member during his/her stay on the territory of the Slovak Republic documented by the state of bank account or the confirmation of the employer on the amount of salary;

   d) secured accommodation in the course of the temporary stay;
   f) a consent given by the parent to whose custody the single child younger than 18 years the foreigner with a temporary stay permit or his/her spouse applies for the maintaining the family unit with was not placed and who is entitled to meet with this child.

3. a document issued by the Birth Registry in the case of an alien who applied for a temporary stay permit under Section 23; in the case of a single child younger than 18 years, a child younger than 18 years placed in custody of an alien, unprovided-for child, a single parent dependent on the care of an alien or a dependant person pursuant to an international treaty also by a document confirming this fact;
4. a document confirming his/her health insurance for the time period of his/her stay on the territory of the Slovak Republic and a document confirming that he/she does not suffer from a disease which endangers the public health;

Rem. A foreign mission or police department may request a foreigner to submit a document not older than 30 days confirming that the foreigner will not constitute a burden to the social security system of the Slovak Republic.

Should a foreigner file an application for a temporary stay permit for the purpose of maintaining family unity with a person granted asylum (a recognised refugee) within three months from granting of the asylum, he/she shall submit, together with the application, only a travel document and a document confirming their relationship or other proof of existence of such relationship.

Q.36. A – Family relationships according to article 4?
1. In the case the applicant is the sponsor’s spouse a Marriage Certificate is required.
2. In the case of a minor child of the sponsors (foreigners with the temporary residence permit in Slovakia) the Certificate of Birth is required.
3. In the case of a minor child of a foreigner with a temporary residence permit in Slovakia who has the minor in personal care according to the legal enactment or the decision of competent authority the Police Department requires a Certificate of Birth and a photocopy of the decision of the competent authority on farming out the minor.
4. In the case of a minor child of a spouse of a foreigner with a temporary residence permit in Slovakia if the spouse has the minor in personal care according to the legal enactment or the decision of competent authority the Police Department requires a Certificate of Birth, photocopy of the decision of the competent authority on farming out the minor and the Marriage Certificate of the spouse and foreigner with the temporary residence permit.
5. In the case of unprovided child older than 18 years of a foreigner with temporary residence permit or his/her spouse the Certificate of Birth.

In the case of a single child younger than 18 years, a child younger than 18 years placed in custody of a foreigner, unprovided-for child, a single parent dependent on the care of an alien or a dependant person pursuant to an international treaty also by a document confirming this fact.

Q.36. B – Accommodation conditions laid down in article 7? Yes
Documents not older than 90 days confirming secured accommodation in the course of the temporary stay shall be attached to an application for a temporary stay permit.

As documents confirming the accommodation are considered:

1. A Title Search or an abstract from the title search (these documents can be older than 90 days);
2. A verified contract of lease with an owner or an user of the estate and the abstract the title search or another document proving the authorization to use of the estate (for example the document on granting the flat);
3. A confirmation of a boarding-house on provision of accommodation for the time of the temporary stay permit (a hotel or a hostel);
4. A verified affidavit of a physical person or a legal person on providing accommodation to an alien for the tome of the temporary stay permit and an abstract from the title search or a document proven the authorization to use of the estate.

Q.36. C – Sickness insurance conditions?

In 30 days from granting of a temporary stay permit, a foreigner shall submit to a police department a document confirming his/her health insurance for the time period of his/her stay on the territory of the Slovak Republic and a document confirming that he/she does not suffer from a disease which endangers the public health.

As a document proving the health insurance it is considered a paper issued on the name of foreigner by any insurance company that proves the foreigner’s healing costs in the Slovak Republic are covered (insured).

A foreign mission or police department may request a foreigner to submit a document not older than 30 days confirming that he/she (the applicant) does not suffer from a contagious disease whose spread is punitive. As documents confirming the health state of the foreigner are considered:

1. A document from the country of origin or the country of the last residence if the foreigner filed his/her application for the temporary residence at a foreign mission
2. A document of a health institute in the Slovak Republic

Q.36. D – Certified copies of family member(s)’ travel documents?
When filing an application for a temporary stay permit, the foreigner shall be obliged to submit his/her valid travel document. Should the alien not submit his/her travel document, a foreign mission or police department shall not admit the application for a temporary stay permit. (Article 25 §1 of the Act on Aliens)

There is no special statement about the family member’s travel documents in the Act on Aliens or other relevant acts. According to the Article 25 § 3 of the Act on Aliens a foreigner shall attach to an application for a temporary stay permit documents not older than 90 days confirming the purpose of stay. According to the Internal Guidance for the Alien and Border Police Departments such a document is
- a document proving the family relations between the sponsor and the foreigner applying for the residence permit, and
- a fotocopy of certificate of the current residence.

Q.37 – Is the possibility foreseen to proceed to:

Interviews:

☒ OUI
☐ NON

There exist no special form of the interview. Usually it is organized by filing the application for the temporary residence permit to specify some terms in the application or to fulfill the application.

Investigations:

☒ OUI
☐ NON

The police officer deciding on the temporary residence permit (the family unification) can investigate all the documents attach to the foreigner’s application to verify their authenticity and to prove the relation between the foreigner and the sponsor. Furthermore the police department investigates in the place that the foreigner alleged as a place of residence on the territory of the Slovak Republic. The results of investigations must be recorded.

Q.38 – When examining an application concerning the unmarried partner of the sponsor, which evidences are taken into account by Member States on the basis of national law to prove family relationship (article 5§2 dernier alinea) ?

Q.38. A – Existence of family ties and other elements such as a common child?

☐ OUI
☐ NON

Q.38. B - Previous cohabitation?

☒ OUI
Q.38. C - Registration of a partnership
- OUI
- NON

Q.38. D - Any other reliable means of proof foreseen in national law?
- OUI
- NON

If yes, specify which ones:

Q.39 – Are family members obliged to reside outside the territory of the Member State while the application is being examined (a5 §3)?
- X OUI
- NON

Is this obligation sanctioned and how?

A person commits a misdemeanour if he/she enters the territory of the Slovak Republic without authorisation. After deliberation s fine up to SKK 50,000 may be imposed for this misdemeanour. Fines for misdemeanours of up to SKK 5,000 may be imposed and collected by police departments based on receipts, in a shorten procedure.

Q.40 – If the answer is yes, is a derogation organised according to article 5 § 3 second indent?
- X OUI
- NON

In the case of
1. a foreigner who is not required to have a visa,
2. a foreigner who is a single child younger than 18 years of foreigner with a temporary stay permit or of an foreigner with a temporary stay permit or his/her spouse or of a person granted asylum, or of a spouse of a person granted asylum, who takes care of the child based on law or based on a decision of the competent authority,
3. a foreigner who is a direct relative of a person granted asylum younger than 18 years
4. in the case of a stay of a spouse of a person granted asylum, the foreigner may file an application for a temporary stay permit also at a police department in the Slovak Republic.

Q.41 – Does your national legislation include a maximum period of 9 month to answer to the application by way of written notification (a5 §4)?
- X OUI
A police department shall decide on an application for a temporary stay permit within 90 days; in particularly complicated cases this time limit may be extended by maximally 90 days.

**Q.42** – This time limit can be extended (a 5 §4 alinea 2)?

- [ ] OUI
- [x] NON

**Q.43** – If yes,

**Q.43. A** – Because of the complexity of the examination of the application?

- [x] OUI
- [ ] NON

**Q.43. B** – What is the length of the extension? 90 days

**Q.44** – If no decision is taken by the end of the 9 months period provided, what are the consequences for the applicant?

If no decision is taken by the end of the 90 days the police department will draw up an official record where the reasons because of which it could not be decided (that caused difficulties for which it could not be decided) should be stated. In that record it also must be made briefly comments on proceeding undertaken n the procedure.

**Q.45** – Is the decision rejecting the application notified? Does this written notification contain the reasons of rejection?

- [x] OUI
- [ ] NON

Specify if only one condition is not required

**Q.46** – How is the best interest of minor children taken into account by your Member State’s legislation and authorities during examination of the application (article 5§5)?

According to the Article 26 (1) b) of the Act on the Stay of Aliens in its decision-making on an application for a temporary stay permit, a police department shall take into account interests of the alien’s minor child, the alien’s personal and family situation, his/her financial situation and the length of his/her previous stay and of the expected stay.

The Slovak Republic is a signature party to the Convention on Rights of Child so in any procedure State authorities must take into account interests of the child.

**CONDITIONS REQUIRED (ARTICLES 6 AND OTHERS)**

- *Questions relating to accommodation and resources will be carefully examined to assess if Member States use them, either as a migration tool or as an integration tool.*
The same assessment applies regarding the option to set up a period of lawfully residence not exceeding two years before applying for family reunification.

According to article 8, the Court of justice states: "That provision does not therefore have the effect of precluding any family reunification, but preserves a limited margin of appreciation for the Member States by permitting them to make sure that family reunification will take place in favourable conditions, after the sponsor has been residing in the host State for a period sufficiently long for it to be assumed that the family members will settle down well and display a certain level of integration. Accordingly, the fact that a Member State takes those factors into account and the power to defer family reunification for two or, as the case may be, three years do not run counter to the right to respect for family rights set out in particular in Article 8 of the ECHR as interpreted by the European Court of Human Rights

"It should, however, be remembered that, as is apparent from Article 17 of the Directive, duration of residence in the Member State is only one of the factors which must be taken into account by the Member State when considering an application and that a waiting period cannot be imposed without taking into account, in specific cases, all the relevant factors" (cons. 99). "The same is true of the criterion of the Member State’s reception capacity, which may be one of the factors taken into account when considering an application, but cannot be interpreted as authorising any quota system or a three-year waiting period imposed without regard to the particular circumstances of specific cases. Analysis of all the factors, as prescribed in Article 17 of the Directive, does not allow just this one factor to be taken into account and requires genuine examination of reception capacity at the time of the application" (cons. 100) "When carrying out that analysis, the Member States must, as is pointed out in paragraph 63 of the present judgment, also have due regard to the best interests of minor children" (cons. 101).

Q.47 – Can public policy, public security or public health grounds be taken into account to (a 6 §§1 et 2):

The impact the impact to private or family life of the alien must be taken into account during the whole procedure.

Q.47. A – Reject an application for family reunification?

☐ OUI
☐ NON

A police department shall dismiss an application for a temporary residence permit when there is a reasonable suspicion that during his/her stay the alien would endanger security of the State, the public policy, health or the rights and freedoms of others and, on the determined territories, also the nature. (Article26 §2 (b) of the Act on Aliens)

Q.47. B – Withdraw an application for family reunification?

☐ OUI
☐ NON
According to the provision of the Article 29 § 1 (b) of the Aliens Act a police department shall withdraw a temporary stay permit when it determines the facts which constitute a reason for dismissal of an application for a temporary stay permit. This provision refers to the Article 26 of the Aliens Act (See above – point Q 47A) where endanger of the security of the State, the public policy, health or the rights and freedoms of others is stated as one of the ground for dismissal of an application for a temporary residence permit.

But if the alien falls ill of a disease which endangers the public health after being granted a residence permit he/she can not be administratively expelled from the territory of the Slovak Republic. (Article 57 § 11 of the Aliens Act) (see below)

The impact to private or family life of the alien must be taken into account during the whole procedure.

**Q.47. C – Refuse to renew a family member's residence permit?**

[X] OUI

[] NON

According to the Article 27 § 7 of the Aliens Act the provisions of Articles 25 and 26 mentioned act shall apply by decision-making on an application for renewal of a temporary stay permit accordingly, unless stipulated otherwise. That means that the same conditions must be fulfilled as by submitting the first application for the temporary residence permit for family reunification and the refusal to renew the residence permit can be based on the same grounds as the rejection of an application for the residence permit so a reasonable suspicion that during his/her stay the alien would endanger security of the State, the public policy, health or the rights and freedoms of others as well.

In this case it must be examined if the alien does no fall ill after he was granted the residence permit. By the provision of the Article 57 § 11 of the Aliens Act it is enacted that a police department must not administratively expel an alien who falls ill of a disease which endangers the public health after being granted a residence permit.

**Q.48 – Does national legislation take into account:**

**Q.48. A – The severity or type of offence against public policy or public security?**

[] OUI

[X] NON

**Q.48. B – The solidity of family relationships regarding article 17 of the Directive?**

[X] OUI

[] NON

The Article 17 of the Directive was transposed into several provisions of the Aliens Act. Firstly into Article 26 § 1 of the Aliens Act that stated that in its decision-making on an application for a temporary stay permit, the police department shall take into account *interests of the alien’s minor*
child, the alien’s personal and family situation, his/her financial situation and the length of his/her previous stay and of the expected stay.

This is applied also in the case of revocation of the temporary stay permit – the provision modifying reasons for the revocation of the temporary stay permit shall not be applied if the consequences of revocation of the temporary stay permit were inadequate to the reason of the revocation of the temporary stay permit, above all with respect to the alien’s private and family life. (Article 29 § 2 of the Act on the Stay of Aliens)

Should an alien not file an application in the stated legal period, a police department shall dismiss the application for renewal of the temporary stay permit; this shall not apply if the consequences of the application’s dismissal were inadequate to the reason for dismissal of the application for renewal of the temporary stay permit. In assessing the adequacy, the police department shall take into account the possible consequences of the application’s dismissal, above all with respect to the alien’s private and family life. (Article 27 § 4 of the Act on the Stay of Aliens)

Remark. The paragraph 7 of the Article 57 of the Aliens Act that modifies the reasons for administrative expulsion estates that a police department may shorten the time period of a ban on entry or not administratively expel an alien who was granted a permanent residence permit if the consequences of such a procedure were inadequate with regard to the alien’s private and family life and the length of his/her stay, the age of an alien and his/her relation to a country of origin. So the police department must consider after-effects of the administrative expulsion but this is mentioned only in a case of an alien with permanent residence permit. On the other hand taking into account the fact that Slovakia is bound by European Convention on Protection of Human Rights and Fundamental Freedoms and other relevant International Agreements (Conventions) in practice this must be applied also in the case of aliens with other types of resident permit.

Q.49 – Does your Member State withdraw the residence permit or remove the third country national on the sole ground of illness or disability suffered after the issue of the residence permit (a 6 §3)?

☐ OUI

☒ NON

According the Article 57 § 11 of the Act on Aliens a police department must not administratively expel an alien who falls ill of a disease which endangers the public health after being granted a residence permit.

Q.50 – Are accommodation conditions required from the applicant (a7 §1a) ?

☐ OUI

☒ NON

The foreigner must submit documents not older than 90 days confirming secured accommodation in Slovakia. The accommodation conditions are not specified in the legislative nor in the internal regulation for the Police Department.

Q.51 – If yes:

Q.51. A – What are those conditions?
Q.51 B – How are they assessed?

Q.51 C – Are they comparable to the conditions required to a normal family living in the same region?

☐ OUI
☐ NON

Conditions like that are not assessed – there should be proven that the applicant has a secured accommodation for ex. by a rental contract.

Q.52 – Is a sickness insurance required from the applicant (a. 7 §1b)?

☒ OUI
☐ NON

The sickness insurance is not required in the time of filing an application for a temporary stay permit but in 30 days from his/her entry or from granting of a temporary stay permit, an alien shall submit to a police department a document confirming his/her health insurance for the time period of his/her stay on the territory of the Slovak Republic and a document confirming that he/she does not suffer from a disease which endangers the public health.

Q.53 – Are stable resources required (a7 §1c)?

☒ OUI
☐ NON

An alien shall attach to an application for a temporary stay permit documents not older than 90 days confirming financial coverage of the stay. That means that an alien shall prove financial coverage of his/her stay in the amount of the minimum wage per each month of stay that is stated on 7,600 SKK (appr. 226 EUR).

Remark: So if the temporary residence is issued for a 1 year period an alien shall prove that he can dispose of an amount 91,200,- SKK (appr. 2710 EUR).

A foreign mission or police department may request a foreigner to submit a document not older than 30 days confirming will not constitute a burden to the social security system of the Slovak Republic.

Q.54 – How is the condition "sufficient" assessed by your Member State? Is it in comparison with national wages?

It shall be proven by a confirmation from the foreigner’s account in bank (a state of bank account of the foreigner’s name) or an affidavit of the applicant that he would provide this financial and material support to the family member during his/her stay on the territory of the Slovak Republic documented by the state of bank account or the confirmation of the employer on the amount of salary;

Q.55 – Are integration criterions required to allow family reunification (a 7 §2)?

☐ OUI
Q.56 – If yes:

Q.56. A – What are those criterions?

Q.56. B – Do they apply indistinctly to all potential beneficiaries of reunification? (Spouse, dependant people, etc.)

Q.56. C – How are they evaluated by your Member State?

Q.56. D – Are refugees and their family members required to fulfil them (a 7 §2, second indent)?

☐ OUI

X NON

Q.57 – Is a minimal period of lawful reside is required before reunification (a 8 §1)?

☐ OUI

X NON

Q.58 – Does this period exceed two years?

Please specify

Q.59 – Does your Member State apply the derogation set up by article 8 § 2 allowing Member States to impose a waiting period of maximum three years due to reception capacities between the submission of the application and the issuance of a residence permit?

☐ OUI

X NON

Please specify

Q.60 – If yes, did this derogation exist in national law before the 22nd of September 2003?

☐ OUI

☐ NON

FAMILY REUNIFICATION OF REFUGEES

The legal regime applicable to refugees derogates from the one applicable to family reunification. The scope of those derogations (minimal lawful residence, members of the family, accommodation requirements) shall be assessed on the basis of national law.
<table>
<thead>
<tr>
<th>Q.61 – Does your Member State allow family reunification of refugees on the basis of Directive 2003/86 (a 9 §1) ?</th>
</tr>
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<tbody>
<tr>
<td>OUI ✗ NON</td>
</tr>
</tbody>
</table>

<table>
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<tr>
<th>Q.62 – Is this right limited to family relationships predating the entry on the territory (a 9 §2)?</th>
</tr>
</thead>
<tbody>
<tr>
<td>✗ OUI ✗ NON</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Q.63 – Does your Member State allow family reunification of family Members not quoted in article 4 of the Directive (a 10 §2) ?</th>
</tr>
</thead>
<tbody>
<tr>
<td>✗ OUI ✗ NON</td>
</tr>
</tbody>
</table>

Which members of the family and under which conditions?

<table>
<thead>
<tr>
<th>Q.64 – According to the specific case of unaccompanied minor refugees, does your Member State authorise family reunification of first degree relatives in the direct ascending line without applying the conditions laid down in article 4 § 2 (a10 §3 a) ?</th>
</tr>
</thead>
<tbody>
<tr>
<td>✗ OUI ✗ NON</td>
</tr>
</tbody>
</table>

What conditions are required?

It is required to submit the travel document and document proving the relationship or other proof of the existence of this relationship.

<table>
<thead>
<tr>
<th>Q. 65 – Does your Member State authorise entry and residence of the legal guardian or any member of the family where the unaccompanied minor refugee has no relatives in the direct ascending line or such relatives cannot be traced (a10 §3 b) ?</th>
</tr>
</thead>
<tbody>
<tr>
<td>✗ OUI ✗ NON</td>
</tr>
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</table>

<table>
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<tr>
<th>Q.66 – Does your Member State take into account other evidence of family relationship where the refugee cannot provide official evidence (a 11 §2) ?</th>
</tr>
</thead>
<tbody>
<tr>
<td>✗ OUI ✗ NON</td>
</tr>
</tbody>
</table>
Should an alien file an application for a temporary stay permit for the purpose of maintaining family unity with a person granted asylum within three months from granting of the asylum, he/she shall submit, together with the application, only a travel document and a document confirming their relationship or other proof of existence of such relationship.

Q.67 – Does the examination of the refugee application take into account their specific situation?

Q.67. A – Are proofs regarding accommodation conditions, sickness insurance or resources required (a 12 §1)?

☐ OUI

X NON

If yes, are those requirements comparable to those imposed to other third country nationals?

Q.67. B – If one of the person concerned (sponsor or family member) has special links with a third country within which reunification is possible, does your member state require those proofs according to article 12 § 1 second indent.

☐ OUI

X NON

This provision of the Article 12 §2 of the Directive was not transposed.

Q.67. C – If a refugee has introduced its application after a period of three months, does your Member State require the refugee to meet the conditions or one of them (accommodation, sickness insurance, resources (a 12 §1 alinea 3)?

X OUI

☐ NON

If yes, which ones?

The same as mentioned in Q 36.

Q.68 – Does your Member State apply the prohibition to impose a residence condition before reunification (a 12 §2)?

X OUI

☐ NON

If not, what is the length of this period? Is it different from the one normally applied?
EXERCISE OF THE RIGHT TO FAMILY REUNIFICATION

The granting of an autonomous residence permit is one of the most sensitive issues of this part of the Directive.

Q.69 – Is entry and residence facilitated by your Member State, as soon as the application for family reunification has been accepted, including the issue of obtaining visas (a13 §1) ?

☑ OUI
☐ NON

This is modified by a provision of the Section VIII. p. 240 of the Act No. 145/1995 Coll. on Administrative Charges – Issuance of the visa is free of charge in the case the visa are issued for the purpose of delivering the residence permit by an alien.

Q.70 – Is a residence permit of at least one year's duration granted to the family members (a 13 §2)?

☑ OUI
☐ NON

What is the duration of the residence permit?

Q.71 – Is this residence permit renewable?

☑ OUI
☐ NON

Q.72 – Is the duration of the residence permit aligned with the duration of sponsor's residence permit (a 13 §3) ?

☑ OUI
☐ NON

If no, please specify

Q.73 – Are the rights awarded to family members' equivalent to those granted to the sponsor (a14 §1):

Q.73. A – Regarding access to education?

☑ OUI
☐ NON
The access of a foreigner to education is not specified in the Act on Aliens but it is guaranteed by other acts as the Act No. 131/2002 Coll. on Universities or the School Act No. 29/1984 Coll.

**Q.73. B - Regarding access to employment?**

☐ OUI

☐ NON

An alien who was granted a temporary stay permit for the purpose of maintaining family unity with an alien who was granted a temporary stay permit for the purpose of undertaking business or employment or who was granted a permanent residence permit, and an alien who is a direct relative of a person granted asylum younger than 18 years, may undertake business or enter employment relations or similar labour relations after 12 months of his/her continuous stay.

**Q.73. C – Regarding access to vocational guidance, initial and further training and retraining?**

☐ OUI

☐ NON

This is a similar as in the point Q.73A. The access to vocational guidance, initial and further training and retraining is not specifically transposed into the Act on Aliens but is guaranteed by the Act No. 5/2004 Coll. on the Services of Employment.

**Q.74 – Does your Member State grant specific rights in social matters to reunified family members?**

☐ OUI

☐ NON

If yes, please describe them and specify if a time limit is established to take advantage from them

**Q.75 – Has Member State set up conditions regarding specific access to employment for family members (a 14 §2)?**

☐ OUI

☐ NON

An alien who was granted a temporary stay permit for the purpose of maintaining family unity with an alien who was granted a temporary stay permit for the purpose of undertaking business or employment or who was granted a permanent residence permit, and an alien who is a direct relative of a person granted asylum younger than 18 years, may undertake business or enter employment relations or similar labour relations after 12 months of his/her continuous stay.

**Q.76 – If yes, do those conditions exceed 12 months (a 14 §2)?**

☐ OUI
Q.77 – Is access to employment limited in your Member State

Q.77.A – Regarding first-degree relatives in the direct ascending line?

☐ OUI

☒ NON

Q.77. B – Regarding adult unmarried children objectively unable to provide for their own needs on account of their state of health (a 14 §3)?

☐ OUI

☒ NON

If yes, how?

Q.78 – Are spouses, unmarried partners and child who has reached majority entitled to an autonomous residence permit at least five years after lawful residence on the basis of the residence permit issued for family reunification (a15 §1)?

☒ OUI

☐ NON

It is defined in a general:
Upon request a police department shall grant a subsequent permit to an alien, who
1. is a family member in the extent determined in Article 23 §1 of the Act on Aliens of an alien with a temporary stay permit and who was granted a temporary stay permit for at least five years immediately before the application’s filing,
2. is a spouse of an alien with a permanent residence permit and who was granted a temporary stay permit for at least five years immediately before the application’s filing, or who
3. is a single parent dependent on the care of an alien with a permanent residence permit and was granted a temporary stay permit for at least five years immediately before the application’s filing.

In the case of a child who has reached majority the foreigner may file an application for change of the purpose of his/her stay also at a police department within 30 days from the day when he came of age.

Q.79 – Does your Member State limit the granting of the autonomous residence in cases of breakdown of the family relationship (a 15 §1 alinea 2)?

☐ OUI

☒ NON

Please explain

Q.80 – Does your Member State grant autonomous residence permit:
**Q.80. A** – To first-degree relatives in the direct ascending line (a15 §2)

- [ ] OUI
- [x] NON

First-degree relatives in direct ascending line are included in the provision of Art. 38 of the Act on Aliens that define the group of foreigners that can apply for the autonomous residence permit (see Q.78:… is a family member in the extent determined in Article 23 §1 of the Act on Aliens)

**Q.80. B** – To adult unmarried children objectively unable to provide for their own needs on account of their state of health (a15 §2) ?

- [ ] OUI
- [x] NON

Adult unmarried children objectively unable to provide for their own needs on account of their state of health (considered as an unprovided-for children) are included in the provision of Art. 38 of the Act on Aliens that define the group of foreigners that can apply for the autonomous residence permit (see Q.78:… is a family member in the extent determined in Article 23 §1 of the Act on Aliens)

**Q.81** – Does your member State grant autonomous residence permit in the event of widowhood, divorce, separation or death of first first-degree relatives in the direct ascending or descending line (a 15 §3) ?

- [x] OUI
- [ ] NON

A foreigner who became a widower/widow or whose marriage was divorced, and whose continuous temporary stay on the territory of the Slovak Republic has lasted for at least three years, may file an application for change of the purpose of his/her stay also at a police department within 30 days from issuance of a certificate of death or from divorce.

**Q.82** – Has your Member State adopted rules granting autonomous residence permit "in the event of particularly difficult circumstances" (a 15 §3)?

- [x] OUI
- [ ] NON

If yes, how is this provision defined and transposed?

This provision is not specified in Slovak legislative. It was transposed into the statement of Article 24 §4 of the Act on Aliens enacting that an alien who was granted a temporary stay permit may file an application for a change of the purpose of his/her stay also at a police department.

**PENALTIES AND REDRESS**

*Those provisions must be read in parallel with those relating to the conditions to be fulfilled to obtain family reunification (articles 6, 7, 8)*
Questions relating fraud, false or falsified documents are of importance to assess their impact.

Q.83 – What are the legal grounds to reject, withdraw or refuse to renew a family member's residence permit (a16 §1 et 2):

Q.83. A – Conditions required by the directive not satisfied?

☑ OUI
☐ NON

Q.83. B – Absence of real martial or family relationship?

☑ OUI
☐ NON

According to the article 29 § 1 of the Act on Aliens a police department shall withdraw a temporary stay permit when the purpose for which the temporary stay permit was granted to an alien ceased to exist.

Although the foreigner is not obliged to attach documents proving his family or martial relationship to his application for the renew of the residence permit again (the only document required is the document proving the pending reason of un-provision of the child in the case this is the ground od the prolonging of the temporary stay) according to the article 54 § 1 of the Act on Aliens a police department shall be entitled to execute a control of authorisation for stay, fulfilment of obligations of the stay and observance of an alien’s obligations under this Act.

Q.83. C – Stable long term relationship with another person?

☐ OUI
☒ NON

Q.83. D – False or falsified documents?

☑ OUI
☐ NON

If it is proven that the foreigner purposely attached false or falsified documents it is a reason for rejecting, withdrawing or refusing to renew a family member's residence permit.

Q.83. E – Marriage, partnership or adoption contracted for the sole purpose of enabling reunification?

☑ OUI
☐ NON

Q.83. F –
According to the Article 26 §2 of the Act on Aliens a police department shall dismiss an application for a temporary stay permit when
- there is a reasonable suspicion that the alien entered into marriage with the aim to obtain a temporary stay permit;
- alien deliberately stated false or misleading data or submitted false or modified documents;

If there is a reasonable suspicion that the foreigner contracted the marriage or adoption for the sole purpose of enabling reunification the police department must investigate that. After the application for renew of the residence permit is filed the police department investigates in the place of residence in the Slovak Republic for the purpose to find out if the spouses lives a common family life. The results of the investigation must be recorded. In the case the police department during its investigations founds out matters that are reasons for rejecting the application for renewing of the temporary residence permit the police officer produces a complex report upon the findings during the investigation and after the authorization he made a decision in which he explains the reasons for not renewing the residence permit.

**Q.83. G** – When the sponsor's residence comes to an end and the family member does not yet enjoy an autonomous right of residence (a 16 §3)?

- [ ] OUI
- [x] NON

**Q.83. H** – What type of control are organised thereof?

Investigations at the place of the residence of the foreigner and interviews

**Q.84** – Are resources of the family taken into account when renewing residence permit where the sponsor does not have sufficient resources without recourse to the social assistance system of the member state?

- [ ] OUI
- [x] NON

If yes, under which modalities?

**Q.85** – Does your Member State's legislation take into consideration (a. 17) :

**Q.85. A** – The nature and solidity of the person's family relationships and the duration of his residence in the Member State?

- [x] OUI
- [ ] NON

According to the Article 26 § 1 of the Act on Aliens in its decision-making on an application for a temporary residence permit, a police department shall take into account interests of the foreigner’s minor child, the foreigner’s personal and family situation.

According to the Article 29 of the same Act in which the reasons for revoking the temporary residence permit are counted the second paragraph of the provision constitutes that a police department shall not apply any of these reasons if the consequences of revocation of the temporary stay permit were
inadequate to the reason of the revocation of the temporary stay permit, above all with respect to the alien’s private and family life.

**Q.85. B** - 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?

- [ ] OUI
- [x] NON

Please see Q.48 B – the remark

**Q.86** – Do the sponsor and/or members if his/her family have the right to mount a legal challenge where an application for family reunification is rejected (a18 §1)?

- [x] OUI
- [ ] NON

**Q.87** – Is this right to legal challenge considered as a right to a judicial review according to jurisprudence C-540/03 (a18 §1)?

- [x] OUI
- [ ] NON
XX. IMPACT OF THE DIRECTIVE ON NATIONAL LAW

**Q.88 A** Did the transposition of the directive made the rules related to the best interest of minor children (a. 5 § 5) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below.

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Due regard to the best interest of minor children during examination of the application a. 5 § 5</td>
<td>• More favourable than previous national rules</td>
<td>• In line with the directive</td>
</tr>
</tbody>
</table>

Before the transposition of the Directive the national law did not specify the obligation to take into account the interest of minor children.

It enacted a general provision stating that in the decision-making of the police department shall take into account the personal and family conditions of a foreigner (former Article 26 §1 of the Act on Aliens)

After the transposition of the Directive the provision of the Article 26 § 1 of the Act on Aliens specified the duty of the police department to take into account interests of the alien’s minor child in its decision-making on an application for a temporary stay permit.

The change was adopted on 15 December 2005.

**Q.88 B** Did the transposition of the directive made the rules related to the beneficiaries of the right to family reunification become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below.

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Definition of the beneficiaries of the right to family reunification a. 4 § 4</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Before the transposition of the Directive in the case of a spouse who applied for the a temporary residence permit for the purpose of maintaining family unity to a spouse of a foreigner.

After the transposition of the Directive a police department may grant a temporary stay permit for the purpose of maintaining family unity to a spouse of a foreigner.
with a foreigner granted the residence permit it was possible only if their marriage lasted for more than 1 year.

This condition had not to be fulfilled in the case of foreigner who was granted the residence permit for the purpose of studying, or activities according to special programs, or for the purpose of employment of senior/upper class employees of corporations or if it is in the interests of the Slovak Republic. (former Article 23 §1 of the Act on Aliens)

More favourable than previous national rules

• In line with the directive

OBJECT
Definition of the beneficiaries of the right to family reunification a. 4 § 4

EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW

EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE

Before the transposition of the Directive in the case of a child of a foreigner with a residence permit in Slovakia the former Article 23 § 1 of the Act on Aliens constituted the right for a family reunification of a child younger than 21 years.

After the transposition of the Directive a police department may grant a temporary stay permit for the purpose of maintaining family unity to a single child younger than 18 years of foreigner with a temporary stay permit.

The change was adopted on 15 December 2005.

Less favourable than previous national rules

• In line with the directive

OBJECT
Definition of the beneficiaries of the right to family reunification a. 4 § 4

EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW

EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE

Before the transposition of the Directive according to the former Act on Aliens the temporary residence permit for the purpose of maintaining the family unit shall be granted to a child of foreigners with a temporary residence permit or a child of a foreigner with a temporary residence permit or with a permanent residence permit, provided that the spouses are at least 18 years old. (Article 23 § 1 of the Act on Aliens)

According to this provision the only limit set in the case of spouses is the age majority.

The change was adopted on 15 December 2005.

More favourable than previous national rules

• In line with the directive
temporary residence permit who takes care of the child based on law or based on a decision of the competent authority.

of a spouse of a person granted asylum, who takes care of the child based on law or based on a decision of the competent authority.

So the possibility to reunify the family was extended and at presence it provides the right for a reunify the family in the case of a child of a spouse of the foreigner with the residence permit and also a child of a refugee or a spouse of the refugee.

*The change was adopted on 15 December 2005.*

<table>
<thead>
<tr>
<th>OBJECT</th>
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<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
</table>
| **Definition of the beneficiaries of the right to family reunification a. 4 § 4** | Before the transposition of the Directive the temporary residence permit for the purpose of maintaining family unity in the case of single parent dependent on the care of a foreigner with residence permit could be granted only if the foreigner had a permanent residence permit in Slovakia.  
(former Article 23 § 1 of the Act on Asylum) | After the transposition of the Directive a police department may grant a temporary stay permit for the purpose of maintaining family unity to a single parent dependent on the care of an alien with a temporary stay permit the purpose of employment or undertaking business or on the care of an alien with a permanent residence permit.  
*The change was adopted on 15 December 2005* | • *More favourable than previous national rules*  
• *In line with the directive* |

<table>
<thead>
<tr>
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</tr>
</thead>
</table>
| **Definition of the beneficiaries of the right to family reunification a. 4 § 4** | Before the transposition of the Directive the Act on Aliens constituted that the police department can grant a temporary residence permit for the purpose of maintaining family unity after fulfilling these conditions: | There is no such a condition to be fulfilled to being granted a temporary residence permit for the purpose of maintaining family unit in Slovakia after the transposition of the Directive. | • *More favourable than previous national rules*  
• *In line with the directive* |
- the residence in the Slovak Republic of the foreigner with whom the foreigner applies for maintaining family unity had to last at least 1 year
- the subsequent residence in Slovakia of the foreigner with whom the foreigner applies for maintaining family unity must last for at minimum other 2 years

According to the second part of this provision This condition had not to be fulfilled in the case of foreigner who was granted the residence permit for the purpose of studying, or activities according to special programs, or for the purpose of employment of senior/upper class employees of corporations or if it is in the interests of the Slovak Republic. (former Article 23 § 1 of the Act on Aliens)

Q.88 C Did the transposition of the directive made the rules related to reunification of minor children between 12 (a. 4 § 1) and 15 (a. 4 § 6) years old become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

The Slovak legislative did not distinguish the difference of ages of the minor children. Provisions related to the Minor children are enacted in general as “minor children under 18 years”.

Please use one box per object and duplicate it if necessary

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Limitation of reunification of minor children of 12 and 15 years of age (a. 4 § 1 and 4 § 6)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Explain the situation before transposition

Explain the situation after transposition
(to evaluate the impact of the directive, take also into consideration national norms which have been adopted before the deadline for transposition or even before the adoption of the directive in cases of Member States having amended their national legislation in advance in view of the directive. Indicate the precise date of adoption of the change)

Complete this box by keeping the right appreciation and deleting the two others:
- Statu quo
- More favourable than previous national rules
- Less favourable than previous national rules

Complete this box by keeping the right appreciation and deleting the other one:
- More favourable than the directive
- In line with the directive

**Q.88 D**

Did the transposition of the directive made the rules related to requirements to the exercise of family reunification (article 7) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

<table>
<thead>
<tr>
<th>OBJECT</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Requirements for the exercise of family reunification (a. 7)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Before the transposition of the Directive a foreigner had to prove financial coverage of his/her stay in the amount of two times the minimum wage per each month of stay. There were two exemptions - in the case of a single parent dependent on the care of a foreigner with residence permit and a child younger than 16 years – where they had to prove financial coverage of his/her stay in the amount of the minimum wage per each month of stay.</td>
<td>With the transposition of the Directive the amount of required money for the stay in Slovakia became more favourable for a foreigner. According to the Article 25 § 9 of the Act on Aliens a foreigner shall attach to an application for a temporary stay permit documents not older than 90 days confirming financial coverage of the stay. The foreigner shall prove financial coverage of his/her stay in the amount of the minimum wage per each month of stay. <em>The change was adopted on 15 December 2005</em></td>
<td>• More favourable than previous national rules • In line with the directive</td>
</tr>
</tbody>
</table>

Please use one box per object and duplicate it if necessary
<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
</table>
| Requirements for the exercise of family reunification (a. 7) | After the transposition of the Directive the sickness insurance is not required in the time of filing an application for a temporary stay permit but in 30 days from his/her entry to the territory of the Slovak Republic or from granting of a temporary stay permit, a foreigner shall submit to a police department a document confirming his/her health insurance for the time period of his/her stay on the territory of the Slovak Republic.  
*The change was adopted on 15 December 2005* | • More favourable than previous national rules  
• In line with the directive |
| Requirements for the exercise of family reunification (a. 7) | After the transposition of the Directive it remained constituted in the Act on Aliens – the Article 25 § 7 enacts that foreign mission or police department may request a foreigner to submit a document not older than 30 days confirming will not constitute a burden to the social security system of the Slovak Republic. | • Status quo  
• In line with the directive |

**Q.88 E** Did the transposition of the directive made the rules related to margins of manoeuvre awarded to Member States (a. 5 § 5, 17, C-540/03) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below
<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Limitation of margins of manoeuvre (a. 17, a.5 §5, C-540/03)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Before the transposition of the Directive there was a duty of the police department to take into account the personal and family conditions of the foreigner in its decision-making on an application for a temporary stay permit.</td>
<td>After the transposition of the Directive the duty of the police department in this situation was specified. It was enacted that the police department shall take into account interests of the foreigner’s minor child in its decision-making on an application for a temporary stay permit. The change was adopted on 15 December 2005.</td>
<td>• More favourable than previous national rules</td>
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<tr>
<td></td>
<td></td>
<td>• In line with the directive</td>
</tr>
</tbody>
</table>

**Q.88 F**

Did the transposition of the directive made the rules related to integration objectives and criterions more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

There are no integrations criterions required.

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attention draw upon integration objectives (considérant 15) and criterions of integration (a.4 §1 dernier alinéa, a. 7 §2)</td>
<td>Complete this box by keeping the right appreciation and deleting the two others:</td>
<td>Complete this box by keeping the right appreciation and deleting the other one:</td>
</tr>
<tr>
<td>Explain the situation after transposition (to evaluate the impact of the directive, take also into consideration national norms which have been adopted before the deadline for transposition or even before the adoption of the directive in cases of Member States having amended their national legislation in advance in view of the directive. Indicate the precise date of adoption of the change)</td>
<td>• Statu quo</td>
<td>• More favourable than the directive</td>
</tr>
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<td></td>
<td></td>
<td>• More favourable than previous national rules</td>
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<td></td>
<td></td>
<td>• Less favourable than previous national rules</td>
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<td></td>
<td></td>
<td>• In line with the directive</td>
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</tbody>
</table>
Q.89 From your point of view, did the transposition of the directive imply other interesting changes for the third national country regarding other elements than the ones mentioned in the previous question. Make also a comparison with the standard of the directive in the last column of the table below.

If they want to do so, the thematic coordinators should complete this question by indicating the number of examples that they ask the national reporter to give.

Please use one box per object and duplicate it if necessary.

<table>
<thead>
<tr>
<th>OBJECT (to be precisely indicated by the national rapporteur)</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Explain the situation before transposition</td>
<td>Explain the situation after transposition (to evaluate the impact of the directive, take also into consideration national norms which have been adopted before the deadline for transposition or even before the adoption of the directive in cases of Member States having amended their national legislation in advance in view of the directive. Indicate the precise date of adoption of the change)</td>
<td>Complete this box by keeping the right appreciation and deleting the two others: • Statu quo • More favourable than previous national rules • Less favourable than previous national rules</td>
</tr>
<tr>
<td></td>
<td>Complete this box by keeping the right appreciation and deleting the other one: • More favourable than the directive • In line with the directive</td>
<td></td>
</tr>
</tbody>
</table>

Q.89. A. Mention if there is a general tendency to just copy the provisions of the directive into national legislation without redrafting or adaptation them to national circumstances.

[X] NO

[ ] YES
Q.89.B. If yes, please indicate if this general tendency may or not create problems (for example difficulties of implementation, risk that a provision remain unapplied).

☐ NO

☐ YES

Q.89.C. If yes, give some of examples:

Q.89.D. If only some provisions of the directive have been copied and if this may create any problem, please quote them and explain the problem.

Q.90. Quote interesting decisions of jurisprudence related to the directive, its transposition or implementation (so this question concerns in principle decisions later that the directive, but previous ones might be quoted if relevant). Quote in particular decisions of supreme Courts; limit yourself to the appeal Courts and ignore the first resort if there are too many decisions at this level, unless there is a certain jurisprudence made of a group of decisions.

*Please use one box per decision and duplicate it if necessary*

<table>
<thead>
<tr>
<th>DECISION OF SUPREME COURTS</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
</tr>
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<tbody>
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<table>
<thead>
<tr>
<th>DECISION OF APPEAL COURTS</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
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<thead>
<tr>
<th>DECISION(S) IN FIRST RESORT</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>SUMMARY OF CONTENT:</th>
</tr>
</thead>
<tbody>
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</table>

ANY SUPPLEMENTARY COMMENT ABOUT THE TREND OF THE JURISPRUDENCE:

Q.91 Specify if there are or not problems with the translation of the text of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated.

☐ There are no problems with the translation of the directive

☐ There are some problems with the translation of (indicate the number of the articles concerned) of the directive.

Explain the difficulties that this could create:
Q. 92 ANY OTHER INTERESTING ELEMENT

Q.92 A. Following your personal point of view, mention from the point of view of third country nationals and/or from the Member State any interesting or innovative practice in your Member State.

*Please use one table per practice and duplicate it if necessary*

<table>
<thead>
<tr>
<th>OBJECT OF THE PRACTICE</th>
<th>EXPLANATIONS</th>
</tr>
</thead>
</table>

Q.92 B. Please add here any other interesting element in your Member State which you did not had the occasion to mention in your previous answers.
COMMENTARIES

1. Council directive 2003/86 on the right to family reunification faced hard negotiations requiring the presentation of revised proposals from the Commission before final adoption in 2003. The European Court of Justice rejected in June 2007 an action for annulment introduced by the European Parliament against the Council directive (C-540/03).

2. Transposition of the directive must be assessed regarding the nature of the provision concerned. So as to help you, those provisions are coloured within the questionnaire as follows: obligatory provision (Q.XX), optional provision (Q.YY), provision which set up a derogation (Q.ZZ)

3. The Court of justice has defined the margins of discretion awarded to the member States even in situations where the directive allows the member States to depart from the directive. The Court states:

   "Article 4(1) of the Directive imposes precise positive obligations, with corresponding clearly defined individual rights, on the Member States, since it requires them, in the cases determined by the Directive, to authorise family reunification of certain members of the sponsor’s family, without being left a margin of appreciation” (cons. 60).

   "Note should also be taken of Article 17 of the Directive which requires Member States to 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 country of origin. As is apparent from paragraph 56 of the present judgment, such criteria correspond to those taken into consideration by the European Court of Human Rights when it reviews whether a State which has refused an application for family reunification has correctly weighed the competing interests” (cons. 64).

   The fact that the concept of integration is not defined cannot be interpreted as authorising the Member States to employ that concept in a manner contrary to general principles of Community law, in particular to fundamental rights. The Member States which wish to make use of the derogation cannot employ an unspecified concept of integration, but must apply the condition for integration provided for by their legislation existing on the date of implementation of the Directive in order to examine the specific situation of a child over 12 years of age arriving independently from the rest of his or her family” (cons. 70).
4. The main difficulty according to the transposition of the directive relies on the systematic opportunities offered to member States to depart from the provisions of the directive when applying it.

5. Article 19 indicates which themes were the most sensitive during the negotiations of the Directive (art. 3, 4, 7, 8 and 13).

FIRST PART

1. NORMS OF TRANSPOSITION AND JURISPRUDENCE

Q.1.A Identify the MAIN (because of its content) norm(s) of transposition and indicate its legal nature

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)
- About legal nature in the table below: legislative refers to a norm adopted in principle by the Parliament; regulation refers to a norm complementing the law and adopted in principle by the executive power; circular or instructions refer to practical rules about implementation of laws and regulations and adopted in principle by the administrative authorities

Please duplicate the table below if there is more than one MAIN norm of transposition
<table>
<thead>
<tr>
<th>LEGISLATIVE:</th>
<th>REGULATION:</th>
<th>CIRCULAR or INSTRUCTIONS:</th>
</tr>
</thead>
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**This table is about:** [X] a text already adopted [ ] a text which is still a project to be adopted  
**TITLE:** Act Amending the Aliens Act  
**DATE:** adopted on 27.09.2002  
**NUMBER:** 2002-01-4358  
**DATE OF ENTRY INTO FORCE:** 16.11.2002  
**PROVISIONS CONCERNED:** amendments to Article 43.  
**REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:** published on 17.10.2002 in the Official Journal RS, No. 87/2002  
**LEGAL NATURE** (indicate a cross in the correct box): [X] LEGISLATIVE: |

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**This table is about:** [X] a text already adopted [ ] a text which is still a project to be adopted  
**TITLE:** Aliens Act and subsequent modifications  
**DATE:** 08.07.1999  
**NUMBER:** 1999-01-2912  
**DATE OF ENTRY INTO FORCE:** 14.08.1999  
**PROVISIONS CONCERNED:** Article 1, 2, 9, 27, 28, 30, 36, 41, 42, 43, 44, 48, and 65.  
**REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:** Published on 30.07.1999 in the Official Journal RS, No. 61/1999  
**LEGAL NATURE** (indicate a cross in the correct box): [X] LEGISLATIVE: |

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**This table is about:** [X] a text already adopted [ ] a text which is still a project to be adopted  
**TITLE:** Aliens Act – Consolidated Text  
**DATE:** confirmed on 29.09.2006  
**NUMBER:** 2006-01-4586  
**DATE OF ENTRY INTO FORCE:** / (see tables above)  
**PROVISIONS CONCERNED:** Articles 1, 2, 9, 27, 30, 36, 41, 42, 43, 44, 48, and 65.  
**REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:** published on 17.10.2006 in the Official Journal RS, No. 107/2006  
**LEGAL NATURE** (indicate a cross in the correct box): [X] LEGISLATIVE: |

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**This table is about:** [X] a text already adopted [ ] a text which is still a project to be adopted  
**TITLE:** Asylum Act  
**DATE:** 08.07.1999  
**NUMBER:** 1999-01-2911  
**DATE OF ENTRY INTO FORCE:** 14.08.1999  
**PROVISIONS CONCERNED:** Articles 3 and 24.
Q.1.B

List the others norms of transposition by order of importance of their legal nature (first laws, secondly regulations; thirdly circulares or instructions):

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)

Please use one table per norm and duplicate as much as necessary

---

**Title**: Employment and Work of Aliens Act
**Date**: 14.07.2000
**Number**: 2000-01-3058
**Date of Entry Into Force**: 10.08.2000
**Provisions Concerned**: Articles 6, 7, 8, 10, and 11.

**Legal Nature** (indicate a cross in the correct box):
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<td>Date: 02.04.2004</td>
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Q.2. THIS QUESTION IS IN PRINCIPLE ONLY FOR FEDERAL OR ASSIMILATED MEMBER STATES LIKE AUSTRIA, BELGIUM, GERMANY, ITALY, SPAIN

The Republic of Slovenia is not a federal state.

Q.2.A. Explain which level of government is competent to adopt the norms of transposition.

Please include your answer in the tables below

**LEGISLATIVE RULES**

COMPETENCES OF THE FEDERAL/CENTRAL LEVEL: National Assembly

COMPETENCES OF THE COMPONENTS: /

EXPLANATIONS IF NECESSARY: /

**REGULATIONS**

COMPETENCES OF THE FEDERAL/CENTRAL LEVEL: Ministry of Interior

COMPETENCES OF THE COMPONENTS: /

EXPLANATIONS IF NECESSARY: /
Q.2.B. In case, explain if the federal structure and the distribution of competences between the different levels pose any problem or difficulty regarding the transposition and/or the implementation of the directive.

Not applicable.

Q.3. Explain which authorities are competent for the practical implementation of the norm of transposition by taking the decisions in individual cases.

Please use one table per competence concerned and duplicate it if necessary

| COMPETENCE CONCERNED: | Ministry of Interior
|-----------------------|-----------------------
| CENTRAL MINISTRY OF:  | Directorate for Administrative Internal Affairs, Section for Migration and Integration
| DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY: | Ministry of Interior
| OTHER LEVEL OF ADMINISTRATION: | The residence permits are issued by the Administrative units (department for foreigners) which are expositions of the Ministry of Interior (the central government) on the local level. The Ministry itself, however, decides on complaints against the decisions issued upon the requests for residence permits.
| COMPETENCE CONCERNED: | Police
| CENTRAL MINISTRY OF: | Ministry of Interior
| DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY: | Police
| OTHER LEVEL OF ADMINISTRATION: | The Police is a state body with a special position within the Ministry of Interior. It is independent and run by a General Director; however its human resources, technical and infrastructural activities are carried out by the Ministry of Interior (Article 2 of the Police Act).
Q.4. A. Has the main regulation foreseen explicitly by the main norm of transposition already been adopted or not:

☐ OUI
☐ NON

Q.4.B. If the main norm(s) of transposition foresees the adoption of one or several regulations, indicate if they have all been adopted:

☐ OUI
☐ NON

If NO, please indicate the missing text(s) in the table below

Please use one line per missing text and duplicate it if necessary

<table>
<thead>
<tr>
<th>MISSING TEXTS</th>
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</thead>
<tbody>
<tr>
<td>INDICATE HERE THE MISSING TEXTS</td>
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</table>

Add if necessary some explanations (specify in particular if the missing texts are at least under preparation or foreseen in the very near future):
SECOND PART

AIM (ARTICLE 1)

The purpose of the Directive is to determine the conditions for the exercise of the right to family reunification. In case C-540/03, the Court of justice recognizes that, in some cases, member States do not have any margin of appreciation to grant the right to family reunification.

Q.5 – Is family reunification considered as a right in your Member State?

☐ OUI
☐ NON

Please explain

Although this is not specifically mentioned in the legislation, family reunification is considered as a right in accordance with Article 36 of the Aliens Act. However, this right is not absolute (as e.g. the right to life) since certain conditions have to be met in order for this right to be respected by the state. These conditions will be specified further in this report.

Q.5. A – Are there any figures available relating to the exercise of the right to family reunification between 2002 and 2006? If yes, what are the trends, including nationality assessment?

Number of persons residing in the Republic of Slovenia in 2002-2003 is as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of persons</th>
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<tr>
<td>2003</td>
<td>6450</td>
</tr>
<tr>
<td>2004</td>
<td>6049</td>
</tr>
<tr>
<td>2005</td>
<td>5890</td>
</tr>
<tr>
<td>2006 (11.12.2006)</td>
<td>5955</td>
</tr>
</tbody>
</table>

In 2003 there were 6450 family members of third country nationals residing in the Republic of Slovenia due to family reunification. 30 % of the permits were issued to nationals of Bosnia and Herzegovina, 26 % to nationals of Serbia and Montenegro, 16 % to nationals of Macedonia, 13 % to nationals of Croatia, 9 % to nationals of other European countries, 2 % to nationals of Americas, and 4 % to other third country nationals.

In 2004 there were 6049 family members of third country nationals residing in the Republic of Slovenia due to family reunification. 31 % of the permits were issued to nationals of Bosnia and Herzegovina, 27 % to nationals of Serbia and Montenegro, 18 % to nationals of Macedonia, 11 % to nationals of Croatia, 7 % to nationals of other European countries, 2 % to nationals of Americas, and 4 % to other third country nationals.

In 2005 there were 5809 residence permits issued to third country nationals due to family reunification (1965 to males and 3844 to females). 31 % of permits were issued to nationals of
Bosnia and Herzegovina, 27 % to nationals of Serbia and Montenegro, 21 % to nationals of Macedonia, 9 % to nationals of Croatia, 6 % to nationals of other European (but not EU) countries, 2 % to nationals from Americas, and 4 % to other third country nationals.

On 11.12.2006 there were 5955 residence permits issued to third country nationals due to family reunification (which represents 22,5 % of all temporary residence permits issued to third country nationals). 30 % of permits were issued to nationals of Bosnia and Herzegovina, 26 % to nationals of Serbia and Montenegro, 17 % to nationals of Macedonia, 14 % to nationals of Croatia, 7 % to nationals of other European (but not EU) countries, 3 % to nationals from Americas, and 6 % to other third country nationals.

The trends show that the number of family members residing in the Republic of Slovenia due to family reunification is slightly decreasing. The majority of family members are nationals of other republics of the former Yugoslavia and the numbers from the recent years do not indicate any change in this respect.

DEFINITIONS (ARTICLE 2)

SCOPE (ARTICLE 3)

The scope of the Directive is defined by Article 3. We recall that:

- § 1 "reasonable prospect..." aims at excluding persons residing on a temporary basis (stagiaires, etc...)
- European citizens are excluded (§ 3)
- Comparison with existing legislation is of importance so as to assess the added value of the harmonization process (§ 5)

Q.6. Period of validity of the sponsor’s residence permit:
   Q.6. A. Is the period of validity of the sponsor’s residence permit of one year or more according to Article 3 § 1 of the Directive?

   ☒ OUI
   ☐ NON

Q.2.B. Quote precisely the period enshrined in national law:

In accordance with Article 36, § 1 of the Aliens Act, a foreigner (a sponsor) who resides in Slovenia on the basis of the permanent residence permit and a foreigner who resides in Slovenia for the last year on the basis of a temporary residence permit with a validity for at least one year, has the right to family reunification. More lenient provisions are in place for a foreigner who resides in Slovenia on a basis of a residence permit issued for the purposes of research and a foreigner whose temporary residence in Slovenia is in a special interest of the state. Such foreigners obtain the right to family reunification regardless of the temporal validity of their residence permit (i.e. even if the validity is less than one year) and regardless of the duration of the sponsor’s residence in Slovenia.

Q.6.C. How does your Member State translate in national law the requirement for the sponsor to have "reasonable prospects of obtaining the right of permanent residence" (a 3 § 1)?

The requirement of “reasonable prospects of obtaining the right of permanent residence” is taken into consideration by enabling the right to family reunification to those foreigners who
have already resided in Slovenia for at least one year and whose residence permit is issued for
at least another year, as stipulated in the Article 36, § 1 of the Aliens Act. Accordingly, such
person will have to live in Slovenia for another three years before being eligible for the
permanent residence permit.

Q.7. – Members of the family concerned:

Q7. A. Are they third country nationals as required by Article 3 § 1 of the
Directive ?

[X] OUI
[] NON

If not, explain

The Aliens Act defines family members as foreigners (Article 36, § 1). In accordance with
Article 2 of the Aliens Act, a foreigner is a person who does not have the citizenship of the
Republic of Slovenia. The provision does not state explicitly that foreigners are third country
nationals. However, the fact that family members are in fact third country nationals is implied
from the structure of the act. Namely, special rights of persons who are citizens of the EU are
specifically dealt with by other parts of the Aliens Act.

Q.7.B. How has your Member State translated in national law the wording of
"whatever status" included in Article 3 § 1 of the Directive?

The wording of “whatever status” is not mentioned in the national legislation of Slovenia,
which means that the entitlement of the right to family reunification is not limited to family
members with any specific status. The absence of any provision concerning their status
therefore has an effect of respect for the wording “whatever status”. However, since the entry
of family members to the Republic of Slovenia is only possible if they have a valid passport
this means that they at least have to have such status that enables them to obtain a passport.

Q.8 – Did the transposition of the Directive in your Member state breached provisions
of international law more favourable to individuals (a 3 § 4)?

[] OUI
[X] NON

Q.9 – If yes, are those provisions based on:

Q.9.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?

[] OUI
[X] NON

Specify which provisions
Q.9.B - The European Social Charter of 18 October 1961 (a 3 § 4)?
☐ OUI
☒ NON
Specify which provisions

Q.9.C. The amended European Social Charter of 3 May 1987 (a 3 § 4)?
☐ OUI
☒ NON
Specify which provisions

☐ OUI
☒ NON
Specify which provisions

Q.10 – Does the transposition of the Directive affect national provisions more favourable to individuals (a 3 § 5)?
☒ OUI
☐ NON
If yes, please specify which provisions

Before the transposition there was no waiting period defined for the right to family reunification; the sponsor could apply for family reunification with his or her family members immediately after he or she began residing in the Republic of Slovenia and regardless of the temporal validity of his or her residence permit. Now the right to family reunification is only accessible to those foreigners who have already resided in Slovenia for at least one year and who have a residence permit valid for at least another year, as stipulated by the Article 36, § 1 of the Aliens Act.

Beneficiaries (Article 4)
• Article 4 of the Directive contains numerous "may clauses". It is therefore important to pay attention on the way Member States use them and on the legal modalities adopted thereof.

• Article 4 § 1 a) and b) enacts a right to family reunification for some members of the sponsor's family. The Member State does not have any margin of discretion regarding those persons.

• Article 4 § 1 last indent foresee one derogation regarding child over 12 years on the basis of an integration criterion. This is one of the most sensitive questions encompassed by the directive beside the issue of the limit of age in § 6.

• Regarding Article 4 § 6, the Court states "It does not matter that the final sentence of the contested provision provides that the Member States which decide to apply the derogation are to authorise the entry and residence of children in respect of whom an application is submitted after they have reached 15 years of age 'on grounds other than family reunification'. The term 'family reunification' must be interpreted in the context of the Directive as referring to family reunification in the cases where family reunification is required by the Directive. It cannot be interpreted as prohibiting a Member State which has applied the derogation from authorising the entry and residence of a child in order to enable the child to join his or her parents". (cons. 86)

The Court adds " Article 4(6) of the Directive must, moreover, be read in the light of the principles set out in Article 5(5) thereof, which requires the Member States to have due regard to the best interests of minor children, and in Article 17, which requires them to take account of a number of factors, one of which is the person's family relationships" (cons. 87)

Q.11 – Does your national law recognize the right to family reunification to:

Q.11. A – The sponsor's spouse (a. 4 § 1 a)?

☒ OUI
☐ NON

Q.11. B - Minor children of the sponsor and of his/her spouse (a. 4 § 1 b)?

☒ OUI
☐ NON

Q.11.C. Minor children adopted of the sponsor and of his/her spouse (a. 4 § 1 b)?

☒ OUI
☐ NON

Q.11.D. Minor children of the sponsor (a. 4 § 1 c)?

☒ OUI
Q.11. E. If yes, does your national law foresee that the sponsor shall have children custody and children are dependant on him or her?

☐ OUI

☒ NON

Specify if necessary the proofs required

There are no provisions in the national legislation stipulating the requirements of the custody or dependency. However, if the competent body establishes that the sponsor is using the right to family reunification to bring his children to Slovenia against the will of his or her spouse who would have children custody, such application would be refused.

Q.11 F. Minor children adopted of the sponsor (a 4 §1.c) ?

☒ OUI

☐ NON

Q.11. G. If yes:

h. Does your national law foresee that the sponsor shall have children custody and children are dependant on him or her?

☐ OUI

☒ NON

Specify if necessary the proofs required

There are no provisions in the national legislation stipulating the requirements of the custody or dependency for the spouse’s children. However, if the competent body establishes that the right to family reunification would be abused by bringing the children to Slovenia against the will of the person who has children custody, such application would be refused.

g.g. Does national law provide that those children shall be 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"?

☐ OUI

☒ NON

Specify if necessary the proofs required

The Aliens Act does not specifically mention the right to family reunification for adopted children. However, In accordance with the Article 7 of the Marriage and Family Relations
Act, adopted children are equal to biological children. In order to prove family relations with the adopted children, the decision on adoption of the competent body of the country of origin has to be enclosed to the application.

Q.11. H. Minor children of the spouse (a 4 §1.d.)?

☐ OUI
☐ NON

Q.11. I. If yes, does your national law foresee that the spouse shall have children custody and children are dependant on him or her?

☐ OUI
☐ NON

Specify if necessary the proofs required

There are no provisions in the national legislation stipulating the requirements of the custody or dependency for the spouse’s children. However, if the competent body established that the right to family reunification would be abused by bringing the children to Slovenia against the will of the person who has children custody, such application would be refused.

Q.11. J. Minor children adopted of the spouse (a 4 §1.d.)?

X OUI
☐ NON

Q.11. K. If yes, k. Does your national law foresee that the spouse shall have children custody and children are dependant on him or her?

☐ OUI
X NON

Specify if necessary the proofs required

There are no provisions in the national legislation stipulating the requirements of the custody or dependency for the spouse’s children. However, if the competent body established that the right to family reunification would be abused by bringing the children to Slovenia against the will of the person who has children custody, such application would be refused.

k.k. Does national law provide that those children shall be 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'"?

☐ OUI
Specify if necessary the proofs required

The Aliens Act does not specifically mention the right to family reunification for adopted children. However, in accordance with the Article 7 of the Marriage and Family Relations Act, adopted children are equal to biological children. In order to prove family relations with the adopted children, the decision on adoption of the competent body of the country of origin has to be enclosed to the application.

Q.12 – Has your Member State transposed the option opened by Article 4 § 1 c:

Q.12A. To authorise reunification of minor children of the sponsor – including also adopted children – of whom custody is shared (a 4 §1.c)?

☐ OUI
☒ NON

Specify if necessary

There are no provisions in the national legislation concerning that shared custody of children. However, if the competent body established that the right to family reunification would be abused by bringing the children to Slovenia against the will of the person who has children custody, such application would be refused.

Q.12.B. If yes, has your legislation transposed the condition that the other party sharing custody has given his or her agreement (a 4 §1. c)?

☐ OUI
☒ NON

Specify if necessary

There are no provisions in the national legislation concerning the agreement of the person who is sharing custody. However, if the competent body established that the right to family reunification would be abused by bringing the children to Slovenia against the will of the person who has children custody, such application would be refused.

Q.13 – Has your Member State transposed the option opened by Article 4 § 1 d):

Q.13.A. to authorise reunification of minor children of the spouse – including also adopted children – of whom custody is shared (a 4.1.d. in fine)?

☐ OUI
☒ NON

Specify if necessary
Reunification of minor children of the spouse is allowed. However, there are no specific conditions in the national legislation concerning the children of the spouse demanding that the custody be shared.

**Q.13 B.** If yes, has your legislation transposed the condition that the other party sharing custody has given his or her agreement (a 4. 1.d) ?

- [ ] OUI
- [x] NON

Specify if necessary.

**Q.14** – In any case referred to in questions 7 to 9, is the age of the minor children below the age of majority set up by the law of your Member State (a.4 §1, second indent)?

- [ ] OUI
- [x] NON

If yes, indicate the age required.

**Q.15** – In any case referred to in questions 7 to 9, has the prohibition of marriage of minor children been transposed (a.4 §1, second indent)?

- [x] OUI
- [ ] NON

If not, explain.

**Q.16** – Is the derogation set up in Article 4 § 1 last indent relating to the conditions for integration of children over 12 years arrived independently from the rest of the family used by your Member State?

- [ ] OUI
- [x] NON

How the criterion "arrives independently from the rest of his/her family" has been transposed in your national legislation?

Not applicable since no such provisions exist.

**Q.17** – If yes, did this integration condition already exist in your national legislation before the date of transposition of the Directive?

- [ ] OUI
- [ ] NON

Not applicable.
**Q.18** – Describe briefly the content of this condition, the date of its creation and the conditions of its examination

Not applicable.

**Q.19** – Are the children of refugees required to an integration test by your Member State (in contradiction with Article 10 § 1)?

[ ] OUI

[ ] NON

If yes, explain

Not applicable.

**Q.20** – Does your Member State authorise:

**Q.20 A** – Reunification of first-degree relatives in the direct ascending line of the sponsor (a 4§2 a)?

[ ] OUI

[ ] NON

**Q.20 B** – If yes, shall they be dependant and not enjoy proper family support in the country of origin?

[ ] OUI

[ ] NON

How each of those criterions is transposed and checked?

The norm is transposed with Article 36, § 3, indent 5 of the Aliens Act stipulating that the adult unmarried children and parents of the sponsor or spouse whom the sponsor or the spouse are obliged to support in accordance with the national law of their country of origin, are considered close family members who have the right to family reunification. In order to prove the family relationship and the obligation to support the family members, the birth certificates and the decisions on the obligation to support, issued by the competent bodies of the country of origin, have to be enclosed. All enclosed documents which are in a foreign language, have to be translated into Slovenian by the authorized court interpreter (except for the international documents issued in multiple foreign languages).

**Q. 20.C.** Reunification of first-degree relatives in the direct ascending line of the spouse (a 4§2 a)?

[ ] OUI

[ ] NON
Q.20.D. If yes, shall they be dependant and not enjoy proper family support in the country of origin?

☐ OUI
☐ NON

How each of those criterions is transposed and checked?

The norm is transposed with Article 36, § 3, indent 5 of the Aliens Act stipulating that the adult unmarried children and parents of the sponsor or spouse whom the sponsor or the spouse are obliged to support in accordance with the national laws of their country of origin, are considered close family members who have the right to family reunification. In order to prove the family relationship and the obligation to support the family members, the birth certificates and the decisions on the obligation to support, issued by the competent bodies of the country of origin, have to be enclosed. All enclosed documents which are in a foreign language, have to be translated into Slovenian by the authorized court interpreter (except for the international documents issued in multiple foreign languages).

Q.20.E. Reunification of adult unmarried children of the sponsor? (a 4§2 b) ?

☐ OUI
☐ NON

If necessary, explain how this procedure is organised

There is no special procedure regarding the reunification with adult unmarried children of the sponsor.

Q.20.F. If yes, does the national legislation impose that those adult unmarried children of the sponsor are objectively unable to provide for their own needs on account of their state of health (a 4 §2 b) ?

☐ OUI
☐ NON

If necessary, specify how each of those criterions ("objectively" and "unable to provide for their own needs") is transposed and checked?

The norm is transposed with Article 36, § 3, indent 5 of the Aliens Act stipulating that the adult unmarried children and parents of the sponsor or spouse whom the sponsor or the spouse are obliged to support in accordance with the national laws of their country of origin, are considered close family members who have the right to family reunification. In order to prove the family relationship and the obligation to support the family members, the birth certificates and the decisions on the obligation to support, issued by the competent bodies of the country of origin, have to be enclosed. All enclosed documents which are in a foreign language, have to be translated into Slovenian by the authorized court interpreter (except for the international documents issued in multiple foreign languages).
Q.20. G. Does your Member State authorise reunification of adult unmarried children of the spouse (a 4§2 b)?

[ ] OUI

[ ] NON

If necessary, specify how this condition is assessed

Please see the answer to the following question.

Q.20.H. If yes, does the national legislation impose that those adult unmarried children of the sponsor are objectively unable to provide for their own needs on account of their state of health (a 4 §2 b)?

[ ] OUI

[ ] NON

If necessary, specify how each of those criterions ("objectively" and "unable to provide for their own needs") is transposed and checked?

The norm is transposed with Article 36, § 3, indent 5 of the Aliens Act stipulating that the adult unmarried children and parents of the sponsor or spouse whom the sponsor or the spouse are obliged to support in accordance with the national laws of their country of origin, are considered close family members who have the right to family reunification. In order to prove the family relationship and the obligation to support the family members, the birth certificates and the decisions on the obligation to support, issued by the competent bodies of the country of origin, have to be enclosed. All enclosed documents which are in a foreign language, have to be translated into Slovenian by the authorized court interpreter (except for the international documents issued in multiple foreign languages).

Q.20. I. Did your Member state use the by law or regulation norms to implement Article 4 § 2 a and b?

[ ] OUI

[ ] NON

Q.21 – Does your Member State authorise reunification of the unmarried partner of the sponsor, being a third country national (a 4 §3)?

[ ] OUI

[ ] NON

Q.22 – If yes:

Q.22 A – This partnership shall be based on a duly attested stable long term relationship?

[ ] OUI
Not applicable.

**Q.22 B** – This partnership shall be registered?

☐ OUI
☐ NON

Not applicable.

**Q.23** – Does your national law consider the registered partner as the husband/spouse (a 4 §3 indent 2)?

☐ OUI
☒ NON

**Q.24** – Does your Member State authorise:

**Q.24. A** – Reunification of minor children of the partner, including adopted children (a 4§3)?

☐ OUI
☒ NON

No if they are not at the same time children of the sponsor, too.

**Q.24. B** – Reunification of adult unmarried children of the partner, including adopted children (a 4§3)?

☐ OUI
☒ NON

No if they are not at the same time children of the sponsor, too, or children adopted by the sponsor too.

**Q.25** – Does your Member State allow reunification of adult unmarried children who are objectively unable to provide for their own needs on account of their state of health (a 4§3)?

☐ OUI
☒ NON
If yes, specify how the conditions, and more particularly the "objectivity", are assessed.

**Q.26** – Did your Member state use the by law or regulation norms to implement Article 4 § 3?

No.

**Q.27** – Is the prohibition of polygamous marriage enshrined in your national legislation (a. 4§4)?

[ ] OUI

[ ] NON

**Q.28** – Does your Member State limit family reunification of minor children of a further spouse and the sponsor (Article 4§4 last indent)?

[ ] OUI

[ ] NON

**Q.29** – Does your Member State use the option set up by Article 4 § 5 requiring the sponsor and his/her spouse to be of a minimum age of 21 years old before reunification?

[ ] OUI

[ ] NON

**Q.30** – If yes,

**Q.30 A** – What is the age required?

**Q.30 B** – Is the derogation founded on integration criteria and/or prevention of forced marriage?

Not applicable.

**Q.31** – Does your Member State use the derogation of Article 4 § 6 by requesting that the applications concerning family reunification of minor children have to be submitted before the age of 15?

[ ] OUI

[ ] NON

Explain

The national legislation of the Republic of Slovenia does not require for the applications of minor children to be submitted before the age of 15.
Q.32 – If yes, was it provided by existing legislation on the date of implementation of the directive?

Not applicable.

Q.33 – If the application is not introduced before the age of 15, do Member States authorise entry and residence on grounds other than family reunification?

☐ OUI
☐ NON

Which grounds and which conditions?

Not applicable.

PROCEDURE (ARTICLE 5)

We draw attention on the major importance given by the Court of justice regarding § 5 relating to the best interest of minor children.

Q.34 – Did your Member State institute a procedure regarding family reunification (a 5 §1) ?

☒ OUI
☐ NON

Q.35 – If yes,

Q.35. A – Which authorities are in charge of this issue?

In accordance with the Article 42, § 1 of the Aliens Act – Consolidated Text, the competent body for deciding upon the applications for temporary residence permits on the basis of family reunification is the Administrative Unit in the area where the family member intends to reside, or where the family member resides (if he or she applies for the extension of the permit). Administrative Units are expositions of the central government on the local level; however, they are not equal to local government, i.e. municipalities, because issuing residence permits is the activity within the competence of the central government. The application for first temporary residence on the basis of family reunification may be lodged either at the Administrative Unit or at the consular representation of the Republic of Slovenia abroad, as stipulated by Article 36, § 2 of the Aliens Act. The application for renewal of residence permit is lodged at the Administrative Unit in the Republic of Slovenia (Article 31 of the Aliens Act).

Q.35. B – Are NGO's associated to this procedure?

☐ OUI
☒ NON

If yes, describe the procedure
Q.35. C – Is the application submitted by the sponsor or by family members?

In accordance with the Article 36, § 5 of the Aliens Act, the application for temporary residence on the basis of family reunification, which is issued to close family members, is submitted by the sponsor.

Q.35. D – Is this procedure exclusive from other possibilities to grant family reunification?

☐ OUI

☐ NON

If other procedural possibilities exist, please describe them

Not applicable.

Q.35. E – Was this procedure existing before the adoption of Directive 2003/86?

☐ OUI

☐ NON

Q.36 – Which documentary evidence are required to prove (a 5 §2):

Q.36. A – Family relationships according to Article 4?

In accordance with Article 27, § 5 of the Aliens Act, the applicant (sponsor) must enclose with the application certificates proving that his or her close family members fulfil the conditions to obtain temporary residence permit due to family reunification. For the purpose of proving family relationship, the applicant must enclose a birth certificate (for minor unmarried children of him and his spouse, his or her parents, dependent parents and dependent adult unmarried children), a marriage certificate for his or her spouse, and an adoption certificate (decision) for adopted children of him and spouse.

Q.36. B – Accommodation conditions laid down in Article 7?

The Aliens Act of the Republic of Slovenia does not set out accommodation as a condition for obtaining the right to family reunification. Instead, the provision of Article 36, § 5 of the Aliens Act requires that the sponsor encloses a proof on sufficient means of subsistence of persons for whom he is applying for temporary residence permit, for the time of their intended residing in Slovenia. In accordance with Article 27, § 3 of the Aliens Act, sufficient means for survival means an amount equal to secured minimum income in the Republic of Slovenia (approximately 200,00 EUR per person per month). Possession of sufficient means of subsistence can be proven by bank notes, confirmation on employment and salary etc.

Q.36. C – Sickness insurance conditions?

Pursuant Article 27, § 3, a foreigner has to possess an appropriate health insurance in the Republic of Slovenia, in order to obtain a temporary residence permit due to family
reunification. Possession of health insurance can be proven by any kind of confirmation proving that the insurance policy has been concluded. Confirmation has to be issued by any of the insurance companies that have a licence to provide health insurance in the Republic of Slovenia.

**Q.36. D** – Certified copies of family member(s)' travel documents?

A foreigner who is applying for residence permit in Slovenia and who wishes to enter the Republic of Slovenia must posses a valid passport. A copy of the passport must be enclosed with the application. The copy must be certified either by the competent body accepting the application, to which the original passport has been shown (in such case the official at the competent body writes on the copy 'a copy identical to the original’ with a signature, date and stamp) or other bodies competent for certifying the copies of the documents (in Slovenia such body is either a notary or an Administrative Unit).

**Q.37** – Is the possibility foreseen to proceed to:

- Interviews:
  - [X] OUI
  - [□] NON

- Investigations:
  - [X] OUI
  - [□] NON

If yes, describe them briefly

Both interviews and investigations in procedures for issuing a temporary residence permits due to family reunification are foreseen by the General Administrative Procedure Act, Articles 70, 175, 181 and 188. The aim of interviews and investigations is to verify the facts important for issuing a decision in the administrative procedure. However, in practice these procedures are mostly written and based on written evidence. The obligation of the applicant to attend the interview is also stipulated by the Article 27 of the Aliens Act.

**Q.38** – When examining an application concerning the unmarried partner of the sponsor, which evidences are taken into account by Member States on the basis of national law to prove family relationship (Article 5§2 dernier alinea) ?

Not applicable since unmarried partners are not entitled to the right to family reunification.

**Q.38. A** – Existence of family ties and other elements such as a common child?

- [□] OUI
- [□] NON

Specify

Not applicable.
Q.38. B - Previous cohabitation?

☐ OUI
☐ NON

Q.38. C - Registration of a partnership

☐ OUI
☐ NON

Q.38. D - Any other reliable means of proof foreseen in national law?

☐ OUI
☐ NON

If yes, specify which ones:

No applicable.

Q.39 – Are family members obliged to reside outside the territory of the Member State while the application is being examined (a5 §3) ?

☒ OUI
☐ NON

Is this obligation sanctioned and how?

If the competent body establishes that the family member already lives in Slovenia prior to issuance of the residence permit, the application for residence permit is rejected (Article 43, § 1, indent 7 of the Aliens Act). In accordance with Article 7 and 8, § 1 of the Aliens Act, to enter the state the foreigner must possess a valid passport and a visa or residence permit to enter the Republic of Slovenia (except for citizens of those states for which visa is not required for residing in Slovenia for up to ninety days). Also, Article 36, § 5 of the Aliens Act, which stipulates that the application for residence permit due to family reunification is lodged by the sponsor, suggests that only the sponsor, but not the family members are present in Slovenia while the application is being examined.

On the other hand, it is possible for the family members to be present in Slovenia even before the residence permit is issued, if they visit Slovenia on the basis of a visa. However, since visas are not issued for residence purpose but for the purposes of private or business visit or transfer, such stay cannot be considered residence. E.g. this is also consistent with the fact that he residence permit for the family members will still be served to them in their country of origin by the consular representation.

Q.40 – If the answer is yes, is a derogation organised according to Article 5 § 3 second indent?

☒ OUI
Third country nationals are obliged to reside outside Slovenia while their application is being examined. However, there is a derogation for visa holders being in Slovenia at the time when their application is being examined.

**Q.41** – Does your national legislation include a maximum period of 9 month to answer to the application by way of written notification (a5 §4)?

- [X] OUI
- [ ] NON

If necessary, please specify

The deadline for issuing a decision upon the application for a temporary residence permit is defined by Article 222 of the General Administrative Procedure Act, stipulating that administrative decisions have to be issued in a maximum of two months or in one month on issues considered in a shorter procedure. In practice this deadline is generally respected.

**Q.42** – This time limit can be extended (a 5 §4 alinea 2)?

- [ ] OUI
- [X] NON

**Q.43** – If yes,

**Q.43. A** – Because of the complexity of the examination of the application?

- [ ] OUI
- [X] NON

If yes, please specify

Not applicable.

**Q.43. B** – What is the length of the extension?

Not applicable.

**Q.44** – If no decision is taken by the end of the 9 months period provided, what are the consequences for the applicant?

If no decision is taken by the end of the deadline of two months, an applicant can file an appeal to the Ministry of Interior as if he or she was issued a negative decision, as stipulated with the provision of Article 222, § 4 of the General Administrative Procedure Act.
Q.45 – Is the decision rejecting the application notified? Does this written notification contain the reasons of rejection?

☐ OU
☐ NON

Specify if only one condition is not required

Not applicable.

Q.46 – How is the best interest of minor children taken into account by your Member State’s legislation and authorities during examination of the application (Article 5§5)?

In accordance with Article 56, § 1, of the Constitution of the Republic of Slovenia, children enjoy special protection and care. Human rights and fundamental freedoms are enjoyed by the children according to their age and maturity. Slovenia ratified the Convention on the Rights of the Child which in Article 3 stipulates the best interest of the child. In accordance with Article 18 of the Constitution of the Republic of Slovenia the international conventions are directly applicable. In accordance with Article 60 of the Aliens Act the unaccompanied minors are appointed a guardian. In the legislation of the Republic of Slovenia there are no other provisions concerning the best interest of a child that could be applied by the authorities while examining the application.

CONDITIONS REQUIRED (ARTICLES 6 AND OTHERS)

• Questions relating to accommodation and resources will be carefully examined to assess if Member States use them, either as a migration tool or as an integration tool.

• The same assessment applies regarding the option to set up a period of lawfully residence not exceeding two years before applying for family reunification.

• According to Article 8, the Court of justice states: "That provision does not therefore have the effect of precluding any family reunification, but preserves a limited margin of appreciation for the Member States by permitting them to make sure that family reunification will take place in favourable conditions, after the sponsor has been residing in the host State for a period sufficiently long for it to be assumed that the family members will settle down well and display a certain level of integration. Accordingly, the fact that a Member State takes those factors into account and the power to defer family reunification for two or, as the case may be, three years do not run counter to the right to respect for family rights set out in particular in Article 8 of the ECHR as interpreted by the European Court of Human Rights

• "It should, however, be remembered that, as is apparent from Article 17 of the Directive, duration of residence in the Member State is only one of the factors which must be taken into account by the Member State when considering an application and that a waiting period cannot be imposed without taking into account, in specific cases, all the relevant factors" (cons. 99). "The same is true of the criterion of the Member State’s reception capacity, which may be one of the factors taken into account when considering an application, but cannot be interpreted as authorising any quota system or a three-year waiting period imposed without regard to the particular circumstances of specific cases. Analysis of all the factors, as prescribed in Article 17 of the
Directive, does not allow just this one factor to be taken into account and requires genuine examination of reception capacity at the time of the application" (cons. 100) “When carrying out that analysis, the Member States must, as is pointed out in paragraph 63 of the present judgment, also have due regard to the best interests of minor children” (cons. 101).

Q.47 – Can public policy, public security or public health grounds be taken into account to (a 6 §§1 et 2):

Q.47. A – Reject an application for family reunification?

☑ OUI
☐ NON

If yes, which ones?

In accordance with the Article 43, § 1 (indents 4, 5, 9) of the Aliens Act, an application of any foreigner (including a family member) can be rejected if conditions are fulfilled for a rejection of entry into the Republic of Slovenia. These conditions are, among others:

- if there are reasons to suspect that a foreigner will represent a threat to public order and security or international relations of the Republic of Slovenia or if there is a suspicion that his residence in the country will be connected to terrorist or other violent acts, illegal intelligence activities, drug trafficking or other criminal acts,
- if there are reasons to presume that a foreigner will not respect the legislation of Slovenia,
- if in the last three months a foreigner was already denied a visa application due to reasons of public order, security or international relations of the Republic of Slovenia or due to a suspicion that his or her residence in the Republic of Slovenia would be connected to terrorist or other violent acts, illegal intelligence activities, drug trafficking or other criminal acts.

The reason for rejection of the application is also the fact that the foreigner was prohibited from entering the state (Article 43, § 1, indent 2). Entry is prohibited in cases when a foreigner is issued a side penalty of expulsion of a foreigner from the state in a criminal procedure or a misdemeanor procedure and in cases of withdrawal of residence permit in accordance with articles 48 and 49 of the Aliens Act (e.g. in cases of threat to public order and security and in cases of conviction with a punishment of imprisonment for more than three months).

The application for temporary residence due to family reunification can also be rejected for public health grounds, i.e. if in the procedure for issuing the first residence permit it is established that a foreigner comes from areas where contagious diseases are present with a possibility of epidemics (stated in international health regulations of the International Health Organization) or from areas where contagious diseases are present that could endanger the health of people and for which special measures are required in accordance with law (Article 43, § 1, indent 8 of the Aliens Act).

Q.47. B – Withdraw an application for family reunification?

☑ OUI
☐ NON
If necessary, please specify

There are situations foreseen in the Aliens Act when the status can be withdrawn for a reason connected to public order and security. Namely, in accordance with the Article 45, § 1, indent 3 of the Aliens Act, the permission for temporary residence is withdrawn if a alien is convicted for a crime or an offence and a punishment of expulsion is issued to him or her with a final decision, or if another EU member state issued such punishment to a alien. Further, in accordance with Article 45, § 1 (indents 1 and 2), of the Aliens Act, the residence permit is withdrawn if it is annulled (i.e. in cases when it is later established that there were reasons for which an application for residence permit should have been denied or if reasons for denying the application for residence permit appear later. Also, the residence permit may be withdrawn in cases of threat to public order and security and in cases of conviction with a punishment of imprisonment for more than three months (Article 48, § 2, of the Aliens Act).

At deciding upon the withdrawal of the residence permit, the competent body takes into account personal, family, economic and other ties of the alien to the Republic of Slovenia and the consequences that the withdrawal would cause to the alien (Article 49, § 3 of the Aliens Act).

Q.47. C – Refuse to renew a family member's residence permit?

☐ OUI
☐ NON

If necessary, please specify

The application to renew residence permit of a family member can be refused for the same reasons as the first application can be rejected for (please see answer to Q 47. A), except for the public health reasons.

Q.48 – Does national legislation take into account:

Q.48. A – The severity or type of offence against public policy or public security?

☐ OUI
☐ NON

Q.48. B – The solidity of family relationships regarding Article 17 of the Directive?

☐ OUI
☐ NON

If necessary, please specify

Article 43, § 2 stipulates that at refusing the application to renew the temporary residence permit of a family member the competent body has to take into account the nature and solidity of the family relationship, duration of the family member’s residence in the Republic of Slovenia and the consequences that the withdrawal would cause to the foreigner (Article 49, § 3 of the Aliens Act).
Slovenia, as well as the existence of family, cultural and social ties to his or her country of origin.

**Q.49** – Does your Member State withdraw the residence permit or remove the third country national on the sole ground of illness or disability suffered after the issue of the residence permit (a 6 §3)?

- [ ] OUI
- [x] NON

**Q.50** – Are accommodation conditions required from the applicant (a7 §1a)?

- [ ] OUI
- [x] NON

**Q.51** – If yes:

**Q.51. A** – What are those conditions?

Not applicable.

**Q.51. B** – How are they assessed?

Not applicable.

**Q.51 C** – Are they comparable to the conditions required to a normal family living in the same region?

- [ ] OUI
- [ ] NON

If not, please specify the differences

Not applicable.

**Q.52** – Is a sickness insurance required from the applicant (a. 7 §1b)?

- [x] OUI
- [ ] NON

**Q.53** – Are stable resources required (a7 §1c)?

- [x] OUI
- [ ] NON

Specify their nature and content
The provision of Article 36, § 5 of the Aliens Act requires that the sponsor encloses a proof on sufficient means of subsistence of persons for whom he or she is applying for temporary residence permit, for the time of their intended residence in Slovenia. Sufficient means of subsistence equals to the amount of minimum income in the Republic of Slovenia (currently 205,57 EUR per month) which changes once a year in accordance with the inflation rate.

Q.54 – How is the condition "sufficient" assessed by your Member State? Is it in comparison with national wages?

In accordance with Article 27, § 3 of the Aliens Act, sufficient means for survival means an amount equal to secured minimum income in the Republic of Slovenia (approximately 200,00 EUR per person per month).

Q.55 – Are integration criterions required to allow family reunification (a 7 §2)?

☐ OUI

☒ NON

Q.56 – If yes:

Not applicable.

Q.56. A – What are those criterions?

Not applicable.

Q.56. B – Do they apply indistinctly to all potential beneficiaries of reunification? (Spouse, dependant people, etc.)

Not applicable.

Q.56. C – How are they evaluated by your Member State?

Not applicable.

Q.56. D – Are refugees and their family members required to fulfil them (a 7 §2, second indent)?

☐ OUI

☒ NON

Q.57 – Is a minimal period of lawful reside is required before reunification (a 8 §1)?

☒ OUI

☐ NON

Q.58 – Does this period exceed two years?

Please specify
No, the period does not exceed two years. In accordance with Article 36, § 1 of the Aliens Act, the minimal period of lawful residence of the sponsor before he or she applies for residence permit for his or her family members, is one year.

Q.59 – Does your Member State apply the derogation set up by Article 8 § 2 allowing Member States to impose a waiting period of maximum three years due to reception capacities between the submission of the application and the issuance of a residence permit?

☐ OUI

☒ NON

Please specify

In accordance with Article 36, § 1 of the Aliens Act the sponsor may lodge the application for temporary residence permit for a family member after the period of one year of legally residing in the Republic of Slovenia, and in accordance with Article 222 of the General Administrative Procedure Act the residence permit has to be issued in the period of two months.

Q.60 – If yes, did this derogation exist in national law before the 22nd of September 2003?

☐ OUI

☐ NON

Not applicable.

FAMILY REUNIFICATION OF REFUGEES

The legal regime applicable to refugees derogates from the one applicable to family reunification. The scope of those derogations (minimal lawful residence, members of the family, accommodation requirements) shall be assessed on the basis of national law.

Q.61 – Does your Member State allow family reunification of refugees on the basis of Directive 2003/86 (a 9 §1) ?

☒ OUI

☐ NON

Q.62 – Is this right limited to family relationships predating the entry on the territory (a 9 §2)?

☒ OUI

☐ NON
Q.63 – Does your Member State allow family reunification of family Members not quoted in Article 4 of the Directive (a 10 §2) ?

☐ OUI

☒ NON

Which members of the family and under which conditions?

According to the proposal of the International Protection Act which will replace the Asylum Act currently in place, the right to family reunification will be recognized to the refugee’s spouse, unmarried partner, minor unmarried children who can not financially support themselves, regardless if they were born in or out of marriage or if they are adopted, and parents of an unaccompanied minor asylum seeker or refugee (Article 3, indent 15).

Q.64 – According to the specific case of unaccompanied minor refugees, does your Member State authorise family reunification of first degree relatives in the direct ascending line without applying the conditions laid down in Article 4 § 2 (a10 §3 a) ?

☒ OUI

☐ NON

What conditions are required?

The proposal of the International Protection Act, which will replace the Asylum Act, allows for family reunification of unaccompanied minors with their first degree relatives in a direct ascending line (parents). Besides proving family relationship in a direct ascending line there are no additional conditions specified in the proposal of the International Protection Act.

Q. 65 – Does your Member State authorise entry and residence of the legal guardian or any member of the family where the unaccompanied minor refugee has no relatives in the direct ascending line or such relatives cannot be traced (a10 §3 b) ?

☐ OUI

☒ NON

If yes, please specify who the member of the family targeted is and which proofs are required to prove family ties?

Not applicable.

Q.66 – Does your Member State take into account other evidence of family relationship where the refugee cannot provide official evidence (a 11 §2) ?

☒ OUI

☐ NON

Which ones?
The proposal of the International Protection Act stipulates that the refugee may apply for family reunification with his or her family members. The proofs of family relations must be enclosed with the application (article 17, § 2). There are no specific provisions defining what kind of proofs must be enclosed and what happens if such proofs do not exist. The general provision concerning proofs and evidence in the asylum procedure stipulates that if the refugee could not enclose any proofs, the competent body takes into account that the refugee made maximum efforts to substantiate the claim, that he or she gave a satisfying explanation why proofs could not be enclosed, that his claims are consistent and believable and do not counter generally accessible information connected to his case and whether or not his general credibility has been established (Article 21, § 1).

**Q.67** – Does the examination of the refugee application take into account their specific situation:

**Q.67. A** – Are proofs regarding accommodation conditions, sickness insurance or resources required (a §1)?

- [ ] OUI
- [x] NON

If yes, are those requirements comparable to those imposed to other third country nationals?

Not applicable since there are no such conditions stipulated either in the Asylum Act or in the proposal of the International Protection Act.

**Q.67. B** – If one of the persons concerned (sponsor or family member) has special links with a third country within which reunification is possible, does your member state require those proofs according to Article 12 § 1 second indent.

- [ ] OUI
- [x] NON

If necessary specify

There are no such provisions in the national legislation.

**Q.67. C** – If a refugee has introduced its application after a period of three months, does your Member State require the refugee to meet the conditions or one of them (accommodation, sickness insurance, resources (a §1 alinea 3))?

- [ ] OUI
- [x] NON

If yes, which ones?

Not applicable since no such conditions exist either in the Asylum Act or in the proposal of the International Protection Act.
Q.68 – Does your Member State apply the prohibition to impose a residence condition before reunification (a 12 §2)?

☐ OUI

☐ NON

If not, what is the length of this period? Is it different from the one normally applied?

EXERCISE OF THE RIGHT TO FAMILY REUNIFICATION

The granting of an autonomous residence permit is one of the most sensitive issues of this part of the Directive.

Q.69 – Is entry and residence facilitated by your Member State, as soon as the application for family reunification has been accepted, including the issue of obtaining visas (a13 §1)?

☐ OUI

☐ NON

If yes, how?

Q.70 – Is a residence permit of at least one year's duration granted to the family members (a 13 §2)?

☐ OUI

☐ NON

What is the duration of the residence permit?

In accordance with Article 36, § 1 and 7 of the Aliens Act, the duration of the first residence permit granted to family member is equal to the one granted to sponsor but it is issued for a maximum of one year. Since the sponsor can only apply for family reunification if he or she has a residence permit with duration of at least one year, the family member will be issued the residence permit with duration of one year.

Q.71 – Is this residence permit renewable?

☐ OUI

☐ NON

In accordance with Article 36, § 6 and § 7 of the Aliens Act, the residence permit can be renewed (extended) under the same conditions as the first residence permit, even if the sponsor’s permit’s duration is less than one year. In general, the renewal of the family member’s residence permit is in line with the duration of the sponsor’s permit, but the family member’s residence permit duration can never exceed two years.
Q.72 – Is the duration of the residence permit aligned with the duration of sponsor's residence permit (a 13 §3)?

☐ OUI

☐ NON

If no, please specify

In general, the renewal of the family member’s residence permit is in line with the duration of the sponsor’s permit, but the family member’s residence permit duration can never exceed two years, as stipulated by the Article 36, § 7 of the Aliens Act.

Q.73 – Are the rights awarded to family members' equivalent to those granted to the sponsor (a14 §1):

The general rule regarding the rights awarded to a sponsor and a family member depends on the fact whether the sponsor who applied for family reunification, has temporary or permanent residence in Slovenia. Namely, some of the social and economic rights (e.g. social welfare benefits) which are awarded to foreigners with permanent residence in Slovenia are not awarded to foreigners with temporary residence permit. Therefore, the following questions will be answered as if both the sponsor and the family member have temporary residence in Slovenia.

Q.73. A – Regarding access to education?

☐ OUI

☐ NON

If no, please specify

Q.73. B - Regarding access to employment?

☐ OUI

☐ NON

Please specify the content of this access

Since the family member is issued an autonomous residence permit in accordance with Article 36, § 8 of the Aliens Act, he or she has access to employment: the person may apply for a work permit in accordance with Article 8 of the Employment and Work of Aliens Act and conclude an employment contract.

Q.73. C – Regarding access to vocational guidance, initial and further training and retraining?

☐ OUI

☐ NON
If no, please specify

**Q.74** – Does your Member State grant specific rights in social matters to reunified family members?

☐ OUI

☒ NON

If yes, please describe them and specify if a time limit is established to take advantage from them.

**Q.75** – Has Member State set up conditions regarding specific access to employment for family members (a 14 §2)?

☐ OUI

☒ NON

If yes, how?

**Q.76** – If yes, do those conditions exceed 12 months (a 14 §2)?

☐ OUI

☐ NON

Which ones?

Not applicable.

**Q.77** – Is access to employment limited in your Member State

**Q.77.A** – Regarding first-degree relatives in the direct ascending line?

☐ OUI

☒ NON

If yes, how?

**Q.77. B** – Regarding adult unmarried children objectively unable to provide for their own needs on account of their state of health (a 14 §3)?

☐ OUI

☒ NON

If yes, how?
Q.78 – Are spouses, unmarried partners and child who has reached majority entitled to an autonomous residence permit at least five years after lawful residence on the basis of the residence permit issued for family reunification (a15 §1)?

☐ OUI
☐ NON

If yes, please specify when and how for each category

Pursuant Article 36, § 8 of the Aliens Act, family members who fulfill the conditions, may be issued an autonomous residence permit. The conditions are stipulated with Article 41, § 1 of the Aliens Act: a foreigner who resides in the Republic of Slovenia uninterruptedly for five years on the basis of almost any type of temporary residence permit (including the one on the basis of family reunification) may be issued an autonomous permanent residence permit, if he or she fulfills other conditions required by the law. The five-year condition is also fulfilled if a foreigner was absent from Slovenia for periods not exceeding six months and if all periods of absence in total do not exceed ten months. There is also a special provision for close family members of a sponsor who resides in Slovenia on the basis of a permanent residence permit (Article 41, § 2 of the Aliens Act) – they may obtain permanent residence permit after two years of residing in Slovenia on the basis of the temporary residence permit.

Q.79 – Does your Member State limit the granting of the autonomous residence in cases of breakdown of the family relationship (a 15 §1 alinea 2)?

☐ OUI
☐ NON

Please explain

The provision of Article 36, § 9 of the Aliens Act stipulates that the competent body may renew (extend) the temporary residence permit to a close family member of a sponsor even in the case if the sponsor passed away or if the spouses divorced, but only if the marriage in the Republic of Slovenia lasted for at least three years. Such renewal is possible only once by issuing a temporary residence permit with a duration for one year. If after this time a widow or a widower or a former spouse reaches the condition of five years he or she may also apply and be issued an autonomous permanent residence permit. If this condition is not reached, the permanent residence permit cannot be issued.

In addition to that, the family member may also apply for an autonomous residence permit on the basis of other grounds (apart from family reunification, such as schooling, work, research etc.), as stipulated in Article 31, § 2, of the Aliens Act.

Q.80 – Does your Member State grant autonomous residence permit:

Q.80. A – To first-degree relatives in the direct ascending line (a15 §2)

☐ OUI
☐ NON
If necessary specify

Autonomous residence permit is issued to any close family member who legally resides in the Republic of Slovenia due to family reunification, if he or she fulfils the conditions, including the condition of the five year legal residence in the Republic of Slovenia. There is also a special provision for close family members of a sponsor who resides in Slovenia on the basis of a permanent residence permit (Article 41, § 2 of the Aliens Act) – they may obtain permanent residence permit after two years of residing in Slovenia on the basis of the temporary residence permit. In addition to that, the family member may also apply for an autonomous residence permit on the basis of other grounds (apart from family reunification, such as schooling, work, research etc.), as stipulated in Article 31, § 2, of the Aliens Act.

**Q.80. B** – To adult unmarried children objectively unable to provide for their own needs on account of their state of health (a15 §2) ?

☐ OUI

☐ NON

If necessary specify

Autonomous residence permit is issued to any close family member who legally resides in the Republic of Slovenia due to family reunification, if he or she fulfils the conditions, including the condition of the five year legal residence in the Republic of Slovenia.

**Q.81** – Does your member State grant autonomous residence permit in the event of widowhood, divorce, separation or death of first first-degree relatives in the direct ascending or descending line (a 15 §3) ?

☐ OUI

☐ NON

If necessary specify

The provision of Article 36, § 9 of the Aliens Act stipulates that the competent body may renew the temporary residence permit to a close family member of a sponsor even in the case if the sponsor passed away or if the spouses divorced, but only if the marriage in the Republic of Slovenia lasted for at least three years. Such renewal is possible only once by issuing a temporary residence permit with duration for one year. If after this time a widow or a widower or a former spouse reaches the condition of five years he or she may also apply and be issued permanent residence permit. If this condition is not reached, the permanent residence permit cannot be issued. In addition to that, the family member may also apply for an autonomous residence permit on the basis of other grounds (apart from family reunification, such as schooling, work, research etc.), as stipulated in Article 31, § 2, of the Aliens Act.

**Q.82** – Has your Member State adopted rules granting autonomous residence permit "in the event of particularly difficult circumstances" (a 15 §3)?

☐ OUI
NON

If yes, how is this provision defined and transposed?

Not applicable.

**Penalties and Redress**

*Those provisions must be read in parallel with those relating to the conditions to be fulfilled to obtain family reunification (Articles 6, 7, 8)*

*Questions relating fraud, false or falsified documents are of importance to assess their impact.*

**Q.83** – What are the legal grounds to reject, withdraw or refuse to renew a family member's residence permit (a16 §1 et 2):

**Q.83. A** – Conditions required by the directive not satisfied?

X OUI

□ NON

**Q.83. B** – Absence of real martial or family relationship?

X OUI

□ NON

If yes, how is this hypothesis assessed?

In the course of the procedure for issuing a residence permit the competent bodies (i.e. the Administrative Units in Slovenia and the consular representations abroad) cooperate and exchange information on the sponsor and the alleged family members, they review visa history of the applicants, and if it is established that the marital or family relationship is not real, the application for residence permit would be rejected, in accordance with Article 36, § 3 and Article 43, § 1, indent 6 of the Aliens Act. While Article 36, § 3 of the Aliens Act does not explicitly stipulate that the application would be rejected in case of absence of real martial or family relationship, that is implied from the nature of the provision. Namely, this provision sets out the conditions that have to exist and be proven with appropriate proofs and if they are not, the application is rejected.

**Q.83. C** – Stable long term relationship with another person?

□ OUI

X NON

If yes, how is this hypothesis assessed?

Not applicable (in Slovenia non-married partner cannot obtain residence permit due to family reunification).
Q.83. D – False or falsified documents?

X OUI

□ NON

Q.83. E – Marriage, partnership or adoption contracted for the sole purpose of enabling reunification?

X OUI

□ NON

Q.83. F – If yes, how is this hypothesis assessed?

The application for temporary residence permit of a family member is rejected if it is obvious that the marriage was concluded exclusively or especially with a purpose to acquire residence permit or if in the procedure for renewal of a residence permit it is established that a close family member actually does not live in a family unity with the sponsor (Article 43, § 1, indent 6 of the Aliens Act). In order to establish such fact the competent bodies, i.e. Administrative Units and the consular representation cooperate and exchange information relevant for such conclusion.

Q.83. G – When the sponsor's residence comes to an end and the family member does not yet enjoy an autonomous right of residence (a 16 §3) ?

□ OUI

X NON

Q.83. H – What type of control are organised thereof?

In the course of the procedure for issuing a residence permit the competent bodies (i.e. the Administrative Units in Slovenia and the consular representations abroad) cooperate and exchange information on the sponsor and the alleged family members, they review visa history of the applicants, and in case there is a proof that the marital or family relationship is not real, the application for residence permit would be rejected. If the competent bodies find that the claims of the applicants are true and if they fulfil the conditions for a residence permit, the permit is renewed (or granted, if they fulfil the conditions for the autonomous residence permit). If the competent bodies find that the claims of the applicants are false they withdraw the residence permit. If they find that the conditions are no longer fulfilled, the residence permit is not granted.

Q.84 – Are resources of the family taken into account when renewing residence permit where the sponsor does not have sufficient resources without recourse to the social assistance system of the member state?

X OUI

□ NON

If yes, under which modalities?
The provision of Article 36, § 5 of the Aliens Act requires that the sponsor must enclose evidence on the sufficient means of subsistence (of him and / or his family members) for persons for whom he is applying for temporary residence permit renewal, for the time of their intended residing in Slovenia. In accordance with Article 27, § 3 of the Aliens Act, sufficient means for survival means an amount equal to secured minimum income in the Republic of Slovenia (approximately 200,00 EUR per person per month). If the sponsor has permanent residence permit he or she is entitled to social welfare benefits, which can be counted towards the required means of subsistence. If the sponsor has only temporary residence permit, he or she is generally not entitled to any social benefits, so recourse to social system of the member state is not possible (Article 5 of the Social Security Act).

Q.85 – Does your Member State's legislation take into consideration (a. 17) :

Q.85. A – The nature and solidity of the person's family relationships and the duration of his residence in the Member State?

☐ OUI
☐ NON

If yes, please specify how and on the basis of which norm (legislation, regulation, jurisprudence, …)

In accordance with Article 43, § 2 of the Aliens Act, at rejecting the application for renewal of the temporary residence permit for family members, the competent body has to take into account the nature and solidity of the family relationship, duration of the family member’s residence in the Republic of Slovenia and existence of family, cultural and social ties with his or her country of origin.

Q.85. B - 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?

☐ OUI
☐ NON

If yes, please specify how and on the basis of which norm (legislation, regulation, jurisprudence, …)

In accordance with Article 43, § 2 of the Aliens Act, at rejecting the application for renewal of the temporary residence permit for family members the competent body has to take into account the nature and solidity of the family relationship, duration of the family member’s residence in the Republic of Slovenia and existence of family, cultural and social ties with his or her country of origin.

Q.86 – Do the sponsor and/or members if his/her family have the right to mount a legal challenge where an application for family reunification is rejected (a18 §1)?

☐ OUI
☐ NON
Q.87 – Is this right to legal challenge considered as a right to a judicial review according to jurisprudence C-540/03 (a18 §1)?

[X] OUI

[ ] NON

When the application is rejected, the sponsor and his or her family members have the right to file an appeal in 15 days to the Ministry of Interior, in accordance with the Article 65 of the Aliens Act. This appeal is filed and considered in the administrative procedure and it can therefore not be considered as the right to judicial review. However, against a negative decision, issued by the Ministry of Interior, it is possible to file a lawsuit to the Administrative Court in 30 days, as stipulated by the Administrative Disputes Act. This lawsuit is considered as a right to a judicial review. Against the decision of the Administrative Court it is possible to file an appeal to the Supreme Court in 15 days since the court decision has been served. Since filing an appeal to the Ministry of Interior opens up a possibility to file further legal remedies to both the Administrative and Supreme Court, this right can be considered as the right to judicial review.
XX. IMPACT OF THE DIRECTIVE ON NATIONAL LAW

Q.88 A  Did the transposition of the directive made the rules related to the best interest of minor children (a. 5 § 5) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

Please use one box per object and duplicate it if necessary

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Due regard to the best interest of minor children during examination of the application a. 5 § 5</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Before the transposition there were only a few provisions specifically concerning children: In accordance with Article 56, § 1, of the Constitution of the Republic of Slovenia, children enjoy special protection and care. Human rights and fundamental freedoms are enjoyed by the children according to their age and maturity. Slovenia ratified the Convention on the Rights of the Child which in Article 3 stipulates the best interest of the child.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>After the transposition, there were no other provisions inserted concerning the best interest of the child.</td>
<td>• Status quo</td>
<td>• In line with the directive</td>
</tr>
</tbody>
</table>
Q.88 B  Did the transposition of the directive made the rules related to the beneficiaries of the right to family reunification become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

<table>
<thead>
<tr>
<th>OBJECT</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Definition of the beneficiaries of the right to family reunification a. 4 § 4</td>
<td>Before the transposition family reunification was allowed for a spouse, minor unmarried children of the sponsor, minor unmarried children of the spouse, parents of a minor foreigner, dependent parents and dependent adult unmarried children. In addition to that the competent body may consider other persons as close family members if special circumstances spoke in favour of family reunification in the Republic of Slovenia.</td>
<td>• More favourable than previous national rules\textsuperscript{306}</td>
</tr>
</tbody>
</table>

\textsuperscript{306} This is not the case for the right to family reunification of refugees.

\textsuperscript{307} This is not the case for the right to family reunification of refugees.
spoke in favour of family reunification in the Republic of Slovenia. The date of adoption of this norm is 29.09.2005. However, that is not the case with family members of the refugees.

**Q.88 C** Did the transposition of the directive made the rules related to reunification of minor children between 12 (a. 4 § 1) and 15 (a. 4 § 6) years old become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

<table>
<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>Limitation of reunification of minor children of 12 and 15 years of age (a. 4 § 1 and 4 § 6)</td>
<td>Before the transposition minor children between 12 and 15 had the right to family reunification.</td>
<td>After the transposition minor children retained the right to family reunification in the same extent as before the transposition, regardless of the age.</td>
</tr>
</tbody>
</table>

**Q.88 D** Did the transposition of the directive made the rules related to requirements to the exercise of family reunification (Article 7) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Requirements for the exercise of family reunification (a. 7)</td>
<td>Before the transposition there was no waiting period for sponsors</td>
<td>After the transposition sponsors could start exercising the right</td>
</tr>
</tbody>
</table>
to exercise the right to family reunification. Before the transposition all sponsors except those who were in Slovenia due to seasonal work, could exercise the right to family reunification.

<table>
<thead>
<tr>
<th>Object</th>
<th>Evaluation regarding the evolution of national law</th>
<th>Evaluation in comparison with the standard of the directive</th>
</tr>
</thead>
<tbody>
<tr>
<td>Limitation of margins of manoeuvre (a. 17, a.5 §5, C-540/03)</td>
<td>• More favourable than previous national rules</td>
<td>• In line with the directive</td>
</tr>
<tr>
<td>Before the transposition the Aliens Act did not encompass provisions providing for margins of manoeuvre concerning the nature and solidity of family relations, duration of stay and ties to the country of origin.</td>
<td>After the transposition the Aliens Act includes a provision on the consideration of the nature and solidity of family relations, duration of stay and ties to the country of origin (Article 43, § 2). Date of change: 29.09.2005.</td>
<td></td>
</tr>
</tbody>
</table>
Before the transposition there were no integration requirements encompassed by the Aliens Act.

After the transposition there are still no integration requirements encompassed in the Aliens Act.

<table>
<thead>
<tr>
<th>§2)</th>
<th>THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Before the transposition there were no integration requirements encompassed by the Aliens Act.</strong></td>
<td><strong>After the transposition there are still no integration requirements encompassed in the Aliens Act.</strong></td>
</tr>
<tr>
<td><strong>• Status quo</strong></td>
<td><strong>• In line with the directive</strong></td>
</tr>
</tbody>
</table>

**Q.89.** From your point of view, did the transposition of the directive imply other interesting changes for the third national country regarding other elements than the ones mentioned in the previous question. Make also a comparison with the standard of the directive in the last column of the table below

There were no other interesting changes besides those already mentioned in previous tables.

**Q.89. A.** Mention if there is a general tendency to just copy the provisions of the directive into national legislation without redrafting or adaptation them to national circumstances.

[X] NO

[] OUI

**Q.89.B.** If yes, please indicate if this general tendency may or not create problems (for example difficulties of implementation, risk that a provision remain unapplied).

Not applicable.

[] NON

[] OUI

**Q.89.C.** If yes, give some of examples:

Not applicable.

**Q.89.D.** If only some provisions of the directive have been copied and if this may create any problem, please quote them and explain the problem.

Not applicable.

**Q.90.** Quote interesting decisions of jurisprudence related to the directive, its transposition or implementation (so this question concerns in principle decisions later that the directive, but previous ones might be quoted if relevant). Quote in particular decisions of supreme Courts; limit yourself to the appeal Courts and ignore the first resort if there are too many decisions at this level, unless there is a certain jurisprudence made of a group of decisions.
| DECISION OF SUPREME COURTS | DATE: 21.06.2005 | REFERENCE OF PUBLICATIONS: Available at http://www.sodnapraksa.si | SUMMARY OF CONTENT: Article 40 of the Aliens Act stipulates that the temporary residence permit in the Republic of Slovenia can also be granted to foreigner who in accordance with the law, international agreement or international principles proves a well-founded reason for which his or her residence in Slovenia is justified. This provision is general and is taken into account when the foreigner does not fulfil the conditions for residence permit on another ground. In the Administrative Court’s opinion this provision does not exclude the situation when the residence permit should have been issued due to family reunification, but the applicant does not fulfil the conditions for that in accordance with Article 36 of the Aliens Act. If the applicant (a daughter of an elderly man whose only remaining relative she is but is living in another country) would establish that her care for the father is absolutely necessary, it would be possible to grant her residence permit on the basis of Article 40 of the Aliens Act. However, since the applicant said herself that her father is still quite healthy and capable of independent life, her application was denied. |
| DECISION(S) IN FIRST RESORT |

ANY SUPPLEMENTARY COMMENT ABOUT THE TREND OF THE JURISPRUDENCE:
Q.91 Specify if there are or not problems with the translation of the text of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated.

[X] There are no problems with the translation of the directive

[ ] There are some problems with the translation of (indicate the number of the Articles concerned) of the directive.

Explain the difficulties that this could create:

Q. 92 ANY OTHER INTERESTING ELEMENT

Q.92 A. Following your personal point of view, mention from the point of view of third country nationals and/or from the Member State any interesting or innovative practice in your Member State

Please use one table per practice and duplicate it if necessary

<table>
<thead>
<tr>
<th>OBJECT OF THE PRACTICE</th>
<th>EXPLANATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>/</td>
<td></td>
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</tbody>
</table>

Q.92 B. Please add here any other interesting element in your Member State which you did not had the occasion to mention in your previous answers
QUESTIONNAIRE POUR LE RAPPORT NATIONAL SUR LA TRANSPOSITION DE LA DIRECTIVE 2003/86 SUR LE DROIT AU REGROUPEMENT FAMILIAL DU 22 SEPTEMBRE 2003

IN SPAIN

par

Esteve Garcia, Francina: University Professor of Public International Law (Community Law) at the University of Girona, francina.esteve@udg.es

Illamola Dausà, Mariona: Professor of Public International Law (Community Law) at the University of Girona, mariona.illamola@udg.es

Indicate here you surname and name

Lazaro González, Isabel E.: University Professor of Private International Law at the Comillas University, Isabel_lazaro@der.upcomillas.es


Le coordinateur thématique en charge de cette directive que vous pouvez contacter si vous avez des questions ou besoin d'aide au cours du "remplissage" du questionnaire est : Yves PASCOUAU, 00 335 59 57 41 20; yves.pascouau@univ-pau.fr

COMMENTAIRES

1. La directive 2003/86 relative au droit au regroupement familial a fait l'objet d'une élaboration particulièrement difficile nécessitant une nouvelle proposition de la Commission avant d'aboutir en 2003. Elle vient de faire l'objet d'un arrêt de la Cour de justice, le 27 juin 2006, dans l'affaire Parlement contre Conseil, rejetant le recours en annulation déposé par le Parlement (C-540/03).

2. La transposition de la directive doit être évaluée au regard de la nature de la disposition en cause. Afin de guider le rapporteur, celle-ci vous est indiquée par un code couleur : disposition obligatoire (Q.XX), disposition optionnelle (Q.YY), disposition dérogatoire (Q.ZZ).

3. La Cour a strictement délimité la marge d'appréciation des États membres, y compris lorsque la directive leur offre des possibilités de dérogation. Elle déclare ainsi :

"l'article 4, paragraphe 1, de la directive impose aux États membres des obligations positives précises, auxquelles correspondent des droits subjectifs clairement définis, puisqu'il leur impose, dans les hypothèses déterminées par la directive, d'autoriser le regroupement familial de certains membres de la famille du regroupant sans pouvoir exercer leur marge d'appréciation" (cons. 60).

"Il convient en outre de tenir compte de l’article 17 de la directive qui impose aux États membres de prendre dûment en considération la nature et la solidité des liens familiaux de la personne et sa durée de résidence dans l’État membre ainsi que l’existence d’attaches familiales, culturelles ou sociales avec son pays d’origine. Ainsi qu’il ressort du point 56 du présent arrêt, de tels critères correspondent à ceux pris en considération par la Cour européenne des droits de l’homme lorsqu’elle vérifie si un État, qui a refusé une demande de regroupement familial, a correctement mis en balance les intérêts en présence" (cons. 65)

"L’absence de définition de la notion d’intégration ne saurait être interprétée comme une autorisation conférée aux États membres d’utiliser cette notion d’une manière contraire aux principes généraux du droit communautaire et, plus particulièrement,
aux droits fondamentaux. En effet, les États membres qui souhaitent faire usage de la dérogation ne peuvent utiliser une notion indéterminée d'intégration, mais doivent appliquer le critère d'intégration prévu par leur législation existant à la date de la mise en œuvre de la directive pour examiner la situation particulière d'un enfant de plus de 12 ans arrivant indépendamment du reste de sa famille" (cons.70)

4. La clause de rendez-vous de l'article19 indique quels ont été les thèmes les plus sensibles de la négociation (3, 4, 7, 8 et 13).

PREMIERE PARTIE

1. NORMES DE TRANSPOSITION ET JURISPRUDENCE

Q.1.A. Identifiez la ou les PRINCIPALE(S) norme(s) de transposition (en raison de leur contenu) et indiquez leur nature juridique

• Cette question inclue aussi les normes adoptées avant l'adoption de la directive mais assurant sa transposition (ce qui est qualifié de "pre-existing norm" dans la table de correspondance).
• Citez la norme de transposition et pas seulement la disposition modifiée par celle – ci (cela vaut également dans le cas où il existe un code des étrangers)
• Au sujet de la nature juridique dans la table ci – après : legislative se réfère à une norme adoptée en principe par le parlement ; regulation correspond à une norme complétant la loi et adoptée en principe par le pouvoir exécutif; circular or instructions correspond à des règles pratiques d'application de la loi et aux réglementations adoptées en principes par les autorités administratives

Dupliez la table ci – dessous s'il existe plus d'une norme principale de transposition

This table is about: □ a text already adopted □ a text which is still a project to be adopted

TITLE: Rights of foreigners in Spain and their social integration
DATE: 11\textsuperscript{th} January 2000
NUMBER: 4/2000
DATE OF ENTRY INTO FORCE: 1\textsuperscript{st} February 2000
PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive):
LEGAL NATURE (indicate a cross in the correct box):
□ LEGISLATIVE: Organic Law
□ REGULATION:
□ CIRCULAR or INSTRUCTIONS:

This table is about: □ a text already adopted □ a text which is still a project to be adopted
| TITLE: | to reform the Organic Law 4/2000, of 11th January on the Rights of foreigners in Spain and their social integration |
| DATE: | 22nd December 2000 |
| NUMBER: | 8/2000 |
| DATE OF ENTRY INTO FORCE: | 23 January 2001 |
| LEGAL NATURE (indicate a cross in the correct box): | LEGISLATIVE: Organic Law |

| DATE: | 20th November 2003 |
| NUMBER: | 14/2003 |
| DATE OF ENTRY INTO FORCE: | 21st December 2003 |
| LEGAL NATURE (indicate a cross in the correct box): | LEGISLATIVE: Organic Law |

| TITLE: | Act Regulating the right to asylum and refugee status, modified by Act 9/1994 of 19 May |
| DATE: | 26 March |
| NUMBER: | 5/1984 |
| REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: | Official State Gazette 27 March 1984, n. 74, p. 8389 |
| LEGAL NATURE (indicate a cross in the correct box): | LEGISLATIVE: Law |

This table is about: X a text already adopted □ a text which is still a project to be adopted
This table is about: X a text already adopted    □ a text which is still a project to be adopted

**TITLE:** Development of the Organic Law 4/2000 of Rights of foreigners in Spain and their social integration Regulation

**DATE:** 30 December 2004

**NUMBER:** 2393/2004

**DATE OF ENTRY INTO FORCE:** 7 February 2005

**PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive):**

**REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:**
Official State Gazette 7 January 2005, n. 7, p. 485

**LEGAL NATURE** (indicate a cross in the correct box):
- [ ] LEGISLATIVE:
- [X] REGULATION: Royal Decree
- [ ] CIRCULAR or INSTRUCTIONS:

This table is about: X a text already adopted    □ a text which is still a project to be adopted

**TITLE:** Approving the Implementation Regulation of Law 5/1984 (March 26th) Regulating the Right to Asylum and the Refugee Status

**DATE:** 10th February 1995

**NUMBER:** 203/1995

**DATE OF ENTRY INTO FORCE:** 3 March 1995

**PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive):**

**REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:**
Official State Gazette 2 March 1995, n. 52, p. 7237

**LEGAL NATURE** (indicate a cross in the correct box):
- [X] REGULATION: Royal Decree
- [ ] CIRCULAR or INSTRUCTIONS:

**Q.1.B.** Listez les autres normes de transposition par ordre d'importance juridique (en premier lieu les lois, ensuite les règlements, et enfin les circulaires et instructions):

- Cette question inclue aussi les normes adoptées avant l'adoption de la directive mais assurant sa transposition (ce qui est qualifié de "pre-existing norm" dans la table de correspondance).
- Citez la norme de transposition et pas seulement la disposition modifiée par celle-ci (cela vaut également dans le cas où il existe un code des étrangers)

*Utilisez une table par norme et reproduisez la table autant de fois que nécessaire*

**TITLE:** On specific measures in matters of citizen safety, domestic violence and social integration of foreigners

**DATE:** 29th September 2003
| NUMBER: 11/2003 |
| DATE OF ENTRY INTO FORCE: 1st October 2003 |
| PROVISIONS CONCERNED: |
| (for example if the norm is not devoted only to the transposition of the concerned directive) |
| REFERENCES OF PUBLICATION |

| LEGAL NATURE (indicate a cross in the right box): |
| X LEGISLATIVE: Organic Law |
| REGULATION |
| CIRCULAR OR INSTRUCTIONS |

| TITLE: on Integral Protection Measures Against Gender-based Violence |
| DATE: 28th December 2004 |
| NUMBER: 1/2004 |
| DATE OF ENTRY INTO FORCE: |
| PROVISIONS CONCERNED: |
| (for example if the norm is not devoted only to the transposition of the concerned directive) |
| REFERENCES OF PUBLICATION |
| IN THE OFFICIAL JOURNAL: Official State Gazette 29 December 2004, |

| LEGAL NATURE (indicate a cross in the right box): |
| X LEGISLATIVE: Organic Law |
| REGULATION |
| CIRCULAR OR INSTRUCTIONS |

| TITLE: on Qualifications and Vocational Training |
| DATE: 19th June |
| NUMBER: 5/2002 |
| DATE OF ENTRY INTO FORCE: |
| PROVISIONS CONCERNED: |
| (for example if the norm is not devoted only to the transposition of the concerned directive) |
| REFERENCES OF PUBLICATION |
| IN THE OFFICIAL JOURNAL: Official State Gazette 20 June 2002, |

| LEGAL NATURE (indicate a cross in the right box): |
| X LEGISLATIVE: Organic Law |
| REGULATION |
| CIRCULAR OR INSTRUCTIONS |

<p>| TITLE: Modifying the Civil Code on the Right to get married |
| DATE: 1st July 2005 |
| NUMBER: 13/2005 |
| DATE OF ENTRY INTO FORCE: |
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**Title:** Green Card Marriage  
**Date:** 31 January de 2006  
**Number:**  
**Date of Entry into Force:**  
**Provisions Concerned:** (for example if the norm is not devoted only to the transposition of the concerned directive)  
**References of Publication**  
**In the Official Journal:**  
**Legal Nature (indicate a cross in the right box):**  
[ ] Legislative  
[ ] Regulation  
[X] Circular or Instructions: of the General Direction of the Register Office and Notarial Activity

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**Title:** Family registration  
**Date:** 29 July 2005  
**Number:**  
**Date of Entry into Force:**  
**Provisions Concerned:** (for example if the norm is not devoted only to the transposition of the concerned directive)  
**References of Publication**  
**In the Official Journal:** Official State Gazette 8 August 2005,  
**Legal Nature (indicate a cross in the right box):**  
[ ] Legislative  
[ ] Regulation  
[X] Circular or Instructions: of the General Direction of the Register Office and Notarial Activity

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<td>of the General Direction of the Register Office and Notarial Activity</td>
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**Title:** sur la preuve et la procédure en cas de mineurs adoptés  
**Date:** 31 mai 2005  
**Number:**  
**Date of Entry into Force:**  
**Provisions Concerned:** (for example if the norm is not devoted only to the transposition of the concerned directive)  
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| TITLE: | Nulité des marriages par simulation |
| DATE: | 20 Novembre 2002 |
| NUMBER: | 5/2002 |
| DATE OF ENTRY INTO FORCE: |
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| (for example if the norm is not devoted only to the transposition of the concerned directive) |
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| IN THE OFFICIAL JOURNAL: | Official State Gazette, |
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| X CIRCULAR OR INSTRUCTIONS: | of the General Direction of the Register Office and Notarial Activity |

| TITLE: | about Civil Unions |
| DATE: | 16th May 2005 |
| NUMBER: | 1/2005 |
| DATE OF ENTRY INTO FORCE: |
| PROVISIONS CONCERNED: |
| (for example if the norm is not devoted only to the transposition of the concerned directive) |
| REFERENCES OF PUBLICATION |
| IN THE OFFICIAL JOURNAL: | Official Cantabria Gazette 24 May 2005, n. 98, p.5539 |
| LEGAL NATURE (indicate a cross in the right box): |
| □ LEGISLATIVE: | Cantabria Autonomous Law |
| □ REGULATION |
| □ CIRCULAR OR INSTRUCTIONS: |

<p>| TITLE: | regulating Civil Unions |
| DATE: | 6 March 2003 |
| NUMBER: | 5/2003 |
| DATE OF ENTRY INTO FORCE: |
| PROVISIONS CONCERNED: |
| (for example if the norm is not devoted only to the transposition of the concerned directive) |
| REFERENCES OF PUBLICATION |
| IN THE OFFICIAL JOURNAL: | Official Canarias Gazette 19 March 2003, n° 54, p. 4236 |
| LEGAL NATURE (indicate a cross in the right box): |
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<th>DATE: 19 December 2001</th>
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| TITLE: concerning Stable Not-Married Couples in Aragon. | DATE: 26 March 1999 |
**Q.2.** CETTE QUESTION NE CONCERNE EN PRINCIPE QUE LES ETATS FEDERAUX OU ASSIMILES TELS QUE L'AUTRICHE, LA BELGIQUE, L'ALLEMAGNE, L'ITALIE ET L'ESPAGNE

**Q.2.A.** Expliquez quel niveau de gouvernement est compétent pour adopter les normes de transposition.

*Insérez vos réponses dans le tableau ci-dessous*

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<tr>
<th><strong>LEGISLATIVE RULES</strong></th>
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<td><strong>COMPETENCES OF THE COMPONENTS:</strong></td>
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<td><strong>EXPLANATIONS IF NECESSARY:</strong> In Family Law the Autonomous Communities have competences that could affect the notion of family members</td>
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relation with non married couples.

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Q.2.B. In case, explain if the federal structure and the distribution of competences between the different levels pose any problem or difficulty regarding the transposition and/or the implementation of the directive.

Not for the present moment.

Q.3. Expliquez quelles autorités sont compétentes pour l'application pratique des normes de transposition par l'adoption de decisions individuelles. Explain which authorities are competent for the practical implementation of the norm of transposition by taking the decisions in individual cases.

Please use one table per competence concerned and duplicate it if necessary

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<td>Ministry of International Affairs</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>Provincial Aliens Office (depending of Internal Affairs)</td>
</tr>
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<td></td>
<td>Consulate or embassy (depending of International Affairs)</td>
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<td></td>
<td>General Direction of Immigration (depending of MTAS)</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td>No</td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</td>
<td></td>
</tr>
</tbody>
</table>

Q.4. A. Est ce que la principale règle d'exécution prévue par la norme principale de transposition a été adoptée ou non (autrement dit le décret d'application principal prévu par la loi a-t-il été adopté)

✓ OUI

☐ NON

Q.4.B. Si la ou les principale(s) norme(s) de transposition prévoient l’adoption d’une ou plusieurs réglementations (au sens de regulation), indiquez si elles ont toutes été adoptées:

☐ OUI

☒ NON

Les principales oui, mais il manque certaines dispositions complémentaires

Si non, indiquez les textes manquant dans la table ci dessous

Utilisez une ligne par texte faisant défaut et dupliquez autant que nécessaire

<table>
<thead>
<tr>
<th>TEXTES MANQUANTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Il manque un Ordre Ministériel qui fixe les ressources économiques du regroupant permettent l’acquisition du au regroupement (Art 42.2 RELOEX). En effet, cette disposition fixe les moyens de vie exigibles ainsi que la manière d’accréditer sa possession, tout en tenant compte du nombre de personnes qui vont dépendre du regroupant lors du regroupement.</td>
</tr>
</tbody>
</table>

Ajoutez si nécessaire des explications (spécifiez en particulier si les textes manquant sont en cours de préparation ou prévus dans un future proche):

SECONDE PARTIE

**BUT (ARTICLE 1)**

L’objectif de la directive est de fixer les modalités d'exercice du droit au regroupement familial. Dans son arrêt C-540/03, la Cour reconnaît que, dans certains cas, les États membres n’ont pas de marge d’appréciation pour accorder le droit au regroupement familial.

**Q.5 – Le regroupement familial est-il un droit dans l’État membre ?**

- [ ] OUI
- [x] NON

Expliquez ou illustrez

Contrairement au droit au regroupement familial, le droit à vivre en famille est un droit reconnu constitutionnellement (sous l’article 39 de la Constitution espagnol). En effet, le droit au regroupement familial ne se définit pas comme un droit fondamental sinon comme un droit subjectif reconnu aux personnes qui remplissent les conditions prévues dans les articles de la LOEX et du RELOEX. Par conséquent, les États doivent réglementer ce droit subjectif en tenant compte de l’importance de protéger l’unité familiale.

**Q.5. A – L’exercice du droit au regroupement familial dans votre État membre entre 2002 et 2006 donne-t-il matière à évaluation chiffrée et laquelle, y compris par nationalité ?**

Officielement : non. Si nous disposons de statistiques fournies par l’institut national de statistique (INE) et par le Ministère de l’Intérieur (à travers des évaluations chiffrées des regroupements par nationalité), nous ne disposons pas à l’heure actuelle d’une information publique officielle et publiée. Toutefois, une évaluation chiffrée des entrées des étrangers selon leur nationalité est faite. D’ailleurs, ceux sont les bureaux des étrangers qui gèrent les données chiffrées des entrées par regroupement. Il peut leur être demandé ces informations, cependant elles ne peuvent être données qu’au niveau provincial (pour le moment, il n’est pas possible d’obtenir ces informations au niveau national).

En résumé, on peut affirmer qu’actuellement le regroupement constitue la principale porte d’entrée de l’immigration légale. Ainsi, il existe un grand pourcentage d’hommes latino-américains qui sont regroupés par ses épouses et un grand pourcentage de femmes marocaines qui sont regroupées par ses époux.

DEFINITIONS (ARTICLE 2)

CHAMP D'APPLICATION (ARTICLE 3)

La détermination du champ d'application du texte est fixée par l'article 3. On signalera que :
- le §1 "perspective fondée..."a pour fonction d'écarter les personnes séjournant temporairement (stagiaire, etc...)
- les citoyens de l'Union sont exclus (§3)
- la comparaison avec l'état du droit national existant est importante afin de déterminer la valeur ajoutée ou non de l'harmonisation (§5)

Q.6. La durée de validité du titre de séjour du regroupant :

Q.6. A. La durée de validité du titre de séjour dont le regroupant doit être titulaire est-elle supérieure ou égale à un an conformément à l'article 3.1 ?

☐ OUI
☐ NON

Q.6.B. Indiquez précisément la durée prévue par votre législation nationale :

Article 18.2 LOEX et art.38 RELOEX.- Le droit au regroupement familial exige que l'étranger réside légalement sur le territoire espagnol « pendant une année et dispose d’une autorisation de résidence pour au moins une l’année suivante ».

Avec l’article 42 RELOEX l’étranger, qui veut invoquer le regroupement, doit en faire la demande muni de la demande de renouvellement de son permis de résidence pour au moins l’année suivante. Par conséquent, la procédure de regroupement familial peut être initiée alors même que l’étranger est dans l’attente d’obtenir son autorisation de renouvellement du permis de résidence.

Néanmoins, il n’est pas possible d’octroyer l’autorisation de résidence à la famille du regroupant avant que celui-ci aie obtenu l’effective rénovation du permis de résidence du regroupant (par notification ou par silence positif).

Cependant, il convient de noter le traitement discriminatoire en relation aux ascendants qui ont été regroupés. En effet, ces personnes doivent accréditer une résidence permanente (au moins 5 ans) et des ressources économiques.

Q.6.C. Comment votre Etat a-t-il traduit-il dans son droit interne l'exigence pour le regroupant d’avoir « une perspective fondée d'obtenir un droit de séjour permanent” (a3 §1) ?

Par l’obtention de « l’autorisation pour résider au moins une autre année ». Cela est plus favorable que la clause de l’ article 3.1 de la Directive.

Les autorités octroient une grande importance au fait d’avoir une certaine stabilité du travail pour autoriser le renouvellement du permis de résidence.

Q.7. – Les membres de la famille concernés :

Q7. A. Sont-ils des ressortissants de pays tiers conformément à l’article 3 §1 ?

☐ OUI
Expliquez si non


Q.7.B. Comment votre État a-t-il traduit dans son droit interne la mention « indépendamment de leur statut juridique” qui figure à l’article 3.1 ?

La législation espagnole n’incorpore pas cette mention pour le regroupement

Q.8 – La transposition de la directive porte-t-elle atteinte à des dispositions internationales plus favorables pour les individus (a.3 §4)?

☐ OUI
☒ NON

Q.9 – Si oui, ces dispositions sont-elles issues de :

Q.9.A - des accords bilatéraux et multilatéraux entre la Communauté ou la Communauté et ses États membres, d’une part, et des pays tiers ?

☐ OUI
☒ NON

Précisez lesquelles

Q.9.B - de la Charte sociale européenne du 18 octobre 1961 (a.3 §4)?

☐ OUI
☒ NON

Précisez lesquelles

Q.9.C. De la Charte sociale européenne modifiée du 3 mai 1987 (a.3 §4)?

☐ OUI
☒ NON

Précisez lesquelles

Q.9.D. De la Convention européenne relative au statut juridique du travailleur migrant du 24 novembre 1977 (a.3 §4)?
□ OUI

X NON

Précisez lesquelles

Q.10 – La transposition de la directive met-elle fin à des dispositions nationales plus favorables pour les individus (a.3 §5) ?

□ OUI

□ NON

Si oui, précisez lesquelles

ces derniers années, nous avons assisté à une tendance consistant à introduire des nouvelles restrictions qui n’existaient pas auparavant, mais cela n’est pas directement lié à la transposition de la Directive 2003/86. En effet, il faut tenir compte du fait qu’il n’y a pas eu en Espagne une réelle transposition de cette Directive. Par exemple, les nouvelles reformes (LOEX 14/2003 et RELOEX 2393/2004) obligent à une présentation personnelle du regroupant au moment de demander le regroupement (pas de représentation), ainsi que la présentation personnelle du ou des membres de la famille devant le consulat ou l’ambassade correspondant pour demander le visa (la présence personnelle constitue la règle bien qu’il existe des dérogations possibles). Par conséquent, le regroupement en chaîne semble plus stricte, du fait de la restriction des conditions de demande du regroupement familial provenant de personnes qui elles même ont été regroupées. Par exemple, l’exigence de résidence permanente pour que les ascendants qui ont été regroupés afin qu’ils puissent eux mêmes regrouper leurs familles (cela dépasse largement les deux ans prévues par l’article 8 de la Directive).

De même les conditions pour regrouper les ascendants sont plus strictes : montrer pleine dépendance économique, de graves problèmes de santé, aucun enfant dans son pays d’origine....

A cela, la Loi 14/2003 a supprimé la possibilité d’exemption de visa pour les étrangers se trouvant sur le territoire espagnol. En effet, il était prévu la possibilité de regroupement du conjoint ou d’autres membres de la famille pour des raisons humanitaires ou de collaboration avec la justice.

En somme, ces réformes introduisent certains avantages pour les étrangers, spécialement en relation à les garanties procédurales (Ex. exigence de motivation et fixation des périodes de résolution des demandes).

BENEFICIAIRES (ARTICLE 4)

- L'article 4 ne présente pas de difficultés particulières si ce n’est les nombreuses facultés (les Etats "peuvent"…) offertes aux Etats membres. Il convient donc de bien s’assurer de l’utilisation ou non de ces facultés par les Etats et des modalités juridiques de cette utilisation.

- L'article 4 §1 a) à d) formule un droit au regroupement familial pour une série de membres de la famille destinataires de ce droit. L'Etat ne dispose d'aucune marge d’appréciation à leur égard.
• L'article 4 §1 dernier alinéa formule une dérogation concernant les enfants de 12 ans sur la base d'un critère d'intégration. Il s'agit de l'une des questions les plus sensibles tout comme celle de l'âge limite de quinze ans du §6.

• En ce qui concerne l'article 4 §6, la Cour de justice indique : "il importe peu que la dernière phrase de la disposition attaquée prévoie que les États membres qui décident de faire usage de la dérogation autorisent l'entrée et le séjour des enfants au sujet desquels la demande est introduite après qu'ils ont atteint l'âge de 15 ans «pour d'autres motifs que le regroupement familial». L'expression «regroupement familial» doit en effet être interprétée dans le contexte de la directive comme visant le regroupement familial dans les hypothèses où il est imposé par cette directive. Elle ne saurait être interprétée comme interdisant à un État membre, qui a fait usage de la dérogation, d'autoriser l'entrée et le séjour d'un enfant afin de lui permettre de rejoindre ses parents" (cons.86). Elle ajoute : "l'article 4, paragraphe 6, de la directive doit en outre être lu à la lumière des principes figurant aux articles 5, paragraphe 5, de la même directive, qui impose aux États membres de prendre dûment en considération l'intérêt supérieur de l'enfant mineur, et 17 de cette directive, qui leur impose de prendre en considération un ensemble d'éléments parmi lesquels figurent les liens familiaux de la personne" (cons.87).

Q.11 – Le droit national reconnaît-il le droit au regroupement familial pour :

Q.11. A - Le conjoint du regroupant (a.4 §1,a) ?

- OUI
- NON

La Loi établit que le conjoint ne doit pas être séparé ni de fait ni de droit et le mariage ne doit pas être célébré en fraude de la Loi. Par conséquent, il est interdit de regrouper plus d’un conjoint.

La procédure est la suivante : il faudra apporter copie du certificat de mariage. A cela, il convient d’éclairer un point relatif au fait qu’en Espagne, le mariage entre personnes du même sexe est autorisé. Il faut tenir compte que la Loi 13/2005 modifie le Code civil en relation au droit au mariage entre personnes du même sexe. La résolution DGRN de 29 juillet 2005 prévoit : « ...le mariage entre espagnol et étranger ou entre étrangers résidents en Espagne du même sexe sera valide par application de la loi matérielle espagnole, même dans le cas que la législation nationale de l’étranger ne permet ou ne reconnaît pas la validité de ce mariage, et même si la célébration aurait eu lieu en Espagne ou bien à l’étranger... ». En ce dernier cas il faudra remplir les conditions de forme et compétence.

Q.11. B - Les enfants mineurs du regroupant et de son conjoint (a.4 §1 b) ?

- OUI
- NON

Les enfants doivent être mineurs de 18 ans et ne pas être mariées.
Il n'y a pas des conditions prévues pour la documentation qui justifie le lien familial et ainsi que la filiation. Néanmoins, les documents principaux demeurent le Livret de famille ainsi que l'inscription de naissance légalisée au Registre Civil.

Par conséquent, le Registre Civil ainsi que les consulats jouent un rôle prépondérant dans la justification de la filiation. Sont admis : les certificats des Registres Civils d'un pays tiers ou les certificats consulaires, s'il n'y a pas des doutes sur la réalité du fait inscrit et sur sa légalité selon la loi espagnole (Loi du registre Civil, Règlement et plusieurs circulaires comme par exemple : RDGRN 3² de 8 de février de 2003).

En effet, certains pays comme le Ghana posent de nombreux problèmes pour le consulat espagnol notamment du fait des faux documents qui sont présentés.

**Q.11.C.** Les enfants mineurs adoptés du regroupant et de son conjoint (a 4 §1 b) ?

- [X] OUI
- [ ] NON

Les enfants doivent être mineurs de 18 ans et ne pas être mariées. L'article 108 du Code Civil ne permet pas de donner un traitement différent entre les enfants adoptés et les enfants biologiques et cela s’applique aussi pour le regroupement. L’art 17.1.b) de la LOEX oblige à justifier que la résolution par laquelle l’adoption est octroyée « réunie les éléments nécessaires pour produire ces effets sur le territoire espagnol ». Cela devant se résoudre par rémission au Code Civil et à la Convention de la Haie de 29 mai de 1993.

L’adoption à l’étranger doit remplir les conditions suivantes: régularité formelle du document étranger justifiant de l’adoption, l’institution adoptive étrangère doit établir le lien de filiation entre l’adoptant et l’adopté, la rupture irrévocable avec la famille biologique antérieure.

Le Ministère de Travail (MTAS) a adopté une Circulaire le 31 mai 2005 sur les preuves et la procédure à suivre dans le cas très complexe de celui des mineurs étrangers adoptés ou avec résolution de tutelle (à des fins d’adoption par des espagnols ou par des étrangers légalement résidants sur le territoire espagnol) quand ils voyagent avec le passeport de son pays d’origine et lorsqu’il n’a pas été possible de l’inscrire au Registre consulaire avant sa sortie de son pays d’origine.

Dans le cas de l’étranger résident en Espagne (considéré comme le représentant légal du mineur) il faudra suivre la procédure du regroupement, mais s’il se trouve dans le pays du mineur il devra présenter le visa de regroupement devant la mission consulaire espagnole la plus proche avec les documents suivants :

- Documentation légale du lien familial (résolution de l’autorité administrative ou judiciaire compétente qui autorise l’adoption ou la tutelle et qui octroie la représentation légale du mineur)
- Copie de la documentation qui justifie l’identité du regroupant (Passeport et document de voyage)
- Copie du document qui prouve la situation de résidence sur le territoire espagnol (permis de résidence)
- Certificat médical du mineur
- Passeport ordinaire ou titre de voyage du mineur étranger, reconnu en Espagne pour au moins 4 mois
Rapport d'idoineté pour l'adoption (émis par l’autorité compétente de chaque Communauté Autonome)

A cela, il faut ajouter une Instruction du 02/06/05 du MTAS qui établit une procédure spécifique pour les demandes de visa de résidence pour la situation concrète d’amener des mineurs étrangers adoptés (ou avec une résolution de tutelle par adoption) par des espagnols ou des étrangers ayant une résidence sur le territoire espagnol. Cette procédure une relation de représentation légale entre le mineur et l’adoptant ou les adoptants. Cette procédure prévoit que l’adoptant peut présenter la demande de regroupement au Bureau consulaire espagnol de la démarcation du mineur étranger, et là il devra présenter la documentation prévue dans les articles 42.2 et 43.2 du RELOEX.

Q.11.D. Les enfants mineurs du regroupant (a 4 §1.c.) ?

☐ OUI
☐ NON

Les enfants doivent être mineurs de 18 ans et ne pas être mariées.
A cela l’art 17.1 LOEX exige que le regroupant dispose de manière absolue de l’autorité parentale c’est à dire qu’il aie la garde et la charge des enfants sur lesquels il exerce cette autorité.
Dans le cas où, l’autre conjoint reste dans le pays d’origine le regroupant doit pouvoir justifier de la cession de l’autorité parentale ou bien de l’autorisation judiciaire pour que la situation ne soit pas considérée comme une séquestration internationale de mineurs « secuestro internacional de menores ». En pratique il est fort difficile d’acquérir une cession de l’autorité parentale « patria potestad » au sens que si les parents sont toujours en vie, normalement ils demeurent les « parents légaux » bien qu’ils soient divorcés ou séparés.

Q.11. E. Si oui, votre législation nationale prévoit-elle bien que le regroupant doit avoir la garde et la charge de ces enfants ?

☐ OUI
☐ NON

Précisez éventuellement quelles preuves sont exigées du demandeur

En général, la preuve d’une circonstance formelle (devant le consulat ou devant le juge), traduisant l’accord de l’autre parent relatif au regroupement du mineur, suffit.
Cela se traduit par la justification de la dépendance économique effective. Autrement dit, le regroupant doit avoir : au moins pendant la dernière année de sa résidence sur le territoire espagnol, envoyé de l’argent ou payé les dépenses familiales en une proportion rendant effective cette dépendance.
En Espagne la preuve principale est celle de l’envoi par le regroupant d’argent au pays d’origine, ensuite les consulats vont vérifiés les autres conditions légales.

Q.11 F. Les enfants mineurs adoptés du regroupant (a 4 §1.c ) ?

☐ OUI
Même réponse que la question Q.11.C. et Q.11.D

Q.11. G. Si oui :

h. Votre législation nationale prévoit-elle que le regroupant doit avoir la garde et la charge de ces enfants ?

☐ OUI
☐ NON

Précisez éventuellement quelles preuves sont exigées du demandeur

Même réponse que Q.11.E

En plus il faut justifier que la résolution d'octroie de l'adoption réunit les conditions nécessaires pour produire des effets juridiques sur le territoire espagnol.

g.g. La législation de votre Etat prévoit-elle que ces enfants sont adoptés "conformément à une décision prise par l'autorité compétente de l'État membre concerné ou à une décision exécutoire de plein droit en vertu d'obligations internationales dudit État membre ou qui doit être reconnue conformément à des obligations internationales"?

☐ OUI
☐ NON

Précisez éventuellement quelles preuves sont exigées du demandeur

L'article 108 du Code Civil traite de façon égale les enfants adoptés et les enfants biologiques, par conséquent on ne peut pas justifier un traitement différent entre les deux au moment du regroupement.

L'article 17.1 b) in fine de la LOEX établit l'exigence de prouver que la résolution, dans laquelle il serait accordé l'adoption, réunit les éléments nécessaires pour produire ces effets sur le territoire espagnol. Cela devra se résoudre par rémission à ce qui est prévu à l'article 9.5 (5) du Code Civil et à la Convention de la Haie de 29 mai de 1993, sur la protection de l'enfant et la coopération en matière d'adoption international.

Il est prévu introduire un contrôle minimum de l'égalité pour les enfants adoptés en exigeant la justification que la résolution, par laquelle l'adoption est reconnue, remplit les éléments nécessaires pour produire ces effets sur le territoire espagnol. Ce contrôle est prévu pour les adoptions qui doivent s'inscrire au Registre Civil.

À la régularité formelle du document étranger dans lequel doit figurer l'adoption (Art. 323 LEC), s'ajoute l'obligation pour l'institution d'adoption étrangère d'établir le lien de filiation entre la personne qui adopte et l'adopté, ainsi que de mettre fin aux liens du mineur avec ses parents biologiques de manière irrévocable.

En Espagne, l'efficacité de l'adoption étrangère se maintiendra dans tous les aspects de la vie de l'enfant adopté et regroupé, en créant une équivalence entre les exigences des lois relatif aux étrangers et celles qui régissent son efficacité sur le territoire espagnol, bien qu'elle soit constitutée par une autorité étrangère compétente.

Q.11. H. Les enfants mineurs du conjoint du regroupant ( a 4 §1.d.) ?
Q.11. I. Si oui, votre législation nationale prévoit-elle bien que le conjoint doit avoir la garde et la charge de ces enfants ?

X OUI
□ NON

Précisez éventuellement quelles preuves sont exigées du demandeur

Il faut justifier de « la garde et de la charge ». En principe, la preuve d’une constance formelle (devant le consulat ou devant le juge), que l’autre parent accepte le regroupement du mineur, suffit.
Par conséquent, il faut prouver la dépendance et cela comporte que, au moins pendant la dernière année de sa résidence sur le territoire espagnol, le regroupant a envoyé de l’argent ou a payé les dépenses familiales des enfants mineurs du conjoint en une proportion qui permet en déduire une dépendance économique effective.
En Espagne la preuve principale est celle de l’envoi par le regroupant d’argent au pays d’origine, ensuite les consulats vont vérifiés les autres conditions légales.

Q.11. J. Les enfants mineurs adoptés du conjoint (a 4 §1.d) ?

X OUI
□ NON

Même réponse que Q.11.E
En plus il faut accréditer que la résolution d’octroi de l’adoption réunit les conditions nécessaires pour produire des effets juridiques sur le territoire espagnol.

Q.11. K. Si oui

k Votre législation nationale prévoit-elle bien que le conjoint doit avoir la garde et la charge de ces enfants ?

X OUI
□ NON

Précisez éventuellement quelles preuves sont exigées du demandeur

Les preuves exigées prennent la forme d’un acte judiciaire qui confirme l’attribution de la garde et de la charge de l’enfant au conjoint du regroupant. Mais elles peuvent aussi prendre la forme d’une déclaration formelle de l’autre conjoint (judiciaire, notarial ou devant le consulat) qui donne foi de qu’il existe bien «la garde et la charge » ou que le bénéficiaire de « la garde et la charge » soit bien le demandeur.
La législation de votre État prévoit-elle que ces enfants sont adoptés "conformément à une décision prise par l'autorité compétente de l'État membre concerné ou à une décision exécutoire de plein droit en vertu d'obligations internationales dudit État membre ou qui doit être reconnue conformément à des obligations internationales"?

[X] OUI
[ ] NON

Précisez quelles preuves sont exigées du demandeur

L'article 17.1 b) in fine de la LOEX établit la nécessité de justifier que la résolution, dans laquelle il serait accordé l'adoption, réunit les éléments nécessaires pour produire des effets, sur le territoire espagnol. Cela devra se résoudre par rémission à ce qui est prévu à l'article 9.5 (5) du Code Civil et à la Convention de la Haie de 29 mai de 1993 sur la protection de l'enfant et la coopération en matière d'adoption international.

Il est prévu introduire un contrôle minimum de légalité pour les enfants adoptés en exigeant la justification que la résolution par laquelle l'adoption est reconnue accomplit les éléments nécessaires pour produire ces effets sur le territoire espagnol. Ce contrôle est prévu pour les adoptions qui doivent s'inscrire au Registre Civil.

Le régime conventionnel permet la reconnaissance de plein droit des adoptions constituées dans un État signataire à la Convention de la Haie de 1993, puis celle-ci produit des effets » inter partes ». D'autres adoptions peuvent aussi produire des effets en Espagne.

La certification de conformité est réalisée par une Autorité Centrale et produit de nombreux effets juridiques.

Q.12 – L'État membre a-t-il transposé la faculté offerte par l'article 4 §1 c :

Q.12A. d'autoriser le regroupement des enfants mineurs du regroupant - y compris les enfants adoptés - quand le droit de garde est partagé (a 4 §1.c) ?

[ ] OUI
[X] NON

Préciser si nécessaire

Non de façon expresse, néanmoins la pratique montre que cela est possible.

La législation espagnole se réfère à deux cas : a) l'exercice seul de l'autorité parentale, cela traduit l'existence juridique d'un seul progéniteur (ou parent) ; et b) L'octroi du droit de garde qui exige normalement une résolution judiciaire prononcée par l'autorité compétente. Toutefois, la pratique montre que le regroupement des enfants mineurs (aussi adoptés) est possible lorsqu'est établie une constance formelle (devant le juge ou le consulat) de l'acceptation du regroupement de la part de l'autre conjoint avec lequel le droit de garde est partagé.

Q.12.B. Si oui, la législation de votre État a-t-elle transposé la condition que l'autre titulaire du droit de garde ait donné son accord (a 4 §1. c) ?

[ ] OUI
Il n'y a pas une transposition expresse de cette condition, mais c'est ce qui est fait normalement.

Q.13 – L'Etat membre a-t-il transposé la faculté offerte par l'article 4 §1 d) :

Q.13.A d'autoriser le regroupement des enfants mineurs du conjoint - y compris les enfants adoptés- quand le droit de garde est partagé (a 4.1.d. in fine) ?

☐ OUI

☒ NON

Il n'y a pas une transposition expresse de cette condition, mais c'est ce qui est fait normalement.

Le faîte d’empêcher le regroupement en cas de garde partagée sans accord exprès de l’autre partie se justifie par la peur de donner couverture juridique à une situation pouvant donner lieu à une rétention ou à un transfert illicite du mineur.

Q.13 B. Si oui, la législation de votre Etat a-t-elle transposé la condition que l’autre titulaire du droit de garde ait donné son accord (a 4. 1.d) ?

☐ OUI

☐ NON

Il n’y a pas une transposition expresse de cette condition, mais c’est ce qui est fait normalement.

Q.14 – Dans tous les cas visés aux Q 7 à Q 9, l’âge de minorité des enfants est-il inférieur à la majorité légale dans l’Etat membre (a.4 §1 alinea 2) ?

☒ OUI

☐ NON

Si oui, indiquez quel est l’âge requis

Tout est fixé à 18 ans.

Q.15 – Dans tous les cas visés aux Q 7 à Q 9, l’interdiction de mariage des enfants mineurs est-elle transposée (a.4 §1 alinéa 2) ?

☐ OUI
L’interdiction de mariage des enfants mineurs n’est pas transposé directement, mais l’article 17 b) LOEX prévoit que pour le regroupement des enfants, ils doivent être mineurs ou incapables et « non mariés » (cela revenant à la même situation)

Q.16 – La dérogation de l'article 4§1 dernier alinéa relative à la satisfaction d'un critère d'intégration des enfants de plus de 12 ans arrivés indépendamment du reste de la famille est-elle utilisée par l'Etat membre ?

☐ OUI

X NON

Comment le critère de l'arrivée "indépendamment du reste de la famille" est-il transposé ?

Q.17 – Si oui, ce critère d'intégration existait-il en droit interne à la date de la transposition de la directive ?

☐ OUI

X NON

Q.18 – Décrivez brièvement en quoi consiste ce critère, sa date de création et ses modalités d'examen

Q.19 – Les enfants de réfugiés sont-ils soumis à un test d'intégration par l'Etat membre (en contradiction avec l'article 10§1) ?

☐ OUI

X NON

Si oui, expliquez

Q.20 – L'Etat membre autorise-t-il :

Q.20 A - le regroupement des ascendants en ligne directe au premier degré du regroupant (a 4§2 a) ?

X OUI

☐ NON

Q.20 B - Si oui, doivent-ils être à charge et dépourvu du soutien familial nécessaire dans le pays d'origine ?

X OUI
Comment chacun de ces deux critères est-il transposé et vérifié ?

L’article 17.1 d) LOEX et art. 39 d) et e) RELOEX établissent que la famille est à la charge du regroupant quand celui-ci peut justifier que, au moins pendant sa dernière année de résidence sur le territoire espagnol, il a transféré de l’argent ou il a supporté les dépenses familiales dans une proportion qui doit permettre de déduire une dépendance économique effective. À cela les articles prévoient qu’un ordre ministériel de la Présidence doit déterminer le montant ou le pourcentage des ressources qui peuvent être considérés comme suffisants pour remplir la condition d’« être à la charge » et aussi la façon de justifier cette condition.

Cet ordre n’a pas encore été adopté, par conséquent chaque Bureau des étrangers (au niveau provincial) fixe ses propres critères.

Critère « être à charge » :
À Barcelone il n’est pas exigé un minimum économique. Toutefois, il faut justifier d’une périodicité, et surtout de l’envoi de différentes sommes d’argent pendant la dernière année. Le critère suivi consiste en la déduction qu’il existe une prise en charge réel, tout en tenant compte de la réalité du pays d’origine. À Girona et Tarragona le regroupant doit apporter la déclaration des revenus qui sont objet d’imposition fiscale (IRPF), le contrat de travail et les trois dernières feuilles d’émargement ou prestation de chômage. Ainsi la référence est l’envoi de 1000 euros aprox. par année.
À Lleida le regroupant doit prouver l’envoi périodique d’argent et il doit justifier au moins d’un revenu de 220 € par personne à regrouper, en ayant diminué les dépenses mensuels de loyer ou d’hypothèque.

Critère « nécessité » :
La législation espagnole n’impose en aucun cas la condition selon laquelle l’ascendant soit dépourvu du soutien familial nécessaire dans le pays d’origine. Néanmoins, qu’il ait des raisons qui justifient la « nécessité » d’autoriser sa résidence en Espagne. À la pratique, la jurisprudence espagnole interprète les raisons qui justifient la nécessité comme une question de caractère économique, mais aussi elle tient compte de l’âge, des maladies. À ces critères, certains tribunaux en ajoutent un autre lorsqu’ils considèrent non justifié le regroupement de l’ascendant quand il y a d’autres enfants qui habitent dans son pays d’origine (STSJ Madrid de 19 de juillet 2004 ; STSJ Navarra de 7 mars 2003 ; STSJ Madrid de 20 janvier 2003).

Bien que l’appréciation des critères diffèrent en fonction des missions consulaires, en général ces critères sont assez restrictifs pour les ascendants.

**Q. 20.C.** Le regroupement des ascendants en ligne directe au premier degré du conjoint du regroupant (a 4§2 a) ?

[X] OUI

[ ] NON

**Q.20.D.** Si oui, doivent-ils être à charge et dépourvu du soutien familial nécessaire dans le pays d’origine ?
Comment chacun de ces deux critères est-il transposé et vérifié ?

L'article 17.1 d) LOEX et art. 39 d) et e) RELOEX établissent que la famille est à la charge du regroupant quand celui-ci peut justifier que, au moins pendant sa dernière année de résidence sur le territoire espagnol, il a transféré de l’argent ou il a supporté les dépenses familiales dans une proportion qui doit permettre de déduire une dépendance économique effective. À cela les articles prévoient qu’un ordre ministériel de la Présidence doit déterminer le montant ou le pourcentage des ressources qui peuvent être considérés comme suffisants pour remplir la condition d’« être à la charge » et aussi la façon de justifier cette condition.

Cet ordre n’a pas encore été adopté, par conséquent chaque Bureau des étrangers (au niveau provincial) fixe ses propres critères.

Critère « être à charge » :
À Barcelone il n’est pas exigé un minimum économique. Toutefois, il faut justifier d’une périodicité, et surtout de l’envoi de différentes sommes d’argent pendant la dernière année. Le critère suivi consiste en la déduction qu’il existe une prise en charge réel, tout en tenant compte de la réalité du pays d’origine.
À Girona et Tarragona le regroupant doit apporter la déclaration des revenus qui sont objet d’imposition fiscale (IRPF), le contrat de travail et les trois dernières feuilles d’émargement ou prestation de chômage. Ainsi la référence est l’envoi de 1000 euros aprox. par année.
À Lleida le regroupant doit prouver l’envoie périodique d’argent et il doit justifier au moins d’un revenu de 220 € par personne à regrouper, en ayant diminué les dépenses mensuels de loyer ou d’hypothèque.

Critère « nécessité » :
La législation espagnole n’impose en aucun cas la condition selon laquelle l’ascendant soit dépourvu du soutien familial nécessaire dans le pays d’origine. Néanmoins, qu’il ait des raisons qui justifient la « nécessité » d’autoriser sa résidence sur le territoire espagnol. À la pratique, la jurisprudence espagnole interprète les raisons qui justifient la nécessité comme une question de caractère économique, mais aussi elle tient compte de l’âge, des maladies. À ces critères, certains tribunaux en ajoutent un autre lorsqu’ils considèrent non justifié le regroupement de l’ascendant quand il y a d’autres enfants qui habitent dans son pays d’origine (STSJ Madrid de 19 de juillet 2004 ; STSJ Navarra de 7 mars 2003 ; STSJ Madrid de 20 janvier 2003).

Bien que l’appréciation des critères diffèrent en fonction des missions consulaires, en général ces critères sont assez restrictifs pour les ascendants.

Q.20.E. autorise-t-il le regroupement des enfants majeurs célibataires du regroupant (a 4§2 b) ?

☐ OUI
☐ NON

Si nécessaire, précisez de quelle manière est aménagé cette procédure.
Seulement en cas de déclaration d’incapacité (Art. 39 c) RELOEX

Q. 20.F. Si oui, la législation nationale de votre Etat impose-t-elle que ces enfants majeurs célibataires du regroupant soient objectivement dans l’incapacité de subvenir à leurs propres besoins en raison de leur état de santé (a 4 §2 b) ?

☐ OUI
☒ NON

Si nécessaire, précisez comment chacun de ces deux critères ("objectivement" et incapacité de subvenir à leurs besoins…) est-il transposé et vérifié ?

La Loi espagnole énonce seulement pour que les enfants majeurs célibataires puissent être regroupés la condition qu’ils soient incapables, en accord avec la loi espagnole ou avec sa loi personnelle.
Cela peut donner lieu à de nombreux problèmes d’interprétation. En effet, l’incapacité est un état civil qui trouve son origine lorsque l’autorité judiciaire la déclare (Article 199 et 200 C Civil).
Toutefois, si la personne fait l’objet d’une incapacité naturelle ou légale selon sa loi personnelle, il faudra considérer qu’aux effets du regroupement cette personne se trouve dans un état «d’incapacité » avéré.
Par conséquent, s’il n’y a pas une déclaration judiciaire d’incapacité, il faudra prouver l’existence de la concrète incapacité légale au moyen de preuves médicales établissant le degré d’invalidité ou de documents accréditant l’incapacité. Toutes ces preuves doivent être apportées au correspondant expédient consulaire pour pouvoir demander le visa (Art.39.b et 43.2 RELOX).

Q.20. G. L’Etat membre autorise-t-il le regroupement des enfants majeurs célibataires du conjoint du regroupant (a 4§2 b) ?

☒ OUI
☐ NON

Si nécessaire, précisez comment cette condition est appréciée.

Seulement en cas de déclaration d’ incapacité de l’enfant

Q.20.H. Si oui, la législation nationale de votre Etat impose-t-elle que ces enfants majeurs célibataires du conjoint du regroupant soient objectivement dans l’incapacité de subvenir à leurs propres besoins en raison de leur état de santé (a 4 §2 b) ?

☐ OUI
☒ NON
Si nécessaire, précisez comment chacun de ces deux critères ("objectivement" et incapacité de subvenir à leurs besoins…) est-il transposé et vérifié ?

La Loi espagnole énonce seulement pour que les enfants majeurs célibataires puissent être regroupés la condition qu’ils soient incapables, en accord avec la loi espagnole ou avec sa loi personnelle.

Cela peut donner lieu à de nombreux problèmes d’interprétation. En effet, l’incapacité est un état civil qui trouve son origine lorsque l’autorité judiciaire la déclare (Article 199 et 200 C Civil).

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Par conséquent, s’il n’y a pas une déclaration judiciaire d’incapacité, il faudra prouver l’existence de la concrète incapacité légale au moyen de preuves médicales établissant le degré d’invalidité ou de documents accréditant l’incapacité. Toutes ces preuves doivent être apportées au correspondant expédient consulaire pour pouvoir demander le visa (Art.39.b et 43.2 RELOX).

Seulement s’il s’agit des enfants d’un seul conjoint, celui-ci doit exercer l’autorité parentale ou bien doit disposer du droit « de garde et de charge » et avoir effectivement en charge l’enfant.

Il sera considéré qu’ils sont « à la charge » du regroupant quand il est prouvé que, au moins pendant la dernière année, il a fait face aux dépenses en une proportion qui permet de déduire une dépendance économique effective. Les autorités administratives exigent des preuves démontrant la véracité des faits allégués.

**Q.20. I.** L’État membre a-t-il utilisé la voie législative ou réglementaire pour mettre en œuvre l’article 4 §2 a et b ?

- OUI
- NON

**Q.21** – L’État membre autorise-t-il le regroupement du partenaire ressortissant d’un État tiers non marié du regroupant (a 4 §3) ?

- OUI
- NON

Non, dans le cas du regroupement d’étrangers.

Oui dans le cas des réfugiés (régime spécial), leur droit s’est étendu à toute « union effective analogue » au mariage. (Art 10 de la Loi 5/1984 modifiée par la Loi 9/1994)


En Espagne, la LOEX n’inclut pas le bénéfice du regroupement pour le partenariat. Bien que la reconnaissance du partenariat ne soit pas non plus incluse dans le Code Civil, cette possibilité est prévue dans les différents législatifs autonomes (Catalogne, Aragon, Navarre, Valence, Baléares, Madrid, Asturies, Andalousie, Canaries, Extremadura y Phys Basque) qui ont créé un statut de partenariat dans leur domaine de compétences législatives respectives. Ainsi, elles reconnaissent les relations durables et stables qui sont retranscrites dans les registres créés à cet effet.
La jurisprudence reconnaît que la LOEX n’assimile pas le conjoint au partenaire de fait quant aux effets de pouvoir demander le visa de résidence, mais elle admet que en certaines situations il peut y avoir une interprétation par analogie des deux situations (STS de 6 mai 2000).

De l’autre côté la jurisprudence a reconnu le partenariat comme une réalité social qui a une relevance juridique (STS de 5 juillet 2001), ouvrant le regroupement aux partenaires en cas d’exemption de visa avec les mêmes effets que le mariage, mais seulement quand la personne se trouve sur le territoire espagnol (cela n’est plus possible avec les reformes actuelles de la LOEX et RELOEX).

Alors, actuellement la LOEX ne permet pas le regroupement du partenaire à l’étranger, mais il peut y avoir des nouveautés judiciaires dans les prochaines années, notamment relatif à la concession de la résidence par enracinement familial.

Aussi le partenariat est pris en compte pour éventuellement nier une expulsion ou accepter une mesure de suspension de l’expulsion.

Q.22 – Si oui :

Q.22 A - Ce partenariat doit-il fondé sur une relation durable et stable dûment prouvé ?

☐ OUI
☐ NON

Si oui, précisez comment l’État apprécie cette situation

Q.22 B - Ce partenariat doit-il être enregistré ?

☐ OUI
☐ NON

Q.23 – Le droit de l’État membre assimile-t-il le partenaire enregistré au conjoint (a 4 §3 alinéa 2) ?

☐ OUI
☒ NON

Non en ce qui concerne les étrangers. Oui en ce qui concerne les espagnols, les nationaux des membres de l’Union Européenne et les réfugies.

Q.24 – L’État membre autorise-t-il :

Q.24. A – Le regroupement des enfants mineurs du partenaire, y compris les enfants adoptés (a 4§3)?

☐ OUI
Non en ce qui concerne les étrangers. Oui en ce qui concerne les espagnols, les nationaux des États membres de l’Union Européenne et les réfugiés.

Q. 24. B – Le regroupement des enfants majeurs non mariés du partenaire, y compris les enfants adoptés (a 4§3)

☐ OUI

☒ NON

Q. 25 – L'État membre autorise-t-il le regroupement des enfants majeurs célibataires du partenaire qui sont objectivement dans l'incapacité de subvenir à leurs propres besoins en raison de leur état de santé (a 4§3)?

☐ OUI

☒ NON

Si oui, précisez notamment la condition "objective"

Q. 26 – L'État membre a-t-il utilisé la voie législative ou réglementaire pour mettre en œuvre l'article 4 §3) ?

La voie législative pour les réfugiés et la voie réglementaire pour les communautaires et la voie autonomique pour les espagnols, mais pas pour les étrangers

Q. 27 – L'interdiction du regroupement polygame est-elle formulée par le droit interne de l'État membre (a. 4§4)?

☒ OUI

☐ NON

L'article 17.1 a) LOEX et l'article 39 a) RELOEX établit clairement l'interdiction de regroupement de plus d'un conjoint, encore que la loi personnelle de l'étranger puisse admettre cette modalité matrimoniale.
Il est exigé de remplir un document officiel qui certifie que le regroupant ne réside pas avec un autre conjoint en Espagne.

Q. 28 – L'État membre impose-t-il des restrictions concernant le regroupement familial des enfants mineurs d'un autre conjoint auprès du regroupant (article 4§4 dernier alinéa.) ?

☐ OUI

☒ NON
Q.29 – L’État membre utilise-t-il l’option de l’article 4§5 relative à un âge minimal de 21 ans concernant le regroupement du conjoint ?

☐ OUI

☒ NON

Q.30 – Si oui

Q.30 A - Quel âge est retenu ?

Q.30 B - La dérogation est-elle fondée sur le critère d’intégration et/ou la prévention des mariages forcés ?

Q.31 – L’État membre fait-il usage de la dérogation de l’article 4§6 en demandant que la demande de regroupement d’un enfant mineur soit introduite avant l’âge de 15 ans ?

☐ OUI

☒ NON

Expliquez

La demande de regroupement doit être introduite avant l’âge de 18 ans

Q.32 – Si oui, la législation nationale en vigueur le prévoyait-elle à la date de la transposition et de quelle manière ?

Q.33 – Si la demande n’est pas introduite avant l’âge de 15 ans, les États membres autorisent-ils l’entrée et le séjour pour d’autres motifs que le regroupement ?

☒ OUI

☐ NON

Lesquels et à quelles conditions ?

Les demandes de regroupement peuvent être introduites jusqu’à l’âge de 18 ans, toutefois à partir de 16 ans les États membres peuvent aussi autoriser l’entrée et le séjour permettant d’accéder au marché de travail.

Cependant, les étrangers ayant un mineur à leur charge ne rentrent pas dans le champ d’application du RD 240/2007, toutefois selon la disposition additionnelle 19 de la RELOEX introduite par la disposition additionnelle 3 du RD 240/2007, ils ont la possibilité de régulariser leur situation administrative par une autorisation de résidence pour circonstances exceptionnelles qui devra être analysée au cas par cas.

PROCEDURE (ARTICLE 5)

On attire l’attention sur l’importance du §5 relatif à l’intérêt supérieur de l’enfant dont l’arrêt C-540/03 souligne le caractère déterminant
Q.34 – L’Etat membre a-t-il institué une procédure relative au regroupement familial (a 5 §1) ?

[X] OUI

[ ] NON

C’est la procédure prévue à l’article 18 LOEX et à l’article 42 et 43 RELOEX.
Il y a deux procédures. La première débute en Espagne et c’est la procédure de demande de regroupement qui exige la présentation personnelle du regroupant devant le Bureau des étrangers de la province (Subdelegación del Gobierno) avec la documentation prévue à l’article 42 RELOEX.
Dans la province de Barcelone, la procédure de demande de regroupement est établie par un système de demande de citation par fax. Puis, pour pouvoir bénéficier de l’assignation de citation, il faut compter plus de trois mois. Ensuite, il nécessitera plus de 4 mois pour obtenir la réponse.
Une fois la résolution positive de la première partie. Une autre procédure est enclenchée : celle de la demande de visa par les bénéficiaires devant le consulat ou l’ambassade du pays de résidence. Il sera exigé la présentation de la documentation prévue à l’article 43 RELOEX.

La procédure de demande de visa dépend des caractéristiques du pays d’origine de la famille du regroupant, mais en général il existe de nombreuses irrégularités et vulnérations de la procédure administrative commune. Ainsi prenons l’exemple des demandes de visa en provenance de l’Equateur, du Maroc, de la Bolivie…celle-ci se font au moyen des agences de voyages et des offices bancaires. Cette procédure soulève un certain problème de preuve ainsi : l’obligation de ne pas excéder plus de 1 mois à partir du moment où est présenté en bonne et due forme devant le consulat compétent (art.43.1 RELOEX et disposition additionnelle 8). A cela il convient d’adjouter qu’il est parfois demandé des conditions autres que celles prévues par la loi.
De même, il existe des problèmes au moment de notifier la concession du visa ou l’exigence d’un entretient personnel, puisque cet entretient est souvent réalisé par téléphone ou par une annonce à la mission consulaire et non pas par courrier, certificat ou publication officielle.
Enfin, la motivation du refus de visa est souvent faite au travers des expressions très génériques comme la suivante « les conditions exigées ne sont pas remplies ».
Il y a des consulats, comme Nigeria ou Ghana qui rarement octroient des visas de regroupement.

Q.35 – Si oui,

Q.35. A – Quelles autorités de l’Etat en traitent ?

Les autorités responsables du regroupement se situent toutes au niveau central : La gestion centrale correspond actuellement au Ministère du Travail et des Affaires Sociales, néanmoins certaines compétences sont exercées par le Ministère de l’Intérieur et par le Ministère des Affaires Extérieures. La procédure administrative se déroule principalement devant le Bureau des étrangers de « la subdélégation provinciale du Gouvernement central ». Ensuite la demande de visa s’effectue devant les missions consulaires ou les ambassades (Ministère des Affaires Extérieures).

Q.35. B – Les ONG sont-elles associées à cette procédure ?
Elles peuvent seulement aider le regroupant à mieux connaître la procédure et ses droits (elles aident à préparer le dossier, à orienter et à suivre la procédure). Elles ne participent pas directement à la procédure administrative mais peuvent éventuellement participer en tant que partie intéressée devant la procédure judiciaire.

Si oui, décrivez la procédure :

Q.35. C – La demande est-elle à l’initiative du regroupant ou/et des membres de la famille ?

La demande peut seulement être à l’initiative du regroupant

Q.35. D – Cette procédure est-elle exclusive de toute autre possibilité de regroupement familial ?

Si elle constitue la procédure ordinaire et exclusive pour la famille étant en dehors du territoire espagnol, pour la famille résidant sur le territoire espagnol il est prévue une procédure de demande de résidence pour « circonstances exceptionnelles » (article 45 RELOEX) :

- Aux étrangers qui peuvent justifier d’une permanence continue sur le territoire espagnol pendant une période minimale de trois ans. À condition qu’ils n’ont pas fait l’objet d’antécédents pénaux en Espagne et dans son pays d’origine. De même, ils doivent être liés par un contrat de travail signé par le travailleur et par l’entrepreneur au moment de la demande avec une durée d’au moins une année. Enfin, ils doivent justifier des liens familiaux (conjoint, ascendant ou descendant en ligne directe).

- Quand il s’agit des enfants de père ou mère d’origine espagnol.

Cette demande doit être présentée personnellement par l’étranger qui souhaite obtenir une autorisation de résidence et travail devant le Bureau provincial des étrangers. Toutefois, dans les cas précis des mineurs ou incapables sont admis la représentation par le représentant légal.

À cela l’article 45.2.a) RELOEX prévoit une procédure extraordinaire d’enracinement laboral qui exige une permanence continue d’au moins 2 ans, pas d’antécédents pénaux et une relation laboral d’au moins une année. Cependant, le moyen de preuve est seul, il faut une résolution judiciaire qui puisse reconnaître cette situation ou la résolution administrative confirmative de l’acte d’infraction de l’Inspection de Travail et SS.

L’article 94.2 RELOEX prévoit que les mineurs ou en état d’incapacité, enfants d’étrangers qui résident légalement sur le territoire espagnol, peuvent obtenir la résidence légale en Espagne. À condition qu’ils justifient d’au moins deux ans de permanence en Espagne et si leurs parents ou représentants légaux réunissent les conditions de moyens de vie et logement qui établit le RELOEX .
L'article 95 RELOEX fait référence au cas des personnes qui ont une autorisation de résidence pour des raisons d'études et qui ont résidé au moins 3 ans en Espagne. Ils peuvent demander à obtenir une autorisation de résidence et travail sans qu'il soit nécessaire d'exiger le visa. À condition qu'ils réunissent les conditions de ressources et logement. Enfin, ils existent une possibilité de regrouper la famille habiterait avec l'étudiant ou le chercheur.

Q. 35. E – Cette procédure existait-elle avant la directive 2003/86 ?

☐ OUI

X NON

Ce n’est pas l’existence de la Directive mais la reforme de la LOEX 14/2003 et la RELOEX qui ont introduit les modifications (déjà mentionnées) à la procédure de regroupement familial préexistante et les exceptions à la procédure ordinaire.

Q. 36 – Quelles pièces justificatives (a 5 §2) sont exigées pour prouver :

Q.36. A – Les liens familiaux de l'article 4 ?

Les pièces justificatives ne sont pas prévues expressément. Les dispositions prévoient qu’il faut apporter la documentation justificative des liens familiaux, mais ces liens peuvent être prouvés par différents moyens :
- Certificat de naissance ou de mariage inscrit dans le Registre Civil
- Livre de famille
- Autres enregistrements reconnus

Pour éviter des falsifications, ces documents doivent être légalisés par voie diplomatique et, si possible, en conformité avec les exigences de la Convention de la Haie de 5 octobre 1961.

En cas de mariage, les conditions à remplir sont les suivantes : aucune séparation de fait ou de droit (malgré la séparation physique) et qu'il ne soit pas célébré en fraude de droit.

Le mariage peut être célébré selon les formes reconnues par la législation espagnole (civile ou religieuse), toutefois dans le cas où la célébration a eu lieu dans un pays étranger, il faudra contrôler la validité de l’engagement.

Q.36. B – Le respect des conditions de logement de l'article 7 ?

Une des pièces justificatives est l’obligation d’apporter un document qui doit prouver un logement adéquat pour pouvoir atteindre les besoins de la famille de la part du regroupant au moment de présenter la demande (art. 42.2 e) RELOEX)

En premier lieu, il est prévu que ce document de certification (rapport de logement) puisse être réalisé par l’autorité locale du lieu de résidence du regroupant. Toutefois, si 15 jours après la demande, la corporation locale n’a pas fourni ce sorte de document, le regroupant pourra se diriger au notaire pour obtenir une acte notarial mixte de présence et manifestations (affidavit).

Ce document doit contenir : le titre qui permet d’occuper le logement, le nombre des chambres, l’utilisation de chaque chambre du logement, nombre de personnes qui y habitent et les conditions habitables et d’équipement.

Actuellement la grande majorité des corporations locales ont créé un dispositif qui fournit ces documents, toutefois une grande diversité de critères existe sur la détermination du concept de « logement adéquat ». Certains envoient des ingénieurs pour contrôler les conditions des logements et d’autres envoient la police ou un technicien pour contrôler les caractéristiques
du logement. Certains fournissent gratuitement cette certificat et d’autres font payer des taxes ...

Les Tribunaux considèrent par exemple que étant donné les conditions du marché de loyer, un logement de 70 m² avec trois chambres et un salon est adéquat pour couvrir les besoins d’une famille avec trois ou quatre membres (Juzgado Contencioso –administrativo nº 3 de Cadiz Sentencia de 10.11.06). En général les interprétations se réalisent à partir du rapport de la corporation local qui contient une information qui peut être contesté avec des éventuelles preuves pouvant montrer l’inexactitude des informations fournies.

**Q.36. C – Le respect de la condition d’assurance maladie ?**

Il faut apporter la preuve d’être couvert par la sécurité sociale ou avoir une assistance médicale privée avec couverture générale – normalement une mutuelle- (Art 42.2 d) RELOEX).

**Q.36. D – La copie certifiée des documents de voyage ?**

Il n’est pas exigé une copie certifiée des documents de voyage mais seulement une copie du passeport, document de voyage ou cédule d’inscription du demandeur en vigueur.

**Q.37 - Existe-t-il une possibilité :**

- D’entretien :
  - [X] OUI
  - [ ] NON

- D’enquête :
  - [X] OUI
  - [ ] NON

Si oui, décrivez-les sommairement

Pendant la procédure devant le consulat ou l’ambassade, il est prévue la possibilité d’un entretien avec la famille qui a demandé le visa pour contrôler la véracité des documents et des faits qui sont apportés au dossier. De même, il est possible de réaliser des enquêtes d’office (Art. 42 et 43 RELOEX).

Au moyen de l’entretient personnel, est vérifié l’identité du demandeur, le lien familial, la dépendance légale ou économique et la validité de la documentation apportée.

Pendant l’entretien, doivent être présents au moins deux représentants de l’administration et le représentant de l’intéressée, en cas de minorité. Enfin, s’il est nécessaire, un interprète.

Le contenu de l’entretien doit figurer dans un acte signé par les présents et dont la copie sera donner à l’intéressée.

Dès 2006 dans certains consulats il fut possible réaliser des tests ADN, en cas de doutes sur la réalité des liens familiers, pour faciliter l’obtention du visa.

En relation à la procédure d’autorisation de résidence temporelle par des circonstances exceptionnelles, il est prévu que l’organe compétent puisse demander des documents
complémentaires ou maintenir une entrevue personnelle. Le contenu de cette entrevue sera des lors inclut dans un acte. (Instruction de 22 juin 2005)

Q.38 – Lors de l'examen de la demande du partenaire non marié, quels éléments d'appréciation sont pris en compte sur la base du droit de l'Etat membre afin d’établir les liens familiaux (article 5§2 dernier alinéa) ?

Il n’est pas prévu la possibilité de demander le regroupement des étrangers pour le partenaire non marié, seulement pour les espagnols et pour les nationaux des autres États membres de l’Union européenne. Ainsi que pour les réfugiées. Néanmoins, il existe des circonstances exceptionnelles dans lesquelles, la jurisprudence tient compte spécialement de la situation du partenaire non marié. Toutefois, elles ne sont pas rééellement prises en compte pour la procédure relative à l’étranger mais plutôt pour la procédure exceptionnelle d’enracinement dans le territoire espagnol (autorisation de résidence temporelle pour circonstances exceptionnelles).

Par exemple, l’ arrêt du TS (Cour Suprême) de 6 mai 2000 reconnaît que la LOEX n’ assimile pas le conjoint au partenaire quant aux effets de pouvoir demander le visa de résidence par regroupement, mais la Cour reconnaît aussi que certaines situations peuvent être considérées comme des situations analogues, alors dans la pratique il peut y avoir une identification entre conjoint et partenaire stable.

Q.38. A - L'existence de liens familiaux et d'éléments tels qu'un enfant commun ?

[X] OUI
[ ] NON

Précisez

Il n’est pas prévu dans la Loi, mais dans certains cas on trouve la possibilité pour responsables de l’Administration de prendre en considération ces faits là.

Q.38. B - une cohabitation préalable ?

[X] OUI
[ ] NON

Q.38. C - l'enregistrement du partenariat ?

[X] OUI
[ ] NON

De nos jours, la législation régissant les conditions de légalisation des partenaires ou des « couples de fait » au niveau des Communautés Autonomes est une assez complète.

Q.38. D - D’autres éléments sont-ils prévus par votre droit national ?

[ ] OUI
Si oui, précisez lesquels :

Q.39 - Les membres de la famille sont-ils tenus de résider à l’extérieur durant l’instruction de la demande (a5 §3) ?

☐ OUI
☐ NON

Cette obligation est-elle sanctionnée et comment ?

Les membres de la famille doivent être dans le pays de sa résidence légale et s’ils sont en situation irrégulière en Espagne pendant l’instruction de la demande ordinaire ils/elles peuvent être sanctionnés par l’expulsion, le renvoi ou le rejet de la demande (Art. 43 RELOEX). La procédure ordinaire se développe avec la famille à l’étranger.

Q.40 – Si la réponse est oui, existe-t-il néanmoins une dérogation à cette situation et laquelle (a 5 §3 alinea 2) ?

☐ OUI
☐ NON

Précisez

Il existe une procédure extraordinaire d’enracinement familial qui permet de légaliser certaines situations de stage irrégulier en Espagne pendant une certaine période déterminée (autorisation de résidence temporelle pour circonstances exceptionnelles- Art 45.2).

L’art. 45 RELOEX prévoit des possibilités d’autorisation de résidence temporelle pour des circonstances exceptionnelles :

- b) Justification d’une permanence continue sur le territoire espagnol pendant au moins trois ans. A condition qu’il ne fasse pas l’objet d’antécédents pénaux en Espagne et non plus dans son pays d’origine. A cela, il doit être lié par un contrat de travail pour au moins une année signée par le travailleur et l’entrepreneur au moment de la demande. Enfin, il doit accréditer des liens familiaux (conjoint, ascendants ou descendants) avec d’autres étrangers résidents. Un rapport qui certifie son insertion sociale, provenant de la mairie ou de la personne chez laquelle il a sa résidence habituelle, sera exigé.

- c) Enfants de père ou mère qui sont d’origine espagnols.

L’art. 94.2 RELOEX : En plus, pour les mineurs ou en situation d’incapacité il est prévu la possibilité d’avoir une autorisation de résidence quand ils peuvent justifier d’une permanence continue en Espagne (cela est assez facile parce qu’il existe le registre municipal (padrón municipal) et à partir de ce moment les enfants en situation de résidence irrégulière ont droit à l’éducation et aux services médicaux d’urgence). Ce registre sert à démontrer la permanence des enfants et de toutes les personnes en Espagne.

Q.41 – Le droit national prévoit-il une durée maximale de neuf mois pour répondre après la demande précédant la notification écrite (a5 §4)?
Il n’est pas prévu expressément dans la législation espagnole une durée maximale de neuf mois pour répondre à la demande de regroupement, mais en général la durée pour recevoir la notification varie de 4-5 mois.

Pendant la phase nationale la RELOEX prévoit un délai d’un mois et demi pour répondre à la demande de regroupement (Disposition additionnelle 8). Au moment où il y a une position favorable au regroupement de part de l’administration interne, la notification sur l’éventuelle concession du visa est soumise à un délai d’un mois à partir du jour suivant l’date que la demande a été dûment présenté devant l’ambassade ou le consulat compétent (pas de proroge) (Disposition additionnelle 8). La mission diplomatique ou consulaire doit la notifier aux membres de la famille en cas de concession du visa, dans une période maximale de 2 mois. (art. 43 RELOEX)

Le RELOEX prévoit que les demandes d’autorisations et des visas de regroupement familial aient un traitement préférentiel (Disposition additionnelle 11). En somme, l’expédition des visas demeure encore lente, spécialement en certains pays comme le Maroc, l’Equateur, Ghana ou Gambie.

Pour que la procédure espagnole soit vraiment en accord avec l’article 5.4 de la Directive 2003/86 il faudrait inclure expressément dans le droit interne l’interdiction d’une durée de 9 mois dans la procédure.

Dans la réalité et même quand la loi les prévoit, les délais des procédures administratives ne sont pas toujours respectés.

**Q.42** – Le délai initial peut-il être prorogé (a 5 §4 alinea 2) ?

□ OUI

X NON

Il n’y a pas des prévisions expresses, sauf pour le terme (pas prorogeable) d’un mois pour la concession de visa par le consulat. Cependant, la pratique montre que des dérogations sont possibles pour tous les autres délais.

**Q.43** – Si oui :

**Q.43. A** - Ces possibilités sont-elles liées à la complexité de l’examen de la demande ?

□ OUI

X NON

Si oui, précisez.

*Normalement oui, mais cela n’est pas établi expressément.*

**Q.43. B** - Quelle est la durée de la prorogation ?
En fonction des procédures d’un à trois mois.

Q.44 – En cas d’absence de décision à l’expiration du délai initialement prévu, quelle conséquence en résulte pour le demandeur ?

En général la loi prévoit que le silence est synonyme de rejet (disposition additionnelle 9 RELOX), par conséquent le demandeur peut former un recours administratif ou éventuellement judiciaire (si la procédure administrative est finie). Seulement le cas d’absence de notification administrative sur le renouvellement du permis de résidence du regroupant est qualifié comme une acceptation de la rénovation de résidence par silence synonyme d’acceptation.

En résumé, le silence synonyme de rejet serait contraire à l’obligation de motivation par écrit des décisions de rejet (Article 42.4 RELOEX) en relation avec les demandes de résidence par regroupement que selon l’article 54.1 de la Loi 30/1992 doit consister en une brève référence aux faits et fondements de droit.

En ce moment un des problèmes principaux c’est que les renouvellements sont trop lents et les certificats de silence positifs ou de confirmation de silence négatif ne s’adoptent pas.

Q.45 – La décision de rejet est-elle notifiée par écrit et est-elle motivée ?

[ ] OUI
[ ] NON

Elle doit être motivée et notifiée par écrit au demandeur, mais cela n’est pas toujours le cas en ce qui concerne la décision de rejet de visa, spécialement dans certains consulats.

Précisez si une seule de ces conditions n’est pas exigée

Q.46 – Comment l’intérêt supérieur de l’enfant est-il pris en compte par la législation de l’Etat membre et ses autorités durant l’examen de la demande (article 5§5) ?


L’intérêt supérieur de l’enfant est éventuellement pris en compte par la mission diplomatique ou consulaire au moment de la concession du visa, mais cela peut donner des résultats très variables puisqu’il n’existe pas de concrétisation de cette notion.

En réalité, l’intérêt supérieur de l’enfant peut être pris en considération en cas d’audience de l’enfant par les organes du consulat ou de l’ambassade. De même, il existe la possibilité de regrouper les enfants des différents époux.

En Espagne, le droit des mineurs non accompagnés à regrouper ses ascendants ou éventuellement son tuteur légal n’est pas reconnu. Toutefois, il est possible dans ce cas là d’intenter une procédure de résidence par circonstances exceptionnelles (enracinement).

CONDITIONS REQUISES (ARTICLES 6 ET SUIVANTS)

- Les questions relatives au logement et aux ressources seront attentivement examinées afin de permettre d’en cerner l'utilisation par les autorités de l'Etat membre, soit à des fins d’une meilleure insertion soit à des fins de régulation des flux migratoires.
Il en va de même à propos de la faculté de fixer une durée de séjour minimal nécessaire préalable au dépôt d'une demande de regroupement.

La Cour de justice indique à propos de l'article 8 : "Cette disposition n'a donc pas pour effet d'empêcher tout regroupement familial, mais maintient au profit des États membres une marge d'appréciation limitée en leur permettant de s'assurer que le regroupement familial aura lieu dans de bonnes conditions, après que le regroupant a séjourné dans l'État d'accueil pendant une période suffisamment longue pour présumer une installation stable et un certain niveau d'intégration. Dès lors, le fait, pour un État membre, de prendre ces éléments en considération et la faculté de différer le regroupement familial de deux ans ou, selon le cas, de trois ans ne vont pas à l'encontre du droit au respect de la vie familiale exprimé notamment à l'article 8 de la CEDH tel qu'interprété par la Cour européenne des droits de l'homme" (cons. 98).

"Il convient cependant de rappeler que, ainsi qu'il résulte de l'article 17 de la directive, la durée de résidence dans l'État membre n'est que l'un des éléments qui doivent être pris en compte par ce dernier lors de l'examen d'une demande et qu'un délai d'attente ne peut être imposé sans prendre en considération, dans des cas spécifiques, l'ensemble des éléments pertinents" (cons.99). "Il en est de même du critère de la capacité d'accueil de l'État membre, qui peut être l'un des éléments pris en considération lors de l'examen d'une demande, mais ne saurait être interprété comme autorisant un quelconque système de quotas ou un délai d'attente de trois ans imposé sans égard aux circonstances particulières des cas spécifiques. En effet, l'analyse de l'ensemble des éléments telle que prévue à l'article 17 de la directive ne permet pas de ne prendre que ce seul élément en considération et impose de procéder à un examen réel de la capacité d'accueil au moment de la demande" (cons.100). "Lors de cette analyse, les États membres doivent en outre, ainsi qu'il est rappelé au point 63 du présent arrêt, veillé à prendre dûment en considération l'intérêt supérieur de l'enfant mineur" (cons.101).

Q.47 – Des motifs d'ordre public, sécurité ou de santé publique peuvent-il fonder (a 6 §§1 et 2) :

Q.47. A – Le rejet de la demande de regroupement ?

☐ OUI

☐ NON

Si oui, lesquels ?

L'entrée d’un étranger sur territoire espagnol est conditionnée au fait de ne pas constituer un danger pour la santé publique, pour l’ordre et la sécurité publique ou les relations internationales de l’Espagne ou des autres pays avec lesquels l’Espagne a des accords en ce sens là (Art 4.1 g) RELOEX.)

Pour remplir cet objectif là, la demande du regroupant doit être contrôlée par la police (certificat des antécédents pénaux) pour vérifier qu’il y a pas des raisons pouvant empêcher le regroupement. Aussi la demande de visa de regroupement doit être accompagnée d’un certificat des antécédents pénaux ou document équivalent et où ne peut figurer des délits pénaux existants dans le code pénal espagnol (Art.43.2 b) RELOEX).

Ce certificat doit être élaboré par les autorités du pays ou des pays dans lesquels « il a résidé pendant les cinq dernières années et où ne doit pas figurer des délits reconnu par le
droit espagnol » Une autre raison possible de refuser le visa de résidence pour regroupement peut être constitué lorsque le demandeur figure sur la liste du SIS (Système d’Information Schengen) comme une personne qui ne dispose pas d’une permission d’entrée.

Par conséquent, avant toutes décisions de regroupement, un rapport de police devra confirmer qu’il n’y a aucune raison pour empêcher le regroupement. Pour cela, la police consulte deux bases de données (celle du PERPOL et celle du Ministère de Justice).

Pour un étranger en situation de résidence temporelle, une condamnation pénale peut constituer un motif suffisant pour interdire l’entrée en Espagne, pour rejeter la concession ou renouvellement de l’autorisation de résidence, pour refuser la demande de regroupement, ou même pour l’expulsion ou dévolution du territoire en se fondant sur le comportement personnel de la personne.

L’art 43.1.ter RELOEX prévoit que le rejet peut être fondé sur l’existence de preuves qu’un étranger, résidant sur le territoire espagnol, se trouve en situation irrégulière. Ces données étant fournies par les administrations. Si les représentants de l’administration relèvent des motifs, la demande peut être rejetée. Ce rejet fera l’objet d’une motivation et une copie de la décision sera envoyée à l’organisme qui a émis l’autorisation initiale de résidence temporelle.

Il peut s’agir d’infractions administratives qualifiées de « très graves » (art. 53 LOEX), et entraînant une sanction pécuniaire ou une décision d’expulsion du territoire. À la condition qu’il ait été fait auparavant des démarches nécessaires pour le dossier administratif correspondant.

Par exemple, la participation à des activités contraires à la sécurité extérieure de l’État ou pouvant nuire aux relations qu’entretient l’Espagne avec d’autres pays constitue une infraction très grave. Ainsi, l’art. 54.1 a) de la LOEX inclue une liste énonciative et non exhaustive des comportements qui peuvent être considérés très graves.

Pour ces raisons il peut être aussi rejeté le renouvellement du permis de résidence et cela pouvant empêcher d’autoriser le regroupement. Cependant, la Loi n’oblige en rien à apporter la preuve des antécédents pénaux dans le cas du renouvellement de l’autorisation de résidence. Néanmoins, il est exigé les antécédents pénaux dans le cas d’une demande de résidence permanente. Ce principe peut entrainer des situations contradictoires.

La situation change complètement quand l’étranger est en situation de résidence permanente, puisque l’expulsion devient très exceptionnelle.

Enfin, il faut tenir compte de la jurisprudence du TEDH qui a établi à plusieurs occasions la non conformité de certaines décisions d’expulsion avec l’article 8 de la CEDH pour n’avoir que peu pris en compte la protection du droit à la vie familiale.

La demande doit aussi être accompagnée d’un certificat médical pour prouver que la personne ne fait pas l’objet de maladies énoncées par le Règlement sanitaire international (Art. 43.2 e) RELOEX. Le Ministère de l’Intérieur peut imposer l’obligation de présenter un certificat sanitaire, fourni par des services médicaux, dans les conditions fixées par la mission diplomatique ou consulaire espagnole. De même, le Ministère peut, lors du passage à la frontière, exiger que lui soit soumise une reconnaissance médicale.

Q.47. B - le retrait de la demande de regroupement ?

☐ OUI
☐ NON

Précisez si nécessaire
L’expression « retrait » de la demande n’est pas utilisée en Espagne. À sa place il est utilisé l’expression « refus ou rejet ».

Q.47. C - le refus de renouvellement du titre de séjour du membre de la famille?

☑ OUI

☐ NON

Précisez si nécessaire

Le renouvellement du titre de séjour du membre de la famille est lié à la validité du titre de séjour du regroupant au moins qu’il obtienne une autorisation de séjour indépendante.

Les mêmes raisons qui ont motivé le rejet de la demande de regroupement peuvent aussi motiver le refus de renouvellement du titre de séjour du membre de la famille. 
En fonction de chaque circonstance particulière, il existe la possibilité de renouveler l’autorisation de résidence aux étrangers qui ont été condamnés du faute de la commission d’un délit ou qui ont déjà accompli la peine, qu’ils ont été graciés ou se trouvant en situation de rémission conditionnelle de la peine (Art. 31.4 LOEX).

Pour le renouvellement du titre de séjour du membre de la famille, il doit apporter les documents qui accéditent une couverture sanitaire générale. (Art.44.2 RELOEX).

Q.48 – Le droit de l’Etat membre prend-il en compte ;

Q.48. A – La gravité de l’atteinte à l’ordre public ?

☐ OUI

☑ NON

Il n’est pas expressément prévu. En réalité en cas d’un antécédent pénal, la police peut présenter un rapport négatif pouvant entraîner le rejet de la demande ou pour pas renouveler le titre de séjour. Toutefois, en pratique il existe une grande marge de manœuvre tenant compte d’autres éléments ainsi que des considérations sociales et familiales. Cependant, le principe de proportionnalité n’est que peu souvent pris en compte.

Q.48. B – L’importance des liens familiaux visés à l’article 17 ?

☑ OUI

☐ NON

Précisez si nécessaire

Les liens familiaux sont pris en compte dans les situations prévues aux articles 45 et 54.9 du RELOEX, dans les décisions sur les expulsions et pour l’application générale du principe de proportionnalité et de la jurisprudence du TEDH et du Tribunal Constitutionnel.

Toutefois, il semble nécessaire de clarifier la présente régulation législative. Du fait de la situation législative actuelle incertaine on se retrouve devant des décisions administratives qui pourraient être contraires à l’article 17 de la Directive. En réalité, cet article semble trop ambigu pour pouvoir être appliqué avec certitude.
L'article 31.4 de la LOEX prévoit qu’il sera pris en compte, « en fonction des circonstances de chaque dossier », la possibilité de renouveler le permis de séjour aux étrangers qui ont été condamnés, ceux qui ont été graciés ou ceux qui se trouvent en rémission conditionnelle des peines.

Q.49 – La survenance de maladie ou d'infirmité après l'octroi de l'autorisation peut-elle à elle seule justifier un retrait ou un éloignement (a 6 §3)?

☐ OUI
☒ NON

Il n’est pas prévu par les normes espagnoles et cela ne se fait pas en pratique.

Q.50 – Des conditions de logement sont-elles exigées du demandeur (a7 §1a) ?

☒ OUI
☐ NON

Lorsque le regroupant présente sa demande, il doit présenter un document justifiant d’un logement adéquat qui permet de répondre aux besoins de la famille (art. 42.2 RELOEX). En premier lieu il est prévu que ce document de certification (rapport de logement) soit réalisé par l’autorité locale du lieu de résidence du regroupant. Toutefois, si 15 jours après la demande la corporation locale n’a pas fourni ce sorte de document, le regroupant peu se diriger vers un notaire pour obtenir une acte notarial mixte de présence et manifestations «acta notarial mixta de presencia y manifestaciones ».

Actuellement la grande majorité des corporations locales ont crée un dispositif qui fournit ces documents. Cependant, on assiste à une grande diversité de critères sur le concept de « logement adéquat ». Ainsi, certains envoient des ingénieurs pour contrôler les conditions des logements et d’autres envoient la police pour contrôler les caractéristiques du logement. Certains fournissent gratuitement cette certificat et d’autres font payer des taxes, etc.…

Q.51 – Si oui :

Q.51. A - Quelles sont ces conditions ?

Il faut apporter une justification documentée qui accrédite la disponibilité du regroupant d’un logement adéquat permettant de répondre aux besoins du regroupant et de sa famille.

Le rapport ou affidavit doivent faire référence au : titre permettant l'occupation du logement, nombre des chambres, l'utilisation de chaque chambre ou département, nombre de personnes qui logent et conditions relatif à l’habitat et à l’équipement.

Ces conditions sont assez raisonnables et par exemple les conditions d’habitat font références à la présence de la lumière, de l’eau, des conditions minimales d’hygiène, etc.

Pour le moment les autorités locales (même si elles ne suivent pas les mêmes critères) ne sont pas très strictes quant aux conditions de logement. Ainsi lorsqu’ils remplissent les conditions minimales, les autorités locales émettent un certificat d’adéquation.

Q.51. B - Comment sont-elles évaluées ?
Une des pièces justificatives est l’obligation pour le regroupant d’apporter, au moment de présenter sa demande, un document prouvant un logement adéquat pour pouvoir répondre aux besoins de la famille (art. 42.2 RELOEX)
Relatif au titre qui habilite à l’occupation d’un logement, le regroupant peut être propriétaire ou locataire. En principe, la sous-location ou la cession ne devraient pas être exclues si le regroupant démontre la réalité et la stabilité de disposition de ces logements. Certaines corporations locales considèrent que ces conditions peuvent être remplies par le seul consentement écrit du bailleur donnant droit à l’utilisation du logement, mais cela n’est pas appliqué d’une manière uniforme. Le problème constitue en le fait que la loi n’énonce pas que le regroupant doit « disposer d’un logement adéquat » mais qu’il doit «justifier d’un logement adéquat ». Ainsi, selon l’interprétation majoritaire c’est au moment de solliciter le renouvellement qu’il faut prouver que le regroupant utilise légalement le logement. Cependant, en ce moment on assiste à un grand nombre de fraudes et de falsifications des contrats de logement ou des situations de justification relatives au logement.
En premier lieu il est prévu que ce document de certification (rapport de logement) soit réalisé par l’autorité locale du lieu de résidence du regroupant. Toutefois, si 15 jours après la demande la corporation locale n’a pas fourni ce sorte de document, le regroupant peu se diriger vers un notaire pour obtenir une acte notarial mixte de présence et manifestations. Actuellement une grande majorité des corporations locales ont créé un dispositif qui fournit ces documents. Cependant, on assiste à une grande diversité de critères sur le concept de “logement adéquat”. Ainsi, certains envoient des ingénieurs pour contrôler les conditions des logements et d’autres envoient la police pour contrôler les caractéristiques du logement. Certains fournissent gratuitement cette certificat et d’autres font payer des taxes, etc.…

Q.51 C - Sont-elles comparables à celles d'une famille normale habitant dans la même région de l'Etat membre ?

☐ OUI
☐ NON
Si non, précisez en quoi elles sont différentes

Actuellement les difficultés pour trouver un logement sont surtout pour les jeunes et les étrangers. Et leurs conditions sont comparables, même si on peut trouver des cas ponctuels de discrimination contre les étrangers.

Q.52 – Une assurance maladie est-elle exigée du demandeur (a. 7 §1b) ?

☐ OUI
☐ NON

Normalement il sera couvert par la sécurité sociale de l’Espagne, mais si ce n’est pas le cas il faudra accréditer d’une assistance médicale privée du regroupant et de la possibilité lui permettant de couvrir les besoins sanitaires de la famille (mutuelle sanitaire).

Q.53 – Des conditions de ressources "stables" sont-elles fixées (a7 §1c) ?

☐ OUI
☐ NON
Il faut justifier d’un travail et de ressources économiques suffisantes pour répondre aux besoins de la famille. Le Règlement prévoit que l’ordre ministériel établira la quantité des ressources économiques exigées.

Mais pour le moment cet ordre n’a pas encore été adopté. De toute façon l’autorisation de résidence est toujours conditionnée à la postérieure inscription du travailleur à la Sécurité Social dans le mois suivant l’autorisation de séjour (Art. 46.7 RELOEX).

La nouvelle Ordre PRE/1282/2007, du 10 mai, qui substitue l’ancienne Ordre du 22 février de 1989, sur les ressources économiques que devront accréditer les étrangers pour entrer en Espagne ne parle pas des conditions économiques pour le regroupement familial.

Expliquez leur nature et leur montant

Le montant n’est pas fixé mais l’administration tient compte de la stabilité et du fait que les revenus puissent normalement couvrir les besoins de la famille.

Q.54 – Comment leur caractère "suffisant" est-il évalué par l’Etat membre, est ce par comparaison avec le niveau national ?

Dans chaque province les critères appliqués sont différents ainsi à Barcelone on exige un minimum de 600 € nets mensuels pour pouvoir regrouper une personne et a cela un net de 300 € sur ce minimum pour regrouper une autre personne.

Toutefois, il ne s’agit en rien d’une condition unique appliquée de façon absolue, mais plutôt d’un critère de référence où il est pris en compte le salaire minimum interprofessionnel établi au niveau national (SMI).

Actuellement à Madrid, on admet que à la moyenne des derniers salaires la possibilité de déduire le prix du loyer et de le diviser entre les membres qui sont ici et ceux qui demandent le regroupement. À la fin cela doit aboutir à une moyenne de 90€ au moins. Les conditions sont plus strictes pour les ascendants (moyenne 120€).

Quelques tribunaux prennent en considération l’article 7 c) de la Directive 2003/86 et interprètent qu’il faut prendre en considération les salaires et les pensions minimales. Ainsi en Espagne le SMI de l’année 2006 est fixé en 540,90 euros/mois (RD 1613/2005). (Sentencia del juzgado contencioso administrativo nº 3 Cadiz de 10.11.06)

Les femmes ont parfois des grandes difficultés pour accréditer des ressources suffisantes du fait de la précarité de leurs emplois et parfois de la difficulté d’obtenir des contrats réguliers et stables.

Q.55 – Des critères d’intégration sont-ils fixés pour permettre le regroupement familial (a 7 §2)?

☐ OUI

☒ NON

Q.56 – Si oui :

Pas de critères

Q.56. A – Quels sont ces critères ?
Q.56. B – S'appliquent-ils indifféremment à tous les bénéficiaires potentiels du regroupement (conjoint, personnes dépendantes, etc…) ?

[ ] OUI
[ ] NON

Q.56. C – Comment sont-ils évalués par l'Etat membre ?

Q.56. D – Les réfugiés et leur famille y sont-ils soumis (a 7 §2 alinea 2) ?

[ ] OUI
[ ] NON

Q.57 – Un délai de séjour minimal est-il opposable avant de procéder au regroupement (a 8 §1)?

[ ] OUI
[ ] NON

Q.58 – Cette durée est-elle supérieure à deux ans ?

Précisez

Non, puisqu’il est prévu une année de permis de résidence et une possibilité de renouvellement du permis de résidence pour au moins une autre année (Art. 18.2 LOEX 3 et Art. 42.1 RELOEX y Art. 42.2 c) RELOEX). Avec le document de « demande de renouvellement de résidence » le regroupant peut déjà déposer la demande de regroupement, mais pour obtenir l’autorisation de résidence de regroupement il faut que le renouvellement soit déjà confirmée. En général, cette durée est inférieure à deux ans.

Q.59 – L'Etat membre fait-il usage de la dérogation de l'article 8 §2 autorisant un délai de trois ans au maximum entre le dépôt de la demande de regroupement familial et la délivrance d'un titre de séjour aux membres de la famille en raison de sa "capacité d'accueil" ?

[ ] OUI
[ ] NON

Expliquez

Q.60 – Si oui, cette possibilité existait-elle avant le 22 septembre 2003 ?

[ ] OUI
[ ] NON

**REGROUPEMENT FAMILIAL DES REFUGIES**

Le régime applicable aux réfugiés est un régime dérogatoire au droit commun du regroupement familial. L'étendue de ces dérogations (séjour minimal, membres de la famille, conditions de logement et autres) doit être vérifiée dans le droit de l'Etat membre.
Q.61 – L'Etat membre autorise-t-il le regroupement familial des réfugiés sur la base de la directive 2003/86 (a 9 §1) ?

☐ OUI
☒ NON

Q.62 – Ce droit est-il restreint aux liens familiaux antérieurs à l'entrée sur le territoire (a 9 §2)?

☒ OUI
☐ NON

L’Espagne restreint le regroupement familial des réfugiés quant aux liens familiaux antérieurs à l’entrée sur le territoire (Art. 34 RD 203/1995).
Si la demande n’a pas eu lieu dans le terme de 3 mois à partir de la concession du statut de réfugié, Espagne peut exiger au réfugié la preuve qu’il dispose de logement approprié, d’une assurance maladie pour lui-même et sa famille et des ressources fixes et régulières suffisantes pour entretenir sa famille.

Q.63 – L’Etat membre autorise-t-il le regroupement de membres de la famille non visés à l'article 4 de la directive (a 10 §2) ?

☒ OUI
☐ NON

Lesquels et quelles conditions sont requises ?

L’article 10 de la Loi d’Asile octroie l’asile par extension familiale à la personne avec laquelle le réfugié est lié par une relation d’affectivité et cohabitation analogue au conjoint en plus de la possibilité de regrouper les ascendants et descendants en première degré.

Q.64 – L'Etat membre autorise-t-il le regroupement familial des ascendants directs au premier degré d'un mineur réfugié non accompagné sans que les conditions fixées à l'article 4§2 a soient exigées (a10 §3 a) ?

☒ OUI
☐ NON

Quelles conditions sont requises ?

Un mineur réfugié peut regrouper ses ascendants directes de façon plus flexible, c’est à dire même s’ ils ne sont pas « à son charge ».

Q. 65 – L'Etat membre autorise-t-il l'entrée et le séjour du tuteur légal ou de tout autre membre de la famille lorsque le réfugié mineur non accompagné n'a pas d'ascendants directs ou que ceux-ci ne peuvent être retrouvés (a10 §3 b) ?

☐ OUI
Si oui, précisez de qui il s'agit et précisez quelles sont les preuves requises pour justifier du lien de parenté

Il n'est pas prévu dans la Loi espagnole.

Q.66 – L'Etat membre prend-il en compte d'autres preuves de l'existence de liens familiaux lorsque le réfugié ne peut fournir de pièces justificatives (a 11 §2) ?

- [ ] OUI
- [x] NON

Lesquelles ?

Avec fréquence les réfugiés ne peuvent pas apporter les pièces justificatives ou les Certificats du Registre Civil qui puissent prouver son état civil et celui des membres de la famille ainsi que les liens familiaux. Dans ces cas, la voie conventionnelle est la plus efficace pour résoudre ces problèmes. La Commission Internationale de l'État Civil (CIEC) au moyen de son Assemblée Générale a invité les États membres à octroyer aux réfugiées des documents qui se substituent aux actes d'état civil et favorisent la reconnaissance internationale de ces documents. Pour cela il a été élaboré une Convention relative à la coopération internationale en matière d'aide administrative aux réfugiés qui dispense la légalisation des actes de l'état civil des réfugiés (Convention de Basilea de 3 septembre 1985 en vigueur en Espagne dès le 1.8.1987).

Q.67 – L'examen de la demande du réfugié tient-elle compte de la particularité de sa situation :

Q.67. A – Exige-t-on qu'il fournisse les preuves relatives au logement, à l'assurance, aux ressources (a 12 §1) ?

- [ ] OUI
- [x] NON

Non, si la demande du réfugié est présenté dans les premiers trois mois. Oui si elle est présentée après les trois mois.

Si oui, les conditions requises sont-elles comparables à celles demandées aux autres ressortissants de pays tiers

Après les trois mois, les demandes sont comparables à celles demandées aux autres ressortissants des pays tiers.

Q.67. B - Si l'une des personnes concernées (regroupant ou membre de la famille) a des liens particuliers avec un État tiers avec lequel le regroupement familial est possible, l'Etat membre exige-t-il ces preuves ?

- [ ] OUI
Précisez si nécessaire

Non, si la demande du réfugié est présenté dans les premiers trois mois. Oui si elle est présentée après les trois mois.

Q.67. C - Si le réfugié a introduit sa demande plus de trois mois après l'octroi du statut de réfugié, l'État membre exige-t-il la satisfaction de ces trois conditions ou d'une de ses trois conditions (logement, assurance, ressources) (a 12 §1 alinea 3) ?

X OUI

Si oui, lesquelles ?

Des trois conditions : logement, assurance et ressources

Q.68 – L'État membre respecte-t-il l'interdiction d'imposer une condition de séjour préalable aux réfugiés (a 12 §2) ?

X OUI

Si non quelle est cette durée ? Diffère-t-elle de la durée normalement exigée ?

EXERCICE DU DROIT AU REGROUPEMENT

L'autonomie du droit de séjour découlant du regroupement familial est la question la plus délicate de cette partie de la directive.

Q.69 – L'entrée et le séjour des membres de la famille sont-ils facilités par l'État membre après acceptation de la demande, y compris en matière de visa (a13 §1) ?

X OUI

Si oui, comment ?

Le Règlement prévoit que les visas et les autorisations de résidence pour des motifs de regroupement auront un traitement préférentiel (Disposition additionnelle 11 RELOEX). Autrement dit, ces demandes passeront devant d’autres demandes, mais en réalité cela dépend du fonctionnement de chaque consulat.

La concession du visa d'entrée est soumise à des délais fixés par la loi (1 mois qui n’est pas prorogeable)(Disposition additionnelle 8 RELOEX) et la famille à un temps (trois mois)
pour pouvoir accéder au territoire espagnol. De nos jours, ces délais ne sont toujours pas respectés.

**Q.70** – Un titre de séjour minimal d’un an est-il délivré aux membres de la famille (a 13 §2) ?

- [x] OUI
- [ ] NON

Quelle en est la durée ?

*La Loi (Art. 18.3 LOEX) prévoit que l’autorisation de résidence des membres de la famille est délivrée jusqu’à la même date que celle du regroupant. Dans la pratique normalement elle est délivrée pour un an. Et après il faut renouveler au même moment l’autorisation de résidence du regroupant et de sa famille. Mais cette disposition peut porter certains problèmes. Quand le regroupant a l’autorisation de résidence permanente la durée de la première autorisation de résidence des familières regroupées sera jusqu’au moment de l’autorisation de résidence du regroupant (chaque 5 années il faut la renouveler) et l’autorisation suivante sera déjà permanente (Art.42.7 RELOEX).*

**Q.71** – Ce titre de séjour est-il renouvelable ?

- [x] OUI
- [ ] NON

*Article 44 RELOEX*

**Q.72** – La durée du titre de séjour est-elle alignée le titre de séjour du regroupant (a 13 §3) ?

- [x] OUI
- [ ] NON

Si non, précisez

*Oui, jusqu’au moment où le membre de la famille obtient un permis indépendant, par exemple quand il rentre dans le marché de travail.*

**Q.73** – Les droits des membres de la famille sont-ils équivalents à ceux du regroupant (a14 §1) :

**Q.73. A** - En matière d'accès à l'éducation ?

- [x] OUI
- [ ] NON
Article 9 LOEX

Si non, précisez

Tous les étrangers mineurs de 18 ans ont droit à l’éducation d’ailleurs celle-ci est obligatoire jusqu’aux 16 ans. Ils jouissent des mêmes conditions que les espagnols, indépendamment du fait qu’ils se trouvent sur le territoire espagnol par le résultat du regroupement ou par d’autres raisons. Les droits sont les suivants : l’accès à l’enseignement élémentaire, gratuit et obligatoire et l’accès au système de bourses et aides sociales. Les étrangers résidents (comme les regroupés) ont droit à accéder à l’éducation non obligatoire dans les mêmes circonstances que les espagnols et à l’obtention des diplômes correspondants. Les Administrations éducatives, dans l’exercice de leurs compétences en matière d’éducation, pourront fournir aux étrangers mineurs inscrits dans le Registre de l’administration locale, l’accès aux niveaux d’enseignement post-obligatoire non des universitaires et à l’obtention du titre académique correspondant en égalité de conditions que les Espagnols de son âge.

Q.73. B - En matière d’accès à l’emploi ?

☐ OUI
☐ NON

Précisez le contenu de cet accès

Les autorisations pour regroupement familial sont uniquement des permis de résidence. Ces permis peuvent se charger par des permis de résidence et travail selon les procédures d’immigration. N’est pas pris en compte dans la « situation nationale de l’emploi », le contrat de travail ou l’offre d’emploi conclu par le conjoint ou les enfants de l’étranger résident en Espagne avec un permis renouvelé (Art. 40. b) LOEX). Les étrangers qui disposent d’un permis de résidence temporelle, normalement peuvent demander au bout d’un an le permis de travail s’ils remplissent les conditions de l’article 50 RELOEX (garantie d’une activité continue pendant un certain période, entreprises inscrites au régime de la sécurité sociale, conditions légales de travail, disposer des diplômes nécessaires ou des capacités exigées, ne pas être en situation irrégulière). L’efficacité de l’autorisation de résidence est conditionnée à l’affiliation du bénéficiaire à la sécurité social dans le mois suivant la notification de l’autorisation (Art 46.7 RELOEX). Mais l’article 96 (3) RELOEX prévoit que les membres regroupés peuvent obtenir un titre de résidence et travail sans la nécessité de remplir la période de résidence légale d’un an. Quand le membre de la famille démontre que une entreprise lui offre un contrat de travail lui garantissant une activité continue pendant la période en vigueur de sa demande d’autorisation pour résider et travailler, son permis peut évolué d’une autorisation temporelle de résidence à une autorisation temporelle de résidence et travail.

L’Ordre TAS 3698/2006, de 22 novembre (BOE 6 décembre 2006, núm 291) régit l’inscription des étrangers dans les Services Publics d’Emploi et dans les Agences d’Occupation et elle donne droit à l’accès au marché du travail en précisant que les membres qui ont une autorisation de résidence par regroupement peuvent s’inscrire comme demandeurs d’emploi pour travailler. Avec comme seule limitation, la période fixée par son permis de résidence en vigueur. De même, il est prévu que s’ils ont resté moins d’une année.
en situation de résidence légale, ils peuvent accéder au marché de l’emploi à la condition que l’employeur présente une demande d’autorisation de résidence et travail.

Même si la procédure d’accès au marché de travail des membres de la famille est différente de celle du regroupant, on considère qu’il n’y a pas une situation de discrimination.

**Q.73. C** – En matière d’accès à l’orientation à la formation, au perfectionnement et au recyclage professionnel ?

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Si non, précisez

L’inscription dans les Services Publics d’Emploi et dans les Agences d’Occupation leur donne un droit d’accès aux services dans le but d’améliorer sa possibilité de trouver un emploi et à des cours de formation organisées par ces services.

**Q.74** – Le droit de l’État membre reconnaît-il des droits spécifiques en matière sociale aux membres de la famille regroupée ?

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Si oui, décrivez et précisez si une condition de délai est fixée pour en profiter

**Q.75** – Le droit de l’État membre réglemente-t-il spécifiquement les conditions d’accès des membres de la famille au marché du travail national (a 14 §2) ?

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Si oui, comment ?

*Ils doivent remplir les conditions de l’article 50 RELOEX : la garantie d’une activité continue pendant une certaine période, entreprises inscrites au régime de la sécurité sociale, conditions légales de travail, avoir les diplômes nécessaires ou les capacités exigées, ne pas être en situation irrégulière. Ils doivent disposer d’une offre de travail, l’entrepreneur doit présenter l’offre devant le Bureau des étrangers. Leurs sont soumis une procédure inexistante pour les nationaux.*

**Q.76** – Si oui, les restrictions excèdent-elles douze mois (a 14 §2) ?

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Lesquelles ?
Pas pour les membres de la famille (conjoint et fils) du regroupant (Art. 96.3 RELOEX).

**Q.77** – L’accès à l’emploi est-il restreint dans l’Etat membre

**Q.77.A** - Pour ce qui concerne les ascendants en ligne directe et du premier degré ?

☐ OUI  
☑ NON

Si oui, comment ?

Non, une fois sur place, leur est appliqué les mêmes conditions que les autres membres de la famille. Toutefois, la procédure initiale de regroupement est plus restrictive. En effet, ils doivent justifier d’une claire dépendance économique et leur « nécessité » de venir sur le territoire espagnol.

**Q.77. B** - Pour ce qui concerne les enfants majeurs célibataires objectivement dans l’incapacité de subvenir à leurs propres besoins en raison de leur état de santé (a 14 §3) ?

☐ OUI  
☑ NON

Ils peuvent y accéder dans les mêmes conditions des espagnols à circonstances égales.

Si oui, comment ?

**Q.78** – Les conjoints, le partenaire non marié et l’enfant devenu majeur ont-ils droit à un titre de séjour autonome au plus tard passé cinq ans de résidence régulière sur la base d’un titre de séjour pour regroupement familial (a15 §1)?

☑ OUI  
☐ NON

*Si oui, précisez quand et comment pour chaque catégorie*

Le conjoint qui n’est pas séparé peut demander une autorisation de résidence autonome ou indépendante quand il a résidé en Espagne pendant cinq ans (Art. 41.1 RELOEX). Il pourra aussi obtenir une autorisation de résidence autonome pour séparation légale ou divorce, s’il peut justifier d’au moins deux années de convivialité en Espagne. Le conjoint regroupé peut disposer d’un titre de séjour (ou d’une autorisation de résidence) autonome (ou indépendante) à la condition qu’il obtienne un permis de travail ou en cas de décès du conjoint. Toutefois, lorsque les conditions fixées dans son contrat de travail (travail temporaire, prestation de services limités) donnent lieu à une rétribution inférieure au salaire minimum à temps complet (en compte annuel), l’autorisation correspondante pour travailler ne lui permettra pas d’obtenir une autorisation de résidence indépendante.
Dans le cas de violence domestique, la victime pourra obtenir l’autorisation de résidence autonome dès le moment qui est dicté l’ordre de protection en sa faveur (l’ordre judiciaire d’éloignement) (Art. 41.2 RELOEX).

En principe, il n’est pas prévu pour le partenaire non marié que celui-ci puisse obtenir un titre de séjour autonome. Toutefois, en pratique et selon le Bureau des étrangers (lieu où la documentation est présentée), un titre de séjour autonome au partenaire est spécialement octroyé s’ils ont des enfants ensemble.

Les enfants majeurs (18 ans), au moment où ils accèdent au marché de travail pourront obtenir un titre de séjour autonome s’ils ont résidé en Espagne au moins 5 ans (Art 41.4 RELOEX).

Le permis de travail ne donne pas droit à un titre de séjour autonome si les conditions du contrat de travail donnent lieu à une rétribution inférieure au salaire minimum interprofessionnel.

**Q.79** – L’Etat membre prévoit-il l’hypothèse de la rupture du lien familial pour le conjoint ou le partenaire non marié (a 15 §1 alinéa 2)?

- [ ] OUI
- [x] NON

Exploquez

Le conjoint regroupé pourra obtenir un titre de séjour autonome ou indépendant en cas de rupture du lien familial (lien à l’origine de son droit de résidence ou séjour), par séparation légale ou divorce, néanmoins doit être prouvé une cohabitation sur le territoire espagnol avec le conjoint regroupant pendant au moins deux ans. (Art. 16.3 LOEX et Art 41.2 a) RELOEX).

**Q.80** – L’Etat membre prévoit-il un titre de séjour autonome :

**Q.80. A** - Pour les ascendants en ligne directe et du premier degré (a15 §2)

- [x] OUI
- [ ] NON

Précisez si nécessaire

Les ascendants regroupés peuvent obtenir une autorisation de résidence temporelle autonome lorsqu’ils ont obtenu un permis de travail (Art. 41.5 RELOEX).

De toute façon, pour que ce permis autonome puisse donner droit au regroupement familial, il est nécessaire que l’ascendant ait obtenu la condition de résident permanent (résidence pendant au moins 5 ans) et pouvoir justifier des ressources économiques suffisantes. Cette condition n’est pas exigée dans le cas où l’enfant serait mineur ou en état d’incapacité (Art. 17.3 LOEX).

Alors, pour avoir un permis autonome ou indépendant, les ascendants sans fils à son charge (dans ce cas il suffit d’avoir un permis de travail) ont l’obligation d’obtenir une résidence permanente et aussi suffisants ressources économiques pour couvrir ses besoins et ces de leur famille.
Q.80. B – Pour les enfants majeurs célibataires objectivement dans l'incapacité de subvenir à leurs propres besoins en raison de leur état de santé (a15 §2) ?

[X] OUI

[ ] NON

Les enfants peuvent obtenir un permis de séjour autonome à leur majorité, à la condition qu’ils disposent d’un permis de travail et qu’ils résident au moins cinq ans sur le territoire espagnol. Aucune condition n’est prévue quant au fait de pouvoir subvenir à leurs propres besoins.
L’enfant se trouvant dans l’incapacité de faire face à ses besoins en raison de son état de santé pourra obtenir un permis de résidence autonome s’il a résidé au moins cinq ans sur le territoire espagnol.

Précisez si nécessaire

Q.81 – L’Etat membre prévoit-il un titre de séjour autonome pour les situations de veuvage, de divorce, de séparation ou de décès d'ascendants ou de descendants directs au premier degré (a 15 §3) ?

[X] OUI

[ ] NON

Précisez si nécessaire

Le conjoint regroupé pourra obtenir une autorisation de résidence autonome pour séparation légale ou divorce, s’il peut justifier d’au moins deux années de cohabitation sur le territoire espagnol. Ce permis de séjour autonome est aussi prévu en cas de décès du conjoint. Toutefois, il n’est pas prévu pour d’autres circonstances.

Q.82 – L’Etat membre a-t-il arrêté des dispositions garantissant un titre de séjour autonome "en cas de situation particulièrement difficile" (a 15 §3) ?

[ ] OUI

[X] NON

Si oui, comment cette disposition est-elle définie et transposée ?

La condition générale de « situation particulièrement difficile » n’est pas prévue dans le droit espagnol, toutefois il existe un titre de séjour autonome en cas de violence domestique (Art. 41.2 b) RELOEX) la victime devra obtenir un ordre judiciaire de protection. Toutefois, il n’est pas prévu pour d’autres circonstances.

SANCTIONS ET VOIES DE RECOURS

Ces dispositions sont à lire en parallèle de celles relatives aux conditions à remplir pour obtenir le droit au regroupement (articles 6, 7, 8)
Les questions relatives aux fraudes et autres moyens illicites sont importantes à traiter afin d’en délimiter la portée.

Q.83 – Quels sont les motifs légaux de rejet, de retrait ou de refus de renouvellement d'une autorisation de regroupement familial (a16 §1 et 2) ?

Q.83. A – L’absence de conditions requises par la directive ?

☐ OUI
☐ NON

Q.83. B – L’absence de vie familiale ou conjugale effective ?

☒ OUI
☐ NON

Si oui, comment cette hypothèse est-elle appréciée ?

L’art. 17.1.a) LOEX prévoit que pour pouvoir prétendre au droit au regroupement du conjoint, il est nécessaire qu’ils ne se trouvent pas séparées de droit ou de fait. La loi exige qu’ils ne soient pas séparés de fait. Cette disposition s’interprète comme le fait d’avoir une « vie familiale effective » pouvant impliquer la communauté de vie, mais aussi des visites, correspondance, appels téléphoniques etc.…

En réalité il s’avère très difficile de prouver la séparation de fait et l’investigation dans ce terrain peut porter atteinte au droit à l’intimité. A cela, il n’existe aucun moyens prévus pour contrôler cette situation, par conséquent dans la pratique cette condition n’est pas un motif de rejet, retrait ou refus de renouvellement de l’autorisation de regroupement.

Q.83. C – Des relations durables avec un autre partenaire ?

☐ OUI
☒ NON

Si oui, comment cette hypothèse est-elle appréciée ?

Q.83. D – Des falsifications de pièces ?

☒ OUI
☐ NON

La falsification des documents peut donner lieu au rejet de renouvellement de la résidence (Art. 43.4 RELOEX).

La question des falsifications est surtout contrôlée par les consulats espagnols dans les pays tiers, mais toutes les autorités administratives et judiciaires disposent de différents moyens pour contrôler l’authenticité des documents qui se présentent à elles.
À cet effet on doit prendre en considération que la LOEX considère comme une infraction grave le fait d’encourir en dissimulation dolosive ou fausseté grave dans l’accomplissement de l’obligation de porter à la connaissance du Ministère de l’Intérieur les changements qui affectent la nationalité, l’état civil ou le domicile. Cette infraction peut être punie d’une amende allant de 301 à 6000 € et/ou d’une expulsion du territoire espagnol, après démarche du dossier administratif correspondant.


**Q.83. E** – La conclusion d’une union aux seules fins du regroupement ?

- [X] OUI
- [ ] NON

Le droit de l’étranger résident à regrouper avec lui son conjoint est reconnu à condition que mariage n’ait pas eu lieu en fraude de loi. Puisque si c’est le cas, l’étranger obtient le rejet de la concession de visa (Art. 43.4 RELOEX) ou le refus du renouvellement du permis de séjour.

L’Art 17.1 a) de la LOEX interdit de conclure un mariage à des fins d’obtenir un permis de séjour. Cette disposition a été développé par l’Instruction de 31 janvier 2006 –matrimonios de complacencia- (BOE 17 de février 2006) qui déclare sa nullité absolue (article 73 Code Civil) pour manquement de volonté matrimoniale.

En réalité, les mariages de convenance (mariages blancs) ont pour objectif de fournir l’entrée et la résidence légale sur le territoire espagnol, à travers des règles de regroupement pour les Espagnols ou à travers les normes sur l’acquisition de la nationalité espagnole par le conjoint. En pratique, le lien familial avec un Espagnol s’avère plus bénéfique que le lien avec un étranger ayant résidence légale.

**Q.83. F** – Si oui, comment cette hypothèse est-elle appréciée ?


La DGRN fait face à ces fraudes de deux manières : en empêchant sa célébration sur le territoire espagnol (contrôle registraire antérieur au mariage) ou en niant l’accès au Registre Civil espagnol de celui déjà célébré (contrôle registraire postérieur au mariage). La nullité d’un faux mariage peut aussi être invoquée par le Ministère Fiscal.

Le dossier matrimonial s’articule sous la forme de mécanisme de contrôle de la capacité matrimonial du couple (Art. 45-48 CC), du consentement matrimonial (Art. 45 CC) et de la forme de célébration (Arts. 49-50 CC). Le contrôle registraire est de la compétence du Juge de Première Instance, qui avec ces fonctions de responsable du Registre Civil, est compétent pour autoriser la célébration du mariage (contrôle a priori) ou pour autoriser son inscription quand le mariage est déjà conclu (contrôle a posteriori).
Enfin, le contrôle du consentement peut aussi avoir lieu lors de l’entrevue consulaire où l’agent consulaire peut émettre des doutes raisonnables sur la véracité des motivations alléguées pour la demande de visa (Art. 42.3 RELOEX) dans la procédure de regroupement. Lors de l’entrevue devront être présents, au moins, deux représentants de l’Administration espagnole, le représentant de l’intéressé (dans le cas de minorité) et un interprète (si cela s’avère nécessaire). Le contenu de l’acte sera certifié au moyen d’un acte signé par les parties présentes. Dans le cas où, les représentants de l’administration arrivaient à la conviction qu’il existe des indices suffisants pour douter de l’identité des personnes, de la validité des documents ou de la véracité des motifs allégués pour solliciter le visa, sera refusée la concession de manière motivée. À la suite de l’entrevue, sera remise une copie de l’acte à l’organisme qui avait accordé initialement l’autorisation.

Par exemple on peut faire mention de l’arrêt du « Tribunal Superior de Justicia de Madrid » de 26 juin 2002 (STST Madrid núm. 804/2002) qui confirme la résolution administrative dénégatoire du visa considérant que le lien matrimonial n’était pas assez garanti.

En l’espèce, le Consulat avait réalisé une série de considérations liées aux résultats de l’entrevue personnelle se synthétisant ainsi : l’épouse a connu son mari quelques jours avant le mariage, elle ne connaît pas son âge ni les détails de sa vie en Espagne, l’époux est divorcé et il a des enfants (le mineur est avec lui en Espagne). Enfin le nouveau mariage est célébré avant qu’il ne soit prononcé le divorce, etc…

A cela, les membres des consulats espagnols doivent appliquer la Résolution de la Direction Générale des Registres et des Notariats de 20 novembre 2002 (Re. DGRN núm. 5/2002) qui permet lorsque des contradictions apparaissent à la lumière du dossier et des entrevues, aux consulats de déduire que le mariage est nul pour simulation.

**Q.83. G** – Le terme du séjour du regroupant en cas d’absence de titre de séjour autonome (a 16 §3) ?

[X] OUI

[ ] NON

**Q.83. H** – Quels types de contrôle sont-ils opérés ?

La généralité des contrôles sont réalisés lors de la concession de l’autorisation initiale et au moment du renouvellement de l’autorisation de résidence. En effet, il n’existe pas de contrôles périodiques des conditions permettant d’octroyer les autorisations.

Dans la pratique l’autorisation initiale de résidence est généralement délivrée pour une année. Quand la décision relative à la rénovation du permis est négative, le demandeur se voit dans l’obligation de quitter le territoire, toutefois les contrôles demeurent laxistes.

La possible divergence en ce qui concerne les dates est résolue par l’article 44.3 RELOEX qui établit que «Les demandes de rénovation des demandes de regroupement familiaux se présenteront et se traiteront conjointement avec celle du regroupant, sauf cause qui le justifie».

**Q.84** – Les ressources du ménage sont-elles prises en compte à l’occasion d’un renouvellement du titre de séjour si le regroupant ne dispose pas de ressources suffisantes sans recourir au système d’aide sociale de l’État membre ?

[X] OUI
La demande de rénovation du permis de séjour pour regroupement familial doit s'accompagner des documents qui démontrent la disposition de travail et/ou des ressources économiques suffisantes pour faire face aux besoins de la famille (Art. 44.2 RELOEX). Néanmoins, ce contrôle ne s'effectue pas dans toutes les provinces et parfois il est seulement nécessaire de montrer le renouvellement du permis par le regroupant. Pour les enfants majeurs il faut justifier les motifs de la dépendance. Il sera considéré qu'ils sont « à la charge » du regroupant quand celui-ci a justifier que, au moins pendant la dernière année, il a répondu aux dépenses en une proportion qui permet d'en déduire une dépendance économique effective.

Q.85 – Le droit de l'Etat membre prend-il en considération (a. 17) :

Q.85. A - la nature et la solidité des liens familiaux de la personne et sa durée de résidence dans l'Etat membre ?

☐ OUI

☐ NON

Si oui précisez comment et par quel type de norme (textuelle, jurisprudentielle…)

En Espagne il n’existe pas de disposition similaire à celle de l’article 17, cela pourrait être considéré comme une situation contraire à la Directive, mais la pratique judiciaire normalement tient compte des liens familiaux de la personne et sa durée de résidence en Espagne.

Les dispositions légales (spécialement les dispositions de « circonstances exceptionnelles comme enracinement « arraigo ») permettent de prendre en considération ces raisons (Art. 45 et 54 RELAEX). De même, la jurisprudence contentieuse n’a pas imposé de critères spécifiques de valorisation dès lors la pratique reste très diverse.

Est fréquent la substitution d’une sanction pécuniaire à l’éloignement ou l’expulsion en fonction de la situation de la famille.

L’article 119 RELOEX en relation avec le régime des infractions et sanctions fait référence à l’obligation de prendre en considération la situation personnelle et familiale de l’auteur de l’infraction au moment de déterminer la sanction.

En plus, à partir des années 90 il est tenu compte de la jurisprudence du TEDH.

Q.85. B - l'existence d'attaches familiales, culturelles ou sociales avec son pays d'origine, dans les cas de refus d'une demande, de retrait ou de non-renouvellement du titre de séjour, ainsi qu'en cas d'adoption d'une mesure d'éloignement du regroupant ou des membres de sa famille ?

☐ OUI

☒ NON
Si oui, précisez comment et par quel type de norme (textuelle, jurisprudentielle…)

De toute façon, l’article 28.1.c) LOEX établit l’obligatoire de quitter le territoire espagnol en cas de rejet administratif des demandes de maintien de la résidence, de permanence sur le territoire espagnol ou de manquement d’autorisation de résidence.

Il n’est pas prévu à la LOEX ou RELOEX une protection spéciale pour le renouvellement du permis de résidence du regroupant ou de leur famille.

On considère qu’il existe lacune juridique quant à la transposition de l’article 17 en ce que concerne principalement la situation du renouvellement du permis de résidence et ses conséquences. Par conséquent, le principe de sécurité juridique devrait porter à une modification législative et une correcte transposition.

Les textes de la LOE et RELOEX ne font pas expressément références aux motifs de l’article 17 de la Directive, a cela la pratique judiciaire ne prend pas généralement en compte les attachés avec son pays d’origine.

La situation familiale est prise en compte principalement pour décider du type de sanction à imposer devant une éventuelle infraction. Les autorités compétentes peuvent choisir, en tenant compte de chaque situation particulière, si elles sanctionnent l’infraction par une sanction pécuniaire ou une mesure d’expulsion. Dans ce choix il est normalement pris en considération la situation personnelle et familiale de l’auteur de l’infraction toutefois la pratique judiciaire ne fait pas référence aux attachés que celui-ci entretient avec son pays d’origine, malgré cela l’expression demeure très vague.

Q.86 – Le regroupant et les membres de la famille ont-ils un droit de recours contre la décision négative les concernant (a18 §1)?

☐ OUI ☐ NON

Oui, le droit de recours est assuré par la LOEX (Art 21) et le droit à l’assistance juridique gratuite (Art 22 LOEX).

La dénégation de visa doit être motivée quand il s’agit de visa de résidence pour le regroupement (Art 27.6 LOEX).

Si la dénégation est due au fait que la personne est incluse dans la liste des personnes qui ne sont pas admissibles selon la Convention d’application de l’accord Schengen de 19 juin 1990, cela sera notifiée d’accord avec les normes prévues dans la Convention.

La résolution doit préciser les voies de recours contre la décision, l’organe compétent devant lequel il faudra la présenter et les termes d’interposition (Art. 27 LOEX).

Les recours administratifs se trouvent aux articles 107-119 de la Loi 30/92 LRJAP-PAC (Ley del régimen jurídico de las administraciones públicas y del procedimiento administrativo común), et les arguments doivent être fondés sur les motifs de nullité et d’annulabilité prévus par la dite Loi et aussi par la Disposition additionnelle du RELOEX.

Les recours judiciaires sont prévus dans la Loi 29/1998 LJCA (Ley de la jurisdicción contenciosa-administrativa).
Q.87 – Ce droit de recours est-il un recours en justice, conformément à la jurisprudence C-540/03 (a18 §1) ?

☐ OUI
☒ NON

En principe, il existe des possibilités de recours administratifs et des possibilités de recours en justice. Néanmoins ces procédures demeurent trop lente et peu efficace pour garantir les droits des victimes (famille) en cas de refus de visa.

La situation posant le plus de problème est celle du recours prévu par la Loi 29/1998 LJCE (Art. 6-14) contre la décision négative de concession de visa par les organes de l’ambassade ou du consulat, ce recours est seulement possible devant le Tribunal Supérieur de Justice de Madrid et cela complique beaucoup la procédure et l’accès en justice. A cela, il convient d’ajouter le problème de la saturation des demandes et des réclamations ainsi que de la lenteur pour résoudre les affaires (il faut compter en moyenne 4 ans pour pouvoir voir se résoudre les dossiers).

TROISIEME PARTIE

Impact de la directive sur le droit national

Q.88 A Est ce que la transposition de la directive au sujet de la garantie de l'intérêt supérieur des enfants (a.5 §5) a rendu l'évolution du droit national plus ou moins favorable du point de vue du ressortissant de pays tiers. Comparez également avec les standards de la directive dans la dernière colonne de la table ci-dessous.

<table>
<thead>
<tr>
<th>OBJET</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Prise en considération de l'intérêt supérieur des enfants dans l'examen de la demande (a. 5§5)</td>
<td>Expliquez la situation avant la transposition</td>
<td>Expliquez la situation après la transposition</td>
</tr>
<tr>
<td>La législation espagnole avant la Directive prévoit ce principe de façon générale dans la LO 1/96 de Protection juridique du mineur et le même principe est pris en considération en</td>
<td>Après l'adoption de la LOEX 14/2003 et du RELOEX, la prise en considération de l'intérêt des enfants se base dans la pratique en les procédures de concession de la</td>
<td>Complétez cette case en conservant l'appréciation correcte et en supprimant les deux autres:</td>
</tr>
<tr>
<td>Commentaire : (mais il pourrait être mieux imposé par la norme et mieux)</td>
<td>• Conforme à la directive</td>
<td>• Statu quo</td>
</tr>
</tbody>
</table>
Q.88 B. Est ce que la transposition de la directive au sujet de la définition des bénéficiaires du droit au regroupement familial a rendu l'évolution du droit national plus ou moins favorable du point de vue du ressortissant de pays tiers. Comparez également avec les standards de la directive dans la dernière colonne de la table ci – dessous.

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</tr>
</thead>
<tbody>
<tr>
<td>Expliquez la situation avant la transposition. La situation était plus favorable pour les ascendants avant la réforme législative de 2003 (LOEX 13/2003). Pour le reste de la famille la situation n'a pas trop changé.</td>
<td>Après la réforme législative de 2003 il est interdit le regroupement en chaîne et les conditions de regroupement des ascendants sont plus strictes : application des conditions vues au texte (« en charge » et « nécessité »)</td>
<td>Complétez cette case en conservant l'appréciation correcte et en supprimant les deux autres: • Moins favorable que les règles nationales antérieures</td>
</tr>
</tbody>
</table>

Q.88 C. Est ce que la transposition de la directive en matière de regroupement des enfants de 12 (a. 4§1) et 15 ans (a. 4§6) a rendu l'évolution du droit national plus ou moins favorable du point de vue du ressortissant de pays tiers. Comparez également avec les standards de la directive dans la dernière colonne de la table ci – dessous.

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<tr>
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<tbody>
<tr>
<td>Limitations du regroupement des enfants</td>
<td></td>
<td></td>
</tr>
<tr>
<td>de 12 et de 15 ans</td>
<td>DU DROIT NATIONAL</td>
<td>DES STANDARDS DE LA DIRECTIVE</td>
</tr>
<tr>
<td>-------------------</td>
<td>-------------------</td>
<td>-----------------------------</td>
</tr>
<tr>
<td>Expliquez la situation avant la transposition</td>
<td>Expliquez la situation après la transposition</td>
<td>Complétez cette case en conservant l'appréciation correcte et en supprimant les deux autres:</td>
</tr>
<tr>
<td>Jamais il n’a été prévu des situations particulières pour les enfants de 12 à 15 ans.</td>
<td>Pas des changements</td>
<td>• Statu quo</td>
</tr>
</tbody>
</table>

Q.88 D. Est-ce que la transposition de la directive au sujet des conditions matérielles mises au regroupement (a. 7) a rendu l'évolution du droit national plus ou moins favorable du point de vue du ressortissant de pays tiers. Comparez également avec les standards de la directive dans la dernière colonne de la table ci-dessous.

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<tr>
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<tbody>
<tr>
<td>Conditions d'exercice du droit au regroupement (a. 7)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Expliquez la situation avant la transposition</td>
<td>Expliquez la situation après la transposition</td>
<td>Complétez cette case en conservant l'appréciation correcte et en supprimant les deux autres:</td>
</tr>
<tr>
<td>La situation n’a pas tellement changé, mais un des problèmes plus graves était l’application mauvaise des procédures et la disparité des critères matériels d’application.</td>
<td>Certains consulats deviennent plus stricts pour le contrôle des documents, et en Espagne les conditions de logement sont plus strictes dans certaines municipalités. Il y a une tendance à faire plus strictes les conditions d’exercice du droit au regroupement (spécialement des ascendants), mais au même temps à inclure plus de garanties pour les</td>
<td>• Plus favorable que les règlesnationales antérieures</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Moins favorable que les règlesnationales antérieures</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Conforme à la directive</td>
</tr>
</tbody>
</table>

Complétez cette case en conservant l'appréciation correcte et en supprimant l'autre:
personnes et à réduire le marge de manoeuvre de l'Administration. De toute façon la situation n'est pas uniforme.

Q.88 E. Est ce que la transposition de la directive au sujet de la marge d'appréciation des Etats membres (a. 5 §5, a. 17, C-540/03) a rendu l'évolution du droit national plus ou moins favorable du point de vue du ressortissant de pays tiers. Comparez également avec les standards de la directive dans la dernière colonne de la table ci-dessous.

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<tbody>
<tr>
<td>Encadrement de la marge d'appréciation des Etats membres (a. 17, a.5 §5, C-540/03)</td>
<td>Expliquez la situation après la transposition</td>
<td></td>
</tr>
<tr>
<td>Les États sont plus conscients qu’ils doivent tenir compte des obligations au niveau communautaire et des intérêts familières, des intérêts des enfants et des circonstances exceptionnelles de chaque cas particulier et que ses actes peuvent être plus contrôlés par les institutions européennes, nationales et judiciaires. Mais le marge de manœuvre n’a pas trop changé.</td>
<td>Complétez cette case en conservant l'appréciation correcte et en supprimant les deux autres: • Statu quo</td>
<td>Complétez cette case en conservant l'appréciation correcte et en supprimant l'autre: • Conforme à la directive</td>
</tr>
<tr>
<td>Expliquez la situation avant la transposition</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Il persiste une grande marge de manoeuvre des organes administratifs pas vraiment soumise à des contrôles (sauf les judiciaires)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Complétez cette case en conservant l'appréciation correcte et en supprimant les deux autres: • Statu quo

Complétez cette case en conservant l'appréciation correcte et en supprimant l'autre: • Conforme à la directive
Q.88 F. Est ce que la transposition de la directive au sujet des objectifs et des critères d’intégration poursuivis par la directive a rendu l’évolution du droit national plus ou moins favorable du point de vue du ressortissant de pays tiers. Comparez également avec les standards de la directive dans la dernière colonne de la table ci – dessous.

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<tbody>
<tr>
<td>Prise en considération de l’objectif d’intégration (considérant 15) et des critères d’intégration (a.4 §1 dernier alinéa, a. 7 §2)</td>
<td>Expliquez la situation après la transposition</td>
<td>Complétez cette case en conservant l’appréciation correcte et en supprimant les deux autres: • Statu quo</td>
</tr>
<tr>
<td>Il n’est jamais pris en considération l’imposition des critères d’intégration</td>
<td>Expliquez la situation avant la transposition</td>
<td>Complétez cette case en conservant l’appréciation correcte et en supprimant l’autre: • Plus favorable que la directive</td>
</tr>
</tbody>
</table>

Q.89. De votre point de vue, la transposition de la directive a – t – elle impliqué d’autres changements intéressants pour les ressortissants de pays tiers en ce qui concerne d’autres éléments que ceux mentionnés dans la question précédente. Comparez également avec les standards de la directive dans la dernière colonne de la table ci – dessous.

**Utilisez une case par objet et dupliquez si nécessaire**

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<tbody>
<tr>
<td>(à remplir de manière très précise par les coordinateurs thématiques)</td>
<td>Expliquez la situation avant la transposition</td>
<td>Complétez cette case en conservant l’appréciation correcte et en supprimant les deux autres: • Moins favorable que les règles nationales antérieures</td>
</tr>
<tr>
<td>Expliquez la situation après la transposition</td>
<td>La principal changement a été la reforme de la LOE 4/2000 par la 14/2003 avec une tendance à introduire plus des restrictions au regroupement familial (spécialement ascendants et regroupement en chaîne), mais aussi à améliorer les procédures d’octroi</td>
<td>Complétez cette case en conservant l’appréciation correcte et en supprimant l’autre: • Plus favorable que la directive</td>
</tr>
</tbody>
</table>
Q.89. A. Indiquez si le droit national démontre une tendance générale à simplement copier les dispositions de la directive sans rechercher à reformuler ou les adapter aux circonstances nationales.

☐ NO
☐ YES

Q.89.B. Si oui, indiquez si cette tendance générale peut créer des problèmes (par exemple des difficultés d'exécution, des risques que la disposition demeure inappliquée).

☐ NO
☐ YES

Q.89.C. Si oui, donnez quelques exemples :

Q.89.D. Si seulement quelques dispositions de la directive ont été copiées, et si cela doit créer des problèmes, citez les et expliquez le problème.

Q.90. Citez des décisions de jurisprudence intéressantes relatives à la directive, sa transposition ou son application (Cette question concerne en principe les décisions ultérieures à l'adoption de la directive. Des décisions antérieures peuvent être citées si elle sont pertinentes). Citez en particulier les décisions des cours suprêmes. Limitez vous au sujet des décisions de cours d'appel et ignorez les jugement en première instance s'il existe trop de jugement à ce niveau à moins qu'une jurisprudence ne se dessine au regard d'un groupe de jugements.

Utilisez une case par decision et dupliquez si nécessaire

<table>
<thead>
<tr>
<th>DECISION OF SUPREME COURTS STS</th>
<th>DATE:</th>
<th>REFERENCE OF PUBLICATIONS:</th>
<th>RESUME:</th>
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<tr>
<td>STS</td>
<td>17-11-2006</td>
<td>(<a href="http://www.reicaz.es">www.reicaz.es</a>)</td>
<td>Pour octroyer une autorisation de résidence il faut prendre en considération pas seulement les circonstances qui apparaissent dans le dossier administratif mais aussi les circonstances qui ont eu lieu au moment ou la Décision est prise.</td>
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<tr>
<td>STS (Sala de lo contencioso)</td>
<td>30-11-2006</td>
<td>STS 4980/2003</td>
<td>Moyens de preuve :pour démontrer que une personne se trouve en Espagne à une certaine date, cela peut se faire par</td>
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<td>-------------------------------------------------</td>
</tr>
<tr>
<td>STS (Sala de lo contencioso)</td>
<td></td>
<td>(<a href="http://www.reicaz.es">www.reicaz.es</a>)</td>
<td>n’importe quel moyen de preuve. Si l’administration considère que une copie d’une offre de travail n’est pas valide, il doit demander la subsanation (correction de l’erreur ou problème) du document. Il n’y a pas de référence à la Directive mais à certaines dispositions sur l’enracinement.</td>
</tr>
<tr>
<td>Tribunal Superior de Justicia de la Comunidad de Madrid</td>
<td></td>
<td>(<a href="http://www.reicaz.es">www.reicaz.es</a>)</td>
<td></td>
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<tr>
<td>Tribunal Superior de Justicia de la Comunidad Autónoma del País Vasco</td>
<td></td>
<td>(<a href="http://www.reicaz.es">www.reicaz.es</a>)</td>
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<tr>
<td>Tribunal Superior de Justicia del País Vasco</td>
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</table>
**RESUME:**

Il est fait référence à la Directive 2003/86 en relation avec l’article 7c pour délimiter le concept de ressources suffisants, en disant que les États membres doivent prendre en considération les salaires et pensions minimales (en faisant référence à ce que en Espagne le salaire minimal (SMI) est de 540,90 €. Le juge considère par exemple que étant donné les conditions du marché de loyer, un logement de 70 m2 avec trois chambres et un salon est adéquat pour couvrir les besoins d’une famille avec trois ou quatre membres.

**AJOUTEZ TOUT COMMENTAIRE SUPPLEMENTAIRE AU SUJET DE LA TENDANCE JURISPRUDENTIELLE:**

Il y a encore très peu de références à la Directive 2003/86 dans la jurisprudence espagnole.

**Q.91.** Expliquez s'il existe des problèmes de traduction de la directive dans la langue officielle de votre Etat membre et donnez si besoin une liste des exemples les plus significatifs de mauvaise traduction.

- [x] Il n'y a pas de problème de traduction de la directive
- [-] Il y a quelques problèmes de traduction de (indiquez l'article concerné) de la directive.

**Expliquez les difficultés que ces problèmes de traduction peuvent créer :**

**92. AUTRES ELEMENTS INTERESSANTS**

**Q.92 A.** A votre avis, mentionnez du point de vue du ressortissant de pays tiers et / ou de l'État membre toutes pratiques nationales intéressante ou innovante

*Utilisez une table par pratique et dupliquez si nécessaire*

<table>
<thead>
<tr>
<th>OBJET DE LA PRATIQUE</th>
<th>EXPLICATIONS</th>
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<tbody>
<tr>
<td>Il y a une évolution favorable à octroyer une carte de résidence indépendante aux regroupés (conjoint, fils et ascendants) et à faciliter son entrée au marché de travail.</td>
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</table>
Il y a aussi une évolution favorable à octroyer les autorisation de regroupement familial avec des délais plus courts et avec plus de garanties procédurales et de motivation (même si ce n’est pas dans tous le bureaux régionaux)

### Q.92 B. Ajoutez tout autre élément intéressant que vous n'avez pas eu l'occasion de mentionner dans les questions précédentes.

La Loi 14/2003 oblige l’étranger à disposer d’un document d’identité permettant d’accréditer de l’autorisation administrative pour résider. Cette norme traduit le commencement d’une nouvelle étape qui se veux plus restrictives et limitatives quant au regroupement (spécialement au regroupement en chaîne et au regroupement des parents), bien que le système espagnol soit plus généreux que la majorité d’autres systèmes juridiques. En règles générales, la majorité des possibles restrictions prévues par la Directive n’ont pas été incorporés dans le droit espagnol.

Une des principales tâches encore pendantes est la simplification des procédures administratives permettant d’octroyer les autorisations de résidence (en général) et de regroupement, puisque la complexité de la procédure entraine souvent une situation de grande insécurité juridique.

En ce moment un des problèmes principaux c’est que les renouvellements sont trop lents et les certificats de silence positifs ne s’adoptent pas.

En ce qui concerne le regroupement du conjoint, celui-ci n’est permis qu’après l’inscription du mariage au Registre Civil Consulaire ou Central en Espagne. Toutefois, actuellement les délais d’attente de plus d’un an pour que le mariage soit retranscrit pose de nombreux problèmes.

L’innovation du nouveau cadre juridique est l’implication des corporations locales dans la gestion de l’immigration, avec un rôle complémentaire de « registre » et de prestation de services, puisqu’elles doivent contrôler (au moyen de l’élaboration de rapports) le degré d’intégration sociale des étrangers et les conditions de logement.

Il demeure d’ importantes lacunes normatives qui donnent une marge très large d’appréciation aux autorités administratives et cela conduit à des situations de grandes divergences d’application des conditions requises et des procédures par les autorités provinciales ou locales.

Le concept d’ordre public est aussi soumis à une marge de manœuvre très large de l’administration compétente et à des pratiques très variées.

En général on peut maintenir l’affirmation que les conditions exigées en Espagne pour le regroupement sont plus favorables et plus généreuses que les options prévues et permises par la Directive 2003/86.

Durant l’année 2007, on a assisté à une augmentation de 30% par rapport a l’année dernière du nombre de « repatriations » (terme anglo-saxon pour désigner le fait de retourner dans son pays d’origine). Les raisons sont de 4 ordres : retour (personnes qui doivent retourner lorsqu’elles sont situées sur de zones frontières –ex : ports et aéroports-) ; expulsion (pour des raisons prévues dans la LOEX, en principe à la suite de dossier administratifs traduisant une
situation irrégulière) ; dévolutions (personnes qui ont essayé d’entrer par des zones non habitables comme celles des frontières) et réadmissions (expulsion par voie d’accord de réadmission avec un pays tiers). Néanmoins, les tribunaux acceptent la suspension de l’exécution de l’expulsion dans un grand nombre de circonstances, parmi elles lorsque l’étranger à des liens familiaux sur le territoire espagnol.

En relation avec les repatriations, le Conseil Général des Avocats a dénoncé le manque de garanties essentielles relatif aux expulsions de mineurs étrangers non accompagnés, puisque dans la procédure administrative ils ne bénéficient pas de l’opportunité d’une assistance légale et cela peut être considérer comme une pratique contraire à l’article 22.2 de la LOEX 4/2000. La situation des mineurs non accompagnés est un grave problème en Espagne. L’article 35.4 de la LOEX établit que doit être considéré comme légal à tous les effets la résidence des mineurs qui sont sous la tutelle d’une administration publique. De même, l’article 92.4 RELOEX établit que « L’Administration Générale de l’État, selon le principe du regroupement familial du mineur, à la suite de l’entretient avec le mineur et du rapport des services de protection des mineurs, devra statuer sur la décision de la répatriation ou non du mineur dans son pays d’origine ou dans le pays où se trouve sa famille, ou bien encore sur sa permanence en Espagne ». 
The person in the team of thematic coordination in charge of this directive that you can contact if you have a question or need help when completing this questionnaire is: Yves Pascouau, +33 5 59 57 41 20, yves.pascouau@univ-pau.fr

COMMENTARIES

1. Council directive 2003/86 on the right to family reunification faced hard negotiations requiring the presentation of revised proposals from the Commission before final adoption in 2003. The European Court of Justice rejected in June 2007 an action for annulment introduced by the European Parliament against the Council directive (C-540/03).

2. Transposition of the directive must be assessed regarding the nature of the provision concerned. So as to help you, those provisions are coloured within the questionnaire as follows: obligatory provision (Q.XX), optional provision (Q.YY), provision which set up a derogation (Q.ZZ)

3. The Court of justice has defined the margins of discretion awarded to the member States even in situations where the directive allows the member States to depart from the directive. The Court states:

   "Article 4(1) of the Directive imposes precise positive obligations, with corresponding clearly defined individual rights, on the Member States, since it requires them, in the cases determined by the Directive, to authorise family reunification of certain members of the sponsor's family, without being left a margin of appreciation" (cons. 60).

   "Note should also be taken of Article 17 of the Directive which requires Member States to 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 country of origin. As is apparent from paragraph 56 of the present judgment, such criteria correspond to those taken into consideration by the European Court of Human Rights when it reviews whether a State which has refused an application for family reunification has correctly weighed the competing interests" (cons. 64)

   The fact that the concept of integration is not defined cannot be interpreted as authorising the Member States to employ that concept in a manner contrary to general principles of Community law, in particular to fundamental rights. The Member States which wish to make use of the derogation cannot employ an unspecified concept of integration, but must apply the condition for integration provided for by their legislation existing on the date of implementation of the Directive in order to examine
the specific situation of a child over 12 years of age arriving independently from the rest of his or her family" (cons. 70).

4. The main difficulty according to the transposition of the directive relies on the systematic opportunities offered to member States to depart from the provisions of the directive when applying it.

5. Article 19 indicates which themes where the most sensitive during the negotiations of the Directive (art. 3, 4, 7, 8 and 13).

FIRST PART

1. NORMS OF TRANSPOSITION AND JURISPRUDENCE

Q.1.A Identify the MAIN (because of its content) norm(s) of transposition and indicate its legal nature

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)
- About legal nature in the table below: legislative refers to a norm adopted in principle by the Parliament; regulation refers to a norm complementing the law and adopted in principle by the executive power; circular or instructions refer to practical rules about implementation of laws and regulations and adopted in principle by the administrative authorities

Please duplicate the table below if there is more than one MAIN norm of transposition

NB: Many of the norms of transposition refers to amendments made in the former Aliens Act (1989:529). This has been replaced by a new Aliens Act (2005:716), in force since 2006-03-31. The former Aliens Act will be referred to as the old Aliens Act, the present Aliens Act is will be referred to as the new Aliens Act.

This table is about: [X] a text already adopted [ ] a text which is still a project to be adopted

| DATE | 2000-05-20 |
| NUMBER | SFS 2000:292 |
| DATE OF ENTRY INTO FORCE | 2000-07-01 |
| PROVISIONS CONCERNED | In the old Aliens Act (Law 1989:529) chapter 2 §4e, corresponds to chapter 5 §16 in the new Aliens Act (Law 2005:716) |
| REFERENCES OF PUBLICATION | not applicable |

| REFERENCES OF PUBLICATION | not applicable |

| REFERENCES OF PUBLICATION | not applicable |

<p>| REFERENCES OF PUBLICATION | not applicable |</p>
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<td>[ ] REGULATION</td>
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<tr>
<td>[ ] CIRCULAR OR INSTRUCTIONS</td>
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transposition of the concerned directive): In the old Aliens Act chapter 2 §5, corresponds to chapter 5 §18 in the new Aliens Act.

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**LEGAL NATURE** (indicate a cross in the right box):

- [X] LEGISLATIVE
- [ ] REGULATION
- [ ] CIRCULAR OR INSTRUCTIONS

### Aliens Act (2005:716)

- **TITLE**: Utlänningslag (2005:716)
- **DATE**: 2005-09-25
- **NUMBER**: SFS 2005:716
- **DATE OF ENTRY INTO FORCE**: 2006-03-31

**PROVISIONS CONCERNED**:

(for example if the norm is not devoted only to the transposition of the concerned directive): chapter 1 §10, chapter 5 §§3, 6, 16 and 18, chapter 7 §4, chapter 13, chapter 14 §§11-13, chapter 16 §9

**REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL**

- not applicable

**LEGAL NATURE** (indicate a cross in the right box):

- [X] LEGISLATIVE
- [ ] REGULATION
- [ ] CIRCULAR OR INSTRUCTIONS

### Amendment (2006:219) to the Aliens Act (2005:716)

- **DATE**: 2006-03-30
- **NUMBER**: SFS 2006:219
- **DATE OF ENTRY INTO FORCE**: 2006-04-30

**PROVISIONS CONCERNED**:

(for example if the norm is not devoted only to the transposition of the concerned directive): New Aliens Act chapter 1 §3, chapter 2 §4 and chapter 14 §3

**REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL**

- not applicable

**LEGAL NATURE** (indicate a cross in the right box):

- [X] LEGISLATIVE
- [ ] REGULATION
- [ ] CIRCULAR OR INSTRUCTIONS

### Amendment (2006:220) to the Aliens Act (2005:716)

- **DATE**: 2006-03-30
- **NUMBER**: SFS 2006:220
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<th>2006-04-30 AND 2006-07-01 (as for chapter 13 §§ 15-16 and chapter 14 §8a)</th>
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<tr>
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<td>(for example if the norm is not devoted only to the transposition of the concerned directive): chapter 5 §§ 3, 3a, 8 and 16–18, chapter 7 § 3, chapter 13 §§ 13 and 16, chapter 14 § 8 a</td>
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<td><strong>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL</strong></td>
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- [X] LEGISLATIVE:
- [ ] REGULATION:
- [ ] CIRCULAR or INSTRUCTIONS:

This table is about: [X] a text already adopted [ ] a text which is still a project to be adopted

**TITLE**: Utlänningsförordning (2006:97)
The Aliens Regulation (2006:97)

**DATE**: 2006-02-23
**NUMBER**: SFS 2006:97
**DATE OF ENTRY INTO FORCE**: 2006-03-31

**REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL**: not applicable

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- [X] LEGISLATIVE:
- [ ] REGULATION:
- [ ] CIRCULAR or INSTRUCTIONS:

This table is about: [X] a text already adopted [ ] a text which is still a project to be adopted

**TITLE**: Förordning (2006:262) om ändring i utlänningsförordningen (2006:97)

**DATE**: 2006-04-06
**NUMBER**: SFS 2006:262
**DATE OF ENTRY INTO FORCE**: 2006-04-30

**REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL**: not applicable

**LEGAL NATURE** (indicate a cross in the correct box):
- [X] LEGISLATIVE:
- [ ] REGULATION:
- [ ] CIRCULAR or INSTRUCTIONS:

Q.1.B. List the others norms of transposition by order of importance of their legal nature (first laws, secondly regulations; thirdly circulars or instructions):
- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)

Please use one table per norm and duplicate as much as necessary

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<td>CIRCULAR OR INSTRUCTIONS</td>
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| This table is about: | X | a text already adopted | a text which is still a project to be adopted |
| TITLEx: Lag (1994:1117) om registrerat partnerskap |
| Law (1994:1117) on registered partnership |
| DATE: 1994-06-23 |
| NUMBER: SFS 1994:1117 |
| DATE OF ENTRY INTO FORCE: 1995-01-01 |
| PROVISIONS CONCERNED: |
| (for example if the norm is not devoted only to the transposition of the concerned directive) chapter 3 §1 |
| REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: not applicable |
| LEGAL NATURE (indicate a cross in the right box): |
| X | LEGISLATIVE |
|  | REGULATION |
|  | CIRCULAR OR INSTRUCTIONS |

| This table is about: | X | a text already adopted | a text which is still a project to be adopted |
| TITLEx: Äktenskapsbalk (1987:230) |
| Law (1987:230) on marriage |
| DATE: 1987-05-14 |
| NUMBER: SFS 1987:230 |
| DATE OF ENTRY INTO FORCE: 1988-01-01 |
| PROVISIONS CONCERNED: |
| (for example if the norm is not devoted only to the transposition of the concerned directive) chapter 2 §1 |
| REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: not applicable |
| LEGAL NATURE (indicate a cross in the right box): |
| X | LEGISLATIVE |
|  | REGULATION |
|  | CIRCULAR OR INSTRUCTIONS |

<p>| This table is about: | X | a text already adopted | a text which is still a project to be adopted |
| TITLEx: Lag (1988:1322) om ändring i lagen (1904:26 s.1) om vissa internationella rättsförhållanden rörande äktenskap och förmynderskap |
| Amendment (1988:1322) to the law (1904: 26 p 1) on certain international legal facts concerning matrimony and guardianship |
| DATE: 1989-01-01 |
| NUMBER: SFS 1988:1322 |</p>
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<td>Legislative</td>
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<td>Regulation</td>
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This table is about: X a text already adopted □ a text which is still a project to be adopted

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<tr>
<td>Date: 1986-05-07</td>
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This table is about: X a text already adopted □ a text which is still a project to be adopted

<table>
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<th>Title: Lag (1986:765) med instruktion för Riksdagens ombudsmän Law (1986:765) with instructions for the representatives of the Parliament</th>
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<table>
<thead>
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<th>Title: Lag (1975:1339) om justitiekanslerns tillsyn Law (1975:1339) on supervision by the Chancellor of Justice</th>
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<td>Date: 1975-12-15</td>
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<td>Number: SFS 1975:1339</td>
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<td>Date of Entry into Force: 1976-01-01</td>
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<tr>
<td>Provisions Concerned:</td>
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NATIONAL REPORTS - DIRECTIVE ON FAMILY REUNIFICATION
(for example if the norm is not devoted only to the
transposition of the concerned directive)

**REFERENCES OF PUBLICATION**
**IN THE OFFICIAL JOURNAL:** not applicable

**LEGAL NATURE** (indicate a cross in the right box):

- [X] LEGISLATIVE
- [ ] REGULATION
- [ ] CIRCULAR OR INSTRUCTIONS

| This table is about: | a text already adopted | a text which is still a project to be adopted |

**TITLE:** Regeringsform (2003:593)
Instrument (2003:539) of the Government

**DATE:** 1974-02-28

**NUMBER:** SFS 2003:593 (new print of the old one)

**DATE OF ENTRY INTO FORCE:** 2003-07-01 (of the new print)

**PROVISIONS CONCERNED:**
(for example if the norm is not devoted only to the
transposition of the concerned directive) chapter 2 §§20 and 22 p.9-10

**REFERENCES OF PUBLICATION**
**IN THE OFFICIAL JOURNAL:** not applicable

**LEGAL NATURE** (indicate a cross in the right box):

- [X] LEGISLATIVE
- [ ] REGULATION
- [ ] CIRCULAR OR INSTRUCTIONS

| This table is about: | a text already adopted | a text which is still a project to be adopted |

**TITLE:** Migrationsverkets Utlänningshandbok kap. 6.1
The Migration Board’s Manual on Alien Issues, chapter 6.1

**DATE:** Last updated 2006-03-31 (a “living” manual that is updated regularly)

**NUMBER:** not applicable

**DATE OF ENTRY INTO FORCE:** Last updated 2006-03-31

**PROVISIONS CONCERNED:**
(for example if the norm is not devoted only to the
transposition of the concerned directive)

**REFERENCES OF PUBLICATION**
**IN THE OFFICIAL JOURNAL:** not applicable

**LEGAL NATURE** (indicate a cross in the right box):

- [X] LEGISLATIVE
- [ ] REGULATION
- [ ] CIRCULAR OR INSTRUCTIONS

| This table is about: | a text already adopted | a text which is still a project to be adopted |

**TITLE:** Migrationsverkets Utlänningshandbok kap. 10.2
The Migration Board’s Manual on Alien Issues, chapter 10.2

**DATE:** Last updated 2006-11-29 (a “living” manual that is updated regularly)

**NUMBER:** not applicable

**DATE OF ENTRY INTO FORCE:** Last updated 2006-11-29

**PROVISIONS CONCERNED:**
(for example if the norm is not devoted only to the
transposition of the concerned directive)

**REFERENCES OF PUBLICATION**
IN THE OFFICIAL JOURNAL: not applicable

**LEGAL NATURE** (indicate a cross in the right box):
- [ ] LEGISLATIVE
- [ ] REGULATION
- [X] CIRCULAR OR INSTRUCTIONS

**This table is about:** [x] a text already adopted [ ] a text which is still a project to be adopted

**TITLE:** Migrationsverkets Utlänningshandbok kap. 10.12
The Migration Board’s Manual on Alien Issues, chapter 10.12

**DATE:** Last updated 2006-03-30

**NUMBER:** not applicable

**DATE OF ENTRY INTO FORCE:** Last updated 2006-03-30

**PROVISIONS CONCERNED:**
(for example if the norm is not devoted only to the transposition of the concerned directive)

**REFERENCES OF PUBLICATION**
IN THE OFFICIAL JOURNAL:

**LEGAL NATURE** (indicate a cross in the right box):
- [ ] LEGISLATIVE
- [ ] REGULATION
- [X] CIRCULAR OR INSTRUCTIONS

**Q.2.** THIS QUESTION IS IN PRINCIPLE ONLY FOR FEDERAL OR ASSIMILATED MEMBER STATES LIKE AUSTRIA, BELGIUM, GERMANY, ITALY, SPAIN

**Q.2.A.** Explain which level of government is competent to adopt the norms of transposition.

*Please include your answer in the tables below*

**LEGISLATIVE RULES**

| COMPETENCES OF THE FEDERAL/CENTRAL LEVEL: |
| COMPETENCES OF THE COMPONENTS: |
| EXPLANATIONS IF NECESSARY: |

**REGULATIONS**

| COMPETENCES OF THE FEDERAL/CENTRAL LEVEL: |
| COMPETENCES OF THE COMPONENTS: |
| EXPLANATIONS IF NECESSARY: |

**CIRCULAR OR INSTRUCTIONS**

| COMPETENCES OF THE FEDERAL/CENTRAL LEVEL: |
| COMPETENCES OF THE COMPONENTS: |
| EXPLANATIONS IF NECESSARY: |
Q.2.B. In case, explain if the federal structure and the distribution of competences between the different levels pose any problem or difficulty regarding the transposition and/or the implementation of the directive.

Q.3. Explain which authorities are competent for the practical implementation of the norm of transposition by taking the decisions in individual cases.

Please use one table per competence concerned and duplicate it if necessary

<table>
<thead>
<tr>
<th>COMPETENCE CONCERNED:</th>
<th>All decisions on application for family reunification</th>
</tr>
</thead>
<tbody>
<tr>
<td>CENTRAL MINISTRY OF:</td>
<td>Justitiedepartementet, in English the Ministry of Justice</td>
</tr>
<tr>
<td>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</td>
<td>Migrationsverket, in English the Migration Board.</td>
</tr>
<tr>
<td>OTHER LEVEL OF ADMINISTRATION:</td>
<td>Work area within the Migration Board is Visas, Work Permits and Residence Permits</td>
</tr>
<tr>
<td>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister):</td>
<td>The Migration Board is Sweden’s central government authority for aliens affairs. It is independent of the competent minister.</td>
</tr>
</tbody>
</table>

Q.4.A. Has the main regulation foreseen explicitly by the main norm of transposition already been adopted or not:

☐ YES
☐ NO

There is no foreseen main regulation

Q.4.B. If the main norm(s) of transposition foresees the adoption of one or several regulations, indicate if they have all been adopted:

☐ YES
☐ NO

If NO, please indicate the missing text(s) in the table below
Please use one line per missing text and duplicate it if necessary

<table>
<thead>
<tr>
<th>MISSING TEXTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>INDICATE HERE THE MISSING TEXTS</td>
</tr>
</tbody>
</table>

Add if necessary some explanations (specify in particular if the missing texts are at least under preparation or foreseen in the very near future):
Aim (Article 1)

The purpose of the Directive is to determine the conditions for the exercise of the right to family reunification. In case C-540/03, the Court of justice recognizes that, in some cases, member States do not have any margin of appreciation to grant the right to family reunification.

Q.5 – Is family reunification considered as a right in your Member State?

☐ OUI

☐ NON

Please explain

In order to transpose the directive the relevant paragraph of the Aliens Act stipulating residence permit because of family reunification (chapter 5 §3) was changed from “can be given”, to “shall be given”. This was done to emphasize that family reunification is a right. The change entered into force in 2006-04-30.

Q.5 A – Are there any figures available relating to the exercise of the right to family reunification between 2002 and 2006? If yes, what are the trends, including nationality assessment?

The total number for 2002-2006 of given residence permits because of family reunification is 117,932:

2002: 22,346
2003: 24,553
2004: 22,337
2005: 22,028
2006: 26,668

One general trend is that the granted applicants comprise a majority of women. Of the total number of granted applicants during 2002-2006 about 58% were women.

As for trends in respect of country of origin/citizenship the majority of the granted applicants every year were from Asia (about 40% of the total numbers 2002-2006) and Europe (about 35%). From Asia the great majority of the granted applicants descend from Iraq (for example in 2006 granted applicants from Iraq constituted 25% of the total number for Asia). From Europe the great majority of the granted applicants descend from former Yugoslavia.

 Definitions (Article 2)

Scope (Article 3)

The scope of the Directive is defined by article 3. We recall that:

- § 1 "reasonable prospect...” aims at excluding persons residing on a temporary basis (stagiaires, etc...)
- European citizens are excluded (§ 3)
- Comparison with existing legislation is of importance so as to assess the added value of the harmonization process (§ 5)
Q.6. Period of validity of the sponsor’s residence permit:

Q.6. A. Is the period of validity of the sponsor’s residence permit of one year or more according to article 3 § 1 of the Directive?

☐ OUI

☐ NON

Q.2.B. Quote precisely the period enshrined in national law:

A period is not enshrined in legislation, but the travaux préparatoires of the legislation transposing the Directive (Government proposal 2005/06:72), state that as a main rule a permanent resident permit is required. The only exception is persons that are citizens in Scandinavia, for them only settlement in Sweden is required. Thus non-Scandinavian persons with a time-limited permit cannot be a sponsor. This is applied in the legal practice of the Migration Board.

Q.6.C. How does your Member State translate in national law the requirement for the sponsor to have "reasonable prospects of obtaining the right of permanent residence" (a 3 § 1)?

This is not transposed since a permanent residence permit is required.

Q.7. – Members of the family concerned:

Q7. A. Are they third country nationals as required by article 3 § 1 of the Directive?

☐ OUI

☐ NON

If not, explain

In the travaux préparatoires (Government proposal 2005/06:72) of the main norm of transposition it is stated that to obtain a uniform and non-discriminating legislation, the right of family reunification shall apply irrespective of the nationality/citizenship of the family member (exception of EES citizens were other rules of course apply). It is further stated that since the directive prescribes only minimum standards these more favorable provisions are allowed (art 3.5 of the directive).

308 Travaux préparatoires are an important source of interpretation in the Swedish legal system. An enactment of Parliament is accompanied by an opinion in which the Parliament develops and clarifies the objective of the enactment and the meaning of its wording. This is written to afford guidance in the application of the law. It is disputed in the Swedish legal literature whether travaux préparatoires are sources of law in a technical sense, that is, if their contents are formally binding upon everyone. There is no straight answer to this question, but it is at least not contentious to hold that these opinions are seen as of great importance in the interpretation of the content of an enactment. This is especially true for interpretations made in the introduction phase, before any accepted practice has been established. In general, the courts and lawyers in Sweden pay greater regard to the legislator’s express will, than is the case in other countries. Thus, one can conclude that the travaux préparatoires function as an important source for interpretation and are followed in legal practice, although they not as a fact are formally binding. (This is based on “General Public Law – the Constitution” by Fredrik Sterzel in Swedish Law - a survey by Tiber, Sterzel, Cronholt (eds), 1994, pp. 52-55 and “Sources of Swedish Law” by Hans-Heinrich Vogel in Swedish Law in the new Millenium, Bogdan (ed), 2000, pp. 57-60)
Q.7.B. How has your Member State translated in national law the wording of "whatever status" included in article 3 § 1 of the Directive? The definition of third country nationals in the Aliens Act (chapter 1 §3c) corresponds to definition in art. 2a of the Directive (and art 17.1 of the Treaty). The wording of “whatever status” is implicit in the provisions of family reunification, since there is no differentiation in treatment of the family members because of their status.

Q.8 – Did the transposition of the Directive in your Member state breached provisions of international law more favourable to individuals (a 3 § 4)?

☐ OUI
☒ NON

Q.9 – If yes, are those provisions based on:

Q.9.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?

☐ OUI
☐ NON

Specify which provisions

Q.9.B - The European Social Charter of 18 October 1961 (a 3 § 4)?

☐ OUI
☐ NON

Specify which provisions

Q.9.C. The amended European Social Charter of 3 May 1987 (a 3 § 4)?

☐ OUI
☐ NON

Specify which provisions


☐ OUI
☐ NON

Specify which provisions

Q.10 – Does the transposition of the Directive affect national provisions more favourable to individuals (a 3 § 5)?
If yes, please specify which provisions
Where more favorable standards exist in the national legislation these have been kept, in accordance with art 3.5 of the directive. No standards that are more favorable have been degraded due to the transposition of the directive.

**BENEFICIARIES (ARTICLE 4)**

- Article 4 of the Directive contains numerous “may clauses”. It is therefore important to pay attention on the way Member States use them and on the legal modalities adopted thereof.

- Article 4 § 1 a) and b) enacts a right to family reunification for some members of the sponsor's family. The Member State does not have any margin of discretion regarding those persons.

- Article 4 § 1 last indent foresee one derogation regarding child over 12 years on the basis of an integration criterion. This is one of the most sensitive questions encompassed by the directive beside the issue of the limit of age in § 6.

- Regarding article 4 § 6, the Court states “It does not matter that the final sentence of the contested provision provides that the Member States which decide to apply the derogation are to authorise the entry and residence of children in respect of whom an application is submitted after they have reached 15 years of age 'on grounds other than family reunification'. The term ‘family reunification’ must be interpreted in the context of the Directive as referring to family reunification in the cases where family reunification is required by the Directive. It cannot be interpreted as prohibiting a Member State which has applied the derogation from authorising the entry and residence of a child in order to enable the child to join his or her parents”. (cons. 86)
  The Court adds " Article 4(6) of the Directive must, moreover, be read in the light of the principles set out in Article 5(5) thereof, which requires the Member States to have due regard to the best interests of minor children, and in Article 17, which requires them to take account of a number of factors, one of which is the person’s family relationships" (cons. 87)

Q.11 – Does your national law recognize the right to family reunification to:

Q.11. A – The sponsor's spouse (a. 4 § 1 a)?

☐ OUI

☒ NON

Q.11. B - Minor children of the sponsor and of his/her spouse (a. 4 § 1 b)?

☐ OUI

☒ NON

__309 The Swedish Red Cross is concerned of the practical transposition of this right in cases of forced marriages. They have stated a need to educate the decision-making authorities in order to make them capable of evaluating whether a forced marriage is at hand or not.__
Q.11.C. Minor children adopted of the sponsor and of his/her spouse (a. 4 § 1 b)?

☑️ OUI

☐ NON

Q.11.D. Minor children of the sponsor (a. 4 § 1 c)?

☐ OUI

☑️ NON

Q.11.E. If yes, does your national law foresee that the sponsor shall have children custody and children are dependant on him or her?

☐ OUI

☑️ NON

Custody: The sponsor does not need to have custody. According to the relevant provision in chapter 5 § 3 1st indent p. 2 in the Aliens Act, being the biological (or adoptive) parent is enough. However, if the other parent or another party has custody, agreement from this person is required (chapter 15 §17 2nd passage of the Aliens Act 2005:716).

Dependence: There is no requirement that the children are dependant on the sponsor.

Proof: If there are doubts about the relationship the Migration Board shall, under certain conditions (when other investigation is insufficient for a decision or when it is obvious that the alleged relationship does not exist), offer a opportunity of a DNA-analysis at the expense of the Government. (Aliens Act 2005:716 chapter 13 §15). Thus, there is no obligation of the applicants to undergo the test, since this would be in breach of the right of physical integrity, as stipulated by the Constitution (chapter 2 §6 of the Instrument of the Government). In the travaux préparatoires (Government proposal 2005/06:72), it is underlined that the DNA-test shall mainly be offered in cases concerning minor children and parents. This because it is regarded as to be in the best interest of the child not be misused as a “fictive link” for reunification or as a “merchandise”, in order for persons to get a residence permit under false pretences.

Q.11.F. Minor children adopted of the sponsor (a 4 §1.c) ?

☑️ OUI
Q.11. G. If yes:

h. does your national law foresee that the sponsor shall have children custody and children are dependant on him or her?

☐ OUI

☒ NON

The Aliens Act (chapter 5§3 point 3) compromises also children that will be adopted:

Unless otherwise provided in Sections 17–17b, a residence permit shall be given to
[...]
3. a child who is an alien, is unmarried and has been adopted or is intended for adoption by someone who at the time of the adoption decision was and who still is resident in or has been granted a residence permit to settle in Sweden, if the child is not covered by point 2 and if the adoption decision
– has been issued or is intended to be issued by a Swedish court,
– is valid in Sweden under the Act on International Legal Relations concerning Adoption (1971:796) or
– is valid in Sweden under the Act consequent on Sweden’s Accession to the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (1997:191)

The sponsor therefore does not have to have children custody (but if someone has, agreement is required, chapter 15 §17 2nd passage of the Aliens Act 2005:716). Since the directive only states minimum standards, this is considered to be allowed (art. 3.5).

There is no requirement that the children are dependant on the sponsor.

g.g. Does national law provide that those children shall be 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"?

☒ OUI

☐ NON

Specify if necessary the proofs required

Yes this is stated in chapter 5 §3 p3 of the Aliens Act, quoted above. Further decisions on adoption that are not yet, but are going to be announced by a court are included.

A written proof of the adoption is required (a copy of the decision of the relevant authority).
Q.11. H. Minor children of the spouse (a 4 §1.d.)?

☑ OUI
☐ NON

Q.11. I. If yes, does your national law foresee that the spouse shall have children custody and children are dependant on him or her?

☐ OUI
☑ NON

Specify if necessary the proofs required

Custody: The spouse does not need to have custody. According to the relevant provision in chapter 5 § 1st indent p. 2 in the Aliens Act, being the biological (or adoptive) parent is enough. However, if the other parent or another party has custody, agreement from this person is required (chapter 15 §17 2nd passage of the Aliens Act 2005:716).

Dependence: There is no requirement that the children are dependant on the spouse.

Proof: If there are doubts about the relationship the Migration Board shall, under certain conditions (when other investigation is insufficient for a decision or when it is obvious that the alleged relationship does not exist), offer a opportunity of a DNA- analysis at the expense of the Government. (Aliens Act 2005:716 chapter 13 §15). Thus, there is no obligation of the applicants to undergo the test, since this would be in breach of the right of physical integrity, as stipulated by the Constitution (chapter 2 §6 of the Instrument of the Government). In the travaux préparatoires (Government proposal 2005/06:72), it is underlined that the DNA-test shall mainly be offered in cases concerning minor children and parents. This because it is regarded as to be in the best interest of the child not be misused as a “fictive link” for reunification or as a “merchandise”, in order for persons to get a residence permit under false pretences.

Q.11. J. Minor children adopted of the spouse (a 4 §1.d )?

☑ OUI
☐ NON

Q.11. K. If yes, k. Does your national law foresee that the spouse shall have children custody and children are dependant on him or her?

☐ OUI
☑ NON
Specify if necessary the proofs required

**Custody:** The Aliens Act chapter 5 §3 point 3 compromises also children that will be adopted:

*Unless otherwise provided in Sections 17–17b, a residence permit shall be given to*

[...]

3. a child who is an alien, is unmarried and has been adopted or **is intended for adoption** by someone who at the time of the adoption decision was and who still is resident in or has been granted a residence permit to settle in Sweden, if

- the child is not covered by point 2 and if the adoption decision
  - has been issued or is intended to be issued by a Swedish court,
  - is valid in Sweden under the Act on International Legal Relations concerning Adoption (1971:796) or
  - is valid in Sweden under the Act consequent on Sweden’s Accession to the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (1997:191)

The spouse therefore does not have to have children custody (but if someone has, agreement is required, chapter 15 §17 2nd passage of the Aliens Act 2005:716). Since the directive only states minimum standards, this is considered to be allowed according to art. 3.5 of the directive.

**Dependence:** There is no requirement that the children are dependant on the spouse.

**Proof:** Written proof, like a copy of the decision of the adoption, is required.

**k.k.** Does national law provide that those children shall be 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’’?

[X] OUI

[ ] NON

Specify if necessary the proofs required

This is stated in the Aliens Act chapter 5 §3 point 3. Also decisions on adoption that are not yet, but are going to be, announced by a court are included:

*Unless otherwise provided in Sections 17–17b, a residence permit shall be given to*

[...]

3. a child who is an alien, is unmarried and has been adopted or **is intended for adoption** by someone who at the time of the adoption decision was and who still is resident in or has been granted a residence permit to settle in Sweden, if

- the child is not covered by point 2 and if the adoption decision
  - has been issued or is intended to be issued by a Swedish court,
– is valid in Sweden under the Act on International Legal Relations concerning Adoption (1971:796) or
– is valid in Sweden under the Act consequent on Sweden’s Accession to the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (1997:191)

Written proof, like a copy of the decision of the adoption, is required.

Q.12 – Has your Member State transposed the option opened by article 4 § 1 c:

Q.12A. To authorise reunification of minor children of the sponsor – including also adopted children – of whom custody is shared (a 4 §1.c)?

☐ OUI
☐ NON

Specify if necessary
Aliens Act chapter 5 §3 point 2 states:

Unless otherwise provided in Sections 17–17b, a residence permit shall be given to
[...]
2. a child who is an alien, is unmarried and
a) has a parent who is resident in or has been granted a residence permit to settle in Sweden or
b) has a parent who is married to or cohabiting partner of someone who is resident in or has been granted a residence permit to settle in Sweden,

Q.12.B. If yes, has your legislation transposed the condition that the other party sharing custody has given his or her agreement (a 4 §1. c)?

☐ OUI
☐ NON

Specify if necessary
Aliens Act chapter 5 §17 2nd passage:

A residence permit under Section 3, first paragraph, point 2 or 3 and Section 3a, second paragraph may be granted only after the parent to whom ties are not cited has also given his or her assent, if that parent shares custody of the child.

The Swedish Red Cross has in a comment on the practical transposition pointed out that this right of reunification does not in all cases bring a positive effect. In many cases the father automatically has custody over a child, even if the child has never lived with him. The Swedish Red Cross is concerned that in some cases there is a risk that the mother feel forced to give her permission. That is, the permission is given of the wrong reasons.
Q.13 – Has your Member State transposed the option opened by article 4 § 1 d):

Q.13.A. to authorise reunification of minor children of the spouse – including also adopted children – of whom custody is shared (a 4.1.d. in fine)?

☐ OUI
☐ NON

Specify if necessary

Aliens Act chapter 5 §3 point 2:

Unless otherwise provided in Sections 17–17b, a residence permit shall be given to

[. . .]

2. a child who is an alien, is unmarried and
   a) has a parent who is resident in or has been granted a residence permit to settle in Sweden or
   b) has a parent who is married to or cohabiting partner of someone who is resident in or has been granted a residence permit to settle in Sweden,

From this provision one can conclude that no differentiation is made between the sponsor or the spouse, since the wording is “parent”.

Q.13 B. If yes, has your legislation transposed the condition that the other party sharing custody has given his or her agreement (a 4. 1.d) ?

☐ OUI
☐ NON

Specify if necessary

Aliens Act chapter 5 §17 2nd passage:

A residence permit under Section 3, first paragraph, point 2 or 3 and Section 3a, second paragraph may be granted only after the parent to whom ties are not cited has also given his or her assent, if that parent shares custody of the child.

Q.14 – In any case referred to in questions 7 to 9, is the age of the minor children below the age of majority set up by the law of your Member State (a.4 §1, second indent)?

☐ OUI
☐ NON

If yes, indicate the age required

18 years is the age of majority in Swedish legislation
Q.15 – In any case referred to in questions 7 to 9, has the prohibition of marriage of minor children been transposed (a.4 §1, second indent)?

☐ OUI

☐ NON

If not, explain Si non, expliquez

Q.16 – Is the derogation set up in article 4 § 1 last indent relating to the conditions for integration of children over 12 years arrived independently from the rest of the family used by your Member State?

☐ OUI

☒ NON

How the criterion "arrives independently from the rest of his/her family" has been transposed in your national legislation?

Q.17 – If yes, did this integration condition already exist in your national legislation before the date of transposition of the Directive?

☐ OUI

☐ NON

Q.18 – Describe briefly the content of this condition, the date of its creation and the conditions of its examination

Q.19 – Are the children of refugees required to an integration test by your Member State (in contradiction with article 10 § 1)?

☐ OUI

☒ NON

If yes, explain

Q.20 – Does your Member State authorise:

Q.20 A – Reunification of first-degree relatives in the direct ascending line of the sponsor (a 4§2 a)?

☒ OUI

☐ NON

Q.20 B – If yes, shall they be dependant and not enjoy proper family support in the country of origin?

☒ OUI
How each of those criterions is transposed and checked? Reunification of first-degree relatives is not a right but may be given. The criterions are stated in the Aliens Act chapter 5 §3a point 2:

Unless otherwise provided in Section 17, second paragraph, a residence permit may be given to

2. an alien who in some way other than those referred to in Section 3 or in this Section is a close relative of someone who is resident in or who has been granted a residence permit to settle in Sweden, if he or she has been a member of the same household as that person and there exists a special relationship of dependence between the relatives that already existed in the country of origin,

Thus, there are two requirements: 1) that the relative was included in the same household as the sponsor until immediately before the sponsors departure and 2) that there is a certain relation of dependence between the relative and the sponsor that existed already in the country of origin. According to the travaux préparatoires (prop. 2005/06:72) there is also an absolute condition that the application for reunification is done “relatively soon” after the sponsors settlement in Sweden, which in practice have been decided to mean soon after the sponsor has obtained a permanent resident permit. This means that “relatively soon” can compromise several years.

As for the factors of dependence the Migration Board shall according to travaux préparatoires take into account social and/or emotional dependence, rather than pure economical factors. Relevant factor are what kind of relationship that exists, age and family status of the relative, if there is a connection to another country and how long in time the sponsor and the relative have lived together.

If there are doubts about the relationship the Migration Board shall, under certain conditions (when other investigation is insufficient for a decision or when it is obvious that the alleged relationship does not exist), offer an opportunity of a DNA-analysis at the expense of the Government. (Aliens Act 2005:716 chapter 13 §15). Thus, there is no obligation of the applicants to undergo the test, since this would be in breach of the right of physical integrity, as stipulated by the Constitution (chapter 2 §6 of the Instrument of the Government). In the travaux préparatoires (Government proposal 2005/06:72), it is underlined that the DNA-test shall mainly be offered in cases concerning minor children and parents. This because it is regarded as to be in the best interest of the child not be misused as a “fictive link” for reunification or as a “merchandise”, in order for persons to get a residence permit under false pretences.

All circumstances are checked by the Migration Board. The applicant shall according to a general principle of asylum law provide information in connection with the application. The Board has according to a general administrative internal principle of law, the principle of official investigation, a
duty to in all cases see to that a case is sufficiently enough investigated, through examination of facts and interviews with the concerned persons.

The Swedish Red Cross has in a comment on the practical transposition, pointed out some problems in the application of chapter 5 §3a point 2. Their experience is that “old parents” and adult unmarried children are denied a residence permit, although there is a certain relation of dependence. The Swedish Red Cross is of the meaning that the requirement of a dependence existing already in the country of origin is improper. The dependence often arise at a later moment, for example when the parent has aged and have a need of support but finds his/herself alone in the country of origin. The Swedish Red Cross is of the meaning that the requirement of a pre-existing relation of dependence should be removed.

**Q. 20.C.** Reunification of first-degree relatives in the direct ascending line of the spouse (a 4§2 a)?

- [X] OUI
- [□] NON

**Q.20.D.** If yes, shall they be dependant and not enjoy proper family support in the country of origin?

- [X] OUI
- [□] NON

How each of those criterions is transposed and checked? Chapter 5 §3a point 2 of the Aliens Act makes no difference if the relative is related to the sponsor, the sponsors wife etc; it’s is enough that the applicant (the relative) is next of kin to someone that lives in or has been granted residence permit for settlement in Sweden.

Reunification of first-degree relatives is not a right but may be given. The criterions are stated in the Aliens Act chapter 5 §3a point 2:

*Unless otherwise provided in Section 17, second paragraph, a residence permit may be given to
[...]*

2. an alien who in some way other than those referred to in Section 3 or in this Section is a close relative of someone who is resident in or who has been granted a residence permit to settle in Sweden, if he or she has been a member of the same household as that person and there exists a special relationship of dependence between the relatives that already existed in the country of origin,

Thus, there are two requirements: 1) that the relative was included in the same household as the sponsor until immediately before the sponsors departure and 2) that there is a certain relation of dependence between the relative and the sponsor that existed already in the country of origin. According to the *travaux préparatoires* (prop. 2005/06:72) there is also an absolute condition that the application for reunification is done “relatively soon” after the sponsors settlement in Sweden, which in practice have been decided to mean soon after
the sponsor has obtained a permanent resident permit. This means that “relatively soon” can compromise several years.

As for the factors of dependence the Migration Board shall according to travaux préparatoires take into account social and/or emotional dependence, rather than pure economical factors. Relevant factors are what kind of relationship that exists, age and family status of the relative, if there is a connection to another country and how long in time the sponsor and the relative have lived together.

If there are doubts about the relationship the Migration Board shall, under certain conditions (when other investigation is insufficient for a decision or when it is obvious that the alleged relationship does not exist), offer an opportunity of a DNA- analysis at the expense of the Government. (Aliens Act 2005:716 chapter 13 §15). Thus, there is no obligation of the applicants to undergo the test, since this would be in breach of the right of physical integrity, as stipulated by the Constitution (chapter 2 §6 of the Instrument of the Government). In the travaux préparatoires (Government proposal 2005/06:72), it is underlined that the DNA-test shall mainly be offered in cases concerning minor children and parents. This because it is regarded as to be in the best interest of the child not be misused as a “fictive link” for reunification or as a “merchandise”, in order for persons to get a residence permit under false pretences.

All circumstances are checked by the Migration Board. The applicant shall according to a general principle of asylum law provide information in connection with the application. The Board has according to a general administrative internal principle of law, the principle of official investigation, a duty to in all cases see to that a case is sufficiently enough investigated, through examination of facts and interviews with the concerned persons.

The Swedish Red Cross has in a comment on the practical transposition, pointed out some problems in the application of chapter 5 §3a point 2. Their experience is that “old parents” and adult unmarried children are denied a residence permit, although there is a certain relation of dependence. The Swedish Red Cross is of the meaning that the requirement of a dependence existing already in the country of origin is improper. The dependence often arise at a later moment, for example when the parent has aged and have a need of support but finds his/herself alone in the country of origin. The Swedish Red Cross is of the meaning that the requirement of a pre-existing relation of dependence should be removed.

Q.20.E. Reunification of adult unmarried children of the sponsor? (a 4§2 b) ?

[ ] OUI
[ ] NON

If necessary, explain how this procedure is organised

Reunification of adult unmarried children is not a right but may be given. The criterions are stated in the Aliens Act chapter 5 §3a point 2:
Unless otherwise provided in Section 17, second paragraph, a residence permit may be given to
[
2. an alien who in some way other than those referred to in Section 3 or in this Section is a close relative of someone who is resident in or who has been granted a residence permit to settle in Sweden, if he or she has been a member of the same household as that person and there exists a special relationship of dependence between the relatives that already existed in the country of origin,

Thus, there are two requirements: 1) that the relative was included in the same household as the sponsor until immediately before the sponsors departure and 2) that there is a certain relation of dependence between the relative and the sponsor that existed already in the country of origin. According to the travaux préparatoires (prop. 2005/06:72) there is also an absolute condition that the application for reunification is done “relatively soon” after the sponsors settlement in Sweden, which in practice have been decided to mean soon after the sponsor has obtained a permanent resident permit. This means that “relatively soon” can compromise several years.

As for the factors of dependence the Migration Board shall according to travaux préparatoires take into account social and/or emotional dependence, rather than pure economical factors. Relevant factor are what kind of relationship that exists, age and family status of the relative, if there is a connection to another country and how long in time the sponsor and the relative have lived together.

If there are doubts about the relationship the Migration Board shall, under certain conditions (when other investigation is insufficient for a decision or when it is obvious that the alleged relationship does not exist), offer an opportunity of a DNA- analysis at the expense of the Government. (Aliens Act 2005:716 chapter 13 §15). Thus, there is no obligation of the applicants to undergo the test, since this would be in breach of the right of physical integrity, as stipulated by the Constitution (chapter 2 §6 of the Instrument of the Government). In the travaux préparatoires (Government proposal 2005/06:72), it is underlined that the DNA-test shall mainly be offered in cases concerning minor children and parents. This because it is regarded as to be in the best interest of the child not be misused as a “fictive link” for reunification or as a “merchandise”, in order for persons to get a residence permit under false pretences.

All circumstances are checked by the Migration Board. The applicant shall according to a general principle of asylum law provide information in connection with the application. The Board has according to a general administrative internal principle of law, the principle of official investigation, a duty to in all cases see to that a case is sufficiently enough investigated, through examination of facts and interviews with the concerned persons.

The Swedish Red Cross has in a comment on the practical transposition, pointed out some problems in the application of chapter 5 §3a point 2. Their experience is that “old parents” and adult unmarried children are denied a residence permit, although there is a certain relation of dependence. The Swedish Red Cross is of the meaning that the requirement of a dependence existing already in the country of origin is improper. The dependence often
arise at a later moment, for example when the parent has aged and have a need of support but finds his/herself alone in the country of origin. The Swedish Red Cross is of the meaning that the requirement of a pre-existing relation of dependence should be removed.

Q.20.F. If yes, does the national legislation impose that those adult unmarried children of the sponsor are objectively unable to provide for their own needs on account of their state of health (a 4 §2 b)?

☐ OUI
☒ NON

If necessary, specify how each of those criterions ("objectively" and "unable to provide for their own needs") is transposed and checked?
There is no condition connected to the health of the child, but a condition of existence of a certain relationship of dependence etc, please see Q 20 E above.

Q.20. G. Does your Member State authorise reunification of adult unmarried children of the spouse (a 4§2 b)?

☒ OUI
☐ NON

If necessary, specify how this condition is assessed
Chapter 5 §3a point 2 of the Aliens Act makes no difference if the relative is related to the sponsor, the sponsors wife etc, it’s is enough that the applicant (the relative) is next of kin to someone that lives in or has been granted residence permit for settlement in Sweden.

Reunification of adult unmarried children is not a right but may be given. The criterions are stated in the Aliens Act chapter 5 §3a point 2:

Unless otherwise provided in Section 17, second paragraph, a residence permit may be given to
[...]
2. an alien who in some way other than those referred to in Section 3 or in this Section is a close relative of someone who is resident in or who has been granted a residence permit to settle in Sweden, if he or she has been a member of the same household as that person and there exists a special relationship of dependence between the relatives that already existed in the country of origin,

Thus, there are two requirements: 1) that the relative was included in the same household as the sponsor until immediately before the sponsors departure and 2) that there is a certain relation of dependence between the relative and the sponsor that existed already in the country of origin. According to the travaux préparatoires (prop. 2005/06:72) there is also an absolute condition that the application for reunification is done “relatively soon” after the sponsors settlement in Sweden, which in practice have been decided to mean soon after the sponsor has obtained a permanent resident permit. This means that “relatively soon” can compromise several years.
As for the factors of dependence the Migration Board shall according to travaux préparatoires take into account social and/or emotional dependence, rather than pure economical factors. Relevant factor are what kind of relationship that exists, age and family status of the relative, if there is a connection to another country and how long in time the sponsor and the relative have lived together.

If there are doubts about the relationship the Migration Board shall, under certain conditions (when other investigation is insufficient for a decision or when it is obvious that the alleged relationship does not exist), offer an opportunity of a DNA-analysis at the expense of the Government. (Aliens Act 2005:716 chapter 13 §15). Thus, there is no obligation of the applicants to undergo the test, since this would be in breach of the right of physical integrity, as stipulated by the Constitution (chapter 2 §6 of the Instrument of the Government). In the travaux préparatoires (Government proposal 2005/06:72), it is underlined that the DNA-test shall mainly be offered in cases concerning minor children and parents. This because it is regarded as to be in the best interest of the child not be misused as a “fictive link” for reunification or as a “merchandise”, in order for persons to get a residence permit under false pretences.

All circumstances are checked by the Migration Board. The applicant shall according to a general principle of asylum law provide information in connection with the application. The Board has according to a general administrative internal principle of law, the principle of official investigation, a duty to in all cases see to that a case is sufficiently enough investigated, through examination of facts and interviews with the concerned persons.

The Swedish Red Cross has in a comment on the practical transposition, pointed out some problems in the application of chapter 5 §3a point 2. Their experience is that “old parents” and adult unmarried children are denied a residence permit, although there is a certain relation of dependence. The Swedish Red Cross is of the meaning that the requirement of a dependence existing already in the country of origin is improper. The dependence often arise at a later moment, for example when the parent has aged and have a need of support but finds his/herself alone in the country of origin. The Swedish Red Cross is of the meaning that the requirement of a pre-existing relation of dependence should be removed.

Q.20.H. If yes, does the national legislation impose that those adult unmarried children of the sponsor are objectively unable to provide for their own needs on account of their state of health (a 4 §2 b) ?

☐ OUI
☒ NON

If necessary, specify how each of those criterions ("objectively" and "unable to provide for their own needs") is transposed and checked?
There is no condition connected to the health of the child, but a condition of existence of a certain relationship of dependence etc. Please see Q.20.G above.
Q.20. Did your Member state use the by law or regulation norms to implement article 4 § 2 a et b?

☐ OUI
☐ NON

Q.21 – Does your Member State authorise reunification of the unmarried partner of the sponsor, being a third country national (a 4 §3)?

☐ OUI
☐ NON

Q.22 – If yes:

Q.22 A – This partnership shall be based on a duly attested stable long term relationship?

☐ OUI
☐ NON

If yes, specify how your Member State assess this situation
The partnership is assessed according to §1 of the Law (2003:376) on common-law spouses and applies to both homosexual and heterosexual unmarried partners. (Married homosexual partners, so called registered partnerships, are in Swedish law equal to spouses). The first condition is that the partners shall have lived together under a certain period of time that is not of a temporary art. In case-law 6 months is set as a guideline. As for shorter relationships the will of the partners to remain common-law spouses is taken into consideration. If the partners have common children there is a presumption that a partnership exists. Another factor of relevance is if the partners have the same address of national registration. Other factors of relevance are residence contracts, shared bank accounts etc. This is all based on case-law. The second condition is that the partners live as a couple, including some kind of a sexual relationship. The third condition is that the partners have a common household where domestic duties and the household economy are in some way shared.

Q.22 B – This partnership shall be registered?

☐ OUI
☐ NON

Q.23 – Does your national law consider the registered partner as the husband/spouse (a 4 §3 alinéa 2)?

☐ OUI
☐ NON
Q.24 – Does your Member State authorise:

Q.24. A – Reunification of minor children of the partner, including adopted children (a 4§3)?

☐ OUI
☐ NON

Q.24. B – Reunification of adult unmarried children of the partner, including adopted children (a 4§3)?

☐ OUI
☐ NON

Q.25 – Does your Member State allow reunification of adult unmarried children who are objectively unable to provide for their own needs on account of their state of health (a 4§3)?

☐ OUI
☐ NON

If yes, specify how the conditions, and more particularly the "objectivity", are assessed.
This question has to be answered both yes and no, since there is a condition that there exists a relationship of dependence, but there is no requirement that this has to be connected to the state of health of the child.

Reunification of adult unmarried children is not a right but may be given. The criterions are stated in the Aliens Act chapter 5 §3a point 2:

Unless otherwise provided in Section 17, second paragraph, a residence permit may be given to
[
...
]
2. an alien who in some way other than those referred to in Section 3 or in this Section is a close relative of someone who is resident in or who has been granted a residence permit to settle in Sweden, if he or she has been a member of the same household as that person and there exists a special relationship of dependence between the relatives that already existed in the country of origin,

Thus, there are two requirements: 1) that the relative was included in the same household as the sponsor until immediately before the sponsors departure and 2) that there is a certain relation of dependence between the relative and the sponsor that existed already in the country of origin. According to the travaux préparatoires (prop. 2005/06:72) there is also an absolute condition that the application for reunification is done “relatively soon” after the sponsors settlement in Sweden, which in practice have been decided to mean soon after the sponsor has obtained a permanent resident permit. This means that “relatively soon” can compromise several years.
As for the factors of dependence the Migration Board shall according to travaux préparatoires take into account social and/or emotional dependence, rather than pure economical factors. Relevant factor are what kind of relationship that exists, age and family status of the relative, if there is a connection to another country and how long in time the sponsor and the relative have lived together.

If there are doubts about the relationship the Migration Board shall, under certain conditions (when other investigation is insufficient for a decision or when it is obvious that the alleged relationship does not exist), offer an opportunity of a DNA- analysis at the expense of the Government. (Aliens Act 2005:716 chapter 13 §15). Thus, there is no obligation of the applicants to undergo the test, since this would be in breach of the right of physical integrity, as stipulated by the Constitution (chapter 2 §6 of the Instrument of the Government). In the travaux préparatoires (Government proposal 2005/06:72), it is underlined that the DNA-test shall mainly be offered in cases concerning minor children and parents. This because it is regarded as to be in the best interest of the child not be misused as a “fictive link” for reunification or as a “merchandise”, in order for persons to get a residence permit under false pretences.

All circumstances are checked by the Migration Board. The applicant shall according to a general principle of asylum law provide information in connection with the application. The Board has according to a general administrative internal principle of law, the principle of official investigation, a duty to in all cases see to that a case is sufficiently enough investigated, through examination of facts and interviews with the concerned persons.

The Swedish Red Cross has in a comment on the practical transposition, pointed out some problems in the application of chapter 5 §3a point 2. Their experience is that “old parents” and adult unmarried children are denied a residence permit, although there is a certain relation of dependence. The Swedish Red Cross is of the meaning that the requirement of a dependence existing already in the country of origin is improper. The dependence often arise at a later moment, for example when the parent has aged and have a need of support but finds his/herself alone in the country of origin. The Swedish Red Cross is of the meaning that the requirement of a pre- existing relation of dependence should be removed.

Q.26 – Did your Member state use the by law or regulation norms to implement article 4 § 3?

☐ OUI

☐ NON

Q.27 – Is the prohibition of polygamous marriage enshrined in your national legislation (a. 4§4)?

☐ OUI
Q.28 – Does your Member State limit family reunification of minor children of a further spouse and the sponsor (article 4§4 dernier alinéa)?

☐ OUI
☐ NON

Q.29 – Does your Member State use the option set up by article 4 § 5 requiring the sponsor and his/her spouse to be of a minimum age of 21 years old before reunification?

☐ OUI
☐ NON

Q.30 – If yes,

Q.30 A – What is the age required?
18 years

Q.30 B – Is the derogation founded on integration criteria and/or prevention of forced marriage?
Only on the prevention of forced marriage

Q.31 – Does your Member State use the derogation of article 4 § 6 by requesting that the applications concerning family reunification of minor children have to be submitted before the age of 15?

☐ OUI
☐ NON

Explain

Q.32 – If yes, was it provided by existing legislation on the date of implementation of the directive?

Q.33 – If the application is not introduced before the age of 15, do Member States authorise entry and residence on grounds other than family reunification?

☐ OUI
☐ NON

Which grounds and which conditions?

PROCEDURE (ARTICLE 5)
We draw attention on the major importance given by the Court of justice regarding § 5 relating to the best interest of minor children.

Q.34 – Did your Member State institute a procedure regarding family reunification (a 5 §1) ?

☐ OUI
☐ NON

Q.35 – If yes,

Q.35. A – Which authorities are in charge of this issue?
The Migration Board
Swedish authorities abroad

Q.35. B – Are NGO's associated to this procedure?

☐ OUI
☐ NON

If yes, describe the procedure

Q.35. C – Is the application submitted by the sponsor or by family members?
By the person that wishes to obtain a residence permit, in other words, the family member. (The Aliens Act chapter 5 §18).

Q.35. D – Is this procedure exclusive from other possibilities to grant family reunification?

☐ OUI
☐ NON

If other procedural possibilities exist, please describe them

Q.35. E – Was this procedure existing before the adoption of Directive 2003/86?

☐ OUI
☐ NON

Q.36 – Which documentary evidence are required to prove (a 5 §2):

Q.36. A – Family relationships according to article 4?
For all: birth certificate
If there are doubts about the relationship the Migration Board shall, under certain conditions (when other investigation is insufficient for a decision or when it is obvious that the alleged relationship does not exist), offer an
opportunity of a DNA-analysis at the expense of the Government. (Aliens Act 2005:716 chapter 13 §15 ). Thus, there is no obligation of the applicants to undergo the test, since this would be in breach of the right of physical integrity, as stipulated by the Constitution (chapter 2 §6 of the Instrument of the Government). In the travaux préparatoires (Government proposal 2005/06:72), it is underlined that the DNA-test shall mainly be offered in cases concerning minor children and parents. This because it is regarded as to be in the best interest of the child not to be misused as a “fictive link” for reunification or as a “merchandise”, in order for persons to get a residence permit under false pretences.

Married couples/registered partners: marriage license, registration by the sponsor of the marriage at the tax authorities

These documentary evidence are laid down in the Manual on Alien Issues, an internal circular of the Migration Board. See chapter 10.2 pp.4, 7, 13-14

In Swedish Law the principle of free evaluation and production of evidence applies as a general internal principle of law.

Q.36. B – Accommodation conditions laid down in article 7?
There are no such conditions

Q.36. C – Sickness insurance conditions?
There are no such conditions

Q.36. D – Certified copies of family member(s)’ travel documents?
A valid passport is a requirement for entry and stay in Sweden (chapter 2 §1 of the Aliens Act). If a time-limited permit is issued, the validity of the passport must be at least as long as the period of permit. Exceptions of the requirement of travel documents are made for certain groups of persons that have no possibility to present valid travel documents. Such an example is Somalis, since Sweden do not accept Somali passports at all.

As for which travel documents that define as a passport, rules for this are stated by chapter 2 §§4-5 of the Aliens Regulation. A passport shall be issued by the competent authority in the country of citizenship/origin and shall include information on the holder of the document (name, birth date etc). A travel document is not recognized if it do not allow for reentrance in the country of origin.

Q.37 – Is the possibility foreseen to proceed to:

Interviews:

☐ OUI
☐ NON

Investigations:

☒ OUI
If yes, describe them briefly
The Migration Board and Swedish authorities abroad have according to a general principle of internal administrative law, the principal of official investigation, a duty of investigation. This principle can be drawn implicitly from §§ 4-7 of the Law (1986-223) on administration. (For administrative courts this is stated by law in §8 of the Law on administrative processes). The duty of investigation means that a case always has to be duly investigated with consideration to the nature of every case. The decision-making authority usually demands demonstration of a valid passport and other documents of identification. The Migration Board is authorized to obtain excerpts from the Swedish record of crime.

The decision-making authority can also, and usually do, make interviews in person or via telephone. These have an informal character, formal inquires are made only in certain cases, like when other persons than the applicant are to be questioned. If the applicant has a solicitor he/she can be present. An interpreter shall be present if necessary (§8 of the law on administration). The Migration Board makes these interviews according to guidelines in their internal circular: Manual on issues of aliens, chapter 6.1.

The Swedish Red Cross is critical of that there is no right of a public counsel in cases of family renunciation according to the Swedish law. They are of the view that there is a need of this, since a lot of the investigations are made through formal inquires.

Q.38 – When examining an application concerning the unmarried partner of the sponsor, which evidences are taken into account by Member States on the basis of national law to prove family relationship (article 5§2 dernier alinea) ?

Q.38. A – Existence of family ties and other elements such as a common child?

[X] OUI

[] NON

Specify
The partnership is assessed according to §1 of the Law (2003:376) on common-law spouses and applies to both homosexual and heterosexual unmarried partners. (Married homosexual partners, so called registered partnerships, are in Swedish law equal to spouses). The first condition is that the partners shall have lived together under a certain period of time that is not of a temporary art. In case-law 6 months is set as a guideline. As for shorter relationships the will of the partners to remain common-law spouses is taken into consideration. If the partners have common children there is a presumption that a partnership exists. Another factor of relevance is if the partners have the same address of national registration. Other factors of relevance are residence contracts, shared bank accounts etc. This is all based on case-law. The second condition is that the partners live as a couple, including some kind of a sexual relationship. The third condition is that the partners have a common household where domestic duties and the household economy are in some way shared.
Q.38. B - Previous cohabitation?

☐ OUI  ☒ NON

Q.38. C - Registration of a partnership

☐ OUI  ☒ NON

Q.38. D - Any other reliable means of proof foreseen in national law?

☒ OUI  ☐ NON

If yes, specify which ones:
Residence contracts, shared bank accounts, same address of national registration and other such information that proves the partnership.

Q.39 – Are family members obliged to reside outside the territory of the Member State while the application is being examined (a5 §3) ?

☒ OUI  ☐ NON

Is this obligation sanctioned and how?
If an exception (see Q.40 below) is not applicable the application will be decided in the negative.

Q.40 – If the answer is yes, is a derogation organised according to article 5 § 3 second indent?

☒ OUI  ☐ NON

Please specify
In chapter 5 §18 2nd passage of the Aliens Act it is stated that exception shall be made if (with my comments in brackets):

1. the alien is entitled to a residence permit here as a refugee or a person otherwise in need of protection under Section 1 or can be granted a residence permit here pursuant to Chapter 21, Section 2, 3 or 4,
2. the alien should be granted a residence permit here pursuant to Section 6 (particularly deserving circumstances),
3. an application for a residence permit concerns extension of a temporary residence permit that has been granted to an alien with family ties pursuant to
Section 3, first paragraph, point 1 (spouse or unmarried partner) or 2b (unmarried minor child of a parent that is married or common-law spouse of the sponsor) or Section 3a, first paragraph, point 1 (person that intends to marry or begin a partnership with a sponsor and the relationship seems serious and there are no particular reasons against a permit) or second paragraph (unmarried child of the former),

4. the alien can be granted or has a temporary residence permit pursuant to Section 15 (participation in a crime investigation or criminal action in court),

5. the alien has strong ties, as described in Section 3, first paragraph, points 1–4, Section 3a, first paragraph, points 1–3 or second paragraph, (= falls under the definition of family reunification) to a person who is resident in Sweden and it cannot reasonably be required that the alien travel to another country to submit an application there or

6. there are some other exceptional grounds.

Q.41 – Does your national legislation include a maximum period of 9 month to answer to the application by way of written notification (a5 §4)?

[X] OUI

☐ NON

If necessary, please specify
To transpose the directive a provision with above requirement was added to the Aliens Regulation (2006:97) in chapter 4 §21a, which came into force 2006-04-30.

The Swedish Red Cross has pointed out that the practical transposition of this provision is failing. At present there are very long periods of waiting time, and the time limit of 9 months is not kept in practice.

Q.42 – This time limit can be extended (a 5 §4 alinea 2) ?

[X] OUI

☐ NON

Q.43 – If yes,

Q.43. A – Because of the complexity of the examination of the application?

[X] OUI

☐ NON

If yes, please specify
Circumstances exemplified in the travaux préparatoires (Government proposal 2005/06:72) are: when the applicant has not handed in required basic data in due time, if the decision-making authorities in spite of injunctions do not receive required information from the applicant or if the applicant in other ways have not contributed to the handling of the case. Extension is also allowed if complicated issues like public policy and public security arise.
**Q.43.** B – What is the length of the extension?
There is no such established extension

**Q.44.** If no decision is taken by the end of the 9 months period provided, what are the consequences for the applicant?
There are no consequences for the applicant, the case is tried in material and substance as usual, although 9 months has exceeded. However, the Migration Board is risking critique or another sanction if the 9-month period is exceeded and the case is reported to the Parliament Ombudsman (who is the supervising authority of the activities of the Migration Board).

**Q.45.** Is the decision rejecting the application notified? Does this written notification contain the reasons of rejection?

☑ OUI
☐ NON

Specify if only one condition is not required

**Q.46.** How is the best interest of minor children taken into account by your Member State’s legislation and authorities during examination of the application (article 5§5)?
I assume that the word “during” refers to that best interest should be considered when the decision is made (and not for example that the Member States should offer the minor child housing and such while the examination is taking place).

There is a pre-existing general provision in the Aliens’ Law, underlining that due regard is made to the best interest of the child in all procedures involving minor children. Chapter 1 §10 of the Aliens Act states:

_In cases involving a child, particular attention must be given to what is required with the child’s health and development and the best interests of the child in general._

According to the _travaux préparatoires_ (Government proposal 2005/06:72) the best interest of the child is not a independent ground of residence permit, but most be weighed against other interest of the society, like the interest of regulated immigration. It also said that in some cases the best interest of the child should presume a residence permit, like in cases of children from war-scarred countries and in cases of children with disease or handicap that cannot be treated in the country of origin.

The more specific content of the concept “best interest of minor children” is further elaborated in case-law. In a recent case from the Migration Court (UM540-06, 2006-08-22) some light was shed on one aspect of the concept. The applicant had been found guilty of physical abuse of his wife and have had 3 decisions of restraining order directed at him. The Court considered it to be a question of which interest that weigh the most: the need of the two children (2 and 3 years old) to have a good and close relation to their father, or the risk that they are afflicted by or forced to witness physical abuse by the father. The Court established that the best interest of the children in this case was to have a close and good relation to their father and therefore granted a residence permit on the ground of reunification with minor children. As for further case-law in this matter it is not possible within the frames of this project to investigate
all cases considering and specifying the best interest of the child. But the interest of the child is further ensured in chapter 1 §11 of the Aliens Act:

*In assessing questions of permits under this Act when a child will be affected case, the child must be heard, unless this is inappropriate. Account must be taken child has said to the extent warranted by the age and maturity of the child.*

The Migration Board can, if necessary and possible, request for a view from the Board of Social Services.

In chapter 10.12 of the Migration Board’s Manual on Aliens Issues above considerations are also stated. Reference is also made UN’s Convention on the Rights of the Child.

The Swedish Red Cross has pointed out the problem that in some cases the children *during* the time of the application assessment reaches the age of majority. The Migration Supreme Court has stated that it is the circumstances at the moment of the decision and not the application that is relevant. They denied a person that at the time of the application was 17 years old, but that had turned 18 at the time of the decision, a right of family reunification. Even if judgments by the Supreme Migration Court do not formally bind decision makers at first instance and judges at the migration courts, those would, as a rule, avoid to deviate from their content. The Swedish Red Cross is of the meaning that the current practice in these cases are questionable and are of the view that these persons shall have a right of family reunification.

**CONDITIONS REQUIRED (ARTICLES 6 AND OTHERS)**

- **Questions relating to accommodation and resources will be carefully examined to assess if Member States use them, either as a migration tool or as an integration tool.**

- **The same assessment applies regarding the option to set up a period of lawfully residence not exceeding two years before applying for family reunification.**

- **According to article 8, the Court of justice states: "That provision does not therefore have the effect of precluding any family reunification, but preserves a limited margin of appreciation for the Member States by permitting them to make sure that family reunification will take place in favourable conditions, after the sponsor has been residing in the host State for a period sufficiently long for it to be assumed that the family members will settle down well and display a certain level of integration. Accordingly, the fact that a Member State takes those factors into account and the power to defer family reunification for two or, as the case may be, three years do not run counter to the right to respect for family rights set out in particular in Article 8 of the ECHR as interpreted by the European Court of Human Rights.**

- **"It should, however, be remembered that, as is apparent from Article 17 of the Directive, duration of residence in the Member State is only one of the factors which must be taken into account by the Member State when considering an application and that a waiting period cannot be imposed without taking into account, in specific cases,**

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all the relevant factors" (cons. 99). "The same is true of the criterion of the Member State’s reception capacity, which may be one of the factors taken into account when considering an application, but cannot be interpreted as authorising any quota system or a three-year waiting period imposed without regard to the particular circumstances of specific cases. Analysis of all the factors, as prescribed in Article 17 of the Directive, does not allow just this one factor to be taken into account and requires genuine examination of reception capacity at the time of the application" (cons. 100) "When carrying out that analysis, the Member States must, as is pointed out in paragraph 63 of the present judgment, also have due regard to the best interests of minor children" (cons. 101).

Q.47 – Can public policy, public security or public health grounds be taken into account to (a 6 §§1 et 2):

Q.47. A – Reject an application for family reunification?

[ ] OUI

[ ] NON

If yes, which ones?
Public policy and public security (Chapter 5 §17 a p3 of the Aliens Act)

Q.47. B – Withdraw an application for family reunification?

[ ] OUI

[ ] NON

If necessary, please specify
Chapter 7 §3 p.2 and same § last indent of the Aliens Act states:

A residence permit may be withdrawn from an alien who has entered the country if
1. the alien, without holding a work permit, is conducting activities that require such a permit or
2. it can be assumed on the basis of previous activities or otherwise that the alien will engage in sabotage, espionage or unlawful intelligence activities in Sweden or in some other Nordic country.

[...]

A residence permit may, however, not be withdrawn under the first paragraph if the alien been in this country on a residence permit for more than three years when the question withdrawal is examined by the authority that makes the first decision in the matter.

This must be seen to fit within public policy and security.

Q.47. C – Refuse to renew a family member's residence permit?

[ ] OUI

[ ] NON
A residence permit may be withdrawn from an alien who has entered the country if:
1. the alien, without holding a work permit, is conducting activities that require such a permit or
2. it can be assumed on the basis of previous activities or otherwise that the alien will engage in sabotage, espionage or unlawful intelligence activities in Sweden or in some other Nordic country.

A residence permit may, however, not be withdrawn under the first paragraph if the alien been in this country on a residence permit for more than three years when the question withdrawal is examined by the authority that makes the first decision in the matter.

This must be seen to fit within public policy and security.

Q.48 – Does national legislation take into account:

Q.48. A – The severity or type of offence against public policy or public security?

☐ OUI
☐ NON

Q.48. B – The solidity of family relationships regarding article 17 of the Directive?

☐ OUI
☐ NON

If necessary, please specify
In chapter 5 §17a third passage of the Aliens Act it is stated that consideration shall be taken to the applicants living situation in whole and family relations. Relevant factors are for example how long the person has been in Sweden, if the applicant is a child or has a child. An individual evaluation is made in every case; there are no exact requirements that have to be fulfilled.

Q.49 – Does your Member State withdraw the residence permit or remove the third country national on the sole ground of illness or disability suffered after the issue of the residence permit (a 6 §3)?

☐ OUI
☐ NON

Q.50 – Are accommodation conditions required from the applicant (a7 §1a)?
Q.51 – If yes:

Q.51. A – What are those conditions?

Q.51. B – How are they assessed?

Q.51 C – Are they comparable to the conditions required to a normal family living in the same region?

☐ OUI

☒ NON

If not, please specify the differences

Q.52 – Is a sickness insurance required from the applicant (a. 7 §1b) ?

☐ OUI

☒ NON

Q.53 – Are stable resources required (a7 §1c) ?

☐ OUI

☒ NON

Specify their nature and content

Q.54 – How is the condition "sufficient" assessed by your Member State? Is it in comparison with national wages?

Q.55 – Are integration criterions required to allow family reunification (a 7 §2)?

☐ OUI

☒ NON

Q.56 – If yes:

Q.56. A – What are those criterions?

Q.56. B – Do they apply indistinctly to all potential beneficiaries of reunification? (Spouse, dependant people, etc.)

Q.56. C – How are they evaluated by your Member State?
Q.56. D – Are refugees and their family members required to fulfil them (a 7 §2, second indent)?

☐ OUI
☐ NON

Q.57 – Is a minimal period of lawful reside is required before reunification (a 8 §1)?

☐ OUI
☐ NON

Q. 58 – Does this period exceed two years?

Please specify

Q.59 – Does your Member State apply the derogation set up by article 8 § 2 allowing Member States to impose a waiting period of maximum three years due to reception capacities between the submission of the application and the issuance of a residence permit?

☐ OUI
☐ NON

Please specify

Q.60 – If yes, did this derogation exist in national law before the 22nd of September 2003?

☐ OUI
☐ NON

FAMILY REUNIFICATION OF REFUGEES

The legal regime applicable to refugees derogates from the one applicable to family reunification. The scope of those derogations (minimal lawful residence, members of the family, accommodation requirements) shall be assessed on the basis of national law.

Q.61 – Does your Member State allow family reunification of refugees on the basis of Directive 2003/86 (a 9 §1) ?

☐ OUI
☐ NON

311 This is not yet transposed into law, but a text (SOU 2006 :6) to be adopted exists, this will probably be finalised during late 2007. The right of family reunification of refugees are to be transposed in connection with the transposition of the Qualification Directive.
Q.62 – Is this right limited to family relationships predating the entry on the territory (a 9 §2)?

☐ OUI
☒ NON

Q.63 – Does your Member State allow family reunification of family Members not quoted in article 4 of the Directive (a 10 §2) ?

☐ OUI
☒ NON

Which members of the family and under which conditions?

Q.64 – According to the specific case of unaccompanied minor refugees, does your Member State authorise family reunification of first degree relatives in the direct ascending line without applying the conditions laid down in article 4 § 2 (a10 §3 a)?

☒ OUI
☐ NON

What conditions are required?
The minor shall be unaccompanied at the arrival or have been left alone after arrival by both its parents or by any other adult person that can be considered as having taken the parents place. But it is only the parents that shall obtain residence permit in these cases. Chapter 5 §3 p. 4. of the Aliens Act states:

Unless otherwise provided in Sections 17–17b, a residence permit shall be given to
[…]
4. an alien who is a parent of an unmarried alien child who is a refugee or a person otherwise in need of protection, if the child arrived in Sweden separately from both parents or from another adult person who may be regarded as having taken the place of the parents, or if the child has been left alone after arrival.

Other than parents may obtain a resident permit on another ground. Chapter 5 §3a 3rd indent states:

When there are exceptional grounds a residence permit may also be granted to an alien in cases other than those referred to in the first and second paragraphs if the alien
1. has been adopted in Sweden as an adult,
2. is a relative of an alien who is a refugee or a person otherwise in need of protection or
3. has some other special tie with Sweden.

312 The requirement is not absolute but a main rule. An individual evaluation is made of every case. This is not stated by law but elaborated in case-law, for example UN 97-93 and UN 356-96.
Exceptional grounds includes according to the *travaux préparatoires* for instance when the health of the unaccompanied minor gives cause for a permit.

As is clear from the stated provision, the right of family reunification is not applied only on unaccompanied minor refugees, but also on unaccompanied minors under subsidiary protection.

**Q. 65** – Does your Member State authorise entry and residence of the legal guardian or any member of the family where the unaccompanied minor refugee has no relatives in the direct ascending line or such relatives cannot be traced (a10 §3 b) ?

- [x] OUI
- [] NON

If yes, please specify who the member of the family targeted is and which proofs are required to prove family ties?

Yes, but unlike in the case of art. 10.3a in the directive the Swedish transposition does not authorize a right of family reunification when there are no relatives or when such cannot be traced. The relative or legal guardian (other than parents) *can* obtain a residence permits on other grounds. In cases where the parents are missing an overall assessment should be made in each individual case. Factors of significance are if there are other relatives already living in Sweden or if there are other persons that can offer support instead. The relative can obtain a residence permit as a relative of a refugee or beneficiary of subsidiary protection if there are particular reasons or the relative otherwise has a special connection to Sweden. This is stated by chapter 5 §3a 3rd indent p. 2-3 of the Aliens Act:

*When there are exceptional grounds a residence permit may also be granted to an alien in cases other than those referred to in the first and second paragraphs if the alien*

1. *has been adopted in Sweden as an adult,*
2. *is a relative of an alien who is a refugee or a person otherwise in need of protection or*
3. *has some other special tie with Sweden.*

Particular reasons can be for example if the child suffers from serious health problems. A relative can also obtain a permit on the ground that he/she shall exercise a right of access with a child to an extent that is not only limited (chapter 5 §3a 1st indent p. 3). The permits can be both permanent and limited in time.

**Q.66** – Does your Member State take into account other evidence of family relationship where the refugee cannot provide official evidence (a 11 §2) ?

- [x] OUI
- [] NON

Which ones?
In Sweden all administrative authorities, like the Migration Board and Swedish authorities abroad, have a duty of investigation according to a general administrative principle of law; the principle of official investigation. This means that a case always has to be duly investigated with consideration to the nature of every case. A decision rejecting an application can therefore never be based solely on the fact that documentary evidence is lacking. If there is no official evidence, the decision-making authority is obliged to investigate the case in other ways, like through interviews with the applicant or obtain information from or/and about the country of origin if possible. There are no specific other evidences required, it depends on the circumstances of the individual case. The principle of production and evaluation of evidence applies as a general internal principle of law.

Q.67 – Does the examination of the refugee application take into account their specific situation:

Q.67. A – Are proofs regarding accommodation conditions, sickness insurance or resources required (a 12 §1)?

☐ OUI
☒ NON

If yes, are those requirements comparable to those imposed to other third country nationals?

Q.67. B – If one of the person concerned (sponsor or family member) has special links with a third country within which reunification is possible, does your member state require those proofs according to article 12 § 1 second indent.

☐ OUI
☒ NON

If necessary specify

Q.67. C – If a refugee has introduced its application after a period of three months, does your Member State require the refugee to meet the conditions or one of them (accommodation, sickness insurance, resources (a 12 §1 alinea 3) ?

☐ OUI
☒ NON

If yes, which ones?

Q.68 – Does your Member State apply the prohibition to impose a residence condition before reunification (a 12 §2)?

☒ OUI
☐ NON
If not, what is the length of this period? Is it different from the one normally applied?

**EXERCISE OF THE RIGHT TO FAMILY REUNIFICATION**

*The granting of an autonomous residence permit is one of the most sensitive issues of this part of the Directive.*

**Q.69** – Is entry and residence facilitated by your Member State, as soon as the application for family reunification has been accepted, including the issue of obtaining visas (a13 §1) ?

[X] OUI

☐ NON

If yes, how?
I understand the question as if entry and the obtaining of visas are facilitated by my Member State, since facilitation of residence is not mentioned in art 13.1 of the directive.

A person that has obtained a residence permit has a right to enter Sweden without a visa (chapter 2 §4 of the Aliens Act).

**Q.70** – Is a residence permit of at least one year's duration granted to the family members (a 13 §2)?

[X] OUI

☐ NON

What is the duration of the residence permit?
Chapter 5 §3 last indent of the Aliens Act states that an issued residence permit shall have a duration of at least one year. The matter of which permit that should be issued, a permanent one or a time-limited one, is not specified by law, except for in certain cases (see below). But according to the *travaux préparatoires* (Government proposal 2005/06:72) a well-established legal practice is to issue a permanent resident permit immediately if the person intends to settle down in Sweden and there are no particular reasons to deny one. Particular reasons against a permanent resident can be if the applicant has requested a permit limited in time and when the applicant’s stay is expected to be only temporary.

In some cases fixed-term residence permits with a possibility for renewal or permanent permit are issued (chapter 5 §8 of the Aliens Act): to persons that *intends* to marry, intends to register a partnership or to begin a partnership. This is also the case for married/unmarried couples that have not been living together on a permanent basis before coming to Sweden. For further information please see Q 78.

Residence permits of unmarried children of the spouse or partner of the sponsor are fixed for the same time as the parent’s permit (chapter 5 §3 last indent last passage of the Aliens Act).
Q.71 – Is this residence permit renewable?

☐ OUI
☐ NON

Q.72 – Is the duration of the residence permit aligned with the duration of sponsor’s residence permit (a 13 §3)?

☐ OUI
☐ NON

If no, please specify
Also when a permanent permit is given, since a requirement is that the sponsor holds a permanent permit.

A period of the validity of the sponsor’s permit is not enshrined in legislation, but the travaux préparatoires\(^{313}\) of the legislation transposing the Directive (Government proposal 2005/06:72), state that as a main rule a permanent resident permit is required. The only exception is persons that are citizens in Scandinavia, for them only settlement in Sweden is required. Thus non-Scandinavian persons with a time-limited permit cannot be a sponsor. This is applied in the legal practice of the Migration Board.

Q.73 – Are the rights awarded to family members’ equivalent to those granted to the sponsor (a14 §1):?

Q.73. A – Regarding access to education?

☐ OUI
☐ NON

If no, please specify

Q.73. B - Regarding access to employment?

\(^{313}\) *Travaux préparatoires* are an important source of interpretation in the Swedish legal system. An enactment of Parliament is accompanied by an opinion in which the Parliament develops and clarifies the objective of the enactment and the meaning of its wording. This is written to afford guidance in the application of the law. It is disputed in the Swedish legal literature whether travaux préparatoires are sources of law in a technical sense, that is, if their contents are formally binding upon everyone. There is no straight answer to this question, but it is at least not contentious to hold that these opinions are seen as of great importance in the interpretation of the content of an enactment. This is especially true for interpretations made in the introduction phase, before any accepted practice has been established. In general, the courts and lawyers in Sweden pay greater regard to the legislator’s express will, than is the case in other countries. Thus, one can conclude that the travaux préparatoires function as an important source for interpretation and are followed in legal practice, although they not as a fact are formally binding. (This is based on “General Public Law – the Constitution” by Fredrik Sterzel in *Swedish Law - a survey* by Tiberg, Sterzel, Cronholt (eds), 1994, pp. 52-55 and “Sources of Swedish Law” by Hans-Heinrich Vogel in *Swedish Law in the new Milenium*, Bogdan (ed), 2000, pp. 57-60)
Please specify the content of this access

According to the Instrument (2003:539) of the Government chapter 2 §22 2nd indent p.9 an alien is equal to a Swedish citizen regarding access to employment, unless otherwise proscribed by law.

Persons that are granted a permanent resident permit are automatically granted a work permit (Aliens Act chapter 2 §8 1st indent). Discrimination on the labour market due to ethnicity, nationality, religion etc is prohibited by law (§8 Law 2003:307 on prohibition of discrimination).

As for persons that are granted a fixed-term residence permit there is normally a requirement of a work permit. But in cases of family reunification, a work permit is automatically issued. This is not stated explicitly in law. Chapter 6 §3 of the Aliens Act state that a work permit may be granted to an alien who has a temporary residence permit unless reasons pertaining to the purpose of the residence permit indicate otherwise. Legal practice based on this provision is to automatically issue a work permit when a time-limited permit on the ground of family reunion is granted. According to travaux préparatoires (Government proposal 2004/2005:170) the exception of chapter 6 §3, only refers to situations of when the permit is limited because the person is in Sweden for a pure visit of family members or such.

The content of this access is that the persons granted permits because of family reunification has the same right of employment, employment-related, activities, education and benefits as a Swedish citizen. Exceptions are only from work that requires a Swedish citizenship, like judges, polices and such.

According to chapter 2 §20 and § 22 2nd indent p.9 of the Instrument of Government, restrictions affecting the right to practice a profession may be introduced only in order to protect pressing public interests and never solely in order to further the economic interests of a particular person or enterprise.

Q.73. C – Regarding access to vocational guidance, initial and further training and retraining?

X OUI

□ NON

If no, please specify

Q.74 – Does your Member State grant specific rights in social matters to reunified family members?

□ OUI

X NON
If yes, please describe them and specify if a time limit is established to take advantage from them

Q.75 – Has Member State set up conditions regarding specific access to employment for family members (a 14 §2)?

☐ OUI
☒ NON

If yes, how?

Q.76 – If yes, do those conditions exceed 12 months (a 14 §2)?

☐ OUI
☐ NON

Which ones?

Q.77 – Is access to employment limited in your Member State

Q.77.A – Regarding first-degree relatives in the direct ascending line?

☐ OUI
☒ NON

If yes, how?

Q.77. B – Regarding adult unmarried children objectively unable to provide for their own needs on account of their state of health (a 14 §3)?

☐ OUI
☒ NON

If yes, how?

Q.78 – Are spouses, unmarried partners and child who has reached majority entitled to an autonomous residence permit at least five years after lawful residence on the basis of the residence permit issued for family reunification (a15 §1)?

☒ OUI
☒ NON

If yes, please specify when and how for each category

The question cannot be answered either yes or no, since the relevant legislation differs between different categories.
According to the Aliens Act chapter 2 §5 a residence permit can be issued either as permanent or as limited in time. The specific criterions for each permit is not regulated by law except for in certain cases, like cases of so called “fast connections” and cases of married /unmarried couples that have not been living together on a permanent basis before coming to Sweden (see below). In the travaux préparatoires of the content of chapter 2 §5 (which derives from provisions in former Aliens Acts dated 1980 and 1989), it is stated that since 1984 permanent residence permits is issued as a main rule, if the person intends to settle in Sweden on a permanent basis or at least for a considerable time. Case- law applies this rule. From this follows that persons that obtain a residence permit on the ground of family reunification, usually immediately obtain a permanent permit. Permanent permits are always autonomous.

The only (here relevant) exception to this, are permits issued to persons that intends to marry, register a partnership or to begin a partnership, so called “fast connections”, and to married /unmarried couples that have not been living together on a permanent basis before coming to Sweden. These permits are limited in time (usually two years) and are renewed on the condition that the marriage/relationship is lasting (Aliens Act chapter 5 §§ 8 and 16 1st indent), with other words they are not as a main rule autonomous.

There are situations when the permit can be renewed even if the marriage/relationship has ended stated in the Aliens Act chapter 5 §16 3rd indent:

*If a relationship has ended, a residence permit may still be granted if*
1. the alien has special ties to Sweden,
2. the relationship has ended primarily because in the relationship the alien or the alien’s child has been subjected to violence or some other serious violation of their liberty or peace or
3. there are other strong grounds for prolonging the alien’s residence permit.

Examples of situations referred to in p. 3, are according to travaux préparatoires (Government proposal 1999/2000:43) if the applicant is seriously ill or handicapped or at risk of being socially outcasted upon return to the country of origin.

This gives that after 5 years the person can be seen as having a special connection to Sweden (a new family, work etc) although the relationship with the sponsor has ended. The person then obtains a permanent and autonomous permit. But if there is no such connection or other reasons to renew the permit, the person will not get a permanent autonomous permit even after 5 years.

In sum spouses, unmarried partners and child are usually given a permanent and autonomous resident permit after 5 years. But as this is not a right as stated by art. 15.1 the Swedish legislation is not entirely in line with the requirements of the Directives.Nota bene that the infringement is only partly; it only comprises the cases of “fast connections” and cases of married /unmarried couples that have not been living together on a permanent basis before coming to Sweden. In the other cases the Swedish legislation is in line with the Directive.
Q.79 – Does your Member State limit the granting of the autonomous residence in cases of breakdown of the family relationship (a 15 §1 alinea 2)?

☐ OUI
☐ NON

Please explain
In cases mentioned in Q78: “fast connections” and when married and unmarried couples has not been living together on a permanent basis before coming to Sweden. Please see Q78 for more information.

Q.80 – Does your Member State grant autonomous residence permit:

Q.80. A – To first-degree relatives in the direct ascending line (a15 §2)

☐ OUI
☐ NON

If necessary specify
According to the Aliens Act chapter 2 §5 a residence permit can be issued either as permanent or as limited in time. The specific criterions for each permit is not regulated by law except for in certain situations not relevant in the case of first-degree relatives. In the travaux préparatoires of the content of chapter 2 §5 (which derives from provisions in former Aliens Acts dated 1980 and 1989), it is stated that since 1984 permanent residence permits is issued as a main rule, if the person intends to settle in Sweden on a permanent basis or at least for a considerable time. Case-law applies this rule. From this follows that persons that obtain a residence permit on the ground of family reunification, as a main rule immediately obtain a permanent permit. Permanent permits are always autonomous. If the person is granted family reunification only with a permit limited in time, this is either renewed or terminated when the time-limit is met. The criterion for a renewal is that the relationship of dependence still exists.

If the permit is not renewed on this ground, the relative can obtain a residence permit on another ground. According to the Aliens Act chapter 5 §3a 3rd indent p.3 a person can be granted a residence permit if there are particular reasons and the person has a special connection to Sweden. Further according to chapter 5 § 6 a person can be granted a residence permit on the ground of particularly deserving circumstances.

In sum, an autonomous permanent resident permit is not obligatory in these cases, but applies as a main rule according to well-established case-law and statements in travaux préparatoires.

Q.80. B – To adult unmarried children objectively unable to provide for their own needs on account of their state of health (a15 §2) ?

☐ OUI
If necessary specify

According to the Aliens Act chapter 2 §5 a residence permit can be issued either as permanent or as limited in time. The specific criteria for each permit is not regulated by law except for in certain situations not relevant in the case of adult unmarried children. In the *travaux préparatoires* of the content of chapter 2 §5 (which derives from provisions in former Aliens Acts dated 1980 and 1989), it is stated that since 1984 permanent residence permits is issued as a main rule, if the person intends to settle in Sweden on a permanent basis or at least for a considerable time. Case-law applies this rule. From this follows that persons that obtain a residence permit on the ground of family reunification, as a main rule immediately obtain a permanent permit. Permanent permits are always autonomous. If the person is granted family reunification only with a permit limited in time, this is either renewed or terminated when the time-limit is met. The criteria for a renewal are that the relationship of dependence still exists.

If the permit is not renewed on this ground, the relative can obtain a residence permit on another ground. According to the Aliens Act chapter 5 §3a 3rd indent p.3 a person can be granted a residence permit if there are particular reasons and the person has a special connection to Sweden. Further according to chapter 5 § 6 a person can be granted a residence permit on the ground of particularly deserving circumstances.

In sum, an autonomous permanent resident permit is not obligatory in these cases, but applies as a main rule according to well-established case-law and statements in *travaux préparatoires*.

As for the Swedish transposition of provisions of adult unmarried children please see Q20f, since the Swedish legislation differ from the condition “objectively unable to provide for their own needs on account of their state of health”.

**Q.81** – Does your member State grant autonomous residence permit in the event of widowhood, divorce, separation or death of first first-degree relatives in the direct ascending or descending line (a 15 §3) ?

☐ OUI

☐ NON

If necessary specify

It depends on the type of residence permit.

According to the Aliens Act chapter 2 §5 a residence permit can be issued either as permanent or as limited in time. The specific criteria for each permit is not regulated by law except for in certain cases, like cases of so called “fast connections” and cases of married/unmarried couples that have not been living together on a permanent basis before coming to Sweden (see below). In the *travaux préparatoires* of the content of chapter 2 §5 (which derives from provisions in former Aliens Acts dated 1980 and 1989), it is stated that since 1984 permanent residence permits is issued as a main rule, if the person intends...
to settle in Sweden on a permanent basis or at least for a considerable time. Case-law applies this rule. From this follows that persons that obtain a residence permit on the ground of family reunification, usually immediately obtain a permanent permit. Permanent permits are always autonomous.

The only (here relevant) exception to this, are permits issued to persons that intends to marry, register a partnership or to begin a partnership, so called “fast connections”, and to married/unmarried couples that have not been living together on a permanent basis before coming to Sweden. These permits are limited in time (usually two years) and are renewed on the condition that the marriage/relationship is lasting (Aliens Act chapter 5 §§ 8 and 16 1st indent), with other words they are not as a main rule autonomous.

Q.82 – Has your Member State adopted rules granting autonomous residence permit "in the event of particularly difficult circumstances" (a 15 §3)?

☐ OUI
☐ NON

If yes, how is this provision defined and transposed?
Where exceptions from permanent permit are applicable, a permit can be renewed even if the relationship has ended, on three grounds that should be seen as compromising “particularly difficult circumstances”. Aliens Act chapter 5 §16 3rd indent:

If a relationship has ended, a residence permit may still be granted if
1. the alien has special ties to Sweden,
2. the relationship has ended primarily because in the relationship the alien or the alien’s child has been subjected to violence or some other serious violation of their liberty or peace or
3. there are other strong grounds for prolonging the alien's residence permit.

PENALTIES AND REDRESS

Those provisions must be read in parallel with those relating to the conditions to be fulfilled to obtain family reunification (articles 6, 7, 8)

Questions relating fraud, false or falsified documents are of importance to assess their impact.

Q.83 – What are the legal grounds to reject, withdraw or refuse to renew a family member's residence permit (a16 §1 et 2):

Q.83. A – Conditions required by the directive not satisfied?

☐ OUI
☐ NON

Q.83. B – Absence of real martial or family relationship?
If yes, how is this hypothesis assessed?
This legal ground only applies to the cases where a permit limited in time is issued: cases with persons that intends to marry, register a partnership or to begin a partnership (chapter 5 §3a p.1 of the Aliens Act) and to cases with married/unmarried couples that have not been living together on a permanent basis before coming to Sweden (chapter 5 §8 of the Aliens Act). In all other cases where a permit has been issued due to family reunification, the permit is as a main rule permanent and autonomous. This means that the family member keeps his/her permit although there is an absence of real martial or family relationship with the exception for cases described in Q 83D and E.

As for the cases with permits limited in time, the permit can be withdrawn under a period of trial (usually 2 years) if the relationship does not really exist or has ceased to exist. On the same grounds it can be refused of renewal. A permanent or prolonged permit can be issued even in situations where no relationship really exists or has ceased to exist, but only under certain exceptional circumstances stated in the Aliens Act chapter 5 §16 3rd indent:

If a relationship has ended, a residence permit may still be granted if
1. the alien has special ties to Sweden,
2. the relationship has ended primarily because in the relationship the alien or the alien’s child has been subjected to violence or some other serious violation of their liberty or peace or
3. there are other strong grounds for prolonging the alien’s residence permit.

To assess the hypothesis in cases of permits limited in time, a so called assessment of seriousness is made before the fixed term permit is issued. NB This assessment only applies to persons that intends to marry etc, and not to married or unmarried partners, since they have a right of family reunification. Requirements and decisive factors are that the relationship has lasted for some time, that the persons sees each other to some extent, that they have good knowledge about each other and that they have a common language to communicate in. After or during the period of trial a so called post-poned review of immigration is made. NB This review applies both to persons intending to marry and to married/unmarried partners that have not been living together on a permanent basis before coming to Sweden. A permit can be withdrawn or refused of renewal if there is an absence of real martial or family relationship and none of the exceptions (please see Q78) are considered to be applicable.

In Sweden a principle of procedural law is free production and evaluation of evidence. Therefore there are no exact requirements of proof established.
Further an application can be refused if it is based on incorrect facts intentionally given by the applicant (chapter 5 §17a p1.)
Controls consists of investigations and interviews as described in Q 83 H.

Q.83. C – Stable long term relationship with another person?
If yes, how is this hypothesis assessed?

Cases of polygamous marriages: The Aliens Act distinguishes the situation of when the sponsor is married to another person than the applicant, from the situation when the applicant is married to another person than the sponsor. As for the case of the sponsor, reunification is always denied if he/she already is married and lives on permanent basis with the other person (Aliens Act chapter 5 §17b). As for the case when the applicant is already married reunification can be denied. The most important factor is the reason of the polygamy: if the situation exists because of difficulties of getting a divorce (for instance if the applicant is a woman and cannot get a divorce according to the law in the country of origin or if the process of divorce in the country of origin is not recognized by Swedish law), a permit is usually issued. As always the decision-making authorities in these cases have a duty of investigation according to the principle of official investigation, which means that the authorities have to make sure that every case is duly investigated (through examination of facts and interviews) with consideration to the nature of the case.

Other cases: If the sponsor or the applicant lives on a permanent basis with another person reunification may be refused (Aliens Act chapter 5 §17a 2nd indent p.2). The main factors to assess are that there has to be an intention of the sponsor and the applicant to live together on a permanent basis in Sweden, and the relationship has to be real and not contracted for the sole purpose of enabling reunification. If the sponsor already has a long-term relationship and lives with another person than the applicant, these criterions are usually not fulfilled. If it is the applicant that has a long-term relationship with another person, consideration are made to circumstances, like if the applicant is forced to this relationship (by social norms etc) and such. The evaluation is made with consideration to the whole living situation of the concerned person (chapter 5 §17a last indent).

In Sweden a principle of procedural law is free production and evaluation of evidence. Therefore there are no exact requirements of proof established. In practice these cases are difficult to reveal. Often attention is made by a third party. The Migration Board then calls for oral investigations with the relevant persons. If none of them admits that they do not live together or that one of them is living with another person, it is hard to prove anything, unless the national registration gives evidence that the couple lives at different addresses and the couple cannot give a reasonable cause for this.

Q.83. D – False or falsified documents?

☐ OUI

☐ NON

Q.83. E – Marriage, partnership or adoption contracted for the sole purpose of enabling reunification?
Q.83. F – If yes, how is this hypothesis assessed?
According to chapter 7 §7 1st indent of the Aliens Act a resident permit can be withdrawn if the persons intentionally has given incorrect statements or left out relevant circumstances.

Factors that are taken as an indication of a sham marriage/partnership, are that the couple has a poor knowledge about each others living conditions, and/or that they have seen each other rarely although there has been practical and economical possibilities to meet. The burden of proof lies on the decision-making authority (the Migration Board). In several cases from the Appeal Court of Migration the court has deemed that the Migration Board has fulfilled its burden of proof by pointing out circumstances as mentioned above.

As for adoption it is in general hard to prove this when a written documentation of the adoption exists. If there are for some reason doubts, oral investigations are made with the concerned parties. In cases of “fake” adoptions the option of withdrawal are unlikely to apply, since the best interest of the child has to be taken into consideration (chapter 1 §10 of the Aliens Act).

Q.83. G – When the sponsor’s residence comes to an end and the family member does not yet enjoy an autonomous right of residence (a 16 §3) ?

Q.83. H – What type of control are organised thereof?

There are no certain provisions on the control of the situations mentioned in Q 83 B-G. The decision-making authorities, the Swedish Migration Board and Swedish Authorities abroad, have according to a general principle of administrative law a duty of investigation. This includes that a case always has to be duly investigated with consideration to the nature of every case. Controls can be made through investigations or interviews with the applicant. As for control of the applicant, the decision-making authority can request for birth certificate, marriage license etc. The sponsor is requested to sign an insurance where he/she on his/her honor certifies that he/she is married, partner or registered partner to the applicant. Document of identification is also requested. The decision-making authority can make a request of the Swedish Record on National Registration to see if the couple is registered on the same home address.

314 NB: A permit can be withdrawn or refused of renewal on this ground only in certain cases. In most cases the family member is granted a permanent permit (as is elaborated in Q 78 and 80). These permits can never be withdrawn because the sponsor leaves Sweden. Only when a residence permit is limited in time, as is the case for so called “fast connections” (elaborated in Q 78), the permit can be withdrawn or not renewed because the sponsor has left Sweden.
Q.84 – Are resources of the family taken into account when renewing residence permit where the sponsor does not have sufficient resources without recourse to the social assistance system of the member state?

☐ OUI

☒ NON

If yes, under which modalities?

Q.85 – Does your Member State's legislation take into consideration (a. 17):

Q.85. A – The nature and solidity of the person's family relationships and the duration of his residence in the Member State?

☒ OUI

☐ NON

If yes, please specify how and on the basis of which norm (legislation, regulation, jurisprudence, …)

This is based on legislation: the Aliens Act.

As for rejection it is stated in law (Aliens Act Chapter 5 §17a last passage) that the decision-making authority should take into account the living circumstances and the family relationships of the applicant. This means humanitarian as well as religious and cultural considerations.

As for withdrawal it is stated in law Aliens Act Chapter 7§4:

In assessing whether a residence permit should be withdrawn under Section 1 or 2 from an alien who has entered the country, account shall be taken of the ties that the alien has to Swedish society and of any other arguments against withdrawing the permit.

In making such an assessment particular attention shall be paid to

1. the alien’s personal circumstances,
2. whether the alien has children in Sweden and, if so, the children’s need of contact with the alien, the nature of the contact in the past and how it would be affected by the withdrawal of the alien’s residence permit,
3. the alien’s family situation in other respects and
4. how long the alien has been in Sweden.

Personal circumstances in p. 1 include conditions of work, residence and social adaptation. Relevant factors indicating that a person has settled in Sweden are if the person works, have his/her own business, studies or actively tries to participate on the work market. Learning the Swedish language is also an indication of adaptation.

If the person concerned is a child legal practice is to make a softer judgment of circumstances than of an adult.
The investigation is to be made through a fusion of all relevant circumstances.

**Q.85. B** - 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?

[ ] OUI

[ ] NON

If yes, please specify how and on the basis of which norm (legislation, regulation, jurisprudence, …)

*Travaux préparatoires* of the Aliens Act (Government proposal 1999/2000:43 and 2005/06:72) and case-law on the relevant provisions (chapter 5 § 16 3rd indent and § 17a last indent, chapter 7 §4 of the Aliens Act), state that such considerations shall be taken into account in the sense that if the applicant is at risk of being socially outputted or otherwise subject for reprisals, the permit shall not be terminated in any way, unless there are compelling reasons otherwise.

**Q.86** – Do the sponsor and/or members if his/her family have the right to mount a legal challenge where an application for family reunification is rejected (a18 §1)?

[ ] OUI

[ ] NON

**Q.87** – Is this right to legal challenge considered as a right to a judicial review according to jurisprudence C-540/03 (a18 §1)?

[ ] OUI

[ ] NON
XX. IMPACT OF THE DIRECTIVE ON NATIONAL LAW

Q.88 A  Did the transposition of the directive made the rules related to the best interest of minor children (a. 5 § 5) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

Please use one box per object and duplicate it if necessary

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Due regard to the best interest of minor children during examination of the application a. 5 § 5</td>
<td>Explain the situation before transposition</td>
<td>Complete this box by keeping the right appreciation and deleting the two others:</td>
</tr>
<tr>
<td></td>
<td>In the Aliens Act it is stated in the first chapter that the best interest of the child always shall be taken into consideration when deciding on cases involving minor children (under the age of 18). The best interest of the child shall according to the travaux préparatoires not be an independent ground of a right to residence permit, but an important factor in the evaluation of all circumstances.</td>
<td>• Status quo</td>
</tr>
<tr>
<td></td>
<td>Explain the situation after transposition</td>
<td></td>
</tr>
<tr>
<td></td>
<td>The already existing provision (in force since 1997-01-01) in the Aliens Act was held to be in line with art. 5 § 5 in the directive. No changes were made.</td>
<td></td>
</tr>
</tbody>
</table>

Q.88 B  Did the transposition of the directive made the rules related to the beneficiaries of the right to family reunification become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below
<table>
<thead>
<tr>
<th>OBJECT</th>
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</tr>
</thead>
</table>
| Definition of the beneficiaries of the right to family reunification a. 4 § 4 | Complete this box by keeping the right appreciation and deleting the two others:  
• **Statu quo**  
• **Less favourable than previous national rules** | Not exactly clear since I couldn’t get hold of any decisions allowing family reunification in the event of polygamous marriages. |
| Explain the situation before transposition  
No specific legislation with a prohibition on refusal of permit in the event of polygamous marriage. But in the legal practice applications with such circumstances as referred to in a. 4 §4 was refused. | Explain the situation after transposition  
A provision was added that explicitly states that family reunification when polygamous marriage is at hand and the sponsor already has a spouse living with him/her in Sweden, shall be refused. The provision entered into force 2006-04-30. | Complete this box by keeping the right appreciation and deleting the other one:  
• **In line with the directive** |

**Q.88 C**  
Did the transposition of the directive made the rules related to reunification of minor children between 12 (a. 4 § 1) and 15 (a. 4 § 6) years old become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

<table>
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</thead>
</table>
| Limitation of reunification of minor children of 12 and 15 years of age (a. 4 § 1 and 4 § 6) | Complete this box by keeping the right appreciation and deleting the two others:  
• **Statu quo** | |
| Explain the situation before transposition  
No rules with condition for integration existed for anyone (whether minor or adult). No rules that limited | Explain the situation after transposition  
Nothing has changed in this issue, when adopting the main norm of transposition of the directive, the Government stated explicitly in the | Complete this box by keeping the right appreciation and deleting the other one:  
• **More favourable than the** |
family reunification for children older than 15 years old. All minor children, until the age of majority at 18 years old, had the same right. 

| travaux préparatoires that no such limitations should be introduced in Swedish law. |

| directive |

Q.88 D Did the transposition of the directive made the rules related to requirements to the exercise of family reunification (article 7) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

| Please use one box per object and duplicate it if necessary |

<table>
<thead>
<tr>
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<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Requirements for the exercise of family reunification (a. 7)</td>
<td>Explain the situation after transposition</td>
<td>Complete this box by keeping the right appreciation and deleting the two others:</td>
</tr>
<tr>
<td>Explain the situation before transposition</td>
<td>The investigation that preceded the Government proposal (2005/06:72) stated that such requirements would counter to the Swedish general policy on immigration. The Government also stated in its proposal that no such requirements should be introduced.</td>
<td>• More favourable than the directive</td>
</tr>
<tr>
<td>No such requirements existed</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Q.88 E Did the transposition of the directive made the rules related to margins of manoeuvre awarded to Member States (a. 5 § 5, 17, C-540/03) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

| Please use one box per object and duplicate it if necessary |

<table>
<thead>
<tr>
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<th>EVALUATION REGARDING THE EVOLUTION OF</th>
<th>EVALUATION IN COMPARISON WITH THE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Limitation of margins of manoeuvre (a. 17, a.5 §5, C-540/03)</td>
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</tr>
</tbody>
</table>

NATIONAL REPORTS - DIRECTIVE ON FAMILY REUNIFICATION 1431
Explain the situation before transposition

Limitation of margins of manoeuvre as in art. 5 §5 already existed, please see Q 88A. As for standards of rejections in art. 17, the decision-making authorities could make such considerations, but was not obliged to. As for standards of withdrawals a provision in the Aliens Act stated explicitly that particular considerations of the applicants living conditions, family ties and duration of stay in Sweden, was to be made.

Explain the situation after transposition

A new provision (in force since 2006-04-30) was inserted into the Aliens Act stating that when deciding on rejection considerations of the applicants living conditions and family ties, shall be made. As for withdrawals the existing provision (in force since 1998-02-01) was kept.

Complete this box by keeping the right appreciation and deleting the two others:

- More favourable than previous national rules

Complete this box by keeping the right appreciation and deleting the other one:

- In line with the directive

Q.88 F Did the transposition of the directive made the rules related to integration objectives and criterions more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

Please use one box per object and duplicate it if necessary

<table>
<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>Explain the situation before transposition</td>
<td>Explain the situation after transposition</td>
<td>Complete this box by keeping the right appreciation and deleting the two others:</td>
</tr>
<tr>
<td>No such rules or requirements on integration objectives and criterions existed.</td>
<td>No such rules were adopted because of the directive.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>- More favourable than the</td>
</tr>
</tbody>
</table>
Q.89 From your point of view, did the transposition of the directive imply other interesting changes for the third national country regarding other elements than the ones mentioned in the previous question. Make also a comparison with the standard of the directive in the last column of the table below

If they want to do so, the thematic coordinators should complete this question by indicating the number of examples that they ask the national reporter to give.

Please use one box per object and duplicate it if necessary

<table>
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<tr>
<td>The right of reunification for the sponsor’s spouse (art. 4 §1)</td>
<td>Explain the situation after transposition</td>
<td>Complete this box by keeping the right appreciation and deleting the two others:</td>
</tr>
<tr>
<td>Explain the situation before transposition</td>
<td>The requirement of the evaluation of seriousness was taken away in order to be in line with the directive. Married couples were given the unconditional right of reunification. But the permit can be limited in time. The new provision is in force since 2006-04-30.</td>
<td>• More favourable than previous national rules</td>
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<td></td>
<td>Complete this box by keeping the right appreciation and deleting the other one:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• In line with the directive</td>
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<td>Right of reunification of minor children (art. 4 §1)</td>
<td>Explain the situation after transposition</td>
<td>Complete this box by keeping the right appreciation and deleting the two others:</td>
</tr>
<tr>
<td>Explain the situation before transposition</td>
<td>The condition that the minor was living or had lived with the sponsor in the country of origin was</td>
<td>• More favourable</td>
</tr>
<tr>
<td>Minor children had to be or have been living with the parent in the country of origin to enjoy the</td>
<td></td>
<td>Complete this box by keeping the right appreciation and deleting the other one:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• In line with the directive</td>
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<tr>
<td>(to be precisely indicated by the national rapporteur)</td>
<td>Explain the situation after transposition (to evaluate the impact of the directive, take also into consideration national norms which have been adopted before the deadline for transposition or even before the adoption of the directive in cases of Member States having amended their national legislation in advance in view of the directive. Indicate the precise date of adoption of the change)</td>
<td>Complete this box by keeping the right appreciation and deleting the two others:</td>
</tr>
<tr>
<td>Explain the situation before transposition</td>
<td></td>
<td>• Statu quo</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• More favourable than previous national rules</td>
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<tr>
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<td></td>
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<td></td>
<td></td>
<td>Complete this box by keeping the right appreciation and deleting the other one:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• More favourable than the directive</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• In line with the directive</td>
</tr>
</tbody>
</table>

Q.89. A. Mention if there is a general tendency to just copy the provisions of the directive into national legislation without redrafting or adaptation them to national circumstances.

[X] NO

☐ YES

Q.89.B. If yes, please indicate if this general tendency may or not create problems (for example difficulties of implementation, risk that a provision remain unapplied).

☐ NO

☐ YES

Q.89.C. If yes, give some of examples:

Q.89.D. If only some provisions of the directive have been copied and if this may create any problem, please quote them and explain the problem.
Q.90. Quote interesting decisions of jurisprudence related to the directive, its transposition or implementation (so this question concerns in principle decisions later that the directive, but previous ones might be quoted if relevant). Quote in particular decisions of supreme Courts; limit yourself to the appeal Courts and ignore the first resort if there are too many decisions at this level, unless there is a certain jurisprudence made of a group of decisions.

Please use one box per decision and duplicate it if necessary

| DECISION OF SUPREME COURTS | DATE: 2007-02-26 | REFERENCE OF PUBLICATIONS: Case no UM 127-66 | SUMMARY OF CONTENT: Question whether an applicant that has a right of family reunification with his spouse, can be refused residence permit due to grounds of public policy and public security. The Court established that EC- law (directives and case-law) on the definition of public police and security is (indirectly) decisive in the evaluation. The Court stated that an enforceable judgment entailing a sanction of prison for not too short period of a time, is necessary for a refusal on this ground. It also stated that the ground of public policy and security should be applied in restrictive manners. The fact that the applicant had been found guilty of smuggling of alcohol and sentenced to 9 months in prison was not considered enough to infringe on the right of family reunification. This judgment clarifies the meaning of “public policy and security”.

| DECISION OF APPEAL COURTS | DATE: 2006-09-14 | REFERENCE OF PUBLICATIONS: UM 499-06 | SUMMARY OF CONTENT: Question of family reunification on the ground as an unmarried minor child to a parent living in Sweden. The applicant is 29 years old and seriously mentally ill. The Court states that due to the applicant’s incurable illness and to the fact that he is declared legally incompetent in the country of origin, he should be equaled to a minor child in the evaluation. The Court applies the right of family reunification of minor unmarried children analogously and gives the applicant a resident permit.
 ANY SUPPLEMENTARY COMMENT ABOUT THE TREND OF THE JURISPRUDENCE:

Q.91 Specify if there are or not problems with the translation of the text of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated.

☒ There are no problems with the translation of the directive

☐ There are some problems with the translation of (indicate the number of the articles concerned) of the directive.

Explain the difficulties that this could create:

Q. 92 ANY OTHER INTERESTING ELEMENT

Q.92 A. Following your personal point of view, mention from the point of view of third country nationals and/or from the Member State any interesting or innovative practice in your Member State

Please use one table per practice and duplicate it if necessary

<table>
<thead>
<tr>
<th>OBJECT OF THE PRACTICE</th>
<th>EXPLANATIONS</th>
</tr>
</thead>
</table>

Q.92 B. Please add here any other interesting element in your Member State which you did not had the occasion to mention in your previous answers
UNITED KINGDOM

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COMMENTARIES

1. Council directive 2003/86 on the right to family reunification faced hard negotiations requiring the presentation of revised proposals from the Commission before final adoption in 2003. The European Court of Justice rejected in June 2007 an action for annulment introduced by the European Parliament against the Council directive (C-540/03).

2. Transposition of the directive must be assessed regarding the nature of the provision concerned. So as to help you, those provisions are coloured within the questionnaire as follows: obligatory provision (Q.XX), optional provision (Q.YY), provision which set up a derogation (Q.ZZ)

3. The Court of justice has defined the margins of discretion awarded to the member States even in situations where the directive allows the member States to depart from the directive. The Court states:

"Article 4(1) of the Directive imposes precise positive obligations, with corresponding clearly defined individual rights, on the Member States, since it requires them, in the cases determined by the Directive, to authorise family reunification of certain members of the sponsor’s family, without being left a margin of appreciation" (cons. 60).

"Note should also be taken of Article 17 of the Directive which requires Member States to 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 country of origin. As is apparent from paragraph 56 of the present judgment, such criteria correspond to those taken into consideration by the European Court of Human Rights when it reviews whether a State which has refused an application for family reunification has correctly weighed the competing interests" (cons. 64)

The fact that the concept of integration is not defined cannot be interpreted as authorising the Member States to employ that concept in a manner contrary to general principles of Community law, in particular to fundamental rights. The Member States which wish to make use of the derogation cannot employ an unspecified concept of integration, but must apply the condition for integration provided for by their legislation existing on the date of implementation of the Directive in order to examine
the specific situation of a child over 12 years of age arriving independently from the rest of his or her family” (cons. 70).

4. The main difficulty according to the transposition of the directive relies on the systematic opportunities offered to member States to depart from the provisions of the directive when applying it.

5. Article 19 indicates which themes where the most sensitive during the negotiations of the Directive (art. 3, 4, 7, 8 and 13).

FIRST PART

1. NORMS OF TRANSPOSITION AND JURISPRUDENCE:

THE DIRECTIVE HAS NOT BEEN AND WILL NOT BE IMPLEMENTED IN THE UNITED KINGDOM. THE PROVISIONS REFERRED TO BELOW ARE THOSE WHICH DEAL WITH FAMILY REUNIFICATION IN THE UNITED KINGDOM BUT THEY ARE NOT TRANSPOSITION NOR IMPLEMENTATION OF THE DIRECTIVE

Q.1.A Identify the MAIN (because of its content) norm(s) of transposition and indicate its legal nature

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)
- About legal nature in the table below: legislative refers to a norm adopted in principle by the Parliament; regulation refers to a norm complementing the law and adopted in principle by the executive power; circular or instructions refer to practical rules about implementation of laws and regulations and adopted in principle by the administrative authorities

Please duplicate the table below if there is more than one MAIN norm of transposition

This table is about:

a text already adopted

<table>
<thead>
<tr>
<th>TITLE:</th>
<th>Immigration Rules (HC 395)</th>
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<tbody>
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<td>DATE:</td>
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</table>
The current rules are dated 1 October 1994 but they can be amended by putting a Statement of Changes before Parliament (which does not require a vote). Such changes are made a number of times each year (there were six statements in 2006) and so the rules are constantly evolving and no one date can therefore be given.

**NUMBER:**

**DATE OF ENTRY INTO FORCE:**

The current rules are dated 1 October 1994 but they can be amended by putting a Statement of Changes before Parliament (which does not require a vote). Such changes are made a number of times each year (there were six statements in 2006) and so the rules are constantly evolving and no one date can therefore be given.

**PROVISIONS CONCERNED**

Please see note above – there is no transposition

The Immigration Rules cover other matters of UK Immigration Policy *in addition* to family reunification, including:

1. General provisions governing the right to enter or remain in the UK
2. Visitors
3. Students
4. Individuals coming for employment (and related categories)
5. Asylum
6. Refusal of right to remain and entry
7. Miscellaneous provisions

**REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:**

**LEGAL NATURE** (indicate a cross in the correct box):

- [X] **LEGISLATIVE**: *(BUT SEE NOTE BELOW)*
- [ ] **REGULATION**: *(BUT SEE NOTE BELOW)*
- [ ] **CIRCULAR** or **INSTRUCTIONS**

There is debate about the exact legal status of the Immigration Rules. The power to make the Immigration Rules comes from statute (legislation) in the Immigration Act 1971. However, the Statements of Changes to the Immigration Rules are laid before the UK Parliament and do not require a vote. Though the rules could be categorised as rules of practice, in effect they have the force of law and this has been recognised in UK jurisprudence.

**Q.1.B.**

N/A
Q.2. THIS QUESTION IS IN PRINCIPLE ONLY FOR FEDERAL OR ASSIMILATED MEMBER STATES LIKE AUSTRIA, BELGIUM, GERMANY, ITALY, SPAIN

Q.2.A. Explain which level of government is competent to adopt the norms of transposition.

N/A

Q.2.B. In case, explain if the federal structure and the distribution of competences between the different levels pose any problem or difficulty regarding the transposition and/or the implementation of the directive.

N/A

Q.3. Explain which authorities are competent for the practical implementation of the norm of transposition by taking the decisions in individual cases.

N/A

Q.4.A. Has the main regulation foreseen explicitly by the main norm of transposition already been adopted or not:

N/A

Q.4.B. If the main norm(s) of transposition foresees the adoption of one or several regulations, indicate if they have all been adopted:

N/A

Add if necessary some explanations (specify in particular if the missing texts are at least under preparation or foreseen in the very near future):

N/A
Aim (Article 1)

The purpose of the Directive is to determine the conditions for the exercise of the right to family reunification. In case C-540/03, the Court of justice recognizes that, in some cases, member States do not have any margin of appreciation to grant the right to family reunification.

Q.5 – Is family reunification considered as a right in your Member State?

[ ] OUI

[ ] NON

Please explain

In order to consider the answers given in this questionnaire a brief summary of practice in the United Kingdom is necessary.

The practice to be followed in the administration of the Immigration Acts for regulating entry into and the stay of persons in the United Kingdom, including for family members, is laid down by the Secretary of State for the Home Department in the Immigration Rules (though these rules do not apply to EEA nationals or their family members).

In relation to family reunification, the rules can be broadly stated to comprise three categories:

1. The family members of those who are ‘settled’ in the United Kingdom
2. The family members of those who are in a ‘category leading to settlement’
3. The family members of those who are neither settled nor in a category leading to settlement.

The immigration rules define ‘settled’ to mean those who are free from any restriction on the period for which they can remain in the UK and are ordinarily resident. Settled persons therefore include British Citizens and third country nationals whose stay is free from any time restriction. These third country nationals are commonly referred to as ‘permanent residents’ though the immigration rules use the term ‘indefinite leave to remain’ and the term ‘settlement’ is also used. The Immigration Rules do not differentiate between the family members of permanent residents and of British citizens. The broadest right to family reunification is attached to this group, including family reunification for first degree ascending relatives in certain circumstances. The family members of this group are also, in certain circumstances, entitled to make applications for the right to remain from within the United Kingdom. The family members of settled persons are not dealt with in this questionnaire.

Individuals in a ‘category leading to settlement’ are those who do not currently have a permanent right to remain in the United Kingdom but, if they continue to comply with the terms and conditions of their stay, they will ultimately be eligible to apply for settlement (permanent residence). The categories leading to settlement are:

- Work permit holder
• Highly skilled migrant
• Innovator
• Writers, composers and artists
• Investors
• Retired person of independent means
• Persons with UK ancestry
• Sole representatives
• Persons intending to establish themselves in business
• Representatives of overseas newspapers, news agencies and broadcasting organisations
• Private servants in diplomatic households
• Domestic workers in private households
• Ministers of religion
• Operation ground staff of an overseas-owned airline
(paragraphs 128 to 135HA, 136 to 176, 178 to 193, 200 to 239 of the Immigration Rules)

The immigration rules make specific provision for the family members of those in these categories and it is these family members who are discussed in the remainder of the questionnaire (in addition to family members of refugees).

The third category includes those who it is not envisaged will ultimately obtain settlement (permanent residence), such as students. Though the immigration rules do make limited provision for their family members, those family members are not discussed in this questionnaire as they are not family members of the type of third party national envisaged by Article 3.1 of the directive.

In addition to these three groups, the UK grants humanitarian protection to those whose situation engages Article 3 of the ECHR and discretionary leave to those whose situation engages Article 8 or one of a number of published Home Office policies outside the Immigration Rules. These categories will usually lead to settlement but are not the subject of this questionnaire as they are excluded from the directive by Article 3.2 (b) and 3.2 (c).

Q.5. Are there any figures available relating to the exercise of the right to family reunification between 2002 and 2006? If yes, what are the trends, including nationality assessment?

The Home Office publishes an annual report entitled ‘Control of Immigration: Statistics.’ The most recent report available is for 2005 published in August 2006. This report does not give a breakdown for all categories which are ‘categories leading to settlement.’ but does give a breakdown for work permit holders and their dependents which is the most used of the categories leading to settlement.

The report is very detailed and to repeat all the figures is beyond the scope of this questionnaire. The full document for 2005 can be found at http://www.official-documents.gov.uk/document/cm69/6904/6904.pdf.

Briefly, for the period from 2001 to 2005, there was an increase in those granted entry as work permit holders from 81,100 to 91,500 – though most of the increase occurred from 2004 to 2005 and of the total number for 2005, 40,300 of these entered to take employment for one year or less). There was also an increase in those granted entry as the dependents of work permit holders from 27,800 to 45,500.
The area from which the greatest number of work permit holders originate is Asia (excluding the Indian sub-continent), followed by the Americas (with the majority from the US), the Indian sub-continent, non-EEA Europe, Africa, Oceania, and finally, the Middle East. The geographical trend has remained constant though the number from non-EEA Europe has dropped from 2003 to 2005 (it can be presumed because of the expansion of the EEA) and the largest proportional rise in work permit holders has been in those from the Indian sub-continent who by 2005 were almost equal in number to those from the Americas and brought to the UK three times the number of dependants as those from the Americas.

UK Visas also release a document entitled ‘entry clearance statistics’ and the most recent for the financial year 2005 to 2006 can be found at http://www.fco.gov.uk/Files/kfile/Annual%20Stats%20book%202005-06%20master.pdf. This document indicates that for this period there was a decline in work permit applications of 23 percent (it does not give a full breakdown for the dependents of work permit holders). It appears therefore that there may be a drop in work permit applications which has not yet been registered by the Home Office’s own report as this is only covers to the end of 2005. The Home Office’s report does show that there was a large increase from 2004 to 2005 so this may have been an exceptional year and numbers may now be reverting to pre-2005 levels.

DEFINITIONS (ARTICLE 2)

SCOPE (ARTICLE 3)

The scope of the Directive is defined by article 3. We recall that:
- § 1 "reasonable prospects..." aims at excluding persons residing on a temporary basis (stagiaires, etc...)
- European citizens are excluded (§ 3)
- Comparison with existing legislation is of importance so as to assess the added value of the harmonization process (§ 5)

Q.6. Period of validity of the sponsor’s residence permit:
   Q.6. A. Is the period of validity of the sponsor’s residence permit of one year or more according to article 3 § 1 of the Directive?

   [X] OUI
   [ ] NON

Q.2.B. Quote precisely the period enshrined in national law:

The exact period for which the sponsor will be granted an initial right to reside in the United Kingdom depends on the category used. For instance, work permit holders can be granted an initial period of five years if work permit approval has been given for that period of time. However, highly skilled migrants will be granted an initial two years and be expected to extend their right to remain near the end of that period. The immigration rules state the maximum initial period to be granted for each category.

Q.6.C. How does your Member State translate in national law the requirement for the sponsor to have "reasonable prospects of obtaining the right of permanent residence" (a 3 § 1)?

In the United Kingdom, the closest equivalent to a ‘sponsor who has reasonable prospects of obtaining the right of permanent residence’ is an individual in a ‘category
leading to settlement’. These individuals are those who do not currently have a permanent right to remain in the United Kingdom but, if they continue to comply with the terms and conditions of their stay, they will ultimately be eligible to apply for settlement (permanent residence).

The categories leading to settlement are: work permit holder; highly skilled migrant; innovator; writers, composers and artists; investors; retired person of independent means; persons with UK ancestry; sole representatives; persons intending to establish themselves in business; representatives of overseas newspapers, news agencies and broadcasting organisations; private servants in diplomatic households; domestic workers in private households; ministers of religion; airport-based operational ground staff of an overseas-owned airline. (paragraphs 128 to 135HA, 136 to 176, 178 to 193, 200 to 239 of the Immigration Rules)

Q.7. – Members of the family concerned:

1. Spouses
   (paras 194 to 196, 240 to 242 and 271 to 273 of the IRs)

2. Civil Partners
   (those in registered same sex partnerships under the Civil Partnership Act 2004. This act, at Schedule 20, recognises certain overseas same sex partnerships as being equivalent to civil partnership) (paras 194 to 196, 240 to 242 and 271 to 273 of the IRs)

3. Children under 18
   (if unmarried and not leading an independent life)(paras 197 to 199, 243 to 245 and 274 to 276 of the IRs)

4. Unmarried partners
   (those in an opposite sex relationship who have been ‘living together in a relationship akin to marriage which has subsisted for two years or more’) (paras 295j to 295 k of IRs)

5. Same sex partners
   (those in a same sex relationship who have been ‘living together in a relationship akin to civil partnership which has subsisted for two years or more’) (paras 295j to 295 k of IRs)

Q7. A. Are they third country nationals as required by article 3 § 1 of the Directive?

[ ] OUI
Q.7.B. How has your Member State translated in national law the wording of "whatever status" included in article 3 § 1 of the Directive?

As there has been no transposition, there is no translation in UK law. UK law does allow for third country nationals of ‘whatever status’ though this is subject to restrictions on applications from within the UK (first applications for the right to reside have to be made from a British mission overseas) and subject to refusal on various general grounds in paragraph 320 of the immigration rules (which apply equally to the family members of British citizens and permanent residents as to the family members of third country nationals in a category leading to settlement.)

Q.8 – Did the transposition of the Directive in your Member state breached provisions of international law more favourable to individuals (a 3 § 4)?

☐ OUI
☐ NON

Not applicable

Q.9 – If yes, are those provisions based on:

Q.9.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?

☐ OUI
☐ NON

Specify which provisions

Not applicable

Q.9.B - The European Social Charter of 18 October 1961 (a 3 § 4)?

☐ OUI
☐ NON

Specify which provisions

Not applicable

Q.9.C. The amended European Social Charter of 3 May 1987 (a 3 § 4)?

☐ OUI
Not applicable


- OUI
- NON

Not applicable

**Q.10** – Does the transposition of the Directive affect national provisions more favourable to individuals (a 3 § 5)?

- OUI
- NON

Not applicable

If yes, please specify which provisions

**Beneficiaries (Article 4)**

- Article 4 of the Directive contains numerous "may clauses". It is therefore important to pay attention on the way Member States use them and on the legal modalities adopted thereof.

- Article 4 § 1 a) and b) enacts a right to family reunification for some members of the sponsor's family. The Member State does not have any margin of discretion regarding those persons.

- Article 4 § 1 last indent foresee one derogation regarding child over 12 years on the basis of an integration criterion. This is one of the most sensitive questions encompassed by the directive beside the issue of the limit of age in § 6.

- Regarding article 4 § 6, the Court states ""It does not matter that the final sentence of the contested provision provides that the Member States which decide to apply the derogation are to authorise the entry and residence of children in respect of whom an application is submitted after they have reached 15 years of age 'on grounds other than family reunification’. The term ‘family reunification’ must be interpreted in the
context of the Directive as referring to family reunification in the cases where family reunification is required by the Directive. It cannot be interpreted as prohibiting a Member State which has applied the derogation from authorising the entry and residence of a child in order to enable the child to join his or her parents". (cons. 86) The Court adds "Article 4(6) of the Directive must, moreover, be read in the light of the principles set out in Article 5(5) thereof, which requires the Member States to have due regard to the best interests of minor children, and in Article 17, which requires them to take account of a number of factors, one of which is the person’s family relationships" (cons. 87)

Q.11 – Does your national law recognize the right to family reunification to:

Q.11. A – The sponsor's spouse (a. 4 § 1 a)?

☐ OUI
☐ NON

Q.11. B - Minor children of the sponsor and of his/her spouse (a. 4 § 1 b)?

☐ OUI
☐ NON

Yes, provided that both parents are being or have been admitted to the United Kingdom. If both parents are not being admitted, then further requirements must be met. ( paras 197 to 199, 243 to 245 and 274 to 276 of the IRs)

Q.11.C. Minor children adopted of the sponsor and of his/her spouse (a. 4 § 1 b)?

☐ OUI
☐ NON

Yes, provided that both parents are being or have been admitted to the United Kingdom. If both parents are not being admitted, then further requirements must be met. ( paras 197 to 199, 243 to 245 and 274 to 276 of the IRs)

Q.11.D. Minor children of the sponsor (a. 4 § 1 c)?

☐ OUI
☐ NON
Yes, provided that both parents are being or have been admitted to the United Kingdom. If both parents are not being admitted then one of the following must apply to the child:

(a) the parent he is accompanying or joining is his sole surviving parent; or
(b) the parent he is accompanying or joining has had sole responsibility for his upbringing; or
(c) there are serious and compelling family or other considerations which make exclusion from the United Kingdom undesirable and suitable arrangements have been made for his care)

(paras 197 to 199, 243 to 245 and 274 to 276 of the IRs)

Q.11. E. If yes, does your national law foresee that the sponsor shall have children custody and children are dependant on him or her?

☒ OUI
☐ NON

If the other parent is not being admitted then one of the following must apply to the child:

(a) the parent he is accompanying or joining is his sole surviving parent; or
(b) the parent he is accompanying or joining has had sole responsibility for his upbringing; or
(c) there are serious and compelling family or other considerations which make exclusion from the United Kingdom undesirable and suitable arrangements have been made for his care)

(paras 197 to 199, 243 to 245 and 274 to 276 of the IRs)

Specify if necessary the proofs required

For (a) above, a death certificate will be required.

For (b) above, UK Visas guidance (the Diplomatic Service Procedures) states at paragraph 14.5:

‘In order to fulfil the ‘sole responsibility’ requirement of the Rules, a sponsoring parent must be able to show that he or she has been solely responsible for exercising parental care over the child for a substantial period. This is in contrast to the concept of the ordinary family unit where responsibility for the child’s upbringing is shared between both parents.

You will need to be satisfied that the sponsoring parent has consistently supported the child, either by direct personal care or by regular and substantial financial remittances.

If the sponsoring parent and child are separated, the child will normally be expected to have been in the care of that parent’s relatives rather than the relatives of the other parent. This means, for example, that an application by a child to join his/her mother in the United Kingdom on the basis of sole responsibility should normally be refused if it transpires that the child has been in the care of his/her paternal relatives and that the father lives nearby and
takes an active interest in the child’s welfare.

The following factors should be considered in assessing sole responsibility:

- If the parents’ marriage / civil partnership has been dissolved, one of the parents must have been awarded legal custody, which includes assumption of responsibility for the child. (You should take care to ensure that the issue of a settlement entry clearance to the child will not contravene the terms of the custody order.) Annex I contains a list of those countries whose custody orders can be recognised as valid in UK.
- Does the marriage / civil partnership subsist, but the parents do not live together?
- Are the parents married / in a civil partnership?
- If the parent migrated to the UK:
  - how long has the parent been separated from the child?
  - what were the arrangements for the care of the child before and after the parent migrated?
  - what has been/what is the parent’s relationship with the child?
- By whom, and in what proportions, are the cost of the child’s maintenance borne?
- Who takes the important decisions about the child’s upbringing, for example where the child lives, the choice of school, religious practice etc?

For (c ) above, UK Visas guidance (the Diplomatic Service Procedures) states at paragraph 14.6:

‘You should always consider whether the circumstances surrounding the child are exceptional in relation to those of other children living in that country. The fact that the general standard of living in the United Kingdom is higher than in the child’s own country is not acceptable as a serious and compelling reason under this provision.

The factors relating to the parent in UK can be of an emotional or physical nature (or both).

Where the physical or mental incapability of the parent who is not in the UK has been established, an entry clearance should normally be granted.’

You should consider all the evidence as a whole, deciding each application on its merits.

Q.11 F. Minor children adopted of the sponsor (a 4 §1.c) ?

[X] OUI

[ ] NON

If the other parent is not being admitted then one of the following must apply to the child:

(a) the parent he is accompanying or joining is his sole surviving parent; or
(b) the parent he is accompanying or joining has had sole responsibility for his upbringing; or
(c) there are serious and compelling family or other considerations which make exclusion from the United Kingdom undesirable and suitable arrangements have been made for his care)

(paras 197 to 199, 243 to 245 and 274 to 276 of the IRs)

Specify if necessary the proofs required

See 11.E above

**Q.11. G.** If yes:

h. does your national law foresee that the sponsor shall have children custody and children are dependant on him or her?

☐ OUI

☒ NON

Specify if necessary the proofs required

This depends on the facts of each case – see the guidance given at 14.5 and 14.6 of the Diplomatic Service Procedures given above.

**g.g.** Does national law provide that those children shall be 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'?

☒ OUI (similar)

☐ NON

The immigration rules define a ‘parent’ as including ‘an adoptive parent, where a child was adopted in accordance with a decision taken by the competent administrative authority or court in a country whose adoption orders are recognised by the United Kingdom or where a child is the subject of a de facto adoption in accordance with the requirements of paragraph 309A of these Rules.’ (paragraph 6 of IRs)

There is therefore a similar reference to that in the directive but allowance is made for ‘de facto’ adoption as defined by the immigration rules themselves.
This is a very brief summary as UK adoption law (and its relation to immigration law) is very complex.

Specify if necessary the proofs required

Q.11. H. Minor children of the spouse (a 4 §1.d.)?

☐ OUI

☒ NON (but see below)

The immigration rules require that the child is the child of the sponsor. If the child is not the child of the sponsor but only of the spouse (or civil partner) then that will not meet the requirements of the immigration rules. However, the definition of ‘parent’ in the Immigration Rules is wider than just biological parent and this must be considered. For instance, if the child’s biological father has died and the child’s mother has married the sponsor, the relationship between child and sponsor will meet the immigration rules and a right to family reunification will exist.

A ‘parent’ includes:

a) the stepfather of a child whose father is dead and the reference to stepfather includes a relationship arising through civil partnership;

b) the stepmother of a child whose mother is dead and the reference to stepmother includes a relationship arising through civil partnership and;

c) the father as well as the mother of an illegitimate child where he is proved to be the father;

d) an adoptive parent, where a child was adopted in accordance with a decision taken by the competent administrative authority or court in a country whose adoption orders are recognised by the United Kingdom or where a child is the subject of a de facto adoption in accordance with the requirements of paragraph 309A of these Rules (except that an adopted child or a child who is the subject of a de facto adoption may not make an application for leave to enter or remain in order to accompany, join or remain with an adoptive parent under paragraphs 297-303);

e) in the case of a child born in the United Kingdom who is not a British citizen, a person to whom there has been a genuine transfer of parental responsibility on the ground of the original parent(s)’ inability to care for the child.

(paragraph 6 of IRs)

Q.11. I. If yes, does your national law foresee that the spouse shall have children custody and children are dependant on him or her?

☐ OUI

☐ NON

Specify if necessary the proofs required

Not applicable
Q.11. J. Minor children adopted of the spouse (a 4 §1.d )?

☐ OUI
☐ NON

Not applicable

Q.11. K. If yes, k. Does your national law foresee that the spouse shall have children custody and children are dependant on him or her?

☐ OUI
☐ NON

Not applicable

Specify if necessary the proofs required

k.k. Does national law provide that those children shall be 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’’?

☐ OUI
☐ NON

Specify if necessary the proofs required

Not applicable

Q.12 – Has your Member State transposed the option opened by article 4 § 1 c:

Q.12A. To authorise reunification of minor children of the sponsor – including also adopted children – of whom custody is shared (a 4 §1.c)?

☐ OUI
☒ NON

If the other parent is not being admitted then one of the following must apply to the child:

(a) the parent he is accompanying or joining is his sole surviving parent; or
(b) the parent he is accompanying or joining has had sole responsibility for his upbringing; or
(c) there are serious and compelling family or other considerations which make exclusion from the United Kingdom undesirable and suitable arrangements have been made for his care
(paras 197 to 199, 243 to 245 and 274 to 276 of the IRs)

In the case of shared custody, (a) will never apply and it is difficult to envisage a situation
where the onerous tests set by (b) and (c) will be met.

Specify if necessary

Q.12.B. If yes, has your legislation transposed the condition that the other party sharing custody has given his or her agreement (a 4 §1. c)?

☐ OUI
☐ NON

Not applicable

Specify if necessary

Q.13 – Has your Member State transposed the option opened by article 4 § 1 d):

Q.13.A. to authorise reunification of minor children of the spouse – including also adopted children – of whom custody is shared (a 4.1.d. in fine)?

☐ OUI
☐ NON

Specify if necessary

Q.13 B. If yes, has your legislation transposed the condition that the other party sharing custody has given his or her agreement (a 4. 1.d) ?

☐ OUI
☐ NON

Specify if necessary

Q.14 – In any case referred to in questions 7 to 9, is the age of the minor children below the age of majority set up by the law of your Member State (a.4 §1, second indent)?

☐ OUI
☐ NON

If yes, indicate the age required

Q.15 – In any case referred to in questions 7 to 9, has the prohibition of marriage of minor children been transposed (a.4 §1, second indent)?

☐ OUI
☐ NON
Q.16 – Is the derogation set up in article 4 § 1 last indent relating to the conditions for integration of children over 12 years arrived independently from the rest of the family used by your Member State?

☐ OUI
☒ NON

How the criterion "arrives independently from the rest of his/her family" has been transposed in your national legislation?

Q.17 – If yes, did this integration condition already exist in your national legislation before the date of transposition of the Directive?

☐ OUI
☐ NON

Not applicable

Q.18 – Describe briefly the content of this condition, the date of its creation and the conditions of its examination

Not applicable

Q.19 – Are the children of refugees required to an integration test by your Member State (in contradiction with article 10 § 1)?

☐ OUI
☒ NON

If yes, explain

Q.20 – Does your Member State authorise:

Q.20 A – Reunification of first-degree relatives in the direct ascending line of the sponsor (a 4§2 a)?

☐ OUI
☒ NON

There is no provision within the immigration rules for first degree relatives in the ascending line of the sponsor. There is, though, a special concession where family reunification may be allowed in this instance. This concession applies when the sponsor has been transferred to the UK branch of the employer’s company and the relative is genuinely dependent on the sponsor and will continue to form part of the family unit. (see chapter 17.15 of Diplomatic Service Procedures)
Q.20 B – If yes, shall they be dependant and not enjoy proper family support in the country of origin?

☐ OUI
☐ NON

Not applicable

How each of those criterions is transposed and checked?

Q. 20.C. Reunification of first-degree relatives in the direct ascending line of the spouse (a 4§2 a)?

☐ OUI
☐ NON

Not applicable

Q.20.D. If yes, shall they be dependant and not enjoy proper family support in the country of origin?

☐ OUI
☐ NON

Not applicable

How each of those criterions is transposed and checked?

Q.20.E. Reunification of adult unmarried children of the sponsor? (a 4§2 b) ?

☐ OUI
☐ NON

There is no provision within the immigration rules for unmarried adult children. There is, though, a special concession where family reunification may be allowed. This concession applies when the sponsor has been transferred to the UK branch of the employer’s company and the child is genuinely dependent on the sponsor and will continue to form part of the family unit. (see chapter 17.15 of Diplomatic Service Procedures)

Also, if the child enters the UK before the age of 18, he or she can continue to extend their right to remain as a dependent child notwithstanding the fact he or she subsequently becomes an adult.
If necessary, explain how this procedure is organised

**Q.20.F.** If yes, does the national legislation impose that those adult unmarried children of the sponsor are objectively unable to provide for their own needs on account of their state of health (a 4 §2 b) ?

☐ OUI
☐ NON

*Not applicable*

If necessary, specify how each of those criterions ("objectively" and "unable to provide for their own needs") is transposed and checked?

**Q.20. G.** Does your Member State authorise reunification of adult unmarried children of the spouse (a 4 §2 b)?

☐ OUI
☒ NON

If necessary, specify how this condition is assessed

**Q.20.H.** If yes, does the national legislation impose that those adult unmarried children of the sponsor are objectively unable to provide for their own needs on account of their state of health (a 4 §2 b) ?

☐ OUI
☐ NON

*Not applicable*

If necessary, specify how each of those criterions ("objectively" and "unable to provide for their own needs") is transposed and checked?

**Q.20. I.** Did your Member state use the by law or regulation norms to implement article 4 § 2 a et b?

☐ OUI
☐ NON

*Not applicable*

**Q.21 –** Does your Member State authorise reunification of the unmarried partner of the sponsor, being a third country national (a 4 §3)?

☒ OUI
Q.22 – If yes:

Q.22 A – This partnership shall be based on a duly attested stable long-term relationship?

☐ OUI

☐ NON

If yes, specify how your Member State assess this situation

The immigration rules require that:

1. the parties have been living together in a relationship akin to marriage or civil partnership which has subsisted for two years or more; and
2. any previous marriage or civil partnership (or similar relationship) by either partner has permanently broken down; and
3. the parties are not involved in a consanguineous relationship with one another;

Opposite sex couples are termed ‘unmarried partners’, same sex couples are ‘same sex partners’. (paras 295j to 295 k of IRs)

Q.22 B – This partnership shall be registered?

☐ OUI

☐ NON

UK law recognises registered relationships (spouses and civil partners) and unregistered relationships (unmarried and same sex partners). For unregistered relationships, the main test is that the couple have been living together in a relationship akin to marriage or civil partnership which has subsisted for two years or more. This requirement does not apply to spouses and civil partners.

Q.23 – Does your national law consider the registered partner as the husband/spouse (a 4 §3 alinéa 2)?

☐ OUI

☐ NON

Q.24 – Does your Member State authorise:

Q.24. A – Reunification of minor children of the partner, including adopted children (a 4§3)?

☐ OUI
Q. 24. B – Reunification of adult unmarried children of the partner, including adopted children (a 4§3)?

☐ OUI

☒ NON

Q.25 – Does your Member State allow reunification of adult unmarried children who are objectively unable to provide for their own needs on account of their state of health (a 4§3)?

☐ OUI

☒ NON

If yes, specify how the conditions, and more particularly the "objectivity", are assessed.

Q.26 – Did your Member state use the by law or regulation norms to implement article 4 § 3?

In so far as Article 4.3 is followed in UK law, this has been done by way of the immigration rules.

Q.27 – Is the prohibition of polygamous marriage enshrined in your national legislation (a. 4§4)?

☒ OUI

☐ NON

UK law reflects 4.4 of the directive in that it will not allow another spouse to enter as a spouse when the sponsor already has a spouse living with him in the UK.(see paragraph 13.19 of the Diplomatic Service Procedures)

Q.28 – Does your Member State limit family reunification of minor children of a further spouse and the sponsor (article 4§4 dernier alinéa,)?

☒ OUI

☐ NON

If the spouse cannot be admitted as a spouse, then the children will not be admitted..(see Paragraph 13.19 of the Diplomatic Service Procedures)
Q.29 – Does your Member State use the option set up by article 4 § 5 requiring the sponsor and his/her spouse to be of a minimum age of 21 years old before reunification?

☐ OUI

☒ NON

However, the UK government has recently proposed that a minimum limit of 21 years may be introduced in the future.

Q.30 – If yes,

Q.30 A – What is the age required?

Q.30 B – Is the derogation founded on integration criteria and/or prevention of forced marriage?

Not applicable

Q.31 – Does your Member State use the derogation of article 4 § 6 by requesting that the applications concerning family reunification of minor children have to be submitted before the age of 15?

☐ OUI

☒ NON

Explain

Q.32 – If yes, was it provided by existing legislation on the date of implementation of the directive?

Not applicable

Q.33 – If the application is not introduced before the age of 15, do Member States authorise entry and residence on grounds other than family reunification?

☐ OUI

☐ NON

Not applicable

Which grounds and which conditions?

PROCEDURE (ARTICLE 5)
We draw attention on the major importance given by the Court of justice regarding § 5 relating to the best interest of minor children.

Q.34 – Did your Member State institute a procedure regarding family reunification (a §1)?

☐ OUI
☐ NON

Q.35 – If yes,

Q.35. A – Which authorities are in charge of this issue?

The applications are dealt with by British missions (British Embassies, British High Commissions and British Consulate Generals). The applications are made in the country of origin of the applicant or in a third country where the applicant is legally resident. The body which oversees British missions is UK Visas - a joint Directorate of the Home Office and the Foreign & Commonwealth Office. UK Visas works closely with the Border and Immigration Agency (BIA) of the Home Office, the government department responsible for immigration policy in the United Kingdom.

Q.35. B – Are NGO's associated to this procedure?

☐ OUI
☐ NON

If yes, describe the procedure

Q.35. C – Is the application submitted by the sponsor or by family members?

By family members

Q.35. D – Is this procedure exclusive from other possibilities to grant family reunification?

☐ OUI
☐ NON

This is the only procedure available.

If other procedural possibilities exist, please describe them

Q. 35. E – Was this procedure existing before the adoption of Directive 2003/86?

☐ OUI
☐ NON
Q.36 – Which documentary evidence are required to prove (a 5 §2):

The onus is on the applicant to show that he or she meets the requirements of the immigration rules. UK Visas give general guidance on the information needed which can be summarised as follows:

1. Visa application form (VAF 1)
2. Visa fee (This cannot be refunded, and they must normally pay it in the local currency of the country where they are applying.)
3. Passport or travel document (with six months validity)
4. A recent passport-sized colour photograph
5. Evidence of relationship. This can take the form of:
   a. For spouses/civil partners - marriage or civil partnership certificate
   b. For children - birth certificate (or adoption papers)
   c. For unmarried/same sex partners – proof of two years’ cohabitation in the form of correspondence sent to the same address (there are variations in the approach of missions and some require evidence of joint commitment such as joint bank accounts but it is questionable whether this is an accurate reflection of the requirements of the immigration rules)
6. Evidence that the dependents can be supported and accommodated without needing any help from public funds (public funds are strictly defined and do not include the UK National Health Service). This evidence can be from the sponsor or dependant (more usually from the sponsor) and will take the form of:
   a. Recent bank statements (usually latest six months)
   b. Recent wage slips (usually the latest six months)
   c. Proof of rental or ownership of property in UK
7. A copy of the pages from the sponsor’s passport showing permission to stay, if they are already in the UK, and
8. Sponsor’s original immigration employment document (e.g. the work permit)

The requirements vary from mission to mission so the exact requirements of that mission must be checked before an application is submitted. Applicants are well advised to do more than the minimum and should also, in the cases of spouses, civil partners and unmarried/same sex partners, provide evidence that their relationship is genuine and subsisting.

Q.36. A – Family relationships according to article 4?

a. For spouses/civil partners - marriage or civil partnership certificate
b. For children - birth certificate (or adoption papers)
c. For unmarried/same sex partners – proof of two years’ cohabitation in the form of correspondence sent to the same address (there are variations in the approach of missions and some require evidence of joint commitment such as joint bank accounts but it is questionable whether this is an accurate reflection of the requirements of the immigration rules)

Applicants are well advised to do more than the minimum and should also, in the cases of spouses, civil partners and unmarried/same sex partners, provide evidence that their relationship is genuine and subsisting.
Q.36. B – Accommodation conditions laid down in article 7?

Proof of rental or ownership of property in UK

Q.36. C – Sickness insurance conditions?

There is no sickness insurance condition and dependents will be entitled to use the British National Health Service. Some missions now require a medical certificate in relation to certain diseases (e.g. applicants from Thailand must provide a certificate to show that they do not have TB)

Q.36. D – Certified copies of family member(s)’ travel documents?

UK Visas just state ‘copy’ but a certified copy is advisable.

Q.37 – Is the possibility foreseen to proceed to:

Interviews:

☑ OUI
☐ NON

Investigations:

☑ OUI (possible)
☐ NON

If yes, describe them briefly

An interview is undertaken by an entry clearance officer who is part of the staff of the mission. Sponsors are not required to attend and would usually be excluded from the interview even if present at the time of the interview (this is at the discretion of the mission). There is no set format and the Entry Clearance Officer may ask wide-ranging questions, especially in relation to the genuine nature of a relationship.

With regard to investigations, the most usual is a request to the Home Office in the UK in relation to an applicant’s prior immigration history in the UK

Q.38 – When examining an application concerning the unmarried partner of the sponsor, which evidences are taken into account by Member States on the basis of national law to prove family relationship (article 5§2 dernier alinea) ?

Q.38. A – Existence of family ties and other elements such as a common child?

☑ OUI (but see below for most important aspects)
Specify

UK Visas simply state:

‘The Entry Clearance Officer will need to see evidence of a two-year relationship. This may include:

- documents showing joint commitments, such as bank accounts, investments, rent agreements or mortgages
- letters linking you to the same address, and official records of your address’

In practice, it is the second point which is crucial. Some missions place some emphasis on the first point but certainly not all. Applicants are advised to use whatever means they can to show that they have been ‘living together in a relationship akin to marriage which has subsisted for two years or more’ This may include statements from the couple, letters of support from third parties, a photographic history of relationship, evidence of continued contact while apart, evidence of holidays spent together and mementoes. This is a non-exhaustive list.

Q.38. B - Previous cohabitation?
[ ] OUI
[ ] NON

Proving two years cohabitation is the most important part of the application and missions expect to see letters linking the couple to the same address

Q.38. C - Registration of a partnership
[ ] OUI
[ ] NON

Unmarried/same sex partners are, by their very nature, usually not in a registered relationship. However, it is possible that they may be in a registered relationship not recognised by the UK as marriage or equivalent to civil partnership. If this is the case, then that registered relationship may still be evidence of a genuine commitment to each other, notwithstanding that it is not recognised by the UK. It is not a substitute, though, for proving two years cohabitation.

(please note that spouses and civil partners do not need to show previous cohabitation)

Q.38. D - Any other reliable means of proof foreseen in national law?
[ ] OUI
[ ] NON

If yes, specify which ones:
There is no set list and applicants are advised to use whatever means they can to show that they have been ‘living together in a relationship akin to marriage which has subsisted for two years or more’ This may include statements from the couple, letters of support from third parties, a photographic history of relationship, evidence of continued contact while apart, evidence of holidays spent together and mementoes. This is a non-exhaustive list.

Q.39 – Are family members obliged to reside outside the territory of the Member State while the application is being examined (a5 §3) ?

☐ OUI
☐ NON

Is this obligation sanctioned and how?

The immigration rules relating to the family members require that the first application for the right to reside in the United Kingdom be made from outside the United Kingdom (this does not apply to subsequent applications for extensions of the right to reside).

There was previously some flexibility in this (especially with regard to unmarried partners) but, in line with UK government policy, this position is now strictly enforced. It is envisaged this requirement would only be waived in the most exceptional cases.

The passport of the family member is held by the British mission while the application is considered.

Q.40 – If the answer is yes, is a derogation organised according to article 5 § 3 second indent?

☐ OUI
☐ NON

Please specify

Q.41 – Does your national legislation include a maximum period of 9 month to answer to the application by way of written notification (a5 §4)?

☐ OUI
☐ NON

In practice, applications are usually decided in a period between one day and three months—the length of time depends on the British mission who is making the decision. A period of nine months would only be reached in a situation where the application is refused and an appeal lodged.

If necessary, please specify

Q.42 – This time limit can be extended (a 5 §4 alinea 2) ?
Not applicable – no time limit

Q.43 – If yes,

Q.43. A – Because of the complexity of the examination of the application?

□ OUI

□ NON

Not applicable

If yes, please specify

Q.43. B – What is the length of the extension?

Q.44 – If no decision is taken by the end of the 9 months period provided, what are the consequences for the applicant?

Not applicable

Q.45 – Is the decision rejecting the application notified? Does this written notification contain the reasons of rejection?

□ OUI

□ NON

Specify if only one condition is not required

Q.46 – How is the best interest of minor children taken into account by your Member State’s legislation and authorities during examination of the application (article 5§5) ?

The immigration rules do not explicitly provide for this and it cannot be considered a guiding principle for the family reunification of children.

CONDITIONS REQUIRED (ARTICLES 6 AND OTHERS)

- Questions relating to accommodation and resources will be carefully examined to assess if Member States use them, either as a migration tool or as an integration tool.

- The same assessment applies regarding the option to set up a period of lawfully residence not exceeding two years before applying for family reunification.
According to article 8, the Court of justice states: "That provision does not therefore have the effect of precluding any family reunification, but preserves a limited margin of appreciation for the Member States by permitting them to make sure that family reunification will take place in favourable conditions, after the sponsor has been residing in the host State for a period sufficiently long for it to be assumed that the family members will settle down well and display a certain level of integration. Accordingly, the fact that a Member State takes those factors into account and the power to defer family reunification for two or, as the case may be, three years do not run counter to the right to respect for family rights set out in particular in Article 8 of the ECHR as interpreted by the European Court of Human Rights.

"It should, however, be remembered that, as is apparent from Article 17 of the Directive, duration of residence in the Member State is only one of the factors which must be taken into account by the Member State when considering an application and that a waiting period cannot be imposed without taking into account, in specific cases, all the relevant factors" (cons. 99). "The same is true of the criterion of the Member State’s reception capacity, which may be one of the factors taken into account when considering an application, but cannot be interpreted as authorising any quota system or a three-year waiting period imposed without regard to the particular circumstances of specific cases. Analysis of all the factors, as prescribed in Article 17 of the Directive, does not allow just this one factor to be taken into account and requires genuine examination of reception capacity at the time of the application" (cons. 100). "When carrying out that analysis, the Member States must, as is pointed out in paragraph 63 of the present judgment, also have due regard to the best interests of minor children" (cons. 101).

Q.47 – Can public policy, public security or public health grounds be taken into account to (a 6 §§1 et 2):

Q.47. A – Reject an application for family reunification?

[X] OUI

[ ] NON

If yes, which ones?

The Immigration Rules contain wide-ranging general grounds which must or can be used to justify a refusal of an application by a family member (paragraph 320).

These include the following situations where entry must be refused:

“(6) where the Secretary of State has personally directed that the exclusion of a person from the United Kingdom is conducive to the public good;
(7) save in relation to a person settled in the United Kingdom or where the Immigration Officer is satisfied that there are strong compassionate reasons justifying admission, confirmation from the Medical Inspector that, for medical reasons, it is undesirable to admit a person seeking leave to enter the United Kingdom.”

They also include the following situation where entry can be refused:
where, from information available to the Immigration Officer, it seems right to refuse leave to enter on the ground that exclusion from the United Kingdom is conducive to the public good; if, for example, in the light of the character, conduct or associations of the person seeking leave to enter it is undesirable to give him leave to enter.

Though in relation to pre-entry cases, the word ‘security’ does not appear, the grounds for refusal are wide and can easily be used to cover this under the ‘conducive to public good’ refusal.

Q.47. B – Withdraw an application for family reunification?
☐ OUI
☐ NON

If necessary, please specify

Not applicable – an application would not be withdrawn, it would be refused.

Q.47. C – Refuse to renew a family member's residence permit?
☒ OUI
☐ NON

If necessary, please specify

There are separate grounds for refusal for an application to renew the right to remain from within the United Kingdom. These are found at paragraph 322 of the immigration rules and include:

"5) the undesirability of permitting the person concerned to remain in the United Kingdom in the light of his character, conduct or associations or the fact that he represents a threat to national security;"

Also, the Home Office may deport a person on the ground that their presence is not 'conducive to the public good'. Such action does not have to wait for an application to renew to be made.

Q.48 – Does national legislation take into account:

Q.48. A – The severity or type of offence against public policy or public security?
☒ OUI
☐ NON
Q.48. B – The solidity of family relationships regarding article 17 of the Directive?

☐ OUI

☐ NON

If necessary, please specify

In deciding whether to deport, a wide range of issues have to be taken into consideration which are set out in the Immigration Rules (paras 364-368), including the following:
- the person's age;
- their length of residence in the UK;
- their strength of connections with the UK;
- their personal history, including character, conduct and employment record;
- their domestic circumstances;
- the nature of any offence of which the person has been convicted;
- the person's previous criminal record;
- any compassionate circumstances
- any representations made on the person's behalf.

Q.49 – Does your Member State withdraw the residence permit or remove the third country national on the sole ground of illness or disability suffered after the issue of the residence permit (a 6 §3)?

☐ OUI

☐ NON

Q.50 – Are accommodation conditions required from the applicant (a7 §1a)?

☐ OUI

☐ NON

Q.51 – If yes:

Q.51. A – What are those conditions?

The housing requirement is complex. The Rules state that 'accommodation must be owned or occupied exclusively'. Home Office guidance (Immigration Department Instructions Chp 8, s1, annex F, para 6) states that:

'Accommodation can be shared with other members of a family provided that at least part of the accommodation is for the exclusive use of the sponsor and his dependants. The unit of accommodation may be as small as a separate bedroom but:

- must be owned or legally occupied by the sponsor;
- its occupation must not contravene public health regulations; and
- its occupation must not cause overcrowding as defined in the Housing Act, 1985.'
Q.51. B – How are they assessed?

The Housing Act provides two tests for overcrowding but the Home Office only relies on one. The number of persons permitted to stay in the accommodation is dependent on the number of rooms available. Rooms are only permitted to be included in the count if firstly, they are of a type usually used as a bedroom or a living room (i.e. kitchens and bathrooms do not count) and if they are more than 50 square feet (roughly 4.6 square metres).

The table below sets out the permitted number of people:

<table>
<thead>
<tr>
<th>Number of rooms</th>
<th>Permitted number of persons</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>3</td>
<td>5</td>
</tr>
<tr>
<td>4</td>
<td>7.5</td>
</tr>
<tr>
<td>5</td>
<td>10</td>
</tr>
</tbody>
</table>

An additional two persons are allowed for each room in excess of five.

Children under the age of one do not count and children aged between one and ten years only count as half a person.

Q.51 C – Are they comparable to the conditions required to a normal family living in the same region?

☐ OUI (Comparable to the ‘minimum’ conditions not the ‘average’ or ‘normal’ conditions)
☐ NON

If not, please specify the differences

Q.52 – Is a sickness insurance required from the applicant (a. 7 §1b) ?

☐ OUI
☐ NON

Q.53 – Are stable resources required (a7 §1c) ?

☐ OUI
☐ NON

Specify their nature and content

The income requirement for individuals is that they can adequately 'maintain and accommodate themselves in the United Kingdom without recourse to public funds'. There is no specific sum set out in legislation, but the Home Office's view is that the level
set by income support is the minimum standard of support considered to be acceptable. Each case though is judged individually and is dependent on what the individuals need.

**Q.54** – How is the condition "sufficient" assessed by your Member State? Is it in comparison with national wages?

*It is in comparison to income support which is the level the state believes is the minimum that an individual can survive upon in the UK. The comparison is therefore not with wages but with benefits given by the state to those who have a low income or no income at all.*

**Q.55** – Are integration criterions required to allow family reunification (a 7 §2)?

- [ ] OUI
- [x] NON

**Q.56** – If yes:

**Q.56. A** – What are those criterions?

**Q.56. B** – Do they apply indistinctly to all potential beneficiaries of reunification? (Spouse, dependant people, etc.)

**Q.56. C** – How are they evaluated by your Member State?

**Q.56. D** – Are refugees and their family members required to fulfil them (a 7 §2, second indent)?

- [ ] OUI
- [x] NON

Not applicable

**Q.57** – Is a minimal period of lawful reside is required before reunification (a 8 §1)?

- [ ] OUI
- [x] NON

**Q.58** – Does this period exceed two years?

Please specify

**Q.59** – Does your Member State apply the derogation set up by article 8 § 2 allowing Member States to impose a waiting period of maximum three years due to reception capacities between the submission of the application and the issuance of a residence permit?
Q.60 – If yes, did this derogation exist in national law before the 22nd of September 2003?

☐ OUI
☐ NON

Please specify

Not applicable

FAMILY REUNIFICATION OF REFUGEES

The legal regime applicable to refugees derogates from the one applicable to family reunification. The scope of those derogations (minimal lawful residence, members of the family, accommodation requirements) shall be assessed on the basis of national law.

Q.61 – Does your Member State allow family reunification of refugees on the basis of Directive 2003/86 (a 9 §1) ?

☒ OUI
☐ NON

No transposition but family reunification of refugees is allowed.

Q.62 – Is this right limited to family relationships predating the entry on the territory (a 9 §2)?

☒ OUI
☐ NON

Q.63 – Does your Member State allow family reunification of family Members not quoted in article 4 of the Directive (a 10 §2) ?

☒ OUI
☐ NON

Which members of the family and under which conditions?

In addition to spouses and minor children, the immigration rules make provision for the civil partners, unmarried partners and same sex partners of refugees provided that the relationship subsisted prior to the refugee leaving the country of origin and provided that the couple intend to live together permanently (paragraph 352 of the Immigration Rules)
Q.64 – According to the specific case of unaccompanied minor refugees, does your Member State authorise family reunification of first degree relatives in the direct ascending line without applying the conditions laid down in article 4 § 2 (a10 §3 a) ?

☐ OUI

☒ NON

What conditions are required?

Parents of refugees are not provided for in the Immigration Rules. The Home Office are currently drafting a new family reunion policy for refugees and this must be examined when published for an indication of the Home Office position. The previous policy did allow for other family members in ‘compassionate, compelling circumstances’. As the immigration rules do not deal with this matter, the parents of unaccompanied refugees may need to look at principles laid down in the UNHCR Handbook, the Qualification directive and the ECHR.

Q. 65 – Does your Member State authorise entry and residence of the legal guardian or any member of the family where the unaccompanied minor refugee has no relatives in the direct ascending line or such relatives cannot be traced (a10 §3 b) ?

☐ OUI

☒ NON

If yes, please specify who the member of the family targeted is and which proofs are required to prove family ties?

Q.66 – Does your Member State take into account other evidence of family relationship where the refugee cannot provide official evidence (a 11 §2) ?

☒ OUI

☐ NON

Which ones?

There are no specific rules on this. In practice missions will look at other evidence to establish a relationship. With children they will at times ask for DNA tests. In the guidance followed by the missions it states that staff can request the original documents of the refugee from the Home Office to see whether somebody the refugee is claiming is a dependant was actually mentioned at the time the original asylum claim was made.

Q.67 – Does the examination of the refugee application take into account their specific situation:

Q.67. A – Are proofs regarding accommodation conditions, sickness insurance or resources required (a 12 §1)?

☐ OUI

☒ NON
If yes, are those requirements comparable to those imposed to other third country nationals?

**Q.67. B** – If one of the person concerned (sponsor or family member) has special links with a third country within which reunification is possible, does your member state require those proofs according to article 12 § 1 second indent.

☐ OUI

☒ NON

If necessary specify

**Q.67. C** – If a refugee has introduced its application after a period of three months, does your Member State require the refugee to meet the conditions or one of them (accommodation, sickness insurance, resources (a 12 §1 alinea 3) ?

☐ OUI

☒ NON

If yes, which ones?

**Q.68** – Does your Member State apply the prohibition to impose a residence condition before reunification (a 12 §2)?

☒ OUI

☐ NON

If not, what is the length of this period? Is it different from the one normally applied?

*There is no residence condition*

**EXERCISE OF THE RIGHT TO FAMILY REUNIFICATION**

*The granting of an autonomous residence permit is one of the most sensitive issues of this part of the Directive.*

**Q.69** – Is entry and residence facilitated by your Member State, as soon as the application for family reunification has been accepted, including the issue of obtaining visas (a13 §1) ?

☒ OUI

☐ NON

*The speed with which the visa is issued will depend on the British mission which has*
responsibility for the application.

If yes, how?

Q.70 – Is a residence permit of at least one year's duration granted to the family members (a 13 §2)?

☐ ☐ OUI

☒ NON

What is the duration of the residence permit?

The family member will be granted permission to reside in the United Kingdom ‘in line’ with the sponsor. This will, in most cases, be for longer than one year. However, if the sponsor has less than one year left on their current permission to reside in the UK, then the family member will only be granted this length of time and will be expected to apply for further permission to remain from within the United Kingdom at the same time as the sponsor.

Q.71 – Is this residence permit renewable?

☒ OUI

☐ NON

Q.72 – Is the duration of the residence permit aligned with the duration of the sponsor's residence permit (a 13 §3)?

☒ OUI

☐ NON

If no, please specify

Q.73 – Are the rights awarded to family members' equivalent to those granted to the sponsor (a14 §1):

Q.73. A – Regarding access to education?

☒ OUI

☐ NON

If no, please specify

Q.73. B - Regarding access to employment?

☒ OUI

☐ NON
Please specify the content of this access

The family member will be able to take employment or be self-employed without restriction. This may mean that the family member’s right to take employment in the UK will be broader than the rights of the sponsor. For instance, a work permit holder sponsor must work for a named employer but the spouse of the work permit holder can work for any employer.

Q.73. C – Regarding access to vocational guidance, initial and further training and retraining?

☐ OUI
☐ NON

If no, please specify

Q.74 – Does your Member State grant specific rights in social matters to reunified family members?

☐ OUI
☒ NON

If yes, please describe them and specify if a time limit is established to take advantage from them

Q.75 – Has Member State set up conditions regarding specific access to employment for family members (a 14 §2)?

☐ OUI
☒ NON

If yes, how?

Q.76 – If yes, do those conditions exceed 12 months (a 14 §2)?

☐ OUI
☒ NON

Which ones?

Q.77 – Is access to employment limited in your Member State

Q.77.A – Regarding first-degree relatives in the direct ascending line?

☐ OUI
☐ NON
Not applicable

If yes, how?

Q.77. B – Regarding adult unmarried children objectively unable to provide for their own needs on account of their state of health (a 14 §3)?

☐ OUI

☐ NON

Not applicable

If yes, how?

Q.78 – Are spouses, unmarried partners and child who has reached majority entitled to an autonomous residence permit at least five years after lawful residence on the basis of the residence permit issued for family reunification (a15 §1)?

☑ OUI

☐ NON

If yes, please specify when and how for each category

The sponsor must complete five years in the UK before being eligible to apply for permanent residence (also known as indefinite leave to remain and settlement). The family member can apply for permanent residence at the same time as the sponsor (and it may be that the family member will reach permanent residence in less than five years as the family member may have joined the sponsor after the start of the five year period.)

The family member will only have autonomous residence on reaching permanent residence. If they wish to be autonomous of the sponsor before this point then they would need to obtain the right to reside in their own right in another category.

Q.79 – Does your Member State limit the granting of the autonomous residence in cases of breakdown of the family relationship (a 15 §1 alinea 2)?

☐ OUI

☑ NON

Please explain

There is provision within the UK Immigration rules relating to bereavement and domestic violence but these only apply to the partners of settled individuals, they do not apply to the family members of those in a category leading to settlement.
If the family member wishes to remain, he or she will need to find another category of the immigration rules into which they can fit.

**Q.80** – Does your Member State grant autonomous residence permit:

**Q.80. A** – To first-degree relatives in the direct ascending line (a 15 §2)

☐ OUI  ☑ NON

*Not applicable*

If necessary specify

**Q.80. B** – To adult unmarried children objectively unable to provide for their own needs on account of their state of health (a 15 §2) ?

☐ OUI  ☑ NON

*Not applicable*

If necessary specify

**Q.81** – Does your member State grant autonomous residence permit in the event of widowhood, divorce, separation or death of first first-degree relatives in the direct ascending or descending line (a 15 §3) ?

☐ OUI  ☑ NON

*Not applicable*

If necessary specify

**Q.82** – Has your Member State adopted rules granting autonomous residence permit "in the event of particularly difficult circumstances" (a 15 §3)?

☐ OUI  ☑ NON

There is provision within the UK Immigration rules relating to bereavement and domestic violence but these only apply to the partners of settled individuals, they do not apply to the family members of those in a category leading to settlement.

If the family member wishes to remain, he or she will need to find another category of the immigration rules into which they can fit.
If yes, how is this provision defined and transposed?

**PENALTIES AND REDRESS**

*Those provisions must be read in parallel with those relating to the conditions to be fulfilled to obtain family reunification (articles 6, 7, 8)*

*Questions relating fraud, false or falsified documents are of importance to assess their impact.*

**Q.83** – What are the legal grounds to reject, withdraw or refuse to renew a family member's residence permit (a16 §1 et 2):

**Q.83. A** – Conditions required by the directive not satisfied?

☐ OUI

☒ NON

*An application for the initial right to reside in the UK or a renewal of the right to reside can be refused if the requirements of the Immigration Rules are no longer satisfied.*

**Q.83. B** – Absence of real martial or family relationship?

☒ OUI

☐ NON

If yes, how is this hypothesis assessed?

*If an entry clearance officer is not satisfied that the relationship is genuine (whether that relationship is marriage, civil partnership, unmarried or same sex partnership) the application for the right to reside can be refused. This also applies when an application is made from within the United Kingdom for the renewal of the permit. The initial application will usually be assessed by interview but this is far less common in an application for renewal. Applicants are advised to provide evidence of their subsisting genuine relationship.*

**Q.83. C** – Stable long term relationship with another person?

☒ OUI

☐ NON

If yes, how is this hypothesis assessed?

The unmarried and same sex partners rules specifically state that any other relationship must have permanently broken down. For any relationship, though, the existence of another relationship would lead the decision maker to doubt the genuine subsisting nature of the relationship and refuse on this basis.

**Q.83. D** – False or falsified documents?
The general grounds of refusal in the immigration rules make specific provision for this at paragraph 320 stating that an application can be refused in circumstances where:

“(21) Whether or not to the applicant's knowledge, the submission of a false document in support of an application.”

Q.83. E – Marriage, partnership or adoption contracted for the sole purpose of enabling reunification?

X OUI

☐ NON

Q.83. F – If yes, how is this hypothesis assessed?

If the decision maker is not satisfied that the marriage is genuine then the application can be refused on this basis. Further, a person who obtains, or tries to obtain, leave to enter or leave to remain by deception can be prosecuted (s24A Immigration Act 1971). In addition, under the Immigration and Asylum Act 1999, section 24, there is a duty on marriage registrars to report to the Home Office any suspicions of a sham marriage. These are defined as a marriage between a British or EEA national and a third country national 'for the purposes of avoiding the effect of […] United Kingdom immigration law…'.

Q.83. G – When the sponsor's residence comes to an end and the family member does not yet enjoy an autonomous right of residence (a 16 §3) ?

X OUI

☐ NON

Q.83. H – What type of control are organised thereof?

If the sponsor’s right of residence comes to an end and the family member does not enjoy an autonomous right of residence, then the family member, if they wish to remain in the UK, must find another category in which they can stay. If they do not, and their right to reside comes to an end, then the UK can administratively remove them from the UK.

It is possible that the UK could withdraw the right of residence if it becomes aware that the family member is no longer entitled to it (for instance, if the family member is questioned when entering a UK port). This practice is referred to as ‘curtailing leave’. In practice, this appears to happen rarely and it is more common for the right of residence not to be renewed (if a renewal is applied for).
Q.84 – Are resources of the family taken into account when renewing residence permit where the sponsor does not have sufficient resources without recourse to the social assistance system of the member state?

☐ OUI
☐ NON

If yes, under which modalities?

*This question will rarely arise. Most of the categories which are the subject of this questionnaire involve being employed in the United Kingdom in some capacity. Therefore, when the sponsor renews the residence permit, they will still need to meet the requirements of that category. For example, a Highly Skilled Migrant will have to have earned a certain income, a work permit holder will need to be in the same employment. However, a situation could be envisaged where the sponsor was on a low income and could potentially need to rely on social assistance. The immigration rules do not prohibit the taking into account the resources of family members when considering the renewal.*

Q.85 – Does your Member State's legislation take into consideration (a. 17) :

Q.85. A – The nature and solidity of the person's family relationships and the duration of his residence in the Member State?

☐ OUI
☐ NON

If yes, please specify how and on the basis of which norm (legislation, regulation, jurisprudence, …)

*This element is not taken into account other than to prove genuineness of relationship. In that sense it could be argued that the 'nature and solidity of the person's family relationship' are considered when a decision is taken. The UK will also consider Article 8 of ECHR to which this may be relevant.*

Further the UK does have a concession concerning minor children who have been in the UK for seven years. It is possible that if the family lived in the UK in some other capacity (for instance as the family members of a student) prior to residing as the family members of a sponsor in a category leading to settlement, it is possible that the seven year concession will be engaged.

Q.85. B - 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?

☐ OUI
☐ NON
The existence of family, cultural and social ties is not an element that is taken into consideration when a decision is taken under the immigration rules. This may be relevant, though, when the UK considers Article 8 of ECHR.

If yes, please specify how and on the basis of which norm (legislation, regulation, jurisprudence, …)

Q.86 – Do the sponsor and/or members of his/her family have the right to mount a legal challenge where an application for family reunification is rejected (a18 §1)?

☐ OUI
☐ NON

A decision to refuse entry clearance to a family member would carry with it an appeal right to an independent tribunal. The relevant provision granting a right to appeal is s82 Nationality, Immigration and Asylum Act 2002. The scope of the review is on the facts and on the law. (The grounds of appeal are set out in s84 Nationality, Immigration and Asylum Act 2002).

Q.87 – Is this right to legal challenge considered as a right to a judicial review according to jurisprudence C-540/03 (a18 §1)?

☐ OUI
☐ NON
THE UK IS NOT BOUND BY THIS DIRECTIVE

XX. IMPACT OF THE DIRECTIVE ON NATIONAL LAW

Q.88 A Did the transposition of the directive made the rules related to the best interest of minor children (a. 5 § 5) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below.

Not applicable – not transposed. The immigration rules do not explicitly provide for this and it cannot be considered as a guiding principle for the family reunification of children.

<table>
<thead>
<tr>
<th>OBJECT</th>
<th>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</th>
<th>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</th>
</tr>
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<tbody>
<tr>
<td>Explain the situation before transposition</td>
<td>Explain the situation after transposition (to evaluate the impact of the directive, take also into consideration national norms which have been adopted before the deadline for transposition or even before the adoption of the directive in cases of Member States having amended their national legislation in advance in view of the directive. Indicate the precise date of adoption of the change)</td>
<td>Complete this box by keeping the right appreciation and deleting the two others: • Statu quo • More favourable than previous national rules • Less favourable than previous national rules</td>
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<td>Complete this box by keeping the right appreciation and deleting the other one: • More favourable than the directive • In line with the directive</td>
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</table>

Q.88 B Did the transposition of the directive made the rules related to the beneficiaries of the right to family reunification become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a
comparison with the standard of the directive in the last column of the table below

Not applicable – not transposed

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| Definition of the beneficiaries of the right to family reunification a. 4 § 4 | Explain the situation after transposition (to evaluate the impact of the directive, take also into consideration national norms which have been adopted before the deadline for transposition or even before the adoption of the directive in cases of Member States having amended their national legislation in advance in view of the directive. Indicate the precise date of adoption of the change) | Complete this box by keeping the right appreciation and deleting the two others:  
  - Statu quo  
  - More favourable than previous national rules  
  - Less favourable than previous national rules | Complete this box by keeping the right appreciation and deleting the other one:  
  - More favourable than the directive  
  - In line with the directive |

Q.88 C Did the transposition of the directive made the rules related to reunification of minor children between 12 (a. 4 § 1) and 15 (a. 4 § 6) years old become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

Not applicable – not transposed

Please use one box per object and duplicate it if necessary

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| Limitation of reunification of minor children of 12 and 15 years of age (a. 4 § 1 and 4 § 6) | Explain the situation after transposition (to evaluate the impact of the directive, take also into consideration national norms which have been adopted before the deadline for transposition or even before the adoption of the directive in cases of | Complete this box by keeping the right appreciation and deleting the two others:  
  - Statu quo  
  - More favourable | Complete this box by keeping the right appreciation and deleting the other one:  
  - More favourable than the |
Q.88 D  Did the transposition of the directive made the rules related to requirements to the exercise of family reunification (article 7) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

Not applicable – not transposed

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| Explain the situation before transposition | Explain the situation after transposition (to evaluate the impact of the directive, take also into consideration national norms which have been adopted before the deadline for transposition or even before the adoption of the directive in cases of Member States having amended their national legislation in advance in view of the directive. Indicate the precise date of adoption of the change) | Complete this box by keeping the right appreciation and deleting the two others:  
- Statu quo  
- More favourable than previous national rules  
- Less favourable than previous national rules |
| Requirements for the exercise of family reunification (a. 7) | Complete this box by keeping the right appreciation and deleting the other one:  
- More favourable than the directive  
- In line with the directive |

Q.88 E  Did the transposition of the directive made the rules related to margins of manoeuvre awarded to Member States (a. 5 § 5, 17, C-540/03) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

Not applicable – not transposed

Please use one box per object and duplicate it if necessary
**Q.88 F**

Did the transposition of the directive made the rules related to integration objectives and criterions more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

*Not applicable – not transposed*

Please use one box per object and duplicate it if necessary

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| Attention draw upon integration objectives (considérant 15) and criterions of integration (a.4 §1 dernier alinéa, a. 7 §2) | Explain the situation after transposition (to evaluate the impact of the directive, take also into consideration national norms which have been adopted before the deadline for transposition or even before the adoption of the directive in cases of Member States having amended their national legislation in advance in view of the directive. Indicate the precise date of adoption of the change) | Complete this box by keeping the right appreciation and deleting the two others:  
- *Statu quo*  
- *More favourable than previous national rules*  
- *Less favourable than previous national rules* | Complete this box by keeping the right appreciation and deleting the other one:  
- *More favourable than the directive*  
- *In line with the directive* |

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| Limitation of margins of manœuvre (a. 17, a.5 §5, C-540/03) | Explain the situation after transposition (to evaluate the impact of the directive, take also into consideration national norms which have been adopted before the deadline for transposition or even before the adoption of the directive in cases of Member States having amended their national legislation in advance in view of the directive. Indicate the precise date of adoption of the change) | Complete this box by keeping the right appreciation and deleting the two others:  
- *Statu quo*  
- *More favourable than previous national rules*  
- *Less favourable than previous national rules* | Complete this box by keeping the right appreciation and deleting the other one:  
- *More favourable than the directive*  
- *In line with the directive* |
Q.89 From your point of view, did the transposition of the directive imply other interesting changes for the third national country regarding other elements than the ones mentioned in the previous question. Make also a comparison with the standard of the directive in the last column of the table below

Not applicable – not transposed

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Q.89 A. Mention if there is a general tendency to just copy the provisions of the directive into national legislation without redrafting or adaptation them to national circumstances.

☐ NO
Not applicable – not transposed

Q.89.B. If yes, please indicate if this general tendency may or not create problems (for example difficulties of implementation, risk that a provision remain unapplied).

☐ NO

☐ YES

Not applicable – not transposed

Q.89.C. If yes, give some of examples:

Q.89.D. If only some provisions of the directive have been copied and if this may create any problem, please quote them and explain the problem.

Q.90. Quote interesting decisions of jurisprudence related to the directive, its transposition or implementation (so this question concerns in principle decisions later that the directive, but previous ones might be quoted if relevant). Quote in particular decisions of supreme Courts; limit yourself to the appeal Courts and ignore the first resort if there are too many decisions at this level, unless there is a certain jurisprudence made of a group of decisions.

Not applicable – not transposed

Please use one box per decision and duplicate it if necessary

<table>
<thead>
<tr>
<th>DECISION OF SUPREME COURTS</th>
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Q.91 Specify if there are or not problems with the translation of the text of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated.

☐ There are no problems with the translation of the directive
There are some problems with the translation of (indicate the number of the articles concerned) of the directive.

**Explain the difficulties that this could create:**

Not applicable – not transposed

**Q. 92 ANY OTHER INTERESTING ELEMENT**

Q.92 A. Following your personal point of view, mention from the point of view of third country nationals and/or from the Member State any interesting or innovative practice in your Member State

Please use one table per practice and duplicate it if necessary

<table>
<thead>
<tr>
<th>OBJECT OF THE PRACTICE</th>
<th>EXPLANATIONS</th>
</tr>
</thead>
</table>

Q.92 B. Please add here any other interesting element in your Member State which you did not have the occasion to mention in your previous answers

The United Kingdom has not implemented this directive. However, its practices do reflect at least the minimum required by the directive and, in many areas, the United Kingdom does more than the directive states is mandatory.

Areas in which the United Kingdom’s practice goes beyond that directive’s bare minimum include:

**Article 4**

1. The recognition of registered same sex relationships - both civil partnerships that are contracted within the United Kingdom and certain overseas relationships that are considered by UK law to be equivalent to civil partnership.

2. The recognition of unmarried partnerships for both opposite sex and same sex couples.

3. No extra requirements on children over the age of 12 or 15 and the recognition of minor children until the age of 18 (the age of majority in the UK).

**Article 5**

4. Though no set time limit is given, a nine month period to decide an application would be extremely rare at a British mission.

**Article 7**

5. The UK’s requirements for support and accommodation are set at a level which is comparable to the minimum in the UK rather than ‘normal for a comparable family’

6. Sickness insurance is not required
7. No integration measures are required

Article 8

8. No period of residence is required before an application for family reunification can be made.

Article 10

9. The civil partners, unmarried and same sex partners are included as dependants in the immigration rules relating to refugees.

Article 12

10. No extra requirements are placed on the family members of refugees if the application for family reunion is not made within three months.

Article 14

11. There is no restriction on the family member’s right to be employed or take self-employment

However, there are provisions within the directive which, while not mandatory, would, if implemented, improve the practice of the United Kingdom with regards to the family members of third country nationals in a category leading to settlement. These include:

Article 4

The UK does not make provision for the first-degree relatives in the ascending line nor for adult unmarried children (apart from in one very limited situation).

Article 5

The concept of 'best interests of the minor children' is not explicitly provided for in the Immigration Rules. It cannot currently be considered a guiding principle of family reunion for children in the UK. An explicit statement to this effect could only improve UK practice.

Article 10

With regard to refugees, the UK does not make explicit provision in the immigration rules for the first-degree relatives in the ascending line nor for adult unmarried children.

Article 15

The UK does not make any provision for the grant of an autonomous permit in the event of breakdown of a relationship due to 'particularly difficult circumstances.' The UK does, for
very good policy reasons, offer an autonomous permit to the partners of settled persons whose relationship breaks down due to domestic violence or bereavement. These same policy reasons should also apply to the family members of third country nationals in a category leading to settlement. This is a failing in the UK’s approach.