Responses of the Czech Republic to the questions raised by the EU Commission in the Green Paper on family reunification:
(Note: the questions are to be read in the context of the Green Paper)

Q1
Are these criteria (reasonable prospect for the right of permanent residence at the time of application as regulated in Article 3 and a waiting period until reunification can actually take place as regulated in Article 8) the correct approach and the best way to qualify the sponsors?

We consider both reasonable prospect for the right of permanent residence and the waiting period as effective criteria. Currently, the Czech Republic uses waiting period of 15 months (not the maximum allowed period of 3 years) in which the sponsor has to stay legally in its territory. The Czech Republic is of the opinion that the waiting period should be preserved and that Member States should be allowed to use it. Other possible criteria could include a restriction on the possibility of reunification in case of an illegal stay and a minimum duration of marriage (e.g. up to 3 years).

Q2
Is it legitimate to have a minimum age for the spouse which differs from the age of majority in a Member State? Are there other ways of preventing forced marriages within the context of family reunification and if yes, which? Do you have clear evidence of the problem of forced marriages? If yes how big is this problem (statistics) and is it related to the rules on family reunification (to fix a different minimum age than the age of majority)?

Currently, the Czech Republic does not face any serious problems in the area of forced marriage. However, since we are aware that other Member States have extensive experience with this issue we consider the age limit which is higher than the age of majority as legitimate measure. We also assume that Member States should be allowed to choose the exact age limit by themselves and in order to help to prevent forced marriage we support the increase of this age limit up to 24 years. Qualification of forced marriage as a crime as well as creation of the environment in which the victims can report incident and receive a protection, if needed, could become another measures in preventing forced marriage.

Q3
Do you see an interest in maintaining those standstill clauses which are not used by Member States, such as the one concerning children older than 15?

This standstill clause is currently not used in the Czech Republic and we do not intend to use it in the future. In case of potential reopening of the Directive the Czech Republic would support its removal.
Q4
Are the rules on eligible family members adequate and broad enough to take into account the different definitions of family existing other than that of the nuclear family?

In our opinion, these rules are sufficient, but we support further discussion which would lead to more precise provisions (e.g. to require that children physically live in the country where they have received a residence permit and are enrolled in education, to ensure that family members are not financial burden for the state, etc.).

Q5
Do these measures efficiently serve the purpose of integration? How can this be assessed in practice? Which integration measures are most effective in that respect? Would you consider it useful to further define these measures at EU level? Would you recommend pre-entry measures? If so, how can safeguards be introduced in order to ensure that they do not de facto lead to undue barriers for family reunification (such as disproportionate fees or requirements) and take into account individual abilities such as age, illiteracy, disability, educational level?

Article 7 is very vague and should be more specific in order to make sure it can be defended in Court. With the emphasis on human rights it would be appropriate to introduce strict conditions with the possibility for Member States to derogate.
Integration measures should be set both for a sponsor (in order to become eligible for the exercise of the right to family reunification) and reunified persons (pre-entry integration measures). Integration demands should increase (visa, permanent residence, citizenship).
As optional measures one might consider to:
• introduce the possibility to withdraw residence permit if integration conditions are not met
• take into account the connection with the host country (such as work, children, language skills, etc.) when taking a decision on family reunification
• introduce integration contracts; in case of non compliance with the contract no residence permit can be granted;
• impose (higher) language requirements for both sponsor and reunified family members;
• stimulate employment of migrants in order to promote their integration;
• introduce requirement of minimum income which would depend on number of family members;
• exclude the possibility of dependence on state social benefits.

Q6
In view of its application, is it necessary and justified to keep such a derogation in the Directive to provide for a three year waiting period as from the submission of the application?
We do not see any reason for a removal of this clause. It is at the discretion of particular Member State whether and how long waiting period it will introduce (up to 3 years).

Q7
Should specific rules foresee the situation when the remaining validity of the sponsor’s residence permit is less than one year, but to be renewed?

Such specific provisions would be highly appropriate. We face this issue quite commonly.

Q8
Should the family reunification of third country nationals who are beneficiaries of subsidiary protection be subject to the rules of the Family reunification Directive? Should beneficiaries of subsidiary protection benefit from the more favorable rules of the Family reunification Directive which exempt refugees from meeting certain requirements (accommodation, sickness insurance, stable and regular resources)?

We do not support this change. We do not think that the family reunification of third country nationals who are also beneficiaries of subsidiary protection should follow the rules of the Directive. We consider subsidiary protection as an instrument of a temporary nature and in accordance with the Qualification Directive we apply the lowest possible length of residence and when extending the subsidiary protection we always investigate if there are reasons for granting it. We believe that in these cases family reunification should be allowed, but it should follow national rules exclusively. The Directive on family reunification should be applied no sooner than when there is at least a presumption that a person will stay in the territory in the long term. In other words, reunification under the Directive should not be available automatically with subsidiary protection status unless the national rules set otherwise.

Q9
Should Member States continue to have the possibility to limit the application of the more favorable provisions of the Directive to refugees whose family relationships predate their entry to the territory of a Member State? Should family reunification be ensured for wider categories of family members who are dependent on the refugees, if so to which degree? Should refugees continue to be required to provide evidence that they fulfill the requirements regarding accommodation, sickness insurance and resources if the application for family reunification is not submitted within a period of three months after granting the refugee status?

In the cases of refugees it is extremely difficult to prove a family relationship. Refugees and their families often do not possess the necessary documents and it is difficult to obtain those from the State of origin. Optional introduction of DNA testing as well as common approach of Member States to foster care can help to prove family relationship.
Q10
Do you have clear evidence of problems of fraud? How big is the problem (statistics)? Do you think rules on interviews and investigations, including DNA testing, can be instrumental to solve them? Would you consider it useful to regulate more specifically these interviews or investigations at EU level? If so, which type of rules would you consider?

The study on family reunification which was created in the Czech Republic in 2009 revealed several types of deceptive practices which exploit the right to family reunification to enter the Czech Republic territory. However, the vast majority of these cases is related to family reunification with a citizen of the EU. With regard to family reunification under the Directive, the issue of false documents proving family relationship (marriage certificated, birth certificates) remains the most serious problem. It is especially difficult to detect a fraud in cases when the document is original but was issued illegally in the country of origin (corruption, etc.).

As mentioned above, we support the optional introduction of DNA testing as a helpful tool which contributes to solve some problems of deceptive practices. With regard to the engagement of organized criminal groups in cases of marriages of convenience it is appropriate to consider this phenomenon as a criminal offense.

Q11
Do you have clear evidence of problems of marriages of convenience? Do you have statistics of such marriages (if detected)? Are they related to the rules of the Directive? Could the provisions in the Directive for checks and inspections be more effectively implemented, and if so, how?

As mentioned above, the vast majority of problems of marriages of convenience concerns family reunification with a citizen of the EU. Official statistics are not available, but in the Czech Republic the first criminal judgments in this area have been issued recently.

Q12
Should administrative fees payable in the procedure be regulated? If so, should it be in a form of safeguards or should more precise indications be given?

Currently, this issue should be left in competence of Member States.

Q13
Is laid down by the Directive for examination of the application justified?

We consider the administrative deadline justified with regard to the very complicated process of inquiry.
Q14
How could the application of these horizontal clauses be facilitated and ensured in practice?

Member States should do more to ensure compliance with these provisions and use them in practice.