Subject: COM (2011) 735 – Green Paper on family reunification

Regarding the questions posed in the Green Paper on family reunification, it should firstly be noted that some provisions of the Directive have not been transposed into Italian law because they would have placed restrictions on the exercise of the right to such reunification. This applies in particular to the provision of Article 3(1) making application conditional on the sponsor having "reasonable prospects" of obtaining the right of permanent residence, and the provision in Article 8 (second paragraph) allowing the Member State to provide for a waiting period of three years between submission of the application and the issue of a residence permit. Further confirmation of this point may be found in the answers to questions 1 and 6.

Question 1. 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?

a) Regarding the conditions required of legally resident foreign nationals to exercise this right, the legislation in force stipulates that the right to keep or bring one's family together is accorded to foreign nationals who hold a long-term EC residence permit or a residence permit valid for at least one year that has been issued for purposes of work (as an employee or self-employed), asylum, study, religious reasons, or subsidiary protection. As can be seen, exercise of the right to family reunification presupposes the holding of certain types of residence permit valid for at least a year; this necessarily implies a certain degree of permanence at the time the application is submitted.

b) As regards the case for establishing waiting periods for the entry of family members as a way of managing migrant flows more effectively, it should be noted that Italy does not have a waiting period apart from the time needed to process the application and the validity period of the authorisation: the permit lapses if it is not taken up within six months of issue.

Question 2: 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)?

We have no information or statistics with which to "quantify" the number of forced marriages. However, we would note that the setting of a minimum age which is above the age of majority could act as a deterrent to forced marriages. Nonetheless, Italian law already stipulates the age of majority and allows marriage from the age of 16 subject to the consent of the parents. In the absence of
statistics, we cannot say whether such a limit might help to reduce this phenomenon in the third countries where the practice is widespread.

**Question 3: 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?**

As regards the restrictive clauses giving Member States the option of requiring minors to meet certain integration conditions or the possibility of authorising entry and residence for reasons other than family reunification, we would note that such clauses do not appear in Italian legislation. Our legislation guarantees reunification of minor children on condition that the applicant has sufficient income to support and house them properly. More specifically, we support the deletion of restrictive clauses as they run counter to the spirit of the New York Convention of 20 November 1989 on the rights of the child, ratified and made operative by Law 176/91.

**Question 4: 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?**

The provisions in our national legislation on eligible family members cover the spouse ("not legally separated and aged at least 18"), minor children and, under certain conditions, children over the age of majority and dependant parents. Reunification cannot be extended to more than one spouse of the same person, or to foreign parents who are lawfully resident in our country with another spouse. In essence, the rules on family reunification of foreign nationals adhere to our national legislation on the monogamous family (Article 556 of the Penal Code). Furthermore, this sees the family as a union between a man and a woman that is based on marriage, and therefore excludes *de facto* partnerships, whether or not they are registered, and same-sex partnerships. Within this framework, the family members covered by this provision seem sufficient and we see no reason for extending them, not least in order to avoid possible abuses.

In addition, with reference to the principle of safeguarding the best interests of minors (see also Question 12), we would point out that Italian legislation does not just refer to international instruments on human rights and the rights of the child (Article 28(3) of Legislative Decree 286 of 1998); it puts such protection into effect by providing for the reunification of minor children of the spouse or of children who were born outside marriage (Article 29(1)(a)), whom it treats in the same way as adopted or foster minor children or children of whom the sponsor has custody (Article 29(2)); and by allowing the entry, for reunification, of the natural parent of a minor who is already lawfully resident with the other parent (Article 29(5)), and of family members authorised by the Minors' Court to assist the minor, resident on Italian territory, when this is necessary for serious reasons related to their psycho-physical development (Article 31(3)).

As regards family ties, the legislation in force does not permit extension of the right to reunification to *de facto* partners.
Question 5: 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?

As regards the usefulness of integration measures, we would note the recent publication in Official Journal No 263 of 11 November 2011 of the decree setting out the practical arrangements for the “Integration Pact” between the State and a foreign national applying for a resident permit. The aim of the pact is to help foreign nationals lawfully resident in Italy to integrate successfully into Italian society. The decree is scheduled to enter into force on 10 March 2012. It establishes the procedure for the signing of the pact by the foreign national, whereby the latter undertakes to achieve specified integration objectives during the period of validity of the residence permit. The issue of the permit is contingent on signature of the pact. Loss of the credits obtained under the pact will result in withdrawal of the permit and the expulsion of the person concerned, except in the case of holders of a residence permit on grounds of asylum or subsidiarity protection, humanitarian or family reasons, or holders of long-term EC residence permits, residence cards for family members of EU citizens, or foreign nationals holding other forms of residence permit who have exercised their right to family reunification. The regulation also lays down procedures and outcomes for the verifications relating to the pact, so that a practical evaluation can be made of the objectives laid down. The integration pact applies to foreign nationals between the ages of 16 and 65 who enter Italy for the first time after its entry into force and who apply for a residence permit valid for at least a year. The regulation does not apply to foreign nationals who apply for a residence permit valid for less than a year; to those suffering illnesses or disabilities liable to seriously limit their self-sufficiency or make it extremely difficult for them to learn the language and culture; or to foreign nationals who obtain a residence permit on humanitarian grounds on the basis of a social integration and assistance project under the terms of Article 18 of amended Legislative Decree 286/98 (known as the Single Text on Immigration, or TUI). In line with the optional clause provided by Article 7(2) of Directive 2003/86/EC, the new provisions are designed to facilitate the integration of reunified family members. Moreover, it seems consistent with the unconstrained nature of the right to family reunification that holders of permits issued on family grounds are excluded, under Article 4a of legislative decree 286/98, from the measures for withdrawal of the permit and expulsion if they lose the credits relating to the abovementioned pact.

Question 6: 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?

Italian law does not lay down any such limitation. All that is necessary is that the requirements and conditions specified in Article 29 of the abovementioned legislative decree 286/98 are met.
Question 7: 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?

Regarding the need for specific rules to avoid situations where the validity of the residence permit of family members does not coincide with that of the sponsor, we would point out that there is a conflict between the provisions of the Directive whereby: a) the residence permit issued to the arriving family member must be valid for at least a year; and b) the validity of the residence permit issued to the arriving family member must not extend beyond that of the sponsor’s permit.

This point is specifically dealt with in Article 30(3) of the amended Legislative Decree 286/98, which states that a residence permit issued on family grounds has the same duration as the residence permit of the foreign-national family member meeting the reunification sponsoring requirements under the terms of Article 29 and is renewable together with that permit. We would note that this provision seems appropriate, as the family member’s residence in Italy is based on the validity of their reasons for entering Italy, excluding cases where there is a change in the nature of the residence permit for other lawful reasons.

Question 8: 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 favourable rules of the Family reunification Directive which exempt refugees from meeting certain requirements (accommodation, sickness insurance, stable and regular resources)?

As regards the possibility of making family reunification of foreign nationals who have subsidiary protection status subject to the rules of the Directive, and exempting them from the requirements on accommodation, income and sickness insurance, we would note that Article 29 et seq of the TUI already provides for this possibility in our domestic legislation.

In this context, also with reference to Question 9, Italian legislation contains provisions which provide a stronger guarantee than those of the Directive, safeguarding the unity of the family group whether they have refugee or subsidiary protection status, these being treated on equal terms for the purposes of recognition of the right to reunification (Article 22 of Legislative Decree No 251 of 2007).

Question 9: Should Member States continue to have the possibility to limit the application of the more favourable 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 fulfil 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?

With regard to this question too, Italian legislation contains provisions which provide a stronger guarantee than those of the Directive, safeguarding the unity of the family group whether they have refugee or subsidiary protection status, these being treated on equal terms for the purposes of recognition of the right to reunification (Article 22 of Legislative Decree No 251 of 2007).
Question 10: 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?
In the absence of specific data on the subject we would note that with a view to curbing this phenomenon, a specific provision was included in the amended Presidential Decree DPR 394/1999. Whilst not explicitly mentioning DNA tests, Article 2(2a) states that Italian diplomatic representations or consulates will issue the requisite certification on the basis of whatever checks are deemed necessary.

Question 11: 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?
The phenomenon of marriages of convenience tends to emerge mainly, if not exclusively, with reference to cases of family cohesion (i.e. of keeping the family unit together), rather than to cases of family reunification of a spouse resident abroad. We refer here to foreign spouses of Italian citizens, of citizens of an EU Member State who are resident in Italy, or of foreign nationals who are lawfully resident in Italy. The regulations in force entitle these persons to be issued with a residence permit on family grounds; this right extends to foreign spouses whose presence in Italy is unlawful, if they are married to an Italian citizen or a citizen of an EU Member State. It should be emphasised that there are no statistics on this type of marriage, as there is no specific crime involved. The provisions for tackling this phenomenon are contained in Article 30(1a) of the TUI, which provides for the withdrawal of the residence permit if it is discovered that the spouses have not co-habited, or in cases of fraud; this can be difficult in practice.

Question 12: 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?
The administrative expenditure incurred for family reunification includes an administrative fee for the processing of the file by the Immigration Office (SUI), the entry visa and the issue of the residence permit for family members. For the latter, the foreign-national family member is required to pay EUR 30, for the postal kit for submitting the permit application, EUR 14.62 for the official stamp to be placed on the application, and EUR 27.50 for the cost of an electronic residence permit.

Question 13: Is the administrative deadline laid down by the Directive for examination of the application justified?
The administrative deadline laid down by Italian legislation for examining the reunification application was extended to 180 days following the amendments brought in by Law 94/09. Until then the deadline had been 90 days, although the applicant was allowed to apply for the entry visa directly from the relevant Italian diplomatic representation/consulate if the deadline passed without action. The deadline was extended because of organisational problems at the Immigration Offices (SUI), which were generally unable to meet the specified deadlines.
Question 14: How could the application of these horizontal clauses be facilitated and ensured in practice?

Italian law has facilitated and ensured the application of the Directive's two safeguard clauses (respectively safeguarding the best interests of the child and the solidity of family ties) by enshrining them in Article 28(3) and Article 5(5) of the TUI. The former stipulates that in all administrative and judicial procedures designed to implement the right to family unity and regarding minors, priority account must be taken of the best interests of the child, in accordance with the provisions of Article 3(1) of the Convention of 20 November 1989 on the rights of the child, as ratified and made operative by Law 176 of 27 May 1991. The second states that with a view to refusal of the issue/renewal of a residence permit or its withdrawal for a foreign national who has exercised the right to family reunification in Italy, account is taken of family relationships and the existence of family and social ties with the country of origin and, in the case of foreign nationals already in Italy, the length of time they have been in Italy. The law thus accords foreign nationals the judicial guarantee enshrined in Article 24 of the Constitution on the safeguarding of legitimate rights and interests.

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