The European Commission’s questions on the right to family reunification of third-country nationals living in the European Union (Directive 2003/86/EC) were published on 15 November 2011. We are taking the opportunity of the Commission’s consultation to set out a comprehensive perspective on family migration policy in the EU. We then use this perspective as a basis for responding to the Commission’s questions.

1. Introduction

The Netherlands would like first of all to express its appreciation for the Commission’s initiative to launch a public debate on family migration, including specific issues covered by the Directive. The Commission has shown its willingness to listen to member states’ views about the challenges they face. This gives the Netherlands confidence that the responses from the member states will lead the Commission to modify the Directive in specific ways so that it does justice to the interests of all the parties concerned in this crucial policy area. The figures on the extent of the influx of migrants make clear just how crucial this policy area is. While family migrants account for a decreasing share of legal migration, as the Commission rightly notes, they still form the largest single category.

The Netherlands’ stance on the Green Paper is based on our overall perspective on family migration policy. To make our stance clear, therefore, it is necessary first to set out this perspective. We see the Green Paper as an invitation to EU member states to discuss the effectiveness of family migration policy, with a view to possibly modifying the Directive as well as to stepping up practical cooperation in this area.

1.1. The Dutch perspective on family migration policy

Family migration is pre-eminently a policy area where both the general interest of the state (in affirming aliens’ responsibility for their own integration and opportunities, limiting the burden on public finances and on social security, combating fraud and abuse, and upholding public policy) and the private interest of individuals (in deciding where they will live and with whom they will share their lives) are at stake. In addition, besides the general interest of the state in this area, the state also has a positive duty to protect its country’s residents from one another, for example by combating and preventing domestic violence (including forced marriage).

The right to family life (set out in article 8 of the European Convention on Human Rights (ECHR) and article 7 of the EU’s Charter of Fundamental Rights) forms the hinge between these interests. On the one hand this right offers protection; on the other hand interference with the exercise of this right is permissible on the grounds of the general interest. The Directive on family reunification, like the national legislation that implements it, fleshes out these articles. The Netherlands endorses the right to family life, on the understanding that this does not establish an automatic right to enjoy family life in an EU member state.

Public authorities at all levels (including the legislative, executive and judicial branches at both national and European level) face a constant challenge and have a great responsibility to strike and maintain a balance between private and general interests. Interpretations of the general interest can vary to a certain extent at different times and places, depending for example on the state of the economy and the social and demographic characteristics of the country in question. The increased prominence of debates on integration, both in a number of member states and within the EU, illustrates this point.
2. Challenges

2.1. Integration

A society in which everyone who lives there or settles there permanently can feel at home cannot be taken for granted and does not necessarily follow from letting everyone do as they please.

A more binding integration policy is needed and justified, because otherwise society will gradually become more fragmented, different groups will be increasingly alienated from each other, and ultimately no one will feel at home anymore in the Netherlands. People who want to settle in the Netherlands are expected to contribute to strengthening societal cohesion and to show civic engagement. Imposing requirements (such as income and age requirements) on immigrants who settle permanently in our society is justified because society also makes demands on our own citizens.

Moreover, in a period when knowledge and skills play an increasingly crucial role and when European welfare states are increasingly under pressure as a result of financial and economic crises, the importance of proper integration of migrants has risen sharply. The consequences of the slow progress of integration are increasingly visible in the member states in health care, education, public safety and the labour market. This has implications for social stability and for public support for immigration. Especially in the case of migration that results from migrants seeking spouses in their country of origin, there is a risk of disadvantages being passed along to new generations. There is also a growing awareness that government’s ability to promote integration is limited, and that migrants' own capacity and efforts play a decisive role.

The Dutch government therefore believes that it is essential for migrants to integrate as much as possible into their new society. The more quickly migrants master Dutch, and the more they know about Dutch society, the greater their chances of successful integration will be. The Dutch government therefore attaches importance to linking residence in the country of destination to requirements with respect to language skills and knowledge of the host society. Failure to participate and integrate can lead to ongoing inequality, a persistent state of alienation from our society, and fewer opportunities for migrants’ children. In our view integration prospects are of great importance, for family migration as for other kinds of migration, and should be fostered as much as possible. We would especially stress migrants’ own responsibility in this regard.

2.2. Preconditions beforehand versus enforcement afterwards

The global economic crisis and the international security situation are important considerations, alongside the necessity of integration. These factors too are significant in striking a balance between the general and private interests at stake in family migration, so that the influx of migrants can be regulated. When government has inadequate means to pursue a selective migration policy, to take measures based on family migrants’ economic

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situation (especially in times of economic crisis like these), and to act effectively against fraud and abuse, there is an imbalance between individual and general interests. This will eventually undermine public support for migration and for EU policies in general.

Due to the problems that member states regularly encounter with effective enforcement of residence requirements, the Dutch government proposes to impose requirements at the admission stage on both the family migrant and on the sponsor for family reunification. This would provide more effective guarantees of immigrants’ compliance with residence requirements.

One motive for this proposal is that lack of capacity and legal scope limit our ability to identify after the fact sham marriages and sham relationships that have been formed purely with the aim of obtaining legal residence. Simply checking people’s addresses is not always enough. Government’s authority to investigate people’s home situation is often limited, and in conflict with their right to protection of their privacy. It is not always possible to revoke immigrants’ residence permits once they have been granted, even in the event of abuses or failure to continue meeting the requirements for legal residence – especially when people have been admitted for family reunification. In many cases it would be incompatible with the human rights protection afforded by international and European law. In practice enforcement is often very labour-intensive and expensive.

2.3. Position of the sponsor for family reunification

Due to the importance of public policy and of integration in relation to the labour market, the Netherlands believes that applications for family reunification should be assessed on the basis of the situation not only of the immigrant family member, as is currently the case under the Directive, but also – to a greater extent than is currently the case – of the sponsor who is requesting the family member’s admission. If the sponsor has been convicted of a violent offence within a relationship, for example, or has committed fraud in connection with earlier applications for residence permits, it should be possible to object to that person’s sponsoring an application for family reunification. Requiring that the sponsor have a certain level of education (as well as housing, a certain level of income and health insurance), with a view to a better position in the labour market, could encourage better social integration of both the sponsor and the immigrant family member. It would enable the sponsor to provide the new migrant with more support in the civic integration process and in entering the labour market. It would also lower the risk of the family’s making demands on public funds later.

2.4. The ‘Europe route’

As part of efforts to enhance harmonisation of family reunification policies, it is worth considering a wider mandate for European legislators in creating a European area of freedom, security and justice. Such a mandate would require a comprehensive perspective on family migration policy, one that would not be limited to family reunification with third-party nationals. Even for family reunification with member state nationals, admission requirements which, as argued above, are needed to ensure that immigrants continue to fulfil the conditions for legal residence are of great importance. The right to free movement of persons should not be allowed to thwart such requirements. In the past several years the EU Court of Justice has made a major contribution to clarifying the rights of EU citizens to free movement of persons and to family migration to the EU, as entailed by the legislation currently in effect. The Netherlands believes that family migration from outside the EU and the free movement of
persons within the EU under the current treaties need to be harmonised better with each other so as to limit the negative results of the use of EU law (the ‘Europe route’) by third-party nationals. The details of our proposal are given at the end of our responses to the questions in the Green Paper.

3. Responses to questions in the Green Paper

Dutch society, in all its diversity, is the society in which people who move to the Netherlands have to learn to live. They have to adapt to it and find their place in it. This may seem like a great deal to ask of migrants, but it isn’t. People who leave their country to go and live in another one go in search of things that they did not have in their country of origin, things they wanted so badly that they were ready to take the momentous step of trying to rebuild their lives elsewhere. Refugees especially have directly experienced what it means when fundamental human rights are trampled underfoot. The core values and freedoms on which Dutch democracy and the rule of law are based are fundamental to the climate of freedom and responsibility that our government stands for.

The scope that the existing Directive on family reunification provides is clearly insufficient to allow us to weigh different interests against each other in the way we currently need to. The Netherlands advocates adapting the Directive so that a better balance can be struck between general and individual interests. In our view, this requires taking account of the following considerations.

- Proper preparation for a stay in a member state should provide better guarantees that a newcomer will be capable of taking part in its economy and society.
- *It must be made possible to impose conditions on both* the sponsor and the immigrant family member.
- *Admissions policy can be used to prevent women in particular from being placed in unequal and vulnerable positions, in which they are dependent on their husbands and not sufficiently enabled to participate in society.*
- *Burdens on member states’ social welfare systems must* be minimised as much as possible.
- *Effective enforcement of our collectively adopted rules* requires not only proper, just and effective enforcement *after* admission but also strict and properly verifiable conditions *before* admission, so as to lighten the burden of the work of enforcement.
- *Further harmonisation of family migration policy must* allow enough scope for doing justice to differences among member states, for example with respect to their income levels and social security systems.
- *Illegal residence* should be considered for a certain period as grounds for rejecting an application for family reunification, so as to make illegal residence less attractive.

A careful appraisal should be made and an appropriate balance struck between all the interests at stake, including fundamental rights enshrined in international agreements, individual interests, and general interests in the integration of immigrants, in equal opportunities and in fraud prevention. This balance should ultimately be reflected in proposed legislation. The Dutch government believes that the balance needs to be restored by amending the Directive. In this way European family migration policy can take another significant step forward. The Netherlands is keen to make a contribution to the road ahead, along the lines indicated in our response to the Green Paper’s questions.
Question 1: criteria which a sponsor for family reunification must fulfil (Article 3, paragraph 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?

The Netherlands is of the opinion that these criteria would be clearer if they were more detailed.

With regard to paragraph 1, the Netherlands believes it is possible to specify which purposes of residence confer a right to family reunification. Certain categories of temporary residents of member states (e.g. au pairs) are not eligible for family reunification. This could be stated in explicit terms.

The Netherlands is of the opinion that the waiting period criterion is a good way to ensure the sponsor takes responsibility for the successful integration of his partner. The Netherlands’ position on the duration of the maximum waiting period is stated in the response to question 6.

Question 2: minimum age requirement for spouse (article 4, paragraph 5).
Is it legitimate to have a minimum age for the spouse which differs from the age of majority in a Member State?

Yes. There must be a distinction between the age of majority and the age at which a person is allowed to marry under national law (18 in most member states and third countries) on the one hand and, on the other hand, the age at which it is possible to exercise the right to family reunification. The latter is a step involving serious responsibilities for which the people concerned must be prepared so that they are able to integrate and participate in the receiving member state. When a marriage partner comes from a third country, both the sponsor and the immigrant family member take on major economic and social responsibilities. The immigrant family member becomes dependent on the sponsor and must be able to rely on him or her socially and economically. A higher minimum age requirement prevents the migration of a new partner becoming an incentive for a young adult to drop out of school, leaving him inadequately prepared for the labour market and inhibiting his development as a member of society.

The age requirement also prevents new partners suffering the same disadvantages, which could jeopardise the integration process from the start. In time, this could lead to marginalisation of certain groups of immigrants as their ability to participate in the labour market and in society in general would be progressively diminished. A higher age requirement gives both partners the opportunity to help each other in this respect and prepare more effectively for their working life by completing a course of study or vocational training. This in turn facilitates their social integration and financial independence.

A higher minimum age also ensures that marriage candidates are better equipped economically and mentally to resist attempts to force them into marriage. Preventing forced marriage is complex and requires a combination of measures, including a set of clear criminal and civil-law standards, combined with public education targeting the communities concerned, i.e. measures that are consistent with the importance the Netherlands attaches to
equality. The Netherlands currently enforces a minimum age requirement of 21, in part to prevent forced marriage (generally speaking, older marriage candidates are better able to withstand family pressure than younger ones) and in part to discourage parents from arranging marriages for their children with a view to migration (and possibly financial gain).²

The Dutch proposal to raise the age requirement to 24
The Netherlands is of the opinion that a minimum age of 24 would be more conducive to the aforementioned objectives of the age requirement. The Netherlands therefore advocates raising the minimum age requirement in article 4, paragraph 5 to 24. The results of changing the age requirement in Denmark have been positive. Research shows that raising the minimum age to 24 has brought about a change in marriage practices among second-generation migrant woman and non-western migrant women raised in Denmark. According to the study, women marry later³ and more frequently choose a partner who lives in Denmark.⁴ This limits chain immigration and the integration problems associated with it. In the light of the above, the Netherlands is in favour of incorporating a higher age requirement as an optional criterion in the Directive.

Are there other ways of preventing forced marriages within the context of family reunification and if yes, which?

The Commission asks whether there are other ways of preventing forced marriages. Broadly speaking, it is the view of the Netherlands that all measures aimed at enabling people to attain social and economic independence and at facilitating their integration help prevent forced marriages. More specifically, the Netherlands recently took steps to further clarify the standards by introducing new civil- and criminal-law⁵ provisions to emphasise the importance of the right to choose one’s partner. Among the measures are provisions authorising the Public Prosecution Service to stop impending forced marriages and to apply to the court for annulments of forced marriages that have taken place. This will better enable people who are being or have been compelled to marry against their will to prevent or reverse a forced marriage. Investments are also being made to educate the public. The government has observed that it is difficult to determine whether forced marriage is at issue in individual cases and consequently whether repressive measures should be taken. For this reason, the Netherlands applauds additional measures like the ones proposed here: measures that make it more difficult to circumvent migration policy by invoking the right to family reunification.

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)?

² In this regard, reference is made to the study: ‘Internationale gezinsvorming begrensd?’ (‘Limiting international family formation?’), an evaluation of the raising of the income and age requirements for migration of foreign partners to the Netherlands, WODC, 2009, p. 14 ff.
³ Annual report 2009, the Rockwool Foundation.
⁴ Statistical paper regarding experiences with the Danish 24-year rule, 2009
⁵ Eliminating the possibility of minors marrying in the Netherlands; eliminating the possibility of marriage between relatives in the collateral line to the third or fourth degree of consanguinity; expanding the scope for preventing a marriage taking place under duress; expanding the scope for having a marriage annulled; restricting the recognition in the Netherlands of polygamous marriages contracted abroad if they were contracted under duress.
Finally, the Commission requests statistics quantifying the problem of forced marriage. In 2005 the Advisory Committee on Migration Affairs (Adviescommissie voor Vreemdelingenzaken, ACVZ) conducted a survey on partner choice and forced marriage among Dutch citizens of Moroccan, Turkish and Surinamese-Indian descent and found that the existence of migration pressure from the country of origin and the occurrence of marriage with blood relatives increase the risk of forced marriage and marriage under intense psychological pressure. A quick scan conducted by Refugee Organisations in the Netherlands (Vluchtelingenorganisaties Nederland) in 2011 among eight groups of refugees in the Netherlands shows that forced marriage is a real and persistent phenomenon. The scan also showed that marriage migrants often end up in a position of dependence. In many cases, the marriage partner’s right of self-determination is subordinated to the desire to maintain cultural traditions, the purpose for which the marriage candidate was brought over from the country of origin. It is difficult to resist adapting to the prevailing standard, because this is regarded as a violation of the collective honour of the group and can lead to honour-based violence.

The German government commissioned research into the nature and scope of forced marriage in Germany. Researchers found that 3,500 impending and contracted forced marriages were registered by counselling centres in 2008. Assuming some people never actually seek assistance, they estimated that there was also a large number of unknown cases. This study, too, shows that the problem arises primarily among people with an immigrant background. Given the similarity between the German and Dutch immigrant populations, it is plausible to assume that the gravity of the problem in the Netherlands is comparable. Although it is impossible to provide an accurate description of the nature and scope of the problem, some informative data are available:

- In 2009 the Ministry of Justice commissioned a national survey to determine the nature and scope of forced marriage in the reference year 2007 using data provided by the regional police forces and the Domestic Violence Advice and Support Centres (Steunpunten huiselijk geweld). Two of the 12 participating regional police forces knew of cases of forced marriage, and seven centres were familiar with one or more cases. Given that the police do not register forced marriages, their data cannot be used to establish the nature and scope of forced marriage in the Netherlands. In addition, a limited number of organisations participated in this survey.
- In 2009, the province of North Holland carried out a quick scan of the nature and scope of forced marriage and found that half of the respondents had received information about impending or contracted forced marriages. Most of the organisations surveyed had received between two and five reports, but the police in the province (not among the police forces referred to under 1) and a self-organising network had received over 20. Education and care organisations had also received multiple signals of force marriage.
- The Domestic Violence Advice and Support Centre in The Hague registered 10 cases of forced marriage in 2010. The Haaglanden Police Force’s National Expertise Centre on Honour-Based Violence (Landelijk Expertisecentrum Eergerelateerd Geweld) dealt with 16 cases involving forced marriage between 2007 and 2009. Figures from a pilot project conducted by Fier Fryslan for girls under 18 affected by honour-based violence

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7 The Domestic Violence Advice and Support Centres offer advice to victims and perpetrators of domestic violence (including forced marriage), and refer people to the appropriate social services. 18 of the 35 centres responded. www.wodc.nl/images/volledige-tekst_tcm44-167298.pdf
show that (the threat of) arranged marriage was the main reason why 18 of the 110 participants (16%) had fled their homes and a secondary reason for 34 of the 110 (31%).

- A recent telephone survey of organisations that offer information and training to secondary school pupils and teachers revealed that in all of the schools visited by these organisations there were indications of forced/arranged marriages.

There is no uniform national registration in the Netherlands and a national study like the one conducted in Germany has not been done here. As a consequence, it is impossible to provide a complete picture of the nature and scope of the problem. Known cases, though, show that the impact on those involved is enormous. The gravity of the problem justifies taking measures to curb this form of violence. Forcing a person to marry against their will is a violation of their human rights.

**Question 3: family reunification restrictions for minor children.**
*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 question relates to article 4, paragraph 6 and paragraph 1, last paragraph of the Directive. These provisions have not been transposed into Dutch law. As far as the Netherlands is concerned, provisions that are not used by any of the member states and can no longer be introduced into national law may be removed from the Directive with a view to further harmonisation.

This does not apply to provisions used by just one or a few member states. It is up to them to indicate whether the provisions fulfil their intended aim and should be maintained. The Netherlands sanctions the removal of provisions only if the member states using them approve.

**Question 4: other family members (outside the ‘core/nuclear family’).**
*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 rules in question here are adequate and broad enough. The Netherlands uses this scope to restrict the right to family reunification to members of the nuclear family. Member states are free to make provision independently for the admission of other relatives in their national legislation. In this way, the Directive takes into account the fact that specific circumstances may differ from one member state to another.

**Question 5: integration measures (article 7, paragraph 2).**
*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?*

**Objective of integration measures and conditions**
Dutch government response to the Green Paper on family reunification 29-02-2012

Under article 79, paragraph 4 of the TFEU member states may attach further integration conditions to the right to family reunification. The majority of EU member states have introduced integration conditions that must be fulfilled prior to entry or during residence. They are often linked to residence status, access to social assistance benefit and/or naturalisation. The aim of these conditions and measures is to ensure that migrants have basic knowledge of the language and society as a first step along the path to self-sufficiency and full participation in society, an important objective of the member states' integration policy and one of the common basic principles on integration.

The Netherlands attaches great importance to enforcing pre- and post-entry integration measures. Dutch civic integration policy ensures that migrants who wish to settle permanently in the Netherlands are prepared and motivated to come here and, after arrival, are able to acquire the language and learn about Dutch society so that they can participate actively in society and support themselves. This helps prepare the partner for life in another country and for becoming part of Dutch society, in which participation and citizenship play a prominent role.

**Effect of integration measures**

Integration measures and conditions are still relatively new, so only limited research has been done into the precise effects. As one of the early implementers of integration measures, the Netherlands has gained some experience in evaluating them. In general, every migrant who takes part in a civic integration programme moves a rung up the ladder of participation in Dutch society. In any case, it is certain that language skills and knowledge of society are essential if migrants are to participate fully in work and society. Integration measures that help migrants acquire these tools may be assumed to aid the integration process in general.

A range of evaluations have shown that there is also broad support for integration measures. Three-quarters of participants in civic integration programmes report that they were satisfied or highly satisfied with the programme. Many participants indicate that the programme helped them improve their language skills, expand their social network and boost their self-confidence. Quantitative analyses also show a positive correlation between integration and command of the Dutch language.⁹

Prospective migrants consider the exam they are required to take in their country of origin a useful preparation for their move to the Netherlands. The majority of participants expect their efforts to enhance their integration prospects in the Netherlands. The exam also has a measurable effect on language skills and knowledge of the Netherlands: 80% of examination candidates attain a level of A1 or higher.

This is precisely the reason the civic integration programme was established: it is the first step in the process of integration into Dutch society. Integration measures have also encouraged people to be more conscientious in their choice of partner and in their decision on whether or not to come to the Netherlands. The supervisory committee for the evaluation of the Civic Integration (Preparation Abroad) Act (Wet inburgering in het buitenland) believes that this

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⁹ '2011 Integration Report' (Jaarrapport Integratie 2011), Netherlands Institute for Social Research (SCP); 'Refugee Groups in the Netherlands' (Vluchtelingengroepen in Nederland), SCP, 2010; 'Civic Integration (Preparation Abroad) Act. A study of the operation, results and initial effects' (De Wet inburgering buitenland. Een onderzoek naar de werking, resultaten en de eerste effecten), Regioplan, 2009
process of considering what is necessary to build a future in the Netherlands has a positive impact on the integration prospects of this group.\textsuperscript{10}

**Which integration measures are the most effective?**
Which integration measures are most effective in a particular member state depends in part on its specific migration context and society. Given the division of competences and the fact that member states bear primary responsibility for integration, deciding which measures are likely to be most effective in their national context should remain the prerogative of the individual member states. In this light, the Netherlands does not advocate establishing integration measures at EU level. In accordance with article 79, paragraph 4 of the TFEU, the individual member states should retain the right to set national integration conditions taking the principles of proportionality and fairness into account; the European Commission has no legislative powers with respect to integration. Immigration measures (i.e. the conditions stipulated in the Family Reunification Directive) therefore may not be used to limit the member states’ ability to develop integration policy. The European Commission can play a role in enhancing knowledge in this area by collecting research and evaluations conducted in the member states and, if necessary, commissioning supplementary research.\textsuperscript{11}

**Dutch proposal for revoking temporary regular residence permit**
The Netherlands would like the Directive to give member states the latitude to revoke temporary regular residence permits as a last resort when aliens fail to meet the applicable civic integration conditions. Of course, the relevant international conventions would need to be taken into account. Choosing to come to the Netherlands also means choosing to integrate and participate in Dutch society.

**Possible barriers to family reunification?**
The Dutch government firmly believes that the conditions set must never be disproportionate, undermine the right to family reunification or make it impossible in practice to exercise that right. This applies to all conditions, including those pertaining to integration, and is in keeping with the general obligation to respect basic human rights and act proportionately. There is no need to include extra, supplementary passages to this effect. These principles should be reflected in all the conditions set by the Directive and in the way the member states implement them.

**Question 6: Waiting time relative to reception capacity (article 8, second indent).**
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?


\textsuperscript{11} In this regard, reference is made to the study: ‘Internationale gezinsvorming begrensd?’ (‘Limiting international family formation?’), an evaluation of the raising of the income and age requirements for migration of foreign partners to the Netherlands, WODC, 2009.
The waiting period referred to in article 8 is intended to ensure that family reunification takes place in circumstances that are favourable for integration. Sponsors, who are already resident in the Netherlands, are expected to share responsibility for the integration of their family members. For this reason, it is desirable for sponsors to have lived in the Netherlands for some time so they themselves have achieved a certain degree of civic integration by the time their family members arrive. The Netherlands does not take reception capacity into consideration and therefore does not apply the second part of article 8. It is up to the member states to indicate whether the provision meets the objective and should be maintained. The Netherlands would only support scrapping the second paragraph if the member state applying it (Austria) considers this desirable.

**Question 7: entry and residence of family members (article 13, paragraphs 2 and 3)**

*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?*

Yes, article 13, paragraphs 2 and 3 should be made more consistent. Although this article does not often lead to problems in practice, it would be worthwhile amending the Directive to eliminate this inconsistency.

**Question 8: exclusion of beneficiaries of subsidiary protection (article 3, paragraph 2(b)).**

*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)?*

The Netherlands does not distinguish between refugees recognised by the member states and beneficiaries of subsidiary protection. Consequently, no distinction is made in the conditions for family reunification between these two groups. The same conditions apply to both, namely those for refugees as described in the Directive. The Netherlands advocates applying the same family reunification rules to refugees and beneficiaries of subsidiary protection.

**Question 9: other asylum-related questions (Chapter V of the Directive).**

*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?*

Yes. This policy was not intended to facilitate the reunification of a family that is formed by a sponsor already living in the Netherlands. Only people who had a family relationship with the sponsor (i.e. the asylum residence permit holder residing in the Netherlands) before he or she left the country of origin should be eligible for family reunification under the favourable provisions of Chapter V. This favourable regime is intended to facilitate, as soon as circumstances allow, the reunification of family members who never intended to separate, but were forced to do so. The aim of the policy is to restore a family situation that existed until the refugee left the country of origin. If an application is submitted by or on behalf of the family members within three months after the refugee is granted an asylum residence permit, the family will qualify for reunification under the favourable rules if the other applicable conditions are fulfilled. If an application for family reunification is not submitted until after

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12 The family members must have the same nationality and actually form part of the family as it existed before the holder of the asylum residence permit left the country of origin.
the three month period has elapsed, the member state is justified in applying the standard provisions.

**Should family reunification be ensured for wider categories of family members who are dependent on the refugees, if so to which degree?**

Yes. The family members who qualify for the favourable conditions in the Netherlands are the spouse, minor children, life partner and adult children. This is wider than the categories of relatives who are eligible under regular family reunification policy (spouse, registered partner and minor children).

**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?**

Yes. Refugees who apply for family reunification under the regular admission policy are subject to resource and healthcare insurance requirements, and the Netherlands intends to introduce an accommodation requirement.

The favourable provisions of Chapter V facilitate the rapid reunification of families forced apart because a family member must seek refuge in another country. Given the brevity of a refugee’s residence in such a situation, it would be unreasonable to expect him or her to have sufficient resources and suitable accommodation. However, if the family members decide to resume family life with the refugee at a later date, it is reasonable to impose these requirements. Furthermore, the involuntary nature of the separation depreciates the longer the family members remain separated after the alien is admitted as a refugee. In this light, once the term of three months has elapsed it is no longer necessary to allow entry under more favourable conditions.

**Question 10: interviews and investigations (article 5, paragraph 2). 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?**

As stated above, the importance of statistical data in this area is limited. It is impossible to make a reliable estimate of the total scope of the problem on the basis of the data we have. This is certainly true in the case of fraud and sham marriages, because in such situations two people are colluding to perpetrate a fraud and there is no victim with an interest in seeking protection.

Fraud and abuse take many forms and are widespread. The Netherlands’ approach to fraud and abuse in the asylum procedure and the favourable family reunification regime for Somali asylum seekers serves as an example. In 2009 ‘large-scale fraud’ was detected. When it emerged that Somali asylum seekers had been applying for family reunification with people who were not relatives, the rules were tightened. As part of the anti-fraud approach, staff of the Immigration and Naturalisation Service (IND) intensified their investigation of family relationships and now request additional evidence if necessary. The results have been positive. In the first months of 2011, less than 10% of Somali applications for family
reunification were granted under the more favourable conditions. This amounts to about 30 people a month. In 2010, some 2,300 applications were granted, approximately a quarter of the total number of applications considered.

To combat fraud the member states must be able to conduct investigations. The Netherlands believes it would be inadvisable to limit the scope for investigation by laying down specific rules in an age when technology is constantly developing. The rights enshrined in articles 7 and 8 of the Charter of Fundamental Rights of the European Union (respect for private and family life and protection of personal data) protect people from disproportionate government interference in their private lives.

Modern technologies make it easier for member states to carry out inspections and specific checks on the basis of, for example, risk profiles. However, the current wording of article 16, paragraph 4 keeps member states from taking full advantage of the possibilities at their disposal. Specifically, the phrase ‘reason to suspect’ is open to interpretation and should be clarified. The explanatory notes should state that ‘reason to suspect’ is not limited to actual evidence of fraud and that risk profiles, linked to digital data, can be used to establish that there is ‘reason to suspect’ fraud so that further investigation is permitted.

Decision time limits and enforcement costs make it impossible to carry out intensive checks on every application. Member states should, however, be given the latitude to carry out checks at their discretion. Of course, this should not lead to direct or indirect discrimination or to disproportionate measures. It is the task of the national and European courts, as well as the public authorities, to ensure that this does not happen.

The Netherlands is of the opinion that the second paragraph of article 16 should be reviewed. The provision is unclear with respect to the possibility of withdrawing or refusing to renew or grant a residence permit if (under b) a marriage, partnership or adoption was contracted for the sole purpose of enabling the person concerned to enter or reside in a Member State. The phrase ‘sole purpose’ imposes an unreasonable burden of proof on the receiving state. It makes the provision too restrictive and practically impossible to prove that this is the case. This problem could be solved by, for example, removing the word ‘sole’.

The Netherlands is of the opinion that a situation described in article 16, paragraph 2 (b) should also have consequences for the sponsor; it should be possible to revoke (at least temporarily) his right to family reunification.

**Question 11: marriages of convenience (article 16, paragraph 4).**

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 response to the previous question on the relative importance of data on fraud applies equally to marriages of convenience, which constitute a specific form of fraud. The policy against sham marriages is intended to have a preventive effect. When the policy works, applications are either not submitted or they are rejected. Some cases involve large amounts of money, which further reduces the chances that the authorities will find out that a marriage is one of convenience.
In this context, too, the wording of article 16, paragraph 4 keeps member states from taking full advantage of the possibilities at their disposal. As stated above, the phrase ‘reason to suspect’ is open to interpretation and needs to be clarified.

Proposal to restrict number of marriage partners
In this context, the Netherlands proposes to restrict the number of marriage partners for whom a sponsor can apply for family reunification within a particular period. It should not be possible to gain entry for multiple consecutive partners for financial gain or for exploitative purposes. In addition, when a sponsor commits fraud (e.g. contracting sham marriages) and abuses the admission procedure, it should be possible to restrict his right to gain entry for partners. In concrete terms, this would constitute a restrictive condition whereby a sponsor is permitted to apply for entry of a (marriage) partner from a third country only once every 10 years (except in certain situations, such as the death of a partner).

Question 12: fees
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 Netherlands does not advocate regulating fees. Each member state has different agencies dealing with entry and residence. As a result, the procedures and costs differ too. Each member state should retain the freedom to pass on the costs incurred to the applicant.

Question 13: length of procedure: deadline for the administrative decision (article 5, paragraph 4).
Is the administrative deadline laid down by the Directive for examination of the application justified?

The Netherlands is of the opinion that the deadline of nine months is justified and sufficient for dealing with applications, and in practice it can be met in the Netherlands. Reducing the time it takes to complete procedures while maintaining precision is a constant aim. Quick procedures are in the interests of aliens and the authorities (good governance, administrative burden). However, a shorter legally binding time limit would be incompatible with the complexity of applications, especially in the context of family reunification, a process which involves taking a range of personal factors into account.

Question 14: horizontal clauses (article 5, paragraph 5 and article 17).
How could the application of these horizontal clauses be facilitated and ensured in practice?

The Netherlands complies with both article 5, paragraph 5 (due regard for the best interests of minor children) and article 17 (due regard for various interests). These considerations are incorporated in the various assessments built into the Dutch procedure to determine whether a person is entitled to a residence permit. The Netherlands has no reason to believe that the application of these clauses is problematic.
I Conditions in article 7 (requirements for the exercise of the right to family reunification)

Although article 19 of the Directive provides that in proposing amendments to it articles 3, 4, 7, 8 and 13 will have priority, the Commission limits its questions on article 7 to paragraph 2 of that article and does not refer to the other conditions for admission. Paragraph 2 allows member states to require third-country nationals to comply with integration measures, in accordance with national law. However, the Netherlands would like to take this opportunity to discuss the other conditions mentioned in article 7, with respect to income, accommodation and medical insurance.

The Netherlands supports advancing the process of harmonisation by making the accommodation and income requirements compulsory. Until now we did not have any accommodation requirement ourselves, but we plan to introduce it.

In addition to the proposal in our response to question 2 to raise the minimum age to 24, the Netherlands would also like to be able to impose a higher income requirement than the current minimum wage. We would also like to be able to require a deposit. As sponsors living in the Netherlands have to be able to fulﬁl their responsibilities, ﬁnancially and otherwise, they must be lastingly capable of bearing the full costs of a new partner’s stay, so that the possibility can be practically ruled out of any beneﬁt claims or additional recourse to public funds. New family members’ integration into and opportunities in Dutch society can be better guaranteed if the person whose family they will be joining is capable of meeting his or her financial responsibilities. Raising the income requirement would ensure that there will be fewer individual cases of recourse to public funds. We therefore propose an income requirement of 120% of the minimum wage. If despite this requirement recourse is made to public funds, a guarantee in the form of a deposit could be used to cover these and other government costs.

For the same reasons, the Netherlands would like to be able to impose educational requirements on sponsors. Imposing educational requirements (in addition to the existing options of accommodation and income requirements) on sponsors, with a view to improving their position in the labour market, would contribute to the better integration into society of both sponsors and immigrant family members, because it would enable sponsors to provide more support to their family members’ civic integration and access to the labour market. It would also lower the risk of the family’s being dependent at some point on public funds.

The Netherlands endorses the right to family life, and views the protections enshrined in the ECHR as the minimum. But our understanding is that they do not imply an automatic right to enjoy family life within an EU member state. We therefore propose that member states be given the option of instituting a test to determine whether the family’s ties with its intended host country are closer than its ties with its country of origin. Such a test would be important in encouraging sponsors to establish or strengthen their position in Dutch society, which would promote the integration of migrants in general. Denmark has been successfully employing such a test for several years now.

These proposals are not significant only in themselves; they would be even more effective as a cohesive set of measures in promoting the integration and economic self-sufficiency of family migrants (immigrant family members and their sponsors). A higher age requirement would give partners the opportunity to prepare themselves better for their working lives by completing a course of study or professional training. A test of ties with the intended host
country would encourage integration there. The admission of no more than one partner every ten years would strengthen family migrants' position and help prevent forced and sham marriages. A higher income requirement would enable to sponsors to fulfil their financial and other responsibilities. In combination, these measures would encourage sponsors to integrate into society and improve their social position, thus making them better able to promote their partner's integration. All of this would benefit both the societal integration and the financial independence of both partners, as well as the general interest.

The Netherlands would prefer not to specify the exact accommodation, income and educational requirements in the Directive, but rather to give member states the scope to impose requirements that meet their specific needs.

II Public policy / public security

In the framework of European asylum policy (the Common European Asylum System, CEAS), an effort is being made to create a coherent system and avoid contradictions between different Directives and Regulations. The same approach would make sense for regular migration policy. Public policy provisions are one area where such an approach is clearly desirable. At present different interpretations are possible of terms and concepts used in the various Directives, such as the Directive on family reunification and the Directive on free movement of persons. Unambiguous terminology and a common understanding are therefore needed, so that it is clear for example when exactly a situation has arisen involving return, termination of residence or an exclusion order.

In the Netherlands' judgment, the current understanding of what falls under 'public policy' should be broadened. Offences that infringe on the physical integrity of the victim or that shock society should be grounds for denial or revocation of a residence permit. An accumulation of minor offences can also lead to a serious breach of public policy, with the same consequences. The Netherlands also believes that the simple fact of illegal residence should fall under the heading of grounds of public policy in the framework of the Directives on regular migration.

With respect to the Directive on family reunification, the Netherlands would specifically stress that we do not consider it sufficient to impose requirements related to public policy only on the immigrant family member. A sponsor's criminal record should also play a role in assessing an application for family reunification. It should also be made possible to require all aliens who apply for admission to submit a certificate of good conduct from their country of origin. The Netherlands is already taking initiatives along these lines.

As for upholding public policy in connection with assessing sponsors, the Netherlands would suggest ruling out family reunification, either temporarily or permanently, with persons who have previously been convicted of contracting sham marriages, human trafficking, engaging in organised crime (on a national or international scale) or committing specific criminal offences in a relationship with a former partner (such as domestic violence). This would mean that grounds of public policy would be relevant not solely to the immigrant family member but also to the sponsor. It would stop sponsors who have used violence against a previous partner from acquiring a new unwitting victim.
III Relationship between the Directives on family reunification and on free movement of persons

The Netherlands favours approaching European regular admissions policy from the standpoint of the material scope rather than the personal scope. This would mean that the first admission of partners or spouses to EU territory would fall under the Directive on family reunification. Only after a partner or spouse has been admitted to a member state or acquired a member state’s nationality should the regime of the Directive on free movement of persons be applicable. After all, the Directive on the free movement of persons is intended to facilitate free movement by EU nationals, not to create a right of residence for an EU national’s family member by bypassing national admission procedures for family reunification.

This approach could help put an end to the existence of the ‘Europe route’: a situation in which third-country nationals can be admitted on the grounds of the right of citizens of the Union and their family members to move and reside freely within the territory of the member states (2004/38/EC) without their ever having been admitted to an EU member state. Besides amending EU legislation to end this situation, minimising differences in admission requirements for family migrants is of great importance.

The Netherlands would like to bring the system governing migration to the EU into line with the system governing migration within the EU, so as to put an end to the current situation of reverse discrimination against EU member states’ own nationals, which is felt to be unfair. ‘Reverse discrimination’ means that the national admission requirements for family reunification are applicable to spouses and partners of EU member states’ own nationals, while the Directive on free movement of persons is applicable to spouses and partners of EU nationals from the other member states. The Netherlands is eager to limit this form of reverse discrimination, by having EU legislators (the European Council and Parliament) reflect developments on this point in the EU Court of Justice’s case law.

For this reason the provision of the Directive on family reunification (article 3, paragraph 3) that makes it inapplicable to members of the family of a Union citizen should be repealed. This would give member states the option of applying the Directive on family reunification to third-country nationals who are family members of EU nationals when they apply for the first time for admission to EU territory. Directive 2004/38/EC should be applied only to those family members who are legal EU residents at the moment that they accompany or join an EU national (article 3).