

# **Misuse of the Right to Family Reunification: Marriages of convenience and false declarations of parenthood**

Focussed Study of the Belgian National Contact Point for the  
European Migration Network (EMN)



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The European Migration Network was set up with the purpose of providing up-to-date, objective, reliable and comparable information in the areas of asylum and migration for the European institutions, national authorities and other stakeholders.

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EMN FOCUSED STUDY 2012

**Misuse of the Right to Family Reunification:  
marriages of convenience and false declarations of parenthood**

**National Contribution from BELGIUM**

*Disclaimer: The following responses have been provided primarily for the purpose of completing a Synthesis Report for the above-titled EMN Focussed Study. The contributing EMN NCPs have provided information that is, to the best of their knowledge, up-to-date, objective and reliable within the context and confines of this study. The information may thus not provide a complete description and may not represent the entirety of the official policy of an EMN NCPs' Member State.*

Section 1

Top-line 'Factsheet' / Executive Summary

*Overview of the National Contribution – drawing out key facts and figures from across all sections of the Study, with a particular emphasis on elements that will be of interest to policymakers.*

*Marriages of Convenience:*

Marriages of convenience appear as a pseudo-legal immigration channel, including the possibility of financial profit. They concern both marriages in Belgium and abroad, and involve among most represented nationalities Moroccans and Turks. However, marriages of convenience are overtaken by **legal cohabitation of convenience**, which were not paid as much attention to in recent years as marriages of convenience and aren't prevented, investigated or punished in the same way as marriages of convenience.

At the legislative level, the Belgian Civil Code provides in Article 146bis for situations of marriages of convenience but **doesn't contain a similar provision relating to legal cohabitations of convenience**. Since the entry into force of the new law on family reunification on 22 September 2011 and based on preliminary observations, the granting of family reunification rights **declined quantitatively**. However such decrease is mainly due to the new requirements, particularly concerning the obligation to have **regular and stable income** (120% of the minimum wage). The latter requirement virtually harmonizes the situation of Belgian nationals with that of foreigners residing in Belgium, submitting them to stricter requirements than EU citizens in terms of family reunification.

In terms of prevention, **visa refusals due to suspicion of marriages of convenience are increasing**, with a higher proportion of denied visas in the cases of family reunification with European or Belgian citizens than with non-EU nationals. As for **marriage refusals**, around 500 cases are annually reported, with however **significant disparities** between regions. Such refusals take place following procedures to assess the validity of marriages. In this regard, it would be appropriate to broaden the competency of civil registrars who would then be able to refuse and defer legal cohabitations in case of suspicion of cohabitations of convenience (as for marriages of convenience), as well as carry out investigations and possibly request the opinion of the Prosecutors' Office.

The detection and burden of proof are particularly **complex and demanding in terms of resources**. In this respect, **awareness, training and professionalization** of key stakeholders both in municipalities, immigration authorities, foreign affairs, police and prosecutors are crucial in the fight against these phenomena. Also **data computerization and centralization** must be optimized to analyze, anticipate and act against such misuses. **Practical cooperation** projects are also to be promoted to identify mechanisms and means of optimally addressing such aspects.

Belgium has several means of action against misuses of the right to family reunification and marriages of convenience. According to the recent law on family reunification, the period during which the conditions can

be verified, and the **residence permit possibly removed**, is extended from two to three years. However such a decision must now take into account **the integration and intensity of ties with the country of origin**. As for marriages of convenience, they are subject to annulment but after a **long and costly procedure**. A recent judgment of the Prosecutor's Office in Antwerp **withdrew the Belgian nationality** from a man who had engaged in a marriage of convenience, setting a precedent. Under criminal law, individuals are subject to fines (from a few tens to 250 Euros, up to 6000 Euros in case of financial profit) and imprisonment (from several days to one year). In this area, the **adequacy and proportionality** of sanctions can be assessed.

Beginning of January 2012, concrete measures to fight against marriages and legal cohabitations of convenience were announced by the Secretary of State for Asylum and Migration, and for Social Integration and draft bills are therefore in the process of being elaborated. To avoid that misuses slip through new policies and practices, it is important that the measures taken (1) are **equally implemented on legal cohabitation of convenience** (definition, exchange and centralization of information, penalties, etc.) and on marriages of convenience, (2) are **uniformly implemented** (to avoid displacement of the problem and "shopping"), (3) interrelate and interact into an **integrated approach and action plan**, allowing all partners to take up their role and responsibility towards a common goal (4) are subject to a **systematic exchange of information**, (4) are **annually reviewed and assessed** to react and adjust the policies and practices.

#### *False Declarations of Parenthood:*

False declarations of parenthood have been increasing in recent years, allowing third-country nationals (alien children and – possibly non-biological - parents) to **fraudulently obtaining a residence permit** and, in many cases, the Belgian nationality. Besides **isolated cases, networks** have developed such as in the Cameroonian or other African community in Liege or in the Nigerian community abusing of prenatal recognitions. Key actors in Municipalities, Migration Board, Police and Prosecutors' Office, increasingly facing the phenomenon, raise the alarm bell and **urge policy and law makers to act to prevent and fight such misuses**.

At the legislative level, there is **no provision** specifically dealing with false declarations of parenthood. Yet **family reunification of the father and mother of a Belgian minor of age** has been facilitated since the entry into force of the new law on family reunification on 22 September 2011.

In terms of **prevention, gaps** are identified and means similar to those provided in the case of marriages of convenience are required. The civil registrar should have a preventive role on the occasion of the registration of the declaration, **controlling** the actuality of parentage, **systematically exchanging information** with the Migration Board when one of the parents has a precarious/illegal residence status and, in case of suspicion, **deferring** the said registration to request advice from the Prosecutors' Office.

Detection and investigation are particularly **difficult and demanding** in terms of resources. Depending on the knowledge and experience of a person or service, possible cross-checking of files and statements, some false declarations of parenthood are detected. However, in most cases, **only false declarations involving blatant fraud are detected** while many others aren't investigated. **Roles and responsibilities of stakeholders must be clarified, declaration of parenthood related data specifically recorded and an action plan drawn up** to progress in this area.

Means of action against misuses of the right to family reunification and false declarations of parenthood exist, but mainly **a posteriori** once residence permits are granted. The case law in development includes court rulings annulling declarations of parenthood which were proven false and inconsistent with public order, but in total **few cases end up in court** and the **consequences of such annulment** should be further assessed. Also **specific penal provisions** could be considered to prosecute the person who makes a false declaration of parenthood as well as the other parent who gains an advantage in terms of residence.

To avoid letting such misuses grow, it is important to (1) further **estimate and analyze** the phenomenon (characteristics of persons involved, modus operandi, etc.) (2) determine **basis indicators and criteria** to launch investigations and elaborate **standard investigation tools**, (3) establish a **mandatory and systematic information exchange** between civil registrars suspecting false declarations of parenthood and the Migration Board, (4) **clarify the role and responsibilities** of stakeholders, (5) take **legal, administrative**

and penal measures to specifically fight false declarations of parenthood, (6) collect and assess best practices at national and international levels.

## Section 2

### National legislative framework and definitions

*2.1 How are concepts of 'marriage' and the 'family' defined and understood in your Member States in the laws and regulations relating to family reunification?? E.g. do concepts of marriage cover civil partnerships, same-sex marriage, cohabitation, etc.) – please refer to any specific pieces of legislation and relevant Articles.*

#### *Marriages of Convenience:*

In Belgium, persons who are married and persons who contracted a registered partnership equivalent or not to marriage may benefit from family reunification.

**Concerning marriage**, Belgium allows opposite-sex marriage as well as same-sex marriages according to [Article 143 of the Civil Code](#). Although Belgium doesn't allow polygamous marriage, [Article 10 § 1er of the Law on access to the territory, residence, establishment and removal of aliens from 15 December 1980](#) (later referred to as "Aliens Law") provides that the right to family reunification can be granted to a second wife when the first wife doesn't reside in Belgium. The Belgian law specifically refers to marriages of convenience. Pursuant to [Article 146bis of the Civil Code](#): "There is no marriage where, although the formal consents have been given to it, **it emerges from a combination of circumstances that the intention of one or both spouses is clearly not the creation of a sustainable community of life, but only seeks to obtain an advantage in terms of residence, linked to the spouse status**".

**Concerning registered partnerships**, Belgium provides under [Articles 1475 and following of the Civil Code](#) for **legal cohabitation** that is open to same-sex persons as well as persons belonging to the same family (no impediment due to family or alliance bond). Legal cohabitation is not a registered partnership equivalent to marriage. For the purpose of implementing the Belgian legislation on family reunification, registered partnerships contracted according to the laws of Denmark, Germany, Finland, Iceland, Norway, United Kingdom and Sweden are considered as equivalent to marriage (based on the [Royal Decree of 17 May 2007](#)). Concerning partners who contracted a registered partnership that is not equivalent to marriage, family reunification is possible only if partners maintain "**a duly established durable and stable relationship**". [According to Article 10 § 1er of the Aliens Law as modified by the Law of 8 July 2011](#), a durable and stable relationship can be established in one of the three following ways: 1) Common child, (2) Legal and uninterrupted cohabitation in Belgium or elsewhere for at least one year before applying, (3) Knowledge of each other for at least two years before applying, regular contacts by phone, post mail or email, at least encounters during the two years preceding the application including 45 days or more. Although "legal cohabitation of convenience" is a growing concern as stated in the recent policy paper on asylum and migration from 11 January 2012, there is no provision defining it as such in the Belgian legislation.

#### *False Declarations of Parenthood:*

Pursuant to [Article 10 §1er 4°, 5°, 6° & 7° and Article 10bis of the Aliens Law as modified by the Law of 8 July 2011](#), **family members of a third-country national** for the purpose of family reunification include inter alia (4°) their children and the children of the spouse or partner as long as they are single and aged under 18. The disabled child who is aged over 18 but unable to support him/herself can also be taken into account (6°). When the third-country national is an unaccompanied minor granted refugee status or subsidiary protection, the father and mother are also taken into account.

Pursuant to [Article 40bis §2 3° & 4° of the Aliens Law as modified by the Law of 8 July 2011](#), **family**

**members of a European Union citizen** for the purpose of family reunification include inter alia: (3°) descendants and descendants of the spouse or partner as long as descendants are aged under 21 or over 21 but dependent and as long as the EU citizen, the spouse or partner has the care and custody (or authorization from the other care holder) and (4°) ascendants or ascendants of the spouse or partner who are dependent.

Pursuant to [Article 40ter of the Aliens Law as modified by the Law of 8 July 2011](#), **family members of a Belgian citizen** for the purpose of family reunification include inter alia: descendants and descendants of the spouse or partner as long as descendants are aged under 21 or over 21 but dependent and as long as the EU citizen, the spouse or partner has the care and custody (or authorization from the other care holder) and, when the Belgian citizen is minor of age, the father and mother.

**Determination of parentage** is dealt with in [Article 312 and following of the Civil Code](#). In Belgium, maternity is established in the birth certificate ("Mater semper certa est"). Paternity is established either by presumption (Article 325 and following) or by recognition (Article 319 and following) or by court ruling (Article 322 and following). It is to be noted that recognition is a unilateral legal act by which a person establishes an affiliation relationship with respect to a child. In this regard, the "will of the author of recognition is central enough to permit the establishment of a parentage which is not conform to the biological truth" [Yves-Henri Leleu, *Persons and Family Law*, Larcier]

*Please refer to Section II (General Context) above*

*2.2 What national legislation regulates family reunification between:*

- (i) a third-country national residing lawfully in the EU / Norway reunifying with a third-country national applying to enter / reside there in order to preserve the family unit.*
- (ii) A mobile EU national reunifying with a third-country national*
- (iii) A non-mobile EU citizen reunifying with a third-country national on the basis of jurisprudence (and reference to the EU Treaty)*
- (iv) A non-mobile EU citizen reunifying with a third-country national.*

*Please provide the name of the legislation and the conditions under which family reunification can take place.*

*Please note that family reunification between two third-country nationals in the EU is regulated under Directive 2003/86/EC, however this Directive leaves room for national discretion in certain areas; therefore a detailed description of national legislation in this area is necessary.*

*Note also that separate or the same legislation may regulate reunification between two spouses as between a parent and child. Please clarify which is the case in your country below.*

*For family reunification between two spouses please also distinguish, where relevant, between marriage, civil partnerships, same-sex marriage, cohabitation, etc.*

*Marriages of Convenience:*

**(i) Articles 10 & 10bis of the Aliens Law as modified by the Law of 8 July 2011** regulate family reunification with a **third country national with unlimited (Article 10) or limited (Article 10bis) residence permit** in Belgium. **According to article 10**, to be joined by a spouse or partner, the third-country national must reside in Belgium for at least 12 months (not applicable if the marriage or partnership is prior to arrival in Belgium or if they have a child together). Spouses or partners must be above 21 (18 if the marriage or registered partnership equivalent to marriage is prior to arrival in Belgium as well as if registered partners not equivalent to marriage have cohabited for at least 1 year prior to arrival in Belgium). Partners in a partnership that is not equivalent to marriage must furthermore be single, not have a durable and stable



partnership relationship with someone else, not face an impediment to marriage (Articles 161-163 of the Civil Code), not have been subject to refusal of marriage (Article 167 of the Civil Code) in order to avoid “marital institution shopping” for family reunification. Moreover the joined third country national must prove that he/she has adequate housing to accommodate the family members applying to join. He/she must also have stable regular and sufficient livelihoods enabling him/her to support them and avoiding relying on public assistance services. The livelihoods must reach 120% of the income for social integration. However, if they don’t reach this threshold, the Migration Board would carry out further investigation into the matter. He/she must be in possession of a health insurance covering risks in Belgium. **According to article 10bis**, family reunification with a third country national with a limited residence permit is subject to the same conditions as those listed above with the exception of the period of 12 months. Moreover, in the case of family reunification with a third country national benefiting from a long-term EU residence status in another Member State, the condition of adequate housing is not required (*Article 10bis*, § 3).

**(ii) + (iii) Article 40bis of the Aliens Law as modified by the Law of 8 July 2011** regulates family reunification between a EU citizen and a member of his/her family (being him/herself a Union citizen or a third country national). To qualify for family reunification, the spouse or partner of a EU citizen must prove his/her identity and alliance or partnership. Moreover, in the case of a partnership not equivalent to marriage, both must be at least 21 years of age; single and have no durable and stable partnership relationship with another person, not be in case of impediment to marriage (Sections 161-163 of the Civil Code); not have been subject to refusal of marriage (Article 167 of the Civil Code) in order avoid "marital institution shopping" for family reunification. If family reunification takes place with a EU citizen who has obtained residence in Belgium as “owner of sufficient resources”, the EU citizen must prove that he/she has sufficient resources to support the person to join as well as a health insurance covering risks in Belgium.

**(iv) Article 40ter of the Aliens Law as modified by the Law of 8 July 2011** regulates family reunification between a Belgian citizen and a member of his/her family (being him/herself a Union citizen or a third country national). To qualify for family reunification, the spouse or partner of a Belgian citizen, the spouse or partner of the Belgian citizen must prove his/her identity and alliance or partnership and be at least 21 years of age. Moreover, in the case of a partnership not equivalent to marriage, both must be single and have no durable and stable partnership relationship with another person, not be in case of impediment to marriage (Sections 161-163 of the Civil Code); not have been subject to refusal of marriage (Article 167 of the Civil Code) in order avoid "marital institution shopping" for family reunification. To be joined by a spouse or partner, a Belgian citizen must also dispose of stable and adequate livelihoods which must reach 120% of the income for social integration. However, if the livelihoods do not reach this threshold, there is no de facto denial of family reunification. The Belgian citizen must also prove that he/she has adequate housing to accommodate the family members applying to join and be in possession of health insurance covering risks in Belgium.

Please note that the new law of 8 July 2011 establishes a **nexus between marriages and legal cohabitations of convenience**, setting that **partners whose marriage was refused or deferred can’t provide legal cohabitation as a basis for family reunification** to take place according to Articles 10 & 40.

#### *False Declarations of Parenthood:*

**(i) Articles 10 & 10bis of the Aliens Law as modified by the Law of 8 July 2011** regulate family reunification with a **third country national with unlimited (Article 10) or limited (Article 10bis) residence permit** in Belgium. **According to Article 10**, to be joined by his/her children or children of his/her spouse or partner, the third-country national must be authorized to indefinitely reside or settle in Belgium for at least 12 months (unless the children are common to both). The children must be aged under 18 (except in the case of a disabled children who are unable to support themselves) and be single. The third country national or spouse or partner must have the care and custody of the children and in case of shared custody, have the agreement of the other care holder. The third country national must prove that he/she has adequate housing to accommodate the children and a health insurance covering risks in Belgium. He/she must also have stable, regular and sufficient livelihoods (120% of the income for social integration) to support him/herself and his/her children to avoid that they become a burden on public authorities. Finally the third-country national must prove that he/she doesn’t have any disease that might endanger public health and mustn’t endanger public order or national security. **According to article 10bis**, family reunification with a third country national with a limited residence permit is subject to the same conditions as those listed above



with the exception of the period of 12 months. Moreover, in the case of family reunification with a third country national benefiting from a long-term EU residence status in another Member State, the condition of adequate housing is not required (*Article 10bis*, § 3).

**(ii) + (iii) Article 40bis of the Aliens Law as modified by the Law of 8 July 2011** regulates family reunification between a EU citizen and a member of his/her family (being him/herself a Union citizen or a third country national). For a EU citizen to be joined by his/her ascendants or descendants or those of his/her spouse or partner, ascendants must be dependent and descendants must be aged under 21 or over 21 but dependent. The third country national or spouse or partner must have the care and custody of the children aged under 18 and in case of shared custody, have the agreement of the other care holder. Ascendants and descendants of a EU citizen must prove their identity and parentage/alliance bond. If the EU citizen had obtained a residence permit in Belgium as “owner of resources”, he/she must prove that he/she has sufficient resources to avoid that they become a burden on public authorities and a health insurance covering risks in Belgium.

**(iv) Article 40ter of the Aliens Law as modified by the Law of 8 July 2011** regulates family reunification between a Belgian citizen and a member of his/her family (being him/herself a Union citizen or a third country national). Family reunification between a Belgian citizen and his descendants or those of his spouse or partner takes place under the same conditions as for family reunification with a Union citizen. However, to be joined by descendants, a Belgian citizen must also prove that he/she has stable, sufficient and regular livelihoods (120% of income for social integration), adequate housing to accommodate the family members asking to join and a health insurance covering risks in Belgium. The conditions of income and housing are not required when the Belgian citizen is a minor of age and is joined by his parents. The latter shall nevertheless establish their identity through an identity document.

*2.3 Is the prevention of misuse of residents’ permits for family reunification as defined in the context of this study specifically covered in national legislation? If so, what are the provisions? Please explain what changes in legislation and/or practice are being considered in your Member State to fight against such misuses. Please refer to the specific piece of legislation and relevant Articles.*

*Marriages of Convenience:*

(i) Pursuant to [Article 11 §1 & §2 of the Aliens Law as modified by the Law of 8 July 2011](#), the Minister may under specific conditions **refuse the right to enter or reside on the territory** to third country nationals who declare to be in a situation covered by Article 10 and **terminate the residence right** of those admitted to reside on this basis but no longer entitled to do so. Pursuant to *Article 13§4*, the Minister may under specific conditions take the same measure regarding family members referred to in Article 10bis.

Pursuant to *Article 13§6* of the above mentioned Law, the Minister or his delegate may carry out checks towards extension or renewal of residence permits, to verify if the third-country national fulfills the requirements of Article 10bis. He may at any time **undertake or request specific controls when there are reasons to suspect fraud or when the marriage, partnership or adoption was contracted to allow the person to enter or reside in Belgium.**

(ii) + (iii) Pursuant to [Articles 42 ter & quater of the Aliens Law as modified by the Law of 8 July 2011](#), the Minister may under specific conditions **terminate the residence right** of family members of a European citizen. Based on *Article 42 septies*, the Minister may also **refuse entry or terminate the residence right** of the European Union or family members when they used false or misleading information, false or fraudulent documents, fraud or illegal means which were key in the granting of such right.

(iv) Pursuant to [Article 40ter of the Aliens Law as modified by the Law of 8 July 2011](#), the Minister may under specific conditions **terminate the residence right** of family members of a Belgian citizen.

The decision to terminate the residence right must be made **within three years following the granting of the residence permit**. Depending on the scenario, the aforementioned **conditions** include: 1. All the conditions for family reunification are no longer fulfilled; 2. Spouses or partners do not maintain an effective

marital/family life anymore; 3. False or misleading information, false or fraudulent documents, fraud or illegal means were used; 4. Marriage or partnership has been contracted solely to enter or reside in Belgium, 5. Remarriage or new partnership with another person has occurred; 6. Residence permit of the person who has opened the right to family reunification is terminated; 7. Unreasonable burden on public authorities.

Further changes in legislation and practice are planned as announced in the policy paper presented by the New State Secretary for Asylum and Migration, and for Social Integration early January 2012. The expected changes include: (1) Setting up a **database** gathering relevant information for all stakeholders involved in the fight against marriages / legal cohabitations of convenience, (2) Dealing with **legal cohabitations of convenience** in the same way as marriages of convenience, (3) Sharing **optimal information** with persons facing marriages / cohabitations of convenience, (4) **Better integrating** criminal, civil and administrative procedures, (5) Creating a national register including **foreign certificates** which have been recognized / refused by the authorities on the basis of the Code of Private International Law, (6) Reinforcing and intensifying **controls during the three-year period** following the granting of a residence permit.

Furthermore the **national interdepartmental working group** that developed [Circular n° COL 10/2009](#) will resume its work in the first half of 2012 with a view to assessing the implementation of the above mentioned circular, possible gaps, current and future needs, and further encouraging coordination in the fight against marriages and legal cohabitations of convenience.

#### *False Declarations of Parenthood:*

(i) Pursuant to [Article 11 §1 & §2 of the Aliens Law as modified by the Law of 8 July 2011](#), the Minister may under specific conditions **refuse the right to enter or reside on the territory** to third country nationals who declare to be in a situation covered by Article 10 and **terminate the residence right** of those admitted to reside on this basis but no longer entitled to do so. Pursuant to [Article 13§4](#), the Minister may under specific conditions take the same measure regarding family members referred to in Article 10bis.

Pursuant to [Article 13§6](#) of the above mentioned Law, the Minister may carry out checks towards extension or renewal of residence permits, to verify if the alien fulfills the requirements of Article 10bis. He may at any time **undertake or request specific controls when there are reasons to suspect fraud or when the marriage, partnership or adoption was contracted to allow the person to enter or reside in Belgium.**

(ii) + (iii) Pursuant to [Articles 42 ter & quater of the Aliens Law as modified by the Law of 8 July 2011](#), the Minister may under specific conditions **terminate the residence right** of family members of a European citizen. Based on [Article 42 septies](#), the Minister may also **refuse entry or terminate the residence right** of the European Union or family members when they used false or misleading information, false or fraudulent documents, fraud or illegal means which were key in the granting of such right.

(iv) Pursuant to [Article 40ter of the Aliens Law as modified by the Law of 8 July 2011](#), the Minister may under specific conditions **terminate the residence right** of family members of a Belgian citizen.

The decision to terminate the residence right must be made **within 3 years following the granting of the residence permit**. Depending on the scenario, the **conditions** include: 1. All the conditions for family reunification are no longer fulfilled; 2. (N/A); 3. False or misleading information, false or fraudulent documents, fraud or illegal means were used; 4. (N/A), 5. (N/A); 6. Residence permit of the person who has opened the right to family reunification is terminated; 7. Unreasonable burden on public authorities.

*2.4 Where relevant and where information is available, give a brief description of the impacts (if any) of European Court of Justice case law which has focused on family reunification (e.g. Zambrano, McCarthy, Dereci) in your Member State?*

*Marriages of Convenience: /*

*False Declarations of Parenthood:*

The European Court of Justice case law, in particular Zambrano, McCarthy and Dereci, had an impact in

Belgium. Following the latter cases, **the Belgian legislator facilitated the obtaining of a residence right for the father and mother of a Belgian minor of age citizen.**

The above mentioned cases highlighted that a third-country national, who is a family member of a Union citizen who never exercised his/her free movement right and reside in the Member State of his/her nationality, can't be denied a residence right if such denial would deprive him/her from the effective enjoyment of most of the rights attached to the EU citizenship. In the Zambrano case in particular, the Court stated that minor of age Union citizens can't exercise such rights, including that of staying in the country of which they are nationals, without the help and support from their parents.

In this way [Article 40 ter of the Aliens Law as modified by the Law of 8 July 2011](#) provides that "Members of the family (...) who are the father and mother of a Belgian minor of age, who establish their identity by means of an identity document and who accompany or join the Belgian citizen" are entitled to the right to family reunification.

### Section 3

#### The situation in BELGIUM

##### Scope of the issue

*3.1 Are a) marriage of convenience and b) false declaration of parenthood recognised as examples of misuse of residents' permits for family reunification in your (Member) State?*

*Please give an overview of the problem, (to the extent that it is recognised as a problem in your (Member) State) and the context (e.g. please refer here to any policy documents, media coverage, NGO campaigns, case law examples, etc. that demonstrate the ongoing problems)*

##### *Marriages of Convenience:*

Marriages and legal cohabitations of convenience are indeed a sensitive issue and a central preoccupation in Belgium. Already in 2007, Belgium implemented an **ARGO project** focusing on "abuse or misuse of EU administrative statuses" (including improper use of marriage). In 2009, the Migration Board, in its **activity report**, referred to "abuse of statuses associated with a marriage" and "fraudulent declarations of durable cohabitation". In 2010, the King Baudouin Foundation launched a research project and **wide consultation** focusing on family reunification with a view to inventorizing legal, administrative and socio-economic challenges attached to this migration channel. Between April 2010 and March 2011, hundreds of field experts and migrants met to share a variety of perspectives and experiences in the topic. Main findings were published in "[Family Reunification in Belgium: field workers have the floor](#)" in June 2011. In 2011, family reunification related issues were frequently raised in the **House of Representatives**. A **new law** was adopted on 8 July 2011, taking effect on 22 September 2011 and imposing new conditions for family reunification with a third country national, with a European Union citizen or a Belgian. The new provisions were widely reported **in the newspapers and on television**, speaking of a "huge turn" and "family reunification conditions under strain" and in **associations for migrants** which daily deal with such issues. Beginning of November 2011, the [nationality was withdrawn](#) from a man who had engaged in a marriage of convenience, creating a **precedent**. On 11 January 2012, the new **Secretary of State for Asylum and Migration and for Social Integration**, when presenting her recent policy paper on asylum and migration, underlined that the above mentioned provisions would be implemented with a view to reinforce controls on family reunification and further intensify the fight against marriages and legal cohabitations of convenience.

Note however that although marriages and legal cohabitations of convenience have increasingly been paid attention to, an accurate statistical overview of the phenomenon is still lacking in Belgium (see section 4).

*False Declarations of Parenthood:*

The scope of false declarations of parenthood in Belgium is smaller than marriages and legal cohabitations of convenience. Nevertheless the **2011 report of the Office of General Prosecutors** to the parliamentary committee responsible for legislative monitoring refers to “a continuing **increase** in recognitions by non-biological fathers illegally residing in the country”. On 17 October 2011 a **draft resolution** “on the issue of false recognitions of paternity” was presented in the House of Representatives, considering that “there is no doubt that fraudulent recognitions, i.e. recognitions only intended to regularize the situation of one of the partner, are common”. **National case law** includes judgements referring to false declarations of parenthood which are considered as “**fraud intended to evade the law and contrary to the public order**”. **Employees of the Migration Board, Municipalities, the Prosecutor’s Office and Police Services face such misuse in their practice** without being able to perceive the overall magnitude of the phenomenon.

*3.2 Optionally, please describe any other forms of misuses detected in your (Member) State (e.g. adoptions of convenience)*

The international adoption unit in the Directorate General for Legislation, Fundamental Rights and Freedoms (Federal Public Service Justice) was confronted with what is referred to as “adoptions of convenience”. In such cases, it was found that the main reason to pursue the adoption was to allow the adoptee (a more or less distant family member or a person outside the family) to enter the Belgian (or European) territory, and not to create a new parent-child relationship in the interest of the latter. The following elements generally emerge in the handling of such applications: (1) the parent/s of the adoptee is/are known and is/are with the child, (2) the parent/s has/have always taken care of his/her child, (3) the adoptee and the adopter never really experience a common life situation and the adoptee often barely or not truly knows the adopter and (4) adoptees are grown up children who are old enough to enter higher education. In such cases, based on [Article 365-2 of the Civil Code](#), **recognition of the adoption is refused as “the adoption aimed at evading legal provisions** relating to nationality or access to the territory, residence, establishment and removal of aliens”.

In the context of applications for recognition of adoption of children having reached majority, misuse is dealt with in an almost identical way. However, in such cases, the adoption doesn’t directly confer the Belgian nationality to the adoptee who doesn’t automatically access the Belgian territory.

Since the entry into force of the [Law of 24 April 2003](#) reforming adoption, this types of misuse (and adoptions in general) have sharply decreased, at least as regards adoptions of minors. The new law sets new requirements, including a certificate related to the “**preparation for adoption**” and a judgment made in court regarding the “**ability to adopt**”.

**National means of preventing misuse**

*3.3 How are misuses of residence permits by a) marriages of convenience and b) false declarations of parenthood prevented?*

*As well as the legislative framework identified above, please describe national policy and practice in this area, highlighting any good practice measures.*

*Marriages of Convenience:*

National means of preventing misuse are the same for the four scenarios and include the following:

Pursuant to [Article 167 of the Civil Code](#), **the civil registrar is entitled to delay (for maximum two months) or refuse the celebration of marriage** when it appears that the conditions prescribed for marriage are not fulfilled or when he/she believes that the celebration is contrary to the public order. For further information on suspicion elements and investigation, see 3.4

Pursuant to a [Circular from 13 September 2005](#), information exchanges take place between civil registrars and immigration authorities (1) before the marriage, namely **on the day of the declaration of marriage**



(involving an alien residing on the territory without any document certifying the legality of his stay) as well as (2) **immediately upon refusal of celebration of marriage**. The Migration Board provides the civil registrar with any useful information (marriage abroad, refused marriage, legal cohabitation with someone else, etc.) within 30 days.

Pursuant to [Articles 18-21 and 27 of the Law implementing the Code of International Private Law](#), it is possible to verify the **validity of a marriage contracted abroad**. Belgian authorities may not recognize a marriage certificate drawn up abroad if it was established with a view to evading the Belgian law and/or if its effects are contrary to the public order. Furthermore, the Migration Board may **refuse to grant a visa** to a foreign citizen who is suspected of marriage of convenience when applying for family reunification at the embassy (questionnaire, interview).

#### *False Declarations of Parenthood:*

Authorities responsible for registering recognitions of parenthood, including civil registrars, notaries and Belgian embassies and consulates have no specific means of prevention once the conditions for establishing recognition (consent of mother, child or legal representative) and formal conditions for recognition (civil status, nationality, identity and birth related documents) are respected.

However, based on [Article 31 of the Law of 16 July 2004](#) implementing the Code of International Private Law, the above mentioned authorities are requested to mention, transcribe or use as a basis for registration, foreign acts or decisions **only after verifying that specific conditions are met** (inter alia related to documents' authenticity, enforceability of decisions taken abroad, compatibility with public order, etc). If serious doubts emerge when assessing such conditions, the above mentioned authorities can transfer foreign acts or decisions to the Public Prosecutor who will carry out additional checks before rendering advice.

Based on [Article 29](#) of the Code of Criminal Procedure, the above mentioned authorities who, as part of their duties, acquire knowledge of a crime or offense are required to immediately notify the Prosecutors' Office and transmit all information, records and acts relating thereto.

#### **National means of detecting misuse**

*Please describe both strategic and practical approaches that are applied, and information sources. Please include the extent to which detection results from those involved admitting the misuse (for example, women wishing to exit a marriage of convenience). Is a special status or amnesty granted in such cases?)*

*3.4 What factors trigger an investigation of individual cases? How are a) marriages of convenience and b) false declarations of parenthood detected and investigated? Are there any factors that have prevented investigations into suspected misuses from progressing?*

#### *Marriages of Convenience:*

Pursuant to [Circular relating to the Law from 4 May 1999](#) modifying some provisions related to marriage, the following **combination of factors** may, inter alia, provide a strong **indication that the marriage is of convenience**: the parties don't understand each other; they never met, one of them long-term cohabit with someone else; they don't know each other's name and nationality; they don't know where the other work; they have diverging declarations regarding how they met; one of them engages in prostitution; a sum of money is promised to contract marriage; an intermediary intervenes; there is a significant age difference.

The above mentioned elements may be detected by the civil registrar (at the occasion of the first visit of the future spouses to set up the marriage file, prior or upon celebration of marriage), by the migration authorities (upon reception of a **denunciation**, when examining the file of one of the future spouses who is **illegally residing in Belgium**, etc.), by the diplomatic post/consulate (during an **interview**), by the police (upon **complaint** of an abused spouse or during an **investigation**), by the Prosecutor's Office (during an investigation).

Circular n° COL 10/2009 from the College of General Attorneys clarifies investigation related tasks. In the case of planned marriages, the investigation concentrates on the circumstances in which the partners met, the duration of the relationship, the possible payment of a sum of money and presence of an intermediary facilitating the marriage. In the case of contracted marriages, the investigation aims at verifying that an effective “common life situation” has been created. The **local police** is in charge of gathering initial information at the address and in the neighborhood. During **home visits**, subject to the consent of the parties, partners are being asked questions (about their lifestyle, earnings, household expenditure etc.) and **checks** take place in the kitchen, bedroom, bathroom etc. to verify that they effectively cohabit. Additional checks can be achieved with public services (water and electricity companies, television cable, insurances, vehicle registration etc.). Upon suspicion of marriage of convenience and in consultation with the Public Prosecutors’ Office, **partners may be thoroughly and separately interviewed** to compare their statements. Additional **witnesses** may also be thoroughly interviewed, including the owner, concierge, neighbors, shopkeepers, factor and others (parents, friends, former spouses, adult children from previous marriages, wedding witnesses, etc.). When the involvement of a criminal network emerges, the federal police is entitled to achieve possible complementary investigation (**rogatory commission, international contacts, etc.**).

Numerous factors may prevent investigations into suspected misuses from progressing: (1) **Staff related issues**: lack of resources, turn-over, overload, lack of proximity (of police officers undertaking investigations); (2) **Subject & Evidence related issues**: difficulty to investigate into a “common life situation”; (3) **Cross-cultural issues**: gender-role, language barriers, code of marriage, etc.; (4) **Coordination related issues**: gap/failure in information exchange between key actors (civil registrars, migration board, police, prosecutor’s office); (5) **Time related issues**: delay between marriage and investigation. Other factors prevent further actions to be taken, for example upon withdrawal of the residence permit.

#### *False Declarations of Parenthood:*

False declarations of parenthood are **particularly difficult to detect**, especially as recognition may take place with regard to a conceived child (when no analysis of true parentage can be performed before birth) and, anyway, is not exclusively limited to biological parents.

Certain elements taken in their context prompt the authorities to question and further investigate the recognition. First of all **factors linked to the relationship between the declaring person and the child** (the declaring person has no contact with the child, he/she doesn’t personally or/and financially contribute to and has no interest in the care and custody of the child, etc.) as well as **between the declaring person and the mother/father of the child** (there is a significant age difference, etc.). **The precarious or illegal residence status** of the mother/father may also indicate that the recognition is being used with a view to obtain or extend a residence permit. Other factors, such as the **number of children recognized**, also trigger an investigation..

Suspicion and detection of false declarations of paternity may emerge (1) on the occasion of the **registration** of the declaration(s) (whether a particularly doubtful declaration or repeated declarations in a specific area – near a reception centre for example), (2) when examining a **visa application for family reunification** (filed for example by a third country national whose parentage with the said mother in Belgium isn’t established), (3) when considering an **application for regularization** (where the recognition is presented in last resort as the ground for recognition), (4) when considering a **residence application** based on article 40 of the Aliens Law as modified by the Law of 8 July 2011 Law (as an increasing number of “authors of a Belgian child” apply for residence on family reunification ground), (5) upon receipt of **denunciations** and anonymous letters, (6) when **the person who recognized the child himself requests the recognition to be annulled** (stating for example that he/she was convinced to do so under threat or manipulation).

Investigations into false declarations of parenthood require **efforts and cooperation from various actors**. For example, upon receipt of a denunciation targeting a particular community, the mayor of a municipality may have to contact the local police, who, upon request from the Public Prosecutor, would then be entitled to undertake further actions: coordinate with the **IT and registration of births services** to identify suspicious recognitions, **interview** concerned persons (questioning them for example about the name and activities of



the father, his current address, their readiness to undertake a DNA test, etc.), forward minutes of the interview to the migration board, respond to the request of the Public Prosecutor etc.

However it is to be noted that investigations require a lot of **time and energy**, often hampered by the **lack of clarity regarding the role of key stakeholders and possible results** of such investigation. The progress of the investigation also very much depends on **persons involved** (civil registrars, police officers, civil servants, judges), their interest in and familiarity with the phenomenon. Also the **mobility** of the parents and the child from one municipality to the other can make the investigation more difficult and not followed up. The **complexity of the phenomenon and the evidence sought** should of course be added to the list: the nature of a **parent-child relationship**, concepts related to “possession of status”, “best interest of the child” etc., may prove particularly sensitive and difficult to investigate.

*3.5 What evidence is needed to prove that the marriage/declaration is false (e.g. DNA-testing, etc.)? Who has the ‘burden of proof’ (the third-country national concerned to prove that the relationship is real or the authorities to prove that it is false)?*

#### *Marriages of Convenience:*

Based on [Article 146bis of the Civil Code](#), the marriage/declaration is proven false based on a **combination of circumstances** showing that the intention of one or both spouses is clearly not the creation of a sustainable community of life, but only the obtaining of an advantage in terms of residence, linked to the spouse status. **Pieces of evidence** proving that the marriage is false emerge during investigations conducted by the police or the Prosecutor’s Office (see 3.4). The **burden of proof lies with the authorities**: The Prosecutor’s Office will need to prove that the marriage is of convenience based on Article 146bis of the Civil Code to annul the marriage.

The Migration Board may under specific conditions withdraw the residence permit if it can prove that **spouses or partners don’t longer share an “effective marital/family life”** or that **the marriage or partnership was “contracted solely to enter or reside in Belgium”**. To motivate such decisions, the Migration Board will use **multiple arguments and elements**, including inter alia the absence of a “common life situation” as reported by a police investigation, the opinion of the Public Prosecutor or a possible court ruling annulling the marriage.

#### *False Declarations of Parenthood:*

[Article 331 septies of the Civil Code](#) states that courts rule on parentage related disputes to establish, by any legal remedy, the most likely parentage. If other **pieces of evidence** aren’t sufficient, the “**possession of status**” will be taken into account. Article 331 octies further states that courts may request **blood tests** or any other examination according to scientifically proven methods.

In the case law in development regarding contestation of declarations of parenthood, the public prosecutor **proved that the public order was violated due to evasion of law**. To prove the evasion of law and misuse of the institution of recognition, significant elements were put forward, indicating that the real intention motivating the declaration was the obtaining of an advantage in terms of residence. Note that in a few cases, the claimant himself contested the recognition and therefore had the burden of proving for example a « **lack of consent** » regarding the disputed recognition.

In entry and residence related decisions, the immigration authorities may **prove that false or fraudulent information or documents, fraud or other determining illegal means were used** to enter or reside in Belgium. Pieces of evidence include inter alia possible contradictory and/or late statements, court decisions regarding the validity of foreign rulings or certificates, requests for voluntary intervention, etc.

Immigration authorities may refuse a visa application for family reunification arguing that parentage has not been established due to a lack of documents or other pieces of evidence, but **subject to a DNA test demonstrating the said parentage**. That is then up to the applicant to consent to undertake a DNA test to prove parentage. Note however that DNA tests are relevant only when the parent pretends to be the

biological parent of the child and when the parent consents.

*3.6 Who (e.g. which national authorities) are responsible for detecting such misuses? If multiple authorities are involved, how are they coordinated? Is there an official mandate – e.g. an Action Plan - governing the involvement of these authorities?*

*Marriages of Convenience:*

A [Circular n° COL 10/2009](#) clarifies the role of national stakeholders concerned with **marriages of convenience**, including Civil Registrars, Migration Board, Police, and Prosecutor's Office. The Circular presents legal standards at international, European and Belgian levels; explains the role of each stakeholder in different situations (intended or concluded marriages, in Belgium or abroad) and determines a uniform intervention process to ensure more legal certainty. This key instrument is the result of an interdepartmental working group, which will **meet again shortly in 2012** with a view to assess the implementation of the above mentioned circular and identify possible adaptations and next steps.

Note that another Circular is currently being developed by the Liege district's Public Prosecutor, specifically dealing with **legal cohabitations of convenience**.

*False Declarations of Parenthood:*

Various stakeholders are concerned with false declarations of parenthood, including Civil Registrars, Migration Board, Foreign Affairs, Police, and Prosecutor's Office. There is no action plan governing the involvement and coordination of the above mentioned actors.

Note that a Circular is currently being developed by the Liege district's Public Prosecutor, specifically dealing with **false declarations of parenthood**. The Circular will clarify the role of key stakeholders confronted with false declarations of parenthood and specify means of action at civil, administrative and criminal levels to fight against such misuses.

**National action against those misusing**

*Please describe the likely penalties imposed, and any impacts on: EU citizens / Third-country nationals*

*3,7 Once detected, how does your Member State treat people found to be misusing family reunification through a) marriages of convenience and b) false declarations of parenthood)?*

*Marriages of Convenience:*

In civil matters, pursuant to [Article 184 of the Civil Code](#), a procedure of **annulment of marriage** is foreseen in case of marriages contracted in violation of Article 146bis (marriage of convenience). The annulment of marriage will have direct effects on the **right of residence or settlement** acquired through the marriage.

In penal matters, pursuant to [Article 79 bis of the Law of 15 December 1980](#), the person who contracts a marriage of convenience (based on Article 146bis) will be punished with **imprisonment ranging from 8 days to 3 months and with a fine ranging from 26 to 100 Euros**. The person who receives a sum of money to contract such marriage will be punished with **imprisonment ranging from 15 days to 1 year and with a fine ranging from 50 to 250 Euros**. Other relevant provisions in the above mentioned Law include [Article 77](#) which provides that the person who knowingly assists a third country national to enter or reside in a EU Member State, can be punished with **imprisonment for 8 days to 1 year and with a fine ranging from 1700 to 6000 Euros**, or one of these penalties as well as [Articles 77bis to 77sexies](#) punishing human trafficking.

In the [Law from 8 July 2011](#), the **right to enter or reside in Belgium can be refused or withdrawn** during the three first years following the granting of a residence permit, if the spouses or registered partners don't (longer) experience an effective marital or family life and as a rule, if they used false or fraudulent

information or documents or engaged in fraud or other illegal means or the marriage or partnerships were contracted solely to allow a person to enter or reside in Belgium.

In the [Belgian Nationality Code](#), while *Article 16* stipulates that the Belgian nationality can be acquired through marriage provided that the spouses have been live together in Belgium for at least 3 years and that their common life situation maintains itself in Belgium, *Article 23* foresees the **deprivation of nationality** when it has been acquired on the basis of false declarations and/or false documents which were key in the granting of nationality. In this regard, the explanatory memorandum of the *Law of 27 December 2006* specifically states that “**may be deprived from the Belgian nationality, the alien who obtained the Belgian nationality on family reunification grounds based on a marriage later annulled due to fraud**”.

#### *False Declarations of Parenthood:*

[Article 318 of the Judicial Code](#) provides that the public ministry automatically acts when the public order require such action. In this regard, the public ministry can contest declarations of parenthood as long as it seeks to remedy a situation violating the public order. In this context, the court may conclude that the contested declaration of parenthood is inconsistent with the Belgian public order and rule the **annulment of the disputed declaration**. However if the “possession of state” is proven, meaning that a genuine and durable parentage relationship exists, the declaration can’t be disputed.

In penal matters, prosecution is possible in the following cases. Pursuant to [Articles 193 and following of the Penal Code](#), the author as well as the user of **forgery** is punishable with **imprisonment for 5 years to 10 years**. On this basis, a person presenting a forged document (i.e. inauthentic foreign court ruling in lieu of birth certificate) taken into account to recognize parentage, may be subject to prosecution. In addition to this, pursuant to [Article 77 of the Law of 15 December 1980](#), a person who knowingly assists a third country national to enter or reside in a EU Member State can be punished with **imprisonment for 8 days to 1 year and with a fine ranging from 1700 to 6000 Euros**, or one of these penalties. *Articles 77bis* punishing human trafficking may also apply.

Regarding entry and residence, actions can be taken to **refuse or withdraw the right to enter or reside in Belgium**. Based on the [Law of 8 July 2011](#), the Minister or his delegate can refuse such right during the three first years following the granting of a residence permit if the person who joins or is joined used false or fraudulent information or documents or engaged in fraud or other determining illegal means to enter or reside in Belgium.

Actions may also be taken regarding the **nationality** of the child. According to [Article 8 §4 of the Belgian Nationality Code](#), the person to whom the Belgian nationality from his/her author was attributed, retains this nationality if parentage ceases to be established after reaching 18 years old. If parentage ceases to be established before he/she reaches 18 years old or is emancipated before that age, acts passed before parentage ceases to be established and whose validity is subject to the possession of the Belgian nationality can’t be contested on the sole ground that he/she didn’t have that nationality. On this basis, **the child aged under 18 who shouldn’t have acquired the Belgian nationality may not retain such nationality**. As to the nationality of the parent of foreign origin who shouldn’t have acquired the Belgian nationality (for example after residing for a few years in Belgium on family reunification grounds as “author of Belgian child”), it was not yet removed based on *Article 23* which foresees the deprivation of nationality when it has been acquired on the basis of false declarations and/or false documents which were key in the granting of nationality. Although the explanatory memorandum of the *Law of 27 December 2006* doesn’t specifically foresee such cases, it may be that courts endorse this interpretation in the future.

### *3.8 Do persons accused of abusing/misusing family reunification have a right to appeal?*

#### *Marriages of Convenience:*

In civil matters, the refusal by the civil registrar to celebrate the marriage may, based on [Article 167 of the Civil Code](#), be appealed to the **Court of First Instance** during a period of 1 month following notification of such decision. The decision of the Court of First Instance can itself be appealed to the **Court of Appeal** and at the highest level of appeal to the **Court of Cassation** dealing with points of law only (no new facts). The

annulment of marriage may as well be appealed to the Court of First Instance based on [Article 569 of the Judicial Code](#).

In penal matters, based on [Article 200 of the Code of Criminal Investigation](#), judgments made by criminal courts may be appealed to **district courts of the Court of Appeal**.

With regard to decisions on residence permits, it is possible to lodge an **appeal with the Aliens Litigation Council**. This appeal, based on [Article 39 §2 of the Aliens Law](#), is not a full jurisdiction appeal but an appeal for annulment (possibly leading to the annulment of the decision against which the appeal was lodged).

With regard to nationality related issues, decisions relating to deprivation of nationality which are taken by courts of appeal may be appealed, based on [Article 23 §6 of the Belgian Nationality Code](#), to the **Court of Cassation**.

#### *False Declarations of Parenthood:*

Decisions annulling recognitions of parenthood, which are taken by Courts of First Instance, may be appealed to the **Court of Appeal** and at the highest level of appeal to the **Court of Cassation** dealing with points of law only (no new facts).

In penal matters, based on [Article 200 of the Code of Criminal Investigation](#), judgments made by criminal courts may be appealed to **district courts of the Court of Appeal**.

With regard to decisions on residence permits, it is possible to lodge an **appeal with the Aliens Litigation Council**. This appeal, based on [Article 39 §2 of the Aliens Law](#), is not a full jurisdiction appeal but an appeal for annulment (possibly leading to the annulment of the decision against which the appeal was lodged).

With regard to nationality related issues, decisions relating to deprivation of nationality which are taken by courts of appeal may be appealed, based on [Article 23 §6 of the Belgian Nationality Code](#), to the **Court of Cassation**.

#### *3.9 Are there any examples of trans-national cooperation (e.g. between Member States or between Member States and third countries in combating misuse of family reunification?)*

#### *Marriages of Convenience:*

In the context of the “Belgian route” (route used to circumvent Dutch family reunification rules, by living for a while in Belgium with a spouse, registered partner or partner in a durable and stable relationship), an **ad hoc and informal cooperation** takes place between Belgium and the Netherlands. Belgian authorities, through a liaison officer, exchange information with Dutch authorities.

Belgium participates in other projects aiming at facilitating information exchange in the matter. In this regard, Belgium participated for example in the fifth **international symposium** co-organized by the Franco-German Institute (Germany), the King Baudouin Foundation (Belgium) and the Robert Bosch Foundation (Germany) on 27-28 October 2011 in Berlin, focusing on the emergence of family reunification as a new migration trend towards EU Member States.

In 2007, Belgium also implemented an **ARGO project** involving 11 Member States furthering cooperation in combating abuse or improper use of EU member States’ administrative procedures, including abuse of marriage with a view to obtaining a residence status. Final recommendations included (1) the need to provide Member States with reliable data and analysis on the phenomena (using reliable and comparable data and methodologies and specialized (EMN) networks), (2) the need to promote uniform interpretation and case law regarding Directive 2004/38/EU, (3) the need to establish national authorities specifically responsible for combating such phenomena in an effective, systematic and proportionate way.

*False Declarations of Parenthood:* None.



### **Reasons and motivations**

3.10 Where possible (i.e. based on previous research undertaken, media interviews, etc.) describe the motivations for the sponsor engaging in a marriage of convenience / false declaration of parenthood. These may be economic, humanitarian or emotional considerations.

Where possible describe the motivations for the third-country national engaging in a marriage of convenience / false declaration of parenthood rather than (other) legal routes into the Member State.

#### *Marriages of Convenience:*

The Civil Code and Circular 10/2009 refer to persons engaging into false marriages with the sole purpose of obtaining an **advantage in terms of residence** (for the person authorized to enter/reside in Belgium on this basis) and to persons receiving a **sum of money** (as compensation for engaging in such marriage). A research undertaken by the King Baudouin Foundation further explores possible reasons why a growing number of persons misuse the right to family reunification. According to the research and interviews undertaken by the King Baudouin Foundation, the **long and demanding character of the family reunification process** lead some to opt for “false family” and “arranged marriage” strategies. Also the **changing nature and complexity of the law** is at stake. Many testimonies report **complex requirements** (particularly as regards the livelihood, evidence, etc.) and **maladjustment to reality** (non-existent administrative procedures in the country of origin, inadequate time, etc.) as well as a **lack of transparency**. The above mentioned source refers to a “**spiral of mutual mistrust**” between applicants and authorities. Also **problems encountered to recognize or validate documents produced in the country of origin** (such as marriage certificates) leading to unexpected **costs** are cited. The intrusive character of family reunification related controls, plus **cultural sensitivities**, also pose problems. Same for the **language barrier** raising difficulties along the whole procedure (forms, interviews etc.). Furthermore, misuse is being facilitated by **coaches, websites and blogs** advising applicants on how to circumvent the law.

#### *False Declarations of Parenthood:*

Very few information is available in this matter. In the case law in development, persons involved in false declarations of parenthood often refer to **advantages in terms of residence** and possible **financial benefit through family allowances**. Also women show an inclination to give birth to their child in Belgium for the **quality of health care**, taking then opportunity to remain on the territory. The 2011 report of the Office of General Prosecutors to the parliamentary committee responsible for legislative monitoring also refers to “friendly services” motivated by a “**tribal community linkage**”.

## Section 4

### Available statistics, data sources and trends<sup>1</sup>

*To the extent possible, statistics provided should be disaggregated according to the four scenarios outlined in Section III of this Common Template.*

#### **Statistics: General Context**

4.1 Please provide the main / (readily) available national statistics (and the data sources with their status, i.e. published / not published) related to and in order to give a general context for the Study. What are the gaps? What are the available years?

<sup>1</sup> Please note that, as this is a Focussed Study, only data that is readily and easily available should be provided.

*Data might include for example: statistics on residence permits / visas granted for the purpose of family reunification, plus other reasons of entry; general characteristics of those entering for family reunification purposes, etc.*

*Note that Eurostat has statistics available on first permissions granted for the purpose of family reunification in accordance with Article 6 of Regulation 862/2007/EC ('Statistics on residence permits and residence of third-country nationals'), available for 2009-2010. The Eurostat statistics are disaggregated by length of validity of permit (i.e. 3-6 months, 6-12 months, and 12 months and more) and by category of family member (e.g. child, spouse, etc.). Moreover, statistics are disaggregated by the type of reunification (TCN joining TCN and TCN joining EU-citizen).*

#### *Marriages of Convenience:*

##### Grants of permission to stay issued to third-country nationals for family formation/reunification reasons:

Source: BE Immigration Office – Eurostat - Published

2008 (last 9 months of the year only!): 20.320 Total permissions for family reasons:

- Spouses/Partners joining an EU citizen: 10.417
- Spouses/Partners joining a non EU citizen: 4.531

2009: 28.523 Total permissions for family reasons:

- Spouses/Partners joining an EU citizen: 15.133
- Spouses/Partners joining a non EU citizen: 4.933

2010: 28.666 Total permissions for family reasons:

- Spouses/Partners joining an EU citizen: 12.332
- Spouses/Partners joining a non EU citizen: 4.157

##### Visas granted for family reasons:

Source: BE Foreign Affairs - Published

2007: 11.616

2008: 13.916

2009: 13.859

2010: 12.675

2011:

- 6.262 based on Article 10
- 1.551 based on Article 10bis §2
- 7.202 based on Article 40

##### Residence permits withdrawn (due to “lack of family unit” or nonfulfillment of other conditions)

Source: BE Immigration Office - Published

2008 : 312:

- 119 based on Article 40bis +40ter (FR with EU citizen or Belgian)
- 193 based on Article 10 (FR with a non EU national)

2009: 828:

- 662 based on Article 40bis +40ter (FR with EU citizen or Belgian)
- 166 based on Article 10 (FR with a non EU national)

2010: 1359:

- 1193 based on Article 40bis +40ter (FR with EU citizen or Belgian)
- 166 based on Article 10 (FR with a non EU national)

2011: 988:

- 842 based on Article 40bis +40ter (FR with EU citizen or Belgian)
- 146 based on Article 10 (FR with a non EU national)

##### Visas refused due to suspicion/evidence of them representing a marriage of convenience

Source: BE Immigration Office - Published

2008 : 647

2009 : 782

2010 : 709

2011 : 882



- Family reunification based on Article 40 bis + 40 ter (FR with EU / Belgian citizen): 665
- Family reunification based on Article 10 (FR with non EU citizen): 217

*False Declarations of Parenthood:*

While some abovementioned available national statistics (permissions to stay and visas granted for family reasons) may to some extent also contribute to giving the general context with respect to false declarations of parenthood, additional statistics may be of use:

Number of persons who obtained a residence permit on humanitarian grounds based on regularization criteria (including authors of Belgian or EU citizen children):

Source: BE Immigration Office - Published

2008-2011

Année	Critère de régularisation			Total
	Auteur d'enfant belge	Auteur d'enfant citoyen de l'UE	Autres	
<b>Total</b>	3.297	75	50.159	53.531
2008	636	-	4.359	4.995
2009	1.114	1	13.713	14.828
2010	1.028	36	23.135	24.199
2011	519	38	8.952	9.509
<b>Total</b>	3.297	75	50.159	53.531

Note that 2008 related data concern decisions and not persons as for other years (the total number of regularized persons -corresponding to decisions related data- amounts to 8369, but is not available by criteria). Note as well that 2009 data relating to “authors of Belgian children” refer to persons for the period April-December and to decisions for the period January-March. The total therefore underestimates the number of people involved.

**Statistics: Specific indicators of the intensity of the issue:**

4.2.a What is the *intensity* of the issue in your (Member) State?

Data might include the number of marriages of convenience and false declarations of parenthood that have been detected in your (Member) State; applications rejected because of presumption of marriage of convenience or false declaration of parenthood; residence permits issued for the purpose of family reunification later revoked, due to suspicion / evidence of them representing a marriage of convenience / false declaration of parenthood cases; case law.

Please provide statistics where available.

*Marriages of Convenience:*

It is very difficult to assess the intensity of the issue. It is possible to start from a **very broad picture**, looking at **marriages that are subject to an information exchange between authorities**, i.e. those involving third country nationals with illegal/precarious residence status who would be likely to gain an advantage in terms of residence through marriage. It is however to be noted that such marriages will not all actually prove to be of convenience. This being said, the following marriages arouse attention: (1) planned marriages in Belgium which are subject to information exchange before celebration (5909 in 2011, among which 24% are from Moroccan nationals residing illegally on the territory, 5% from Algerian nationals and 71% composed of 135 nationalities), (2) marriages concluded in Belgium which are subject to information exchange with a view to annulling the marriage (816 in 2011) and (3) marriages concluded abroad which are

subject to information exchange with a view to transcribing the marriage celebrated abroad (4003 in 2011). In 2011, a total of 10.728 marriages were thus subject to information exchange. In addition to this, **legal cohabitations** should also be taken into account. While we don't have data in this regard, the national institute of statistics suggest that they are close (at least equal) to marriage related figures.

It is then reasonable to concentrate on a **narrower picture**, looking inter alia at the number of **marriages refused as well as marriages annulled**. In 2011, 359 planned marriages were refused (compared to 440 in 2010). In 2010 and 2011 74 court decisions annulling marriages were communicated to the Migration Board (knowing that courts which state the annulments aren't required to inform the Migration Board and that such data are in all likelihood incomplete). **Visas refused due to suspicion of marriage of convenience and residence permits withdrawn due to evidence of them representing a marriage of convenience** may also be taken into account, accounting respectively for 882 and 988 cases (see breakdown in 4.1).

#### *False Declarations of Parenthood:*

Specific and reliable data aren't available in this regard.

In order to indicate the intensity of this issue, we may inter alia need to collect the following data: (1) Number and reason for annulment of declarations of parenthood, (2) Number and reasons for prosecution under Article 193 of the Penal Code, (3) Number of visas and residence permits refused due to evidence of false declaration of parenthood, (4) Number of residence permits withdrawn due to evidence of false declaration of parenthood and (5) Number and reason for the Belgian nationality not being retained by children following implementation of Article 8 §4 of the Nationality Code.

However these above mentioned data should not be added up as the same person may be found in more than one of the categories (i.e. a person prosecuted under Article 193 of the Penal Code may also be refused or withdrawn a residence permit etc.).

#### **Characteristics of those involved**

*4.2.b For: a) Marriages of Convenience and b) False Declarations of Parenthood, please describe where possible, a) the EU status (e.g. EU citizen, legally resident third-country national), the nationality and sex of those involved.*

*Please provide details of data sources.*

#### *Marriages of Convenience:*

Based on family reunification related statistics from the Migration Board (see 4.1), persons whose visa or residence application is refused or withdrawn due to evidence of marriage of convenience are rather **EU citizens or Belgian nationals** but the aforementioned statistics don't allow to distinguish between EU citizens and Belgian nationals. Disaggregated data by nationality shows that **Moroccans and Turks** represent almost half of this category. Based on a recent study "Family reunification in Belgium: Data beyond the myth" (King Baudouin Foundation, Ina Lodewyckx & Johan Wets, January 2011), Moroccans and Turks are probably **naturalized Belgians or descendants of second/third generations**. The partner generally has the Belgian nationality: he/she is a descendant of (grand) parents from Moroccan or Turkish origin who marries someone originating from the country of his/her (grand) parents.

Based on statistics from the Migration Board, the top 5 nationalities involved in planned marriages are: **Morocco (29%), Algeria (6%), Turkey (5%), Tunisia (4%) and Russia (3%)**. In the total number of concluded marriages investigated, nearly 40% involve a Moroccan, 12% a Turk et 49% 120 other nationalities.

Data disaggregated by sex are not available.

#### *False Declarations of Parenthood:*

Specific and reliable data aren't available in this regard. Nevertheless some characteristics have been

detected and reported by the Police or Prosecutors' Office. End 2009, the Police in Liege investigated tens of false declarations of parenthood and concluded that such declarations are made **by Cameroonians or other Africans who all obtained the Belgian nationality or by Belgians**. More recently, late 2011 and early 2012, a draft resolution on the issue of false recognitions of paternity and the 2011 report of the Office of General Prosecutors to the parliamentary committee responsible for legislative monitoring referred to **Nigerian men** misusing provisions allowing for prenatal recognition under Article 328 of the Civil Code.

According to the Immigration Office services confronted with such misuses, false declarations of parenthood most frequently involve a **third-country mother and her third-country child who is recognized by a Belgian (or EU) citizen**.

However one shouldn't deduce trends or conclusions on this basis.

*4.2.c Please also provide information about the location of the misuse (i.e. whether the marriage took place in your (Member) State or on the territory of another (Member) State.*

*Marriages of Convenience:*

Misuses occur in the cases of marriages concluded in Belgium as well as abroad, and to a lesser extent on the territory of other Member States. Marriages of convenience **in Belgium** rather occur **in large cities** with high concentration of migrants. Based on 2011 statistics from the Migration Board relating to administrative investigations concerning possible marriages of convenience, the **top 5 cities** in which investigations on planned marriages take place are: Antwerp, Molenbeek, Charleroi, Brussels and Ghent. It is to be noted that disparities exist between regions and cities in terms of detection, investigation, information exchange and action regarding marriages of convenience, depending on human, legal, financial resources. Marriages of convenience also occur **abroad, mostly in Morocco and Turkey** (Emirdag region), possibly with a view to evading investigation in Belgium. To a lesser extent, marriages are concluded in another Member State before the parties come to live in Belgium (see "Belgium route" or "EU route").

*False Declarations of Parenthood:*

Specific and reliable data aren't available in this regard.

## Section 5

### Summary and conclusions

*Key findings, main observations, concluding remarks, any identified actions and next steps.*

*Marriages of Convenience:*

While the phenomenon of marriages of convenience is known to the Belgian authorities, another phenomenon concerns them since the implementation of the directive 2004/38/UE into Belgian law, namely **legal cohabitations of convenience**. When attempts to conclude a marriage fail, legal cohabitation procedures are initiated. The problem shifts: from illegal migration to pseudo-legal migration, from one municipality to the other ("marriage shopping"), from one Member State to the other ("Belgian route").

During the past decade, key stakeholders have made considerable efforts to improve the fight against marriages and, to some extent, legal cohabitations of convenience. In this regard, a **Circular in October 2009** addressing marriages of convenience clarified international, European and national standards in the matter and the role of each of the authorities concerned. More recently the **Law of July 8, 2011** made family reunification rules less flexible (in particular by introducing an income requirement, the sponsor being required to prove that he/she has a minimum income amounting to 120% of the minimum social income and by moving the situation of a Belgian national closer to that of a third country national, the Belgian national being required to meet new criteria for exercising his/her right to family reunification). The latter Law also

established a nexus between marriages and legal cohabitations of convenience, setting that partners whose marriage was refused or deferred can't provide legal cohabitation as a basis for family reunification to take place according to Articles 10 & 40. Finally the recent **policy paper** from the Secretary of State for Asylum and Immigration and for Social Integration announced an intensification of the fight in this area and upcoming changes (including the creation of a database gathering relevant information of use to relevant authorities).

The **increase** in the number of cases; the **resources** required to sensitize and train staff, to collect and exchange information on planned as well as concluded marriages, in Belgium and abroad; the time required for the **investigation** and the various **obstacles** identified in its course; the **time limits** for decisions on visa and residence; the **conditions** in the new law upon withdrawal of residence permits, all these elements make the prevention, detection and action in terms of marriages and cohabitations of convenience quite **complex**.

The topic remains a priority in Belgium. In this context, **in terms of legislation**, the entitled services are working on bills aimed at implementing the aforementioned database and a new device to fight these abuses. **In terms of practice and interdepartmental coordination**, the working group that developed the circular of October 2009 will resume its work in the first half of 2012 to assess the implementation of the mechanisms previously put in place and possibly integrate new means of action (regarding legal cohabitation of convenience, for example). Moreover, given the dispersion and unreliability of data that may provide a clearer picture of the phenomenon and its intensity, **computerized data** appears as essential to analysis, anticipation and prevention but also rationalization and optimization of actions against marriages and cohabitations of convenience.

#### *False Declarations of Parenthood:*

Despite the lack of specific statistics relating to false declarations of parenthood, it is reasonable to conclude from the daily practice of stakeholders facing such misuse, that it is increasing and even booming. False declarations of parenthood arouse concern as they **distort the institution of child recognition** and **neglect the best interest of the child** as well as **allow evasion of immigration and family reunification related regulations**.

False declarations of parenthood present different **modus operandi**. The first scenario involves a mother and a child from a third country, whose residence status is precarious or illegal. The child is recognized by a Belgian citizen and acquires the Belgian nationality. The mother is granted a residence permit on family reunification grounds and may apply for the Belgian nationality after a few years. Another scenario involves a man from a third country who recognizes a Belgian child and on this basis applies for a residence permit as "father of a Belgian minor of age". Besides isolated cases, **networks** develop in some communities, particularly African communities.

Such scenarios are facilitated inter alia by the fact that the person who makes a declaration of parenthood **doesn't have to prove parentage or claim to be the biological parent**. It is also very difficult to investigate and assess the **reality of parentage** and concepts such as the "**possession of status**" consisting of a series of facts showing the relationship between the child and the person who is said to be the father or mother. Effective checks regarding such relationship doesn't take place when the declaration is made and registered.

Some cases, often the most blatant frauds, are detected and investigated. But such investigations require **time and resources**, as well as **efforts and cooperation from various actors** whose roles and responsibility aren't sufficiently defined yet. Some cases end up in courts that are then entitled to **annul the false declaration of parenthood** but the question remains whether the **impact** of such annulment is proportionate and targeted at those who benefit from the misuse.

As the phenomenon grows and could further grow with the entry into force of the family reunification related Law of 8 July 2011, civil registrars, immigration officers, police officers and public prosecutors are increasingly concerned and **urge policy and law makers to elaborate and implement an action plan including legal and administrative measures and tools with a view to efficiently fight against false declarations of parenthood**.

