

EMN FOCUSSED STUDY 2012

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

National Contribution from Italy

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' (National Contribution) / Executive Summary (Synthesis Report)

This national contribution has been developed as part of the EMN work program for 2012 according to an innovative format able to provide immediate usability for the benefit of policy-makers and, secondarily, to reach a wider audience.

In completing the common template, there have been used inter alia the database of case law on immigration and asylum policy created by the law and social sciences journal "Immigrazione.it"¹ and sector studies promoted by the Commission Internationale de l'État Civil - CIEC (*A Study on marriages of convenience within ICCS Member States* of March 2011² and *Fraud with respect to civil status in ICCS Member States* of December 2000³).

Marriages of convenience:

To understand the issues related to marriage of convenience in Italy, it is appropriate to start with the premise that the Italian legal system does not recognize the status of family member to the so-called "de facto couples" and that the right to seek the reunification with third country family members is recognized, in addition to nationals and EU nationals, to nationals of third Countries holding in Italy a EC long-term residence permit or holding a residence permit valid for a period not less than one year issued for subordinate employment or self employment, or for asylum, study, religious grounds or family reasons.

Although there are no specific sanctions against the misuse of the law on reunification, the request for reunification is refused when it is established that the marriage (or adoption) has taken place for the sole purpose of enabling the person to enter and reside in the territory of the State. Moreover, the immediate withdrawal of the permit is envisaged if it is ascertained that there is no "actual cohabitation" after marriage. In both cases, of course, the measure is followed by a report to the competent authorities.

As widely confirmed, also by reading the Italian comments on the Green Paper on the right to family reunification launched by the EC on 15th November⁴ (which at paragraph 5 questioned on problems on frauds and abuses to prove the family ties and on marriages of convenience), there are no reliable statistics, even though the press records in most cases the role played by organized

¹ www.immigrazione.it.

² www.ciec1.org/Etudes/Fraude/MariagesSimules-ITA-mars2011.pdf.

³ www.ciec1.org/CadrEtudeFraude.htm.

⁴ http://ec.europa.eu/home-affairs/news/consulting_public/consulting_0023_en.htm.

crime.

With regard to family reunification, as has already happened in France⁵, it should be recorded the acknowledgment of the illegality, based on the Italian Constitution and the European Convention for the Protection of Human Rights and the Fundamental Freedoms, of the ban to marry for a third country national without a valid residence permit, a power which enables the foreigner to regularize his/her status.

Policy makers and the media, faced with a very limited number of case studies, are used to focus on the possible misuse related to the application for citizenship and, in particular, to the payment of pensions, for there is widespread fear that there can be cases of circumvention of an elderly person. There were also cases, as will be seen, when the public opinion has gone beyond the issue by misrepresenting the statistics related to mixed marriages, criminalizing these phenomena as a “pathological source” of misuse.

False Declarations of Parenthood:

To prevent misuse in requests for residence permits on the basis of false statements of family kinship, the national law provides that, when requiring the entry visa, if family ties cannot be documented with certainty by means of certificates or certifications issued by competent foreign authorities, the Italian consular/diplomatic office may provide, at the expense of the interested parties, to issue certificates based on the examination of DNA.

To prevent misuse of the permit required for reunification with family members already residing in Italy, the application shall be accompanied by foreign certification translated and legalized; and if the acts giving rise to the family ties occurred in Italy (marriage, birth) it is required both a copy of the passport and the document issued by the office of civil status. In particular, in case of application for a residence permit in favour of the child born in Italy, it is generally required that the birth certificate has affixed a photograph of the child.

Although there is no specific law punishing the false declaration of parenthood, art. 495, par. 1 of the Italian Penal Code punishes with imprisonment from 1 to 6 years anyone who gives false identity, state or other qualities of himself or others before a public officer. In case of false declarations to the Registrar, the term of imprisonment is at least 2 years.

Moreover, law no. 94 of 2009 introduced the penalty of imprisonment from 1 to 6 years for all who counterfeit or alter documents in order to illegally obtain a visa or a residence permit. If the falsity relates to an act or part of an act considered valid until there is a complaint of forgery, imprisonment is extended from 3 to 10 years.

Section 2

National legislative framework and definitions

National Contribution (1 - 2 pages)

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: [(Member) State should add their contribution here]

According to the regulations on **family reunification between third-country nationals**, the term “**family**” only refers to the so-called nuclear family, consisting of the spouse and minor children, i.e. those younger than 18 years of age (Article 29, paragraph 1, letters a) and b) of Legislative

⁵www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/depuis-1958/decisions-par-date/2003/2003-484-dc/decision-n-2003-484-dc-du-20-novembre-2003.871.html.

Decree No. 286\1998, Consolidated Act on Immigration). The law also provides for family reunification in cases of “dependent” children over 18 and “dependent” parents over 65 (Article 29, paragraph 1, letters a) and b) of the Consolidated Act on Immigration) only in particular situations of disability or lack of economic means of support.

As regards, however, the **reunification between a third-country national and an EU citizen who has exercised his/her right to free movement (a “mobile EU national”)**, pursuant to art. 2 of Legislative Decree No. 30\2007 which implements Directive 2004\38\EC, there is a slight widening of the above definition of “family”: in addition to the spouse, in fact, direct descendants under the age of 21, children still dependent on parents (including children of the spouse), as well as dependent direct ascendants (including ascendants of the spouse) are also considered “family members”.

The **status of spouse** derives from the institution of “**marriage**”, the only legal instrument recognized by the Italian legal system for the relationship of a couple formed by a man and a woman, which is considered by the Italian Constitution (Art. 29) a requirement for legitimate filiation. **The Italian legal system does not recognize the status of family members to *more uxorio* cohabiting couples (the so-called “de facto couples”)**, as repeatedly stressed by the Constitutional Court. In several judgments, in fact, the Court specified that Article 19 of the Consolidated Act on Immigration is not unconstitutional insofar as it does not prohibit the expulsion of third-country nationals cohabiting *more uxorio* with an Italian citizen (Constitutional Court, ord. 313/2000; Constitutional Court, ord. 481/2000).

The non-recognition of the “spouse” or “family member” status to *more uxorio* cohabiting couples was also reaffirmed by the Supreme Court (judgment 6441\2009, First Civil Division), even when the union is registered and recognized in the country where it was contracted, as in Italy registered unions are not considered a marriage.

A recent judgment of the Court of Reggio Emilia (filed on February 13, 2012 and relating to the proceeding 1401/2011), however, established the recognition of the status of “spouse” under art. 2, letter b), n. 1) of the Legislative Decree 30/2007, when by way of documented evidence it is proven that a marital type of relationship has formed, even between persons of the same sex, in an EU country that recognizes such kind of union under its national law. So, according to the judgment in question, the free movement of a citizen and his/her family members or spouse must be guaranteed, regardless of the recognition of same-sex marriage by the national law of the spouses; thus, the only relevant aspect is the place where the marital type of relationship was contracted. There are certain legislative proposals in this regard, but at the moment there are no conditions for approval.

Italian law forbids polygamy; therefore it does not allow the reunification of the second or third wife in polygamous marriages recognized in the country of origin. However, the reunification of spouses in a polygamous relationship is often allowed not due to the marriage but to their status as “parent of a minor” (biological or legal). This reunification is entitled to the best interests of the minor, not for the right to family unity.

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.

Scenario (i):

The right to apply for family reunification with third-country nationals is granted to **third-country nationals in Italy holding an EC residence permit for long-term residents (former Residence Card) or a residence permit of at least one year** for employment, self-employment, asylum, study, religious or family reasons. This case is provided for by the **Articles 28-30 of the Consolidated Act on Immigration (law. 286\1998), as amended by the legislative decree no. 5 of 2007 implementing the Directive 2003\86\EC.**

Categories of **persons entitled to enter Italy for reunification**: art. 29 of the Consolidated Act on Immigration determines that a third-country national may ask for reunification with (a) the **spouse not legally separated and no younger than 18 years of age**, (b) the **minor children, including those of the spouse or born outside of marriage, unmarried, on condition that the other parent, if alive, has given his/her consent** (children adopted, fostered, subject to protection plans are also included), (c) the **dependent children aged over 18**, if for objective reasons they are unable to support themselves because of their health conditions causing total disability, (d) the **dependent parents**, if they have no other children in their country of origin or provenance, **or parents aged over 65**, if their other children are unable to support them for serious health reasons.

The **necessary requirements** for a **visa** (Article 29, paragraph 3, Consolidated Act on Immigration) are:

- Availability of **accommodation complying with hygienic and sanitary as well as dwelling suitability requirements, as certified by the relevant Technical Office of the Municipality.**
- Availability of **adequate income**: the third-country national applying for reunification needs to provide evidence of a minimum annual income deriving from legitimate sources and not lower than the annual social allowance, increased by half for each family member to be reunited. For the reunification of two or more children younger than 14, or with two or more family members who were granted social protection, it is necessary to give evidence of an income not lower than twice the annual social allowance.
- In the sub-case d), availability of **health insurance** or other suitable title is required, in order to ensure coverage of all risks in the national territory in favor of the ascendant over 65 years of age or his/her registration in the National Healthcare System.

Furthermore, although the Italian legislation, as was previously mentioned, does not recognize any form of *de facto* union, Art. 29, par. 5 allows the **biological parent** (who has not been expelled or reported for expulsion for reasons of public order under art. 4, par. 6 of the Consolidated Act on Immigration) to enter for family reunification with a minor child who is already regularly residing in Italy with the other parent, provided that either parent proves to meet the above-mentioned requirements. This is due to the legislative recognition of the higher interests of the child.

The third-country national regularly residing in Italy for other reasons may request the conversion

of the residence permit for family reasons if the following 3 requirements are met (Art. 30, par. 1, letter c) of the Consolidated Act on Immigration):

- the family member is regularly residing in Italy,
- the third-country national applicant meets all the above-mentioned requirements;
- the conversion request is made within one year from the date of expiry of the permit originally owned by the family member.

Article 30, par. 2 of the Consolidated Act on Immigration allows the holders of a residence permit for family reasons access to social services, enrollment in courses of study or vocational training, registration for unemployment, exercise of employment or self-employment activities. The residence permit for family reasons has the same duration of and is renewable with the residence permit of a third-country family member who is eligible for reunification (Art. 29, par. 4 of the Consolidated Act on Immigration).

In the Italian legislation the reunification with a spouse and minor children is governed by the same legislative sources.

Scenario (ii)

The case of a **UE citizen who is exercising his right to move and to reside and wants to reunify with a third-country national, is regulated by Legislative Decree no. 30/2007, implementing the Directive 2004/38/EC**. This decree regulates the EU citizens' right to enter, move and reside freely in Italy (the hosting Member State), a right which is extended to his/her third-country national relatives, according to the provisions of the directive. This allows the family reunification of a "mobile EU citizen" with his/her relatives, regardless of their status as EU citizens.

Third-country national relatives, as defined by Art. 2 of the Legislative Decree no. 30/2007 (see par. 2.1), may enter into the territory of the State as long as they hold a valid passport and a regular Visa, if needed (see Consolidated Act on Immigration).

For stays longer than 3 months, an EU citizen needs to comply with the following conditions: *a*) being a salaried employee *b*) having sufficient economic resources for him/herself and his/her family or *c*) being enrolled in a school or vocational training courses (art. 10 of the Legislative Decree 30/2007).

Restrictions to the right to reside of EU citizens and third-country national relatives are provided for only due to public order or national security reasons; these measures must be undertaken according to principles of proportionality and after the evaluation of the actual dangerousness of the subject, as well as his/her personal conditions (art. 20 of the Legislative Decree no. 30/2007)

Scenario (iii):

Currently, in the Italian law system there are no cases of residence permits issued for family reunification purposes on the basis of case-law, with specific regard to the recent judgments Zambrano (C-34-09), McCarthy (C – 434/09) and Dereci (C-256/11) of the European Court of Justice. In the future, these judgments could have an impact on Italian case-law, but at present, due to their recentness (all of these decisions were taken in 2011), it's too early to evaluate their effects.

Scenario (iv):

After the abrogation of the Presidential Decree no. 1656 of 1965 (amended by Presidential Decree no. 54 of 2002) by the Legislative Decree n.30 of 2007 (implementing the Directive 38/2004/EC), the family reunification of third-country relatives of an Italian citizen is now regulated by this Legislative Decree, as in the case of third-country relatives of a UE citizen (see scenario ii), as

specified by Art. 23 of the Legislative Decree no. 30 of 2007. The only case which remains under the provisions of the Consolidated Act on Immigration (art. 30 par. 1 letter d) is that of the Italian minor whose parent (including the biological one), regardless of the irregularity of his/her stay, may apply for the reunification, provided that he/she was not previously deprived of his/her parental authority.

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:

Although specific rules sanctioning the abuses of the law on family reunification (as called for by the directives 86/2003/EC and 38/2004/EC) have not been issued in Italy, there are however some prevention measures. In particular, art. 29 par. 9 of the Consolidated Act on Immigration provides for that the request for family reunification has to be rejected when it is established that **the sole purpose for the marriage or the adoption was to allow the person to enter and reside in the territory of the State**. Moreover, par. 1-bis of art. 30 of the Legislative Decree no. 286/1998 provides for the immediate revocation of the residence permit when it is established that the marriage was not followed by "actual cohabitation". A possible exception to such provision is allowed only if children were born from that marriage. The fact that cohabitation is an essential element is also proven by art. 19, par. 2, sec. c of the Consolidated Act on Immigration, which forbids the expulsion of foreigners cohabiting with relatives within the fourth degree or with their spouse, of Italian citizenship, thus excluding from this protection measure the non-cohabiting spouse of an Italian citizen. With regard to marriages contracted in Italy, art. 30, par 1, letter b) of the Consolidated Act on Immigration grants the residence permit for family reasons to a third-country national only if he/she holds a valid residence permit for different purposes since at least one year.

The above-mentioned article provides for that the application for a residence permit or its renewal is rejected, or that the residence permit is revoked, when it is proven that the marriage or the adoption, which justified the authorization to family reunification, took place only to allow the third-country national to reside in Italy (art. 30, par. 1-bis of the Consolidated Act on Immigration).

In order to discourage the so-called "marriages of convenience", law n. 94 of 2009 introduced stricter requirements for the acquisition of the Italian citizenship by marriage with an Italian citizen. Art. 11 of the above mentioned law amended Art. 5 of law n. 91 of 1992, as follows: «Italian citizenship can be granted following marriage, provided the following conditions are met: the foreign or stateless applicant must be married to an Italian citizen for at least 2 years, and he/she must have his/her legal residence in the territory of the Italian Republic; if the spouses reside abroad, the application can be submitted three years after the date of the marriage. Until the adoption of the decree granting citizenship, the spouses must not be legally separated and there must not be dissolution or nullity of the marriage or cessation of its civilian effects. » Paragraph 2 of the same law specifies also that the above mentioned periods «are reduced by half if the spouses have natural or adopted children.»

The same law n. 94 of 2009 amended also art. 116, par. 1 of the Italian Civil Code, as follows: «a foreign national who wants to contract a marriage in Italy must show to the Registrar», apart from the authorization, «a valid Italian residence permit.» This provision, however, has been declared unconstitutional by the Italian Constitutional Court (decision n. 245 of July 25 2011). According to

the Constitutional Court, in fact, the right to marry is an inviolable fundamental one which cannot be restricted in a general, unreasonable and disproportionate way.

The judgment of the Constitutional Court, in particular, has criticized the fact that the alien is treated differently as regards the protection of inalienable rights, that the restrictions introduced by L. 94/2009 may give rise to unacceptable compression of the rights of the Italian citizen who wants to marry a foreigner irregularly staying; the judgement has also criticized the violation of art. 12 (right to marry) of the European Convention of Human Rights, as interpreted by the Strasbourg Court judgment of 14th December 2010 (O'Donoghue and Others v. The United Kingdom).

False Declarations of Parenthood:

When paternity/maternity cannot be precisely determined or in case of false documents, art. 29 par. 1-bis of the Consolidated Act on Immigration provides for that the Italian Embassies and Consulates may issue certificates based on DNA tests, according to art. 49 of the Presidential Decree no. 200 of 1967. According to art. 2, par. 7 of the Legislative Decree no. 5 of 2007, implementing the Directive 86/2003/EC, once the authorization to reunification is granted, the Italian consular authorities may issue the entry visa only after verifying the authenticity of the documents proving family relationship, marriage, minor age, health conditions. These documents, therefore, when released by a foreign country have to be previously verified.

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?

As mentioned before, the important Zambrano, McCarthy and Dereci decisions are too recent to determine an impact on the Italian case-law with regard to family reunification. However, due to the extraordinary relevance of those cases, which are a considerable step forward to the protection of the right to family reunification for EU nationals, a decisive impact on our country's legislation is expected in the near future. In the Zambrano decision, the European Court of Justice declared that regardless of the applicability of Directive 38/2004/CE (which in this case could not be applied, because Mr. Zambrano's son - a Belgian citizen - never exercised his right to free movement, as specified by art. 3 of that directive) there is a right to reside which derives directly from article 20 of the TFEU (Treaty on the Functioning of the European Union); according to the provisions of this treaty, in fact, denying the right to reside within the territory of a Member State to a third-country national who wants to take care of his minor child (citizen of the same Member State) would inevitably affect the rights of the latter as an EU citizen. The minor child, in fact, by following his father, would have been forced to leave the territory of the Member State where he resides. For the same reason, the Court also granted Mr. Zambrano the right to work in Belgium, in order to provide for his son's needs. The McCarthy and Dereci decisions further specified what was established in the Zambrano decision; in the first case, the Court denied the right to reside to Mrs. McCarthy's husband (a third-country national), because in such case this ruling would not constitute a violation of Mrs. McCarthy's rights as an EU citizen (as in the Zambrano case). With regard to the Dereci decision, the EU citizens involved – contrary to the ones involved in the Zambrano decision – are not dependent on third-country national parents; for this reason, the Court decided to leave it to the national judges to evaluate, case by case, if denying a right to reside consists in a violation of the rights of the EU citizen who applied for family reunification.

In conclusion, as we already noted, art. 30, par. 1 letter d) of the Consolidated Act on Immigration already allowed a third-country national parent (including a biological one) of an Italian minor to apply for a residence permit, regardless of the irregularity of his/her stay, provided that he/she was not previously deprived of his/her parental authority. The Italian legal system, therefore, would have granted a residence permit to Mr. Zambrano based on its own national laws, without recurring to the TFEU. More interesting will be the impact of the Dereci decision, because it offers the opportunity to exercise the rights of EU citizenship within the Member State of origin.

Section 3
The situation in Italy

National Contribution: (3-5 pages in total)

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)

On 31st May 2011, Corrado Giustiniani, a journalist specialized in immigration issues, asked the following question to the readers of *Il Messaggero* newspaper: "For every ten Italian woman or men who marry, one chooses a foreign partner. We may add to these data those referring to marriages contracted between foreigners that, according to ISTAT (National Institute of Statistics) archives for 2009, amounted to 14% of the total. Mixed couples are confirmed as the data emerging from our social customs. But what is the incidence of marriages of convenience on this phenomenon?"⁶.

The question asked in that forum and investigations generally conducted by other media in terms of marriages of convenience rarely express connection with possible misuse of family reunification, but rather suggest the interest to acquire the citizenship or the possibility of using a reversionary pension in the case of the "marriage between caregiver and dependent adult", namely between an elderly Italian spouse and a much younger foreign spouse.

It should be noted that, despite civil society (unions, associations, Catholic organization, etc.) was averse to it, one of the most significant rules introduced by the "security package" (Law 94/2009) states that the foreign national irregularly staying in Italy is prohibited to marry, with the aim of limiting cases of abuse being used to contravene the immigration laws (as stated the question was overtaken with the judgment no. 245 of 25th July 2011 of the Constitutional Court).

On the other hand, with regard to the misuse linked to the application for citizenship and, in particular, improper disbursement of reversionary pensions, linked to circumventing an elderly person, recently there has been the penalization of reversionary pensions of seventy-and-over years old persons married with persons much younger (L. 111/2011). On 24th February 2011 the newspaper *La Repubblica*⁷ published the news of the alleged records of reversionary pensions to caregivers under age 50, thus arousing a parliamentary inquiry from Hon. Maraventano to the Minister of Labour and Social Policy⁸, aimed to know the number of marriages registered annually in Italy between elderly Italian citizens and young foreigners, the annual expenses paid for the reversionary pensions as well as any action taken by the Minister. The response from the Ministry on this issue will be provided in the section on statistics.

Even without specific data necessary to define the phenomenon, several estimates have been provided and disseminated mainly through the mass media (which amount between 1 and 2% of total marriages), on the merits of which severe doubts must be expressed.

On the whole, the discussion has moved to focus on mixed marriages, against which sometimes a distorted interpretation has been given to the public, by describing them as a "pathological source" since by their ephemeral nature they would aim to achieve no sentimental objectives. Nevertheless, scholars agree that mixed marriages should be interpreted as an indicator of strong integration and statistics of the National Institute of Statistics (ISTAT) have denied the abnormal rates of transience periodically imposed to public attention⁹.

With regard, however, to the discussion herein, it should be noted that, as reported in the *EMN*

⁶ www.ilmessaggero.it/home_blog.php?blg=P&idb=1039&idaut=11.

⁷ http://www.repubblica.it/cronaca/2011/02/24/news/record_pensioni_badanti-12831805/.

⁸ XVI Legislature Act No. 4-05034 of Syndicate Inspection Act no. 4-05034 Published 14th April 2011 Meeting No. 541, www.senato.it/japp/bgt/showdoc/frame.jsp?tipodoc=Sindisp&leg=16&id=530799.

⁹ Ministry of Interior, *First report on Immigrants in Italy*, Rome, December 2007, pp. 132-154.

Glossary on Asylum and Migration, at the EU level a marriage of convenience is “a marriage contracted for the sole purpose of enabling the person concerned to enter or reside in a Member State”¹⁰, for which it is appropriate to postpone any further analysis, external to the subject, to subsequent occasions.

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

One possible form of misuse hinted at by the Italian legislation on immigration is the adoption of convenience. On this issue, art. 29, paragraph 9 of the Consolidated Act on Immigration merely says that the demand for reunification is refused when it is determined that the marriage or adoption was made for the sole purpose of enabling the person to enter and reside in the State.

Another form of possible misuse in the context of family reunification may be the false statement of age of the child, considering the fact that the law recognizes a special discipline for the benefit of the minor child rather than for the adult child, who instead is entitled to claim reunification only if s/he is “dependent” upon the applicant. In the case of documentation issued by a foreign state, since such documents have to be previously verified, the Italian Court of Cassation has stated that Italian consular representatives may undertake all necessary investigations to determine the age of those who require an entry visa in Italy, including the use of bone densitometry exam (Court of Cassation, Civ., 25th January 2007, no.1656). The next circular of the Ministry of the Interior (9th July 2007, no. 17272) clarifies that if the report of investigation has a margin of error, to protect the child, the minor age will be assumed as valid.

Finally, to avoid the so-called chain reunification and discourage forced marriages between or with minors intended to contravene the rules on entry of nationals of third countries, the Consolidated Act on Immigration provides that the spouse is allowed to the reunification only if s/he is at least 18 years old and the minor child enjoys reunification with the parent only if unmarried (ex Art. 29, paragraph 2 letter a) and b)).

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.

To prevent misuse when applying for a residence permit on the ground of marriage of convenience or false declaration of parenthood, the Italian law provides:

Marriage: if celebrated abroad, the certificate translated and legalized by Italian authorities abroad is always requested, except in cases of exemption under international conventions; whether the marriage was celebrated in Italy, the third Country national must make a statement. The police office that receives the declaration is required to request the certificate directly to the civil registrar. In addition to the control of the certificate of marriage, before issuing a residence permit for family reasons, the police office carries out checks at the applicant's home to ensure the effective cohabitation and marriage relationship.

Family relationships: Where in the stage of application for an entry visa family ties cannot be documented with certainty by means of certificates or certifications issued by competent foreign authorities, Italian consular representatives request the examination of DNA, at the expense of the parties concerned. To prevent misuse of the permit required for reunification with family members already residing in Italy, the application shall be accompanied by foreign certification translated and legalized; and if the acts giving rise to the family ties occurred in Italy (marriage, birth) it is required both a copy of the passport and the document issued by the office of civil status. In particular, in case of application for a residence permit in favour of the child born in Italy, it is generally required that the birth certificate has affixed a photograph of the child.

National means of detecting misuse

¹⁰ Council Directive 2003/86/EC of 22nd September 2003 on the right to family reunification (Article 16 (2b)).
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0086:IT:HTML>.

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?

Customarily, after the issuance of the residence permit for family reasons in favour of the spouse or the entitled relative, the competent police forces carry out checks to verify the cohabitation or, in the case of the spouse, the effectiveness of marriage. In the case of negative results, there comes the decision by competent authority to revoke the residence permit. It is discussed whether it is possible to identify other factors that indicate the fraudulent nature of parenthood or marriage, beyond testing the actual cohabitation, but the doctrine is negatively oriented. The Court of Cassation added that a condition for issuing residence permits to foreigners married to an Italian citizen is not only the permanent cohabitation of the spouses, but also the fact that they have set up residence in Italy. Therefore, the withdrawal of the residence permit by order of the *Questore* (police commissioner) is legitimate if it is found that the alien, having obtained a residence permit for family reasons, had moved abroad (Court of Cassation, Civ., Sect. I, 25th November, 2005, no. 25 027). On other occasions, however, the Court seems to justify any different spatial location of the spouses in the light, for example, of special employment needs (Court of Cassation, Civ., Sect. I, 18th June 2005, no. 13 165).

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)?

Usually, to prove the existence of a marriage of convenience and/or falsity of the statements and/or falsity of the documents, testimonies, direct investigations of police officers (such as inspections in housings) and technical assessments on documents are used. There are no investigations on the DNA, but this does not exclude that in certain cases the court may require them.

The burden of proof of family parenthood (and if the applicant meets the requirements, as appropriate) lies on the applicant for family reunification as long as the applicant has not obtained it. The Supreme Court of Cassation, in judgments no. 16452/2006 and no. 2539/2005, confirmed this approach in particular in relation to the requirement of cohabitation of the spouses.

Later, in the absence of specific disciplinary measure on marriages of convenience and false declaration of parenthood, when the authorities suspect the existence of an abuse or fraud, the burden of proving the falsity of the alleged marriage or the declaration of parenthood rests on the Public Administration in order to revoke the permit of stay. Although no transposition into a specific penalty took place, the EU Guidance for better transposition and application of Directive 2004/38/EC are respected, which, in Section 4.2, state that "the burden of proof lies on the authority of States seeking to restrict rights under the Directive".

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?

It is usually the immigration office of the police (*questura*) or the office of border police (both within the State Police) that undertake checks or request controls to other police agencies (flying squad, police, local police and *Carabinieri*). When the assessments evidence a crime (forgery, impersonation, etc.) the competence and responsibility for directing the investigation is assumed by the Prosecutor of the Republic responsible for the area. In the case of acts attributable to criminal organizations operating on a large scale, even at international level, usually the Prosecutor of the Republic involves in the investigation central investigative agencies such as Interpol and/or the Central Directorate of Immigration of State Police.

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)?

The lack of actual cohabitation in a marriage will erode the right of the spouse to the permit of stay acquired on the basis of a marriage. There are no punitive consequences concerning the typology of misuse of the law in question, but it is derived from the system and the case law that the third national spouse loses the right to reside in Italy and then s/he is subjected to a removal order, since s/he lacks the requirements.

Although there is no specific law punishing the false declaration of parenthood, art. 495, par. 1 of the Italian Penal Code punishes with imprisonment from 1 to 6 years anyone who gives false identity, state or other qualities of him/herself or others before a public officer. In case of false declarations to the Registrar, the term of imprisonment is at least 2 years.

Even in this case the withdrawal of the permit of stay is a consequence of the complaint of forgery to a public official.

Moreover, law no. 94 of 2009 amended art. 5, par. 8-bis of the Consolidation Act on Immigration by introducing the penalty of imprisonment from 1 to 6 years for all who counterfeit or alter documents in order to illegally obtain a visa or a residence permit. If the falsity relates to an act or part of an act considered valid until there is a complaint of forgery, imprisonment is extended from 3 to 10 years.

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

Since the law does not lay down any specific sanctions for these types of abuse of rights or misuses other than the denial or revocation of the permit of stay, a right of appeal will be possible if one of the two situations described below occur and affect the residence permit.

Scenario I:

Article 30 paragraph 6 of Consolidated Act on Immigration provides that against the refusal of nihil obstat for family reunification and the permit of stay for family reasons, and against other measures of the Administrative Law on the right to family unity (and therefore also in principle against the alleged withdrawal of the permit of stay in case of investigation subsequent to the fraud), the applicant may appeal to the monocratic judge. Unlike other types of residence permits, which are raised on mere legitimate interests (administrative law judge's jurisdiction), the residence permit for family reasons is a necessary deed when applicable and integrates the object of a subjective right. This is the reason why the jurisdiction of all disputes regarding residence permits for family reasons is ordinary (see Court of Cassation, Civ., Sec. United, 12th January 2005, no. 383). The special local jurisdiction is exclusive of the monocratic judge of the place in which the interested party reside (so the art.30 paragraph 6 Consolidated Act on Immigration, notwithstanding the rules on the court of claims art. 25 code of civil procedure). The Court deliberates, after hearing the person concerned, in closed session (pursuant to art. 737 ss. code of civil procedure). Since this is a contentious process, it is necessary to form the adversarial procedure with the Ministry of Interior. Moreover, the same paragraph 6 of Article 30 provides that the decree that grants the appeal may order the issuance of visas in the absence of nihil obstat for family reunification. In conclusion, the article provides that the proceeding shall be exempt for the stamp duty and registration charges and any other tax. Against the decree issued by the Court it is possible then either to submit a complaint pursuant to art. 739 of the code of civil procedure at the Court of Appeal (within ten days of notification of the decree by either party), and to appeal in Cassation under art. 111 of the Constitution.

Scenario II:

Against the measures that deny to stay in the Italian territory to the third country family members of EU citizens with regard to the scenarios ii) and, by extension pursuant to art. 23 of Law Decree 30/2007, the scenario iv), appeal is always admitted. In particular, with regard to a revocation or refusal of a residence permit, the applicant may appeal to the monocratic Judge of the place where s/he resides. As for the removal orders for termination of the conditions that determine the right of

residence (Article 21 of the above Law Decree), these may be challenged under art. 22 paragraphs 4 and following of the quoted Law Decree. *Right here the subsistence of abuse or fraud primarily established in the case of false declaration of parenthood could take place: among the requirements explicitly required by art. 21, there is also the documentation indicating the situation of proven familiarity.* Upon request, the decision is suspended for the duration of the procedure and if the suspension is denied, the person may be authorized by the *questore* (police commissioner) to stay in Italy so as to allow the attendance of the proceedings; the application must be made to the monocratic Judge where the authority who placed the order is established; this can be submitted through the consular representation; the limitation period is 20 days.

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?)

In Italy the problem of marriages of convenience and false declarations of parenthood is challenged not only by legislative means, but also by state police operations aimed at the identification and prosecution of such situations. In this type of operations, cooperation with other EU Member States and third Countries involved represents a strategic priority.

At international level, this cooperation takes place within the Interpol network, which intensifies not only the collaboration with EU countries, but also with those third Countries that are mostly affected by the phenomenon.

In this context, there is a constant attention from Italy to the transnational cooperation initiatives with countries with strong migratory pressure. In this regard, please note the recent “African campaign” led by the Chief of Police Antonio Manganelli, who, in recent years, has visited several African Countries, as well as other countries from the Middle East and the Balkan area, signing independent police cooperation agreements or other understandings under the auspices of Interpol.

As a continuation of this national strategy, dictated by the commitments formulated in the Stockholm Programme, there was launched a meeting initiative between the Member States and the main countries of origin of migrants from Africa, chaired by Italy. Transnational cooperation has been the focus of the Euro-African Conference held in Naples on 9th February 2011 that saw the participation of many representatives of police forces from different African and European Countries, who have defined common elements in the analysis of criminal activities related to migration flows. Cases of coordination on future cross-border investigations and exchange of information have emerged from this initiative.

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.

Considering the lack of data on the phenomenon, it is quite complex to describe the motivations that lead the “sponsor” and the third Country citizen to engage in the misuse of the mentioned institutions.

- As far as the reasons leading the “sponsor” to engage in a marriage of convenience are concerned, from the little information available coming from the daily newspapers, one can assume that the reasons are mainly of economical character. Often, the third Country national is requested to pay high fees in exchange of the favour received, which for the most part go into the pockets of criminal organizations.
- As far as the reasons leading the third Country national to deviate from the official channels and resort to marriage of convenience or beneficiary of false declaration of parenthood are concerned, these are mainly due to the difficulties encountered in entering the Country and thus having a stable and authorized residence on the territory. This because the residence permit for reasons of work is strictly tied to the contract of work, therefore the loss of a job leads the third Country citizen to a condition of irregularity. The family reunification, instead, offers a higher

assurance of obtaining the permit to enter the Country for family reasons in the case of a spouse or minor child to be reunified. Moreover, legislation allows greater protection for those who hold a residence permit for family reunification reasons; for example, based on art. 19 of the Consolidated Act on Immigration, the removal of several categories of individuals is prohibited, amongst which the foreign spouse living with an Italian citizen. In addition, in paragraph 2-bis of art. 13 of the Consolidated Act on Immigration regulating the procedure for administrative removal, it is foreseen that in adopting the provision of removal according to paragraph 2, sub paragraph a) and b) towards a foreign citizen who has benefited of family reunification provisions or towards the reunified family member, based on art. 29, the nature of the family bond of the interested party, the length of the permanence on the territory as well as the existence of family, cultural or social relations with the Country of origin must be taken into consideration.

- A different case is that of the marriages between elderly people and their young foreign caregivers, in which case the reasons go beyond those of family reunification and are to be related to the solitude of the elderly Italian citizens who feel the necessity of having someone to take care of them.
- Finally, as observed by some parties, one should not forget that behind the marriage or the adoption of convenience there is not always an economical reason; sometimes this could be a choice of solidarity within a relationship that is not that of a couple but rather a bond of friendly affection or solidarity between nationals, that leads to obtain the Italian citizenship in virtue of the false declaration of parenthood.

Section 4

Available statistics, data sources and trends¹¹

National Contribution (1-3 pages)

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?

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.

During the year 2010 a total of 1,543,408 entry visas (A + C + D) was issued, about 10% more than the previous year and over 63% more compared to 2001.

For the purposes of this research, it was decided to focus the analysis on the trend of national visas. The magnitude of this particular type of visa has grown from 186,167 units in 2001 to 218,318 in 2010 (+32,151 visas, an increase of 17%).

As for the reasons underlying issuance of national visas for the several years concerned, generally it should be noted that the predominant types are those related to family and employment reasons. There has been a prevalence of visas for family reasons (accompanying family member + family

¹¹ Please note that, as this is a Focussed Study, only data that is readily and easily available should be provided.

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reunification), which stood steadily between 37% and 44% with a peak reached in 2004, with the exception of 2007, when the incidence had amounted to 25.7%. However, it is interesting to note the preponderance of visas for employment in the period between 2007 and 2009 and, in particular, in 2008 when 59.3% of the issued visa was due to professional reasons, and only 25.7% were motivated by family reasons.

The change in the number of visas is connected, as regards the types of visas indicating a permanent settlement, to the annual flow decrees. There are also flows, such as family reunification, where the will of migrants already present in Italy, as well as their ability to meet the conditions laid down by law, plays an important role.

ITALY. National visas by reason (2001-2010)

	Total	Education	Employment	Family	Other reasons: Total
2001	186,167	26,777	55,68	70,346	33,364
2002	153,83	30,89	40,154	66,033	16,753
2003	178,532	32,077	59,096	69,532	17,828
2004	196,825	30,94	59,747	86,898	19,24
2005	224,08	31,691	79,764	91,165	21,46
2006	217,875	32,928	83,086	80,181	21,68
2007	363,277	34,933	215,72	93,554	19,07
2008	318,872	37,236	131,692	129,007	20,937
2009	301,561	34,462	132,019	111,775	23,305
2010	218,318	36,794	69,041	91,224	21,259

SOURCE: EMN Italy. Elaboration on data from Ministry of Foreign Affairs

ITALY. National visas by reason and citizenship (2008-2010)

	Position of the country	Name of the country	Total	Education	Employment	Family	Other reasons: Total
2008	1st main	Morocco	39,820	371	14,113	24,841	495
2008	2nd main	Albania	30,576	991	8,137	20,793	655
2008	3rd main	USA	22,331	15,340	775	261	5,955
2008	4th main	India	21,893	907	13,565	6,627	794
2008	5th main	Ukraine	19,883	202	14,223	4,410	1,048
2008	6th main	China	18,610	2,792	7,855	7,796	167
2008	7th main	Moldova Rep.	15,760	95	8,695	6,851	119
2008	8th main	Philippines	11,525	96	7,611	3,430	388
2008	9th main	Bangladesh	10,716	133	6,318	4,214	51
2008	10th main	Peru	9,421	100	5,293	3,410	618
2009	1st main	China	30,079	2,679	19,455	7,670	275
2009	2nd main	Morocco	24,768	436	9,355	14,150	827
2009	3rd main	India	23,778	822	18,491	3,653	812
2009	4th main	Albania	21,567	991	6,772	13,244	560
2009	5th main	USA	20,597	13,855	643	255	5,844
2009	6th main	Moldova Rep.	17,216	167	7,525	9,282	242
2009	7th main	Pakistan	16,618	273	5,643	10,596	106
2009	8th main	Ukraine	14,987	165	9,440	4,327	1,055
2009	9th main	Peru	10,845	77	6,464	3,459	845
2009	10th main	Philippines	10,097	86	5,939	3,644	428
2010	1st main	USA	21,021	14,710	654	250	5,407
2010	2nd main	Morocco	20,759	403	7,894	11,927	535
2010	3rd main	Albania	15,446	676	4,882	9,214	674
2010	4th main	India	15,240	718	11,537	1,937	1,048
2010	5th main	China	14,062	3,378	2,512	7,738	434
2010	6th main	Moldova Rep.	11,924	118	4,238	7,199	369
2010	7th main	Bangladesh	9,866	145	6,267	3,383	71
2010	8th main	Philippines	8,521	86	3,939	4,104	392
2010	9th main	Pakistan	7,549	332	3,250	3,868	99
2010	10th main	Ukraine	6,458	225	1,773	3,719	741

SOURCE: EMN Italy. Elaboration on data from Ministry of Foreign Affairs

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.

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.

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 and false declarations of parenthood:

As specified on more occasions in the course of the study, specific data related to reporting of marriages of convenience are not available since there is not a specific disciplinary measure for this kind of misuse, which is instead attributed to other measures such as false declaration to public official or abetting of unauthorized migration.

Moreover, in case of detection of abuse while issuing or renewing the residence permit, the reasons for the refusal or withdrawal of the residence permit are not recorded by the competent authorities. Also in the case of removal provisions, the related motivations are not recorded.

The same occurs for what concerns the false declarations of parenthood.

The press review of the events occurred in the course of 2011 and in the first months of 2012 provides only a partial, even though indicative, view of the characteristics of the phenomenon related to marriage of convenience and false declaration of parenthood.

The many operations concluded, of difficult execution and involving years of investigation, have led to the discovery of misuses or even frauds occurred in the course of the last decade.

On many occasions, the organization of one or more marriages of convenience was operated by criminal organizations involving Italian and foreign citizens, also with connivance of other organized crime sectors. Normally, the benefitting foreign spouses (male or female) are obliged to pay a sum varying from 5,000 to 10,000 euro, of which a very small amount, 1,000 to 2,000 euro, goes to the false Italian spouse. The latter is almost always a victim of the criminal organization who has been obliged to marriage through forms of blackmail or violence (see: Operation "Don Rodrigo" in the province of Messina in March 2011; Operation "Marriage Agency" held in Modica in November 2011; Operation "Redemption" concluded in Verona in November 2011; etc.).

In a particular case occurred in Palermo in the first semester of 2011, the fraud was aggravated by the figure of a complaisant Sicilian woman who married 3 times with third country nationals, thereby involving also the crime of bigamy.

Without specific data necessary to define the phenomenon, whilst knowing that in the EU context marriage of convenience involves exclusively family reunification, it is useful to fully quote the response of the Under-secretary of the Minister of Labour and Social Policy Hon. Belotti of 27th July 2011 to the previously mentioned parliamentary inquiry posed by Hon. Maraventano¹², on the one hand, related to the number of marriages between elderly Italian citizens and young foreign women, on the other, referring to the annual expenses paid for the reversionary pensions:

"For what concerns the first question, based on data published by ISTAT (National Institute of Statistics) related to the year 2009, the marriages where the male spouse is of Italian citizenship and

¹² XVI Legislature, Answer to inquiry no. 4-05034, File no.134, www.senato.it/japp/bgt/showdoc/frame.jsp?tipodoc=Sindispr&leg=16&id=615817.

the female is a foreign national have been 16,559, with an percentage incidence on the total marriages of 7.2%. In 2008, the same type of marriages were 18,240, with a percentage incidence of 7.4%. In 2009, the marriages between a male spouse over 60 years of age and a female of up to 49 years of age, regardless of the nationality, were 2,190, while in 2008 they were 2,241.

From the data released by INPS (National Institute of Social Security), as of 1st January 2011, the reversionary pensions assigned to foreign spouses by Italian citizens were 57,639, in relation to: *Fondo pensioni lavoratori dipendenti* - Pension Funds for Employee workers (excluding the separate accounts), Farmers, Sharecroppers, Settlers, Artisans and Traders, excluding the pensions assigned to orphans or to individuals having rights other than those of marriage. The percentage distribution by nationality of Italian citizens' widows having a reversionary pension is as follows: nationals 97.7%; EU15 nationals 0.93%; other EU nationals 0.13%; rest of Europe nationals 0.34%; rest of the world nationals 0.91%.

Always referring to 1st January 2011, the average difference of age between the foreign female holder of reversionary pension and the Italian male citizen predecessor, considering the place of birth of the widow, is the following: Italy 5.49; EU15 6.94; Rest of EU 14.61; rest of Europe 9.97; rest of the world 11.27.

For what concerns the amount of annual expenditures for the reversionary pensions, INPS has reported that for the year 2010 the overall expenditure amounts to 37,902,518 euro, of which 495,872 euro paid to foreign female holders.

For the year 2010, the foreign female holders of survivor pensions have been 166,054.

The pensions given to female survivors of up to 49 years of age have been 157,549 for an overall expenditure of 821,024 thousands of euros.

Please note that INPS has extracted the data related to pension expenditures from the Central Register of Pensioners up to 31st December 2010. This data are provisional and may be subject to change.

As regards the measures undertaken by the Government with regard to the phenomenon exposed by the questioner, it is reported that with Law Decree no. 98 of 2011, published in the Italian Official Journal of last 6th July, it has been decided in Art 18, paragraph 5, that "with effect from January 1st 2012, the percentage rate of pensions towards survivors of insured or pensioned individuals within the framework of general obligatory insurances and of the exclusive or replacement forms of such regimes, including that of separate management, is reduced, in the cases where the marriage with the predecessor was celebrated when the predecessor was over 70 years of age and the difference in age between the spouses is more than 20 years, by 10 per cent for every year of marriage missing to the attainment of 10 years. In case of fractions of years, the mentioned percentage will be recalculated proportionally. The dispositions of this paragraph are not applicable when there are children of minor age, students, or disabled. The regime related to accumulation as disciplined by article 1, paragraph 41 of the previously mentioned law no. 335 of 1995 remains unaltered."

Finally, it is highlighted that the competent parliamentary Committees are investigating a proposed law on the matter, having as a main objective a provision that, in case of decease of an insured individual having more than 50 years and a survivor having less than 40, without children, the assignment of reversionary pension shall be postponed until the surviving spouse reaches the age of the deceased spouse, fixing a maximum limit to 60 years of age".

In the Italian case, the consequences at pension level are not the only ones to be taken into consideration. Also those related to citizenship shall be considered. If it were true that the most part of mixed marriages occurs with the scope of acquiring the Italian citizenship, an indirect source of revealing the maximum dimensions of the phenomenon could be represented by the refusals of the applications for citizenship as a consequence of marriage. From 2003 through 2010, globally there have been less than 2,500 refusals of citizenship applications due to marriage, of which only a certain percentage could be attributed to the possibility of discovering a case of marriage of convenience.

Section 5

Summary and conclusions

National Contribution (up to one page only)

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

Eventual misuses with regard to marriages of convenience and false declarations of parenthood are countered, in Italy, by using a number of legislative instruments and through police operations aimed at curbing the abuses. Although there are no specific rules that punish the marriage of convenience or the false declaration of parenthood, the specific case is likely to be made within the scope of application of the penal code, for what concerns the offense of making false declarations before a public official. In a broader sense, the subject matter of this offence could also fall in the crime of aiding and abetting unauthorized immigration. In any case, should there be provided more enforcement actions, it is necessary that any further action taken shall be able to sum up the right to family and the right to privacy, in order to protect the privacy of those involved.

The absence of specific rules makes, thereby, the retrieval of statistical data on the subject extremely complex. In this regard, it may be appropriate to collect data on the grounds which prompted the administration to enforce measures of removal of third country nationals found to be irregularly present, as well as on withdrawals and refusals of residence permits; in some cases, these reasons might lead to a misuse of the right to family reunification.

An Italian proverb says: “make the law and then find the loophole”. Legality means endeavouring to establish standards inspired by the principle of maximum justice and commit to their enforcement because, without supervision, even the provision of stricter laws does not serve as a deterrent. However, even with just laws and vigilant authorities, subterfuges and even swindles may still occur.

In some cases there may be misuse of the right to family reunification and the investigation carried out may highlight only part of what is happening. However, whatever the proportion of irregular cases, it is a marginal expression of a positive reality, which is much wider. As shown in the focussed study, there are still many prejudices against mixed marriages, which are sometimes described by the media as possible marriages of convenience. But intermarriage is, in fact, the most promising horizon of integration.

On this matter, the statistics on foreign beneficiaries of survivors' pension are significant. Their percentages, compared with those of Italian beneficiaries and taking into account that foreign nationals are on average 12 years younger, bring into consideration the unfounded assumptions of negative pathological dimensions. Moreover, the absolute value of marriages with foreign spouses is very limited and it cannot be the reason for a social alarm.

To discourage the misuse of family reunification and to enhance the provisions for tackling the marriages of convenience and false declarations of parenthood, it is necessary to facilitate the exchange of information, experiences and good practices between Member States and with the Commission, so that effective practices and resources can be shared at EU level. According to this perspective, the focussed study intends to provide data on the scope of the phenomenon and identify possible regulatory gaps in the prevention and contrast.
