

EMN FOCUSED STUDY 2012

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

**National Contribution from the Netherlands**

*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)

National Contribution (one page only)

*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:*

In the EU, concern about the misuse of family migration to achieve residence in the EU is growing in a number of Member States. Due in part to the evaluation (and possible revision) by the European Commission of Directive 2003/86/EU on the right to family reunification by third country nationals residing in the European Union, the European Migration Network is conducting a study on the nature and extent of this misuse. In this study, consideration will also be given to the way in which the Member States are combating this misuse. This questionnaire is the contribution that the Dutch national contact point for EMN is making to this study.

The Netherlands operates a restrictive admission policy. In other words, an alien will only be granted a residence permit if he meets certain conditions. These conditions are based on two starting points: 1) the presence of the alien serves an essential Dutch interest, or 2) the alien is able to derive rights from international treaties and regulations by which the Netherlands is bound. Family migration falls largely in the latter category. The implementation of international obligations has been included in Dutch legislation and regulations. Given the restrictive nature of Dutch admission policy, it is no surprise that the combating of misuse and fraud is receiving the attention it merits.

Section 2 of this questionnaire relates to the national framework of definitions and regulations for family migration, and to the combating of misuse in the form of marriages and relationships of convenience, and false declarations of parenthood.

Dutch regulations distinguish between various forms of family migration. The forms of family migration that are relevant (for this report) are described, and an outline overview is provided of the conditions attached to each permit. One important condition for many third country nationals is that they are in possession of a regular provisional residence permit (mvv): this is a national visa that is only issued once all of the requirements for a residence permit have been met. This prevents the misuse of family migration (in part) while the alien in question is still residing outside the Netherlands. Recent plans by the Dutch government, under which family reunification on the basis of a non-registered relation will no longer be permitted, are in line with the trend to tighten up rules on family migration.

Where false declarations of parenthood are concerned, the questionnaire looks at the phenomenon relating to the inability to meet the standard of proof: sometimes, aliens requesting family migration are unable to demonstrate their family relationships due to the absence of a (reliable) registry of births, deaths and marriages in their country of origin, or are not able to do so to a sufficient extent.

The following are discussed as measures that are used to combat the misuse of family migration: the Marriages of Convenience (Prevention) Act [Wet voorkoming schijnhuwelijken], forms of investigation designed to assess the nature of a relationship, and measures to curtail the misuse of family migration within the asylum procedure. Finally, the Dutch response examines the impact of European case law (Zambrano and Dereci) on family migration in the Netherlands; this is still limited at the current time.

Section 3 looks at the implementation of regulations and at the attention that politicians and society are giving to the problem of the misuse of family migration. This section starts by providing an impression of the political and social debate about the misuse of family migration in the last three years. The following examples, amongst others, are notable in this respect: the various letters written by the government to the House of Representatives in 2009, and the current debate on the impact of various measures on family migration within the asylum procedure. Consideration is also given to other forms of misuse that have attracted attention in the Netherlands: consular marriages and the misuse of the Europe route. This is followed by a description of preventive measures, such as the completion of questionnaires at Dutch diplomatic posts, and a brief impression of the indicators that may prompt the

presumption of misuse and the investigation of this misuse in more depth.

The distribution of the burden of proof in the Netherlands in the event of the (suspected) misuse of family migration is discussed, as well as the parties that are responsible for investigation of marriages and relationships of convenience and false declarations of parenthood.

This is followed by an explanation of the consequences for the persons concerned under administrative and criminal law if misuse is established, and of the legal remedies available to the parties in question once misuse has been established. Finally, brief attention is given to international collaboration in relation to the combating of misuse, and it is concluded that, as far as we know, no investigation has ever been done in the Netherlands into the reasons why the persons concerned misuse family migration.

Section 4 of the report discusses the (limited) statistical data available on family migration and misuse. The first subsection outlines the overall playing field for family migration: the data available on the years 2008 to 2010 inclusive are provided together with an explanation of these data, which are organised on the basis of the stratified Dutch procedure. This entails assessment (for many third country nationals) while the family migrant is still residing abroad. The stratified nature of the procedure is one of the reasons why it is not possible to deliver any aggregated statistics.

Next, attention turns to the figures available on misuse. No standardised data on these figures are available in the Netherlands: the current registration systems are still insufficiently geared towards this. However, data collected manually is able to give an impression of the misuse identified.

### Synthesis Report (up to 3 pages)

*Executive Summary of Synthesis Report: this will form the basis of an EMN Inform, which will have EU and National policymakers as its main target audience.*

## 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:

Under Dutch aliens law, family members are understood to mean: the spouse, registered partner or non-registered partner of a person who is residing legally in the Netherlands and his/her minor biological or legal children (Section 3.14, preamble and under a of the Aliens Decree [*Vreemdelingenbesluit*]).

Under special conditions, residence may be granted to other individuals that actually form part of the family (adult children or grandparents, for example) in situations where these individuals would suffer disproportionate hardship if left behind in the country of origin. Added to this, a separate policy exists for elderly single parents that do not have any shelter in the country of origin (their children legally residing in the Netherlands) and for foster children. These family members will be disregarded in this study.

On 17 February 2012, the Minister for Immigration, Integration and Asylum notified the House of Representatives of his intention to amend the Aliens Decree<sup>1</sup>, whereby the right to family migration will, from that time on, be limited to the nuclear family, consisting of the spouse and any minor children. The registered partner will also be regarded as a spouse. Pursuant to this draft decree, family migration will no longer be possible for non-registered partners and adult children.

Under Dutch aliens law, a marriage is a marriage that is valid under Dutch private international law (Section 3.14(1)(a) of the Aliens Decree).

A marriage will be legally valid if:

- it has been solemnised by a Dutch Registrar of Births, Deaths and Marriages; or

<sup>1</sup> Parliamentary Documents II 2011/12, 32175, no. 21 (letter).

- it has been solemnised in accordance with legislation in the country in which the marriage solemnisation took place; or
- it has been solemnised at an embassy or a consulate of the country of origin of one of the spouses based in the Netherlands, provided neither of the partners have the Dutch nationality (in addition to another nationality).

Since 1 April 2001, it has also been possible for same-sex partners to enter into a civil marriage in the Netherlands.

The registered partnership was introduced in the Netherlands on 1 January 1998. A registered partnership is similar to marriage. The differences between the two concern the way in which the commitment can be ended, the legal relationship between the registered partners and children, and the limited recognition abroad. Residence as a registered partner is subject to the condition that the partnership has been registered in the Registry of Births, Deaths and Marriages in the Netherlands (Section 3.14, preamble and under a of the Aliens Decree). The registered partnership is also open to same-sex partners.

To be eligible for residence as a non-registered partner (cohabiting without being married), both partners must be single, must not be involved in a relationship that is such that it would constitute an impediment to marriage<sup>1</sup> under Dutch law, and the relationship must be permanent and exclusive (in other words, it must be possible, to a sufficient extent, to put the relationship on an equal par with a marriage) (Section 3.14, preamble and under b of the Aliens Decree). As stated above, the possibility for family migration by non-registered partners will probably lapse in the near future.

In the Netherlands, a distinction is made between family *reunification* and family *formation* in the context of family migration. Where family reunification is concerned, the relationship between the alien and the person who is already residing in the Netherlands existed before the latter started to reside in the Netherlands. Where family formation is concerned, the relationship commenced at a time when one of the persons involved already had his/her principle place of residence in the Netherlands. This distinction is not relevant for the subject of this study. Where reference is made to family reunification in this contribution, this will also be understood to include family formation.

A marriage or relationship of convenience is: a marriage or relationship that is entered into with the sole aim of providing an alien that does not have a right of residence in the Netherlands with the said right of residence (see, for instance, B2 4.2 of the Aliens Act Implementation Guidelines [*Vreemdelingencirculaire*]).

For the sake of completeness, it is also observed that a third country national will be understood to mean an alien that is not a national of the EU/EEA or Switzerland<sup>2</sup> in the context of this report.

### *False Declarations of Parenthood:*

For the definition of children that are eligible for family reunification: see above, under family members.

A false declaration of parenthood is a document or oral declaration (the latter only being applicable in situations where it is not possible to meet the standard of proof; see Subsection 2.2 below) by the alien on the family relationship that exists between parent(s) and a child, which declaration may or may not be deliberately incorrect.

This definition is derived from the general provision that an application for the extension of the period of validity of a temporary residence permit may be rejected if the alien has provided information that is incorrect, or has withheld information in a situation where this information would have resulted in the rejection of the original application to grant or extend a residence permit. The provision of incorrect information will also be understood to include the act of withholding essential (correct) information (Section 18(1)(c) of the Aliens Act [*Vreemdelingenwet*]).

*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*

<sup>1</sup> Section 41(1), Book 1, of the Netherlands Civil Code (*Burgerlijk Wetboek*): A marriage may not be contracted between individuals who are related to each other, whether biologically or because of a family relationship in the ascending and descending line, or as brothers, sisters, or brother and sister.

<sup>2</sup> See B1 9.4 of the Aliens Act Implementation Guidelines, for instance.

(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, in the section 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 and iv) The entry conditions for family reunification of a third country national as the spouse or partner of a third country national or a Dutch citizen have been laid down in Section 16 of the Aliens Act and are elaborated on in Sections 3.13 to 3.24 inclusive of the Aliens Decree. The policy for family reunification has been elaborated on in Chapter B2 of the Aliens Act Implementation Guidelines.

The following conditions apply for residence with a spouse or partner:

- There must be a legally valid marriage, registered partnership or, in the case of unmarried, cohabiting individuals, a permanent and exclusive relationship. This must be demonstrated and substantiated by means of authenticated official documents;
- The residential status of the sponsor<sup>1</sup>: the sponsor is a Dutch citizen, an EU subject, a Turkish national with a right of residence under the Association Council Decision 1/80, or the holder of a residence permit;
- The ages of both (marriage) partners: both must be at least 21 years of age;
- Polygamy: if the sponsor has polygamous relationships, it will only be possible to grant residence to one partner and to the children born into this relationship;
- Cohabitation and a joint household: cohabitation and a joint household must apply both formally and in practice;
- The Regular Provisional Residence Permit (MVV) requirement: an application to be granted a Regular Provisional Residence Permit will be assessed on the basis of the conditions that apply for a residence permit in the Netherlands, but will be effected before the applicant enters the Netherlands. Thus, the Regular Provisional Residence Permit is a special entry visa<sup>2</sup>. The obligation to apply for an Regular Provisional Residence Permit before arriving in the Netherlands enables the government to investigate whether aliens meet all of the requirements for entry, without finding itself faced with a *fait accompli*, due to the fact that the aliens in question are already present in the Netherlands;
- A valid document for border crossing: the principle rule is that all aliens must be in the possession of a valid document for border crossing. This document evidences the identity of the alien and his/her nationality;
- A danger to public order or national safety: under the Aliens Act, the residence of an alien in the Netherlands will be refused or terminated if the alien constitutes a danger to public order or national safety;
- Examination or treatment for TB: at the current time, TB is the only infectious disease to which aliens law attaches consequences, both as regards supervision and the granting of a residence permit. The willingness to have the examination (and treatment, where necessary) and to render cooperation in this respect are general conditions that must be met in order to obtain a temporary residence permit. If TB is diagnosed, this in itself will not constitute a ground for rejection of the application;
- The means requirement: in respect of the means a residence permit will be granted in any event if the sponsor permanently and independently has an income that is at least equal to the minimum wage for adults aged 23 or older, as referred to in the Minimum Wage and Minimum Holiday Allowance Act [*Wet minimumloon en*

<sup>1</sup> The term *sponsor* will be understood to mean the person already legally residing in the Netherlands, with whom family reunification is applied for.

<sup>2</sup> The authorisation for temporary stay is a so-called D visa. The following are exempted from the MVV requirement: nationals of Member States of the EU, Member States of the EEA, Australia, Canada, Japan, Monaco, New Zealand, Vatican City, the United States, South Korea and Switzerland (Appendix 2 to Section 2.2 of the Aliens Regulations [*Voorschrift Vreemdelingen*]).

*minimumvakantiebijslag*]. This income norm is a reference amount. If the sponsor earns less, it is possible to take the situation applicable for the applicant and the sponsor into detailed consideration;

- The civic integration requirement: the civic integration requirement as part of the MVV procedure consists of the successful completion of the civic integration examination no later than one year prior to the application for a Regular Provisional Residence Permit at a Dutch diplomatic or consular representation.

**The details of the various conditions have been described in outline above. The conditions have been elaborated on in Part B of the Aliens Act Implementation Guidelines. In certain special cases, it is possible to deviate from these conditions. This is also elaborated on in the part of the Aliens Act Implementation Guidelines mentioned above.**

Family members of asylum status holders will be permitted to enter the country for family reunification if:

- an application to this end is submitted within three months of the date on which an asylum residence permit is granted to the sponsor;
- a real family tie<sup>1</sup> exists, which already existed in the country of origin; and
- the family members have the same nationality as the sponsor.

In this situation, it will not be necessary to meet any extra conditions, such as an income requirement or civic integration examination. Nor will it be necessary to arrange the authentication of documents intended to establish a biological relationship. To facilitate the legal entry of dependants, an application may be submitted for a Regular Provisional Residence Permit. After entry into the Netherlands, the family members will then be able to apply for an asylum residence permit.

Once the period of three months has expired, the normal conditions for family reunification apply.

ii The entry conditions for family reunification by a third country national with a citizen of the EU that has utilised his/her right to free movement have been laid down in Sections 8.7, 8.12 and 8.13 of the Aliens Decree. The policy for this category has been elaborated on in Chapter B10 of the Aliens Act Implementation Guidelines.

- Cohabitation: the unmarried partner of a national of the EU, the EEA or Switzerland is required to be cohabiting with his/her partner in the Netherlands. It is not required that the other family members referred to in Section 8.7 of the Aliens Decree permanently cohabit with the national of the EU, the EEA or Switzerland, or his/her spouse or registered partner, provided the legal family tie has not been severed and the other requirements have been met.
- A family member that is himself a national of the EU or EEA or a national of Switzerland has the same right of residence as the citizen of the Union with whom he/she is going to reside. In the event of residence for a period of more than three months, he/she will be obliged to report for registration in the aliens administration system (Section 8.12(4) of the Aliens Decree).
- In the event of a stay of more than three months after the submission date of the application, a family member that is not a national of the EU or EEA or a national of Switzerland will be issued with a EU/EEA document with the following endorsement: 'family member of a citizen of the Union'. The period of validity for this document is five years from the date on which it is issued, or will be the same as the (proposed) period of residence for the EU or EEA national or national of Switzerland on whom lawful residence depends (if less than five years).
- Where a citizen from the EU is registered as an economically inactive person, he/she will be expected to demonstrate that he/she meets the means requirement. If his/her family members originating from outside the EU wish to join him/her at a later date and apply for assessment in terms of Community law, the citizen from the EU must submit proof to demonstrate that he/she has sufficient means of support for himself and his/her family members. The same applies for family members of an economically active citizen of the Union, on the understanding that it must be demonstrated that the citizen of the EU is still performing effective and genuine economic activities.
- To be able to establish the fact that an applicant is a family member of the sponsor, the submission of documents must demonstrate the family-law or permanent relationship that exists between the applicant and the sponsor.

A permanent (unmarried) relationship will be assumed where it is demonstrated that the unmarried partner and the EU citizen, who utilises his/her right of free movement, have been in a relationship for at least six months and have maintained

<sup>1</sup> Children will no longer form part of the family of the sponsor if the family tie can be regarded as having been severed. This will apply in one or more of the following situations in any event: - the child has been permanently taken into a family other than the family of the sponsor; - the child has started to live independently; - the child has formed its own family by marrying or entering into a relationship.

a joint household during this period. The fact that the unmarried partner and the EU citizen have a child together will also demonstrate the existence of a relationship between them.

- The applicant must produce a valid identity card or a valid passport, or demonstrate his/her identity and nationality unequivocally (without any doubt) by other means.
- The residence of a citizen of the EU and his/her family members can be denied or terminated for reasons relating to public order or public safety (Section 8.22(1) of the Aliens Decree), for reasons of national health (Section 8.23 of the Aliens Decree) and where the person in question has provided incorrect information, or has withheld (correct) information, in a situation where this information would have resulted in the refusal of entry or residence (Section 8.25 of the Aliens Decree).

**A more detailed description of these points can be found in Chapter B10 of the Aliens Act Implementation Guidelines.**

In the case of the family reunification of a third country national with a Dutch citizen who has utilised his/her right to free movement and has resided with his/her family members in a host Member State, it can be deduced from the judgments rendered by the Court of Justice of the European Communities in relation to *Surinder Singh* (7 July 1992, C-370/90) and *Eind* (11 December 2007, C-291/05) that, when the Dutch citizen returns to the Netherlands, these family members must enjoy at least the same rights of entry to and residence in the Netherlands as those that EU legislation would grant to them if the Dutch citizen were to decide to go to another Member State and reside there. The policy for this category has been elaborated on in Chapter B10/5.3 of the Aliens Act Implementation Guidelines.

iii Based on the description of this category in the explanation to this questionnaire, we interpret this category as being “Dutch citizens that have not utilised their right to free movement, who invoke the EU Treaty when applying for family reunification with a third country national on the grounds of case law.” Where the invocation of case law is deemed to be well-founded, these third country nationals will be treated as described above under ii; if the invocation is not well-founded, they will be treated as described above under i and iv.

*False Declarations of Parenthood:*

Sections 3.13 to 3.22 inclusive of the Aliens Decree include conditions for residence in the case of family reunification for minor biological or legal children of a sponsor. These conditions relate to the following:

- An actual family tie: residence may be granted to the minor biological or legal child of a sponsor who is residing in the Netherlands, if the child is subject to the lawful custody of the sponsor. The condition applicable in this situation is that the Minister believes that the child actually forms part of the family of the sponsor and already formed part of this family in the country of origin;
- The residential status of the sponsor;
- Polygamy;
- Cohabitation and a joint household;
- The MVV requirement;
- A valid document for border crossing;
- A danger to public order or national safety;
- Examination for or the treatment of TB;
- The means requirement.

These conditions, which are very similar to those for (marriage) partners, are elaborated on in Part B of the Aliens Act Implementation Guidelines. For a brief explanation, see above under Marriages of Convenience (i and iv).

General

In order to be granted residence in the Netherlands for family reunification, official, authenticated documents must be submitted in proof of the civil status claimed (a birth certificate or marriage certificate, for example). This has been elaborated on in B2/8 of the Aliens Act Implementation Guidelines and in the circular entitled *Legalisatie en verificatie van buitenlandse bewijsstukken betreffende de staat van personen* (Authentication and verification of foreign documents relating to the civic status of an individual).

An exemption from this condition may be granted in a situation in which it is ‘not possible to meet the standard of proof’, for example. This situation will primarily arise where there are no registers of births, deaths and marriages in the country from which the documents are to be obtained, where these registers are incomplete, or if no documents can be obtained in the country in question because of the political situation there. To establish whether there really is a situation in which it is not possible to meet the standard of proof, use is made of the knowledge and expertise of the Ministry of Foreign Affairs. In the absence of the necessary evidence, an investigation (detailed interviews) is carried out to establish the identity of the individual and the actual family relationship that exists. If relevant and necessary, this

can be supplemented by DNA testing, with the object of establishing parental descent. A situation in which it is not possible to meet the standard of proof will particularly arise in relation to applications that are submitted for family members (a spouse, partner, child or foster child) of aliens that have been granted residence in the Netherlands as part of the asylum procedure.

*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.*

### General

An application for family reunification must be accompanied by an official and authenticated marriage certificate and/or birth certificate (Aliens Act Implementation Guidelines B2). The alien must arrange to have the document authenticated by the Dutch embassy in the country of origin, where the alien will also complete a questionnaire. Any suspicion of fraud may be noted on this questionnaire. This is important, since the fact that it is possible to authenticate a certificate does not mean that the contents of the certificate are correct. Where fraud or misuse is suspected, the Immigration and Naturalisation Service [*Immigratie- en Naturalisatiedienst (IND)*] may decide to launch a verification investigation. In this situation, the Dutch embassy will be asked to investigate the contents of the certificate.

### *Marriages of Convenience:*

Where a marriage or relationship of convenience is suspected, an application for a residence permit may be rejected if it is not plausible that the individuals in question will cohabit and maintain a joint household (Section 3.17 of the Aliens Decree). B2/2.7 and B2/4 of the Aliens Act Implementation Guidelines stipulate that spouses and partners must cohabit. They must be registered at the same address in the Municipal Personal Records Database [*Gemeentelijke Basisadministratie (GBA)*] and also use the same address in contact with others, for example the employer, the tax authorities and the healthcare insurer (if there is a *legal* family tie (not severed) with a national of the EU, the EEA or Switzerland, the requirement of permanent cohabitation will not apply, except for *non*-registered partners.)

On 1 November 1994, the Marriages of Convenience (Prevention) Act [*Wet voorkoming schijnhuwelijken (WVS)*] entered into force. This Act makes it possible to take (preventive and repressive) action against the solemnisation of marriages of convenience in the Netherlands. The registration of a foreign marriage of convenience in the Register of Births, Deaths and Marriages and in the Municipal Personal Records Database can be refused, as well. If at least one of the prospective spouses does not have the Dutch nationality, the Registrar of Births, Deaths and Marriages may only solemnise a marriage or register a marriage solemnised abroad in the Register of Births, Deaths and Marriages after the Commissioner of Police of the Regional Police Force for the municipality in which the marriage will be registered has issued an advice on any convenience aspects of the marriage. If the Registrar of Births, Deaths and Marriages concludes that the marriage or partnership in question is one of convenience, he/she will refuse to solemnise the marriage or refuse to register the marriage solemnised outside the Netherlands in the Register of Births, Deaths and Marriages, which he/she will do on the basis of this advice (in part). Where a marriage of convenience is only found to be the case after the marriage has already been solemnised, the marriage may be annulled on the demand of the Public Prosecution Service, under Section 71a, Book 1 of the Netherlands Civil Code [*Burgerlijk Wetboek*].

According to research, for instance that conducted by the Research and Documentation Centre [*Wetenschappelijk Onderzoek- en Documentatiecentrum (WODC)*] in March 2004 on the implementation of the Marriages of Convenience (Prevention) Act, it is clear that in practice only very few registrations and solemnisations of marriages are refused.

At the current time, a legislative proposal for the simplification of the Register of Births, Deaths and Marriages and the introduction of electronic services at that Register is being debated in the Senate. In this legislative proposal, the advice from the Commissioner of Police is replaced by a personal declaration by the prospective spouses or registered partners, stating that they are not entering into the marriage or registered partnership in order to obtain a right of residence in the Netherlands (however, investigation by the Aliens Police would continue to be possible). They will also state what their right of residence is, which will be checked by the Registrar of Births, Deaths and Marriages. This declaration will be retained, because of which the IND will be able to invoke the declaration and attach consequences to it where it is found that a marriage was actually a marriage of convenience. For example, the extension application may be rejected and/or the right of residence may be withdrawn. In Modern Migration Policy (an amendment to the Aliens Act that has already been passed, but has not entered into force yet), it will also be possible to impose an administrative fine in the future. Added to this, a declaration that is incorrect is punishable under Sections 227-227b of the Penal Code [*Wetboek van Strafrecht*]. Both of the above meet the need, in practice, to simplify and accelerate the procedure designed to prevent marriages of convenience.

Signs that a relationship or marriage may be a relationship or marriage of convenience will be investigated in depth – preferably by interviewing the alien and sponsor in question separately at the IND Desk. During the interview, the IND member of staff will complete an extensive questionnaire that will serve as the basis for further decision-making. Investigations into possible marriages of convenience that have been solemnised at foreign embassies in the Netherlands (also see Subsections 3.2 and 4.2) will be conducted in the form of an interview by an appeals committee, which will usually consist of two experienced members of staff from the IND. The preparation involved and the interview itself are time-consuming. Where necessary, the Aliens Police will be asked to carry out an address check.

It is advisable for marriages or relationships of convenience to be identified as early as possible, preferably before the alien comes to the Netherlands. Information on the nature of the relationship can be obtained by presenting the alien – abroad- and his/her (marriage) partner – in the Netherlands – with a number of questions simultaneously (simultaneous interviews). In a number of cases, this information will be sufficient to make it possible to reject an application immediately. In other cases, this information may prompt an investigation in the future, the object of which will be to ascertain whether the partners still meet the conditions applicable. Staff from the IND who are responsible for combating fraud amongst aliens entering the country will train staff at the diplomatic posts to hold the interviews referred to above and to recognise marriages or relationships of convenience.

The proposed amendment of the Aliens Decree referred to in Subsection 2.1 also proposes that the period after which an independent right of residence can be granted to family members, based on continued residence, be extended from three to five years. One of the reasons for this amendment is to reduce the attractiveness of a marriage of convenience as a springboard to an independent residential status. Such a measure was already proposed in the WODC research mentioned above, which related to the implementation of the Marriages of Convenience (Prevention) Act.

In the past, when an application was received for assessment in terms of EU law for non-registered partners of EU citizens, the Netherlands satisfied itself with a written declaration stating that the relationship in question was a long term one. In order to prevent any misuse, the term ‘long term relationship, duly attested’ has been specified in more detail. This has resulted in the requirement for partners to have cohabited for at least six months or for a child to have been born into the relationship.

#### *False Declarations of Parenthood:*

In 2008-2009, misuse of the asylum procedure and the procedure for family reunification with asylum status holders within three months of the date on which asylum status had been granted was observed amongst Somalians in particular: asylum residence permit holders submitted applications to be joined by aliens that did not actually form part of the family in the country of origin. For example, reports were often made of foster children that had supposedly been taken into the family, whereas this was not actually the case.

Further to the situation outlined above, a number of measures have been put in place to tighten up the policy for family reunification within the asylum procedure, with the object of combating fraud and misuse<sup>1</sup>:

- The alien and sponsor will be asked for additional proof to demonstrate that the alien did actually form part of the family of the alien prior to the departure of the alien. As such, the burden of proof for the alien is being increased;
- At the Dutch embassies, family members wishing to obtain a residence permit to join an alien that has gained residence in the Netherlands as part of the asylum procedure are being asked a number of additional identifying questions. If no consistent statements are produced about the family tie, the application will be rejected;
- It is more often argued that a foster child actually no longer forms part of the family, for example where there are indications that the foster child has been taken into a different family since the departure of the sponsor;
- Family members who were not named as family members by the sponsor during his/her asylum procedure, will not be eligible to follow this person to the Netherlands.

Specific measures to prevent fraud with family reunification amongst Somalian within the asylum procedure:

- The IND has posted members of staff to the diplomatic representation in Addis Abeba in Ethiopia, where 80% of the MVV applications for family reunification within the asylum procedure from Somalians are submitted;
- Efforts will be made to find opportunities to hear the alien and the sponsor at the same time: the sponsor in the Netherlands and the alien at the Dutch diplomatic post.

In cases where doubts still exist, it will also be possible to use DNA testing in a situation where a relationship involving parental descent is concerned (also see Subsection 2.2).

<sup>1</sup> Parliamentary Documents II, 2008/09, 19637 no. 1261 (letter dated 3-4-2009).

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 Zambrano, Mc Carthy and Dereci judgments have had little impact in the Netherlands. Further to the Zambrano judgment, the Minister did not see any reason to attach more consequences to the judgment than those prompted directly by the individual facts and circumstances of the judgment<sup>1</sup>. As a result, the residence of the parents in the Netherlands will only be approved in exceptional cases. An exceptional case may apply in the event of the following cumulative circumstances: the parents are nationals of a third country; they are residing in the Netherlands with a minor child that was stateless at the time of birth, but which gained the Dutch nationality after its parents signed an option statement three years after their entry of the Netherlands, which then became their principle place of residence during this period; the parents do not have a valid residence permit for the Netherlands (any more) after signing the option statement for their child; and the minor child is completely dependent on its parents.

In the judgment of 5 May 2011 in the McCarthy case, the Court of Justice of the European Communities made it clear that the Zambrano judgment concerned an exceptional situation. The exceptional nature of the Zambrano case is also confirmed in national case law. In the Dereci judgment of 15 November 2011, the Court largely follows the line adopted in the Zambrano and McCarthy judgments.

*Synthesis Report (up to 5 pages)*

*2.1 - Summary of definitions and table mapping these across Member States*

*2.2 - Summary of definitions and table mapping these across Member States*

*2.3 - Outline of EU provisions in this area. In relation to National provisions, possibly either to include in table (if appropriate) – otherwise a synthesis of the information highlighting those countries which do have legislative provisions*

*2.4 – Summary of any information provided*

### Section 3

#### The situation in the Netherlands

*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)*

*Marriages of Convenience:*

This subsection has focused particularly on the period from 2009 up to the time at which this report is written.

In political debate, consideration is regularly given to marriages and relationships of convenience, not just in the context of aliens policy, but also in relation to the discussion of subjects like the Netherlands Nationality Act [*Rijkswet op het Nederlanderschap*], the Netherlands Civil Code, criminal law, social security and the Municipal Personal Records Database, etc. In the various contributions to the debate, marriages and relationships of convenience are often bracketed together with other forms of abuses of rights, such as trafficking in human beings, misuse of the Europe

<sup>1</sup> Parliamentary Documents II, 2010/11, 19637 no. 1408 (letter dated 31-3-2011).

route, forced marriages and misuse of first-cousin marriages.

In recent years, various measures have been put in place to combat marriages and relationships of convenience. The most elaborate example of this is the letter written to the House of Representatives by the Minister for Housing, Districts and Integration and the Minister of Justice, dated 2 October 2009<sup>1</sup>. The following measures are expressed in this letter:

- If there are doubts about the nature of the relationship when the Regular Provisional Residence Permit is issued, more thorough checks will be carried out when the first application is submitted for an extension of the permit (interviews, address checks and data held with other government agencies);
- The deployment of liaison officers in various countries of origin;
- More commitment to the achievement of systematic and preventive enforcement (questionnaires to be completed when submitting the application, order to appear at the IND Desk where there are indications of fraud and address checks).

In the letter dated 30 June 2010<sup>2</sup>, from the Minister for Housing, Districts and Integration and the Minister of Justice to the House of Representatives, which related to the government strategy on marriage and family migration, a first evaluation is provided of the measures that were put in place in 2009. This letter confirms the measures indicated in the letter mentioned above. The then State Secretary of Justice also notified the House of Representatives of some of these measures at an earlier date (letters dated 23 January 2009<sup>3</sup> and 27 January 2009<sup>4</sup>).

The measures already put in place are also discussed in a letter from the State Secretary of Justice to the House of Representatives (18 December 2009)<sup>5</sup> about the research report entitled *Gemeenschapsrecht en gezinsmigratie – Het gebruik van gemeenschapsrecht door gezinsmigranten uit derde landen* (Community law and family migration – the use of Community law by family migrants from third countries). New measures are also being introduced, such as heightened attention for consular marriages, (future) utilisation of the new possibilities presented by INDIGO (the automated registration system of the IND that is currently under construction) and further collaboration between the Member States of the EU.

In the press (national newspapers and news magazines), marriages and relationships of convenience feature particularly in news reports: usually about judgments and legal proceedings. In addition, several background articles have been written in recent years in which marriages of convenience are named particularly in combination with other forms of fraud, such as forced marriages and trafficking in human beings, or in the context of the debate about the advisability of first-cousin marriages.

NGOs are not actively involved in the debates on this subject.

A final mention concerns the M foundation (*Meld Misdaad Anoniem*) [Report Crime Anonymously]. M. is a telephone hotline that citizens with information about possible punishable acts can contact anonymously if they feel unable to report the matters in question to the police. If the anonymity of the persons providing the information can be guaranteed and the information is sufficiently factual, it will be made available to the authorities. In recent years, the hotline has received approximately 100 reports per year about marriages of convenience. An average of one in four reports meets the criteria necessary for notification of the authorities<sup>6</sup>.

### *False Declarations of Parenthood:*

There would currently seem to be less debate about fraud in relation to the family reunification of children. However, there was a great deal of attention for this subject following the strong increase, in 2008, in the number of applications for family reunification by Somalians that had been granted residence in the Netherlands as part of the asylum procedure. This concerned spouses, children and foster children for whom it was not possible to demonstrate a family tie on the basis of official, authenticated documents in most cases. This attracted both political and social attention. This subject was debated in the House of Representatives, and both news reports and background articles were published in the press. Since the introduction of measures to combat fraud within this group in 2009, the number of applications has

<sup>1</sup> Parliamentary Documents II, 2009/10, 32175 no. 1 (letter dated 2-10-2009).

<sup>2</sup> Parliamentary Documents II, 2009/10, 32175 no. 10 (letter dated 30-6-2010).

<sup>3</sup> Parliamentary Documents II, 2008/09, 30573 no. 33 (letter dated 23-1-2009).

<sup>4</sup> Parliamentary Documents II, 2008/09, 19637 no. 1247 (letter dated 27-1-2009).

<sup>5</sup> Parliamentary Documents II, 2009/10, 32175 no. 6 (letter dated 18-12-2009).

<sup>6</sup> Concerns information obtained directly from the M foundation.

fallen (for the figures, see Section 4, Subsection 2).

Criticism has now been expressed by various NGOs (for example, the Dutch Council for Refugees [*Vluchtelingenwerk*] and Defence for Children<sup>1</sup>) about the small number of (Somalian) family members that are eligible for this form of family reunification. They have reported on this to further the political discussion of the green paper on family reunification<sup>2</sup>, amongst other things. The House of Representatives, as well, has debated this subject, and Parliamentary questions have been raised with the Minister of Immigration, Integration and Asylum<sup>3</sup>.

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

#### *Marriages of Convenience:*

##### **Consular marriages:**

A consular marriage is a marriage that is solemnised at an embassy or consulate of the country of origin of one of the spouses, in a situation where neither spouse has the Dutch nationality (in addition to another nationality). It is not necessary for both partners to be present for a marriage of this nature. The marriage certificate is submitted to the Ministry of Foreign Affairs for authentication, after which the aliens in question will be able to submit an application for assessment in terms of EU law for lawful residence or for a residence permit.

In 2009, an increase was observed in the number of consular marriage certificates presented for authentication, relating particularly to marriages between Egyptians and EU citizens. The suspicion arose here that that these marriages could be marriages of convenience, the sole purpose of which was to gain lawful residence via EU law.

Given the legal framework of Community law and the presence of an authentic marriage certificate, the Dutch authorities have limited scope to doubt the validity of a marriage, but it does have some scope. This is because the Freedom of Movement Directive does not prevent the Member States from investigating individual cases where there are grounds to suspect misuse.

For example, the IND has conducted detailed investigations into questionable applications for assessment in terms of EU law by inviting the aliens in question to attend a hearing at the IND office in Hoofddorp, in which they were interviewed about the object of their residence.

Following the completion of the investigation process, 85% of the (more than 200) cases investigated were rejected because of fraud<sup>4</sup>. In most cases in which an appeal was lodged by aliens, the decision made by the IND was upheld by the court.

This approach has resulted in a drastic reduction in the number of applications received that relate to consular marriages.

##### **The Europe route**

There are situations in which national aliens legislation is circumvented because a Dutch citizen resides in another Member State for a short period of time and then returns to the Netherlands as a Community citizen, as a result of which his/her non-EU national (marriage) partner falls under EU law, which is more flexible. In this situation, the sole object is to circumvent the stricter national regulations.

In 2009, the WODC published a report about this subject, which was mentioned above: *Gemeenschapsrecht en gezinsmigratie – Het gebruik van gemeenschapsrecht door gezinsmigranten uit derde landen*. Although the researchers collected a great deal of data, they were unable to arrive at hard conclusions about the extent of any misuse of European migration rules: it has been found to be a complex playing field, for which it is not possible to properly identify all of the various relevant aspects.

<sup>1</sup> [www.defenceforchildren.nl](http://www.defenceforchildren.nl) "Kind in het buitenland mag bijna nooit naar ouder in Nederland".

<sup>2</sup> Letter from the Dutch Council for Refugees to the spokespeople of the Immigration and Asylum committee for the House of Representatives, 9-2-2012 and letter from Defence for Children to the Immigration and Asylum committee for the House of Representatives, 7-2-2012.

<sup>3</sup> Parliamentary Documents II, 2011/12, appendix number 1602 (Parliamentary questions 23-1-2012, answered 20-2-2012).

<sup>4</sup> Manual count project, not published in this form, issued on request; also see Section 4, Subsection 2.

The Council Directive does not prevent the Member States from investigating individual cases in a situation where there is a well-founded suspicion of misuse of such rules. However, systematic checks are prohibited under Community law. Article 35 of Council Directive 2004/38/EC makes it possible to put the necessary measures in place in the event of fraud (a marriage or relationship of convenience, for example) or an abuse of rights. To date, the term ‘abuse of rights’ has not been established by case law yet. In its guidelines for the better transposition and application of Council Directive 2004/38/EC, the European Commission observes that residence in the host Member State must be *genuine and effective*.

A number of aliens that failed to gain lawful residence in the Netherlands under Article 1F of the Geneva Convention and Protocol<sup>1</sup> (whether or not in combination with an exclusion order) did subsequently gain lawful residence in other European countries as a family member (usually the partner) of a Dutch citizen. As the family member of a Dutch citizen, they are regarded as Community citizens in the other Member States. Therefore, these aliens have lawful residence. Other immigration services are not adopting the Dutch interpretation of Article 1 F of the Geneva Convention and Protocol beforehand. If these persons return to the Netherlands, residence must be assessed in terms of EU law and residence may only be refused where these persons constitute a current danger to public order. It is unclear whether the term ‘abuse of rights’ applies in cases of this nature.

#### *False Declarations of Parenthood:*

#### **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:*

In recent years, the IND has worked with other relevant government organisations to develop a number of initiatives to recognise and address marriages and relationships of convenience at an earlier stage. Where a marriage or relationship of convenience is suspected in relation to an application for family reunification, further investigations will be conducted. To start with, when an application is received for a Regular Provisional Residence Permit (D visa), for residence with a partner, the sponsor will always be asked to complete a questionnaire about his/her relationship with the alien, about the residence history of both partners and about any previous relationships. The answers given in the questionnaire may prompt further investigation, for example a simultaneous interview with both partners. Where necessary, the alien could already be interviewed at the Dutch diplomatic post in the country of origin. It may also be decided to ask both partners to appear at the IND Desk for further questioning, or the Aliens Police may be asked to carry out an address check. Where fraud or misuse emerges from this investigation, the application in question will be rejected.

This approach is also adopted where there are indications of a marriage or relationship of convenience between third country nationals and EU citizens.

In 2010-2011, further experience was gained with the completion of questionnaires and the conducting of interviews at the embassy in a pilot carried out in collaboration with the Dutch embassy in Istanbul. This pilot is being evaluated at the current time.

The IND is currently investigating applications for assessment in terms of Community law in the case of a marriage between a third country national and a citizen of the Union with an Eastern European nationality. There are indications that within this group Community law is being abused. No results are available for publication yet.

#### *False Declarations of Parenthood:*

When authenticating official documents at a Dutch diplomatic post, a questionnaire must be completed. This makes it possible to spot suspected fraud, on the basis of which action can be taken. Where there are suspicions of fraud, a verification investigation in the country of origin can be requested. This will involve an investigation into the content of the declaration in question. Where family reunification is requested by asylum status holders within three months of the date on which asylum status is granted (the dependents procedure mentioned above), in a situation in which it is not possible to submit any documents, an identifying investigation will be conducted. In this situation, the persons concerned will be asked questions about the family situation and the family tie. Where relevant and necessary, DNA

<sup>1</sup> Exclusion of protection by the Geneva Convention and Protocol on a number of grounds, including war crimes, crimes against humanity or crimes against peace.

testing can be done, as well.

### **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:*

Firstly, it is observed that marriages and relationships of convenience are often difficult to prove, because the partners often collude to accomplish the fraud. Both profit from the situation in most cases and, in many cases, there is therefore no victim with an interest in protection (and who, for this reason, would want to submit a report thereover).

However, in situations where there is a victim, the marriage of convenience has generally been used as a tool in cases of trafficking in human beings. Victims of trafficking in human beings who make a report and render their cooperation in the preliminary investigation and prosecution investigation may be granted a (temporary) residence permit during the investigation and prosecution process.

When handling applications for a Regular Provisional Residence Permit and a residence permit for residence with a spouse or partner, the first step will be to use indicators to assess whether a marriage or relationship is a marriage or relationship of convenience. Possible indicators are: the existence of a family tie between the sponsor and the alien, a big age difference, the combination of non-obvious nationalities (non-obvious because of a difference in religious or cultural background, for example), the fact that the two individuals do not speak each other's languages (and lack a common third language, as well), the fact that the sponsor has previously sponsored an alien in relation to family formation, or the fact that the alien has previously requested residence on different grounds, but to no avail. Besides these indicators, there may also be indications submitted by third parties. For example, a diplomatic post may express doubts about the relationship claimed, or an anonymous letter to the same effect may be received. The answers given by the sponsor when completing the partner questionnaire may also result in a suspicion that the marriage or relationship is a marriage or relationship of convenience.

The possibility to (retrospectively) identify the existence of marriages or relationships of convenience is limited as a result of capacity issues (with the Aliens Police, for instance) and restricted legal possibilities. It will not be sufficient to carry out just one address check in many cases. In this situation, a number of house visits will be necessary and/or the partners will also need to be interviewed (separately and/or simultaneously), which is very time-consuming for IND staff. Because of the international protection of human rights, including family life, it is not always possible to terminate residence by family migrants in the event of misuse, or in the event that they no longer meet the conditions for residence.

Subsection 3.2 considered the lack of clarity about the interpretation of the term 'abuse of rights'. In a number of cases, this makes it more difficult to adopt an effective approach to (suspicions of) misuse in relation to family reunification under EU law.

#### *False Declarations of Parenthood:*

Some reports relating to the suspected use of false declarations of parenthood are received via other government organisations, such as the Ministry of Foreign Affairs (diplomatic and consular staff), but also from the network of Immigration Liaison Officers (ILO: IND staff that are stationed in strategic locations abroad).

*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:*

To be able to reject an *application* for residence with a spouse or partner based on the suspicion that a marriage or relationship is a marriage or relationship of convenience, it must be sufficiently plausible from information obtained from investigations that the partner and sponsor in the Netherlands are not cohabiting (and will not cohabit) and are not maintaining (and will not maintain) a joint household. The alien and the sponsor (the person who already has residence

in the Netherlands) must sufficiently demonstrate that the relationship is long-term and exclusive. This could be done, for example, by demonstrating how they have maintained their relationship up to the time of the application.

Where an asylum status holder submits an application for family reunification, the sponsor and the alien must demonstrate that the alien did actually form part of the family of the sponsor up to the time of the departure of the asylum status holder from the country of origin and that, where children are concerned, there is a biological and/or legal family tie. Besides this, it must also be demonstrated that the family members have the same nationality. Ideally, they will demonstrate this on the basis of official, authenticated documents. Thus, the burden of proof lies with the interested parties.

Where there are any doubts about the authenticity of a document, it will be the responsibility of the IND to demonstrate that the document is false or has been forged.

To be able to *withdraw* a residence permit that has already been granted due to the suspicion of a marriage or relationship of convenience, the IND will be expected to demonstrate that the marriage or relationship in question is a marriage or relationship of convenience: the burden of proof lies with the IND. To be able to establish that fraud or misuse is the case, it must be demonstrated that the individuals in question are not, or are no longer, actually cohabiting, and that they are not, or no longer, maintaining a joint household. This is often labour-intensive: for example, the Aliens Police may be instructed to carry out an address check, with the object of assessing whether the sponsor and the partner are actually cohabiting. The (simultaneous) interviewing of both partners is also a possibility in such cases.

When applying EU law, the Netherlands follows the guidelines provided by the Commission: in an investigation into fraud or misuse based on the application of EU law, the burden of proof lies with the authorities in the Member States that want to restrict the rights ensuing from the Council Directive. The authorities must be able to compile a persuasive file and must also consider all material safeguards.

Current investigations of cases in which it is suspected that marriages are actually marriages of convenience do not justify derogation from the rights that family members from third countries derive from the Council Directive (such as a prohibition of work, passport confiscation, or an extension of the six-month period in which a residence permit is issued). These rights may be withdrawn at any time where prompted by the outcomes of the investigation.

The Council Directive does not prevent Member States from investigating individual cases where there is a well-founded suspicion of misuse. However, systematic checks are prohibited under EU law. The Member States are able to rely on earlier analyses and experiences that show a clear connection between cases in which misuse has been proven and on certain characteristics of these cases.

#### *False Declarations of Parenthood:*

The burden of proof in relation to applications for the family reunification of children is largely comparable to what has been described above for spouses and partners.

In many cases, the results of a DNA test are the best proof of the existence or non-existence of a biological tie between parents and children. However, for logistical and financial reasons, a DNA test will only be done if all other conditions for the residence requested are met and some doubt still exists about the biological family tie.

In the case of 'normal' family reunification, the applicant will pay the costs of the investigation initially. If the outcome of the investigation is positive, he/she will be reimbursed for the amount paid. Where an asylum status holder applies for family reunification within three months of the date on which asylum status is granted (the dependents procedure mentioned above), he/she will not be required to pay in advance. If the outcome of the investigation is negative, the costs may be recovered from the applicant at this stage. (B2 8.6 of the Aliens Act Implementation Guidelines).

*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:*

When allowing aliens to enter the country and when enforcing aliens policy, responsibility for recognising and combating marriages and relationships of convenience lies with the IND, in collaboration with the Aliens Police (address checks) and the Dutch diplomatic posts (identifying suspicions, document authentication, completing questionnaires and possibly even conducting interviews). In a number of countries, ILOs at the diplomatic posts play a role in the discovery of misuse. At the IND, staff are kept alert to different forms of fraud by fraud contacts, who exchange experiences between themselves.

When implementing the Marriages of Convenience (Prevention) Act, responsibility for recognising and combating

marriages of convenience lies with the municipalities, in collaboration with the Aliens Police (see Subsection 2.3 about the Marriages of Convenience (Prevention) Act).

It can be added to the above that municipalities also have a responsibility to recognise and combat the registration of personal details in the Municipal Personal Records Database on the basis of documents that are false or that have been forged.

*False Declarations of Parenthood:*

See Marriages of Convenience.

**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:*

Where there are sufficiently strong indications of fraud or misuse, an application for a residence permit for family reunification will be rejected. If fraud or misuse is established when a residence permit has already been granted, the permit may be withdrawn due to the provision of incorrect information. This will only be possible if the correct information would have resulted in the rejection of the original application (Sections 18 and 19 of the Aliens Act). The act of withholding essential (correct) information is also regarded as the provision of incorrect information. The residence permit may be withdrawn with retrospective effect from the date on which it was granted.

If a residence permit is withdrawn because a marriage or relationship has been found to be a marriage or relationship of convenience (based on the provision of incorrect information), the alien may be denied a (normal) departure period of four weeks (Section 62(2) of the Aliens Act) and an entry prohibition may be imposed on him/her. In this situation, the alien must leave the Netherlands immediately (within 24 hours). The reason for denying the alien a departure period is based on the provision of incorrect or incomplete information and/or the risk that the alien will evade supervision.

A report may also be made in relation to forgery (Sections 225 and/or 227 of the Penal Code). Conviction under these sections of the Penal Code may result in a prison sentence of up to six years or a fine of the fifth category (with effect from 1-1-2012, this will be a maximum of € 78,000.00).

Where a third country national submits an application for assessment in terms of EU law, this application will be rejected if fraud or misuse has been established. If fraud or misuse is established when a residence document or permit has already been granted, lawful residence may be ended due to the provision of incorrect information or because information has been withheld. Here too, this will only be possible if provision of the correct information would have resulted in the refusal of entry or residence (Section 8.25 of the Aliens Decree).

*False Declarations of Parenthood:*

Where an application for a residence permit has been submitted and a false or forged declaration has been provided, the application will be rejected.

If a residence permit has been granted on the basis of a false or forged birth certificate and false information, it will be possible to withdraw the residence permit. In a case of this nature, the individual in question may be reported for forgery (also see Marriages of Convenience).

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

*Marriages of Convenience:*

Applicants may use legal remedies against any negative decision on an application for a residence permit or a decision relating to the withdrawal of a residence permit. Applicants in this situation will be given the possibility to apply for review and appeal against the decisions made.

A sponsor will only lack recourse to legal remedies where an application for a Regular Provisional Residence Permit is concerned: formally, this is a request for advice, which will result in the provision of advice, not a decision. Incidentally, the advice provided will be based on the conditions applicable for the resident permit required. This advice procedure is not subject to any costs (for more information about the MVV procedure, see Subsection 4.1).

The possibility to object to or appeal against a decision also applies to applications from third country nationals for assessment in terms of EU law.

*False Declarations of Parenthood:*

See Marriages of Convenience

*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:*

The Netherlands participates in the meetings of the Free Movement Working Group in Brussels, at which best practices in the implementation of the Freedom of Movement Directive are exchanged. Besides this, under the chairmanship of the European Commission, consideration is primarily given to the subject of fraud, misuse and public order aspects.

The EU Circa network is used to upload data that could be of importance for other Member States (trends, statistics).

On 16 December 2009, the research report entitled *Gemeenschapsrecht en gezinsmigratie – Het gebruik van gemeenschapsrecht door gezinsmigranten uit derde landen* was presented to the House of Representatives. This research was conducted by the WODC and the IND, and considers a number of issues, including the extent to which and the grounds on which there is reason to assume that a situation involving assessment in terms of Community law concerns a case of use or (legal) abuse.

The Netherlands circulated the letter written by the government to the House of Representatives about this research, which letter also contained a summary of the various measures, within the EU Circa network (accessible for contact persons from all EU Member States that participate in the Free Movement Working Group). This research also prompted the delivery of a presentation, on the approach adopted to tackle fraud and misuse, to delegates attending a meeting of the Free Movement Working Group in Brussels.

Based on a number of individual files, the IND has established contacts about possible fraud and the abuse of rights with German and Belgian liaison officers within the context of European migration law (also in connection with Section 1 f of the Geneva Convention on Refugees; see Subsection 3.2). ILOs could play a role in contacts with (representatives of) other Member States in other countries too.

*False Declarations of Parenthood:*

The various Member State embassies in origin countries (in Addis Abeba, for instance) maintain contacts with each other in situations where an alien is admitted to the asylum procedure in the Netherlands, after which his/her family members wish to follow him/her.

**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:*

It would seem that no research projects are available in which the reasons for a marriage or relationship of convenience have been studied.

In interviews in newspapers<sup>1</sup> with several Dutch women that had entered into marriages of convenience, it emerged that they did this to help an alien to gain lawful residence in the Netherlands.

It has emerged from a number of legal actions against individuals who are suspected of smuggling migrants or trafficking in human beings that individuals are also forced into marriages of convenience. These marriages facilitate

<sup>1</sup> The Volkskrant newspaper dated 29/3/2009, and www. NAPnieuws.nl.

trafficking in human beings. In this situation, the motive for the sponsor is almost always financial gain.
<b>False Declarations of Parenthood:</b> No research projects are available in which the reasons for the use of false declarations of parenthood have been studied.
<b>Synthesis Report (up to 10 pages)</b> <i>Overall synthesis, drawing out key points to be highlighted at national level with the possibility of presenting information on national means of detecting misuse and reasons and motivations (i.e. drivers) of the misuse in a table.</i>

<b>Section 4</b> <b>Available statistics, data sources and trends<sup>1</sup></b>
<b>National Contribution (1-3 pages)</b>  <b><i>To the extent possible, statistics provided should be disaggregated according to the four scenarios outlined in Section III of this Common Template.</i></b>  <b><u>Statistics: General Context</u></b>  <i>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 <u>general context</u> for the Study. What are the gaps? What are the available years?</i>  <i>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.</i>  <i>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).</i>
<b>Marriages of Convenience:</b>  In this subsection, the numerical context of family migration in the Netherlands is outlined. Because of the procedures that are (or can be) followed in the Netherlands for family migration, it is not possible to provide clear, precise and itemised figures on the overall context of residence procedures for family reunification. The figures indicated do not align seamlessly with the figures that are submitted to Eurostat.  To be considered eligible for a residence permit, many third country nationals are expected to be in the possession of a Regular Provisional Residence Permit <sup>2</sup> : a visa permitting them to come to the Netherlands and that will be issued following a successful assessment in terms of the conditions of the residence permit envisaged. Before an application for a Regular Provisional Residence Permit is actually submitted, the sponsor is able to approach the IND for advice. This advice is assessed in terms of the conditions for the residence permit envisaged. No costs are charged for advice of this nature, as a result of which the threshold is very low. However, no legal remedies are open where a negative advice is issued.  In 2008, 19,900 advice decisions for family migration were registered (61% spouse/partner, 36% child and 3% other

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

<sup>2</sup> Schedule 2 to Section 2.2 of the Aliens Regulations indicates the nationals of which countries have been exempted from the MVV requirement.

family members), 62% of which were positive. In 2009, 24,404 advice decisions were registered for family migration (56% spouse/partner, 39% child and 3% other family members), 54% of which were positive. In 2010, 30,493 advice decisions for family migration were registered (52% spouse/partner, 39% child and 9% other family members), 45% of which were positive. No data are available for 2011 yet. The negative-advice percentage for spouses/partners increased from 32% in 2008, via 36% in 2009, to 42% in 2010. The negative-advice percentage for children increased from 36% in 2008, via 48% in 2009 to 57% in 2010. For other family members, the negative-advice percentage increased from 86% in 2008, via 87% in 2009, to 96% in 2010.

Aliens are able to submit their actual applications for a Regular Provisional Residence Permit at the Dutch embassy in their countries of origin. This is possible both after and without having requested prior advice. Charges apply for the processing of these applications. Applicants do have recourse to legal remedies against negative decisions. Where an application for a Regular Provisional Residence Permit is submitted to a Dutch diplomatic post, this will be possible without having requested any prior advice. It is not possible to deduce from the figures available how many of the applications submitted to the diplomatic posts were or were not preceded by requests for advice. The Regular Provisional Residence Permit are issued by the Dutch diplomatic or consular representation abroad, following their prior authorisation by the Visa Service at the Ministry of Foreign Affairs, which has been placed with the IND. These authorisations are valid for six months from the date of the notification in which a Regular Provisional Residence Permit is granted. Aliens are required to have taken receipt of the authorisation within this six month period, after which they will have six months from the date on which the Regular Provisional Residence Permit is issued to travel to the Netherlands. Once in the Netherlands, aliens will be able to submit an application for a residence permit with the IND.

In 2008, 3,984 decisions on MVV applications for family migration were registered (69% spouse/partner, 29% child and 2% other family members): 68% of these applications were granted. In 2009, 3,708 decisions on MVV applications for family migration were registered (65% spouse/partner, 34% child and 2% other family members): 61% of these applications were granted. In 2010, 4,518 decisions on MVV applications for family migration were registered (48% spouse/partner, 40% child and 12% other family members): 44% of these applications were granted. The rejection percentage for spouses/partners in this procedure increased from 29% in 2008, via 31% in 2009, to 35% in 2010. The rejection percentage for children increased from 30% in 2008, via 45% in 2009, to 65% in 2010. For other family members, the rejection percentage changed from 66% in 2008, via 91% in 2009, to 85% in 2010.

If an alien submits an application for a residence permit after entering the country and is in the possession of a Regular Provisional Residence Permit, his/her application will be granted in virtually all cases: after all, the application has already been assessed against all of the conditions applicable. However, in some cases, an alien will not apply for a residence permit in the Netherlands after being issued with a Regular Provisional Residence Permit. It is not known how often this situation arises.

There is also a group of aliens that is not required to be in the possession of a Regular Provisional Residence Permit<sup>1</sup>. This group of aliens is able to travel to the Netherlands to submit an application for a residence permit without being in the possession of a Regular Provisional Residence Permit.

In 2008, 9,341 decisions were registered on applications for a residence permit for family migration without a Regular Provisional Residence Permit (24% spouse/partner, 68% child and 9% other family members): 83% of these applications were granted. In 2009, 8,166 decisions were registered on applications for a residence permit for family migration without a Regular Provisional Residence Permit (25% spouse/partner, 67% child and 7% other family members): 83% of these applications were granted. In 2010, 7,546 decisions were registered on applications for a residence permit for family migrations without a Regular Provisional Residence Permit (25% spouse/partner, 67% child and 8% other family members): 86% of these applications were granted. The percentage of spouses/partners whose applications were rejected at the end of this procedure developed from 20% in 2008, via 17% in 2009, to 15% in 2010. The rejection percentage for children developed from 6% in 2008, via 6% in 2009, to 4% in 2010. The rejection percentage for other family members increased from 24% in 2008, via 46% in 2009, to 53% in 2010.

In the context of family migration, a total of 24,092 first residence permits were issued in 2008 (48% spouse/partner, 41% child and 11% other family members). In 2009, a total of 23,078 first residence permits were granted for family migration (49% spouse/partner, 38% child and 13% other family members). In 2010, the total number of residence permits issued for family migration was 21,565 (51% spouse/partner, 38% child and 12% other family members)<sup>2</sup>.

### *False Declarations of Parenthood:*

<sup>1</sup> Nationals of the following countries have been exempted from the MVV requirement: Member States of the EU, Member States of the EEA, Australia, Canada, Japan, Monaco, New Zealand, Vatican City, the United States, South Korea and Switzerland. (Schedule 2 relating to Section 2.2 of the Aliens Regulations). However, these aliens *may* apply for an Regular Provisional Residence Permit should they wish to do so. By doing this, they are able to establish whether they will be eligible for the residence permit envisaged prior to their arrival in the Netherlands.

<sup>2</sup> Eurostat figures, consulted on 1 March 2012.

See Marriages of Convenience.

**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:*

Because the IND is unable to register the marriages or relationships of convenience observed in the current automated systems as a matter of course, it is not possible to generate hard figures or to arrive at a proper estimate of the total extent of the problem. The possibilities available for the registration of grounds for rejection are not utilised consistently. Added to this, it has been found that it is often difficult to prove that a marriage or relationship is actually a marriage or relationship of convenience, because the partners usually collude to accomplish the fraud. Because there is no victim with an interest in protection in many cases, this fraud is not reported very often.

Possibly, more could be said about the extent of the phenomenon if a file investigation were to be conducted in the systems in place at the IND. However, the performance of a file investigation (based on a representative sample of files, for example) would be very labour intensive and is not possible within the (time) frameworks of this study.

Under criminal law, marriages of convenience fall under the offence *forgery*. There are many different variants of this offence. Because of this, it is not possible to provide statistical data from the criminal-law chain within the scope of this study either (without further research).

However, there have been various independent research projects, pilots and samples in recent years that have generated numerical material. This material was collected manually and is not structured such that it results in a consistent picture of the subject. The outcomes provide an indication at the most.

- The IND conducted a pilot on relationships of convenience from February 2007 until the spring of 2008. In this pilot, any doubt about the nature of a relationship at the time when issuing the Regular Provisional Residence Permit would result in extra attention to the subsequent extension application (usually submitted approximately one year after arrival in the Netherlands). The pilot involved 100 files. In 30 of these files, this resulted in a withdrawal of the permit granted or a rejection of the extension application. In these cases, the Aliens Police were asked to conduct an investigation prior to deciding to reject the application in the majority of cases. This approach has now been introduced nationally.
- In 2009, the Minister of Foreign Affairs observed a striking increase in the number of marriage certificates for consular marriages being presented for authentication at the Egyptian and Moroccan embassies in The Hague. These were accompanied by indications that led to the suspicion that these marriages were marriages of convenience. These indications included the fact that the spouses did not speak each other's languages and often had no third common language of which both had a sufficient command. Almost all of the cases identified by the Ministry of Foreign Affairs involved the marriage of Egyptian men to women originating from one of the Eastern European Member States or Portugal. Following the marriage solemnisation, the third country nationals in question submitted applications for assessment in terms of Community law. Further to the above, the IND selected 20 random samples and subsequently asked the persons involved in these cases to appear for an interview. The results that emerged in relation to the 20 cases selected were such (a marriage of convenience in 16 of the 20 cases) that it was decided to continue the pilot. At the end of 2010, 29 (13.9%) of the 208 cases already decided on were granted; 176 (84.6%) were rejected because they involved a marriage of convenience. The other cases (1.5%) have been dealt with differently. After the pilot, the number of applications of this nature fell drastically: from an average of 15-20 cases per month to an average of three cases per month.
- If an IND official is aware of an offence, he/she is expected to report this offence to the police. These reports are registered manually. These records show that IND staff reported 183 offences in 2011 in any event. Sixty of the cases registered pertained to forgery and/or fraud in relation to a suspected marriage of convenience. Twenty-eight of these 60 cases also involved document fraud.
- Subsection 3.1 above referred to data from the M foundation [Report Crime Anonymously]. In recent years, it

has received approximately 100 reports per year on marriages of convenience.

*False Declarations of Parenthood:*

The table below shows the decisions on MVV applications for family reunification with sponsors who are holders of an asylum residence permit (see Subsection 2.3). In 2009 and 2010, a huge increase in the number of application rejections was evident, particularly an increase in the rejection of children. However, an increase in the number of rejections issued to spouses and partners can be seen too. In 2011, the number of applications decreased. Many of these rejections are due to the forms of misuse referred to in Subsection 2.3. However, no exact figures are available, as the grounds for rejection are not registered reliably in the IND systems.

**Decision data on applications for family reunification with asylum residence permit holder**

	2008				2009			
	Rejection	MVV's* granted	Other	Total	Rejection	MVV granted	Other	Total
Child	1.175	1.607	95	2.877	3.428	1.943	91	5.462
Spouse	499	744	47	1.290	1.013	690	35	1.737
Partner	51	39	6	96	88	50	5	143
	1.725	2.390	148	4.263	4.529	2.683	131	7.343

	2010				2011			
	Rejection	MVV granted	Other	Total	Rejection	MVV granted	Other	Total
Child	7.292	2.317	237	9.846	5.965	507	92	6.564
Spouse	1.867	608	83	2.558	1.481	198	27	1.706
Partner	75	24	5	104	77	13	0	90
	9.234	2.949	325	12.508	7.523	718	119	8.360

\* for an explanation about MVV's see section 4.1

**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:*

Because the marriages or relationships of convenience observed are not registered by the IND in the current automated systems as a matter of course, it is not possible to generate hard figures or to arrive at a proper estimate of the total extent of the problem.

*False Declarations of Parenthood:*

The same applies for rejections based on false declarations of parenthood. The IND does not register these in the current automated system as a matter of course. Thus, here too, it is not possible to generate hard figures or to arrive at a proper estimate of the total extent of the problem.

*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:*

No information is available about this.

*False Declarations of Parenthood:*

No information is available about this.

*Synthesis Report (up to 5 pages)*

*Description of available statistics / data and identified gaps.*

*Overall synthesis, drawing out key points to be highlighted at national / Member State level. This section could include graphics such as a map outlining the patterns of instances of misuse + synthesis of trends/data to show which Member States most commonly experience these phenomena.*

Section 5

Summary and conclusions

*National Contribution (up to one page only)*

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

*Marriages of Convenience:*

The approach adopted to marriages and relationships of convenience is based on a two-pronged approach. The first prong focuses on preventing individuals from entering into marriages of convenience in the Netherlands. The second focuses on identifying marriages and relationships of convenience, preferably at as early a stage as possible, and on the refusal or withdrawal of the right of residence on the grounds of the relationship in question. Criminal prosecution is possible too. Risk indicators are often used to identify misuse and fraud. Where there is any doubt about the nature of a relationship, further investigations will be carried out by staff from the Immigration and Naturalisation Service [Immigratie- en Naturalisatiedienst (IND)] (in the Netherlands and at diplomatic posts abroad) or by the Aliens Police. These investigations are labour intensive.

In many marriages and relationships of convenience, the 'partners' involved work together, because both profit from the situation. This hinders investigations. Some marriages and relationships of convenience are used as a tool for trafficking in human beings.

Together with other forms of misuse and fraud, marriages and relationships of convenience feature regularly in political debates. Although marriages of convenience are the subject of social attention, this attention is limited.

This study shows that the extent of the problem involving marriages and relationships of convenience in the Netherlands cannot be quantified at the current time. Although there are a number of indications, registration is not systematic or complete. Further investigations to identify the extent of the problem more effectively are possible, but would fall outside the framework of this study. Investigations into marriages of convenience will be time consuming and it will not be possible to estimate how reliable the results will be in advance.

*False Declarations of Parenthood:*

In the Netherlands, false declarations of parenthood feature primarily in relation to family migration within the asylum procedure: asylum seekers that have been granted asylum status are able to request that their family members be permitted to join them. If they submit a request of this within three months of the date on which they are granted asylum status, their request will be subject to more favourable conditions. Where individuals are normally required to demonstrate family relationships on the basis of official (authenticated) documents when requesting family reunification, it will not be possible to impose this requirement where there is no registry of births, deaths and marriages in the country of origin, or an incomplete registry of this nature. In 2008 and 2009, it was observed that Somalis (in particular) who were in the possession of asylum permits took advantage of the fact that it was not possible for them to meet the standard of proof, in their attempts to arrange for individuals other than their own children join them in the Netherlands. In cases like this, DNA testing would be obvious, but this is only effective when seeking to establish biological descent. The Somali cases, however, often involved foster children (for this reason).

Measures that have been put in place since 2009 as a result of the above abuses have resulted in a decrease in the number of requests. The extent of this decrease is now such that letters written to the House of Representatives by NGOs state that it has become too difficult for the children of asylum status holders to gain the right to reside in the Netherlands.

*Synthesis Report (2-4 pages)*

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

