

Procedure file

Basic information			
CNS - Consultation procedure Directive	1999/0258(CNS)	Procedure completed	
Right to family reunification			
Subject 7.10.08 Migration policy			
Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	LIBE Citizens' Freedoms and Rights, Justice and Home Affairs	PSE CERDEIRA MORTERERO Carmen	02/07/2002
	Former committee responsible		
	LIBE Citizens' Freedoms and Rights, Justice and Home Affairs	ELDR WATSON Sir Graham	17/01/2000
	Committee for opinion	Rapporteur for opinion	Appointed
	JURI Legal Affairs and Internal Market	PSE BERGER Maria	29/02/2000
	Former committee for opinion		
	JURI Legal Affairs and Internal Market	PSE BERGER Maria	29/02/2000
Council of the European Union	Council configuration	Meeting	Date
	Competitiveness (Internal Market, Industry, Research and Space)	2525	22/09/2003
	Justice and Home Affairs (JHA)	2489	27/02/2003
	Justice and Home Affairs (JHA)	2370	27/09/2001
	Justice and Home Affairs (JHA)	2350	28/05/2001
	Justice and Home Affairs (JHA)	2266	29/05/2000
European Commission	Commission DG	Commissioner	
	Justice and Consumers		

Key events			
01/12/1999	Legislative proposal published	COM(1999)0638	Summary
18/02/2000	Committee referral announced in		

	Parliament		
29/05/2000	Debate in Council	2266	
13/07/2000	Vote in committee		Summary
13/07/2000	Committee report tabled for plenary, 1st reading/single reading	A5-0201/2000	
06/09/2000	Debate in Parliament		
06/09/2000	Decision by Parliament	T5-0362/2000	Summary
10/10/2000	Modified legislative proposal published	COM(2000)0624	Summary
28/05/2001	Debate in Council	2350	Summary
27/09/2001	Debate in Council	2370	
02/05/2002	Amended legislative proposal for reconsultation published	COM(2002)0225	Summary
23/05/2002	Formal reconsultation of Parliament		
27/02/2003	Debate in Council	2489	Summary
19/03/2003	Vote in committee		Summary
19/03/2003	Committee report tabled for plenary, reconsultation	A5-0086/2003	
08/04/2003	Debate in Parliament		
09/04/2003	Decision by Parliament	T5-0179/2003	Summary
22/09/2003	Act adopted by Council after consultation of Parliament		
22/09/2003	End of procedure in Parliament		
03/10/2003	Final act published in Official Journal		
06/12/2003	Additional information		Summary

Technical information

Procedure reference	1999/0258(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Directive
Legal basis	EC Treaty (after Amsterdam) EC 063
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/5/12545; LIBE/5/16289

Documentation gateway

Legislative proposal	COM(1999)0638 OJ C 116 26.04.2000, p. 0066 E	01/12/1999	EC	Summary
Economic and Social Committee: opinion, report	CES0588/2000 OJ C 204 18.07.2000, p. 0040	25/05/2000	ESC	

Committee report tabled for plenary, 1st reading/single reading	A5-0201/2000 OJ C 135 07.05.2001, p. 0011	13/07/2000	EP	
Text adopted by Parliament, 1st reading/single reading	T5-0362/2000 OJ C 135 07.05.2001, p. 0081-0174	06/09/2000	EP	Summary
Modified legislative proposal	COM(2000)0624 OJ C 062 27.02.2001, p. 0099 E	10/10/2000	EC	Summary
Amended legislative proposal for reconsultation	COM(2002)0225 OJ C 203 27.08.2002, p. 0136 E	02/05/2002	EC	Summary
Economic and Social Committee: opinion, report	CES0857/2002 OJ C 241 07.10.2002, p. 0108	17/07/2002	ESC	
Committee of the Regions: opinion	CDR0243/2002 OJ C 073 26.03.2003, p. 0016-0019	20/11/2002	CofR	
Committee final report tabled for plenary, reconsultation	A5-0086/2003	19/03/2003	EP	
Text adopted by Parliament after reconsultation	T5-0179/2003 OJ C 064 12.03.2004, p. 0283-0373 E	09/04/2003	EP	Summary
Follow-up document	COM(2008)0610	08/10/2008	EC	Summary
Follow-up document	COM(2014)0210	03/04/2014	EC	Summary
Follow-up document	COM(2019)0162	29/03/2019	EC	Summary

Additional information

European Commission

[EUR-Lex](#)

Final act

[Directive 2003/86](#)
[OJ L 251 03.10.2003, p. 0012-0018](#) Summary

Right to family reunification

PURPOSE : To present a draft directive on family reunification of third country nationals. **CONTENT :** A common immigration policy has been given impetus and legal base by the provisions of the Amsterdam Treaty. As a starting point, the Commission considers that zero immigration mentioned in past Community discussion was never justified. The policy was not fully implemented for two main reasons: in the short and medium term, immigration facilities such as family reunion should not be interrupted and there are branches of industry that are short of manpower. Member States wish to maintain their privileged relationship with certain non-member countries. In the long term, there is the issue of population ageing and all that this entails in terms of welfare protection and the funding of pension schemes. The Tampere Council in October 1999 reiterated that the Union must offer fair treatment to third-country nationals residing lawfully in the territory of its Member State. This proposal establishes a right to family reunification for third country nationals residing lawfully in a Member State; it also establishes this right for Union citizens not exercising their right to free movement. This right is not absolute: its exercise is subject to respect for the practical and procedural conditions determined by the proposed Directive. The main points of the draft Directive: Scope · The applicants for reunion must belong to one of the categories listed. These include third country nationals residing lawfully in the Union and holding a residence permit valid for at least one year. Other eligible applicants are refugees, persons enjoying subsidiary protection and citizens of the Union not exercising his right to free movement, if the applicant's family are third-country nationals, irrespective of their legal status. The Directive shall not apply to family members of Union citizens exercising their right to free movement of persons. Family members · this includes spouses and children, and relatives in the ascending line. In the latter case, it must be shown that they have no family support in the country of origin and are dependent on the applicant. Submission and examination of the applicant · It is the applicant who files for reunion and provides documentary evidence. Refugees, who have often had to flee without the necessary documents should not be penalised and rules should be relaxed to accept other forms of evidence, such as testimony. Practical conditions · Member States have discretionary powers in relation to public health, public policy and domestic security. This power is not unlimited, and must be defined, with reasons given for its exercise. The applicant may be asked to prove that he has adequate accommodation, sickness insurance covering all risks, and stable and adequate resources. The evaluation criteria are strictly defined. Refugees and persons enjoying subsidiary protection cannot be subjected to the same

additional conditions. Member States may set a qualifying period not exceeding one year. Again, this measure is not applicable to refugees and persons enjoying subsidiary protection. Penalties - the cases in which penalties are incurred are enumerated exhaustively and include fraud, falsification of documents, marriages and adoptions of convenience.?

Right to family reunification

The committee adopted the report (consultation procedure) by Ewa KLAMT (EPP-ED, D) amending the proposal for a directive on family reunification. While broadly approving the proposed directive, the committee adopted a number of amendments designed, firstly, to ensure that Member States may adopt more liberal legislation if they so wish and, secondly, to clarify and tighten up the text in various places. Following the vote on the amendments Mrs Klamt decided to withdraw as rapporteur and it was decided that the report would be submitted in the name of the committee chairman, Graham WATSON (ELDR, UK). ?

Right to family reunification

In approving the report drafted by Mr Graham R. WATSON (ELDR, UK), the European Parliament has adopted, under consultation procedure, the proposal for a Council Directive on the right to family reunification. A number of amendments were adopted, firstly, to ensure that Member States introduce a more liberal legislation if they so choose and to prevent any weakening of existing protection for family reunification. Secondly, to clarify and tighten up the text in various parts.?

Right to family reunification

This document concerns an amended proposal for a Council Directive on the right to family reunification. The European Parliament adopted 17 amendments in total and the Commission can accept most of them in full or in part, in some cases, subject to a change of wording. Moreover, the amendments are completely in line with the Commission's approach and complement and enrich the Directive. One amendment restricts the scope of this Directive. It excludes persons enjoying a subsidiary form of protection and calls for the adoption without delay of a proposal on their admission and residence. The Commission accepts this amendment and has changed the relevant articles accordingly. It considers that persons in this category must have the right to family reunification and need protection; however, it recognises that the absence of a harmonised concept of subsidiary protection at Community level constitutes an obstacle to their inclusion in the proposed Directive. As a result of the Tampere European Council summit of October 1999, the Scoreboard presented by the Commission in March 2000 and endorsed by the Council envisages the adoption by 2004 of a proposal on the status of persons enjoying subsidiary forms of protection. The Commission intends to make such a proposal next year, which could also cover family reunification for this category of third-country nationals. 8 recitals were accepted in full or in part and relate to the following: - the establishment of an area of freedom, security and justice; - the citing of Article 63(3)(a) of the EC Treaty in its entirety; - the need to have access to statistical data and information in order to be able to evaluate migration flows; - family reunification; - persons enjoying a subsidiary form of protection - the nature of the dependence on the applicant of relatives; - transparency of procedures for national administrations; - prevention of breaches of procedure. In addition, 7 other amendments were accepted resulting in the amendment of several articles of the proposed Directive. These amendments related to the following areas: - the exclusion of persons enjoying subsidiary forms of protection from the scope of the Directive; - several applications for several members of their families; - quality and assessment of accommodation; - resources the applicant may be required to provide; - prohibition on access to employment and vocational training by relatives in the ascending line or the children of full age.?

Right to family reunification

The Council held a general discussion on the principles concerning a draft directive on family reunification, addressing in particular questions relating to the scope of application of the proposal- definition of family members to be covered by the Directive- and certain time limits placed on the rights and obligations of persons benefiting from the right to family reunification and their sponsors. The Council noted that outstanding issues still remained which required further work with a view to reaching a general consensus on the text.?

Right to family reunification

Following the conclusions of the Laeken European Council, the Commission takes a new approach to the points still outstanding. It is concerned to preserve what has been achieved in the last two years' negotiations and therefore, has incorporated the compromises reached in Council. There are several stages to be gone through and the amended proposal is only the first of these. It is inspired by a concern for flexibility on the basis of two main parameters. First, as regards substance, the use of a standstill clause. Second, as regards the time-frame, a deadline for the next stage. The standstill clause will ensure that Member States do not use the new derogations if their legislation at the time of adoption of the Directive did not already provide for them. The objective is to ensure that the Directive does not operate paradoxically as a source of fresh divergence among the Member States. The deadline clause means that the deadline will now be set for the next stage of harmonisation of legislation governing admission for the purposes of family reunification. On this date - two years after the transposition of the Directive - the provisions that offer the greatest degree of flexibility, which are those that lie at the heart of the negotiations, will have priority for review so as to achieve progress towards harmonisation of admissions policy. The main changes necessitated by the new approach: -the former Article 4 provided for alignment of family reunification of Union citizens not covered by Community law on free movement of persons with that of citizens who have exercised their right to free movement. It has been deleted as work had begun on recasting Community law on free movement of persons. -the provision concerning the age up to which children may be reunified has been revised to provide a specific exception for certain pieces of national legislation. By way of derogation from the right to reunification for minor children: where a child is aged over 12 years, the Member State may, before authorising entry and residence, verify whether the child meets a condition for integration provided for by its existing legislation on the date of adoption of the Directive. At the same time, a provision has been inserted in the Chapter

on refugees specifying that the age limit for reunifying children may under no circumstances be lowered. The provision on children will have priority for review two years after the Directive has been transposed. -resources may be checked after reunification, when family members' residence documents are up for renewal. The deadline clause provides for a review of this question. -One Article provides that Member States may require the applicant to have stayed lawfully on their territory for not more than two years before having family members join him. There is a tightly limited derogation, applicable solely where national legislation already existed when the Directive was adopted. It allows authorisations to enter for the purposes of family reunification to be spread over several years, depending on the reception capacity of the Member State concerned. This period may in no case exceed three years. This provision will also have priority for review two years after the Directive has been transposed. -the period of validity of the residence document issued to family members being reunified with a person entitled to stay permanently has been revised to refer to the proposal for a directive on the status of long-term residents, thus reinforcing consistency. Family members will now obtain long-term resident status on the basis of the same criteria as the person with whom they are reunified. Member States are free to give more favourable treatment. There is a review two years after transposition. -to improve consistency with the long-term residence status proposal, the upper limit for the grant of autonomous status of family members is set at five years residence. This will harmonise the period for obtaining permanent residence documents and autonomous status and will allow adequate flexibility to reflect different national situations.?

Right to family reunification

The Council defined a general approach on the Directive on the right to family reunification, which will become the first legal instrument adopted by the Community in the area of legal immigration. The purpose of the Directive is to determine the conditions under which family members of a third-country national, who resides lawfully in the territory of a Member State and has reasonable prospects of obtaining the right of permanent residence, can enter into and reside in that Member State in order to preserve the family unit, whether the family relationship arose before or after the resident's entry. According to the text agreed, the Member States shall authorise the entry and residence of the following family members: - the sponsor's spouse; - the minor children of the sponsor and of his/her spouse, including children adopted in accordance with a decision taken by the competent authority in the Member State concerned or a decision which is automatically enforceable due to international obligations of that Member State or must be recognised in accordance with international obligations; - the minor children including adopted children of the sponsor where the sponsor has custody and the children are dependent on him or her. Member States may authorise the reunification of children of whom custody is shared, provided the other party sharing custody has given his or her agreement. - the minor children including adopted children of the spouse where the spouse has custody and the children are dependent on him or her. Member States may authorise the reunification of children of whom custody is shared, provided the other party sharing custody has given his or her agreement. The minor children referred to in this Article must be below the age of majority set by the law of the Member State concerned and must not be married. By way of derogation, where a child is aged over 12 years and arrives independently from the rest of his/her family, the Member State may, before authorising entry and residence under this Directive, verify whether he or she meets a condition for integration provided for by its existing legislation on the date of implementation of this Directive. The Member States may, by law or regulation, authorise the entry and residence of the following family members: - first-degree relatives in the direct ascending line of the sponsor or his or her spouse, where they are dependent on them and do not enjoy proper family support in the country of origin; - the adult unmarried children of the sponsor or his or her spouse, where they are objectively unable to provide for their own needs on account of their state of health. The Member States may, by law or regulation, authorise the entry and residence of the unmarried partner, being a third-country national, with whom the sponsor is in a duly attested stable long-term relationship, or of a third-country national who is bound to the sponsor by a registered partnership, and the unmarried minor children, including adopted children, as well as the adult unmarried children who are objectively unable to provide for their own needs on account of their state of health, of such persons. Member States may decide that registered partners are treated equally as spouses with respect to family reunification. In the event of a polygamous marriage, where the sponsor already has a spouse living with him in the territory of a Member State, the Member State concerned shall not authorise the family reunification of a further spouse. Member States may limit the family reunification of minor children of a further spouse and the sponsor. In order to ensure better integration and to prevent involuntary marriages, Member States may require the sponsor and his/her spouse to be of a minimum age, and at maximum the age of 21, before the spouse is able to join him/her. By way of derogation, Member States may request that the applications concerning family reunification of minor children have to be submitted the age of 15, as provided for by its existent legislation on the date of implementation of this Directive. If the application is submitted after the age of 15, the Member States which decide to apply this derogation shall authorise the entry and residence of such children on grounds other than family reunification. It is recalled that the first proposal was presented by the Commission in January 2000. A second amended proposal was submitted by the Commission in May 2002. The European Council of Seville invited the Council to adopt this Directive by June 2003.?

Right to family reunification

The committee adopted the report by Carmen CERDEIRA MORTERERO (PES, E) amending the draft directive under the consultation procedure. The amendments were aimed principally at enabling more categories of people to benefit from the right to reunification: - not only spouses but also registered and unmarried partners, irrespective of sex, should be eligible for family reunification, if the host Member State treats unmarried or registered partners in the same manner as married couples; - not only refugees, but also people who are entitled to stay in the Union on the basis of the less favourable "subsidiary protection" status should also be entitled to family reunification; - Member States should authorise the entry of parents, spouses or partners of applicants if they are unable to look after themselves and have no other means of support; - unmarried adult children should be authorised to enter if they are dependent on the applicant because of their state of health; - the question of the entry of these categories should be harmonised at Community level rather than being left up to the Member States, as proposed by the Commission; - the provision whereby Member States may refuse entry to a child aged over twelve if he or she does not meet existing national conditions for integration was deleted; - the provision allowing Member States, for reasons of reception capacity, to stipulate a waiting period of up to three years between submission of an application for reunification and the issuing of a residence permit to the family members concerned was also deleted; - Member States may require applicants to have lived for just one year (as opposed to two years in the Commission proposal) in their territory before they can have their family members join them; - however, to prevent the directive from being misused, the committee stipulated that, in the event of widowhood, divorce, separation, or death of relatives, an independent residence permit should only be issued to people who have entered the Union for reasons of family reunification if they have been resident within the EU for a minimum of one year; - applications should be submitted to the competent authorities in the Member State where the applicant is resident (i.e. not to consulates abroad); - the period for taking a decision on an application should be cut from nine months (as proposed by the Commission) to six months; - illness or disability should be ruled out as a ground for refusing to renew a residence permit; - to ensure that the

transposition of the directive does not lead to a lower level of protection than is currently provided by individual Member States, the latter should be allowed to uphold existing national provisions that are more favourable to applicants than those laid down in the directive. ?

Right to family reunification

The European Parliament adopted a resolution based on the report by Carmen CERDEIRA MORTERERO (PES, Spain) and made several amendments to the Commission's proposal. (Please refer to the document dated 19/03/03). Member States must provide for penalties in case of infringements, and the Commission must report every five years on the application of the Directive.?

Right to family reunification

PURPOSE: to determine the conditions for the exercise of the right to family reunification by third country nationals residing lawfully in the territory of the Member States.

LEGISLATIVE ACT: Council Directive 2003/86/EC on the right to family reunification.

CONTENT: the Council adopted the Directive on the right to family reunification. The purpose of this Directive is to determine the conditions under which family reunification is granted to third-country nationals residing lawfully in the territory of the Member States.

The Directive contains a series of useful definitions such as:

- "third country national" means any person who is not a citizen of the Union;
- "refugee" means any third country national or stateless person enjoying refugee status;
- "sponsor" means a third country national residing lawfully in a Member State and applying or whose family members apply for family reunification to be joined with him/her;
- "family reunification" means the entry into and residence in a Member State by family members of a third country national residing lawfully in that Member State in order to preserve the family unit, whether the family relationship arose before or after the resident's entry;
- "residence permit" means any authorisation issued by the authorities of a Member State allowing a third country national to stay legally in its territory;
- "unaccompanied minor" means third country nationals or stateless persons below the age of eighteen, who arrive on the territory of the Member States unaccompanied by an adult responsible by law or custom, and for as long as they are not effectively taken into the care of such a person, or minors who are left unaccompanied after they entered the territory of the Member States.

This Directive shall apply where the sponsor is holding a residence permit issued by a Member State for a period of validity of one year or more who has reasonable prospects of obtaining the right of permanent residence, if the members of his or her family are third country nationals of whatever status.

This Directive shall not apply where the sponsor is:

- applying for recognition of refugee status whose application has not yet given rise to a final decision;
- authorised to reside in a Member State on the basis of temporary protection or applying for authorisation to reside on that basis and awaiting a decision on his status;
- authorised to reside in a Member State on the basis of a subsidiary form of protection in accordance with international obligations, national legislation or the practice of the Member States or applying for authorisation to reside on that basis and awaiting a decision on his status.

Moreover, this Directive shall not apply to members of the family of a Union citizen. This Directive is without prejudice to more favourable provisions of bilateral and multilateral agreements between the Community or the Community and its Member States, on the one hand, and third countries, on the other. This Directive shall not affect the possibility for the Member States to adopt or maintain more favourable provisions.

In accordance with the Directive, family reunification will apply in any case to members of the nuclear family: the sponsor's spouse and the minor children. The minor children referred to in this Article must be below the age of majority set by the law of the Member State concerned and must not be married.

Family members:

The Member States shall authorise the entry and residence of the following family members:

- the sponsor's spouse;
- the minor children of the sponsor and of his/her spouse, including children adopted in accordance with a decision taken by the competent authority in the Member State concerned or a decision which is automatically enforceable due to international obligations of that Member State or must be recognised in accordance with international obligations;
- the minor children including adopted children of the sponsor where the sponsor has custody and the children are dependent on him or her. Member States may authorise the reunification of children of whom custody is shared, provided the other party sharing custody has given his or her agreement;
- the minor children including adopted children of the spouse where the spouse has custody and the children are dependent on him or her. Member States may authorise the reunification of children of whom custody is shared, provided the other party sharing custody has given his or her agreement.

The minor children referred to in this Article must be below the age of majority set by the law of the Member State concerned and must not be married.

By way of derogation, where a child is aged over 12 years and arrives independently from the rest of his/her family, the Member State may,

before authorising entry and residence under this Directive, verify whether he or she meets a condition for integration provided for by its existing legislation on the date of implementation of this Directive.

The Member States may, by law or regulation, authorise the entry and residence, pursuant to this Directive and subject to compliance with the conditions laid down in Chapter IV, of the following family members:

- first-degree relatives in the direct ascending line of the sponsor or his or her spouse, where they are dependent on them and do not enjoy proper family support in the country of origin;
- the adult unmarried children of the sponsor or his or her spouse, where they are objectively unable to provide for their own needs on account of their state of health.

The Member States may authorise the entry and residence of the unmarried partner, being a third country national, with whom the sponsor is in a duly attested stable long-term relationship, or of a third country national who is bound to the sponsor by a registered partnership and of the unmarried minor children, including adopted children, as well as the adult unmarried children who are objectively unable to provide for their own needs on account of their state of health, of such persons.

Member States may decide that registered partners are to be treated equally as spouses with respect to family reunification.

In the event of a polygamous marriage, where the sponsor already has a spouse living with him in the territory of a Member State, the Member State concerned shall not authorise the family reunification of a further spouse. Member States may limit the family reunification of minor children of a further spouse and the sponsor.

In order to ensure better integration and to prevent forced marriages Member States may require the sponsor and his/her spouse to be of a minimum age, and at maximum 21 years, before the spouse is able to join him/her.

By way of derogation, Member States may request that the applications concerning family reunification of minor children have to be submitted before the age of 15, as provided for by its existing legislation on the date of the implementation of this Directive. If the application is submitted after the age of 15, the Member States which decide to apply this derogation shall authorise the entry and residence of such children on grounds other than family reunification.

Submission and examination of the application:

Member States shall determine whether, in order to exercise the right to family reunification, an application for entry and residence shall be submitted to the competent authorities of the Member State concerned either by the sponsor or by the family member or members.

The application shall be accompanied by documentary evidence of the family relationship as well as certified copies of family member(s)' travel documents. The application shall be submitted and examined when the family members are residing outside the territory of the Member State in which the sponsor resides. The competent authorities of the Member State shall give the person, who has submitted the application, written notification of the decision as soon as possible and in any event no later than 9 months from the date on which the application was lodged. Reasons shall be given for the decision rejecting the application. Any consequences of no decision being taken by the end of the period provided for in the first subparagraph shall be determined by the national legislation of the relevant Member State.

Requirements for the exercise of the right to family reunification:

When the application for family reunification is submitted, the Member State concerned may require the person who has submitted the application to provide evidence that the sponsor has:

- accommodation regarded as normal for a comparable family in the same region and which meets the general health and safety standards in force in the Member State concerned;
- sickness insurance in respect of all risks normally covered for its own nationals in the Member State concerned for himself/herself and the members of his/her family;
- stable and regular resources which are sufficient to maintain himself/herself and the members of his/her family, without recourse to the social assistance system of the Member State concerned. Member States may require third country nationals to comply with integration measures, in accordance with national law.

Member States may require the sponsor to have stayed lawfully in their territory for a period not exceeding two years, before having his/her family members join him/her.

Entry and residency of family members:

As soon as the application for family reunification has been accepted, the Member State concerned shall authorise the entry of the family member or members. In that regard, the Member State concerned shall grant such persons every facility for obtaining the requisite visas.

The Member State concerned shall grant the family members a first residence permit of at least one year's duration. This residence permit shall be renewable.

The duration of the residence permits granted to the family member(s) shall in principle not go beyond the date of expiry of the residence permit held by the sponsor.

The sponsor's family members shall be entitled, in the same way as the sponsor, to access to education; access to employment and self-employed activity and access to vocational guidance, initial and further training and retraining.

Not later than after 5 years of residence, and provided that the family member has not been granted a residence permit for reasons other than family reunification, the spouse or unmarried partner and a child who has reached majority shall be entitled, upon application, if required, to an autonomous residence permit, independent of that of the sponsor. Member States may limit the granting of the residence permit referred to in the first subparagraph to the spouse or unmarried partner in cases of breakdown of the family relationship. The Member States may issue an autonomous residence permit to adult children and to relatives in the direct ascending line.

In the event of widowhood, divorce, separation, or death of first-degree relatives in the direct ascending or descending line, an autonomous residence permit may be issued, upon application, if required, to persons who have entered by virtue of family reunification.

Penalties and redress:

Member States may reject an application for entry and residence for the purpose of family reunification, or, if appropriate, withdraw or refuse to renew a family member's residence permit, in the following circumstances: where the conditions laid down by this Directive are not or are no longer satisfied.

When renewing the residence permit, where the sponsor has not sufficient resources without recourse to the social assistance system of the Member State, the Member State shall take into account the contributions of the family members to the household income; where the sponsor and his/her family member(s) do not or no longer live in a real marital or family relationship; where it is found that the sponsor or the unmarried partner is married or is in a stable long-term relationship with another person.

Member States may also reject an application for entry and residence for the purpose of family reunification, or withdraw or refuse to renew the family member's residence permits, where it is shown that false or misleading information, false or falsified documents were used, fraud was otherwise committed or other unlawful means were used; the marriage, partnership or adoption was contracted for the sole purpose of enabling the person concerned to enter or reside in a Member State.

Lastly, the Directive stipulates that periodically, and for the first time not later than 3 October 2007, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States and shall propose such amendments as may appear necessary.

ENTRY INTO FORCE: 03/10/2003.

TRANSPOSITION IN THE MEMBER STATES: 03/10/2005.

TERRITORIAL APPLICATION: the Directive shall not apply to United Kingdom, Ireland and Denmark in accordance with the appropriate measures in the Treaty.

Right to family reunification

The European Parliament is preparing itself for a challenge with the Council of Ministers concerning the new Directive on the right to family reunification by third country nationals residing lawfully in the territory of the Member States (adopted in September 2003). The Legal Affairs Committee voted unanimously to sue EU countries in the European Court of Justice over the provision in a "family reunification directive" agreed by Member States in February 2003. MEPs argued the article enforcing tests on children aged 12 or more contradicts Article 8 of the 1950 European Convention on Human Rights. According to Rule 91 of the Parliament's Rules of Procedure, the President shall bring an action on behalf of Parliament in accordance with the recommendation of the committee responsible. At the start of the following part-session, he may put to plenary the decision on maintaining the action. Should plenary rule against the action by a majority of the votes cast, he shall withdraw it. Should the President bring an action contrary to the recommendation of the committee responsible, he shall put to plenary, at the start of the following part-session, the decision on maintaining the action. At the 28 February-1 March 2003 meeting of the Justice and Home Affairs Council, Member States reached political agreement on terms of this third and final proposal. However, the European Parliament had not examined the proposal again. Indeed, it was not until 9 April 2003 that the Parliament adopted, in plenary assembly, the report of the Freedom and Citizens' Rights Committee, Justice and Home Affairs.?

Right to family reunification

This report meets the Commission's obligation under Article 19 of the Directive 2003/86/EC setting out common rules on the exercise of the right to family reunification by third-country nationals residing lawfully in Member States and identifies possible problems and gives recommendations on proper application.

The report is based on two Commission studies on the implementation of the Directive and on information from other studies. In accordance with Article 3(3) of the Directive, it does not deal with the situation of third-country nationals who are members of the family of a Union citizen.

Context: the Directive forms the first set of measures based on Article 63(3)(a) of the Treaty establishing the European Communities on third-country nationals' entry and residence conditions. As the adopted text underwent some substantial -often more restrictive- changes compared to the Commission's original proposal and came closer to the existing national rules, it was considered only as a first step harmonisation. For the past 20 years family reunification has been one of the main sources of immigration to the EU. In many Member States today, family reunification accounts for a large (and still increasing) share of legal migration. Discussions on how to manage more effectively the large inflow of migrants under family reunification led to a number of policy changes, many restrictive in nature, in some Member States. These changes need to be in line with the right to family reunification as set out in the Directive.

Monitoring and state of transposition: Member States had to complete transposition by 3 October 2005. Commission officials assisted Member States in this process through regular meetings with national experts. Following expiry of the transposition deadline, infringement procedures were started against 19 Member States for non-communication of their transposition measures. Subsequently, in accordance with Article 226 of the Treaty, the Commission addressed 10 reasoned opinions. Decisions to bring cases before the European Court of Justice (ECJ) were taken for 4 Member States: 3 were withdrawn and a judgment was given for one. Out of the 24 Member States bound by the Directive, currently only one (LU) is still in process of transposition and another (ES) has not yet included a formal explicit reference (harmonisation clause) in its national legislation.

ECJ Case C-540/03: the report recalls that the European Parliament brought an action against the Council to annul some provisions in the Directive. It argued that the provisions enabling Member States to restrict in some cases the right to family reunification (Article 4(1) last indent, Article 4(6) and Article 8) are noncompliant with the right to respect for family life and the principle of non-discrimination enshrined in Articles 8 and 14 of the European Convention on Human Rights (ECHR). In its judgment of 27 June 2006, the ECJ ruled that the Directive does not run counter to the fundamental right to respect for family life, the best interests of children or the principle of non-discrimination on age grounds.

This report analyses national legalisation implementing the Directive 2003/86/EC on the right to family reunification. This is the first legislative instrument on legal migration at EU level and, as a result several Member States for the first time have a detailed set of rules on the right to family reunification in their national legislation.

The report revealed a few cross-cutting issues of incorrect transposition or misapplication of the Directive which need to be highlighted, such as:

- the provisions on visa facilitation;
- granting autonomous residence permits;
- taking into account the best interest of the child;
- legal redress;
- more favourable provisions for the family reunification of refugees.

The Commission will examine all cases where application problems were identified and ensure that the provisions are correctly applied, in particular in conformity with fundamental rights such as respect for family life, the rights of the child and the right to an effective remedy. This will imply launching, during 2009, the necessary procedural steps for non-compliance, where appropriate in accordance with Article 226, in particular in cases where there are clear differences in interpretation of Community law between the Member States and the European Commission.

Furthermore the report showed that the impact of the Directive on harmonisation in the field of family reunification remains limited. The low-level binding character of the Directive leaves Member States much discretion and in some Member States the results has even been lowering the standards when applying ?may? provisions of the Directive on certain requirements for the exercise of the right to family reunification in a too broad or excessive way. In this respect the possible waiting period, the minimum age of the sponsor, the income requirement and the possible integration measures should be mentioned in particular. The Commission will take forward these issues through all appropriate means, including the policy follow up that the Commission will give to the present report.

In line with the [Communication](#) of 17 June 2008 as well as the upcoming European Pact on Immigration which identified family reunification as the key to successful immigration and an area where the European Union needs to develop further its policies, the Commission intends to launch a wider consultation ? in the form of a Green Paper ? on the future of the family reunification regime.

Right to family reunification

The Commission presented a report proposing guidelines for the application of Directive 2003/86/EC on the right to family reunification.

Aim of the guidelines: the [report](#) on the implementation of the Directive, adopted in October 2008, concluded that there were a number of cross-cutting issues of incorrect transposition or misapplication of the Directive and that its impact on harmonisation in the field of family reunification remained limited.

In 2011, the Commission published a [Green Paper](#) on the right to family reunification to gather opinions on how to have more effective rules at EU level and gather information on the application of the Directive. There were 120 responses, including contributions from 24 Member States, international organisations, social partners, NGOs and individuals.

The consensus of the public consultation was that the Directive should not be re-opened, but that the Commission should:

- ensure the full implementation of the existing rules,
- open infringement procedures where necessary,
- produce guidelines on identified issues.

This Communication therefore provides guidance to Member States on how to apply Directive 2003/86/EC. These guidelines reflect the current views of the Commission and are without prejudice to the case law of the Court of Justice of the EU (CJEU) and its further development.

Margin of appreciation: the CJEU confirmed that Article 4(1) imposes precise positive obligations, with corresponding clearly defined individual rights, on the Member States, since it requires them, in the cases determined by the Directive, to authorise family reunification of certain members of the sponsors family, without being left a margin of appreciation. On the other hand, Member States are recognised as having a certain margin of appreciation. They may decide to extend the right to family reunification to family members other than the spouse and minor children. They may make the exercise of the right to family reunification subject to compliance with certain requirements if the Directive allows this.

They retain a certain margin of appreciation to verify whether requirements determined by the Directive are met and for weighing the competing interests of the individual and the community as a whole, in each factual situation.

However, since the authorisation of family reunification is the general rule, derogations must be interpreted strictly. The margin of appreciation which the Member States are recognised as having must not be used in a manner that would undermine the objective of the Directive, which is to promote family reunification, and the effectiveness thereof.

At the same time, the right to family reunification is not unlimited. Beneficiaries are obliged to obey the laws of their host country, as set out in the Directive. In case of abuse and fraud, it is in the interests of both the community and of genuine applicants that Member States take firm action, as provided for by the Directive.

Accordingly, the presentation of the guidelines to clarify the interpretation of certain provisions and to facilitate their implementation is essential.

Guidelines: although Member States maintain a margin of discretion in the application of certain optional provisions of the Directive, the guidelines presented in the communication should ensure that this discretion does not jeopardise the rights of individuals.

These guidelines provide a suitable framework for a more transparent and clearer understanding of the rules for family reunification and provide common principles at EU level, in particular for the following areas:

- the scope of the Directive (e.g. clarification of the definition and concepts applicable to migrants who fall under the scope);

- the rules for the submission and examination of a request (e.g. official documentary evidence, length of procedures);
- the conditions for exercising the right to family reunification (for example, accommodation, health insurance plan, sufficient resources, integration measures);
- the conditions of entry and residence of family members (e.g. long-term visas and residence permits, access to employment);
- the situation of beneficiaries of international protection (refugees);
- the general principles relating to the availability of information, the best interests of the child, the fight against situations of abuse and fraud and the right to legal challenge.

Right to family reunification

This Commission presents its report on the implementation of Directive 2003/86/EC setting out common rules on the exercise of the right to family reunification by third-country nationals residing lawfully in Member States.

As a reminder, on 22 September 2003, the Council adopted Directive 2003/86/EC on the right to family reunification which applies to all Member States except Denmark, Ireland, and the UK.

In accordance with the Directive, it does not regulate the situation of third-country nationals who are family members of an EU citizen. For the past 30 years, family reunification has been one of the main reasons of immigration to the EU. In 2017, 472 994 were admitted to the EU-25 on grounds of family reunification, amounting to 28% of all first permits issued to third-country nationals in the EU-25.

This report in particular gives an overview of the current situation on the implementation of the Directive by Member States, focusing on the key issues that have emerged from the Commission's own compliance analysis, complaints received and relevant judgements of the CJEU.

In this respect, it is worth stressing that the Commission has received numerous complaints related to the family reunification of third-country nationals.

Issues of concern

The main issues raised concern the refusal to issue visas or permits, proof of identity or family ties as ground for rejection, long processing times by administrations, disproportionate charges for issuing permits, the notion of stable and regular resources, access to employment for family members, incorrectly applied waiting periods, and the proportionality of pre-integration conditions.

It is stressed that three major problems are faced by applicants:

- 1) the obligation to appear in person at a diplomatic mission to submit their application; this obligation creates a practical problem in particular for applicants to smaller Member States that do not necessarily have a diplomatic representation in every country;
- 2) the often very long processing time of an application;
- 3) the lack of documents necessary to process the application, especially the proof of identity and family ties. From the perspective of national authorities, the study reported as a major challenge the detection of forced or sham marriages or registered partnerships and false declarations of parenthood¹², which requires thorough investigations and in turn may affect the processing time of applications.

Conclusions

The report stated that since 2008, the implementation state of play of the family reunification Directive has improved, due to the infringement proceedings launched by the Commission as well as to the numerous judgments of the Court of Justice of the European Union.

Member States have been investing major efforts to improve and adapt their national legislations so that they fulfil the requirements of the Directive.

The Commission Communication from 2014, which served as a guidance for the application of the Directive highlighted persistent issues in national legislations, in particular a few problematic cross-cutting issues that had clearly emerged, such as integration measures, stable and regular resources, the need to take into account effectively the best interest of the child and the more favourable provisions for the family reunification of refugees. Four years later, these core issues remain a challenge for some Member States, which should continue to seek effective application of the Directive, by paying specific attention to the paramount importance of the fundamental right of respect for family life, the rights of the child and the right to an effective remedy.

As the guardian of the EU Treaties, the Commission has been regularly monitoring the legal and practical implementation of the Directive by Member States, particularly on the issues highlighted in this report.

As family reunification remains a major challenge for the EU in the frame of migration policy, the Commission will continue to closely monitor national legislations and administrative practices and may consider appropriate action in line with its powers under the EU Treaties including opening infringement procedures, where necessary.