

# Family Reunification of TCNs in the EU: National Practices

## Common Template of EMN Focussed Study 2016

Final version: 16<sup>th</sup> September 2016

**Subject:** Common Template for the EMN Focussed Study 2016 on “*Family Reunification of TCNs in the EU: National Practices*”

**Action:** EMN NCPs are invited to review this draft version of the Common Template and provide feedback to the EMN Service Provider in writing by 9<sup>th</sup> September 2016 or at the 81<sup>st</sup> EMN NCP meeting taking place in Brussels on 12<sup>th</sup> September 2016. If needed, further clarifications can be provided by contacting the EMN Service Provider (ICF International) at [emn@icfi.com](mailto:emn@icfi.com).

## 1 STUDY AIMS AND RATIONALE

### 1.1 STUDY AIMS

The aim of the 2016 EMN Focussed Study is to compare national practices on family reunification between the different Member States plus Norway, with the purpose of informing the target audience<sup>1</sup> on current developments and national policies in this field.

The Study will describe the **policy and practice** of (Member) States in the area of family reunification, including (Member) States’ **implementation of the minimum standards** set in Directive **2003/86/EC**.<sup>2</sup> The Study will also report on the changes in (Member) State policy and practice since the implementation of the Directive, inter alia any changes with regard to the family reunification of third-country nationals (TCNs) who are beneficiaries of international protection, whose number in the EU as a whole has increased over the past couple of years,<sup>3</sup> as well as any changes resulting from the **2014 Communication on guidelines for implementing the Directive**.<sup>4</sup> The study will also review how (Member) States have implemented the requirements laid down in Article 7(1) of Directive 2003/86/ EC, as well as which integration measures are foreseen under national law (as per Article 7(2)). The Study will also report on any existing evidence (if available) of effects of certain provisions of Directive 2003/86/EC as applied in different (Member) States on the exercise of the right to family reunification, the integration of TCNs, and/ or the prevention of forced marriages or any misuse of family reunification.

In particular, the Study will:

- ★ Map and compare (Member) States’ policy and practice on family reunification with regard to:
  - The possible extension of this right to other relatives than the spouse and minor children;

<sup>1</sup> The target audience is composed of: policy makers at national and EU level; practitioners at national level working with family reunification; policy makers and practitioners concerned with the implications that the current policies on family reunification have on the processes of integration of third country nationals in host societies, including prevention of forced marriage; researchers and support groups (NGO’s) active in the field; politicians.

<sup>2</sup> Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification Official Journal L 251, 03/10/2003 P. 0012 – 0018.

<sup>3</sup> See Section 1.2.

<sup>4</sup> Communication from the Commission to the European Parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification.

- The methods used to verify family ties;
  - The requirements for family reunification foreseen by the Directive and, where relevant, the integration measures<sup>5</sup> as established in national law.
- ★ Map the relevant jurisprudence from the Court of Justice of the European Union (CJEU), and the impact of this jurisprudence on the development of national policies and practices.
  - ★ Map the application of the Commission Guidelines of Directive 2003/86/EC on the development of national policies and practices.
  - ★ Map the recent planned, proposed or implemented changes in national family reunification policies and practices in response to the increased number of applications for international protection in some (Member) States.
  - ★ If available, compile existing evidence from evaluations/ studies, NGOs reports, etc. of effects of requirements and measures on the exercise of the right to family reunification and integration of TCNs, prevention of forced marriages, etc.
  - ★ Identify good practices of national institutions dealing with family reunification applications, as well as any obstacles encountered.

## 1.2 RATIONALE FOR THE STUDY

During the 1970s, while labour migration policy in Europe was registering a more restrictive turn, family reunification started to become a more important migration channel.<sup>6</sup> Since then, the share of family-based migration flows has continued to increase. Today, overall in the EU, family reasons drive the relative majority of incoming TCNs: in 2014, 29% (680,204) of all first-time residence permits were issued to family members, while 25% (572,827) were issued for remunerated activities, 20% (476,615) for study and 26% (595,432) for other reasons.<sup>7</sup> In 21 Member States,<sup>8</sup> family reunification amounted to more than 30% of the new arrivals, exceeding 50% in some Member States (BE, EL, ES, HR, LU and SI). In the last 7 years,<sup>9</sup> family-based migration peaked in 2010, when it increased by 15% compared to the previous year.

One of the main migration-related challenges the EU is currently tackling is the rise in the number of asylum seekers: in 2014, 626,960 requests for asylum were received in the EU as a whole, rising substantially to 1,321,600 in 2015. The increase of permits issued for protection reasons in some Member States may lead to an increase in the number of family reunification requests as beneficiaries of international protection are generally entitled to ask for family reunification and, among them, refugees enjoy particularly favourable conditions for obtaining it.<sup>10</sup> In this context, the Commission's goal is to promote safe and legal avenues for migration and thereby discourage people from embarking on risky journeys to reach Europe. To achieve this objective, in the EU Agenda on Migration, the Commission has called for the full use of the legal avenues for migration, including family reunification.<sup>11</sup> In light of these developments, some Member States have introduced private sponsorship

<sup>5</sup> "Requirements" refers to the conditions listed in Art. 7 (1) while "integration measures" refers to the measures set out in national law mentioned in Art. 7(2) of Directive 2003/86/EC.

<sup>6</sup> Messina, A. (2007) *The Logics and Politics of post-WWII Migration to Western Europe*. Cambridge University Press.

<sup>7</sup> Eurostat, First permits by reason, length of validity and citizenship [migr\_resfirst], accessed on 04.07.2016. These data include persons joining EU citizens.

<sup>8</sup> AT, CZ, DE, EE, FI, FR, HU, IT, LV, NL, NO, PT, RO, SE, SK.

<sup>9</sup> Eurostat statistics are available only as of 2008.

<sup>10</sup> The more favourable treatment of refugees is required in Chapter V of Directive 2003/86/EC.

<sup>11</sup> "In addition, Member States should use to the full the other legal avenues available to persons in need of protection, including private/non-governmental sponsorships and humanitarian permits, and family reunification clauses". European Commission (2015), *A European Agenda on Migration*, [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/communication\\_on\\_the\\_european\\_agenda\\_on\\_migration\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_en.pdf).

programmes which are similar to family reunification arrangements (EMN, 2016 Synthesis Resettlement and Humanitarian Admission Programmes in Europe – what works?).

The data cited above show the importance of family reunification as an entry channel to the EU. The main EU legislative instrument in this policy area dates back to 2003 when the Council adopted the [Directive on the Right to Family Reunification](#) (2003/86/EC) mentioned above. The Directive, which was the first EU instrument in the legal migration area, determined the conditions under which family reunification is to be granted to family members of legally staying TCNs, as well as the rights of the family members concerned.<sup>12</sup> In its [First Implementation Report](#)<sup>13</sup> in 2008, the Commission found that the Directive had a relatively low impact and led to a low level of harmonisation, due to the degree of discretion given to (Member) States when setting certain requirements ('may-clauses') and to instances of incorrect transposition or misapplication across (Member) States. Transposition issues were identified with regard to the implementation of the income requirement in relation to the number of family members, as well as when to ask the sponsor to comply with the integration measures foreseen at the national level. Moreover, the *Implementation Report* highlighted issues in the transposition of more favourable provisions for refugees and of the principle of the best interests of the child, as well as the provisions in Art. 17 of Directive 2003/86/EC whereby Member States shall take account of the individual circumstances when making a negative decision on an application. As a consequence, in 2012 the Commission launched a public consultation on the [Green Paper](#) on family reunification and, two years later, issued a [Communication](#) providing guidance for the application of the Directive. The impact of the Communication has not been assessed yet and one of the present study's aims is to do so.

Recently, as a response to the increased number of asylum applications, there have been indications that several (Member) States have started or planned to change their policies towards refugees and beneficiaries of subsidiary protection. A compilation of these recent or planned changes has not been carried out at EU level yet. In particular, there has been no investigation whether the divergence in rights and procedures available to refugees and beneficiaries of subsidiary protection in different (Member) States has widened in the last few years. This is relevant for the EU, as these divergences may encourage migration status 'shopping' and this present Study aims to fill this particular information gap.

Moreover, the jurisprudence of the Court of Justice of the EU (CJEU) regarding the right to family reunification is growing and has had an impact on national policies. Therefore, this Study further aims at providing a comprehensive and timely evaluation of the effect that the European jurisprudence has had at national level.

## 2 SCOPE OF THE STUDY

The Study's main scope includes the family members of TCNs residing legally on the territory of the EU and Norway (=sponsors), who come to Member States and Norway through the channel of family reunification with the sponsor or at a later stage. The **sponsor is a TCN who resides in the EU plus Norway as a beneficiary of international protection (refugee, beneficiary of subsidiary protection) or is a holder of another permit (e.g. as a worker, student, etc.)**. The relevant family members are the spouse and minor children<sup>14</sup> (of the sponsor and/ or the spouse), as per the Directive, and any other family members as defined by (Member) States' national legislation, such as parents, adult children or civil partners. Conditions for family reunification for non-mobile EU nationals<sup>15</sup>, which are governed by national law, are not the primary focus of the Study, hence the Common Template includes only one general question on this type of sponsors. Family reunification for mobile EU nationals<sup>16</sup> is not covered by the study; thus no questions are asked concerning this group.

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<sup>12</sup> IE, UK, DK are not bound by Directive 2003/86/EC.

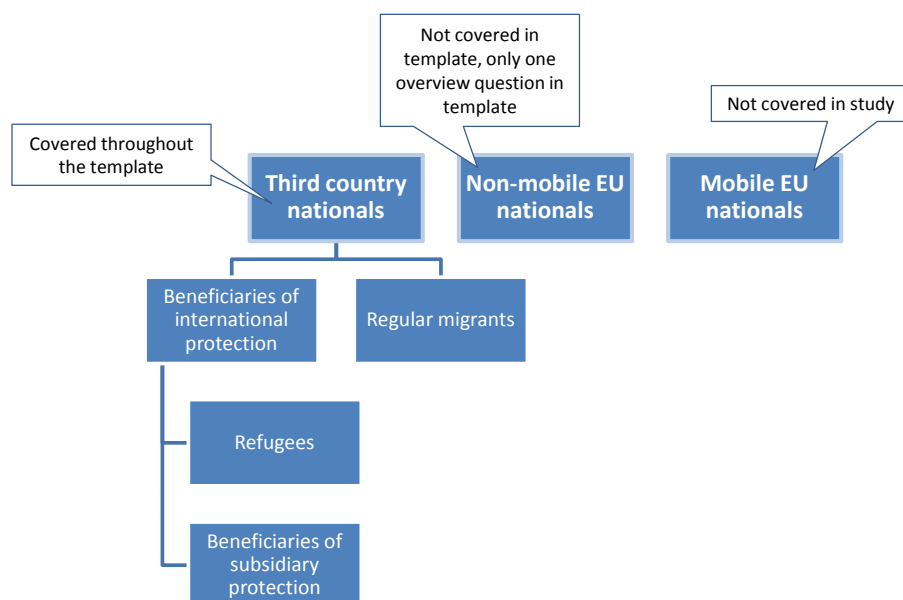
<sup>13</sup> The Second Implementation Report is expected in 2017 and main implementation/application issues will be covered in the 'fitness check' of the legal migration acquis which is ongoing in the Commission.

<sup>14</sup> The age up to which a child is considered minor is defined at the national level.

<sup>15</sup> Non-mobile nationals are nationals that have not exercised their right to free movement within the EU (e.g. a German national residing in Germany).

<sup>16</sup> Non-mobile nations are nationals that haven exercised their right to free movement with the EU (e.g. a German national residing in the Netherlands)

Figure 1. Scope of the Study

**Scope: Which types of sponsors are covered by the study?**

The Study examines (Member) States' policies and practices in the field of family reunification, most notably:

- ★ Eligibility criteria for the sponsor: for example, which categories of migrants are eligible for family reunification (e.g. refugee, beneficiary of subsidiary protection, student, researcher, worker or long-term resident) and after which period of residence (waiting period), whether the permit the sponsor holds needs to be of a minimum duration and whether the sponsor's prospects of obtaining permanent residence (as per Art. 3 of Directive 2003/86/EC) are assessed;
- ★ Eligibility criteria for family members: for example, which family members are eligible for reunification, especially in relation to those mentioned in Art. 4 of Directive 2003/86/EC (dependent first-degree relatives, adult unmarried children, unmarried partners, second spouses, spouses under the age of 21, children above the age of 15), when the marriage needs to have taken place, what kind of evidence is required, etc.;
- ★ Requirements for family reunification, as per Art. 7(1) of Directive 2003/86/EC, i.e. family-size accommodation meeting health and safety standards, sickness insurance, stable and regular resources: whether (Member) States implement them and if there are any exemptions;
- ★ Integration measures, as per Art. 7(2) of Directive 2003/86/EC, including any integration and language tests that family members may be required to sit as a pre- or post-departure measure; and conditions for exemptions to complying with these measures, if any;
- ★ Procedural aspects of the application for family reunification: for example, how the evidence is checked, which methods of investigation are used, how long the procedure takes by law and in practice, whether applying from inside the territory is allowed, and whether the applicant is the sponsor or the family member, etc.
- ★ Rights granted: in particular, whether the access to employment/ self-employment is in any way restricted (as allowed by Art. 14 of Directive 2003/86/EC), and when a family member can acquire an autonomous residence permit (as per Art. 15 of Directive 2003/86/EC), etc.
- ★ Policies and practices regarding non-renewal and withdrawal of the residence permit of family members, as allowed by Art. 16 of Directive 2003/86/EC.

### 3 EU LEGAL AND POLICY CONTEXT

Since the Conclusion of the Tampere Programme (1999), the EU has been working towards the “approximation of national legislations on the conditions for admission and residence of third country nationals”.<sup>17</sup>

In 2003, the Council approved the [Directive on the Right to Family Reunification \(2003/86/EC\)](#), which determined the conditions under which family reunification is granted to family members of legally staying TCNs, as well as the rights of the family members concerned. The Directive, by which Denmark, Ireland and the United Kingdom are not bound, is without prejudice to more favourable provisions laid down in the national law and bilateral or multilateral agreements with third-countries.<sup>18</sup>

On the basis of this legislative instrument, legally residing non-EU nationals (sponsors) holding a residence permit for a period of validity of one year or more, who have “reasonable prospects of obtaining the right of permanent residence” (as per Art. 3 of Directive 2003/86/EC), have the right to bring their family members to the (Member) State in which they are residing. The Directive lays down provisions for the members of the ‘nuclear family’, i.e. the spouse and the minor<sup>19</sup> unmarried children of the sponsor and/or the spouse. (Member) States may however include first-degree dependent relatives, adult unmarried children unable to provide for themselves due to their state of health, unmarried partners and registered partners. The Directive does not specify the treatment of same-sex couples, which means that they enjoy rights under the Directive according to the status they have under the national law of each (Member) State. However, recital (5) in the preamble affirms the principle of non-discrimination on the basis of sexual orientation.

The Directive includes three requirements for family reunification that (Member) States may ask the sponsor to meet: accommodation suitable for the size of the family and meeting health and safety standards, sickness insurance for the sponsor and his/ her family, and stable and regular resources sufficient to maintain the family without recourse to social assistance (Art. 7(1) of Directive 2003/86/EC). Moreover, (Member) States may require TCNs to comply with some pre-departure or post-departure integration measures, according to national provisions (Art. 7(2) of Directive 2003/86/EC). The sponsor may also be required to have been resident for a maximum period of 2 years, or exceptionally 3 years, before reuniting with the family (Art. 8 of Directive 2003/86/EC).

Once in the EU, eligible family members shall receive a residence permit entitling them to **equal treatment with the sponsor** in multiple areas, such as access to education, vocational training and guidance, employment and self-employment, which may be however restricted for 1 year after carrying out labour market analysis (Art. 14 of Directive 2003/86/EC).

The family reunification of **refugees** is subject to **specific, more favourable rules** in Directive 2003/86/EC. For example, refugees shall not be asked to meet the requirements set out in Art. 7(1) of Directive 2003/86/EC for a period of three months after the granting of the refugee status, whilst the integration measures set out in 7(2) of Directive 2003/86/EC shall not be applied as a pre-condition to grant family reunification to them. In addition, the waiting period does not apply to sponsors who are refugees (as per Art. 9 of Directive 2003/86/EC).

**Beneficiaries of subsidiary protection** are not within the scope of application of the Directive, thereby falling under national law in this regard. However, Member States may choose under their national law to extend to this group the favourable family reunification conditions they provide for refugees. It can also be noted that the [recast Qualification Directive](#) (2011/95/EU) adopted in 2011 approximated the rights of refugees and beneficiaries of subsidiary protection in a number of areas, including the right to family unity.

Family members of **highly skilled workers (holding an EU Blue Card), researchers and intra-corporate transferees** enjoy more favourable conditions for family reunification laid down in other directives (in the Member

<sup>17</sup> Tampere European Council 15 and 16 October 1999, Presidency Conclusions, [http://www.europarl.europa.eu/summits/tam\\_en.htm#a](http://www.europarl.europa.eu/summits/tam_en.htm#a)

<sup>18</sup> Recitals 17 and 18; Art. 3(5).

<sup>19</sup> Defined by national legislation according to Art. 4(1) of the Directive.

States bounded by them).<sup>20</sup> For instance, family reunification is not dependent on the sponsor's perspective to obtain permanent residence, or on the fulfilment of specific integration measures (referred to in Art. 7(2) of Directive 2003/86/EC). Moreover, processing time is shorter and family members of researchers and highly skilled workers have the right to immediately access the labour market.

In 2014, the [First Implementation Report](#) of the Directive highlighted several issues of incorrect transposition or misapplication and noted that the impact of the Directive on harmonisation had been limited, due to the high number of discretionary clauses. As a consequence, the Commission launched a wide [public consultation](#), in the form of a Green Paper, which received 120 contributions.<sup>21</sup> To ensure the full implementation of the existing rules and to guide the application of the Directive, the Commission published in 2014 the [Communication from the Commission to the European Parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification](#).<sup>22</sup> The Communication, following CJEU case law, emphasised that "derogations must be interpreted strictly [and] the margin of appreciation [...] 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".

#### 4 RELEVANT CASE LAW

The right to family life is expressed in the [Charter of Fundamental Rights of the European Union](#)<sup>23</sup> and in international human rights law (e.g. [Universal Declaration of Human Rights](#),<sup>24</sup> [International Covenant on Civil and Political Rights](#),<sup>25</sup> [Convention on the Rights of the Child](#),<sup>26</sup> and the [European Convention on Human Rights](#)<sup>27</sup>). During the last decade, relevant case law has been produced by the CJEU and international courts.<sup>28</sup> The CJEU was initially referred to by the European Parliament in *C-540/03, European Parliament v Council of the European Union*<sup>29</sup>, which asked for the annulment of some provisions of Directive 2003/86/EC on the basis of their incompatibility with fundamental rights, in particular the principles of non-discrimination and respect of family life. Specifically, the contested provisions (of Directive 2003/86/EC) were: Art. 4(1), whereby a child over 12 years arriving to a Member State independently might be asked to meet integration conditions; Art. 4(6), whereby a Member State might decide to issue permits for family reasons only to children above 15 years; and Art. 8, whereby the sponsor may be required to wait for a period of up to three years before s/he can apply for family reunification. The CJEU ruled that the Directive, as well as other integrational instruments, posed negative and positive obligations on (Member) States, towards which they enjoy a margin of appreciation. The CJEU ruled that the contested provisions fell within this margin of appreciation and do not infringe the fundamental rights.

Below are the preliminary rulings that the CJEU has issued on Directive 2003/86/EC, specifically on Art. 7(1)(c) (minimum resources) and Art. 4(5) (minimum age of the sponsor and the spouse); and the rulings that the

<sup>20</sup> Blue Card Directive (2009/50/EC), Art. 15, proposal for a reviewed Blue Card Directive (COM(2016) 378 final) Art. 16; Researchers Directive (2005/71/EC), Art. 9, recast Students and Researchers Directive (2016/801/EU), Art. 26; Intra-Corporate Transferee Directive (2014/66/EU), Art. 19.

<sup>21</sup> European Commission, 2012. Summary of stakeholder responses to the green paper on the right to family reunification of third-country nationals [http://ec.europa.eu/dgs/home-affairs/what-is-new/public-consultation/2012/pdf/0023/summary\\_of\\_stakeholder\\_responses\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-is-new/public-consultation/2012/pdf/0023/summary_of_stakeholder_responses_en.pdf)

<sup>22</sup> European Commission, 2014. Communication on guidance for application of Directive 2003/86/EC on the right to family reunification, (COM(2014) 210 final), [http://www.europarl.europa.eu/meetdocs/2014\\_2019/documents/com/com\\_com\(2014\)0210\\_/com\\_com\(2014\)0210\\_en.pdf](http://www.europarl.europa.eu/meetdocs/2014_2019/documents/com/com_com(2014)0210_/com_com(2014)0210_en.pdf)

<sup>23</sup> Articles 7, 9 and 33 of the Charter.

<sup>24</sup> Articles 12 and 16.

<sup>25</sup> Articles 17, 23 and 24.

<sup>26</sup> Articles 10, 16 and 22.

<sup>27</sup> Article 8.

<sup>28</sup> Although extensive case law has been produced also on the right of family reunification for EU nationals (e.g. case C-34/09 - Gerardo Ruiz Zambrano v Office national de l'emploi, and its follow-up case law, such as C-256/11 - Murat Dereci and Others v Bundesministerium für Inneres, and the joined cases C-356/11 and C-357/11, O, S, Maahanmuuttovirasto and Maahanmuuttovirasto), in consideration of the scope of this Study, only case law on family reunification for TCNs residing in the EU is covered.

<sup>29</sup> Judgment of the Court (Grand Chamber) of 27 June 2006. European Parliament v Council of the European Union. Case C-540/03 <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-540/03>



European Court of Human Rights (ECtHR) has issued on the right of family reunification, in relation to Art. 8 of the Charter:

★ CJEU - Case C-558/14 *Khachab v Subdelegación del Gobierno en Álava*

In this case, a long-term resident saw his application for family reunification refused on the ground that he did not present evidence of sufficient resources to maintain his family, as per Art. 7(1)(c) of Directive 2003/86/EC. The CJEU ruled that verifying the evidence of “stable and regular resources” required analysing the past pattern and future perspectives of such resources, and it was not limited to the resources available at the time of the application. The CJEU ruled that considering a period of 6 months to 1 year, before and after the application, to assess the past and perspective resources of the sponsor is compatible with EU law.

★ CJEU - C-153/14, *Minister van Buitenlandse Zaken v K and A*

This case involved a request for exemption submitted by a TCN who was asked to sit a civic integration exam in the country of origin, whose cost amounted to €350. The CJEU recognised that the (Member) States could impose integration measures to TCNs, as per Art. 7(2) of Directive 2003/86/EC; however, it also noted that these measures should be in proportion to serving their objective, i.e. integration of TCNs, and should not undermine the possibility of family reunification itself. In particular, passing integration tests may be required as a condition to grant a residence permit, provided that the conditions to comply with it do not make compliance excessively difficult.

★ CJEU - Case C 338/13, *Marjan Noorzia v Bundesministerin für Inneres*

This case was about the minimum age condition that the spouse and the sponsor may be required to satisfy before applying for family reunification, as per Art. 4(5) of Directive 2003/86/EC. The CJEU ruled that the Member States that have implemented such a requirement may equally decide to require the sponsor or the family member to meet it at the time the application is lodged or when the decision (on the application) is taken.

★ CJEU - C-578/08, *Rhimou Chakroun v Minister van Buitenlandse Zaken*

The case involved a TCN living in a Member State for several years and finding himself unemployed at the moment of lodging an application for family reunification. The TCN received unemployment benefits which entitled him to receive social assistance. The income requirement for family reunification was set at 1.2 times higher than the minimum wage in the Member State (and the TCN could not meet this with the unemployment benefit received). The CJEU ruled that the income requirement in Directive 2003/86/EC should not be interpreted in a way that prevents a sponsor showing stable and regular resources sufficient to maintain himself/ herself and his/ her family from being granted a positive decision, even when the level of resources entitled the sponsor to social assistance. Moreover, in this case, the CJEU also ruled that Member States were not allowed to make a distinction based on when the marriage was concluded with respect to the entrance of the TCN in the territory of the Member State.

★ CJEU - *O. S en L*, in joined cases C-356/11 and C-357/11

In these cases, the Court explained that Article 7(1)(c) of Directive 2003/86 must be interpreted as meaning that, while Member States have the discretion to require proof that the sponsor has stable and regular resources which are sufficient to maintain himself and the members of his family, that discretion must be exercised in the light of Articles 7 and 24(2) and (3) of the Charter, which require the Member States to examine applications for family reunification in the interests of the children concerned and also with a view to promoting family life, and avoiding any undermining of the objective and the effectiveness of the Directive.

★ CJEU - *CGIL Case C-309/14, CGIL and INCA*

In this case, the Italian court requested the Court of Justice which level of fees for the application of the Long Term Residence status (on the basis of Directive 2003/109/EC) can be considered proportional. The Court referred to its judgment in *Commission v Netherlands*, C-508/10, EU:C:2012:243, in which it ruled that, even if the Directive does not include a provision on fees, the discretion left to Member States is not unlimited and that they may not apply national rules which are liable to jeopardise the achievement of the objectives of the Directive and therefore, deprive it of its effectiveness. The Court ruled in *CGIL and INCA* that the requirement of paying a fee in amount between €80 and €200 for the issue or renewal of a residence permit in the Member State concerned, is disproportionate in the light of the objective pursued by that Directive and is liable to create an obstacle to the

exercise of the rights conferred by the instrument. In its ruling, the Court paid attention to the duration of the residence permit. In the judgment C-309/14, the Court had also taken into account the amount of fees required for the identity card for nationals, arguing that a too big difference between those two levels can amount to disproportionality. The Dutch Administrative Jurisdiction Division of the Council of State decided that although both judgments relate to fees on the basis of the Long Term Residents Directive, the reasoning is identically applicable to the Family Reunification Directive (ABR v S, ECLI:NL:RVS:2016:1831, 24 June 2016 and ABR v S, 201008782/1/V1, LJN:BY0145, 9 October 2012).

★ ECtHR - Tuquabo-Tekle And Others v The Netherlands, Application no. 60665/00, 1 March 2006

The case involved an application lodged by the spouse (first applicant) of a refugee recognised in the Netherlands in order to reunite with her daughter. The first applicant had previously received a permit on humanitarian grounds in Norway, and the Norwegian authorities had approved her request to reunite with her son. Once the first applicant married a refugee in the Netherlands and the Dutch authorities granted her a residence permit, the first applicant lodged an application in the Netherlands for family reunification with her daughter who was still living in Eritrea. The Dutch authorities rejected her application. The ECtHR ruled in favour of the first applicant, referring to Art. 8 of the Convention and arguing that leaving the child behind when settling in the new country did not amount to renouncing the right to family unity.

★ ECtHR - Mugenzi v. France, Application No. 51701/09, 10 July 2014

The case was about a request for family reunification lodged by a Rwandan national who was recognised as a refugee in France. The French authorities rejected the application as the children who were to be reunited with the refugee were considered to be too old for family reunification. This was decided on the basis of an age assessment examining the children's mouth cavity, which contradicted the age stated on the birth certificate. The third-country national appealed to the Council of State, asking to deal with the request urgently, in consideration of his children being unaccompanied and having suffered psychological trauma in Rwanda. The Council of State, taking in consideration the age of the children, ruled against the applicant. The case was then brought before the ECtHR who ruled that, in view of the applicant's refugee status, the application needed to be examined rapidly and with particular attention, taking into account the events that led to the disruption of family unity. The Court noted that the applicant experienced several difficulties in following the application process and in providing other elements to certify the children's age. The Court also noted that the medical examination, on which the final decision depended, was not sufficiently accurate and that the five-year time to reach the decision was excessive.

★ ECtHR - Hode and Abdi v. the United Kingdom, Application No. 22341/09, 6 February 2013

In this case, a third-country national who obtained refugee status in the UK saw his request for family reunification with his wife in Djibouti denied, on the ground that the marriage was held after the applicant was recognised as a refugee. According to a rule in force in the UK until 2011, the applicant who formed his/ her family after receiving a residence permit would need to wait 5 years before reuniting with his/ her family members. The Court ruled that the ground to discriminate between refugees who contracted marriage before or after receiving the residence permit lacked an objective and reasonable justification, and therefore ruled in favour of the applicant.

★ ECtHR – Biao v. Denmark, Application No. 38590/10, 24 May 2016

The case concerned the complaint by a naturalised Danish citizen of Togolese origin, Ousmane Biao, and his Ghanaian wife that they could not settle in Denmark. Notably, the Danish authorities refused to grant them family reunion, as the couple did not comply with the requirement under the relevant domestic law (the Aliens Act) that they must not have stronger ties with another country, in this case Ghana, than with Denmark (known as the "attachment requirement"). They also complained that an amendment to the Aliens Act in December 2003 – lifting the attachment requirement for those who held Danish citizenship for at least 28 years – resulted in a difference in treatment between those born Danish nationals and those, like Mr. Biao, who had acquired Danish citizenship later in life. The Court concluded that the Government had failed to show that there were compelling or very weighty reasons unrelated to ethnic origin to justify the indirect discriminatory effect of this 28-year rule. That rule favoured Danish nationals of Danish ethnic origin, and placed at a disadvantage, or had a disproportionately prejudicial effect on persons, such as Mr. Biao, who acquired Danish nationality later in life and who were of ethnic origins other than Danish.



## 5 PRIMARY QUESTIONS TO BE ADDRESSED BY THE STUDY

The primary questions the Study will address include:

- ★ Under which rules and through which procedures do the different Member States grant family reunification, both in policy and practice? Has EC Communication COM(2014)2010's guidance for application of Directive 2003/86/EC led to any policy changes in the Member States bound by the Directive? If so, which ones?
- ★ How has the more favourable treatment of refugees as required by Chapter V of Directive 2003/86/EC been implemented?
- ★ Have there been changes in policy and/ or practice due to jurisprudence from ECtHR and CJEU? If so, which ones?
- ★ How has family reunification policy and practice been affected by the increased number of asylum applications since 2015?
- ★ What good practices and obstacles to family reunification can be identified?
- ★ To what extent are family reunification rules covered solely by national law more or less favourable than family reunification rules covered by Union law (e.g. beneficiaries of subsidiary protection, own nationals)?
- ★ To what extent is the policy and practice on the non-renewal or withdrawal of the residence rights of family members influenced by Directive 2003/86/EC, the guidelines of the Commission and the case-law of the Court of Justice?

## 6 RELEVANT SOURCES AND LITERATURE

### **EMN Studies**

The following 2015 EMN study looked at how Member States allowed TCNs to change their status without leaving the country; changes from and into family are particularly relevant for this study.

- ★ EMN (2016) Changes in immigration status and purpose of stay: an overview of EU Member States' approaches (forthcoming) - *The Study examines the different legal frameworks, procedures and practices in place in the Member States to enable third-country nationals to change their migration status, as well as the conditions and rights associated with such changes. It also looks at existing obstacles and good practices. One of the findings is that all Member States participating in the Study allow changes from the family status, and this is the only migration status which can be changed from in the whole EU. However, it is also one of the least frequent changes: between 2010 and 2014 each year only 1% of third-country nationals with a valid residence permit for family reasons changed their status.*

The following 2014 EMN study looked at the policies and practices that Member States developed on unaccompanied minors and provided for data that described the size and characteristics of the phenomenon.

- ★ EMN (2015) [Policies, practices and data on unaccompanied minors in the EU Member States and Norway](#) – *This Study provided a description of the phenomenon of unaccompanied minors (UAMs) in the (Member) States, the different motivations and circumstances that led UAMs to enter the EU, as well as the procedural safeguards for this vulnerable group from the moment of entry into the territory, through to reception conditions and integration arrangements, to any arrangements taken by the (Member) States when the minors turned into adults.*

The following 2012 EMN study described Member States' policies and practices on family reunification misuse, in particular marriage of convenience and false declaration of partnerships:

- ★ EMN (2012) [Marriages of convenience and false declarations of parenthood](#) - *This Study, which is the result of 24 national contributions, provided some relevant information on the scale and the scope of two instances of misuse of family reunification, namely marriages of convenience and false declarations of parenthood. This is relevant as Art. 16 of the Directive laid down that "Member States may conduct specific checks and inspections where there is reason to suspect that there is fraud or a marriage, partnership or adoption of convenience." The Study further illustrates the national measures for preventing misuses, including involving*

*the embassies in countries of origin, undertaking interviews, inspections and DNA tests and the circumstances in which checks are triggered.*

Other relevant, though less recent, EMN studies include:

- ★ EMN (2010) [The different national practices concerning granting of non-EU harmonised protection statuses](#)
- ★ EMN (2008) [Family Reunification](#)

### **EMN Ad-Hoc Queries**

The following recent EMN AHQs (2014 onwards) are relevant to this Study:

- ★ [Content of integration programmes for applicants for/ beneficiaries of international protection](#) (2016.1097), requested by IT on 11<sup>th</sup> August 2016
- ★ [Waiting period for family reunification for beneficiaries of subsidiary protection](#) (2016.1096), requested by BE on 10<sup>th</sup> August 2016
- ★ [Checking identity and family relationships in case of family reunification with a beneficiary of international protection](#) (2016.1074), requested by NL on 8<sup>th</sup> June 2016
- ★ [Required resources in the framework of family reunification](#) (2016.1070), requested by BE on 27<sup>th</sup> May 2016
- ★ [Rules on family reunification of unaccompanied minors granted refugee status or subsidiary protection](#) (2016.1071), requested by BE on 27<sup>th</sup> May 2016
- ★ [Misuse of family reunification legal provisions](#) (2016.1062), requested by BE on 2<sup>nd</sup> May 2016
- ★ [Maximum time limit for applications for family reunification of third-country nationals](#) (2016.1054), requested by BE on 4<sup>th</sup> April 2016
- ★ [Polygamous marriage](#) (2016.1032), requested by ES on 23<sup>rd</sup> February 2016
- ★ Family reunification of third country nationals receiving international protection Part 2 (2015.735), requested by FI on 9<sup>th</sup> October 2015
- ★ Family reunification of third country nationals receiving international protection Part 1 (2015.734), requested by FI on 9<sup>th</sup> October 2015
- ★ Travel documents issued to family members of refugees or other beneficiaries of international protection who do not hold travel documents (2015.723), requested by EL on 2<sup>nd</sup> September 2015
- ★ The recognition of proxy marriages (2015.664), requested by UK on 18<sup>th</sup> February 2015
- ★ [Policies for family members of beneficiaries of international protection](#) (2014.534), requested by NL on 12<sup>th</sup> February 2014
- ★ [Reunification of third country nationals by an own national sponsor](#) (2014.632), requested by ES on 19<sup>th</sup> November 2014
- ★ [Support requirements related to the right to family reunification re: Council Directive 2003/86/EC](#) (2014.618), requested by NO on 14<sup>th</sup> October 2014.

### **Other relevant studies and reports**

The following study presents an overview of the most prominent legal issues in family reunification for beneficiaries of international protection:

- ★ [ELENA \(European Legal Network on Asylum\)/ ECRE \(2016\). Information Note on Family Reunification for Beneficiaries of International Protection in Europe](#) – *The study reviews the international and EU law framework and the applicable rights and principles in family reunification, and discusses some controversial issues, such as the status of the sponsor, the definition of family members, the documentation and evidentiary requirements, the length of the procedure, and the relevance of Dublin family unit case law.*

The following book identifies the key elements of the right to family unification:

- ★ [Klaassen, M.A.K. \(2015\). The right to family unification: between migration control and human rights](#) – *This book contains a comparative analysis of family reunification legislation in Denmark, Germany, the Netherlands and the UK.*

The following tool compares family reunification policies across 38 states in the world and assesses how easy it is to reunite with family members:

- ★ [MIPEX 2015 – Family Reunion](#) – *This index is built upon several indicators, divided into four policy dimensions of family reunion: eligibility, conditions for acquisition of the status, security of the status and rights associated with it. It describes the best and worst practices and provides the reunion rate in 2013.*

The following report offers an overview from a practitioners' perspective on the national practices in relation to family reunification for beneficiaries of international protection:

- ★ [Red Cross EU and ECRE \(2014\), Disrupted flights. The Realities of Separated Refugees Families in the EU](#) – *This report describes the procedural obstacles to family reunification faced by refugees both in countries of destination and origin.*

The following working paper analyses the patterns of differentiated access to the right of family reunification and their rationale:

- ★ [Reinhard Schweitzer \(2014\), A Stratified Right to Family Life? Patterns and Rationales behind Differential Access to Family Reunification for Third-Country Nationals Living within the EU](#) – *This paper describes the most common diversities in accessing family reunification and finds that instances of unequal treatment are more common in countries that regulate family reunification more restrictively.*

The briefing below provides information on Central European Member States' (Bulgaria, Czech Republic, Hungary, Romania, Slovak Republic, Slovenia) family reunification patterns and practice:

- ★ [Huddleston, T. \(2013\) Family reunion policies in Central Europe](#)

The following study provides an overview of the legislative framework on family reunification in six Member States (Austria, Germany, Ireland, the Netherlands, Portugal and the United Kingdom), describes the implementation of the procedures, analyses the policies' development and the extent to which the changes made to policy were evidence-based; it also reports on the relevant case law and assesses the impact of family reunification policies on family life and integration:

- ★ [Strik, T, de Hart, B., Nissen E. \(2013\), Family Reunification: A Barrier or Facilitator of Integration? A Comparative Study](#) – *This study finds that over the last decade, the conditions for family reunification have become more restrictive and the number of applications decreased. The study differentiates between groups of third-country nationals, Member States and practices and finds out that neutral rules in practice lead to discrimination against certain groups of migrants, based for example, on their level of education and gender.*

The following study discusses some requirements and conditions for family reunification, with a special focus on migrant women:

- ★ [European Network of Migrant Women \(2011\), Family Reunion Legislation in Europe: Is It Discriminatory Against Migrant Women?](#), – *The report argues that family migration policies are often the result of negative stereotyping that sees migrants as a homogeneous group that struggle to integrate. In particular, the criteria that migrants have to meet are designed to limit and select migrants. To serve the best interest of women, an autonomous residence permit to family members should be issued at the earliest occasion.*

The following study provides a thorough overview of the policy for family reunification in nine selected Member States (Belgium, France, Germany, Poland, Portugal, Slovenia, Spain, Sweden, the Netherlands):

- ★ [Pascouau Y. and Labayle H. \(2011\), Conditions for Family Reunification under Strain. A comparative study in nine EU member states.](#) – *The report provides a detailed analysis of the legislation and practices at the national level and concludes that the jurisprudence and the rights enshrined in the EU Charter of Fundamental Rights should be taken into account for future development in the area of family reunification; that further harmonisation is needed across Member States; that the underlined rationale of family*

*reunification is to promote integration rather than to manage migration flows, and that this rationale must be safeguarded.*

The following ICMPD study describes the patterns of family-related migration in the EU, the policy framework and the impact of the policy on the third-country nationals trying to reunite, with a gender perspective:

- ★ [Kraler A. \(2010\), Civic Stratification, Gender and Family Migration Policies in Europe](#), – *The report concludes that the way dependency has been constructed as the basis for family reunification has changed over time, and compared to the post-war period has formally become gender-neutral. In practice, however, family reunification rules have gender-related implications in practice. The principle of selection has come up while family has become an important channel of migration. Finally, the report argues that the reality of family has been only poorly captured by the concept of family employed in migration law.*
- ★ [Strik T., Böcker A., Luiten M. and Van Oers R. \(2010\), “The INTEC Project: Integration and Naturalisation Tests: the New Way to European Citizenship” – Synthesis Report](#) - *The report is an analysis of the results of a comparative research on the effects (intended and unintended) of integration and language tests on the integration of migrants. The research distinguishes between pre-entry measures (applied for family reunification), integration requirements for permanent residence and integration requirements for naturalization. The research identifies the groups of migrants facing the most difficulties with meeting the requirements, and gives recommendations on how to ensure the promotion of integration while applying integration measures.*

## 7 AVAILABLE STATISTICS

### **EU level**

*The following statistics are available through Eurostat, and may be indicative of the scale of the phenomenon (i.e. the number of family members reunited).*

- ★ Number of first residence permits by reason, length of validity and citizenship [migr\_resfirst]
- ★ Number of first permits issued for family reasons by reason, length of validity and citizenship [migr\_resfam]
- ★ First permits by reason, age, sex and citizenship [migr\_resfas]
- ★ Number of changes of immigration status permits by reason and citizenship [migr\_reschange]
- ★ Number of valid permits by reason, length of validity and citizenship on 31 December of each year [migr\_resvalid]
- ★ Single Permits issued by type of decision, length of validity [migr\_ressing]
- ★ Admitted family members of EU Blue Cards holders by type of decision and citizenship [migr\_resbc2]

### **National level**

The following data would be very useful for this Study, and should be included insofar as possible:

- ★ The total number of applications for family reunification in 2011-2015 and, where available, the first half of 2016, disaggregated by the ground of residence of the sponsor (beneficiaries of international protection (i.e. refugees, BSPs, UAMs), persons admitted for remunerated activities,<sup>30</sup> persons admitted for study purposes, etc.) and sex;
- ★ The total number of accepted/ rejected applications for family reunification in 2011-2015, and where available, the first half of 2016, by status of the sponsor.

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<sup>30</sup> This includes persons who are employed, self-employed, business owners, highly qualified workers under Directive 2009/50/EC (EU Blue Card Directive), highly qualified workers under national labour permits for (highly) skilled workers, seasonal workers and intra-corporate transferees (based on definitions in the recent EMN study on changes of status).

**NB: The EMN Statistics Working Group is kindly invited to comment on the inclusion of statistics in the Common Template and to trial the collection of statistics in their (Member) State.**

## 8 DEFINITIONS

The following key terms are used in the Common Template. The definitions are taken from the EMN Glossary v3.0.<sup>31</sup>

**'Adoption of convenience'**: is defined as "an adoption (of a child) contracted for the sole purpose of enabling the person adopted to enter or reside in a Member State".

**'Adult'**: is defined as "every human being aged 18 years or more unless, under the law applicable to the adult, majority is attained later".

**'Applicant for international protection'**: is defined as "a third-country national or a stateless person who has made an application for international protection in respect of which a final decision has not yet been taken".

**'Application for international protection'**: is defined as "a request made by a third-country national or a stateless person for protection from a Member State, who can be understood to seek refugee status or subsidiary protection status, and who does not explicitly request another kind of protection, outside the scope of Directive 2011/95/EU, that can be applied for separately".

**'Beneficiary of International Protection'**: is defined as "a person who has been granted refugee status or subsidiary protection status".

**'Civil Partnership of Convenience'**: is defined as "a civil partnership contracted for the sole purpose of enabling the person concerned to enter or reside in a Member State".

**'False declaration of parenthood'**: is defined as "an untruthful declaration of a relationship of parenthood which does not actually exist either (a) between a minor who is an EU citizen or settled third-country national and a third-country national adult, where the adult claims to be the parent in order to obtain or legalise their residence in a Member State, or (b) between a third-country national minor and a union citizen adult or a settled third-country national adult where the adult declares themselves parent of the minor in order to obtain or legalise the residence of the child and / or possibly the residence of the other parent".

**'Family formation'**: is defined as "the entry into and residence in a Member State of a third-country national on the basis of the establishment of a family relationship either (a) after their third-country national sponsor has gained legal residence in a Member State; or (b) with an EU national".

**'Family member'**: is defined as "in the general migration context, a person either married to, or having a relationship legally recognised as equivalent to marriage, to a migrant, as well as their dependent children or other dependants who are recognised as members of the family by applicable legislation. In the context of the Family Reunification Directive, a third country national, as specified in Art. 4 of Directive 2003/86/EC (normally members of the nuclear family – i.e. the spouse and the minor children), who has entered the territory of the European Union for the purpose of family reunification".

**'Family migration'**: is defined as "in the global context, a general concept encompassing family reunification, family formation, and migration of an entire family at the same time. In the EU context, a concept which refers explicitly to family reunification and family formation".

**'Family reunification'**: is defined as "the establishment of a family relationship which is either: (a) the entry into and residence in a Member State, in accordance with Council Directive 2003/86/EC, by family members of a third-country national residing lawfully in that Member State ('sponsor') in order to preserve the family unit, whether the family relationship arose before or after the entry of the sponsor; or (b) between an EU national and third-country national established outside the EU who then subsequently enters the EU".

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<sup>31</sup> Available at: [http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european\\_migration\\_network/docs/emn-glossary-en-version.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/docs/emn-glossary-en-version.pdf)

*Synonymous:* family reunion

**'Forced marriage'**: is defined as "the union of two persons, at least one of whom has not given their full and free consent to the marriage".

**'Highly qualified migrant'**: is defined as "in the global context, a person falling within ILO ISCO-88 Classes 1, 2 and 3, e.g. a person qualified as a manager, executive, professional, technician or similar, who moves within the internal labour markets of transnational corporations and international organisations, or who seeks employment through international labour markets for scarce skills. In the EU context, a third-country national who seeks employment in a Member State and has the required adequate and specific competence, as proven by higher professional qualifications".

**'Integration'**: In the EU context, a dynamic, two-way process of mutual accommodation by all immigrants and residents of Member States.

**'Intra-corporate transferee'**: is defined as "a third-country national subject to a temporary secondment from an undertaking established outside the territory of a Member State and to which the third-country national is bound by a work contract to an entity belonging to the undertaking or to the same group of undertakings which is established inside this territory".

**'Labour market test'**: is defined as a "mechanism that aims to ensure that migrant workers are only admitted after employers have unsuccessfully searched for national workers, EU citizens (in EU Member States this also means EEA workers) or legally residing third-country nationals with access to the labour market according to national legislation".

**'Long-term resident'**: is defined as "a third-country national who has long-term resident status as provided for under Arts. 4 to 7 of Council Directive 2003/109/EC or as provided for under national legislation".

**'Marriage of convenience'**: is defined as "a marriage contracted for the sole purpose of enabling the person concerned to enter or reside in a Member State".

**'Refugee'**: is defined as "in the global context, either a person who, owing to a well-founded fear of persecution for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail themselves of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned before, is unable or, owing to such fear, unwilling to return to it. In the EU context, either a third-country national who, owing to a well-founded fear of persecution for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail themselves of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, and to whom Art. 12 (Exclusion) of Directive 2011/95/EU does not apply".

**'Researcher'**: is defined as "in the EU migration context, a third-country national holding an appropriate higher education qualification, which gives access to doctoral programmes, who is selected by a research organisation for carrying out a research project for which the above qualification is normally required".

**'Right to family life'**: is defined as "a principle enshrined in Arts. 7, 9 and 33 of the Charter of Fundamental Rights of the European Union and Art. 8 of the European Convention on Human Rights (ECHR)".

**'Right to family unity'**: is defined as "in the context of a refugee, a right provisioned in Art. 23 of Directive 2011/95/EU and in Art. 12 of Directive 2013/33/ EU obliging Member States to ensure that family unity can be maintained".

**'Seasonal worker'**: is defined as "a third-country national who retains their principal place of residence in a third country and stays legally and temporarily in the territory of a Member State to carry out an activity dependent on the passing of the seasons, under one or more fixed-term work contracts concluded directly between that third-country national and the employer established in that Member State".

**'Sponsor'**: is defined as "in the global context, a person or entity which undertakes a (legal, financial or personal) engagement, promise or pledge, on behalf of another. In the EU context of family reunification, a third-



country national residing lawfully in a Member State and applying, or whose family members apply, for family reunification to be joined with them”.

**‘Student’:** is defined as “in the EU migration context, a third-country national accepted by an establishment of higher education and admitted to the territory of a Member State to pursue as their main activity a full-time course of study leading to a higher education qualification recognised by the Member State, including diplomas, certificates or doctoral degrees, which may cover a preparatory course prior to such education according to its national legislation”.

**‘Subsidiary protection’:** is defined as “the protection given to a third-country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to their country of origin, or in the case of a stateless person to their country of former habitual residence, would face a real risk of suffering serious harm as defined in Art. 15 of 2011/95/EU, and to whom Art. 17(1) and (2) of Directive 2011/95/EU do not apply, and is unable or, owing to such risk, unwilling to avail themselves of the protection of that country”.

**‘Unaccompanied minor’:** is defined as “a minor who arrives on the territory of the Member States unaccompanied by the adult responsible for them by law or by the practice of the Member State concerned, and for as long as they are not effectively taken into the care of such a person. It includes a minor who is left unaccompanied after they have entered the territory of the Member States”.

**‘Third-country national’:** is defined as “any person who is not a citizen of the European Union within the meaning of Art. 20(1) of TFEU and who is not a person enjoying the Union right to free movement, as defined in Art. 2(5) of the Schengen Borders Code”.

## 9 ADVISORY GROUP

For the purpose of providing support to EMN NCPs while undertaking this Focussed Study and for developing the Synthesis Report, an Advisory Group (AG) has been established. In addition to COM and the EMN Service Provider (ICF International), the AG for the Study consists of AT, ES, FI, FR, HU, IE, LU, LV, NL, NO, SE and UK EMN NCPs.

EMN NCPs are invited to send any requests for clarification or further information on the Study to the following AG members:

- ★ AT EMN NCP: [rlukits@iom.int](mailto:rlukits@iom.int)
- ★ ES EMN NCP: [cblancogaz@meyss.es](mailto:cblancogaz@meyss.es); cc: [sara.corres@meyss.es](mailto:sara.corres@meyss.es)
- ★ FI EMN NCP: [johanna.vaananen@migri.fi](mailto:johanna.vaananen@migri.fi); cc: [Kielo.Brewis@migri.fi](mailto:Kielo.Brewis@migri.fi)
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- ★ NO EMN NCP: [ditj@udi.no](mailto:ditj@udi.no); [rha@udi.no](mailto:rha@udi.no); cc: [oyvind.jaer@jd.dep.no](mailto:oyvind.jaer@jd.dep.no); [eho@udi.no](mailto:eho@udi.no); [magne.holter@jd.dep.no](mailto:magne.holter@jd.dep.no); [tmh@udi.no](mailto:tmh@udi.no); [kac@udi.no](mailto:kac@udi.no); [Ane-Kristine.Djupedal@jd.dep.no](mailto:Ane-Kristine.Djupedal@jd.dep.no); [ditj@udi.no](mailto:ditj@udi.no); [torill.myhren@mfa.no](mailto:torill.myhren@mfa.no)

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## 10 TIMETABLE

The following timetable has been proposed for the Study going forward:

Date	Action
20 <sup>th</sup> July 2016	Circulation of <u>Version 1</u> of the Common Template to AG members to provide comments (by 29 <sup>th</sup> July 2016)
10 <sup>th</sup> August 2016	Circulation of <u>Version 2</u> of the Common Template to AG members to provide comments (by 24 <sup>th</sup> August 2016)
2 <sup>nd</sup> September 2016	Circulation of <u>Version 3</u> of the Common Template to EMN NCPs to provide feedback in writing (by 9 <sup>th</sup> September 2016) or at the 81 <sup>st</sup> NCP Meeting taking place in Brussels on 12 <sup>th</sup> September 2016
Week of 12 <sup>th</sup> September 2016	Finalisation of the Common Template and official launch of the Study
15 <sup>th</sup> December 2016	Completion of the National Reports by EMN NCPs
16 <sup>th</sup> January 2016	First draft of the Synthesis Report <sup>32</sup>
31 <sup>st</sup> January 2016	Finalisation of the Synthesis Report and National Contributions for publication

## 11 TEMPLATE FOR NATIONAL CONTRIBUTIONS

The template provided below outlines the information that should be included in the National Contributions of EMN NCPs to this Focussed Study. The indicative number of pages to be covered by each section is provided in the guidance note. For National Contributions, the total number of pages should **not exceed 35 pages**, including the questions and excluding the Statistical Annex. A limit of **35 pages** will apply to the Synthesis Report, in order to ensure that it remains concise and accessible.

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<sup>32</sup> Provided that at least 20 EMN NCPs have submitted a National Contribution in time for the synthesis stage of the Study.

# EMN FOCUSED STUDY 2016

## Family Reunification of TCNs in the EU: National Practices

### Top-line "Factsheet" (National Contribution) [maximum 1 page]

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

*Please also provide a concise summary of the main findings of Sections 1-6 below, for example:*

- *Evolution of the phenomenon of family reunification in your (Member) State over time and latest figures;*
- *Key changes to policy and/ or practice on family reunification in recent years (i.e. since 2011)<sup>33</sup> or being planned currently – including EU or national-level factors driving changes to policy and/ or practice, for example, the increased number of TCNs seeking asylum in the EU, the European Agenda on Migration,<sup>34</sup> and/ or relevant EU and/ or national case law, etc.;*
- *Whether policy and/ or practice on family reunification in your (Member) State has become more or less restrictive over time;*
- *Any challenges as well as good practices in the field;*
- *Any suggestions for EU level action(s) in family reunification that might be useful for your (Member) State.*

Over the years, except volume of applications of permit for temporary family reunification residence increase, there wasn't significant change of regulations of law concerning claimants for the permits. Substantial requirements' liberalisation, which the claimants should meet for the purposes of family reunification, was implemented by the Act of 12 December 2013 on foreigners, notably article 159 part 2. Currently there is no requirements concerning health insurance, steady and regular income and guaranteed place of accommodation to a family members of a foreigner who has been granted refugee status or subsidiary protection, where an application for granting him/her such a permit has been filed before the lapse of a 6-month period from the date of being granted refugee status or subsidiary protection.

### Executive Summary (Synthesis Report) [maximum 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.*

<sup>33</sup> The proposed reference period of the Study is 2011 onwards with some flexibility if (Member) States believe there to be a significant change to law, policy and/ or practice outside this period.

<sup>34</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions A European Agenda on Migration, available at [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/index_en.htm)

## Section 1: Overview of the situation on family reunification [maximum 2 pages]

*This section of the Synthesis Report will provide an up-to-date overview of the national situation with regard to family reunification of TCNs, including figures on the scale of family reunification, e.g. number of residence permits issued on grounds of family reunification, number of unaccompanied minors (UAMs) reunited with family in (Member) States, etc. The section sets out the context for the Study by providing information on the approaches of (Member) States to family reunification, as well as recent (since 2011) changes to law, policy and/ or practice. The section will be drafted on the basis of data available from Eurostat or other relevant sources and complemented by national data provided by EMN NCPs.*

**Q1.** Please briefly describe the basis for developing legislation/ policy on family reunification in your (Member) State (e.g. Directive 2003/86/EC, Art. 8, ECHR on the right to respect private and family life, etc.). **(If your (Member) State distinguishes between family formation and family reunification, please provide further information here and if applicable, make such a distinction in the subsequent questions).**

The basis for developing legislation on family reunification are included in the Act of 12 December 2013 on foreigners, which transposed regulations of the Council Directive nr 2003/86/WE to polish national law. The Act of 12 December 2013 on foreigners refers to the article 8 of Convention for the Protection of Human Rights and Fundamental Freedoms (4.11.1950) and to Convention of the Rights of the Child. The Act of 12 December 2013 on foreigners doesn't distinguish between family formation and family reunification.

**Q2.** Please provide an overview of **recent (since 2011) changes to law, policy and/ or practice** in the field of family reunification in your (Member) State, covering the following:

- Current public debate on family reunification in your (Member) State (e.g. on requirements for exercising the right to family reunification or other issues);
- Whether family reunification is a national policy *priority* currently;
- Any *planned* changes to law, policy and/ or practice on family reunification;
- Any changes to policy and/ or practice as a result of the Commission Communication COM(2014)2010's guidance for application of Directive 2003/86/EC? If no, please specify why not;
- If your (Member) State has introduced a private sponsorship programme, which requires the beneficiary to be a family member of the sponsor. If yes, briefly elaborate in what ways the requirements, eligibility and access to rights differ.

Please support your answers by providing qualitative evidence, e.g. from (media) reports, political debate, etc. *(Quantitative evidence is requested in the subsequent question so should not be covered here).*

"Family reunification" definition was used first time on 1<sup>st</sup> May, 2014 in the Act of 12 December 2013 on foreigners. Before 1<sup>st</sup> May, 2014 there were other regulations allowing permit of all members of foreigner family. Migrations of family reunification streams at the moment are not subject of any public disputation or priority of national policy, thereupon any changes of the policy are not planned.

**3. a.** Please complete the Excel document in Annex 1 below (including data, as well as metadata) if you have national statistics on:

- The total number of applications for family reunification in 2011-2015 and, where available, the first half of 2016, disaggregated by the ground of residence of the sponsor (beneficiaries of international protection (i.e. refugees, BSPs, UAMs), persons admitted for remunerated activities, persons admitted for study purposes, etc.) and sex;
- The total number of accepted/ rejected applications for family reunification in 2011-2015, and where available, the first half of 2016, if available disaggregated by the grounds for rejection of applications.

Please do not here include the Eurostat data mentioned above in Section 7 above, as this information is available publically and can therefore be analysed centrally for the Synthesis Report.

**b.** Please supplement the data provided above with a narrative on the profiles of TCNs residing in your (Member) State and asking for family reunification, i.e. are the sponsors mostly beneficiaries of international protection and/or other TCNs, e.g. workers, students, etc.?

The large group of members of separated family represents economic migrants and The Pole's Cards holders, who can easily obtain permanent residence permit.

## Section 2: Definition of sponsor and family members [maximum 5 pages]

*This section of the Synthesis Report will aim to provide information on the understanding of family members entitled to family reunification across the (Member) States. The definition of family members is prescribed in Art. 4 in Chapter II of Directive 2003/86/EC. The section will also aim to clarify who is eligible to be a sponsor to an application for family reunification (Art. 3 in Chapter I of Directive 2003/86/ EC). **If applicable, please distinguish to what extent any of the provisions apply to certain/ all groups of migrants (see Figure 1 above) applying for family reunification in your (Member) State depending on the grounds of residence of the sponsor (e.g. refugee, BSP, worker, student, etc.). If the provisions vary across different groups of migrants, please describe the variations.***

**Q4. a.** Who can be a **sponsor**<sup>35</sup> to an application for family reunification in your (Member) State (e.g. UAMs, students, workers, etc.)?

The following persons shall be considered a family member (temporary residence permit):

- (1) a person married to a foreigner under Polish law;
- (2) a minor child of a foreigner and a person married to him/her under Polish law, including an adopted child;
- (3) a minor child of a foreigner, including an adopted child, dependent on him/her, of whom the foreigner has actual parental custody;
- (4) a minor child of a person married to a foreigner under Polish law, including an adopted child, dependent on him/her, of whom he/she has actual parental custody.

According to the article 168 of the Act of 12 December 2013 on foreigners, a foreigner shall be granted a temporary residence permit for the purposes of family reunification at the request of the foreigner residing in the territory of the Republic of Poland to whom a member of his/her family arrives or with whom he/she resides in the territory of the Republic of Poland.

A foreigner (mentioned above) shall be granted a temporary residence permit for the purposes of family reunification if he/she meets each of the following conditions:

- 1) arrives in the territory of the Republic of Poland or stays in this territory for the purposes of family reunification and is a family member of a foreigner residing in the territory of the Republic of Poland:
  - (a) on the basis of a permanent residence permit,
  - (b) on the basis of a long term resident's EU resident permit,
  - (c) in connection with having been granted refugee status,

<sup>35</sup> Art. 2 and 3 in Chapter I of 2003/86/EC define who can be a **sponsor** to an application for family reunification in the EU.

(d) in connection with having been granted subsidiary protection,

(e) for at least 2 years, on the basis of further temporary residence permits, also immediately before filing an application for being granted a temporary residence permit for a family member – on the basis of a permit granted him/her for a period of stay of no less than 1 year,

(f) on the basis of the temporary residence permit referred to in Article 151(1),

(g) on the basis of a temporary residence permit for the purposes of carrying out research if such a foreigner holds the residence permit referred to in Article 1(2)(a) of Council Regulation No 1030/2002, with an annotation “naukowiec” (“researcher”), issued by another European Union Member State, where the agreement on admitting the foreigner for the purposes of carrying out a research project concluded with a competent research institution established in that state provides for carrying out research also in the territory of the Republic of Poland,

(h) on the basis of a temporary residence permit for the purposes of highly qualified employment,

(i) in connection with having been granted a residence permit for humanitarian reasons;

A lineal ancestor of a minor foreigner who has been granted refugee status or subsidiary protection, residing unattended in the territory of the Republic of Poland, or a person responsible for such a foreigner shall also be considered his/her family member.

**b.** Does the national law of your (Member) State allow **beneficiaries of subsidiary protection (BSPs)**<sup>36</sup> to apply for family reunification?  N

If yes, please elaborate below. If no application procedure is made available to BSPs, how does your (Member) State ensure that the right to family life (Art. 8, ECHR) of BSPs is respected?

No, because according to the article 99 part 1 point 4 of the Act of 12 December 2013 on foreigners, initiation of the proceedings on granting a temporary residence permit shall be refused if the foreigner has been granted a permit for tolerated stay, a permit for stay for humanitarian reasons, asylum, subsidiary protection or temporary protection, or has been granted refugee status in the Republic of Poland.

A foreigner who arrives in the territory of the Republic of Poland or stays in this territory for the purposes of family reunification and is a family member of a foreigner residing in the territory of the Republic of Poland in connection with having been granted refugee status, or in connection with having been granted subsidiary protection is eligible as sponsor to submit an application for temporary residence permit for his/her family member, according to the article 159, part 1 point 1 c and d of the Act of 12 December 2013 on foreigners.

**Q5.** Does your (Member) State extend the **scope of family reunification** beyond nuclear/ core members of the family,<sup>37</sup> i.e. parents, adult children, non-married partners, etc.?  N

If yes, does your (Member) State extend the scope of family reunification to the following family members:

- Parents?  N

Such opportunity is limited exclusively to the situation of illegal stay in the territory of the Republic of Poland of foreigner's parent.

According to the article 187 point 7 of the Act of 12 December 2013 on foreigners, a temporary residence permit due to other circumstances shall be granted to a foreigner if his/her departure from the territory of the Republic of Poland would violate the rights of the child, as defined in the Convention on the Rights of the Child, adopted by the United Nations General Assembly on 20 November 1989 (Dz. U. of 1991 No. 120, item 526, of 2000 No. 2, item 11

<sup>36</sup> Currently, BSPs are not covered by Directive 2003/86/EC.

<sup>37</sup> Art. 4 in Chapter II of Directive 2003/86/EC stipulates that (Member) States shall authorise the entry and residence of certain **family members**, including the sponsor's spouse and minor (including adopted) children of the sponsor and/ or his/ her spouse.



and of 2013, item 677), to the extent that could significantly adversely affect his/her mental and physical development, and the foreigner stays in the territory of the Republic of Poland illegally.

When the case concerns parents of an adult, we should apply regulations of the article 187 point 6 of above Act: A temporary residence permit due to other circumstances shall be granted to a foreigner if his/her stay in the territory of the Republic of Poland arises from the need to respect the right to family life within the meaning of the Convention on the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950, and the foreigner stays in the territory of the Republic of Poland illegally.

Legislator projects also legalization of stay of:

- a foreigner who is a family member of a Polish national or a national of another European Union Member State, a European Free Trade Association (EFTA) member state – a party to the Agreement on the European Economic Area or the Swiss Confederation, other than that referred to in Article 2(4) of the Act of 14 July 2006 on the entry into, residence in and departure from territory of the Republic of Poland of nationals of the European Union Member States and members of their families, residing in the territory of the Republic of Poland, if the foreigner stays in this territory together with such a national – due to:

(a) being financially dependent on him/her or staying with him/her in the same household in the country from which the foreigner has arrived, or

(b) serious health considerations making the foreigner require attendance by such a national – if the foreigner meets the requirements of health insurance, steady and regular income and guaranteed place of accommodation.

- foreigner living a family life within the meaning of the Convention for the Protection of Human Right and Fundamental Freedoms signed in Rome on 4 November 1950 (Dz. U. of 1993 No. 61, item 284, as amended<sup>21</sup>), with a Polish national or a national of another European Union Member State, a European Free Trade Association (EFTA) member state – a party to the Agreement on the European Economic Area or the Swiss Confederation, residing in the territory of the Republic of Poland, with whom the foreigner resides together in this territory, if the foreigner meets the requirements of health insurance, steady and regular income and guaranteed place of accommodation.

- Adult children? Y/ ~~N~~

According to the article 161 of the Act of 12 December 2013 on foreigners, a temporary residence permit shall be granted to a foreigner who meets the requirements of health insurance, steady and regular income and guaranteed place of accommodation, and who is an adult child of a foreigner residing in the territory of the Republic of Poland on the basis of:

(a) one of the premises referred to in Article 159(1)(1)(a)-(g) and (i), and resides in this territory,

(b) the permit referred to in Article 159(1)(1)(h), and has been residing in this territory or the territory of another European Union Member State

– for minimum 5 years on the basis of temporary residence permits for the purposes of family reunification.

Furthermore, in the case of illegal stay, the article 187 point 6 of the Act of 12 December 2013 on foreigners could be applied.

- Same-sex partners who are married? Y/ ~~N~~

Same-sex partners who are married are not legally recognized by Polish law, therefore granting them temporary residence permit generally is not possible. The permit could be granted only in case of illegal stay, according to the article 187 point 6 of the Act of 12 December 2013 on foreigners.

- Same-sex partners who are registered? Y/ ~~N~~

Same-sex partners who are registered are not legally recognized by Polish law, therefore granting them temporary residence permit generally is not possible. The permit could be granted only in case of illegal stay, according to the

article 187 point 6 of the Act of 12 December 2013 on foreigners.

- Non-married partners? Y/  N

Non-married partners are not legally recognized by Polish law, therefore granting them temporary residence permit generally is not possible. The permit could be granted only in case of illegal stay, according to the article 187 point 6 of the Act of 12 December 2013 on foreigners.

- 'Dependent' persons, i.e. persons receiving legal, financial, emotional or material support by the sponsor or by his/ her spouse/ partner (other than those mentioned above<sup>38</sup>)? Y/  N

If yes, please specify how the concept of dependency<sup>39</sup> is defined in the relevant provisions/ practice.

The permit could be granted only in case of illegal stay, according to the article 187 point 6 of the Act of 12 December 2013 on foreigners. The situation concerns mainly minor children and closest adults (parents) being financially dependent on him/her or staying with him/her in the same household in the country from which the foreigner has arrived.

- Other (please specify, e.g. foster children, applicants in polygamous and/ or proxy marriages, etc.)? Y/ N

If yes, please elaborate on each of the categories mentioned above.

The following persons shall be considered a member of separated family:

- (1) a person married to a foreigner under Polish law;
- (2) a minor child of a foreigner and a person married to him/her under Polish law, including an adopted child;
- (3) a minor child of a foreigner (sponsor), including an adopted child, dependent on him/her, of whom the foreigner has actual parental custody;
- (4) a minor child of a person referred to in paragraph 1, including an adopted child (stepchild), dependent on him/her, of whom he/she has actual parental custody.

The legalization of stay in above category is possible under the standard procedure (the article 159 part 1 of the Act of 12 December 2013 on foreigners). In case of illegal stay the article 187 point 6 and 7 of the Act of 12 December 2013 on foreigners should be applied. The Act doesn't distinguish between regulations applied to related and adopted children of claimant.

In the event of polygamous marriage, deciding factor is which of the marriages is legally recognized by Polish law. Only spouse who is in bonds of marriage which is legally recognized by Polish law is eligible to legalize his/her stay according to the article 159 part 1 of the Act.

In the event of relationships which are not legally recognized by Polish law (partners in polygamous relationships, marriages jointed by plenipotentiary), the permit could be granted only in case of illegal stay. Then, validity of permits granting is considered under the need to respect the right to family life within the meaning of the

<sup>38</sup> I.e. other than those referred to in Art. 4 of Directive 2003/86/EC.

<sup>39</sup> According to UNHCR, dependent persons should be understood as persons who depend for their existence substantially and directly on any other person, in particular because of economic reasons, but also taking emotional dependency into consideration. Dependency should be assumed when a person is under the age of 18, and when that person relies on others for financial support. Dependency should also be recognised if a person is disabled not capable of supporting him/ herself. The dependency principle considers that, in most circumstances, the family unit is composed of more than the customary notion of a nuclear family (husband, wife and minor children). This principle recognises that familial relationships are sometimes broader than blood lineage, and that in many societies extended family members such as parents, brothers and sisters, adult children, grandparents, uncles, aunts, nieces and nephews, etc., are financially and emotionally tied to the principal breadwinner or head of the family unit. Further information is available at: <http://www.unhcr.org/3b30baa04.pdf>, as well as in the Communication from the Commission to the European Parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification mentioned in Section 1 in the first part of this document.

Convention on the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950, according to the article 187 point 6 of the Act of 12 December 2013 on foreigners. According to the Act, these relationships are treated as non-married partners.

### Section 3: Requirements for exercising the right to family reunification [maximum 5-10 pages]

*This section of the Synthesis Report will report on the requirements for exercising the right to family reunification (referred to in Art. 6-8 in Chapter IV of Directive 2003/EC/86). **If applicable, please distinguish to what extent any of the provisions apply to certain/ all groups of migrants applying for family reunification in your (Member) State depending on the grounds of residence of the sponsor (e.g. refugee, BSP, worker, student, etc.). If the provisions vary across different groups of migrants, please describe the variations.***

**Q6.** Does your (Member) State (plan to) impose the following **requirements**<sup>40</sup> for exercising the right to family reunification (please also indicate if exemptions can be made in individual cases based on e.g. hardship clauses):

- Accommodation suitable for the size of the family, as well as meeting health and safety standards?  
Y/ N

Submitting documents concerning having current place of permanent stay in the territory of the Republic of Poland, current address of permanent residence and contract for the rental of the rent home with perpetual book's number are essential to confirm accommodation.

According to regulations of the Act of 12 December 2013 on foreigners there is possibility of getting temporary residence permit for separated family member, regardless of meeting the requirements for exercising the right to family reunification.

According to the article 167 of the Act of 12 December 2013 on foreigners in the proceedings on granting or revoking a temporary residence permit for the purposes of family reunification the following shall be taken into account:

- (1) the interest of a minor child;
- (2) the nature and stability of family ties in the territory of the Republic of Poland;
- (3) the period of the foreigner's stay in the territory of the Republic of Poland;
- (4) the existence of family, cultural and social ties with the country of origin.

In case, if the interest of the party determined in accordance with the above mentioned guidelines supports the granting of the permit, a temporary residence permit may be granted irrespectively of fulfilling the requirement of accommodation, health insurance or income source, which meets the relevant criteria.

- Healthcare insurance? Y/ N

In that case documents confirming current healthcare insurance according to the Act of 27 August 2004 on public

<sup>40</sup> Art. 7(1) of Directive 2003/86/EC stipulates that Member States may require the person who has submitted the application to provide evidence that the sponsor has: accommodation suitable for the size of the family, as well as meeting health and safety standards; sickness insurance; and sufficient resources to provide for himself/ herself and his/ her family.

health benefits, or defrayal of treatment expenses by insurer in the territory of the Republic of Poland are essential.

- Sufficient financial resources to provide for the sponsor and his/ her family? Y/ ~~N~~

In that case documents confirming steady and regular income which assure livelihood of foreigner and his/her financially dependent members of family; declaration (for single – 634 PLN per month, for couples – 514 PLN per month for 1 person); income statement for last 3 months are essential.

**Q7. a.** Does the national law of your (Member) State require TCNs to comply with any **integration measures** before and/ or after admission?<sup>41</sup> Y/ N

If yes, are TCNs required to comply with the following integration measures:

- Civic integration exams? Y/ N

If yes, please specify:

- When the civic integration exam(s) takes place (i.e. before admission, after admission, before and after admission):

- What knowledge and skills are required from applicants in order to pass the exam(s):

- If any support is provided to them during preparation (e.g. preparatory classes):

- If/ What costs are incurred by applicants:

- Language tests? Y/ N

If yes, please specify:

- When the language test(s) takes place (i.e. before admission, after admission, before and after admission):

- What knowledge and skills are required from applicants in order to pass the test(s):

- If any support is provided to them during preparation (e.g. preparatory classes):

<sup>41</sup> Art. 7(2) of Directive 2003/86/EC stipulates that Member States may require TCNs to comply with integration measures, in accordance with national law.

- If/ What costs are incurred by applicants:

- Other integration measures (please specify)? Y/ N

If yes, please specify what these measures entail and when they takes place:

- If the national law of your (Member) State does not currently require TCNs to comply with any of the above measures – any planned changes? Y/ N

If yes, please provide further information below:

**b.** Please specify if any negative consequences (e.g. refusal to issue a permit or withdrawal of the existing permit) are foreseen for family members not complying with the above-mentioned integration measures – both according to law, as well as how this is applied in practice.

There are not any negative consequences foreseen for family members not complying with the above-mentioned integration measures.

**Q8.** Does your (Member) State set a **waiting period**<sup>42</sup> before a sponsor's family members can reunite with him/ her? Y/ N

If yes, how long is the waiting period? Can an application be submitted before the period has expired? Are there any exemptions granted in individual cases?

According to the Act of 12 December 2013 on foreigners, the minimal waiting period for reunite with sponsor's family members is 2 years. According to the article 159 part 1 point 1 e of the Act a foreigner shall be granted a temporary residence permit for the purposes of family reunification if he/she arrives in the territory of the Republic of Poland or stays in this territory for the purposes of family reunification and is a family member of a foreigner residing in the territory of the Republic of Poland for at least 2 years, on the basis of further temporary residence permits, also immediately before filing an application for being granted a temporary residence permit for a family member – on the basis of a permit granted him/her for a period of stay of no less than 1 year.

Other cases are deviation from a rule, which arise from:

- Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (prohibition of setting a waiting period for members of refugees' families) - directly
- Preferences arising from implementation of other directives (no waiting period, e. g. Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment; Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of

<sup>42</sup> Art. 8 of Directive 2003/86/EC stipulates that Member States may require the sponsor to have stayed lawfully on the territory for a period not exceeding two years (or three years by derogation in specific circumstances) before having his/ her family members join him/ her.

scientific research; Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents);

- Preferences arising from national solutions for integration (no waiting period in case of sponsor staying in the territory of the Republic of Poland based on permanent residence)

**Q9.** Does the national law of your (Member) State provide for a **rejection of an application** for entry and residence of family members on grounds of public policy, public security or public health?<sup>43</sup> Y/ ~~N~~

If yes, please provide data (if available) on the number of times your (Member) State has invoked this provision(s) since 2011.

A temporary residence permit shall be refused to be granted because of defence or security of Poland or protection of security and public order of Poland.

**Q10. a.** In addition to any information you have already provided above, does your (Member) State apply the following provisions concerning the **more favourable family reunification rules for refugees**:<sup>44</sup>

- Application and possible extension of the grace period of (minimum) three months before the requirements for exercising the right to family reunification apply?<sup>45</sup> Y/ ~~N~~

If yes, is this grace period of (minimum) three months extended and if so, for how long?<sup>46</sup> Y/ ~~N~~ For how long?

According to the Act of 12 December 2013 on foreigners, above grace period lasts 6 months.

In above period, there are no requirements concerning health insurance according to the Act of 27 August 2004 on public health benefits, or defrayal of treatment expenses by insurer in the territory of the Republic of Poland, steady and regular income and guaranteed place of accommodation to a family members of a foreigner who has been granted refugee status or subsidiary protection, where an application for granting him/her such a permit has been filed before the lapse of a 6-month period from the date of being granted refugee status or subsidiary protection.

Procedure of extending 6-month period of respite of proceeding above requirements is not provided.

According to the article 167 of the Act of 12 December 2013 on foreigners in the proceedings on granting or revoking a temporary residence permit for the purposes of family reunification the following shall be taken into account:

- (1) the interest of a minor child;
- (2) the nature and stability of family ties in the territory of the Republic of Poland;
- (3) the period of the foreigner's stay in the territory of the Republic of Poland;
- (4) the existence of family, cultural and social ties with the country of origin.

In case, if the interest of the party determined in accordance with the above mentioned guidelines supports the granting of the permit, a temporary residence permit may be granted irrespectively of fulfilling the requirement of accommodation, health insurance or income source, which meets the relevant criteria.

Collaterally, in case of illegal stay, permit granted in specific mode on the basis of conventional criteria arised from

<sup>43</sup> Art. 6 of Directive 2003/86/EC stipulates that Member States may reject an application for entry and residence of family members on grounds of public policy, public security or public health.

<sup>44</sup> Art. 9-12 in Chapter V of Directive 2003/86/EC set out more favourable conditions for family reunification of refugees.

<sup>45</sup> Art. 7(1) of Directive 2003/86/EC.

<sup>46</sup> Art. 7(1) of Directive 2003/86/EC.



Convention for the Protection of Human Rights and Fundamental Freedoms (4.11.1950) or from Convention of the Rights of the Child, is not needed to make arrangements concerning meeting above requirements.

- Restriction to relationships established before entry into the (Member) State?<sup>47</sup> Y/ N

If yes, please specify:

- Application of a wider definition of family members (going beyond parents) when it comes to UAMs?<sup>48</sup> Y/ N

If yes, please specify:

According to the Act of 12 December 2013 on foreigners, a lineal ancestor of a minor foreigner who has been granted refugee status or subsidiary protection, residing unattended in the territory of the Republic of Poland, or a person responsible for such a foreigner shall also be considered his/her family member.

- Have any of these family reunification rules for refugees been changed recently?? Y/ N

If yes, please provide further information on these changes below:

**b.** If applicable, does your (Member) State apply **similar rules for the family reunification of BSPs** as refugees, i.e. in relation to eligible family members, waiting period and requirements for family reunification? Y/ N

If yes, please cross-refer to the information you have provided previously on the more favourable rules applicable to refugees, stating that similar rules apply to BSPs.

If no, please explain how the rules differ for BSPs referring to the different topics covered previously (e.g. eligible family members, waiting period and requirements for family reunification).

The Act of 12 December 2013 on foreigners applies identical requirements for both of above family members of foreigner.

**Q11.** Are there any differences in the requirements to be met for exercising the right to family reunification (under Directive 2003/86/EC or national law in some cases) in comparison to a similar request governed by national law by a **(Member) State national who has not exercised his/ her free movement rights** (non-mobile EU nationals)? Overall, to what extent are these requirements for exercising the right to family reunification under national law more or less favourable than those covered by Directive 2003/86/EC?

According to the article 159 part 1 of the Act of 12 December 2013 on foreigners, a person married to a foreigner under Polish law or minor children (included an adopted child) of a foreigner shall be granted a temporary residence permit for the purposes of family reunification if he/she arrives in the territory of the Republic of Poland or stays in this territory for the purposes of family reunification and is a family member of a foreigner residing in the territory of the Republic of Poland:

- (a) on the basis of a permanent residence permit,
- (b) on the basis of a long term resident's EU resident permit,

<sup>47</sup> Art. 9(2) of Directive 2003/86/EC.

<sup>48</sup> Art. 10(3)(b) of Directive 2003/86/EC.

- (c) in connection with having been granted refugee status,
- (d) in connection with having been granted subsidiary protection,
- (e) for at least 2 years, on the basis of further temporary residence permits, also immediately before filing an application for being granted a temporary residence permit for a family member – on the basis of a permit granted him/her for a period of stay of no less than 1 year,
- (f) on the basis of the temporary residence permit referred to in Article 151(1),
- (g) on the basis of a temporary residence permit for the purposes of carrying out research if such a foreigner holds the residence permit referred to in Article 1(2)(a) of Council Regulation No 1030/2002, with an annotation “naukowiec” (“researcher”), issued by another European Union Member State, where the agreement on admitting the foreigner for the purposes of carrying out a research project concluded with a competent research institution established in that state provides for carrying out research also in the territory of the Republic of Poland,
- (h) on the basis of a temporary residence permit for the purposes of highly qualified employment,
- (i) in connection with having been granted a residence permit for humanitarian reasons.

He/she should have health insurance within the meaning of the Act of 27 August 2004 on health care services financed from public funds, or a document confirming that the costs of treatment in the territory of the Republic of Poland will be covered by the insurer; a source of steady and regular income sufficient to cover the costs of subsistence for the foreigner himself/herself and family members dependent on him/her and a guaranteed place of accommodation in the territory of the Republic of Poland.

A temporary residence permit for a family member of a national of the Republic of Poland shall be granted to a foreigner if the foreigner:

- (1) is married to a national of the Republic of Poland under Polish law, or
- (2) is a minor child of a foreigner married to a national of the Republic of Poland under Polish law and holds a temporary residence permit for a family member of a national of the Republic of Poland.

In case of members of family of a national of the Republic of Poland as above, there are no requirements concerning health insurance, steady or regular income and place of accommodation. Furthermore, minimum period of waiting (2 years) does not apply to nationals of the Republic of Poland.

**Q12. a.** Please indicate any **challenges** experienced by i) sponsors and/ or family members associated with accessing the right to family reunification, and/ or ii) your (Member) State in the implementation of any of the above requirements for family reunification (e.g. based on existing studies/ evaluations/ other sources or information received from relevant authorities and stakeholders) and how these can be overcome.

Most common difficulty, which members of separated family meet is inability to prove a source of steady and regular income sufficient to cover the costs of subsistence for the foreigner himself/herself and family members dependent on him/her (especially in case of numerous family).

**b.** Please provide any examples of proven (e.g. through studies/ evaluations) **good practices** that might help to overcome the above-mentioned challenges or otherwise. Please specify the source (e.g. based on existing studies/ evaluations/ other sources or information received from relevant authorities and stakeholders).

**Q13.** Is any research (conducted by relevant authorities, academics, NGOs etc.) on the following available in your (Member) State:

- Effects of the requirements for family reunification as applied in your (Member) State on the right to family reunification and integration of TCNs? Y/ N
- Effects of the integration measures as applied in your (Member) State on the right to family reunification and integration of TCNs? Y/ N

- Effects of the minimum age requirement<sup>49</sup> as applied in your (Member) State on the prevention of forced marriages or any misuse of family reunification (e.g. marriages of convenience)? Y/ N

If yes to any of the above, please briefly describe the main findings and conclusions of this research and provide a full reference to the source (e.g. based on existing studies/ evaluations/ other sources or information received from relevant authorities and stakeholders).

## Section 4: Submission and examination of the application for family reunification [maximum 5-10 pages]

*This section of the Synthesis Report will report on the process for submitting and examining an application for family reunification in the (Member) States or abroad covered by Chapter III of Directive 2003/86/EC, including the procedures for verifying the fulfilment of the requirements/ measures listed in Section 3 above. You may wish to include flow chart(s) visually illustrating the application process for family reunification in your (Member) State.*

**If applicable, please distinguish to what extent any of the provisions apply to certain/ all groups of migrants applying for family reunification in your (Member) State depending on the grounds of residence of the sponsor (e.g. refugee, BSP, worker, student, etc.). If the provisions vary across different groups of migrants, please describe the variations. Please note that emphasis should be on the application of these provisions and where applicable, relevant national case law should be provided.**

**Q14.** Please describe the **procedure(s) that apply to the sponsor or his/ her family members** when an application for entry and residence for the purpose of family reunification is submitted, as follows:

- a.** Who is the formal party to an application for family reunification in your (Member) State: the sponsor or his/ her family members?<sup>50</sup>

According to the article 168 of the Act of 12 December 2013 on foreigners, a foreigner shall be granted a temporary residence permit for the purposes of family reunification at the request of the foreigner residing in the territory of the Republic of Poland to whom a member of his/her family arrives or with whom he/she resides in the territory of the Republic of Poland.

- b.** If the sponsor's family members must submit an application for family reunification, where can this application be submitted (e.g. consulate of the (Member) State abroad, possibility to submit the application in the (Member) State, etc.)?

Application for family reunification instead of sponsor's family members can be submitted by the foreigner residing in the territory of the Republic of Poland to the voivode, specific for the place of residence of claimant. Presence of sponsor's family member on behalf of whom foreigner submits the application is not essential. However, if sponsor's family member resides in the territory of the Republic of Poland, the application shall be submitted by at least the last day of residence in the territory of the Republic of Poland of claimant.

- c.** What documentary evidence is required from the applicant to confirm i) his/ her identity and ii) the family relationship?

<sup>49</sup> Art. 4(5) of Directive 2003/86/EC stipulates that 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, in order to ensure better integration and to prevent forced marriages.

<sup>50</sup> Art. 5 of Directive 2003/86/EC specifies that Member States determine whether, in order to exercise the right to family reunification, an application for entry and residence must be submitted to the competent authorities by the sponsor or his/ her (family) members.

To proof of identification of sponsor's family member claimant shall present his travel document or copy of this document certified by consulate office or polish diplomatic body.

In particularly justified cases, if the claimant is not in possession of a valid travel document and is unable to obtain it, he/she can produce another proof of identification of family member or its certified copy.

In the case of foreign documents it is essential to present them with polish certified translation. In the administrative practice this requirement is not applied to biometric travel document.

Submitting the application the claimant shall provide document that entitle him/her to residence in the territory of the Republic of Poland.

In the case of documenting family ties, lawmaker does not mention documents, which confirm existence of family ties. According to administrative practice, except registry office records, which confirm marriage or connections, to the proof material all documents confirming existence of real, close family ties are enclosed. These documents are characterized by bilateral interest, affection and dependency and report to free estimation of proof.

**d.** What methods of investigation are employed by the competent authorities in your (Member) State in the absence of (reliable) documentation?

In the case of suspicions of absence of reliable documentation concerning registry office records, approval of documents as apostille or legalization of the document conducted by polish consul after previous certification by specific institution of country of origin obtained by claimant is essential. If submitted approval is questionable, the institution appealed as administrative course to issuer to ask if the approval was issued.

**Q15.** Please describe the **procedure(s) that apply to family members** when an application for entry and residence for the purpose of family reunification is submitted, as follows:

**a.** What is the procedure in place in your (Member) State to verify that any **extended family members** have fulfilled the requirements for family reunification (e.g. dependency)? At what stage(s) of the examination procedure is this verified?

Are there any exemptions from fulfilling these conditions and if yes, on what grounds are they granted?

According to the article 160 point 1 and 3 of the Act of 12 December 2013 on foreigners, a temporary residence permit may be granted to:

- a foreigner who is a family member of a Polish national or a national of another European Union Member State, a European Free Trade Association (EFTA) member state – a party to the Agreement on the European Economic Area or the Swiss Confederation, other than that referred to in Article 2(4) of the Act of 14 July 2006 on the entry into, residence in and departure from territory of the Republic of Poland of nationals of the European Union Member States and members of their families, residing in the territory of the Republic of Poland, if the foreigner stays in this territory together with such a national – due to:

(a) being financially dependent on him/her or staying with him/her in the same household in the country from which the foreigner has arrived, or

(b) serious health considerations making the foreigner require attendance by such a national – if the foreigner meets the requirements referred to in Article 159(1)(2);

- a foreigner living a family life within the meaning of the Convention for the Protection of Human Right and Fundamental Freedoms signed in Rome on 4 November 1950 (Dz. U. of 1993 No. 61, item 284, as amended<sup>21</sup>), with a Polish national or a national of another European Union Member State, a European Free Trade Association (EFTA) member state – a party to the Agreement on the European Economic Area or the Swiss Confederation, residing in the territory of the Republic of Poland, with whom the foreigner resides together in this territory, if the foreigner meets the requirements referred to in Article 159(1)(2).

Verification concerning meeting of requirements of family reunification (consists dependencies) is proceeding according to general rules based on facts current at date of outcome of the proceedings in the case of temporary

residence permit.

**b.** Please describe the procedure in place in your (Member) State to verify that the following **requirements for family reunification** have been fulfilled:

- Please specify how the health and safety standards, as well as the size of the accommodation are determined as suitable in practice:

Conditions concerning accommodation are not checked by migrational institutions during the verification process of temporary residence permit.

- Please specify the conditions under which sponsors have access to healthcare insurance (e.g. by having employment/ self-employment or is this access automatic)?

Documenting fact of meeting above requirement, foreigner shall be obliged to be in possession of and produce, at the request of a competent authority a document certifying that he/she has health insurance within the meaning of the Act of 27 August 2004 on health care services financed from public funds or defrayal of treatment expenses by insurer in the territory of the Republic of Poland.

- Please specify the following in relation to the minimum income requirement sponsors must meet in your (Member) State:
  - The amount of the minimum income requirement in the relevant currency and year:
  - If your (Member) State sets a different income requirement depending on the type of family member being reunited (e.g. minor children):
  - The reference period over which this requirement is considered:
  - How any past/ future income of the sponsor is evaluated in practice:

A foreigner shall be granted a temporary residence permit for the purposes of family reunification if he/she has a source of steady and regular income sufficient to cover the costs of subsistence for the foreigner himself/herself and family members dependent on him/her.

The amount of the monthly income shall be higher than the amount of income which entitles to cash benefits from the social assistance system, specified in the Act of 12 March 2004 on social assistance (Dz. U. of 2013, item 182, as amended), with respect to the foreigner and each family member dependent on him/her. Current monthly income was set on 514 PLN per month per person (6168 PLN per year per person – 1,425 euro per month per person). This income does not depend on sex or age of the family members. However simultaneously article 168 part 2 of the Act of 12 December 2013 on foreigners states an alternative requirement. According to above article requirement concerning having a steady and regular income is fulfilled also when costs of living of foreigner will be covered by family member of foreigner who is obligated to cover livelihood of foreigner residing in the territory of Poland.

It is not specified in the Act any reference period, when the requirement is examined. Foreigner shall have a source of steady and regular income at the day of granting him/her a decision concerning obtain of temporary residence permit. There is a problem with forecasts of possibility of having steady and regular income if we do not know a particular situation before filing an application for being granted a temporary residence permit.

During the proceedings, all proof according to the law, which confirm that foreigner has a steady and regular income, including declarations of income, documents confirming current income (e.g. employment contract, documents confirming income level etc.) are analyzed.

- Whether any exemption grounds apply and to what extent non-compliance has consequences for the right to family reunification:

In the proceedings on granting or revoking the permit for family reunification the following shall be taken into

account: the interest of a minor child; the nature and stability of family ties in the territory of the Republic of Poland; the period of the foreigner's stay in the territory of the Republic of Poland; the existence of family, cultural and social ties with the country of origin.

In the case when the interest of the party, set with above guidelines, is in favour of granting him/her permit of temporary residence, the permit could be granted independently from from fact of fulfilling the requirement concerning accommodation, health insurance and income, meeting appropriate criteria.

- At what stage(s) of the examination procedure are the above requirements verified?

The above requirements are verified after initiation of the proceedings on granting a temporary residence permit. Admission requirements are analysed collaterally with conducted analysis of family ties.

c. Please describe the procedure in place in your (Member) State to ensure **integration measures** have been complied with, for example, if an application form for civic integration exam(s)/ language test(s) must be submitted to the authorities, etc. Please specify what exemption grounds apply and to what extent non-compliance has consequences for the right to family reunification.

Poland did not implement any additional integration measures referred to in paragraph 1 article 7 part 2 of the Directive 2003/86/ EC.

d. If the above conditions are not (completely) fulfilled, how does your (Member) State guarantee that individual circumstances are taken into account (e.g. nature and solidity of the person's family relationship)?<sup>51</sup>

In the proceedings on granting or revoking the permit for family reunification the following shall be taken into account: the interest of a minor child; the nature and stability of family ties in the territory of the Republic of Poland; the period of the foreigner's stay in the territory of the Republic of Poland; the existence of family, cultural and social ties with the country of origin.

In the case when the interest of the party, set with above guidelines, is in favour of granting him/her permit of temporary residence, the permit could be granted independently from from fact of fulfilling the requirement concerning accommodation, health insurance and income, meeting appropriate criteria.

e. What is the procedure in place in your (Member) State to verify whether or not the family member(s) constitute a **threat to public policy, public security or public health**?

Before start of the proceedings in the case of temporary residence permit voivode looks to commandant of Border Guards' unit, provincial commandant of Police, president of the Internal Security Agency and as a need arises consul competent in respect of the place of permanent residence abroad of the foreigner or to other institutions with application for information if the entry of foreigner into territory of the Republic of Poland, and his staying could be the threat to national defence or national security or to the protection of public safety and order.

According to practice, in the case of communicating information to foreigner about fact that foreigner could be the threat to national legally protected rights, institution which is proceeding looks to juridical institutions or law enforcement agencies for detailed information about his/her current legal status and reported breaches of the law. Collaterally institution can check information in the National Criminal Register, and in registries of wanted and arrested.

Acting in accordance with adequacy and proportional rule institution estimates on the basis of circumstances of

<sup>51</sup>This is laid down in Article 17 of Directive 2003/86/EC, as well as the principles of effectiveness and proportionality (as interpreted by the CJEU in K. and A., paragraph 60 and O.S and L, paragraph 81) and the EU Charter of Fundamental Rights (O.S. and L, paragraphs 77, 78 and 80).



case, if foreigner could be a real threat to national legally protected rights. Estimating if a foreigner could guarantee of law-abiding behaviour in the future, administrative agency takes into consideration both, criminal past of foreigner and process of his/her resocialization, having regard to the fact if a foreigner was subjected to absolute imprisonment, to what extent, the repetition of offenses, as well as the available documents and verdicts given in connection with the process of rehabilitation (e.g. the opinion of the court officer, a prison psychologist, the court decision on the release of the rest of serving the sentence or refusing such consent). A community interview is also carried out and actions involving the foreigner and his family members (e.g. interrogation).

**f.** How does your (Member) State define the **term 'minor child'** and how are the **best interests of the child** taken into account during the examination of the application for family reunification?<sup>52</sup>

Regulations of the Act of 12 December 2013 on foreigners do not include definition of the term "minor child". The definition is taken from the Act of 23 April of 1964 on Civil Code. With the meaning of the Act, minor child is a person, who is under eighteen and is not married.

In the case of a foreigner who is a minor – an application for granting him/her a temporary residence permit shall be filed by the parents or guardians appointed by the court, or one of the parents or one of the guardians appointed by the court. In the case of a foreigner who is an unattended minor – an application for granting him/her a temporary residence permit shall be filed by a guardian. In the case of filing an application for granting a temporary residence permit to a minor foreigner over 6 years of age, the presence of such a minor is required.

A temporary residence permit may be granted to a minor child of a foreigner who stays in the territory of the Republic of Poland on the basis of a national visa or a temporary residence permit, if such a child was born in the period of validity of such a national visa or a temporary residence permit, and the foreigner meets the requirements referred to in article 159(1)(2) and (3).

According to the article 167 of the Act of 12 December 2013 on foreigners in the proceedings on granting or revoking a temporary residence permit for the purposes of family reunification the interest of a minor child shall be taken into account. In case, if the interest of the child supports the granting of the permit, a temporary residence permit may be granted irrespectively of fulfilling the requirement of accommodation, health insurance or income source, which meets the relevant criteria.

Furthermore, migration authorities endeavor to, in the case of issues concerning minor children, the period of processing of the claim is the shortest. The issues concerning minors are treat priority.

**g.** Please describe what is involved in an assessment for family reunification where **children** are concerned, for example, DNA testing, etc. At what stage(s) of the examination procedure is this assessed?

While examining issues of family ties, migration authorities rely mainly on the supplied civil registries, which are tested for their authenticity. Under the article 3 of the Act of 28 November 2014 - Act on Registry Office Records (Dz. U. of 2014. Item. 1741, as amended. D.) civil registries represent the exclusive evidence of the events stated in them; their incompatibility with the truth can be proved only in court proceedings. Similar wording was inapplicable already in the article 4 of the Act of 29 September 1986. – Act on Registry Office Records (Dz. U. of 2011. No. 212, item. 1264, as amended. D.). In the judicature, it has been widely accepted that foreign civil registries have the same force of evidence in the territory of the Republic of Poland as the Polish civil registries (for example, the decision of the Supreme Court from 16 March 2007., Ref. Act III CSK 380/06, LEX No. 457689). Blood relationship is not determined through DNA testing by the authorities outside of court proceedings, which could lead to non-compliance with true of registry office record.

In certain cases determined by the Act, the fact of actual charge under a minor child is the only subject matter of the assessment.

Moreover, evidentiary material concerning meeting the requirements of having health insurance, stable and

<sup>52</sup> Art. 5 of Directive 2003/86/EC

regular source of income and accommodation is collected and assessed.

This assessment is made after successful submission of the application of a temporary residence permit for a minor foreigner.

**Q16.** Taking the different steps above into account, what is the **duration** of the procedure deciding on an application for family reunification in your (Member) State – both according to law and in practice:

- Legal time limit for deciding upon an application (if any)?

According to the rules of the Code of Administrative Proceedings, public authorities are obliged to handle the cases without undue delay. Handling a matter requiring investigation procedure like granting temporary residence permit should take place no later than within 30 days, and things particularly complicated - no later than within two months from the date of the initiation of proceedings, and on appeal - within one month from the date of receipt of the appeal.

The provisions provide for the possibility of prolonging the proceedings. The party has to, however, be informed of the reasons why each case is not dealt with on time and about new deadline for the completion of the proceedings. The party has the opportunity to make complaints about not handling the case on time or chronic case running.

- Average duration of the procedure in practice?

About 2 months.

- Have any specific measures been taken by your (Member) State to shorten processing times?

Workers of the competent departments of province offices and the Department of Legalization of Stay of the Office for Foreigners (on appeal) take part in the trainings necessary to ensure professional service of the review process on matters relating to family reunification.

Detailed information on the admission requirements and procedures for granting a temporary residence permit is available on information websites of province offices and The Office for Foreigners. The Office for Foreigners, in response to the questions of foreigners sent to the email address: [http://:legalizacjapobytu@udsc.gov.pl](mailto:legalizacjapobytu@udsc.gov.pl), provides legal information including the procedure for family reunification. Furthermore, many campaigns and projects are undertaken, including the ones in cooperation with non-governmental organizations, which aim at enhancing the legal awareness of foreigners.

In the course of administrative proceedings, a series of verification activities are being undertaken, which determine the outcome of the case. An example of actions taken by the Office for Foreigners is obtaining information by the Commander-in-Chief of the Polish Border, the voivodeship Police commander and the Head of the Internal Security Agency about the foreigner and the threat that he/she may be a while in the country (Art. 109 § 1 of the Act on Foreigners). In accordance with § 2 and 3 of the aforesaid provision, the deadline to provide information for those called to the authorities is within 30 days from receipt of the request, or if justified - 60 days from the date of receipt of the request (this applies to people under 13 years of age).

**Q17. a.** Please indicate any **challenges** experienced by i) sponsors and/ or family members throughout the above-mentioned procedure(s), and/ or ii) your (Member) State in the implementation of the examination procedure (e.g. based on existing studies/ evaluations or information received from relevant authorities and stakeholders) and how these can be overcome.

The difficulties are related, in particular, to documenting and evaluation of family ties (blood relationships or marriage) by people from high-risk countries of migration, in which the procedure for issuing civil registries do not provide sufficient guarantee on the reliability of the data contained therein.

In order to confirm the authenticity of civil registry, in case of doubt, migration authorities require the applicant to submit the credentials of the document in the form of its legalization made by the Polish consul after having been authenticated by the competent authority of the country of origin of the foreigner.

There is no requirement for the family member to be or not to be in the territory of the Republic of Poland during the examination of an application for a temporary residence permit. The difficulty appears in assessment of marriages, whether the relationship was not under false pretenses, and in the case of minor children, the assessment of the actual parental authority in the period preceding the application for granting the permit. Therefore, migration authorities carry out interviews with family members present in Poland in terms of the relevant circumstances serving the above settlings. Analyzing the content of the testimony in terms of their credibility, migration authorities guided by the principles of logic and life experience compare the content of the information resulting from an act of archival sponsor and possibly other witnesses who submitted documentation and the settlings of their own (e.g. documentation of the reported border crossings). In parallel, the applicant is asked to supplement the evidence of the documents confirming the fact of maintaining close personal ties and contacts with a family member remaining outside the territory of the Republic of Poland. Migration authorities shall also take efforts for verifying the circumstances of the sponsor in the course of the inquiry at the place of residence and possibly the place of performance of work. In the case of a minor if the parents do not live together in the territory of the Republic of Poland verification also applies to circumstances of the other parent, the migration situation and future plans.

b. Please provide any examples of proven (e.g. through studies/ evaluations) **good practices** that might help to overcome the above-mentioned challenges or otherwise. Please specify the source (e.g. based on existing studies/ evaluations/ other sources or information received from relevant authorities and stakeholders).

Migration organs overcome such a difficulties in above way.

## Section 5: Access to rights following family reunification [maximum 5 pages]

*This section of the Synthesis Report will provide a comparative overview of the rights that follow on from family reunification in the (Member) States, notably access to education, employment, vocational guidance and training, and right to apply for autonomous right of residence. The aim of this section is to report on measures available specifically to **persons admitted for the purpose of family reunification** and not duplicate information covered in other EMN studies on general integration measures. **If applicable, please distinguish to what extent any of the provisions apply to family members of persons belonging to all groups of migrants, or only certain groups (e.g. family members of refugees, BSPs, workers, students, etc.). If the provisions vary for family members of persons belonging to different groups of migrants, please describe the variations.***

**Q18.** Are family members entitled (in the same way as the sponsor) to access the following rights<sup>53</sup> in your (Member) State (please also comment on any *planned* changes in the national legislation/ policy/ practice):

<sup>53</sup> Art. 14 of Directive 2003/86/EC in your (Member) State stipulates that family members are entitled (the same way as the sponsor) to access education, employment and self-employed activity, as well as vocational guidance and training. Art. 15 of Directive 2003/86/EC additionally specifies that family members are entitled to apply for autonomous right of residence after no later than five years, independent of that of the sponsor (also in case of dissolution of family ties).

**a. Access to education?** Y/ ~~N~~

If yes, please indicate whether any special measures to support access to education are available specifically to family members, e.g. language assistance, guidance regarding the national education system, etc.

There are no special measures.

**b. Access to employment and self-employed activity?**<sup>54</sup> Y/ ~~N~~

If yes, please specify whether the access available to family members is limited in any way, for example, if such access is restricted for up to 1 year and/ or limited to a maximum number of days per year, if this right is automatic or conditional upon obtaining a work permit, etc.

After receiving the temporary residence permit for the purpose of family reunification, right is granted automatically in the period of validity of the permit.

A foreigner holding a temporary residence permit granted under the so-called "Family reunion" article 159 (1) of the Act on Foreigners is exempt from the requirement to obtain a work permit (art. 87 paragraph 2 item 4 of the Act on Employment Promotion and Labor Market Institutions).

A foreigner holding a temporary residence permit granted under the so-called "Family reunion" under article 159 (1) of the Act on Foreigners may undertake and conduct business activity in the territory of the Republic of Poland on the same basis as Polish citizens (article 13 paragraph. 1 item 1 letter c of the Act on Freedom of Economic Activity).

**c. Access to vocational guidance and training?** Y/ ~~N~~

If yes, please describe what the access to vocational guidance and training entails, for example, whether special guidance and training programmes are provided to family members or whether they have access to the general measures.

A foreigner holding a temporary residence permit in the territory of the Republic of Poland for the purposes of family reunification, granted on the basis of the article 159 paragraph 1 of the Act of 12 December 2013 on Foreigners, can use the services of the labor market excluding the right to benefits referred to in article 41-42 of the Act on Employment Promotion and Labor Market Institutions, i.e. scholarships, loans etc. paid to the unemployed in connection with undertaken trainings (based on art. 3 paragraph 6 of the Act).

**d. Right to apply for autonomous right of residence** independent of that of the sponsor (also in case of dissolution of family ties)? Y/ ~~N~~

If yes, please specify if the access to this right differs depending on the kind of permit the family member receives.

The provisions of the Act on Foreigners provide for the possibility for independent seeking by a member of the separated family to obtain a temporary residence permit after five years of residence on the basis of temporary residence permits granted for the purposes of the family reunification. Access to this law differs slightly depending on the permit granted by a family member.

Possibility for obtaining independent permit has been provided in the art. 161 paragraph. 1 of the Act on Foreigners. According to the article a temporary residence permit is granted to a foreigner who resides in the territory of the Republic of Poland and is married, under Polish law, to a foreigner residing in the territory of the Republic of Poland, on the basis of one of the premises referred to in article 159(1)(1)(a)-(g) and (i), i.e.:

<sup>54</sup> In addition to Directive 2003/86/EC, there are further Legal Migration Directives containing specific provisions on access to employment of family members of certain sponsors, for example, family members of Blue Card holders or ICTs. Please elaborate on such specificities in the above answer.

- (a) on the basis of a permanent residence permit,
- (b) on the basis of a long term resident's EU resident permit,
- (c) in connection with having been granted refugee status,
- (d) in connection with having been granted subsidiary protection,
- (e) for at least 2 years, on the basis of further temporary residence permits, also immediately before filing an application for being granted a temporary residence permit for a family member – on the basis of a permit granted him/her for a period of stay of no less than 1 year,
- (f) on the basis of the temporary residence permit referred to in article 151(1),
- (g) on the basis of a temporary residence permit for the purposes of carrying out research if such a foreigner holds the residence permit referred to in article 1(2)(a) of Council Regulation No 1030/2002, with an annotation "naukowiec" ("researcher"), issued by another European Union Member State, where the agreement on admitting the foreigner for the purposes of carrying out a research project concluded with a competent research institution established in that state provides for carrying out research also in the territory of the Republic of Poland,
- (h) on the basis of a temporary residence permit for the purposes of highly qualified employment,
- (i) in connection with having been granted a residence permit for humanitarian reasons;

-or is a major child of a foreigner resident on the basis of the above- mentioned residence titles, living in the territory of the Republic of Poland on condition of supplying documentary evidence of meeting admission requirements concerning health insurance, a source of income and accommodation. The exception is an independent temporary residence permit granted to the spouse or a major foreigner's child who resides in the territory of the Republic of Poland on the basis of a temporary residence permit in order to work in a highly skilled profession, which is granted both if the foreigner applying for authorization resides in the territory of the Republic of Poland and in the case of residence in another EU Member State, provided that they meet other requirements.

In the case of permits granted following a divorce, separation or death of a family member (art. 161, paragraph. 2), there is no differentiation of requirements in relation to the type of permit granted by a family member, but a catalogue of residence premises is limited to the ground rules of stay specified in art. 159 paragraph 1, item 1 of the Act on Foreigners. According to art. 161 paragraph 2 of the above-mentioned act, a foreigner who resides in the territory of the Republic of Poland on the basis of a temporary residence permit for the purposes of family reunification shall be granted a temporary residence permit if it is justified by the his/her vital interest, in the event of:

- (1) divorce, legal separation or becoming widowed by such a foreigner if he/she was married under Polish law to a foreigner residing in the territory of the Republic of Poland, on the grounds of the premises referred to in article 159(1)(1), or
- (2) the death of his/her parent who was a foreigner residing in the territory of the Republic of Poland on the grounds of one of the premises referred to in article 159(1)(1), or
- (3) the death of his/her minor child who has been granted refugee status or subsidiary protection.

3. The period of stay referred to in paragraph 1(1)(b) and paragraph 1(2)(b) shall include the periods referred to in article 212(1)(1).

Permit granting does not depend on meeting the requirements of having health insurance, sources of income and accommodation.

**e. Any other rights granted to family members in your (Member) State**, for example, healthcare, recourse to public funds, possibility for family members to apply for long-term residence status or naturalisation, etc.? Y/ N  
If yes, please specify what such access entails in practice in your (Member) State.

It is possibility of granting of a long-term resident's EU residence permit. There are no limits in terms of changing of residence basis and standing for other temporary residence permit than reunification of family. Furthermore, there are no limits in terms of standing for permanent residence permit. Applying for above permits is proceeded in general terms. Foreigner can stand for polish citizenship too.

**Q19.** Are family members of refugees and/ or BSPs granted refugee/ BSP status in their own right or a 'derived' permit (from that of the sponsor)? Please clarify how the type of permit issued differs in terms of its validity and rights attached to it. If possible, please also provide information on the cost of the permit.

It is possibility of granting a foreigner a temporary residence permit for the purposes of family reunification if he/she arrives in the territory of the Republic of Poland or stays in this territory for the purposes of family reunification and is a family member of a foreigner residing in the territory of the Republic of Poland in connection with having been granted refugee status and in connection with having been granted subsidiary protection provided requirements concerning health insurance, source of income and accommodation. The requirements shall not apply to a temporary residence permit for the purposes of family reunification granted to a family member of a foreigner who has been granted refugee status or subsidiary protection, where an application for granting him/her such a permit has been filed before the lapse of a 6-month period from the date of being granted refugee status or subsidiary protection. The permit shall be granted to a foreigner for the period of 3 years. The fees connected to this permit are taken in general: 340 PLN for issue of application and 50 PLN for issue of residence card.

**Q20. a.** Do any conditions apply to sponsors and/ or family members after admission for the purpose of family reunification in your (Member) State? Y/ N

If yes:

- At which stage(s) after admission is examined whether these conditions have been fulfilled?

- Does not fulfilling one of these conditions constitute a ground for non-renewal or withdrawal of the residence permit?<sup>55</sup> Y/ N
  - If yes, how are individual circumstances and interests<sup>56</sup> taken into account?

- If no, what are the consequences of not fulfilling the conditions (e.g. obligation to pay a fine, exclusion from more favourable residence permits)?

**Q21. a.** Please indicate any **challenges** experienced by family members in your (Member) State with regard to accessing the above-mentioned rights (e.g. based on existing studies/ evaluations or information received from relevant authorities and stakeholders) and how these can be overcome.

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<sup>55</sup> Article 16 of Directive 2003/86/EC

<sup>56</sup> Article 17 and Article 24 of the Charter



b. Please provide any examples of proven (e.g. through studies/ evaluations) **good practices** with regard to the provision of education/ access to the labour market and vocational guidance and training/ right to autonomous residence for family members in your (Member) State/ etc. Please specify the source (e.g. based on existing studies/ evaluations/ other sources or information received from relevant authorities and stakeholders).

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## Section 6: National and international case law [maximum 1 page]

**Q22.** Has the following CJEU/ ECtHR case law led to any changes in policy and/ or practice in family reunification in your (Member) State:

- CJEU - C-540/03 *European Parliament v Council of the European Union*;
- CJEU - C-558/14 *Khachab v Subdelegación del Gobierno en Álava*;
- CJEU - C-153/14, *Minister van Buitenlandse Zaken v K and A*;
- CJEU - C 338/13, *Marjan Noorzia v Bundesministerin für Inneres*;
- CJEU - C-578/08, *Rhimou Chakroun v Minister van Buitenlandse Zaken*;
- CJEU - C-356/11 and C-357/11, *O. S. and L*;
- ECtHR - *Mugenzi v. France*, Application No. 51701/09, 10 July 2014;
- ECtHR - *Tuquabo-Tekle And Others v The Netherlands*, Application no. 60665/00, 1 March 2006;
- ECtHR - *Hode and Abdi v. the United Kingdom*, Application No. 22341/09, 6 February 2013;
- ECtHR – *Biao v. Denmark*, Application No. 38590/10, 24 May 2016;
- Any other relevant case law (please specify)?  Yes/  No

If yes, please briefly describe the changes brought about by this case law.

**Q23.** Has any national case law led to changes in policy and/ or practice in family reunification in your (Member) State since 2011 onwards?  Yes/  No

If yes, please briefly describe the changes brought about by this case law. (For example, in 2013 the Belgian Constitutional Court held that the differentiation of requirements for family reunification between refugees and beneficiaries of subsidiary protection is unlawful, hence the latter were exempted from the condition of sufficient income even after the period of one year when the sponsor is joined by his/ her minor children. As well, in 2015, the Slovenian Constitutional Court held that in specific factual circumstances the scope of family life should include non-nuclear family members who perform a similar or same function as the nuclear family, allowing for an individual examination of specific circumstances and leading to an amendment of the national legislation on family reunification.<sup>57</sup>)

<sup>57</sup> European Legal Network on Asylum (ELENA) (2016), Information Note on Family Reunification for Beneficiaries of International Protection in Europe, <http://www.ecre.org/information-note-on-family-reunification-for-beneficiaries-of-international-protection-in-europe/>

## [Section 7: Overview of the international and EU legislative framework on family reunification \(Synthesis Report\) \[maximum 3 pages\]](#)

*This section of the Synthesis Report will briefly outline the EU legal framework guiding national legislation on family reunification. It will provide a mapping of the substantive and procedural provisions in the EU acquis that regulate family reunification. The section will also highlight how the EU acquis relates to the broader international legal framework in this area.*

***This section will be developed by the EMN Service Provider, hence no input from the EMN NCPs is required.***

## [Section 8: Conclusions \(Synthesis Report\) \[maximum 3 pages\]](#)

*The Synthesis Report will outline the main findings of the Study and present conclusions relevant for policymakers at national and EU level. **Member States should include any overall conclusions in the Top-line Factsheet at the beginning of the Common Template rather than duplicate information in this Section.***

## [Annex 1 Statistical Annex](#)

**Q24.** With reference to Question 3.a. above, please complete the following table with national statistics on the (estimated) number of applications for family reunification, if available.

Please provide here a brief explanation of the metadata, describing for example the population covered, the method used to reach the estimates, any caveats as to their likely accuracy etc. It should be noted, given the differences in methods used to make the estimates, that it will not be possible to synthesise this information to produce a 'total EU estimate' for the Study.

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Please provide your answer by completing the Excel document inserted as an object below and sent separately with this Common Template.

Please do not here include the above-mentioned Eurostat data in Section 7 (first part of this Template), as this information is available publically and can therefore be analysed centrally for the Synthesis Report.



New FR stats annex  
28Oct16.xlsx