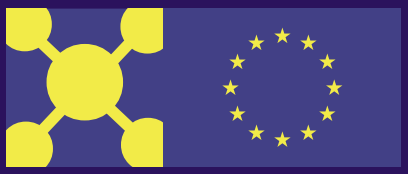


EMN - European Migration Network
Dutch National Contact Point

Small Scale Study IV

Family reunification

Family reunification and family formation in the Netherlands during the period 2002 - 2006

November 2007

Immigratie- en Naturalisatiedienst

The European Migration Network (EMN) is an initiative of the European Commission. It's objective is to provide the Community, its Member States and in the longer term the general public, with objective, reliable and comparable information on the migration and asylum situation on a European and national level.

The EMN's mission is to facilitate communication between decision-makers, government institutions, non-governmental organisations and the scientific community by bringing together people who deal with migration and asylum on a professional basis.

To that end, the EMN has a network of National Contact Points (NCPs), who on their part, have set up networks of national partners. In the Netherlands, the designated NCP is the department INDIAC (Immigration and Naturalisation Service Information and Analysis Centre) of the Dutch Immigration and Naturalisation Service (IND).

Contact
IND / INDIAC (National Contact Point for the European Migration Network)
P.O. Box 5800
2280 HV Rijswijk (The Netherlands)
Tel. +3170 779 4897
Fax +3170 779 4397
E-mail: emn@ind.minjus.nl

Small scale Study IV
Family reunification

Family reunification and family formation in the Netherlands during the period 2002 – 2006

November 2007
Immigration- and Naturalisation Service (IND),
Staff Directorate for Implementation and Policy,
section Information- and Analysis Centre (INDIAC)
Dutch National Contact Point for the European Migration Network (EMN)

Table of contents

List of abbreviations

ACVZ	Advisory Committee for Aliens Affairs
AMV	Unaccompanied Minor Foreign National
Awb	General Administrative Law Act
BW	Civil Code
CBS	Statistics Netherlands
CWI	Centre for Work and Income
EER	European Economic Area
EG	European Community
EHRM	European Court of Human Rights
EVRM	European Convention for the Protection of Human Rights and Fundamental Freedoms
EMN	European Migration Network
EU	European Union
GBA	Municipal Population Register
IND	Immigration and Naturalisation Service
INDIS	Information System of Immigration and Naturalisation Service
m.nt.	Annotated
mvv	Provisional Residence Permit
NGO	Non-government organisation
Rb	Court
Ri	Directive
Stb.	Dutch Bulletin of Acts, Orders and Decrees
Stcr.	Dutch Government Gazette
SUO	Schengen Implementation Agreement
Vb	Aliens Decree
Vc	Aliens Act Implementation Guidelines
Vw	Aliens Act
VV	Aliens Regulations
Wav	Labour Act for Aliens
Wi	Integration Act
Wib	Integration Abroad Act
WODC	Scientific Research and Documentation Centre
WRR	Scientific Council for Government Policy

1. Executive summary

The small scale study of family reunification during the period 2002 – 2006 of the European Migration Network (EMN) aims, through a systematic comparative method, to identify the similarities and differences in the approaches of Member States towards family reunification. This should lead to the development of comparable and reliable data at the European level, more detailed and current knowledge of the policies of policy makers and decision-makers and the exchange of more information. A synthesis report is compiled by the European Commission based on the different country reports.

Objective
The main objective of the study is to determine:
- The situation in the Netherlands with regard to family reunification and family formation regulations, policy and characteristics of family migration during the period 2002-2006.

The topic will be divided into three subtopics:
- To what extent can trends be distinguished in policy development?
- To what extent can statistical data trends be distinguished within this period?
- To what extent can conclusions be drawn with regard to any causal connection between policy developments and statistical data and does this reflect the effectiveness of the policy?

Methodology
Desk research has been chosen as methodology. The consulted sources consist of publications in scientific journals, statistics, legislation and case law, policy documents, press and other media. Much has been published about the family reunification topic. The viewpoints of the relevant parties are available from existing written sources and internet sources.

Background of Dutch family migration policy
The Dutch policy distinguishes between family reunification and family formation. Family reunification is understood to mean the reunification of family members with a sponsor in the Netherlands in cases where the family relationship arose in the country of origin. If the family tie arose after the entry of the sponsor into the Netherlands, we refer to family formation. The policy of the last few years distinguishes between family formation measures and measures directed at both modes of family migration. Therefore, the present study also distinguishes between family reunification and family formation.
An important requirement for the granting of a regular residence permit for family reunification or family formation is a valid provisional residence permit (mvv). Foreign nationals who are nationals of a European/European Economic Area country, Australia, Canada, Japan, Monaco, New Zealand, the United States of America, South Korea or Switzerland are exempted from the provisional residence permit requirement. The provisional residence permit should be applied for in the country of origin or permanent residence. When reviewing provisional residence permit applications, compliance of the applicant with the conditions for family reunification or family formation is verified. Subsequently, the application for a residence permit should be lodged in the Netherlands where it is examined whether the applicants (still) meet the entry clearance conditions.

Dutch policy in the context of the Family Reunification Directive (Directive 2003/86/EC on the right to family reunification of 22 September 2003)
The family reunification directive imposes conditions on the entry of family members of third country nationals who reside lawfully in the territory of one of the member states. The family reunification directive was published on 3 October 2003 under number 2003/86/EC. In connection with the directive there have been adjustments to the Aliens Decree.
The impact of the directive on the development of the policy during the period 2002 – 2006 appears to be relatively small so far. Amendments to the Dutch policy for the transposition of the directive are limited. The Dutch legislation has only been adapted to the directive where family reunification with refugees is concerned and the possibility of an unaccompanied minor refugee who resides in the Netherlands to have his/her parents join him/her. Only a small number of the restrictive optional provisions have been introduced in the Netherlands. For instance, the Netherlands does not require a waiting period of two to three years, no condition that the application for family reunification by the minor child has to be lodged

before the child is 15 years of age and the Netherlands has not implemented any specific integration requirements for children older than 12 years. Moreover, no accommodation requirements are imposed. Medical health insurance is mandatory once a residence permit has been granted. On the other hand, the Netherlands did not adopt certain optional liberalising provisions such as the provision with regard to parents and adult children. In respect of the special regime for refugees, the Netherlands has used the possibilities to restrict the scope of application to family reunification (not family formation). The optional restrictions that were substantiated by the Netherlands during the negotiations have been adopted: in particular the age requirement of 21 years for the spouse or partner and the sponsor and the possibility to impose integration requirements. In relation to a number of points it is discussed in literature whether Dutch legislation is in complete accordance with the directive (see also paragraph 3.2). This applies for example to the public order policy in the Netherlands, the question whether the Netherlands should be allowed to pursue its own policy with regard to the entry of parents and adult children and the dual review of conditions: first when applications for provisional residence permits are lodged and secondly in the case of applications for permanent residence permits.
Certain components of the Dutch policy have been contested before the court. However, many (appeal) cases are dismissed because the concerned sponsor falls outside the scope of application of the directive. In many cases the judge is not given the opportunity to decide whether a specific Dutch provision conflicts with the directive. As a result of this jurisprudence approach, the directive (so far) only plays a limited role in legal practice.
Only brief attention was given to the directive and the impact thereof on the Netherlands both by parliament and the NGOs and the media. Other developments during the study period attracted a much broader interest. The policy in this period is based on the observation of the parliamentary Blok Committee that large-scale family migration seriously hindered integration at the group level and that new measures that should contribute to a better integration, are needed. The most important measures focus on family formation, however the policy has also become more restrictive for family reunification in general. This trend coincides with a shift in the political field of influence. The rise of Pim Fortuyn and the LPF (Pim Fortuyn list) has strongly influenced the social and political debate on migration. New cabinets in 2002 (CDA, LPF, VVD) and 2003 (CDA, D'66, VVD) led to new family formation measures such as the increase of the age requirement of the spouse/partner and the sponsor to 21 years, the increase of the required resources to 120% of the net minimum wage and integration requirements.

Other developments
An additional important development that attracted much attention is the adoption of a new integration regime by virtue of which an integration requirement abroad prior to entry into the Netherlands has been implemented. This requirement applies to foreign nationals between 16 and 65 years who wish to reside in the Netherlands for a prolonged period, and need to apply for an authorisation for temporary stay, as well as religious leaders coming to the Netherlands for employment. In addition, an integration requirement applies to foreign nationals who wish to apply for continued residence or for a permanent residence permit. This requirement consists of passing an exam within a certain period under penalty of a fine. Another recent development is the liberalization of the family reunification policy of 8 September 2006, specifically related to the definition of the actual family tie (see paragraph 3.2.2).
Finally, the study examines the developments with regard to the so-called Belgian route and the legal fees. By Belgian route is meant the possibility for a citizen of the European Union, who does not meet the national conditions for family reunification in his/her own country, to be joined in another state by a partner or spouse from another state who possesses the nationality of a third state. Subsequently, the citizen of the European Union can return with his/her partner to the country of residence of the Union citizen. As a result of developments in the administration of justice of the European Court of Justice, uncertainty has arisen about the legitimacy of this channel of family reunification with a third country national. This uncertainty has not been dispelled after the most recent judgment in the Jia case. In this case a Swedish judge put questions to the Court of Justice that possibly could shed more light on the proper interpretation of this decision (see 5.2).
The legal fees for residence permits in the Netherlands have been increased in 2002 and 2003 (and later on decreased for certain groups). This has led to a combination of social resistance. Several actions have been undertaken to attempt to reverse the increase.

Statistical data
The possibility to draw firm conclusions is very limited as reliable figures regarding the granting of residence permits are only available for 2005 and 2006. Moreover, additional structural data of the

sponsor are not registered in the computer systems. Therefore, the concrete impacts of the policy cannot be measured.
Research by Statistics Netherlands (Centraal Bureau voor de Statistiek (CBS)) shows that immigration (both for managed migration and on grounds of asylum) into the Netherlands has strongly decreased since 2002. This decrease is caused by a combination of factors such as the economic recession, the tightening of the asylum policy, more stringent requirements for family reunification and family formation and international measures to combat illegal migration.
Certain family reunification and family formation trends have emerged that should be either confirmed or negated by statistics from later years in order to be able to draw more firm conclusions.
Compared with 2005, the year 2006 shows a decrease in the number of applications for family migration. This decrease is also observed for other regular purposes of stay, with the exception of highly skilled migration.
Regarding the number of granted applications, a marked decrease of granted applications for family formation can be seen. Family formation in the 18 – 21 age category almost dropped to 0 in 2006. This is caused by the increase of the age requirement for the partner (family member) to 21 years. A possible explanation for the decrease of the granted applications for family formation is the adoption of the Integration Abroad Act on 15 March 2006. Although a marked decrease of the number of granted applications for family formation from Moroccans and Turks is observed, family formation from other countries is also declining.
On the other hand, an increase of the number of granted applications for family reunification in 2006 can be observed compared with 2005. This rise is caused by an increase in the 0 – 12 age category. Although an integration abroad requirement has also been implemented for family reunification, the requirement does not apply to this age group. The age categories, for which an integration requirement has been introduced, show a slight decrease. It is likely that this decrease is (also) caused by the integration exam in the foreign country; however no firm conclusions can be drawn in view of its recent entry into force.

Conclusion
A number of trends in policy development are evident. A clear trend is the linking of integration to immigration. The findings that inadequate integration is also caused by a continuous immigration of spouses have led to a policy in which, on the one hand, integration requirements and on the other hand, restrictive measures with regard to family formation were introduced. This link has taken the form of an integration exam in the foreign country as an entry clearance condition and an integration exam in the Netherlands as a condition for a regular permit for continued residence or a permanent residence permit.
A second trend is the specific attention to family formation and the adopted difference in admission conditions for family formation and family reunification.
Thirdly, an emphasis on the responsibility of the foreign national (and his/her spouse) has constituted a trend, both where finances and the achievement of certain results are concerned.
Finally, the policy for foreign nationals who were allowed entry into the Netherlands has become less noncommittal. Instead of an obligation to make an effort towards integration, an obligation to achieve results has been introduced.

Suggestions for further studies
A suggestion would be to conduct monographs on minor subjects such as:
- The admission of adult children and parents;
- Family reunification of refugees;
- Family migration of EU citizens.

Another suggestion for further studies is a qualitative analysis of the impacts of the family reunification and family formation policy and the Integration (Abroad) Act. A similar qualitative analysis concerns an already planned evaluation of the policy measures for family formation to be carried out by the IND in cooperation with the WODC (Scientific Research and Documentation Centre of the Department of Justice).
Finally, it is recommended to keep more detailed data files to facilitate the formulation and evaluation of policies.

2. Introduction: Family reunification in the Netherlands

2.1. Background

The present study on family reunification and family formation in the Netherlands during the period 2002 – 2006 was carried out within the framework of the European Migration Network (EMN). EMN is the project of the European Commission in which information about migration is compiled and analysed.
The Dutch national contact point of the EMN is housed in the IND Information and Analysis Centre (INDIAC). The study on family reunification is the fourth 'Small Scale Study' for the EMN. A synthesis report will be drawn up by the European Commission based on the national reports of the participating member states.
The present study has been structured in accordance with the directive 2003/86/EC of 22 September 2003 on the right to family reunification (Family Reunification Directive). The directive sets out conditions for the admission of family members of third country nationals who lawfully reside in the territory of one of the member states. The directive entered into force on 3 October 2003.

2.1.1. Short account of the Dutch policy

In order to obtain a better insight into the Dutch situation, a short account is provided of the Dutch aliens policy in general and family reunification in particular.

Aliens policy
The Dutch aliens legislation is laid down in the *Aliens Act 2000* (Vw) and elaborated in the *Aliens Decree 2000* (Vb) and the *Aliens Regulations 2000* (VV). In addition, policy rules were drawn up that are set out in the *Aliens Act Implementation Guidelines 2000* (Vc). The *General Administrative Law Act* (Awb) is relevant to the general rules that govern the relations between government and citizens. The Awb is also applicable in aliens law, although in specific cases derogation of the *Awb* provisions occurs.

A foreign national who wants to stay in the Netherlands for a longer period than the original three months, has to apply for a residence permit (an exception hereto are foreign nationals who derive their right to residence directly from Community law). Two types of residence permits exist in the Netherlands: the regular residence permit and the asylum residence permit. A foreign national who seeks protection in connection with events or circumstances in his country of origin may apply for an asylum residence permit. Regular is defined as 'non-asylum'. Hence, a foreign national who enters the Netherlands for a certain purpose for reasons that are not connected with protection against a return to the country of origin, has to apply for a regular residence permit. When examining the application for a regular residence permit, any asylum related facts or circumstances are left aside. The reverse applies to the decision on an asylum residence permit where certain regular grounds for residence are officially examined (displaced persons policy and the policy for unaccompanied minor foreign nationals).

A temporary regular residence permit is granted for a specific purpose. For example, this purpose can be: family reunification or family formation, education or practical training, au pair work, work as an employee or work on a self-employed basis. The purpose, for which the permit is granted, is stated on the permit. The residence permit only grants residence rights for the stated purpose. A list of possible purposes of stay has been provided in the Aliens Decree (see Art 3.4 Vb).
Conditions are attached to the granting of a temporary regular residence permit. These conditions have been set out in general terms in the Aliens Act. Specific conditions apply to each purpose of stay. These can be found in the Aliens Decree and have been further elaborated in the Aliens Act Implementation Guidelines.
The first condition for the granting of a regular temporary residence permit is a valid provisional residence permit (mvv). Certain categories of foreign nationals are exempted from the provisional residence permit requirement. The most important category concerns foreign nationals who are exempted on the ground of their nationality (see Annex 3 for an overview). Foreign nationals whose right

of residence is directly derived from Community law, for example as a spouse or child of a community citizen, are also exempted from the provisional residence permit requirement. Other exempted categories are foreign nationals who cannot travel to their country of origin or country of permanent residence for health reasons, foreign nationals who immediately preceding their application for a temporary regular residence permit were in the possession of a temporary or permanent asylum residence permit and foreign nationals who timely submitted a request to modify their purpose of stay. Finally, the State Secretary of Justice can grant an exemption of the provisional residence permit requirement in special circumstances on grounds of the hardship clause. Provisional residence permits are applied for in the country of origin or permanent residence. Provisional residence permits are applied for in connection with a specific purpose of stay. When considering the application for a provisional residence permit, it is examined if the person meets the conditions that are attached to the desired residence permit. The aim of the provisional residence permit requirement is to allow the government to examine whether a foreign national meets the entry clearance conditions prior to his/her entry into the Netherlands.

Other conditions for the granting of a regular residence permit are a valid passport, adequate financial resources and the applicant should not present a danger to society. A further condition is that the foreign national should be willing to undergo a tuberculosis examination or treatment. He/she is not allowed to work for an employer in violation of the Labour Act for Aliens and he/she should comply with the restriction related to his/her purpose of stay.
Finally, the requirement that the foreign national should pass a basic integration exam prior to his arrival in the Netherlands applies to a number of purposes of stay. This requirement only applies to foreign nationals between 16 and 65 years who want to reside in the Netherlands for non-temporary purposes such as family reunification and who are subject to the provisional residence permit requirement.

An asylum residence permit can be granted on six different grounds. These grounds could be refugee status (1), subsidiary forms of protection (2), humanitarian reasons related to events in the country of origin (3) or a form of temporary protection related to the overall difficult situation in the country of origin (4), family relation (5 and 6). Holders of an asylum residence permit have the same rights regardless of the grounds on which the permit was granted.

Both the regular residence permit and the asylum residence permit are always granted for a temporary period at first and can be changed into a permanent residence permit after a period of five years.

Family migration to the Netherlands: family reunification and family formation

Family reunification can be defined as the reunification of family members with a sponsor in the Netherlands where the family relationship arose in the country of origin. If the family relationship arose after the entry of the sponsor into the Netherlands, we speak of family formation. The Dutch policy distinguishes between conditions for family reunification and family formation.
A large part of family migration to the Netherlands falls under the regular aliens policy. In addition, family members of foreign nationals who have been admitted on the grounds of asylum, can apply for family reunification by virtue of the asylum policy.

Hereunder follows a description of family migration under the regular aliens policy and, subsequently, family migration under the asylum policy is explained.

Family migration under the managed migration policy

In addition to the aforementioned general conditions for the granting of a regular residence permit, certain specific conditions apply to the purposes of stay for family reunification and family formation. The State Secretary of Justice grants a residence permit when all conditions have been satisfied. A residence permit can still be granted when not all conditions have been met. The Secretary of State enjoys a certain margin of appreciation to still grant a permit by way of derogation of the imposed conditions. In the Aliens Act Implementation Guidelines the policy rules for this have been laid down

The 18-year old and older spouse or partner of the sponsor residing in the Netherlands and the minor children of both or one of them qualify for family reunification. Family reunification can also be applied for on the ground of a registered or non-registered partnership between two people of a different or the same gender. The relationship should be permanent and monogamous and both partners should be

unmarried, unless the marriage has not been annulled as a result of legal impediments. The minimum age of the joining partner (both married and unmarried) and the sponsor is 21 years in the case of family formation.
A residence permit can be granted to other family members than the spouse, partner or minor children as part of an extended family reunification. An important condition for extended family reunification is that these family members already belonged to the family in the country of origin and that leaving these family members behind would constitute a disproportionate hardship in the opinion of the State Secretary of Justice. In addition, the Dutch law provides for a specific arrangement for the admission of a single parent of 65 years or older, who would like to enter the Netherlands for reasons of family reunification.

See paragraph 3.1.3 for further explanation of the application procedure for provisional resident permits, the fast track procedure for provisional resident permits and the residence permit for family reunification.

Family migration under the asylum policy
An asylum residence permit can be granted to the family members of the holder of an asylum residence permit (asylum status holders) through the channel of family reunification. This specific policy for family members of asylum status holders does not apply to family formation. Asylum residence permits are granted based on the fact that the applicant is a family member of the holder of the asylum permit. A prerequisite is that family members have the same nationality as the asylum status holder and entered the Netherlands together with the sponsor, or joined the sponsor within three months after the granting of a temporary asylum residence permit to the sponsor. Family members, who can derive rights from these provisions, are the spouse and minor children (asylum ground 5) and the partner and the major children insofar as they really belong to the family and are dependant of the sponsor and for that reason belong to the family of the sponsor (asylum ground 6).
An application for a residence permit on regular grounds can be lodged if the criterion of entry within three months is not satisfied, if the family members have a different nationality or if it concerns family members other than the aforementioned.

2.1.2. Objective, topic and design of the study

Objective
Like all EMN studies, the present study also aims, through a systematic comparative method, to identify the similarities and differences in the approaches of the different member states of the EU towards family reunification. This should lead to the development of comparable and reliable data at the European level, more detailed and current knowledge of the policies of policy makers and decision-makers and the exchange of more information.
A synthesis report will be compiled based on the different country reports of the countries that participate in this study. Based on the synthesis report, any deficiencies with regard to the implementation of the family reunification directive will be identified.

Objective
The main objective of the study is to determine:
- The situation in the Netherlands with regard to family reunification and family formation regulations, policy and characteristics of family migration during the period 2002-2006.

The topic will be divided into three subtopics:
- To what extent can trends be distinguished in policy development?
- To what extent can statistical data trends be distinguished within this period?
- To what extent can conclusions be drawn with regard to any causal connection between policy developments and statistical data and does this reflect the effectiveness of the policy?

Study design
The study has been structured on the basis of specifications set out by the European Commission in consultation with the national contact points of the EMN.
This introductory chapter concludes with a number of the definitions used in the study and a methodical justification.

Chapter 3 describes the family reunification policy and the developments of the policy during the reference period based on the provisions of the family reunification directive. An overview is presented of the current state of affairs regulated by the Dutch law and policy. Subsequently, certain developments during the period 2002 – 2006 are discussed. This chapter closes with a number of conclusions regarding (the development of) the policy in the light of the family reunification directive.
Chapter 4 contains a statistical overview of family migration to the Netherlands. First, an overview of the available statistical data is presented with regard to the number of applications and decisions of regular family migration to the Netherlands. Subsequently, the composition of the group of family members is examined. The concluding paragraph of this chapter enumerates any remarkable developments in the size and composition of family migration to the Netherlands.
In chapter 5 three additional developments in the family migration policy are discussed. Firstly, the implementation of a new integration regime that has an impact on the admission of family migrants and imposes obligations on admitted migrants. Secondly, the so-called Belgian route is discussed and finally, the chapter examines the increase of the legal fees for residence permits and the debate on this subject.
Finally, chapter 6 contains the general conclusions that can be drawn based on the foregoing and provides a reply to the central topic and the three subtopics.

2.2. Definitions

In order to enable a comparison between reports from the participating countries, this study uses the definitions that are used by the other countries. The definitions of concepts that are used in the present study have been largely derived from directive 2003/86/EC (the Family Reunification Directive). Hereunder follow the definitions of a number of concepts. For each definition, the description from the directive is provided first and subsequently an explanation of the concept as adopted in the Dutch policy is given.

2.2.1. Nuclear family

Definition in the directive
The concept nuclear family is not defined in the directive. The preamble shows that nuclear family is understood to mean the spouse and the minor children.[1] It is unclear whether this refers to the minor children of the couple or whether minor children of one of the spouses also belong to the nuclear family. From Article 4, paragraph 1 of the directive it can be inferred that only the children of the sponsor or the spouse if he/she has custody of the child and if it is a dependant of him/her, belong to the nuclear family.

Dutch law
There is no formal definition for the concept nuclear family. From the provisions of the Aliens Decree it can be inferred that the spouse, the unmarried (whether registered or not) partner and the minor children of the sponsor are members of the nuclear family.[2] Special circumstances can by exception lead to the issue of a residence permit even when not all conditions have been met. This must be seen in the light of responsibilities on grounds of Article 8 of EHRM. The Aliens Act Implementation Guidelines provides that residence may be granted to minor children who are in the legal custody of the dependent spouse or partner.

2.2.2. Third country national

Definition in the directive
A third country national means any person who is no Union citizen within the meaning of Article 17, paragraph 1, of the Treaty (Article 2, sub a, Directive 2003/86/EC), i.e. any person who does not posses the nationality of one of the member states.

[1] Preamble of recital 9.
[2] See Art. 3.14 Vb.

Dutch law
The Aliens Act refers to 'family members who posses the nationality of a third country'[3]. This concept is not defined, however it can be inferred from the context that it concerns persons with a different nationality than citizens of the European Union or citizens of the other countries of the European Economic Area (EEA) who do not belong to the European Union or Switzerland and who use the right to freedom of movement.

2.2.3. Refugee

Definition in the directive
A refugee means third country national or stateless person enjoying refugee status within the meaning of the Geneva Convention relating to the status of refugees of 28 July 1951, as amended by the Protocol signed in New York on 31 January 1967 (Article 2, sub b, Directive 2003/86/EC).

Dutch law
The Aliens Act defines 'Convention refugee' as the foreign national who is a refugee within the meaning of the Geneva Convention on refugees.[4] The Geneva Convention on refugees is defined as the Geneva Convention as described above. Refugees within the meaning of the directive are foreign nationals who have received an asylum residence permit on the first of the six asylum grounds (see above under paragraph 2.1.1. under 'Aliens policy').

2.2.4. Sponsor

Definition in the directive
The family reunification directive describes a sponsor as a third country national residing lawfully in a member state and applying or whose family members apply for family reunification to be joined with him/her (Article 2, sub c, Directive 2003/86/EC).

Dutch law
In the terminology of the Dutch law, the sponsor is referred to as the principal person. The Dutch provisions not only apply to third country nationals but also to Dutch citizens. A Dutch citizen or a foreign national with a temporary or permanent asylum or regular (non-asylum) residence permit, who is at least eighteen years of age, can be a sponsor.[5] The condition for family formation is that the sponsor is at least 21 years old.
EU citizens who reside in the Netherlands can also be sponsors in accordance with the Dutch law. However, they can directly appeal to the more favourable provisions of the Community law as community citizens. Their family members do not have to apply for a residence permit for regular family reunification. The term principal person in this study refers to the sponsor.

2.2.5. Family reunification

Definition in the directive
Family reunification in the directive is described as the entry into and the residence in a member state by family members of a third country national residing lawfully in that member state in order to preserve the family unit, whether the family relationship arose before or after the resident's entry (Article 2, sub d, Directive 2003/86/EC).

Dutch law
Family reunification is not defined in the Dutch Aliens Act or lower regulations, but a definition for the concept family formation has been provided. Family formation is described as family reunification of the

[3] See Art. 1 sub e, 2 Vw.
[4] Art. 1 sub l Vw.
[5] See Art. 3.15 Vb.

spouse, registered partner or non-registered partner, when the family tie arose after the sponsor entered the Netherlands.[6]

2.2.6. Residence permit

Definition in the directive
A residence permit is described in the directive as any authorisation issued by the authorities of a member state allowing a third country national to stay legally in its territory, in accordance with the provisions of Article 1, paragraph 2, (a), of Council Regulation (EC) No. 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third country nationals. 'Residence permit' in Article 1, paragraph 2 of this regulation means: any authorisation issued by the authorities of a Member State allowing a third country national to stay legally on its territory, with the exception of (i) visas, (ii) permits issued pending examination of an application for a residence permit or asylum, (iii) authorisations issued for a stay of a duration not exceeding six months by Member States not applying the provisions of Article 21 of the Convention implementing the Schengen agreement. Article 21 of the Schengen agreement is a complex article in its own right that governs the conditions for travel within the Schengen area. A further analysis of this provision falls outside the scope of the present study.

Dutch law
The term 'residence permit' is not used in the system of the Aliens Act. The concept 'lawful residence' is central in the Aliens Act.[7] The Dutch concept of lawful residence does not always correspond with the concept 'residence permit' as defined in the directive. Lawful residence on the ground of a temporary or permanent asylum or regular permit can be considered as a residence permit within the meaning of the directive.
Types of lawful residence that do not come under the concept 'residence permit' of the directive are the lawful residence of Union citizens based on Community law, the lawful residence of foreign nationals during the free period of stay and lawful residence pending a decision on an application.

2.2.7. Unaccompanied minor

Definition in the directive
An unaccompanied minor means third country nationals or stateless persons below the age of eighteen who arrive on the territory of the member state unaccompanied by an adult responsible by law or custom, and for as long as they are effectively taken into the care of such a person, or minors who are left unaccompanied after they entered the territory of the member state.

Dutch law
The Dutch law does not contain a definition of unaccompanied minor. Minority is defined based on the Civil Code which lays down an age limit of 18 years. The Aliens Act Implementation Guidelines provide an explanation of the concept of unaccompanied minor foreign national (AMV).[8]

2.2.8. Family member

Definition in the present study
The directive does not contain a definition of the concept family member. The absence of a definition constitutes a problem for a comparative study, not only where terminology is concerned but also in the case of a founded statistical analysis and comparison. Therefore, a definition for this concept has been provided for the study on family reunification of the European Migration Network, to wit '*dependant*'. This definition has been compiled based on a quick scan of the participating countries in this study. A '*dependant*' is defined as any person who is granted entry and residence in a member state to stay with their family member (the person referred to as 'sponsor' in Directive 2003/86/EC), and who has explicitly

[6] Article 1.1. sub r Vb.
[7] Article 8 of the Vw.
[8] Vc B14/2.2.1.

filed an application for reasons of family reunification. The term 'dependent' in this definition denotes the requirement of a family member whose main residence is situated in the Netherlands (the sponsor).

Dutch law
The Dutch law does not contain the concept of '*dependant*', as defined herein. The Aliens Decree refers to a family member who may be granted or has been granted a residence permit. After the residence permit has been granted, the '*dependant*' is described as the 'holder of a residence permit granted under the family reunification or family formation restriction'. The term dependant has its own meaning in the Dutch context. In the case of a family reunification with major children, 'financial and moral dependence' constitutes a special elaboration of the 'existing family tie'. The usual Dutch terminology for the twin concepts of '*sponsor'* and *'dependant'* is 'principal person' and 'family member'.

2.3. Methodology

The study questions laid down in the specifications constitute the guidelines on which the present study is based.
Desk research was chosen as methodology. The consulted sources consist of publications in scientific journals, statistics, legislation and case law, policy documents, press and other media. Much has been published about the family reunification topic. The points of view of the relevant parties have been taken from existing written sources and internet sources.
The description of the present policy is based on the law text in the Aliens Act and the Aliens Decree. The Aliens Act Implementation Guidelines were used to transpose the policy into policy rules. Where necessary, a footnote referring to the Dutch provisions is provided. Annex 2 presents a table indicating in which Dutch provisions the provisions of the directive were transposed.
The policy developments are described based on parliamentary documents and the publication of decisions in the Dutch Bulletin of Acts, Orders and Decrees (Stb.) and the Dutch Government Gazette (Stcr.). Articles, reports and advice were used for an overview of a couple of discussion points regarding the implementation. The case law with regard to the directive was derived from published case law and decisions posted on the internet. A study conducted for the Scientific Council for Government Policy (WRR) on the involvement of society in the establishment of the family reunification directive was used for an overview of family reunification in the media.[9]
The requested statistical data in chapter 4 with regard to the applications for and decisions regarding regular (non-asylum) residence permits are available to a limited extent in the Netherlands. The main reason is the method of data registration and a transfer of tasks during the reference period of the present study. In the past, applications for regular (non-asylum) residence permits were lodged with and registered by the regional Aliens Police where no central registration system was used. In the course of 2003 and 2004, the administrative tasks were transferred to the IND and the municipalities. The different registration systems and the problematic transmission of these data resulted in a high degree of noise in the data. As a consequence, the responsible organizations only publish fully reliable data. The implication for statistical information is that no data are available for the years prior to 2005 with regard to the number of applications for regular residence permits and the decisions on these applications. Moreover, no structural data of the sponsor such as nationality, resident status, age or gender are recorded in computer systems in the Netherlands. The most important reason is that this additional information does not always have a bearing on a decision on an application. This situation has certain consequences for any possible conclusions based on the statistical data.
However, other statistical data regarding migration to the Netherlands are available. Statistics Netherlands (Centraal Bureau voor de Statistiek (CBS)) records data on family reunification, accompanying family members of migrants (these are family members (for instance of an economic migrant) who immigrate in the same year as the migrant worker) and family formation. These data are based on the registration in the Municipal Population Register GBA). These data cannot be used to answer the research questions as they do not concern applications for and decisions on residence permits and because the CBS does not use definitions that correspond to the definitions used in the present study. However, the trend that becomes apparent from these data is briefly outlined in a separate paragraph. Data are also available on the applications for a temporary residence permit for reasons of

[9] Den Heijer 2007.

family reunification or family formation. These data cannot be combined either with the data requested in the present study, because not all foreign nationals are required to apply for a provisional residence permit prior to an application for a residence permit. Furthermore, the granting of a provisional residence permit does not necessarily mean that the foreign national actually applies for a residence permit.

3. Family reunification policy in the Netherlands

This chapter describes the family reunification policy and the developments in the policy during the reference period based on the provisions of the family reunification directive.
The first paragraph provides an overview of the policy regarding family reunification and family formation in the Netherlands at the end of the reference period. Paragraph 3.2 discusses the developments in the period 2002 – 2006. The last paragraph of this chapter provides some conclusions with regard to the development of the policy in the light of the family reunification directive.

3.1. Overview of the current Dutch policy

3.1.1. Minimum standards and optional provisions in the Family Reunification Directive.

Directive 2003/86/EC of the European Council, the Family Reunification Directive, lays down minimum standards that member states should meet when third country nationals apply for family reunification or family formation. The member states have to authorise the entry of the family members set out in the directive to join the sponsor based on the ground of these minimum standards. In addition to the provisions that set out minimum rights to family reunification, the directive includes many optional provisions. The member states are free to implement or reject these provisions. There are 2 types of optional provisions: restrictive provisions such as the accommodation, adequate financial resources and health insurance requirements of Article 7 and liberalising provisions. An example hereof is the possibility to apply the directive to the unmarried partner in accordance with Article 4, paragraph 3. Furthermore, Article 3, paragraph 5 offers the member states the possibility to adopt or maintain more favourable provisions. A prerequisite for certain restrictive optional provisions was that the relevant optional provision had to be transposed into national legislation upon the expiry of the implementation period of the directive (namely 3 October 2005). The exact purport of an optional provision is under debate. Can a member state refuse to apply a certain optional provision and implement its own policy instead? This is clear where the restrictive provisions are concerned. In the case of minimum standards, a member state cannot impose other, more stringent conditions. A definite answer in the case of liberalising provisions is less obvious. (This issue is further expounded hereunder in paragraph 3.3).
Most optional provisions are discussed in other paragraphs of this study. Therefore, these are not further considered here. An overview of the optional provisions and their implementation or rejection in the Netherlands is presented in a table in Annex 2.

3.1.2. Optional provisions for granting entry and residence to family members

The directive distinguishes between family members to whom the member states *should* or *may* grant the right to family reunification. The members of the nuclear family, i.e. the spouse and the minor children always have a right to family reunification in principle (if the material and procedural conditions are satisfied. The directive allows member states to impose a number of additional conditions on the members of the nuclear family. Family reunification based on the directive may be granted to the parents, major unmarried children, unmarried partner, and in the case of a polygamous marriage, to the minor children of a second spouse and the sponsor.
Hereunder, the implementation of any *optional* provisions for entry and residence of the categories of family members set forth in Articles 4, 9 and 10 of the directive in the Netherlands and the scope of application are discussed.

Minor children (between 12 and 18 years) (Art. 4.1. last paragraph of the directive)
Minor children belong to the nuclear family and in principle have a right to family reunification. The Dutch policy refers to children under the age of 18, as the children reach the age of majority at 18. Minor children of the sponsor have a right to family reunification by virtue of the Aliens Decree.
The Aliens Act Implementation Guidelines provide that minor children who are in the legal custody of the spouse or (registered) partner of the sponsor applying for reunification and who belonged to the family of the spouse or (registered partner) in the country of origin, may be granted a permit.

The directive allows a member state to verify compliance with the condition for integration of a child of 12 years or older who arrives independently from the rest of his/her family, prior to authorising entry and residence. This condition should be laid down in the national legislation prior to the expiry of the implementation period of the directive. The Aliens Act or the Aliens Decree does not explicitly contain a provision in which the right to family reunification of minor children of 12 years or older depends on compliance with the integration requirement.
However, the Integration Abroad Act (Wib) entered into force on 15 March 2006.[10] The Act imposes an integration requirement abroad for foreign nationals who want to become permanent residents in the Netherlands and who have to apply for a provisional resident permit. This integration requirement also applies to 16 and 17 year old foreign nationals who don't have to go to school or only have to go to school part-time after their entry into the Netherlands (see paragraph 5.1 for a more extensive discussion of the Wib).

Parents and major children (Art. 4.2 sub a and b of the directive)
The provisions of the directive regarding the entry of parents and major children have not been implemented in the Netherlands.[11] However, Dutch legislation contains two national provisions for the entry of parents and major children. These provisions are not a transposition of the optional provisions of the directive (See 'Extended family reunification' in paragraph 3.2.3 for the discussion of the correspondence between the Dutch policy on this issue and Article 4.2 of the directive).
The entry of family members other than the members of the nuclear family is referred to as "extended family reunification' in the Dutch terminology. Article 3.24 Vb provides for the entry of other family members for reasons of family reunification. In addition, Article 3.25 Vb contains a special arrangement for sole parents of 65 years or older of the sponsor.

The entry of other family members may be granted when the family member belongs and already belonged to the family in the country of origin and in cases where abandonment would constitute disproportionate hardship. Certain situations where the family relationship has been disrupted, are set out in the Aliens Act Implementation Guidelines. These include permanent placement in another family and the fact that the sponsor does not have the (legal) custody or does not provide for education and care. When the actual family tie has been disrupted, reinstatement is not longer accepted, according to the Vc. It can be inferred from the policy for disproportionate hardship set out in the Vc, that this policy only applies to major children. According to the case law of the Administrative Law Chamber of the Council of State, the highest administrative law court in the Netherlands, the disproportionate hardship criterion should be judged separate when determining whether the foreign national still belongs to the family. Furthermore, asylum related reasons cannot be taken into consideration in the evaluation of disproportionate hardship.[12] The Dutch policy regarding extended family reunification with a major child that has been left behind, grants family reunification if the child still belongs to the family and there are one or more specific individual circumstances that would lead to a situation of disproportionate hardship in the country of origin.

The Dutch policy regarding family reunification with parents is limited to the sole parent of 65 years or older of the sponsor. The following conditions apply to the special parent policy:
• the parent is alone in the country of origin;
• no children reside in the country of origin who could take care of the parent;
• almost all children reside lawfully in the Netherlands by virtue of a residence permit;
• the children in the Netherlands jointly have adequate financial resources to absorb the extra costs involved in the care of their parent.

Unmarried partner (Art. 4.3 of the directive)
In the Netherlands, partners who are unmarried can register their partnership in order to be entitled to the same rights and obligations as a married couple. Therefore, the Netherlands does not distinguish between married partners or unmarried partners who have registered their partnership. In addition,

[10] Stb. 2006, 28.
[11] Letter of the Minister to the Lower House. TK 2004-2005, 19 637, n° 901.
[12] See ABRvS 06-11-2002, JV 2002/472, m.nt. van Asperen en Duijvendak-Brand and ABRvS 19-02-2003, JV 2003/137. See Boeles 2003, pages 76 – 79 for a review of this jurisprudence.

unmarried partners without a registered partnership qualify under the same conditions for entry and residence if they are in a stable and long-term relationship with the sponsor.

Minor children of the sponsor and a second spouse (Art. 4.4 of the directive)
The children of a second or further spouse are excluded from the right to entry and residence when the sponsor is married or has a partnership with more than one person. The Netherlands did make use of the possibility to exclude these minor children of the sponsor from the right to family reunification pursuant to Article 4.4. of the directive in derogation of Article 1, paragraph 1(c) of the directive.

Minimum age of spouse (Art. 4.5 of the directive)
The Netherlands distinguishes between family reunification and family formation where the minimum age requirement for the spouse or partner and the sponsor is concerned. In the event of family reunification, a minimum age of 18 years for the spouse, registered partner or unmarried partner and the sponsor applies. A minimum age requirement of 21 years applies in the case of family formation.

Minor child of 15 years or older (Art. 4.6 of the directive)
This provision that allows a member state to require that the application for family reunification for minor children should be submitted before the age of 15, has not been implemented in the Dutch law.

A separate chapter in the Family Reunification Directive is dedicated to refugees (see Article 9 – 12 of the directive). On some counts, more liberal conditions apply for family reunification with a sponsor who has a refugee status. Provisions that are optional for family members who can derive rights from this more lenient regime are discussed hereunder. Provisions that refer to the conditions that the refugee has to satisfy if he/she is the sponsor within the meaning of the directive, are set forth in paragraph 3.1.3 from Article 9.

Family reunification and family formation with refugees (Art. 9 of the directive)
Family reunification with refugees is regulated in the chapter asylum of the Aliens Act.[13] As previously explained (see paragraph 2.1.1. family migration and asylum policy), family members of a refugee may be granted an asylum residence permit when they meet certain specific conditions.
These conditions are that the spouse and the minor child (1) belong to the family, (2) that they enter the Netherlands together with the sponsor or join him/her within three months after the residence permit has been granted and (3) that they possess the same nationality as the sponsor.
An additional requirement is that the partner and the major child are dependent on the sponsor and as such belong to the family of the sponsor. This provision only applies to family members whose family relationship predates the entry of the refugee. Dutch legislation distinguishes between family reunification and family formation as allowed in the directive with regard to family reunification with a sponsor who has been granted asylum status.
If a family member does not satisfy these specific conditions, an application for a regular residence permit can be filed (see also the discussion of Article 12 of the directive in paragraph 3.1.3)

Possible extension of the category family members of refugees (Art. 10, paragraph 2 of the directive)
Article 10, paragraph 2 provides that the member states may authorise family reunification of other family members not referred to in Article 4, if they are dependent on the refugee.
Pursuant to the specific Dutch regulations with regard to family reunification with refugees, the family members that are hereto entitled are the spouse and minor children who belong to the family of the asylum status holder and the partner or the major child who are dependent on the asylum status holder and on account hereof belong to the family. This provision does not include other family members than the family members set forth in Article 4 of the directive. Technically, the regular system offers the possibility for family reunification with other family members as part of the extended family reunification. As stated above, the application of this provision in practice is very limited.

Family members of unaccompanied minor refugees (Art. 10.3 of the directive)
Regarding unaccompanied minors who have been granted an asylum permit[14], the Aliens Decree provides that family reunification can take place with first-degree relatives in the direct ascending line.

[13] See Art. 29, paragraph 1, points e and f Vw.

The optional provision to grant entry to a legal guardian or other family members, if the refugee does not have any relatives in the direct ascending line, has not been implemented by the Netherlands.

More favourable admission criteria for family members of sponsors who belong to a special category
The Dutch policy does not provide any more favourable conditions for the admission of the family members of an economic migrant, a highly skilled migrant or a self-employed migrant. In some cases a fast track procedure for provisional residence permits can be adopted for family members of economic migrants and highly skilled migrants. See paragraph 3.1.3 'Admission of entire family'.

Distinction between family reunification – family formation
As stated in the introduction (see paragraph 2.1.1.), the Dutch policy distinguishes between family reunification and family formation. For more information see 'Other measures' in paragraph 3.2.2..

3.1.3. Policy with regard to specific articles of the Family Reunification Directive

Submission and examination of the application
Article 5 of the directive provides procedural conditions regarding the application for family reunification and the examination of the application.

Who submits the application
The application for family reunification or family formation should be submitted by the family member or his/her legal representative, not by the sponsor.

Provisional residence permit procedure
As explained in the previous chapter, in order to be able to apply for a regular (non-asylum) residence permit in the Netherlands, the applicant first has to apply for a provisional residence permit. Upon receipt of the application for a provisional residence permit, it is examined whether the applicant satisfies the conditions for family reunification or family formation.

Where is the application for a provisional residence permit filed
Article 5, paragraph 3 of the directive stipulates that the application for family reunification should be submitted while the family member resides outside the territory of the member state in which the sponsor resides. Pursuant to the Dutch provisional residence permit procedure, the application for a provisional residence permit should be submitted to the Dutch diplomatic or consular representation in the country of origin or the country of permanent residence. 'Permanent residence' is understood to mean lawful residence by virtue of a residence permit that is at least still three months valid when the application is submitted or when the decision is made. This includes residence by virtue of a residence permit with a validity of more than three months; lawful residence pending the decision on an application or lawful residence after the final decision on an application while legal impediments exist against removal. If there is no Dutch embassy or consulate in the country of origin or the country of permanent residence, the application for a provisional residence permit has to be submitted in the closest neighbouring country where a Dutch representation is established. The foreign national cannot submit an application for a provisional residence permit in the Netherlands and he/she is not allowed to reside in the Netherlands while awaiting a decision on his/her application.

Sponsor procedure
A provisional residence permit procedure may be prepared on behalf of the family member by the sponsor. The sponsor can submit an application to the Visa Service in order to inquire whether the family member is eligible for a provisional residence permit. The Visa Service advises on the application. If the advice is positive, the concerned family member has to submit an official application to the diplomatic mission. The application is forwarded to the Visa Service by the Dutch diplomatic mission abroad. The Visa Service may request the Aliens Police to carry out a further investigation during the examination of

[14] Pursuant to Dutch policy, it is first examined whether an unaccompanied minor foreign national is eligible for an asylum residence permit. If the application for an asylum residence permit is rejected, it is officially examined whether he/she is eligible for a regular residence permit by virtue of the policy for unaccompanied minor foreign nationals, without having to submit a new application.

the advice application or official provisional residence permit application if serious doubts arise about the information supplied by the applicant or sponsor. If necessary, the sponsor can be asked to report to the police in person to clarify the application. If the application for a provisional residence permit is refused, the family member has the right to lodge a notice of objection and can appeal the decision or go to a higher court or the Administrative Law Chamber of the Council of State (ABRvS). If the application for a provisional residence permit is granted, the family member can enter the Netherlands within a period of six months upon the delivery of the provisional residence permit.

Application for residence permit
The family member should report to the Aliens Police of the municipality where he/she will reside in the Netherlands within three days after his/her entry. He/she can then submit an application for a temporary regular (non-asylum) residence permit. The application for the granting or modification of a temporary regular residence permit should be submitted to the mayor of the municipality where the foreign national lives or resides. In the case of a first application for a residence permit, the foreign national will have to first register himself/herself in the Municipal Population Register (GBA). The identity of the foreign national is established based on the required source documents. These source documents can differ for each purpose of stay. Subsequently, the submission of all required documents by the applicant is checked and the payable legal fees are collected. If no valid travel document can be submitted, the foreign national should, where possible, demonstrate that he cannot obtain such from the authorities of the country of which he is a citizen. The municipality forwards the application with the documents, copies of the original documents and a payment receipt of the legal fees to the IND.

Determination of family tie
Family members have to demonstrate their family tie by means of official legalised documents. Foreign documents that relate to the marital status of persons such as a birth certificate, marriage certificate, divorce certificate and documents concerning custody or guardianship should be legalised for most countries. If there are doubts about the correctness of the documents, the IND can decide to request the Minister of Foreign Affairs to conduct an investigation on-site. The legalisation guidelines enumerate the countries for which legalisation is mandatory and how this condition can be satisfied.[15] If it is likely that a foreign national lacks documentary evidence (asylum seekers, accepted refugees, people from regions where the population registration can no longer be consulted due to a state of war) the person concerned can be exempted from this obligation. For others there is the possibility to undergo DNA sampling if the IND and the Ministry of Foreign Affairs conclude there is a situation of lack of documentary evidence. DNA sampling is only used to establish the biological relation between parent(s) and children in the case of family reunification after lack of documentary evidence has been established. Participation in DNA sampling is on a voluntary basis and can be refunded by the government if there is proven lack of documentary evidence.

Prior to contracting a marriage/registered partnership or the registration of a marriage/registered partnership contracted outside the Netherlands in the municipal population register, where one of the partners possesses another nationality than the Dutch nationality, the registrar should first request a declaration from the Chief of Police. The Chief of Police fills out the details of the residence status and of previous marriages or relationships. The aim of this declaration is to investigate whether there is reason to suspect a marriage or partnership of convenience prior to the celebration of the marriage or registration of the marriage or registered partnership.
Admission on the ground of a relationship requires the submission of a legalised certificate of celibacy. The concerned parties also have to sign a declaration. Directions for the establishment of stable relationships are included in the Aliens Act Implementation Guidelines.

Admission of the entire family
Companies have the possibility to use the fast track procedure for provisional residence permits under certain conditions if they regularly hire foreign employees. The companies should have been admitted to the fast track procedure. A request hereto can be submitted to the IND.[16] An arrangement for the

[15] Circular letter of the Secretary of State for Justice (also on behalf of the ministers of Foreign Affairs and Urban Policy) of 12 January 2000 (reference 5001966/99/6). Last adjusted 15 May 2006.
[16] See Vc B1/1.5.

admission of the entire family only exists for foreign nationals who apply for a residence permit in order to work in the country using the fast track procedure. All applications should be submitted at the same time through the fast track procedure.

Requirements for the exercise of a right to family reunification and family formation
Articles 6, 7 and 8 of the directive contain requirements for the exercise of the right to family reunification that member states may impose. These provisions are optional. Article 6 of the directive provides that the family member should comply with the public policy and further potential requirements are formulated in Article 7 of the directive. Paragraph 1 of the Article formulates optional accommodation, insurance and income requirements that the sponsor should satisfy. The second paragraph enables the member states to require third country nationals to comply with integration measures. The provision in Article 8 sets out a potential waiting period for the sponsor before family members can join him or her.

Public security as ground for rejection (Art. 6 of the directive)
Article 6 of the directive enables member states to reject an application (paragraph 1) or revoke or refuse to renew a residence permit (paragraph 2) on grounds of public policy or public security or public health. When taking the relevant decision, the member states should consider the severity or type of offence against public policy or public security committed by the family member, or the dangers that are emanating from such person. Furthermore, the Article states that the prescribed balancing of interests in Article 17 of the directive should be observed when taking a decision. Article 17 prescribes that the member states have to take due account of the nature and solidity of the person's family relationships and the duration of his/her residence in the member state and of the existence of family, cultural and social ties with his/her country of origin when they reject an application, or withdraw or refuse to renew a residence permit.

The Dutch policy with regard to the refusal of a first permit on grounds of public policy and public security is contained in the Aliens Decree[17] and in the Aliens Act Implementation Guidelines.
The concept *public policy* not only covers criminal public policy but also public order, international relations and public health. Political activities that can harm international relations can also be classified under public policy. Each conviction for an offence can be a ground to refuse the application for a first temporary residence permit. It does not make a difference whether a non-suspended prison sentence is imposed, or a fine or community service or whether a transaction proposal has been accepted. A foreign national who is guilty of an offence against the peace, war crimes, crimes against humanity, serious non-political crimes or actions in violation of the objectives and principles of the United Nations is not only excluded from admission on grounds of asylum but shall not be granted any regular residence permit. Moreover, the application for a regular (non-asylum) residence permit can be refused when the applicant constitutes a threat to the public policy, if the alien is the spouse, partner or child of a foreign national residing in the Netherlands who is suspected of being guilty of war crimes or crimes against humanity as set out in Article 1F of the Geneva Convention.
If it does not concern a decision on a first residence permit application, but the withdrawal or renewal of a permit on grounds of public order, the so-called sliding scale is used in the Netherlands. This implies that the decision to revoke or refuse to renew a permit is related to the duration of the stay and the severity of the offence and the imposed punishment, measure or fine. The longer the duration of stay, the more serious the committed crime has to be in order to refuse the renewal of the permit or revoke the permit.
The relevant public order provisions stipulate that the nature and solidity of the family tie of the alien and the duration of his/her stay, as well as the existence of family, cultural or social ties with his/her country of origin should be taken into account pursuant to Article 17 of the directive. (See paragraph 3.2.2 on the debate surrounding the question whether the Dutch public policy corresponds with the directive).

Material conditions for family reunification (Art. 7, paragraph 1of the directive)
Pursuant to Article 7, paragraph 1 of the directive, member states may impose accommodation, financial resources and health insurance requirements.

[17] See Art. 3.20 Vb, 3.77 Vb and 3.78 Vb.

An application for a residence permit for family formation or family reunification is not rejected in the Netherlands due to a lack of health insurance. However, pursuant to the Dutch Health Insurance Act foreign nationals are required to take out health insurance. This obligation is pointed out to the foreign national when the permit is granted. No requirements are imposed in the Netherlands regarding suitable accommodation.[18] The lack of stable and regular resources which are sufficient for maintenance constitutes a ground for the rejection of the application for a regular permit for family reunification and family formation. Only the income of the sponsor is taken into account for the first admission. The requirement for resources has been transposed in the Aliens Decree into a concrete standard with regard to the level, nature and regularity of the income.[19] A distinction is made between family reunification and family formation where the level of the required resources is concerned. In the case of family reunification, the sponsor should have an income that is at least equal to the social security standard for the relevant category (single parents or couples and families). As a requirement for family formation, the sponsor should have an independent net income that is at least equal to 120 percent of the minimum wage. An exemption of the resources requirement is granted when the sponsor is 65 years of age or permanently or fully disabled.

Integration conditions (Art. 7, paragraph 2 of the directive)
The possibility open to the member states in the second paragraph of Article 7 of the directive has been fleshed out in the Netherlands in the Integration Abroad Act (Wib) in which admission is dependent on an integration requirement is included in the Aliens Act. Pursuant to this law, foreign nationals who are subject to an integration requirement in their country of origin, have to pass a basic exam in the Dutch language and on their knowledge of Dutch society. In broad lines, all third country nationals between 16 and 65 years of age who have to apply for a provisional residence permit and who want to become permanent residents in the Netherlands and did not reside in the Netherlands for a period of eight years during school age, are subject to the integration abroad requirement. Most foreign nationals, who apply for a residence permit for family migration reasons in the Netherlands, are subject to this requirement. Upon their entry in the Netherlands, a foreign national subject to integration requirements, has to further integrate pursuant to the Integration Act (Wi). After their entry in the Netherlands, foreign nationals who are not subject to a provisional residence permit requirement and foreign nationals who have been granted an asylum residence permit are also subject to the integration requirement. See paragraph 5.1 for more information about the integration regime.

Waiting period for sponsors (Art. 8 of the directive)
Article 8 offers member states the possibility to require the sponsor to stay lawfully in their territory for a period of two or three years. The Netherlands has not implemented this restrictive optional provision.

Family reunification of refugees
Articles 9 through 12 apply to the family reunification of refugees recognised by the member states with their families. Insofar as Articles 9 and 10 of the directive refer to the family members of recognised refugees, they are discussed in 3.1.2. Optional conditions for the granting of entry and residence to family members'. Article 11 of the directive stipulates that member states should apply a more lenient regime regarding official documentary evidence of the family relationship when the sponsor is a refugee. This article is not further elaborated hereunder.

Refugee as sponsor (Art. 9 of the directive)
Article 9 allows member states to confine the application of the special regime of the directive regarding family reunification with refugees to refugees whose family relationships predate the entry of the sponsor (the Netherlands distinguish between family reunification and family formation in the entire family migration policy). The Netherlands has made use of this option. However, these rules also apply to sponsors who have been granted an asylum permit for other forms of protection. In that respect, the Dutch law is more favourable than the directive dictates.

---

[18] A debate was staged in the House of Representatives on the reinstatement of the accommodation requirement. See TK 2004 – 2005, 19 637, n° 873, page 5 et. seq.
[19] See Art. 3.22 Vb and 3.73 – 3.76 Vb.

More lenient requirements imposed on family members of refugees (Art. 12 of the directive)
Article 12 of the directive stipulates that the provisions of Article 7 do not apply to family reunification with refugees. However, the second and third paragraphs allow derogation from this principle if family reunification is possible in a third country or when the application is not submitted within three months after the entry of the refugee. The Dutch policy makes use of this option.
Pursuant to the special Dutch policy for family reunification with refugees as sponsor, the following family members are eligible for family reunification [20]: (1) the spouse and the minor children of the sponsor who belong to the nuclear family of the sponsor and (2) the partner and major children who are dependent on the sponsor and who have the same *nationality* as the sponsor and who have *joined him/her within three months after his/her entry* or who have submitted their application *within three months* after the granting of the residence permit to the sponsor. These family members will be granted a temporary asylum residence permit, like the sponsor, without having to satisfy usual family reunification conditions except that they should not constitute a threat to public order. As a result, there is no provisional residence permit requirement and no obligation to stay abroad pending the decision on the application.
The regulations in the directive for spouses, partners and minor children with a different nationality than the sponsor who has an asylum permit were transposed in the Aliens Decree that sets out that they do not have to satisfy the resources requirement on the condition that they submit their application within three months and provided that 'family reunification is not possible in a third country with which the foreign national or the sponsor has a special link'. A provisional residence permit for these cases is mandatory, but not the integration exam abroad. If the conditions for the special reunification policy with asylum status holders are not satisfied, the family members have to meet all standard conditions for regular family reunification, with the exception of the integration exam abroad.

Entry and residence of family members
Articles 13, 14 and 15 of the directive assign a number of rights to family members whose application was approved (or on whose behalf the application was approved). Article 13 provides for the granting of every facility for obtaining the requisite visa and residence permit. Article 14 relates to access to education, employment and training. Article 15 regulates the right to an autonomous residence permit.

Granting of residence permit to family members (Art. 13, paragraph 2 of the directive)
The first permit has a duration of one year maximum and expires one month before the validity of the travel document of the family member. The permit can be renewed for one year. The Dutch regulations regarding the duration of permits differ according to the category of family members. A more favourable rule has been adopted for minor children who were admitted for reasons of family reunification, including adopted children and foster children. They can be granted a first residence permit with a duration equal to the duration of the (adoptive/foster) parent if the parent has a temporary residence permit or a permit for a duration of five years if the parent has a permanent residence permit.
The spouse or partner of a sponsor with a permanent residence permit or a temporary regular residence permit, which is considered "not temporary" by virtue of Article 3.5 Vb, may be granted a residence permit for five years when the permit is renewed after the first year.

Rights of family members related to employment (Art. 14 of the directive)
The Labour Act for Aliens (Wav) in the Netherlands regulates which foreign nationals have access to employment and under which conditions. Access to the labour market of admitted family members of third country nationals depends on the residence situation of the sponsor. The residence document states whether employment is allowed and under which conditions, if any. If employment is not allowed, the employee should have a work permit. The Centre for Work and Income (CWI) is the organisation that decides on the issue of work permits. The employer has to apply for a work permit. The Netherlands has adopted a differentiated system for access to the labour market of (third country) foreign nationals who were admitted for reasons of family reunification. The position of the spouse, partner or minor children depends on the position on the labour market of the sponsor.[21] Four possibilities exist: access to

[20] The explanation in the Aliens Act Implementation Guidelines shows that minor and major children of the sponsor should also include children of one of both spouses or partners from a previous marriage or relationship who attestably belonged to the family (Vc C2/6.1).
[21] Vc B2/2.11; Vc B2/4.13; Vc B2/5.12.

employment, access to employment if the foreign national has a work permit, access to specific employment or no access to employment. This also applies to family members (such as major children) who were granted entry for reasons of extended family reunification.[22] Parents, who were granted entry by virtue of the special policy for sole parents, have free access to the labour market.[23]
No specific restrictions apply to access to employment for self-employed, admitted foreign nationals.

Autonomous residence for family members (Art. 15 of the directive)
In most cases, the Dutch rules for the right to autonomous residence are more favourable for family members than the minimum standards prescribed by the directive. The autonomous residence permit, subject to the restriction 'continued residence' can be granted to a foreign national who was granted entry as a minor for the purpose of family reunification after one year, and after three years to other family members.[24] It concerns a temporary permit that has to be renewed periodically. No resources requirement applies to the granting of this residence permit. In the event of the decease of the sponsor within this three-year period, a continued residence permit can also be granted. Finally, the Aliens Decree contains a provision pursuant to which continued residence can be granted to a foreign national who lawfully resided in the country and who cannot be asked to return to the country of origin on account of special individual circumstances.[25] Women who enter the Netherlands for reasons of family reunification or formation and whose marriage or relationship breaks down within three years after their entry in the Netherlands, may fall under this provision if they cannot be asked to return to the country of origin for a combination of humanitarian reasons. They can be granted an autonomous permit for continued residence by virtue of this provision. Demonstrable (sexual) violence in the relationship can be a sufficient reason in itself to grant a permit for continued residence.[26] The violence should be demonstrated by means of a report or a declaration of a sexual abuse counsellor. If the violence was not reported, but *ex officio* proceedings were instituted, a declaration of the Public Prosecutor can be submitted instead of the report.
An application for a permanent residence permit can be submitted after a 5-year period of lawful residence. The party concerned should have adequate financial resources.

Penalties and redress
Article 16 of the directive provides an exhaustive account of the grounds on which the application for family reunification can be refused, or that could lead to the withdrawal or refusal to renew the previously granted residence permit. Article 17 provides for a balancing of interests when decisions are made within the framework of the family reunification directive. Finally, Article 18 relates to the right to appeal against the decision of the member state.

Rejection of applications, withdrawal or refusal to renew permits (Art. 16 of the directive)
All grounds for refusal for a regular (non-asylum) residence permit have been formulated as material requirements for the granting of permits. The general grounds for refusal are set out in the Aliens Act, whereas the grounds for refusal of family reunification have been laid down in the Aliens Decree.[27]
The grounds on which an application for the renewal of the permit can be refused, or the grounds on which a permit can be revoked, are largely similar to the conditions that apply to the granting of the first permit. In addition, submitting false information or withholding relevant information that led to the rejection of the original application, are grounds for the withdrawal of the permit or the refusal to renew the permit. The Netherlands has also adopted the explicit condition for family reunification and family formation that the family members cohabit with the sponsor. This cohabitation condition cannot be found in the directive. A foreign national has to specify changes in his situation that are relevant for his/her right to a residence permit in his application. A disrupted relationship between the partners or between the partners and the children is relevant and should be reported by the foreign national. Failure

[22] Vc B2/6.12.11.
[23] Vc B2/7.9.
[24] See Art. 3.50 and 3.51 Vb respectively.
[25] Art. 3.52 Vb.
[26] By decree of 30 March 2004, the Aliens Act Implementation Guidelines 2000 were amended to include that demonstrable (sexual) violence in the marriage is considered sufficient grounds for the granting of a continued residence permit. Stcrt. n° 63, 31-03-2004, p. 16. See Vc B16/7.
[27] Art. 3.13 – 3.26 Vb 2000.

to report relevant information is punishable.[28] If the relationship is disrupted temporarily on account of acts of violence on the part of the sponsor, the permit is not revoked if the relationship was not longer disrupted than one year.[29]

Balancing of interests (Art. 17 of the directive)
Article 17 of the directive can be considered as a codification of the case law of the European Court for Human Rights (ECHR) regarding the scope of Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) in matters concerning family migration. Article 8 of the ECHR stipulates that everyone has the right to respect of his family or private life. A public authority may only interfere with the exercise of this right as is in accordance with the law and is necessary in a democratic society in the interest of national security, public safety, the economic well-being of the country or for the prevention of disorder or crime, for the protection of health and morals, or for the protection of the rights of freedom of others.
The interests set out in Article 17 of the directive should already be regarded in accordance with the General Administrative Law Act (Awb). As a matter of extra precision the balancing of interests set out in Article 17 of the directive have been explicitly described in the stipulations for the rejection of the application to grant, renew or change the regular residence permit on grounds of public safety (see above Article 6 of the directive). According to the Minister, the weight of Article 8 of the ECHR in the decision on applications for family reunification or formation has been described in the Aliens Act Implementation Guidelines. The policy essentially rules that Article 8 of the ECHR should always be relied on when no residence permit for family reunification or family formation is granted after consideration of the national conditions. This examination is carried out both for applications for a first residence permit and for the withdrawal or non-renewal of a permit.

Redress (Art. 18 of the directive)
The foreign national may lodge an objection against the full or partial refusal of the application to grant, renew or modify a regular residence permit. Pursuant to the Aliens Legislation, objections should be lodged with the Secretary of State of Justice within four weeks after notification of the decision. A notice of objection against the refusal to grant an authorisation for a provisional residence permit should be lodged with the Minister of Foreign Affairs.
The principal rule is that the decision is suspended when a notice of objection is lodged against the rejection of the application to grant, renew or change the regular residence permit, while the notice of objection is being considered. This implies that the foreign national may reside in the Netherlands pending the ruling of his notice of objection against the decision. He/she still has a lawful residence in the Netherlands and cannot be removed. In cases in which the lodged objection does not have a suspensive effect, the foreign national can apply for a so-called 'preliminary injunction' in which he requests authorisation to reside in the Netherlands pending the ruling. If a preliminary injunction is requested to prevent removal from the Netherlands and a decision is pronounced on the preliminary injunction prior to the consideration of the objection, the preliminary injunction court can also rule on the objection.
The administrative authority that has taken the original decision, will consider the objection. The decision period is six weeks. This period can be extended by a maximum of four weeks.
If the authority declares the objection unfounded, the foreign national can lodge *an appeal* against the disallowance with the Aliens Chamber of the court in The Hague. The period for the lodging of an appeal is four weeks. Court fees will be charged for the appeal procedure. No legal period has been defined for the judgment of notices of appeal by the court. If the court allows the appeal, the administrative authority will have to take a new decision on the notice of objection or appeal the decision of the court. Both the foreign national and the Secretary of State have the right to appeal the decision of the judge at the Administrative Law Chamber of the Council of State (ABRS). The Chamber pronounces its judgment not later than twenty three weeks upon receipt of the notice of appeal.

See paragraph 3.2.2 for an overview of case law regarding the directive.

[28] See Art. 54, paragraph 1 sub b Vw and Art. 4.43 Vb for information duty. Penalisation is set out in Article 108 Vw.
[29] Art. 3.90 Vb.

3.1.4. Sponsor outside the scope of application

The scope of the directive is restricted to the sponsor specified in Article 3. The sponsor should be a third country national who lawfully resides in a member state and has a residence permit with a duration of at least one year with a view to a permanent residence permit. Excluded from the scope of application are: persons who are awaiting a decision on an application for refugee status and persons who reside in the member state on the grounds of temporary protection or subsidiary forms of protection or who await a decision on the application for these forms of protection.

The Dutch regulations do not provide a possibility of family formation for persons who await a decision, in accordance with the provisions of the directive. The same regime for sponsors, who were granted a residence permit on the ground of the Geneva Convention on Refugees, applies to sponsors who enjoy other forms of protection (Art. 3, paragraph 2 sub b and c of the directive). They can derive the same rights from the asylum residence permit.

Union citizens are also excluded from the scope of the directive (Art. 3, paragraph 3 of the directive). The regulations regarding the free movement of persons for Union citizens who exercise or have exercised their right of free movement also apply to their right to family reunification (see directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely in the territory of member states). It should be stated that partners of this group of sponsors in the Netherlands are treated as spouses, as in the case of family migration to the Netherlands under the Family Reunification directive.

The national rules apply in the Netherlands to Union citizens who do not exercise their right to free movement, Dutch citizens. They neither come under Community law nor within the scope of the directive. For some time, there existed some uncertainty about this issue in the Netherlands. A passage in the Aliens Act Implementation Guidelines stated that the directive would apply analogously to Dutch citizens.[30] However, this passage has been abolished as of 1 January 2007.[31]

3.2 Developments in the family reunification policy

An overview of the Dutch policy on 1 January 2007 based on the Family Reunification Directive is provided in paragraph 3.1. The developments between 2002 and 2006 regarding family migration are discussed. A number of important developments took place during the reference period. One of these developments was the establishment, entry into force and implementation of the Family Reunification Directive. The Family Reunification Directive and the impact of the directive on the Dutch policy have led to a discussion by a limited group of experts. Legal proceedings were instituted with regard to the question whether certain provisions of the Dutch policy are in line with the directive.
Finally, a number of developments took place in the Dutch family reunification policy that are within the scope of the directive but cannot be directly attributed to the directive, such as measures that were specifically implemented for family formation.
The construction of the paragraph is as follows. Firstly, a short description is presented of the establishment of the Family Reunification Directive and its implementation in the Netherlands. Subsequently, the thematic developments of certain provisions of the directive that were the subject of debates and litigation will be elucidated. This paragraph concludes with a discussion of a number of other family reunification and family formation measures that were implemented during the reference period.

[30] WBV 2004/63, Stcrt 20 October 2004, n° 207. Date of entry into force 1 November 2004.
[31] Aliens Act Implementation Guidelines 2000 B2/1.1, November 2006, supplement 86.

3.2.1. Establishment and implementation of the Family Reunification Directive

1. Establishment of the Family Reunification Directive
On 1 December 1999, a first proposal for a directive of the Council on the right to family reunification was submitted by the Commission.[32] The aim of the directive was to harmonise national legislation. The Commission submitted an amended proposal based on the amendments of the European Parliament.[33] The negotiations advanced with difficulty. For a number of countries, including the Netherlands, the proposed scope of the directive presented an obstacle.[34] According to the proposal, Union citizens who do not exercise their right to free movement, would also be able to derive rights from the directive. Another issue on which no agreement could be reached, was the question which family members would be granted a right to family reunification and under which conditions. As the negotiations ended in a deadlock, the Laeken European Council asked the Commission on 14 and 15 December to submit a new amended proposal.[35] This second amended proposal[36] offered more flexibility on a number of issues. On 27 February 2003, a political agreement was reached on the directive with the reservation pending scrutiny by the Dutch parliament. The Family Reunification Directive was adopted on 23 September 2003.

Both parliament and non-governmental organisations (NGO's) and the media only paid little attention to the establishment of the directive and the impact hereof on the Netherlands.[37] The media only paid attention to the directive after its official adoption.[38]
Of the large number of NGO's that look after the interests of migrants in the Netherlands, only a few demonstrated involvement in the establishment of the Family Reunification Directive. The Permanent Commission of experts in international aliens and refugees legislation and criminal law (the Meijers Commission) sent several letters to the members of the Senate and House of Representatives and the European Commission with regard to the development of the directive during the period December 2002 to May 2003.[39] The Commission was of the opinion that the directive had been eroded to such an extent that family reunification could be restricted for a long period or rendered impossible as a result of the accumulation of restrictive measures. This would potentially lower the protection level of family migrants below the minimum level of Article 8 of the ECHR. The Commission therefore argued in favour of the inclusion of an explicit provision in which compliance with the obligations by virtue of Article 8 of the ECHR would be safeguarded. The actions of the Meijers Commission ultimately led to an official declaration of the Netherlands with regard to the directive stating that the directive should be implemented with due regard to the standards of Article 8 of the ECHR.
Another interest group, VluchtelingenWerk Nederland[40], urged the House of Representatives to disagree with the draft directive. VluchtelingenWerk also believed that the directive had been stripped to such an extent that it could no longer bear the title 'family reunification'.[41] In a comment on the directive, the group mentioned ten critical points, including the possibility to impose a joining period of 3 months as a requirement for the application of the more lenient regime for family reunification with legally admitted refugees and also the possibility to impose the condition that family reunification has to be impossible in another country with which the sponsor or his/her family members have a special link.

---

[32] COM (1999) 638 def.
[33] COM (2000) 624 def.
[34] Council document 5772/00, p.12.
[35] Conclusions of the chairmanship, Laeken, point 41.
[36] COM (2002) 225 def.
[37] Den Heijer 2007.
[38] The family migration issue garners much attention of the media. This was revealed in a study conducted for the Scientific Council on Government Policy (WRR) on the Dutch policy regarding the Family Reunification Directive. The media attention study covers the period 2000 – 2006. The study focused on three national newspapers, namely Volkskrant, Telegraaf and Trouw. During this period, the three newspapers jointly dedicated 476 articles to the family migration issue. Only fifteen of these articles focused on the impacts of the Family Reunification Directive for the Dutch policy.
[39] CM 0213, CM 0304, CM 0301.
[40] VluchtelingenWerk Nederland devotes itself to the interests of asylum seekers and refugees in the Netherlands.
[41] Letter of VluchtelingenWerk Nederland to the spokespersons for asylum policy of the parliamentary parties of the Lower House, 25 March 2003.

Finally, the Stichting Lawine and the Actiecomité Referenten can be mentioned[42]. These two organisations seized the establishment of the EC Family Reunification Directive to propose a number of policy amendments. In a joint report, submitted to the Minister of Justice and the House of Representatives on 26 February 2002, they called for attention to the difficulties encountered by Dutch citizens who want to bring a partner from outside the EC to the Netherlands. At that point, the proposal for the directive contained a provision to the effect that the conditions for the admission of family members of own citizens would be put on a par with the conditions for the admission of family members of Union citizens who exercise their right to free movement. The two organisations entreated the authorities to review the Dutch viewpoint with regard to the reversed discrimination of its own citizens compared with Union citizens. The Minister replied by letter to the Standing Committee on Justice on the contents of this report. She stated that acceptance of the equal treatment of Dutch citizens with Union citizens proposed in the directive would constitute a far-reaching extension of the policy and did not deem this advisable.[43]

2. Implementation of the Family Reunification Directive
The Family Reunification Directive was implemented in the Netherlands more than a year after its entry into force. The Decree on the implementation of the directive was promulgated on 29 September 2004[44] and entered into force on 1 November 2004. Certain Dutch provisions were amended in the Decree of 23 November 2006 in connection with the implementation of the directive for long-term residents (2003/109/EC) within the framework of the Family Reunification Directive.[45] These amendments entered into force on 1 January 2007.

The Netherlands only introduced a limited number of amendments in its legislation in order to implement the directive. Firstly, an exemption of the resources requirement was implemented for family members with a different nationality than the nationality of the asylum status holder/sponsor, who submit an application for a provisional residence permit for family reunification reasons within three months after the status was granted to the sponsor and who cannot establish or preserve family life in another country than the Netherlands. They are also exempted from the integration abroad requirement. Furthermore, all conditions for regular residence permits for family reunification reasons (see Article 12 for an explanation of provision 3.1.3) apply. Secondly, the opportunity was created to admit the parents of an unaccompanied minor refugee with an asylum permit (see also under Article 10).
Finally, the balancing of interests set out in Article 17 of the directive has been explicitly included in the Dutch provisions with regard to the rejection of a residence permit, or the withdrawal or refusal to renew a regular temporary residence permit on the ground of danger to public order (see Article 6 of the directive). This provision of the directive is not referred to in other Articles of the Vw or the Vb.

In a reply to these measures inherent in the implementation of the Family Reunification Directive, VluchtingenWerk Nederland doubts as to whether the proposed measures for family reunification with an asylum status holder when the family members have another nationality, is in full agreement with the directive.[46] The organisation fails to understand how the balancing of interests set out in Article 17, including the duration of the stay of the sponsor in the Netherlands, will be taken into account in the decision on the application if family life in a different country is possible.

[42] Stichting Lawine is a national organisation for bicultural relations and families. www.stichtinglawine.org. The actiecomité referenten recently changed its name to 'Stichting Buitenlandse Partner'. www.buitenlandsepartner.nl.
[43] Letter of the Minister to the Lower House. TK 2001-2002, just020427, 3 May 2002.
[44] Decree of 29 September 2004 on the amendment of the Aliens Decree 2000 in connection with the implementation of Directive 2003/86/EC of the Council of 22 September 2003 on the right to family reunification (OJ EC L 251) and certain other issues concerning family reunification, family formation and public policy. Stb. 2004, 496.
[45] Decree of 23 November 2006 on the amendment of the Aliens Decree 2000 in connection with the implementation of Directive 2003/109/EC. Stb. 2006, 585. Entry into force on 1 January 2007.
[46] Letter of VluchtelingenWerk Nederland to the spokespersons with regard to the integration and asylum policy of the Standing Committee on Justice of the Lower House, 12 October 2004.

3.2.2. Developments regarding certain provisions of the Family Reunification Directive

1. Scope of the directive for persons with a dual and/or Dutch nationality
The scope of the directive is limited to sponsors who are third country nationals by virtue of Article 3. Union citizens are excluded from the scope of the directive in accordance with Article 3, paragraph 3. Nevertheless, for some time, uncertainty existed in the Netherlands in respect of the scope of the directive. In different court judgments the directive was declared to be applicable to both sponsors with a dual nationality (the nationality of a third country in addition to the Dutch nationality) and sponsors with single Dutch citizenship.
This uncertainty was also caused by the previously mentioned passage in the Aliens Act Implementation Guidelines, which stated that the directive would analogously apply to Dutch citizens. For sponsors with the Dutch nationality, the court allowed the reference to the aforementioned passage from the Aliens Act Implementation Guidelines and declared that the directive had to be applied analogously to Dutch citizens.[47] The Chamber later quashed the judgment after deciding that the passage in the Aliens Act Implementation Guidelines was in violation of the Aliens Decree[48]. Questions were put to the Minister in the Dutch parliament concerning these two judgments.[49] The Minister replied that the implemented policy with regard to family reunification with a third country national, should apply the same rules to sponsors with the Dutch nationality and to sponsors with the nationality of a third country with a residence permit. The passage in the Aliens Act Implementation Guidelines was intended to introduce the implemented policy. For clarity's sake, it was nevertheless decided to amend the text in the Vc. However, the judges also decided on the ground of other arguments that Dutch citizens with a dual nationality fell within the scope of the directive. In the first decision where this issue was debated, the court confined itself to the argumentation that persons with a dual nationality had not been expressly excluded from the scope by the Minister.[50] In an appeal against this decision, the Chamber judged that a person with a dual nationality i.e. Dutch nationality and another nationality, is a Union citizen within the meaning of the directive and that the scope is excluded by virtue thereof.[51] The court in Middelburg acquiesced in this opinion in a judgment of 18 October 2006 with regard to a sponsor with both the Turkish and Dutch nationality.[52] The court argues that the preamble of the Family Reunification Directive shows that family reunification is considered a fundamental right and that the wording of the directive does not show that persons with dual nationality should be excluded. After this judgment, no other judgments in which the directive was declared to apply to Dutch citizens with a single or dual nationality against the grain of the Chamber were pronounced by judges of lower courts. It seems that the courts have ceased their opposition against the stance of the Chamber. The Chamber has confirmed its stand regarding persons with the single Dutch nationality in a judgment of 20 March 2007.[53] The question, whether the directive applies to persons with dual nationality, was not answered by the Chamber in its judgment of 6 March 2007 by concluding on substantive grounds that the party concerned would not be in a more favourable position, even if the directive would have applied to him.[54] Whether this means that there is still room for arguments on the ground of which the directive can be declared applicable to persons with dual nationality, appears unlikely in view of the earlier judgments of the Chamber, but cannot be fully excluded.

2. The actual family tie
A condition in the Dutch policy for family reunification with minor children is the existence of an actual family tie. Family reunification is granted to the minor child that actually belongs and already belonged to the family of the sponsor in the country of origin.[55] The elaboration of this condition has been laid

[47] Court of The Hague zp Rotterdam 17 - 07 – 2006, JV 2006/36.
[48] ABRvS 23 – 11 – 2006, JV 2007/39, m.nt. C.A. Groenendijk.
[49] TK 2006 – 2007, Appendix, 901, p. 1929 Questions of member of parliament Spekman with reply of the Secretary of State.
[50] The Hague court zp Amsterdam 16 -11-2005, JV 2006/28.
[51] ABRvS 29 - 03 - 2006, JV 2006/172, m.nt. C.A. Groenendijk.
[52] The Hague court zp Middelburg 18 - 10 – 2006, JV 2006/462, m.nt. P. Boeles
[53] ABRvS 20 – 03 – 2007, 200609096/1, migratieweb ve07000713.
[54] ABRvS 06- 03 - 2007, JV 2007/178, m.nt. P. Boeles.
[55] Art. 3.14, paragraph 1, sub c Vb.

down in the Aliens Act Implementation Guidelines.[56] Up to five years after the separation between parent(s) and child, the Implementation Guidelines assume that the child belongs to the family. Only when the child lives on its own and becomes self-supporting, when the child forms an independent family by contracting a marriage or relationship, when child protection measures have been imposed and/or when custody arrangements are made, it is assumed that the family relationship has been disrupted. Upon the expiry of the reference period of five years, it is assumed that the family tie has been disrupted, unless special circumstances exist in connection with the person or in the family, or if the child could not be traced as a result of a war situation. Already at the promulgation of this policy, it was contended that the policy was not in line with the case law of Article 8 of the ECHR.[57] After the entry into force of the directive, it was argued in legal literature that this policy was in violation of Articles 4 and 16 of the directive.[58] Court cases were also held about the question whether the Dutch concept of 'actual family tie' had the same meaning as the 'real marital or family relationship' referred to in Article 16 of the directive.
Three full bench aliens divisions judged that the Dutch policy was in violation of the directive with regard to the actual family tie. See also the judgment of the court of The Hague z.p. Amsterdam of 16 November 2005.[59] The court concluded that the concept of a 'real marital or family relationship' (Article 16, paragraph 1 sub b) of the directive does not require that the child already belonged to the family of the sponsor in the country of origin. The judge was also of the opinion that the directive leaves no room to establish "further rules" in respect of a national explanation of the community concept of real marital or family relationship". In its decision of 12 July 2006, the Chamber reached a different conclusion on the ground of a further explanation of the policy by the minister.[60] According to the minister, the foreign national is given the opportunity to prove that the actual family tie with the family member, with whom reunification is intended, is not disrupted, if none of the enumerated circumstances arise. The foreign national can be eligible for family reunification if all other conditions are satisfied.[61] The Chamber concludes that the Dutch policy, as explained by the minister in casu, is in line with the directive.[62]

Meanwhile, the Dutch policy has been amended in connection with this condition not as a result of the directive but based on developments in the case law of the ECHR.
The Netherlands concurs with the interpretation of the ECHR of the concept of 'family life'. This assumes that the family tie between parents and minor children has continued to exist, unless there are certain restrictive circumstances. The new policy was implemented retroactive to 8 September 2006.[63]

3. Extended family reunification
The provisions of the directive regarding the admission of first-degree relatives in the direct ascending line and major children are optional with regard to the question which other family members can derive rights from the directive. In the literature it is concluded that the national provisions regarding the admission of parents and major children are not in full agreement with the directive.[64] Important cited differences are that the admission of parents based on the Dutch rules only applies to sole parents of 65 years or older of the sponsor, while the directive refers to *all* dependent first-degree relatives in the direct ascending line (not only when they are unaccompanied and older than 65 years) of *both* the sponsor and his/her spouse. The Dutch requirement that all children should reside in the Netherlands has not been included in the directive either. The question that is subsequently asked in the literature is whether a national policy can be implemented based on the directive, while an optional provision in respect of the same issue has been set out in the directive.[65] In other words, is a member state allowed to not apply an optional provision to a certain issue and subsequently introduce its own rules in respect of the same

[56] The interpretation of the concept of actual family tie entered into force on 22 March 2002.
[57] Van Walsum 2002, p. 57.
[58] See also. Scheers 2004a, p. 287 – 288; Boeles, Lodder, Guèvremont 2006, p. 32 – 33; Groenendijk 2004. p. 4.
[59] JV 2006, 28. See also: The Hague court zp Haarlem, 21-12-2005, JV 2006/65; The Hague court zp Middelburg, 14-03-2005, JV 2006/177.
[60] ABRvS 12 -7-2006, JV 2006/328 m.nt. C.A. Groenendijk
[61] ABRvS 12 juli 2006, r.o. 2.5.2, JV 2006/328, m.nt. C.A. Groenendijk.
[62] ABRvS 12 juli 2006, r.o. 2.5.3.
[63] Amendment of Aliens Act Implementation Guidelines 2000 (2006 / 33A), p. 2, Stcr. 29 November 2006, 233 / page 9.
[64] See also Scheers 2004, p. 287 – 288; Boeles, Lodder, Guèvremont 2006, p. 32 – 33; Groenendijk 2004, p. 4.
[65] Ibid.

issue? In a letter to the House of Representatives of 23 February 2005[66], the Minister stated that these provisions (Art. 4, paragraph 2, sub a and b, of the directive) are optional and that the Netherlands did not implement the relevant provisions. The Minister points out that the policy regarding extended family reunification is more favourable than the minimum requirements in Article 4 of the directive. According to the Minister, such is in line with Article 3, paragraph 5, which allows member states the scope to establish or maintain more favourable provisions. This point of view is contested.[67] It is argued for instance that the explanation to the amended proposal for the directive stipulates that member states have to authorise family reunification for these persons (the major children and first-degree relatives in the ascending line) 'under the requirements set forth in the proposal'.[68] According to the authors, it could be inferred that a member state would not be allowed to introduce its own rules. It was also alleged that it could be inferred from the establishment history of the directive, that it was not the intention of the Community legislator to leave the admission of other family members to the national legislation of the member states in view of the fact that several proposals of the same tenor were rejected during the negotiations about the establishment of the directive.[69]

4. Public order policy

Different points of view exist with regard to the question whether the Dutch policy in respect of the rejection of an application, the refusal to renew or the withdrawal of a residence permit is in line with Article 6 of the directive (see Article 6 in paragraph 3.1.3 for a description of the Dutch policy on this issue). The Advisory Committee for Alien Affairs (ACVZ)[70] stated in its advice on the proposed tightening of the public order policy that more embracing guarantees are set out in the directive than in the Dutch sliding scale.[71] In addition to the duration of stay and the severity of the offence, which has been allowed for in the sliding scale, the ACVZ believes that the dangers that emanate from the person should also be taken into account. This is a future-oriented factor that assumes a more complex examination than that laid down in the national public order policy. The Minister is of the opinion that the directive does not stipulate a risk assessment for all cases.[72] Furthermore, the minister stated that an individual balancing of interests always took place by virtue of Article 8 of the ECHR and that the General Administrative Law Act (Awb) also lays down a balancing of interests. An automatic application of the sliding scale is out of the question according to the Minister. The Meijers Commission was not convinced by the reaction of the cabinet to the advice of ACVZ. The Commission stated that the new EC directives (including the Family Reunification Directive) impose more stringent requirements on the consideration of the individual interests than the general standards of Article 8 of the ECHR provide for and concerning the assumed non-mandatory character of the risk assessment by the Minister, the Commission is of the opinion that this explanation is 'evidently in breach of the text of Article 6, paragraph 2 of the directive'[73]. Meanwhile, the mandatory balancing of interests by virtue of Article 17 of the directive has been included in the provisions of the Aliens Decree that provide for the rejection, withdrawal or refusal to renew the residence permit on grounds of public policy.[74] The text of these provisions now reads *'when the application is related to family reunification or family formation, the nature and the solidity of the family relationships of the foreign national and the duration of his residence, and the existence of family, cultural and social ties with the country of origin should be taken into account as a minimum requirement.*' The viewpoint of the ACVZ and the Meijers Commission that the danger emanating from the person should be also considered, has not been met by this amendment.

---

[66] TK 2004-2005, 19 637, n° 901.

[67] See Boeles, Guèvremont en Lodder 2006, p. 35 – 36.

[68] Explanation of amended proposal COM (2002) 225, p.5. Ibid. footnote above.

[69] See for instance Council document 9019/01, p.9.

[70] ACVZ is an independent advisory committee that provides advice on aliens legislation and aliens policy. It provides invited and uninvited advice to the government and parliament.

[71] ACVZ 2005, p. 23.

[72] TK 2005-2006, 19 637, nr. 971.

[73] Permanent Committee of Experts in International Aliens and Refugees Legislation and Criminal Law, CM0503, 10 October 2005, p. 3.

[74] See Article 3.77 Vb and Art. 3.86 Vb. These provisions were amended when the Directive for long-term residents of third countries was implemented (Directive 2003/109/EC). Published in the Stb. 2006, 585. Entry into force 1 January 2007.

5. Dual applications

As explained above in paragraph 3.1.3 in 'Submission and examination of the application', the right to entry into the territory is first examined based on the conditions for family reunification or family formation when an application for a provisional residence permit is submitted. Subsequently, an application for a residence permit has to be submitted after entry into the country. This residence permit can still be refused when an examination reveals that the conditions are no longer satisfied. In professional literature doubts are cast on the dual review system. It is called into question whether this is in line with Articles 5 and 13 of the directive.[75] It is also contended that it can be inferred from Article 5 of the directive that the application where family members reside abroad should relate directly to a residence permit. When the application for family reunification is granted, the Netherlands would have to grant entry to the family members according to the authors by virtue of Article 13 and grant such person every facility for obtaining the requisite visa.[76] A residence permit should be granted pursuant to Article 13, paragraph 2. According to them, the provision does not provide for an additional review of the conditions for family reunification. The importance of this debate lies in the fact that the conditions for the first granting of the application are not similar to the grounds on which a residence permit can be revoked. When the concerned party no longer satisfies the conditions after the residence permit has been granted, it can be examined whether the residence permit should be withdrawn. In particular the review of conditions pursuant to Article 8 of the ECHR differs where it concerns the granting of a first residence permit or the termination of residence. This matter was also brought before the court. In a decision of the interlocutory court of 16 November 2006, the court endorses the position that the directive refers to an application for family reunification where decisions on both entry and residence are taken. According to the court, this would mean that a positive decision on a provisional residence permit would also imply a positive decision on residence. No appeal was open against this decision. The Administrative Law Chamber did not yet make a statement regarding this issue.

A possibility to change the policy with regard to the dual procedure was provided at the end of the reference period. An investigation into other possibilities than the current dual procedure system has been planned in the 2007 programme of the ACVZ. Regarding the provisional residence permit procedure, the ACVZ has been asked to provide advice on the possibility to avoid a dual procedure and waiting period for regular residence permits. A request was also made to map out other possibilities for the application procedure and base these on practices in other European countries.[77]

3.2.3. Other family formation and family reunification measures

The policy for family migration to the Netherlands, and in particular family formation, was tightened on several counts during the reference period. These measures had already been agreed in the cabinet decision of the second Balkenende cabinet.[78] The government considers it necessary '*in connection with the non-existent integration and the limited social support for the entry of new migrants to pursue a more restrictive family migration policy within the limits of international law*'[79]. The two most important measures were the increase of the minimum age to 21 years for family formation for both the sponsor and the partner and an increase of the income requirement for the sponsor to 120 % of the legal minimum wage. According to the Explanatory Memorandum to this amendment, large-scale family migration from Turkey and Morocco seriously impeded integration at the group level and an important part of the family migrants had characteristics that were unfavourable to a suitable integration in Dutch society. The aim of the measures was to discourage family migration of Turkish and Moroccan marriage partners with these characteristics**.** The earlier adopted age requirement of 18 years and the income

[75] See also Scheers 2004, p. 290; Boeles, Guèvremont, Lodder, 2006, p. 39 and 73; Lodder, 2007, p. 30 - 31; Groenendijk et al 2007, p. 69.

[76] Boeles, Guèvremont, Lodder, 2006, p. 73.

[77] www.acvz.com/publicaties/WP_2007_NL.pdf

[78] This is known as the so-called coalition agreement. TK 2002 – 2003, 28 637, n° 19. See p. 14 for family reunification and family formation measures.

[79] Memorandum of Explanation to the Decree of 29 September 2004 on the amendment of the Aliens Decree 2000 in connection with the implementation of Directive 2003/86/EC and certain other issues regarding family reunification, family formation and public policy, Stb. 2004, 496, p. 5.

requirement at the social security level did not safeguard sufficiently that the sponsor, who wanted family reunification with his/her partner, would also be able to fulfil his financial responsibilities and the integration responsibility of himself/herself and his/her partner in the long term. An increase of the age requirement from 18 to 21 years for the sponsor would reduce the chance that he/she would be encouraged 'to leave school and hence be insufficiently prepared for access to the labour market and stunted in his further social development.' For the partner applies, that it can be prevented that the assumed deprivation of the sponsor is reproduced in the position of the new partner whose integration would consequently already show a lag.' Moreover, 'the 21 year minimum age (for the partner) warrants that reunification with the (marriage) partner is based on a deliberate and voluntary choice of the party concerned'.[80]
In the first instance, the Minister expected a decrease of the number of granted applications for provisional residence permits by approximately 45%. In part, it would concern a postponement of family migration until a later date when the conditions were satisfied.

In addition to these measures that are specifically directed to family formation, a number of measures for family reunification were also introduced. For instance, exemption grounds for the resources requirement are limited to sponsors who are 65 years or older, or permanently and fully disabled. Until 1 November 2004, an exemption of the resources requirement applied to sponsors who were 57 ½ years or older or when he/she as single parent took care of children under the age of 5. The Minister was of the opinion that the financial responsibility for reunification with family members should also apply to this category of sponsors. Finally, a more lenient public order regime applied to family members of a Dutch citizen, holders of a temporary asylum residence permit or holders of a permanent regular or asylum permit. According to the Minister, the principle that the importance of the foreign national in the family relationship should have more weight than the public policy interest, should no longer apply. Instead it should be examined in each individual case whether an obligation exists by virtue of Article 8 of the ECHR to grant entry into the Netherlands despite offences against public order.

At the request of the Minister, ACVZ already advised on the proposed amendments whereby legal tenability was a first priority.[81] ACVZ believes that the aforementioned new requirements for family formation are not unacceptable in their own right and that they are in accordance with the directive. However, the necessity of an increase of the income requirement to achieve political objectives is called into question and ACVZ wonders what the cumulative impact of all proposed measures will be. Furthermore, ACVZ is of the opinion that the 21 years requirement and the increase of the income requirement is contrary to Article 8 of the ECHR in the case of family formation with an asylum status holder when objective impediments exist that prevent family life in the country of origin.
The discussion also focused on the alleged inconsistency of the measures with different international treaties.[82] Professor Groenendijk points out the inconsistency of the increase to the age requirement of 21 with the European Social Charter and the European Convention on the Legal Status of Migrant Workers. The income requirement of 120 % of the net minimum wage is in his opinion contrary to the Family Reunification Directive.
FORUM (Institute for Multicultural Development) had already commented on these conditions earlier and had warned of its the arbitrary character. It asked in May 2003 why an income requirement of 120% was imposed while the legal minimum wage had been based on the fact that a family could support itself on this wage.[83]
The interest group VluchtelingenWerk Nederland deplored the fact that the implementation of the directive was used to introduce restrictive measures for family migration.[84] One month after the Amendment Decree for the implementation of the directive was published, VluchtelingenWerk Nederland endorsed the earlier point of view of ACVZ with regard to family formation of asylum status holders. Furthermore, it agrees with Groenendijk that the new income requirement conflicts with the Family Reunification Directive.

---

[80] Stb. 2004, 496, p. 10-11. Memorandum of Explanation.
[81] ACVZ 2004a.
[82] Letter Groenendijk 2004.
[83] Press release Utrecht, 20 mei 2003. Reaction of FORUM to coalition agreement. FORUM: Integration becomes a one-way street in new coalition agreement. www.Forum.nl/persberichten.
[84] Letter VluchtelingenWerk 2004.

E-Quality (Knowledge Centre for Emancipation, Family and Diversity) is of the opinion that the increase of the income requirement will hit women harder than men because women earn less than men in general.[85] This is worse still for women from ethnic minority groups. They will have more difficulties in bringing a partner from abroad, according to E-Quality and this is prohibited discrimination by virtue of the UN Convention on the Elimination of all Forms of Discrimination Against Women.
In the de Hart study, assumptions that underlie the debate on marriage migration are discussed, such as the idea that marriage migration hinders integration, that marriage migration can be regulated and that restrictive measures favour integration.[86] Furthermore, it was concluded based on the study that restrictive measures lead to postponement but not to renunciation.

3.3. Conclusion

The impact of the directive on the development of the policy during the period 2002 – 2006 is not particularly large. The amendments made to the Dutch policy in order to implement the directive are limited. The Netherlands implemented only few of the restrictive optional provisions. No waiting period of two or three years was introduced, no restriction of the right of minor children of fifteen or older was imposed and no specific integration requirements for children of over twelve were implemented. The accommodation requirement was not reinstated either, although there was some talk about reinstatement at one point. On the other hand, the Netherlands did not use a number of liberalizing optional provisions such as the provision regarding parents or other family members of unaccompanied minor refugees. Regarding the special regime for refugees, the Netherlands made use of the possibilities to limit the scope. The potential restrictions for which the Netherlands made a case during the negotiations about the directive have been introduced: namely the age requirement of 21 years and the possibility to impose integration requirements. The involvement of NGO's in the establishment of the directive was minor. After its entry into force, the directive did not attract much attention either except from a select critical group of experts. All attention was focused on national policy proposals. Certain aspects of the Dutch policy were contested before the court. Many court cases are dismissed (by the appeal court) because the concerned sponsor falls outside the scope of the directive. In many cases the judge does not have to decide whether a Dutch provision conflicts with the directive. As a result of this line of case law, the directive only plays a limited role in the administration of justice for the time being.

Although the impact of the directive on the policy is not extensive, certain important developments regarding family migration took place during the period 2002 – 2006. A clear trend towards a more restrictive policy emerged during this period. The policy in this period was based on the observation that large-scale family migration seriously impeded integration at the group level and that new measures that contributed to a better integration were needed. The most important measures relate to family formation, but the policy has also become more restrictive in general where family reunification is concerned. This trend coincides with a shift in the political field of influence. The rise of Pim Fortuyn and the LPF (Pim Fortuyn List) had a large impact on the social and political debate on migration. New cabinets in 2002 (CDA, LPF, VVD) and 2003 (CDA, D'66, VVD) led to new family formation measures such as the increase of the age requirement to 21 years, integration requirements and the increase of the income requirement for family formation.

[85] Herman 2004, p. 1. See also Kraus 2005, p. 106 – 110.
[86] De Hart 2004.

4. Scale and composition of family migration

Dutch policy distinguishes between family reunification and family formation. Family reunification is understood to mean the reunification of family members with a sponsor in the Netherlands in cases where the family relationship arose in the country of origin. If the family tie arose after the entry of the sponsor into the Netherlands, we refer to family formation. The policy of the last few years distinguishes between measures regarding family formation and measures directed at both modes of family migration. Therefore, the present study also distinguishes between family reunification and family formation.

Most foreign nationals have to apply for a provisional residence permit as a condition for the granting of a temporary regular (non-asylum) residence permit (see the list of countries of which the citizens are not subject to a provisional residence permit in Annex 3). An application for a provisional residence permit is submitted in the country of origin or permanent residence. When deciding on the application for a provisional residence permit, it is examined whether the person concerned meets the conditions for family reunification or family formation. The application is rejected if he/she does not meet the conditions. Theoretically, a foreign national who is subject to a provisional residence permit obligation and who submits an application for a residence permit for reasons of family reunification or family formation, will be granted a residence permit when he/she satisfies the conditions. A different procedure applies to foreign nationals that do not have to apply for a provisional residence permit. The application for a residence permit from these foreign nationals has not yet been examined against the conditions for family reunification or family formation as part of an application for a provisional residence permit. The presented statistics relate to applications for a residence permit and not to applications for a provisional residence permit in order to present a more accurate picture of the total family reunification and family formation immigration in the Netherlands.

Family members of the holder of an asylum residence permit can be granted an asylum residence permit for family reunification reasons when the specific conditions attached to the granting of such a permit are satisfied. This permit is not granted on asylum-related grounds but based on the fact that the applicant is a family member of the holder of the asylum permit. Family members, who are granted a residence permit for family reunification on this ground, are not included in the statistics related to regular residence permits for family reunification reasons. No separate records are kept of persons who are granted an asylum permit for reasons of family reunification. No data are available regarding these applications for family reunification and the associated decisions.
Family members of an asylum status holder who do not meet the conditions for the granting of an asylum residence permit, such as family members who do not satisfy the joining criterion or family members who want to join the asylum status holder for reasons of family formation, come under the regular admission policy and are included in the data below.

Reliable data regarding residence permits for family migration for the present study were only available for 2005 and 2006. This limits the possibility to draw conclusions about trends and possible impacts of the policy.

4.1. Scale of family reunification

4.1.1. Number of applications for family reunification

Information with regard to the number of submitted applications for regular residence permits for family reunification and family formation and the total scope of family migration is presented in this paragraph. The number of submitted applications in 2006 decreased by almost 4,500 applications compared with 2005. This decrease is caused by both a decline in the number of applications for family reunification and a decline in the number of applications for family formation. This could indicate a limiting effect on immigration of the Integration Abroad Act. This Act that entered into force on 15 March 2006 provides a new admission condition: the integration exam abroad. Theoretically, this exam is mandatory for foreign nationals between 16 and 65 years who have to apply for a provisional residence permit and who want to reside permanently in the Netherlands for example in the case of family

reunification or family formation (see paragraph 5.1 for more information). A reservation should be entered here in view of the effective date of the Integration Abroad Act (15 March 2006) and in view of the fact that compliance with the integration condition was already examined when the application for a provisional residence permit was submitted. This causes a delay in the effect on applications for regular residence permits. As a consequence, the impact of the Act on the number of applications for regular residence permits will be limited in 2006. However, it is expected that the number of applications for a first regular (non-asylum) residence permit for family reunification and family formation in 2007 will further decline. In terms of percentage, the family formation portion of the total family migration in 2005 decreased compared with 2006.

Table 1: Applications for regular (non-asylum) residence permits for family migration

Application for residence permit	***2005***	***%***	***2006***	***%***
Family reunification	22.749	62%	20.737	65%
Family formation	13.826	38%	11.330	35%
Total family reunification and family formation	36.575	100%	32.067	100%

Source: INDIS (IND Information System)

4.1.2. Decisions on submitted applications

Tables 2 – 4 contain data regarding the decisions that were taken in 2005 and 2006 respectively on applications for regular residence permits for the purpose of family reunification and family formation. These statistics concern decisions that were made in the relevant year. The application could have been submitted in a different year.
The low number of rejected applications in comparison with the number of granted applications is remarkable. The most obvious explanation is that the application of foreign nationals, who have to apply for a provisional residence permit as part of the provisional residence permit procedure, was already examined against the conditions. The application for a provisional residence permit is rejected if a foreign national does not meet the conditions. A foreign national who has to apply for a provisional residence permit will only receive a negative decision on his application for a first residence permit if he/she does not have a provisional residence permit or if he/she no longer satisfies the conditions as a result of changes in his situation that occurred between the decision on the application for a provisional residence permit and the decision on the residence permit. Furthermore, the rejections could concern foreign nationals who do not have to apply for a provisional residence permit and whose application for a residence permit was directly filed in the Netherlands without any previous examination in the country of origin, and who do not meet the conditions.
Table 2 presents the data on the decisions on applications for regular residence permits as a proportion of total family migration. Although the number of granted applications for family migration in 2006 decreased in an absolute sense compared with 2005, the number of granted applications rose with 2% in terms of percentage.

Table 2: Decisions on applications for total family migration (family reunification and family formation)

Decisions on applications for residence permits	***2005***	***%***	***2006***	***%***
Rejected	4.472	13%	3.869	12%
Granted	28.118	82%	27.693	84%
Other*	1.769	5%	1.282	4%
Total	34.359	100%	32.844	100%

* The category 'Other' includes applications that were withdrawn, dismissed or not considered.
Source: INDIS

Tables 3 and 4 show the decisions on applications for family reunification and family formation. Regarding the decisions on applications for residence permits for the purpose of family reunification, the number of negative decisions in 2006 decreased with regard to 2005 and the number of positive

decisions increased. The number of issued residence permits for family reunification rose by more than 5% in 2006 compared with 2005.

Table 3: Decisions on applications for family reunification

Decisions on applications for residence permits	***2005***	***%***	***2006***	***%***
Rejected	3.567	17%	3.101	14%
Granted	15.284	75%	17.244	80%
Other	1.537	8%	1.114	5%
Total	20.388	100%	21.459	100%

Source: INDIS

With regard to family formation, both the number of rejections and the number of authorisations decreased in 2006. The authorisation percentage for family formation remained the same in 2006. The percentage of issued residence permits for family formation in 2005 and 2006 (Table 4) is higher than for family reunification (Table 3).

Table 4: Decisions on applications for family formation

Decisions on applications for residence permits	***2005***	***%***	***2006***	***%***
Rejected	905	6%	768	7%
Granted	12.834	92%	10.449	92%
Other	232	2%	168	1%
Total	13.971	100%	11.385	100%

Source: INDIS

4.1.3. Family reunification as a proportion of total immigration

This paragraph paints a picture of migration for the purpose of family reunification and family formation related to overall immigration to the Netherlands. Dutch policy distinguishes between residence on grounds of asylum and residence on regular (non-asylum) grounds (see paragraph 2.1.1 for an explanation of the Dutch policy). A large number of purposes of stay for temporary residence permits are set out in the Aliens Decree. In addition, regular (non-asylum) residence permits can be granted for other purposes in special cases.

Table 5 presents an overview of the applications for the five most important purposes of stay in the Netherlands during 2005 and 2006. In addition to family reunification and family formation, these purposes are employment, highly skilled immigration (a permit for highly skilled labour for which a certain standardised minimum wage is paid) and education. The purpose category 'Other' can include many other purposes. For instance, minor foreign nationals who travelled alone to the Netherlands and applied for asylum but who are not eligible for an asylum permit, can be granted a regular (non-asylum) residence permit if they come under the special policy for unaccompanied minor foreign nationals. The category 'Other' also includes residence permits for medical treatment, residence permits for spiritual leaders and residence permits as part of an exchange programme.
The total number of applications for regular (non-asylum) residence permits for family reunification and family formation combined, amounted to 40%, both in 2005 and 2006. This percentage is almost equal to the percentage of applications for employment purposes (ordinary employment + highly skilled employment) and education. This accounted for 35% of the total in 2005 and 38% in 2006.
The total number of applications in 2006 decreased by almost 10,000. Almost half of the decrease is caused by a decline of family migration of more than 4,500. However, the number of applications for residence permits for education and employment also decreased sharply. In paragraph 4.1.1 it was assumed that the decrease of family migration could be caused by the implementation of the Integration Abroad Act. Since no integration exam abroad has to be passed for a residence permit for employment or

education, this does not explain the decrease for these purposes of stay. Foreign nationals, who want to enter the Netherlands for family migration reasons and are confronted with the integration requirement, could first try to enter the Netherlands for a different purpose of stay and subsequently change their residence permit into a residence permit for family reunification or family formation. Anyhow, the decrease of residence permits for education and employment does not indicate that this was the case on a large scale. The decrease of the number of applications for residence permits for employment is partially compensated by an increase in the number of applications for highly skilled migration. In view of the total decrease of applications for regular migration, other factors, such as the economic and political situation in the Netherlands, or the economic or political situation in the country of origin or in other Western European countries, or factors that relate to the situation of the foreign nationals themselves could also play a role.

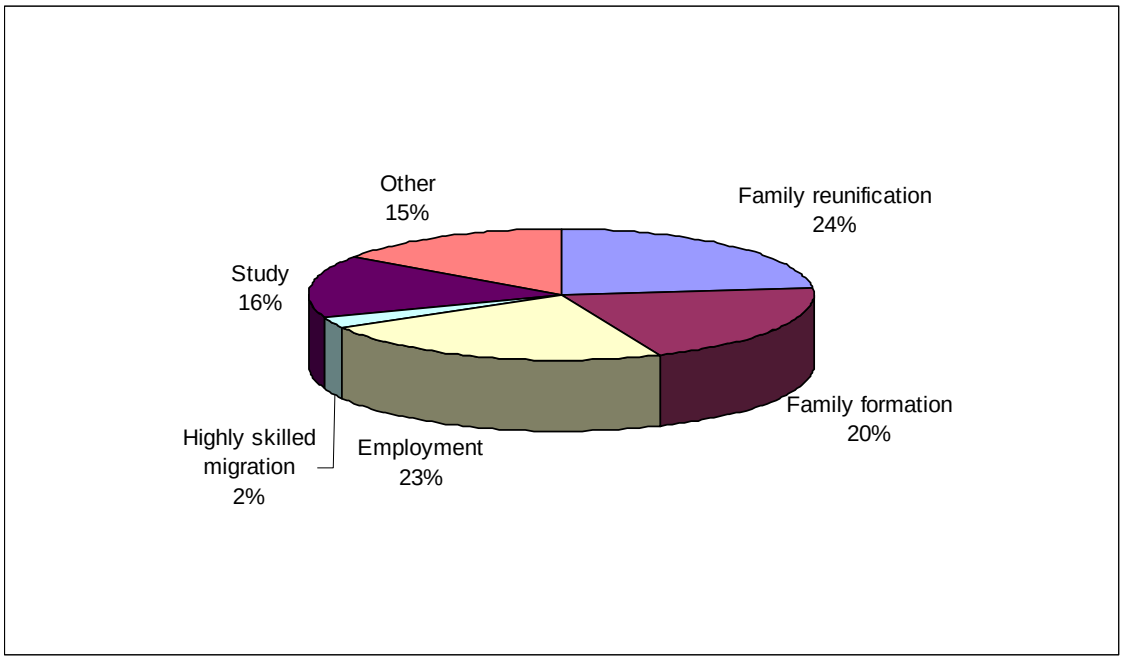
Table 5: Filed applications for regular (non-asylum) residence permits per purpose of stay

Purpose of stay	***2005***	***%***	***2006***	***%***
Family reunification	22.749	25%	20.737	26%
Family formation	13.826	15%	11.330	14%
Employment	19.323	21%	16.664	21%
Highly skilled migration	2.007	2%	3.934	5%
Education	11.277	12%	10.563	13%
Other	21.880	24%	17.943	22%
Total	91.062	100%	81.171	100%

Source: INDIS

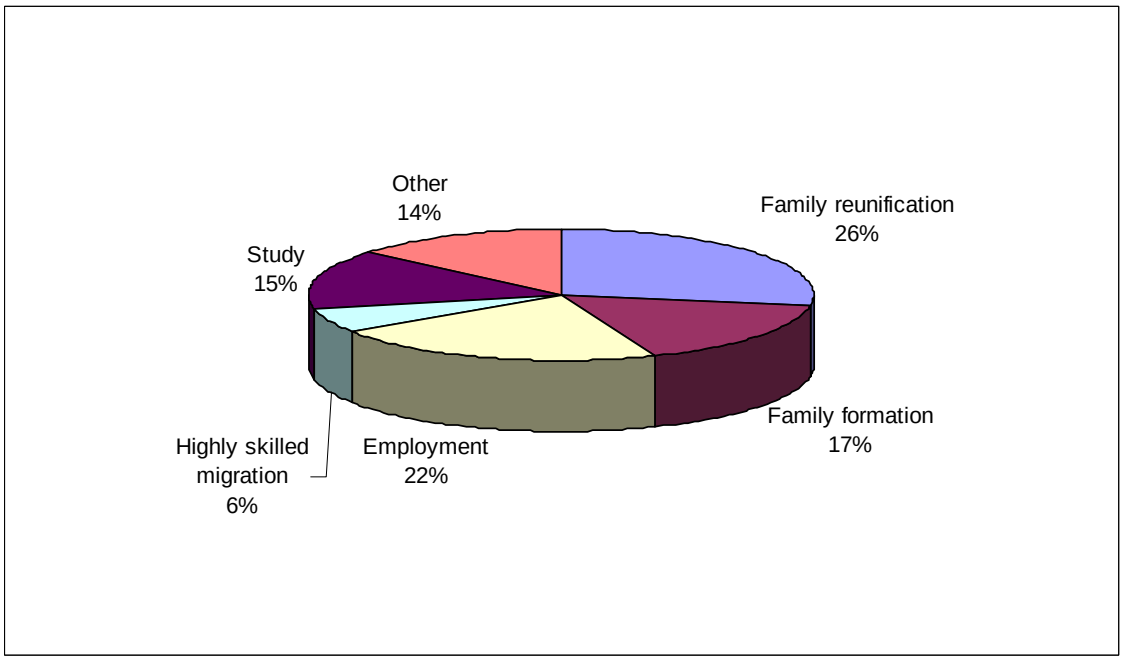
Figure 1 and Figure 2 present a pie chart with the scope of the issued residence permits for family migration in relation to the issued residence permits for the other regular (non-asylum) purposes of stay. The percentage of issued residence permits for family migration accounts for 44% of the total regular (non-asylum) migration in 2005. In 2006, this percentage is 43%. These percentages are higher in comparison with the percentage of family migration for the filed applications (Table 5: 40% for both 2005 and 2006). With regard to education, the percentage of issued residence permits is higher than the percentage of submitted applications both in 2005 and 2006. The issued residence permits for education, employment and highly skilled migration represent 41% and 43% respectively compared with 35% and 39% for the filed applications. The percentage of 'Other' for the issued residence permits is slightly below the filed applications.

Figure 1: Issued regular (non-asylum) residence permits in terms of purpose of stay, 2005



Source: INDIS

Figure 2: Issued regular (non-asylum) residence permits in terms of purpose of stay, 2006



Source: INDIS

4.1.4. Other statistical information

Cautious trends can be observed during the period 2002 – 2004 based on the statistical data of Statistics Netherlands (Centraal Bureau voor de Statistiek (CBS)) regarding the scale of family reunification and the characteristics of the family members. These data cannot be extrapolated to the figures that were presented above for the period 2005 – 2006 as it concerns data that are based on other sources, namely registration in the Municipal Population Register and due to the fact that other definitions were used.

The table below presents an overview of the number of family members divided into family reunification, accompanying family members and family formation for the period 2002 – 2004. These

figures show a declining trend for all three modes of family migration with a marked decrease in 2004. The decrease is largest for family formation.

Table 6: Immigration of foreign nationals in terms of migration motive

	2002		***2003***		***2004***	
	Total	***Percent***	***Total***	***Percent***	***Total***	***Percent***
Family reunification	11.757	33%	11.372	33%	10.623	37%
Accompanying family members	2.743	8%	2.235	7%	2.350	8%
Family formation	20.725	59%	20.654	60%	15.377	54%
Total	35.225	100%	34.651	100%	28.350	100%

Source: CBS, Statline, consulted on 29 August 2007

Studies of the CBS further reveal a strong decrease of the overall immigration (both for regular purposes and asylum grounds) to the Netherlands since 2002.[87] The study shows that this decrease is caused by a combination of factors, such as the economic downturn, tightening of the asylum policy, more stringent requirements for family reunification and family formation and international measures to combat illegal migration. The declining immigration is combined with rising emigration. Since 2003, the emigration surplus rose to 27,000 in 2005.

4.2. Characteristics of family members

A number of characteristics regarding the composition of the family members group will be further explained in this paragraph. Firstly, data on nationality are presented and subsequently gender and age are discussed.

Tables 7 – 11 present a picture of the nationalities of family members who file applications to join the sponsor in the Netherlands. The data relate to issued residence permits. The tables are compiled based on the top ten for 2006. The top ten countries in 2006 account for 56% of the number of issued residence permits. The other 44% represents the rest of the world. Persons with an unknown nationality are mainly children who have obtained a residence permit to join their parent(s) and who do not require a provisional residence permit.
Table 7 learns that the number of issued residence permits for applicants from Morocco and Turkey are by far the highest in the context of overall family migration. Furthermore, a marked increase in 'unknown' nationalities can be seen.
In terms of numbers, Poland is also an important country of origin, closely followed by the United States of America and Surinam.

[87] Nicolaas 2006, p. 2.

Table 7: Top 10 nationalities of applicants with issued regular (non-asylum) residence permits
Overall family migration

Top 10	*2005*	*%*	*2006*	*%*
Turkey	3.493	12%	3.673	13%
Morocco	3.140	11%	3.355	12%
Unknown	942	3%	1.913	7%
Poland	1.268	5%	1.374	5%
United States of America	976	3%	1.121	4%
Surinam	1.455	5%	1.033	4%
China	883	3%	960	3%
Ghana	667	2%	755	3%
Japan	583	2%	690	2%
India	431	2%	670	2%
Other	14.280	51%	12.149	44%
Total	28.118	100%	27.693	100%

Source: INDIS

These data are subsequently broken down into family reunification and family formation. Morocco and Turkey account for the largest percentage of family migration both for family reunification and family formation purposes. The composition for family formation and family reunification for the rest of the top ten is differently composed.

Table 8 shows an increase in the number of issued residence permits for family reunification to applicants from Morocco and Turkey in 2006 compared with 2005. These two countries jointly account for a rise of almost 1,400 of the total increase of almost 2,000 issued residence permits for family reunification in 2006. An increase of the issued residence permits for family reunification to applicants from Morocco and Turkey both in an absolute sense and in terms of percentage is noticeable. This is in line with the general picture of the increase in the number of issued residence permits for family reunification (See Table 3).

Table 8: Top 10 nationalities of applicants with issued regular (non-asylum) residence permits
Family reunification

Top 10	*2005*	*%*	*2006*	*%*
Morocco	1.348	9%	2.025	12%
Turkey	1.328	9%	2.011	12%
Unknown	889	6%	1.887	11%
Poland	1.128	7%	1.283	7%
United States of America	827	5%	862	5%
Germany	914	6%	649	4%
Great Britain	778	5%	553	3%
Japan	473	3%	547	3%
India	219	1%	431	2%
China	376	2%	420	2%
Other	7.004	46%	6.576	38%
Total	15.284	100%	17.244	100%

Source: INDIS

Table 9 shows a markedly high percentage of issued residence permits for family reunification with family members from a European Union country (29% in 2005 and 22% in 2006). This percentage could consist of Union citizens, who still apply for a residence permit despite the fact that they directly derive their residence permit from Community law.

Table 9: Distinction between EU and non-EU nationalities of applicants with issued regular (non-asylum) residence permits
Family reunification

EU/ non-EU	*2005*	*%*	*2006*	*%*
EU	4.376	29%	3.866	22%
Non-EU	10.019	66%	11.491	67%
Unknown	889	6%	1.887	11%
Total	15.284	100%	17.244	100%

Source: INDIS

Table 10 shows a declining trend for issued residence permits for family formation to applicants from Morocco and Turkey in contrast with the figures for family reunification. This could suggest a limiting effect on immigration as a result of the implementation of the Integration Abroad Act in 2006 on marriage migrants from these two countries. Family formation with a EU family member is not included in the top ten. Countries that do show an increase in 2006 are China, Ghana and the United States of America.

Table 10: Top 10 nationalities of applicants with issued regular (non-asylum) residence permits
Family formation

Top 10	*2005*	*%*	*2006*	*%*
Turkey	2.165	17%	1.662	16%
Morocco	1.792	14%	1.330	13%
Surinam	945	7%	624	6%
China	507	4%	540	5%
Ghana	453	4%	474	5%
Thailand	478	4%	406	4%
Brazil	348	3%	311	3%
Indonesia	370	3%	289	3%
Russian Federation	304	2%	273	3%
United States of America	149	1%	259	2%
Other	5.323	41%	4.281	41%
Total	12.834	100%	10.449	100%

Source: INDIS

The aggregate total of 161 for all EU countries in 2006 in Table 11 shows that family formation with a Union citizen is almost non-existent. Union citizens who enter the Netherlands for family formation would have a right to residence (for instance as job-seeker, employee or student) based on Community law and therefore are barely represented in the statistics of regular (non-asylum) national residence permits.

Table 11: Distinction between EU and non-EU nationalities of applicants with issued regular (non-asylum) residence permits
Family formation

EU/ non-EU	*2005*	*%*	*2006*	*%*
EU	221	2%	161	2%
Non-EU	12.560	98%	10.262	98%
Unknown	53	0%	26	0%
Total	12..834	100%	10.449	100%

Source: INDIS

The tables 12 - 14 distinguish between the gender of the family members. The large majority of family members are women. The breakdown according to the gender of the sponsor is not known, and neither is the percentage of heterosexual couples in family migration.

Table 12: Issued regular (non-asylum) residence permits per gender 2005 – 2006
Overall family migration

Gender of family member	*2005*	*%*	*2006*	*%*
Man	10.533	37,%	10.712	39%
Woman	17.531	62%	16.978	61%
Unknown	54	0%	3	0%
Total	28.118	100%	27.693	100%

Source: INDIS

A breakdown into family reunification and family formation is presented in Tables 13 and 14. For family reunification, the percentage of men rose lightly in 2006 compared with 2005.

Table 13: Issued regular (non-asylum) residence permits per gender 2005 – 2006
Family reunification

Gender of family member	*2005*	*%*	*2006*	*%*
Man	6.413	42%	7.559	44%
Woman	8.831	58%	9.683	56%
Unknown	40	0%	2	0%
Total	15.284	100%	17.244	100%

Source: INDIS

The percentage of women in family formation is considerably larger than men. For family formation, the decrease in the number of issued residence permits in general is higher than for men. The number of issued residence permits to women for family formation has declined by more than 1,400, whereas the number for men is not more than 1,000. In terms of percentage, the entry of women rose further. Based on these figures, measures such as the increase of the income requirement, age requirement and the integration requirement do not seem to have a larger effect on the number of applications for residence permits by women. (See paragraph 3.2.3 for expectations).

Table 14: Issued regular residence permits per gender 2005 – 2006
Family formation

Gender of family member	*2005*	*%*	*2006*	*%*
Man	4.120	32%	3.153	30%
Woman	8.700	68%	7.295	70%
Unknown	14	0%	1	0%
Total	12.834	100%	10.449	100%

Source: INDIS

Finally, a breakdown of the family members into age categories was made. These figures are presented in Tables 15 - 17. The age categories 0 – 12 and 12 – 18 mainly concern the admission of children of a sponsor or family member. Although admission of a partner or spouse under the age of 18 is not fully excluded in very special circumstances, this rarely or never occurs. The age categories 18 - 21 and 21 – 65 predominantly concern partners and spouses, although these could include major children or other family members who are granted entry based on extended family reunification. As explained in paragraph 3.1.2, this mode of family reunification is not frequent in practice. However, no information is available about the exact numbers. The group of 65+ can concern both parents and partners or spouses. The largest percentage of family members falls in the category 21 – 65 with children between 0 – 12 in the second place.

Table 15: Issued residence permits to family members per age category 2005 – 2006
Overall family migration

Age of family member	*2005*	*%*	*2006*	*%*
0 – 12	7.868	28%	10.467	38%
12 – 18	2.380	0%	1.886	7%
18 – 21	1.119	4%	438	2%
21 – 65	16.668	59	14.817	54%
65 +	77	0%	85	0%
Unknown	6	0%	0	0%
Total	28.118	100%	27.693	100%

Source: INDIS

The data on family reunification show that the increase in the number of issued residence permits is mainly caused by a considerable increase of 2,590 issued residence permits in the age category 0 – 12 years whereas the age category 12 – 18 years shows a decrease. If we combine both age categories, the total increase of issued residence permits to minor family members is still more than 2000. It is possible that this increase can be partially explained by the policy change related to the actual family tie (see paragraph 3.2.3.), which resulted in a less stringent policy for the admission of minor children. On the other hand, the amendment was only published on 29 November 2006 retroactive to 8 September 2006. The age category 65 + can concern both (unmarried) partners and parents.
How many persons enter the Netherlands as a parent for family reunification reasons is not known. They only represent a small fraction of the overall family migration.

Table 16: Issued residence permits per age category 2005 – 2006
Family reunification

Age of family member	*2005*	*%*	*2006*	*%*
0 – 12	7.861	51%	10.451	61%
12 – 18	2.374	16%	1.873	11%
18 – 21	530	3%	421	2%
21 – 65	4.460	29%	4.432	26%
65 +	55	0%	67	0%
Unknown	4	0%	0	0%
Total	15.284	100%	17.244	100%

Source: INDIS

The introduction of the increased age requirement had a distinct impact on family formation. The number of issued residence permits in the category 18 to 21 years fell from 589 in 2005 to 17 in 2006. Theoretically, all issued residence permits referred to applications that were filed prior to 1 November 2004, the date on which the new family formation policy entered into force. The small number of minor children that were granted entry for family formation reasons could be children of only one of the partners or spouses (family member).

Table 17: Issued residence permits per age category 2005 – 2006
Family formation

Age of family member	*2005*	*%*	*2006*	*%*
0 – 12	7	0%	16	0%
12 – 18	6	0%	13	0%
18 – 21	589	5%	17	0%
21 – 65	12.208	95%	10.385	99%
65 +	22	0%	18	0%
Unknown	2	0%	0	0%
Total	12.834	100%	10.449	100%

Source: INDIS

All other requested data on family members and all figures related to the sponsor cannot be provided, as their structural details were not registered in the IND's automated systems.

4.3. Conclusion

The possibility to draw conclusions is limited, as reliable figures regarding issued residence permits are only available for 2005 and 2006. Moreover, no data on the sponsor are registered. Some trends, however, can be observed.

As stated in paragraph 4.1.4, studies from the CBS revealed a marked decrease in overall immigration (both for regular purposes and on asylum grounds) to the Netherlands since 2002. Statistics from the CBS showed a declining trend in family migration during the period 2002 – 2004, with a sharp regression in 2004.

Based on the INDIS figures regarding applications for residence permits, the number of applications for family migration fell in 2006 compared with 2005. This concerns both family reunification and family formation. The decrease of the number of applications could be a result of the introduction of the Integration Abroad Act (Wib). On the other hand, this could also be an indication of other factors as a decrease in the number of applications for all purposes of stay (with the exception of highly skilled

migration) can be observed. This could be the general economic situation, the political climate in the Netherlands, or factors that are connected with the situation in the country of origin.

The total number of issued residence permits for family migration fell slightly in 2006 compared with 2005. A decrease in the number of issued residence permits for family formation was observed, whereas issued residence permits for family reunification increased. Family formation in the age category 18 – 21 fell to almost 0 in 2006. This is caused by an increase in the age requirement for partners (family members) to 21 years. Another possible explanation for the decrease in issued residence permits for family formation is the introduction of the Integration Abroad Act (Wib) on 15 March 2006. Although the number of issued residence permits to applicants from Morocco and Turkey decreased considerably, the decrease cannot only be contributed to the family members of these countries.
Family reunification increased in 2006 compared with 2005. This increase is caused by an increase in the age category 0 – 12. Although an integration obligation abroad was also introduced for family reunification, the obligation does not apply to this age category. The age categories for which an integration requirement has been introduced, also show a slight decrease. It is possible that this decrease was (partially) caused by the integration exam abroad, but no definite conclusions can be drawn in view of the recent introduction of the law.

5. Other relevant developments

In this chapter a number of other developments are discussed that not solely relate to family migration and that are not directly linked to the directive. Firstly, the introduction of a new integration regime that has consequences for the admission of family migrants and for migrants who want to work in the Netherlands as spiritual leaders, and also imposes obligations on admitted migrants. Secondly, the so-called Belgian route is discussed where EU citizens move to a different member state than their own member state in order to facilitate family migration with a third country national. Finally, this chapter pursues the increase of the legal fees for residence permits, including the residence permit for family reunification and family formation, and the debate that arose on this subject.

5.1. Introduction of a new integration regime

Article 7, paragraph 2 of the Family Reunification Directive offers member states the possibility to 'require third country nationals to comply with integration measures'. The Netherlands has used this option through the introduction of a new integration regime. The basis for the new integration regime can be found in the coalition agreement of the Balkenende II cabinet. A new requirement for the admission of certain groups of foreign nationals was introduced under the chapter 'Immigration and Integration'.[88] The intentions of the coalition agreement were elaborated in the contours report.[89] Every newcomer who enters our country on a voluntary basis and who wants to reside permanently in the Netherlands, has to pass a basic integration exam prior to entry into the Netherlands. This first part of the integration regime has been given shape through the introduction of the Integration Abroad Act that entered into force on 15 March 2006.[90] The second part of the integration regime consists of an integration requirement in the Netherlands. According to the coalition agreement, the integration requirement in the Netherlands was originally intended for all foreign nationals between 16 and 65 years, who want to reside permanently in the Netherlands, i.e. groups of established migrants to be defined at a later date (persons who already resided in the Netherlands when the new regime was introduced) and certain groups of Dutch citizens who do not have a thorough command of the Dutch language and who depend on social security benefits. Ultimately, an integration requirement for Dutch citizens was not introduced. A permanent resident status can only be obtained after passing the exam. This second part of the integration regime has been laid down in the Integration Act that entered into force on 1 January 2007. The plans and bills for the integration regime were a frequent subject of discussion. Hereunder follows a short description of the purport of the integration regime and a couple of discussion points are mentioned.

Integration requirement abroad
The integration requirement abroad applies to foreign nationals between 16 and 65 years of age who want to reside permanently in the Netherlands and who have not been exempted from the requirement to apply for a provisional residence permit prior to entering the country. This concerns foreign nationals who enter the Netherlands in the context of family reunification and family formation. In addition, foreign nationals who want to reside in the Netherlands as spiritual leaders are subject to the integration requirement. On the one hand, the objective of the Wib is to prepare applicants for integration in the Netherlands. On the other hand, the Wib is also used as a pre-selection of those who have shown sufficient motivation and perseverance to be able to integrate in the Netherlands and in this respect, the law has a limiting effect on immigration.[91]
The exam can be passed by telephone at the embassy or consulate. The exam is also electronically assessed by a computer. The exam covers speaking and listening skills and knowledge of Dutch society and tests the A1-min level of the European Framework for Modern Languages. The exam is held in the

[88] TK 2002 - 2003, 28 637, n° 19, p. 14.
[89] TK 2003 – 2004, 29 543, n° 2.
[90] Stb, 2006, 28 (Integration Abroad Act) and Stb. 2006, 75 (Entry into force of the Integration Abroad Act); Stcr. 2006, 51 (Amendment of Aliens Decree 2000 (Integration abroad)).
[91] See the Memorandum of Explanation of the Integration Abroad Act, TK 2003 – 2004, 29700, n° 3.

Dutch language only. It is the foreign national's (and the sponsor in the Netherlands) own responsibility to prepare for the exam. The Dutch government does not offer (language) courses. An exercise package for the preparation of the exam developed by the government can be purchased. The exam is valid for one year. Exemption of the requirement to have sufficient command of the Dutch language and sufficient knowledge of Dutch society is only granted to foreign nationals who cannot pass the exam as a result of a permanent mental or physical disability. Furthermore, this applies to the family members of the holder of a temporary or permanent asylum residence permit. This exemption does not apply to naturalised refugees or former asylum seekers who have obtained a regular residence permit. In addition, the Secretary of State has discretionary power to grant exemption in exceptional situations.

Integration requirement abroad
On 1 January 2007, the Integration Act (Wi) entered into force.[92] Pursuant to this Act, all foreign nationals between 16 and 65 years who wish take up permanent residence in the Netherlands are subject to the integration requirement. The integration requirement can apply to both foreign nationals who want to take up permanent residence in the Netherlands and family migrants and spiritual leaders, who did not yet reside in the Netherlands on the ground of a residence permit at the time that the Act entered into force (the so-called newcomers), and foreign nationals who already resided in the Netherlands on the ground of a residence permit at the time of the entry into force of the Act (established migrants). Foreign nationals who have lived in the Netherlands for eight years during school age, go to school or are in the possession of certain diplomas are not subject to the integration requirement. The integration requirement implies that an integration exam has to be passed within a certain period. For newcomers who have passed the basic integration exam, the exam that they had to pass in their country of origin prior to their entry into the Netherlands, this period is 3 ½ years, in all other cases 5 years. A financial sanction is imposed when the foreign national fails to pass the exam within the prescribed period. Passing the integration exam is also a condition for obtaining a continued or permanent residence permit. Family members who are subject to the integration requirement and who may apply for an autonomous continued residence permit after three years (see paragraph 3.1.2. under Article 15) have to pass the integration exam in order to be granted a residence permit. Theoretically, foreign nationals are responsible for preparing themselves for the exam. If they want to follow a course, they have to make their own arrangements. The municipality may or must offer integration facilities to a limited group, set out in the Act, who reside in the municipality concerned. The municipality should offer such facilities to holders of an asylum residence permit and to spiritual leaders. The exam consists of a theoretical part and practical part and focuses on knowledge of Dutch society and of the Dutch language where speaking, listening, conversational, writing and reading skills are concerned at the A2 level of the European Framework for Modern Languages. Established migrants only have to satisfy a lower level of A1 for writing skills. The incurred costs will be partially reimbursed when the exam is passed within the prescribed period.

Many organisations and persons commented on the various sections of the Act. The scope of the small-scale study on family reunification is too limited to discuss the Act in great detail.[93] A number of points are touched on briefly. Groenendijk is of the opinion that an integration exam prior to entry is not compatible with the optional provision of the directive (Art. 7, paragraph 2 of the directive) that allows member states to impose integration requirements.[94] Now that the integration requirement is linked to the provisional residence requirement, certain nationalities who are exempted from the provisional residence permit are also exempted from the integration requirement. According to some, this is a disproportional distinction and therefore in conflict with the prohibition of discrimination based on nationality.[95] The motivation between the linking of the integration requirement to the provisional

[92] Stb. 2006, 625; Stb. 2006, 645 (Decree of 5 December 2006 on the enforcement of the Integration Act and on the establishment of the effective date).
[93] See van der Winden 2006 for a detailed report on the establishment, purport and criticism on the WIB.
[94] See for instance Groenendijk 2005 and Groenendijk 2007.
[95] Groenendijk 2005, p. 26-27, ACVZ 2004, p. 32-33, Scheers 2004, p. 339. See for other objections of Groenendijk against this measure: Groenendijk 2005, p. 22-25. The point of view of the Dutch government with regard to the alleged inconsistency with the international standards can be found in the Memorandum of Explanation p. 16–19. See also Scheers 2004, p. 335, 338-339. ACVZ 2004, p. 22-35. Boeles 2005, p. 59 – 75, Lawson 2005, p 115 - 134. Oosterom-Staples 2004.

residence requirement is that this enables the government to verify whether the new requirement was satisfied prior to the entry of the foreign national into the Netherlands. Moreover, this prevents that the foreign national who is not subject to a provisional residence permit, for instance an American sponsor, is still confronted with this requirement and is therefore forced to master the required basic knowledge outside the Netherlands and hence becomes subject to a provisional residence permit requirement.[96]
Sixteen and seventeen year old foreign nationals, who have to go to school part-time after their entry into the Netherlands, are obliged to pass an integration exam by virtue of the Wib prior to their entry into the Netherlands. It is argued that this is contrary to the directive now that an integration requirement for minor children older than twelve may only be applied if this requirement was transposed in national legislation on the effective date of the directive, i.e. 3 October 2005. However, the Wib entered into force after this date, namely on 15 March 2006.[97]
During the preliminary phase, an important point of discussion was whether (naturalised) Dutch citizens would also be subject to integration. The essence of the discussion was the inconsistency with the principle of equality as certain categories of Dutch citizens would be subject to integration whereas others would not.[98] The most pressing issue disappeared when Dutch citizens were removed from the target group of the Act on the advice of the Council of State[99].[100] However, the final bill still provokes many reactions. On the eve of the discussion in the Senate, eighteen professors, who deal with migration and integration from different disciplines, from eight universities, sent a pressing letter to the members of the Senate in which they urged them to reject the proposal bill.[101] In this letter, it is pointed out that the high enforcement costs of the Wib, the potential off-putting effect of the Act on highly educated migrants, and the large chance that the group of newcomers does not pass the exam and periodically has to pay a fine, would have a negative effect on integration and some legal arguments based on international treaties, in particular the association conventions between the EC and Turkey. The Minister reacted to these issues in writing[102] and during the discussion of the bill in the Senate[103]. The Minister firstly pointed out that advice had been sought with regard to the skills level to be obtained. Furthermore, it transpired that a more binding and result-oriented regime was a condition for effective integration.[104] With regard to the potential conflict with the association conventions, the Minister is of the opinion that this does not fall within the scope of the agreement, but adds that the European Court of Justice should decide on the (ir)reconcilability.[105] A number of parties in the Senate voted against the bill based on the points advanced in this letter, however the bill was passed in the end.[106]

5.2. The Belgian route

The rules of the national (Dutch) aliens legislation apply to the reunification of third country nationals with a Dutch citizen residing in the Netherlands. A Dutch citizen, who resides in a different member state of the EU by virtue of Community law and wants to bring a family member with the nationality of a third country to another member state, can use the rules that Community law imposes on reunification with a Union citizen. The rules of Community law regarding the reunification of a third country national with a EU citizen, are far more lenient on several points than the Dutch Aliens legislation on family reunification and family formation. Community law for instance only imposes a very limited resources requirement, no integration requirements apply to family members from third countries, there is no provisional residence permit requirement and the conditions with regard to the required documents and legalisation are less stringent. If the Dutch citizen returns to the Netherlands he still comes under

[96] TK 2003 – 2004, 29700, n° 3, p. 8.
[97] See de Vries 2006, p. 275.
[98] See de Vries 2006, p. 278 – 281 for an account of this discussion.
[99] See the advice of the Council of State of 3 and 25 August 2006. TK 2005 – 2006, 30308, n° 106.
[100] EK 2006 – 2006, 30308, C.
[101] Letter of 11 October 2006. http://www.nrc.nl/opinie/article508654.ece. See also the letter of Vluchtelingenwerk 2006.
[102] EK 2006 – 2007, 30308, n° F and n° H.
[103] EK 2006 – 2007, Proceedings n° 9, p.353-363 and p. p.383-394.
[104] EK 2006 – 2007, 30308, n° H, p. 6.
[105] EK 2006 – 2007, Proceedings n° 9, p.354-355.
[106] EK 2006 – 2007, Proceedings n° 10, p. 407.

Community law, even if he meanwhile resides again in his own member state. He/she may bring back his family members with the nationality of a third country to the Netherlands. This is called the Belgian route in the vernacular. However, this route could just as well go via Germany, France, Italy or any other EU member state.
The Belgian route is sometimes recommended by legal advice centres or interest groups when family reunification is not possible in the Netherlands, because stricter national, in this case Dutch, conditions cannot be satisfied. Guidelines are posted on the website of Stichting Buitenlandse partner with tips and facts to inform people about this opportunity.[107] The circumvention of the Dutch conditions for family reunification or family formation via the Belgian route has been discussed several times in the Senate and House of Representatives.[108] In a letter to the Senate, the Minister emphasized that this is a possibility offered by Community law and does not constitute abuse.[109] Following the decision of the European Court of Justice, the so-called Akrich case[110], the Dutch government is convinced that 'in the event of the immigration of a third country national from a third country to a EU member state, the national migration law of that member state applies and not the Community law on the right to free movement of persons.[111] That would mean that the Dutch citizen who goes to Belgium would come under Belgian national law when he wants to bring a partner from a third country to Belgium, and not anymore, as previously always assumed, under Community law. The European Commission did not subscribe to the interpretation of the Akrich decision by the Netherlands.[112] Because a Swedish judge meanwhile put questions to the Court of Justice in a case (the JIA case), that possibly could shed more light on the proper interpretation of this decision, the Minister did not want to introduce any integration requirement for the category of third country national relatives of Union citizens for the time being. A judgment in the Swedish case *Jia* vs *Migrationsverket* was pronounced on 9 January 2007.[113] This decision did not create the expected clarity. According to the Secretary of State, it is not clear whether Dutch law or Community law applies to the third country national who is a relative of a Union citizen and who wants to join a Union citizen in the Netherlands directly from a third country. The decision still does not provide clarity as to whether the Belgian route can still be used by Dutch citizens who want to facilitate the entry of their family members from a third country via a stay in Belgium or another EU member state.

5.3. Legal fees

The legal fees for the application of a regular residence permit were considerably increased on 1 May 2002 and on 1 January 2003. This also applies to the costs for the renewal or modification of the temporary residence permit period or the application for a permanent residence permit. The increase aimed to break even where the costs of regular residence permit applications are concerned. In one year, the costs rose from 300% in some cases to more than 1000% in others. These increases led to considerable social protest. The opposition of several social organisations was combined in the Working Party against Legal Fees Increases (Werkgroep tegen de Legesverhogingen) that was set up early 2003. This working party is an association of several organisations with the aim to lower the high legal fees for residence permits to an amount that is deemed reasonable by the working party.[114] On 20 February 2003,

[107] www.buitenlandsepartner.nl.
[108] See for instance EK 2004 – 2005, 29 700 D; TK 2005 – 2006, 29 700, 31; TK 2005-2006, 29 700, 32; TK 2005-2006, 30 308, p, 44; TK 2006 – 2007 Annex to the proceedings 1125, p. 2387 – 2388.
[109] TK 2005 – 2006, 29 700, 31
[110] HvJ EG 2003, case C-109/01, Akrich, I-09607.
[111] Ibid. p. 3-4.
[112] Oosterom-Staples 2004.
[113] HvJEG 2007, case C-1/05, Jia.
[114] The participating organisations are: *National organisations:*- Stichting Buitenlandse Partner; - Stichting FORUM; - Stichting INLIA; - Stichting Inspraakorgaan Turken, IOT; - Stichting Landelijk Bureau ter bestrijding van Rassendiscriminatie, LBR; - Stichting Landelijk Inspraakorgaan Zuid-Europeanen, LIZE; - Stichting LOS; - Stichting Nederlands Centrum Buitenlanders, NCB; - Stichting Nederlandse Unie van Turks-Islamitische Organisaties; - Stichting Russische gemeenschap; - Stichting Samenwerkingsverband van Marokkanen en Tunesiërs, SMT; - Stichting Stem van Marokkaanse Democraten in Nederland, SMDN; - Stichting Surinaams Inspraakorgaan, SIO; - Stichting Turks-Islamitische Culturele Federatie, TICF; - Stichting UAF; - Stichting Vluchtelingen-organisaties Nederland, VON; - Vereniging DSDF; - Vereniging Hollanda Türkiyeli Isciler Birligi; de vereniging van arbeiders uit Turkije in Nederland;

a strong plea was made to then Minister Nawijn in a first letter to reverse the increase of the legal fees. In June 2003 a similar plea was made to Minister Verdonk. On 13 August 2003, the 25 organisations combined in the Working Party against Legal Fee Increases (Werkgroep tegen Legesverhogingen) started proceedings on the merits against the State regarding the increase of the costs for residence permits in the Netherlands. They argued that many migrant and refugee families ran into difficulties as a result of the high costs. In March 2004, the working party started with a petition and a website against increase in legal fees for residence permits. The petition asks the Minister and the House of Representatives to lower the legal fees to a reasonable amount and to fix a maximum amount per year per family.
The scientific community was also opposed to the new legal fees.[115] An article appeared in the Dutch Law Journal (Juristenblad) of 14 February 2003 by Groenendijk and Kortmann in which they argue that the fee increase is unreasonable, unwise and also unlawful for large groups of foreign nationals. The high legal fees in conjunction with other costs such as the additional costs incurred for the integration exam were discussed in the House of Representatives.[116] Following questions in the House of Representatives, a possibility to grant exemption of the legal fees was included in the Aliens Regulations in connection with Article 8 of the ECHR.[117]
The court in The Hague decided in favour of the Working Party against Legal Fees Increases (Werkgroep tegen de Legesverhoging) on 16 February 2005 with regard to Turkish citizens who derive their right to residence from the association conventions. The increase of the legal fees for these Turkish citizens is contrary to this agreement. Both the State and the plaintiffs lodged an appeal against this decision.
In addition to the still pending appeal against the court in The Hague, currently, two other developments that could have an impact on the legal fees can be cited. Firstly, the European Commission started infringement proceedings against the Netherlands. On 12 December 2006, the European Commission decided to submit the increases of legal fees for residence permits for annulment based on the conflict with the EC - Turkey Association Convention.
And secondly, although outside the reference period, it can be stated that questions were recently put to the Secretary of State for Justice by the member of the House of Representatives Azough.118 She asks whether the Secretary of State is of the opinion that the legal fees for residence permits are 'rather substantial".119 Furthermore, she asks whether the Secretary of State is also of the opinion that the high legal fees have a prohibitive effect on foreign nationals who still have to establish their lives in the Netherlands and in general earn low wages and whether she is prepared to restore the amount of the fees to the level of 1 January 2002. A reply of the Secretary of State was received on the 4th of July. Although the Secretary of State admits that the costs for residence permits are not insubstantial, she deems that it is not unreasonable to have users of public services pay for the actual costs. She promised to investigate whether the legal fees could be lowered, for instance by reducing the costs for residence permits. [120]

- Vereniging van Samenwerkende Nederlandse Universiteiten, VSNU; - Vereniging VluchtelingenWerk Nederland, VVN; - Wijzijnertegen.com; - IMAD B.V., Zoetermeer; - Kleurrijk Platform GroenLinks. *Local and regional organisations:* - Centrum Turkse Jongeren; - Stichting Federatie Milli Görüs Noord-Nederland, Amsterdam; - Stichting Multicultureel Instituut Utrecht, MIU; - Stichting Palet; - Stichting Platform Buitenlanders Rijnmond, PBR; - Stichting Rechtsbijstand Asiel Amsterdam; - Stichting Rechtsbijstand Asiel Hofressort Arnhem; - Stichting Rechtsbijstand Asiel 's-Hertogenbosch; - Stichting Regionale Steunfunctie Allochtonen Zuid-Holland West, RSA, Den Haag; - Stichting Sociaal-Cultureel Centrum Venlo; - Vereniging Advies- en Begeleidingscentrum voor Islamitische Jongeren, Rotterdam; - Vereniging HTIB, afdeling Amsterdam; - Vereniging HTIKB; - Vereniging Samenwerkende Arabische Jongeren, SAJ, Rotterdam.

[115] Groenendijk and Kortman 2003, p. 314-321.

[116] See for instance TK Proceedings 2004/05, 60, p.3900 and 3902. Letter of the Minister to the Chairperson of the House of Commons, TK 2004/05, 29000 VI, n° 122, p. 2 and the account of the discussion with the House of Representatives on 12 April 2005, TK Proceedings 2004/05, 71, p. 4377-4382.

[117] See Article 3.34f of the VV 2000.

[118] TK 2006–2007 Questions by members of the House, Member of Parliament Azough (GroenLinks) to the Secretary of State for Justice about the legal fees. (Submitted on 19 March 2007).

[119] ANP 15 March 2007: Vogelaar wants better employment status for refugees.

[120] TK 2006-2007 Reply of the Secretary of State Albayrak to the questions of M.P. Azough.

6. Conclusion

In this concluding chapter, an answer is first given to the study questions from Chapter 2. Finally it is examined which points lend themselves to further research in order to obtain an even better insight into the developments in the family reunification policy.

The main topic of the study was:
What is the situation in the Netherlands concerning family reunification and family formation as regards legislation, policy and the characteristics of family migrants during the period 2002-2006?

The topic will be divided into three subtopics:
- *To what extent can trends be distinguished in policy development?*
- *To what extent can statistical data trends be distinguished within this period?*
- *To what extent can conclusions be drawn with regard to any causal connection between policy developments and statistical data?*

6.1. The situation in the Netherlands with regard to family reunification and family formation during the period 2002-2006

Migration is a socially and politically sensitive phenomenon. In order to properly interpret the developments in the migration policy, the developments should be placed in a social and political context. The beginning of the reference period, the year 2002, coincides with a major political change in the Netherlands. The rapid rise of Pim Fortuyn and the LPF surprised the established political elite. One of the important topics that created a distinct profile for Pim Fortuyn, was integration and immigration. This topic was not only important during the elections, but the topic immigration and in particular family migration and integration also occupied an important place during the cabinet formations in 2002 and 2003. Both cabinets endorsed the analysis that continuous family migration, notably from Morocco and Turkey, had a negative effect on integration. In the paragraph integration in the coalition agreement of the second Balkenende cabinet, a number of measures were set out. These proposed measures formed the guiding principle of the policy during the period 2003 - 2006. The establishment and the entry into force of the Family Reunification Directive did not or only played a marginal role in the shaping of the new policy. It was rather the other way around: the proposed Dutch measures were brought into the negotiations about the establishment of the directive and advocated.

6.1.1. Trends in policy development

In chapter 3 it was concluded that the Netherlands did not implement all possible restrictive provisions. On the other hand, the Netherlands did not use all optional provisions to liberalise the policy.

The agenda for family migration was clearly defined by national priorities. These national priorities were the proposed measures with regard to the restriction of family formation and the stimulation of integration. The main idea behind these measures was that a more restrictive policy would benefit integration.

A clear trend is the linking of integration to immigration. The analysis that inadequate integration is also caused by the continuous immigration of marriage partners, led to a policy in which, on the one hand, integration requirements were introduced and on the other hand, the introduction of restrictive measures with regard to family formation. The most far-reaching measure was the introduction of the Wib. Family members are not granted a residence permit in the Netherlands without passing an integration exam. Foreign nationals who want to take up permanent residence in the Netherlands (continued residence permit or permanent residence permit) have to pass an integration exam. The objective of the Wib is to motivate people to already master the Dutch language and learn about Dutch

society prior to their entry into the Netherlands and at the same time select those people who possess the motivation and perseverance to pass the exam.
The linking of immigration and integration at the governmental level took shape in the appointment of a Minister for Immigration and Integration Incidentally, these two policy areas were separated again during the most recent cabinet formation (March 2007).

A second trend is the particular focus on family formation and the distinction in the admission conditions for family formation and family reunification. Two restrictive measures were implemented for family formation: the increase of the age requirement and the increase of the resources requirement. According to the Minister, the previously adopted age requirement of 18 and the resources requirement at the social security level insufficiently guaranteed that the sponsor who wants to be united with a new partner, would also be able to fulfil his responsibilities in the long term, both in terms of financial resources and the integration of the new family member. This would also prevent that the sponsor leaves school prematurely and throws away his chances at better employment in the labour market. It would also prevent that the assumed disadvantage of the sponsor 'is reproduced in the position of the new partner and causes an immediate disadvantage where integration is concerned'.

Thirdly, the emphasis on the responsibility of the foreign national (and his/her partner) within the family immigration policy constitutes a trend. This is translated into a larger financial responsibility, in particular the restriction of the exemption grounds for the resources requirements, higher legal fees and the auto-financing of the preparation for the integration exam, and the achievement of the desired result. For instance, the restriction of courses organized and offered by the government and instead leaving the preparation for the exam to the foreign national's own initiative.

Finally, the policy has become less noncommittal. Family members have to pass an exam before they are allowed entry into the Netherlands. For foreign nationals who already reside in the Netherlands, a result requirement has been introduced instead of an effort requirement. Following a course is not enough. Foreign nationals have to pass the exam within a certain period under penalty of a fine. Passing the exam is also a condition for a permanent or continued residence permit.

6.1.2. Statistical trends

In chapter 4 it was stated that no firm conclusions could be drawn on regular residence permits in view of the limited period for which reliable figures are available. Only developments in 2005 and 2006 could be observed, which will either be confirmed or negated by later statistics.

The first trend is a decrease in the total number of filed applications for regular residence permits in 2006 compared with 2005. This decrease also applies to family migration, both for family formation and family reunification.
Secondly, it is striking that the number of granted applications for family formation decreased, whereas the number of granted applications for family reunification increased. When we look at the nationality of the family members, the decrease in the number of granted applications for family formation is largely caused by a decrease in granted applications of family members from Morocco and Turkey. The increase in the number of granted applications for family reunification is mainly the result of an increase in the number of granted applications in the 0 – 12 age category.

The decrease of the total number of filed applications for regular residence permits in 2006 compared with 2005 is confirmed by statistics from the CBS that reveal a decrease in total immigration since 2002. This could be caused by a combination of factors, such as the economic situation, the more stringent asylum policy and the tightened measures for family formation and family reunification and factors that are related to the situation in the country of origin.

6.1.3. Linking of statistics to policy

As mentioned in chapter 4, there are too few statistical data on applications and issued residence permits for family reunification or family formation to be able to determine any causal connections to policy amendments. The expectation of the Minister (see paragraph 3.2.3) that the introduction of the

higher age requirement and the resources requirement in the family formation policy would lead to a decrease of 45% of granted applications for family formation, cannot be verified.

In view of the fact that no data are available for 2004, the impact of the measures that came into effect on 1 November 2004 cannot be assessed. It is clear however that the decrease in family formation in the 18 – 21 age category to almost 0 in 2006, is the result of the implemented increase of the age requirement to 21 on 1 November 2004. However, we don't know how large the group was when family formation from 18 years was still possible and hence the impact of the increase of the age requirement on the total family formation migration cannot be evaluated. With regard to the introduction of the Wib, the period since the introduction is still too short to be able to establish causal connections. When we look at the data that have been broken down into age, there is a trend that reveals a decrease in both family formation and family reunification with foreign nationals for the age where they are subject to the integration requirement.
This could indicate a connection, but in the light of the decrease in the total regular immigration in 2006 compared with 2005, this could also be caused by other more general factors such as the economic situation and the political climate and external factors such as the situation in the country of origin.

As this regards an analysis on the basis of only 2 years it concerns nothing more than trends which will have to be validated by data from later years in order to be able to draw any solid conclusions. End 2007, an evaluation of the policy amendments discussed in paragraph 3 will be carried out by the IND Information and Analysis Centre (IND Informatie en Analyse Centrum (INDIAC)) in co-operation with the WODC. An attempt will be made to map out the effects of the higher age requirement and resources requirement. In addition, another evaluation is planned of the Integration Abroad Act in the coming period that will be conducted by Significant on the order of the Scientific Research and Documentation Centre of the Ministry of Justice (Wetenschappelijk Onderzoeks- en Documentatiecentrum (WODC)).

6.2. Suggestions for further study

The aim of the present small-scale study is to present an overview of the developments in the policy and statistical data during the period 2002 – 2006 for family reunification and family formation. In such a general overview, too little attention is given to subtopics.
Therefore, it might be a suggestion to conduct substudies on subjects where the legislation is optional and where relatively little data are available, such as:
- The admission of adult children and parents;
- Family reunification of refugees;
- Family migration of EU citizens.

Another suggestion for further research is a qualitative analysis of the impacts of the family reunification and family formation policy. The restrictive measures for family formation and the introduction of the Integration Abroad Act and the Integration Act were based on many assumptions. A qualitative analysis could be conducted to map out any possible impacts of the implementation of these measures.
The abovementioned evaluation of the family formation policy measures encompasses such a qualitative study.

Finally, it is recommended to keep more detailed data files. To carry out the policy, data should be available to demonstrate the necessity of the policy and to chart the impact of the policy at a later date. Moreover, a comparable database between the member states is necessary for a comparative European study.

Annex 1: Bibliography

Adviescommissie voor Vreemdelingenzaken; ACVZ: 2004 a, Briefadvies Wijziging Vb2000 – Richtlijn 2003/86/EG. Den Haag.

Adviescommissie voor Vreemdelingenzaken; ACVZ: 2004 b, Inburgering als voorwaarde voor verblijf in Nederland. Den Haag

Adviescommissie voor Vreemdelingenzaken; ACVZ: 2004 c, Van contourennota naar Inburgeringswet, Den Haag.

Adviescommissie voor Vreemdelingenzaken; ACVZ: 2005 a, Van contourennota naar Inburgeringswet, Den Haag.

Adviescommissie voor Vreemdelingenzaken; ACVZ: 2005 b, Tot het huwelijk gedwongen. Den Haag.

Adviescommissie voor Vreemdelingenzaken; ACVZ: 2007, werkprogramma 2007. Den Haag. www.acvz.com/publicaties/WP_2007_NL

ANP 15 maart 2007: Vogelaar wil betere arbeidspositie vluchteling

Boeles, P. 2003: Verruimde gezinshereniging op zijn smalst, *Migrantenrecht* 03-03, p. 76 - 79, FORUM: Utrecht.

Boeles, P. en Lodder, G.G.: 2005 (ed), Integratie en uitsluiting, Sdu: Den Haag.

Boeles, P.: 2005, Gemeenschapsrechtelijke aspecten van het stellen van integratievereisten, in: Boeles, P. en Lodder, G.G.: 2005 (ed), Integratie en uitsluiting, Sdu: Den Haag p. 59-76.

Boeles, P., Guèvremont, S. en Lodder, G.G.: 2006, Legale migratie. Commentaar Europees Migratierecht, Sdu: Den Haag.

Circulaire van de Staatssecretaris van Justitie (mede namens de ministers van Buitenlandse Zaken en Grote Stedenbeleid) van 12 januari 2000 (kenmerk 5001966/99/6).

Eerste Kamer 2004 – 2005, 29 700 D. Brief van de minister voor vreemdelingenzaken en integratie.

Eerste Kamer 2006 – 2007, 30 308, C. Nader voorlopig verslag van de vaste commissie voor Justitie.

Eerste Kamer 2006 – 2007, 30308, nr. F en nr. H. Memorie van Antwoord en nader Memorie van Antwoord.

Eerste Kamer 2006 – 2007, Handelingen nr. 9, p.353-363 en p.383-394. Behandeling van het wetsvoorstel Regels inzake inburgering in de Nederlandse samenleving (Wet inburgering) (30308).

Eerste Kamer 2006 – 2007, Handelingen nr. 10, p. 407, Stemmingen i.v.m. wetsvoorstel Regels inzake inburgering in de Nederlandse samenleving (Wet inburgering) (30308)

Entzinger, H.B. e.a.: 2006, Open brief aan de leden van de vaste commissie van Justitie van de Eerste Kamer inzake voorstel Wet inburgering (30 308). Brief van 11 oktober 2006. http://www.nrc.nl/opinie/article508654.ece..

FORUM: 2003, Persbericht..FORUM-reactie op het hoofdlijnenakkoord. FORUM: Integratie wordt eenrichtingsverkeer in nieuw regeerakkoord. Utrecht, 20 mei 2003. www.Forum.nl/persberichten

Groenendijk, C.A. en Kortmann, C.A.J.M.: 2003, NJB, afl. 7, p. 314-321.

Groenendijk, C.A.: 2004, Brief aan de leden van de vaste commissie voor Justitie van de Tweede Kamer, inzake ontwerp-besluit tot wijziging van het Vreemdelingenbesluit 2000, Nijmegen, 5 april 2004.

Groenendijk, C.A.: 2005, Integratie en uitsluiting in het Nederlandse vreemdelingenrecht, in: Boeles, P. en Lodder, G.G.: 2005 (ed), Integratie en uitsluiting, Sdu: Den Haag p. 9-32.

Groenendijk, C.A.: 2006, Nieuw inburgeringsrecht strijdig met Gemeenschapsrecht, *Migrantenrecht* 10-06, p. 366 – 371, FORUM: Utrecht.

Groenendijk, C.A.: 2007, Inburgeren in het buitenland: de Gezinsherenigingsrichtlijn biedt meer bescherming dan artikel 8 EVRM, *Migrantenrecht* 3-07, p. 111-113, FORUM: Utrecht.

Groenendijk, C.A.: e.a. 2007, The Family Reunification Directive in EU Member a. The first year of implementation. CMR: Nijmegen.

Hart, B. de: 2004, Huwelijksmigratie, vreemdelingenrecht en integratie, Bevolking en Gezin 33(2004), 2, p. 51 – 78.

Heijer, M. den: 2007, Dutch EU-policies with regard to legal migration – The directive on family reunification, Issue paper, June 2007, www.wrr.nl. Geschreven ten behoeve van: The political and social embedding of Dutch policy in the EU'. WRR project 'Europe in the NL'.

Hermans, M.: 2004, Uitstel leidt niet altijd tot afstel, Equality Matters, digitale versie oktober 2004, jaargang 6, nr. 7. p.1.

Lawson, R.A.: 2005, Taaleisen en discriminatieverboden in het Europese recht. Over het alledaagse leven als maatstaf, in: Boeles, P. en Lodder, G.G.: 2005 (ed), Integratie en uitsluiting, Sdu. Den Haag, p 115 - 134.
Lodder, G.G.: 2007, De gezinsherenigingsrichtlijn: legitimering van of keerpuntvoor het restrictieve Nederlandse beleid?, *Migrantenrecht* 1+2-07, p. 26-31, FORUM: Utrecht.
Nicolaas, H.: 2006, Nederland van emigratie naar immigratie, Bevolkingstrend 2e kwartaal 2006, Centraal Bureau voor de Statistiek.
Oosterom-Staples, H.: 2004, Europeesrechtelijke grenzen aan inburgeringsverplichtingen, Tilburg: Universiteit van Tilburg 2004, www.wodc.nl/onderzoeken.
Permanente Commissie van deskundigen in internationaal vreemdelingen-, vluchtelingen- en strafrecht: 2002, Brief aan de leden van de Eerste en Tweede Kamer betreffende agenda JBZ-Raaad 19 en 20 december 2002, Utrecht, 16 december 2002. (CM 0213)
Permanente Commissie van deskundigen in internationaal vreemdelingen-, vluchtelingen- en strafrecht: 2003, Brief aan de leden van de Eerste Kamer betreffende gezinshereniging; reactie op de brief van de Minister d.d. 24 maart 2003, Utrecht, 9 april 2003.(CM 0304)
Permanente Commissie van deskundigen in internationaal vreemdelingen-, vluchtelingen- en strafrecht: 2003, Brief aan de lende van de Eerste en Tweede Kamer betreffende commentaar JBZ-Raad 27 en 28 februari 2003, Utrecht, 17 februari 2003 (CM 0301)
Permanente Commissie van deskundigen in internationaal vreemdelingen-, vluchtelingen- en strafrecht: 2005, Brief aan de vaste commissie voor Justitie van de Tweede Kamer betreffende de Kabinetsreactie op het ACVZ-advies openbare orde (TK 19637, nr. 91). Utrecht, 10 oktober 2005.
Scheers, E.: 2004a, Richtlijn gezinshereniging. Gevolgen Nederlands gezinsherenigingsbeleid (deel 1), *Migrantenrecht* 8- 04, p. 284–292, FORUM: Utrecht.
Scheers, E.: 2004b, Europese richtlijn gezinshereniging (deel 2), *Migrantenrecht* 9/10- 04, p. 333 – 340, FORUM: Utrecht.
Tweede Kamer 2001-2002, just020427, 3 mei 2002. Brief van de minister aan de tweede kamer.
Tweede Kamer 2002 - 2003, 28 637, nr. 19, p. 14. Regeerakkoord
Tweede Kamer 2003 – 2004, 29 543, nr. 2.
Tweede Kamer 2003 – 2004, 29 700, nr. 3. Memorie van Toelichting bij de Wet Inburgering Buitenland
Tweede Kamer 2004 - 2005, 19 637, nr. 873. Verslag van een algemeen overleg.
Tweede Kamer 2004 - 2005, 19 637, nr. 901. Brief van de minister voor vreemdelingenzaken en integratie.
Tweede Kamer 2004 - 2005, Handelingen 60, p.3900 en 3902.
Tweede Kamer 2004 - 2005, 29 000 VI, nr. 122, p. 2 Brief van de minister aan de Voorzitter van de TK.
Tweede Kamer 2004 - 2005, Handelingen,71, p. 4377-4382. Verslag van het overleg met de Tweede Kamer op 12 april 2005.
Tweede Kamer 2005 - 2006, 19 637, nr. 971. Brief van de minister voor vreemdelingenzaken en integratie.
Tweede Kamer 2005 - 2006, 30 308, nr. 6, Verslag voorbereidend onderzoek wetsvoorstel Wet inburgering.
Tweede Kamer 2005 -2006, 30 308, nr. 106. Advies van de Raad van State van 3 en 25 augustus 2006 wetsvoorstel Wet inburgering.
Tweede Kamer 2005 - 2006, 29 700, 31
Tweede Kamer 2005 - 2006, 29 700, 32;
Tweede Kamer 2006 - 2007, Aanhangsel van de Handelingen, 901, p. 1929. Vragen van het lid Spekman (PvdA) over de gelijke behandeling van Nederlanders en burgers van derde landen bij gezinshereniging. Met antwoord van staatssecretaris Albayrak.
Tweede Kamer 2006 – 2007, Aanhangsel van de handelingen 1125, p. 2387 – 2388.Vragen van de leden Fritsma en Wilders (PVV)over de toename van importpartners uit Marokko naar België. Met antwoord van staatssecretaris Albayrak.
Tweede Kamer 2006–2007 Vragen gesteld door het lid Azough (GroenLinks) aan de staatssecretaris van Justitie over de legeskosten. (Ingezonden 19 maart 2007).
TK 2006-2007, Aanhangsel van de Handelingen, 2064, p. 4371, Antwoord van staatssecretaris Albayrak op vragen van het lid Azough (ontvangen 4 juli 2007).
Uyl, A. van: 2007, Gezinsleven van vluchtelingen steeds meer in de knel, *Migrantenrecht* 1+2-07, p. 7-11, FORUM: Utrecht
Valk, H.A.G. de & Liefbroer, A.C.: 2007, Parental influence on union formation preferences among Turkish, Moroccan, and Dutch adolescents in the Netherlands. *Journal of Cross-Cultural Psychology* 38 (4): 487-505.
VluchtelingenWerk Nederland: 2003, Brief aan de woordvoerders asielbeleid van de fracties van de Tweede Kamer, 25 maart 2003.

VluchtelingenWerk Nederland: 2004, Brief aan de woordvoerders inzake Integratie en asielbeleid van de vaste commissie voor Justitie van de Tweede Kamer, 12 oktober 2004.
Vries, K.M. de: 2006, Inburgeringseisen en gemeenschapsrecht. Een reactie, *Migrantenrecht* 8-06, p. 272-282, FORUM: Utrecht.
Vries, K.M. de: 2007, Het nieuwe Nederlandse inburgeringsstelsel, *Migrantenrecht* 3-07, p. 111-113, FORUM: Utrecht.
Walsum, S.K. van: 2002, Commentaar bij TBV 2002/4: feitelijke gezinsband 'AN unfair Balance', *Migrantenrecht* 2-02, p. 55-57, FORUM: Utrecht.
Winden, J.H. van der: 2006, Wet inburgering in het buitenland, Sdu, Den Haag.

Acts and legislation:

- Aliens Act 2000
- Aliens Decree 2000
- Aliens Regulations 2000
- Aliens Act Implementation Guidelines 2000
- Integration Abroad Act
- Integration Act
- Decree of 29 September 2004 to amend the Aliens Decree 2000 in connection with the implementation of the 2003/86/EC Directive and a number of other family reunification, family formation and public order issues, Stb. 2004, 496
- Decree of 23 November 2006 to amend the Aliens Decree 2000 in connection with the implementation of Directive 2003/86/EC of the European Council of 25 November 2003 regarding the status of long-term residents of third countries, Stb. 2006, 585.
- Decree of 5 December 2006 for the implementation of the Integration Act, Stb. 2006, 625.
- Decree for the determination of the effective date of the Integration Act, Stb. 2006, 645.
- Decree for the amendment of the Aliens Act Implementation Guidelines 2000 (B2/5.3.3) with regard to demonstrable (sexual) violence within the marriage relationship, Stcrt. N° 63, 31-03-2004.
- Decree for the amendment of the Aliens Act Implementation Guidelines 2000 (2006 / 33A), p. 2, Stcr. n° 233, p. 9, 29 November 2006.

Annex 2: Overview of the implementation of optional provisions

Provision of Directive	***Applied yes/no***	***Dutch provisions***
Art. 4, paragraph 1, sub c	Yes	Art. 3.14 paragraph 1, sub c Vb, Vc B2/5.2.
Art. 4, paragraph 1, sub d	Yes	Vc B2/5.2
Art. 4, paragraph 1,final paragraph	No	
Art. 4 paragraph 2, sub a	No*	Note: The Netherlands has its own policy. See Art. 3.25 Vb.
Art. 4, paragraph 2,sub b	No*	Note: The Netherlands has its own policy. See Art. 3.24 Vb.
Art. 4 paragraph 3	Yes	Art. 3.14 paragraph 1, sub b Vb
Art. 4 paragraph 4, 2e subparagraph	Yes	Art. 3.16 Vb
Art. 4, paragraph 5	Yes	Art. 3.14 paragraph 2 and Art. 3.15 paragraph 2 Vb (only for family formation)
Art. 4, paragraph 6	No	
Art. 6, paragraph 1	Yes	Art. 16 paragraph 1 sub d and e Vw, jo. Art. 3.20 Vb, 3.77 Vb, 3.78 Vb, 3.79 Vb
Art. 6, paragraph 2	Yes	Art. 3.86 Vb, 3.87 Vb
Art. 7, paragraph 1, sub a	No	
Art. 7, paragraph 1, sub b	No	
Art. 7, paragraph 1, sub c	Yes	Art. 16 paragraph 1 sub c Vw jo. Art. 3.22 Vb, 3.73 – 3.75 Vb
Art. 7, paragraph 2	Yes	Art. 16 paragraph 1 sub h Vw, jo. Art. 3.98a Vb.
Art. 8	No	
Art. 9 paragraph 2	Yes	Art. 29 paragraph 1 sub e and f Vw
Art. 10 paragraph 2	Yes	Art. 29 paragraph 1, sub f Vw
Art. 10 paragraph 3, sub b	No	
Art. 12 paragraph 1, 2nd subparagraph	Yes	Art. 29, paragraph 1 sub e and f Vw jo. Art. 3.22, paragraph 4 Vb
Art. 12 paragraph 1, 3rd subparagraph	Yes	Art. 29 paragraph 1 sub e and f Vw jo. Art. 3.22, paragraph 4 Vb
Art. 14 paragraph 3	N.A.	
Art. 15 paragraph 2	Yes	Art. 3.51 Vb, 3.52 Vb
Art. 15 paragraph 3	Yes	Art. 3.51, 3.52 Vb
Art. 16 paragraph 1 a	Yes	Art. 17-18 Vw, Art. 3.83 – 33.87 Vb, Art. 3.90 Vb
Art. 16 paragraph 1 b-c	Yes	Art. 18, paragraph 1, sub f Vw, 19 Vw.
Art. 16 paragraph 2 sub a-b	Yes	Art. 18 paragraph 1 sub c Vw, jo. Art. 19 Vw, Art. 3.84 Vb
Art. 16, paragraph 3	Yes	Art. 18 paragraph 1 sub c Vw, jo. Art. 19 Vw
Art. 16, paragraph 4	Yes	Vc B2/3

Annex 3: Exemption of provisional residence permit requirement

List of countries of which the citizens do not have to apply for a provisional residence permit:
Australia
Austria
Belgium
Bulgaria
Canada
Cyprus
Czech Republic
Denmark
Estonia
Finland
France
Germany
Greece
Hungary
Iceland
Ireland
Italy
Japan
Latvia
Liechtenstein
Lithuania
Luxemburg
Malta
Monaco
New Zealand
Norway
Poland
Portugal
Romania
Slovakia
Slovenia
South Korea
Spain
Sweden
Switzerland
United Kingdom
United States of America
Vatican City

Annex 4: List of case law

ABRvS 29 - 03 - 2006, JV 2006/172, m.nt. C.A. Groenendijk.
ABRvS 19 - 06 - 2006, 200601672/1.
ABRvS 12 – 07 - 2006, JV 2006/328 m.nt. C.A. Groenendijk.
ABRvS 23 - 11 - 2006, JV 2007/39, m.nt. C.A. Groenendijk.
ABRvS 06- 03 - 2007, JV 2007/178, m.nt. P. Boeles.
ABRvS 20 - 03 - 2007, 200609096/1, migratieweb ve07000713.

Rechtbank 's-Gravenhage zp Amsterdam 16 - 11- 2005, JV 2006/28.
Rechtbank 's-Gravenhage zp Haarlem 21 - 12 - 2005, JV 2006/65.
Rechtbank 's-Gravenhage zp Middelburg 14 - 03 - 2006, JV 2006/177.
Rechtbank 's-Gravenhage zp Zutphen 15 - 05 - 2006, JV 2006/26.
Rechtbank 's-Gravenhage zp Rotterdam 17 - 07 - 2006, JV 2006/36.
Rechtbank 's-Gravenhage zp Middelburg 18 - 10 - 2006, JV 2006/462, m.nt. P. Boeles.
Rechtbank 's-Gravenhage zp Haarlem 02 - 11 - 2006, Awb 06/21168, Migratieweb ve07000073.
Rechtbank 's-Gravenhage zp Haarlem 16 - 11 - 2006, Awb 06/22751, Migratieweb ve07000185.
Rechtbank 's-Gravenhage zp Haarlem 02 - 03 - 2007, Awb 06/37440 en Awb 06/ 37439, Migratieweb ve07000468.

Annex 5: Involved authorities

The power to make decisions in aliens affairs is allocated to different authorities.

State Secretary of Justice
All decisions regarding the authorisation, rejection or non-consideration of applications for the granting, renewal or modification of a regular or asylum residence permit are made by or on behalf of the *Secretary of State for Justice*. The latter has granted full discretionary powers to the Head of the Immigration and Naturalisation Service (Immigratie- en Naturalisatiedienst (IND)).
The responsible member of government in the Balkenende II cabinet (June 2003 – March 2007) was the *Minister of Immigration and Integration.*

Immigration and Naturalisation Service (Immigratie- en Naturalisatiedienst) (IND)
IND is an executive body of the Department of Justice that makes decisions with regard to the regular and asylum residence permits and naturalisation applications.

Minister of Foreign Affairs
The Minister of Foreign Affairs is officially empowered to decide on visa applications. This applies to both visas for short stays and provisional residence permits (mvv). In many cases, these powers were granted to the Visa Service. Visa applications for short stays in connection with business visits, conferences, seminars, sports events, cultural events, international organisations, political matters and scientific visits are dealt with by the Movement of Persons, Migration and Aliens Affairs Department and the Aliens and Consular Affairs Department of the Ministry of Foreign Affairs. In addition, the Ministry of Foreign Affairs deals with visa applications for the short stay of citizens of the former Soviet Republics and visa applications of holders of diplomatic and service passports.

Visa Service
The *Visa Service* is an executive body of the Ministry of Immigration and Integration. The head of the IND is also head of the Visa Service. The Visa Service takes decisions on applications for provisional residence permits or visas for short stays in connection with family visits or visits to friends and/or tourism on behalf of the Minister of Foreign Affairs. In addition visa applications of artists, students, trainees, athletes and visits for medical treatment can be presented to the Visa Service.
The Visa Service can also reject applications for provisional residence permits, consider objections against rejections on behalf of the Minister of Foreign Affairs or represent the Minister in court.

Aliens Police
The *Aliens Police* is responsible for the supervision of foreign nationals. Formally, the Chief of Police.

Centre for Work and Income (Centrum voor werk en inkomen) (CWI)
The Centre for Work and Income decides on work permit applications.

Annex 6: Text of directive 2003/86/EC

Read further on the next page

COUNCIL DIRECTIVE 2003/86/EC
of 22 September 2003
on the right to family reunification

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 63(3)(a) thereof,

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the European Parliament [2],

Having regard to the opinion of the European Economic and Social Committee [3],

Having regard to the opinion of the Committee of the Regions [4],

Whereas:

(1) With a view to the progressive establishment of an area of freedom, security and justice, the Treaty establishing the European Community provides both for the adoption of measures aimed at ensuring the free movement of persons, in conjunction with flanking measures relating to external border controls, asylum and immigration, and for the adoption of measures relating to asylum, immigration and safeguarding the rights of third country nationals.

(2) Measures concerning family reunification should be adopted in conformity with the obligation to protect the family and respect family life enshrined in many instruments of international law. This Directive respects the fundamental rights and observes the principles recognised in particular in Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and in the Charter of Fundamental Rights of the European Union.

(3) The European Council, at its special meeting in Tampere on 15 and 16 October 1999, acknowledged the need for harmonisation of national legislation on the conditions for admission and residence of third country nationals. In this context, it has in particular stated that the European Union should ensure fair treatment of third country nationals residing lawfully on the territory of the Member States and that a more vigorous integration policy should aim at granting them rights and obligations comparable to those of citizens of the European Union. The European Council accordingly asked the Council rapidly to adopt the legal instruments on the basis of Commission proposals. The need for achieving the objectives defined at Tampere have been reaffirmed by the Laeken European Council on 14 and 15 December 2001.

(4) Family reunification is a necessary way of making family life possible. It helps to create sociocultural stability facilitating the integration of third country nationals in the Member State, which also serves to promote economic and social cohesion, a fundamental Community objective stated in the Treaty.

(5) Member States should give effect to the provisions of this Directive without discrimination on the basis of sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or beliefs, political or other opinions, membership of a national minority, fortune, birth, disabilities, age or sexual orientation.

(6) To protect the family and establish or preserve family life, the material conditions for exercising the right to family reunification should be determined on the basis of common criteria.

(7) Member States should be able to apply this Directive also when the family enters together.

(8) Special attention should be paid to the situation of refugees on account of the reasons which obliged them to flee their country and prevent them from leading a normal family life there. More favourable conditions should therefore be laid down for the exercise of their right to family reunification.

(9) Family reunification should apply in any case to members of the nuclear family, that is to say the spouse and the minor children.

(10) It is for the Member States to decide whether they wish to authorise family reunification for relatives in the direct ascending line, adult unmarried children, unmarried or registered partners as well as, in the event of a polygamous marriage, minor children of a further spouse and the sponsor. Where a Member State authorises family reunification of these persons, this is without prejudice of the possibility, for Member States which do not recognise the existence of family ties in the cases covered by this provision, of not granting to the said persons the treatment of family members with regard to the right to reside in another Member State, as defined by the relevant EC legislation.

[1] OJ C 116 E, 26.4.2000, p. 66, and OJ C 62 E, 27.2.2001, p. 99.
[2] OJ C 135, 7.5.2001, p. 174.
[3] OJ C 204, 18.7.2000, p. 40.
[4] OJ C 73, 26.3.2003, p. 16.

(11) The right to family reunification should be exercised in proper compliance with the values and principles recognised by the Member States, in particular with respect to the rights of women and of children; such compliance justifies the possible taking of restrictive measures against applications for family reunification of polygamous households.

(12) The possibility of limiting the right to family reunification of children over the age of 12, whose primary residence is not with the sponsor, is intended to reflect the children's capacity for integration at early ages and shall ensure that they acquire the necessary education and language skills in school.

(13) A set of rules governing the procedure for examination of applications for family reunification and for entry and residence of family members should be laid down. Those procedures should be effective and manageable, taking account of the normal workload of the Member States' administrations, as well as transparent and fair, in order to offer appropriate legal certainty to those concerned.

(14) Family reunification may be refused on duly justified grounds. In particular, the person who wishes to be granted family reunification should not constitute a threat to public policy or public security. The notion of public policy may cover a conviction for committing a serious crime. In this context it has to be noted that the notion of public policy and public security covers also cases in which a third country national belongs to an association which supports terrorism, supports such an association or has extremist aspirations.

(15) The integration of family members should be promoted. For that purpose, they should be granted a status independent of that of the sponsor, in particular in cases of breakup of marriages and partnerships, and access to education, employment and vocational training on the same terms as the person with whom they are reunited, under the relevant conditions.

(16) Since the objectives of the proposed action, namely the establishment of a right to family reunification for third country nationals to be exercised in accordance with common rules, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved by the Community, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(17) In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community and without prejudice to Article 4 of the said Protocol these Member States are not participating in the adoption of this Directive and are not bound by or subject to its application.

(18) In accordance with Article 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark does not take part in the adoption of this Directive, and is not bound by it or subject to its application,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

General provisions

Article 1

The purpose of this Directive is to determine the conditions for the exercise of the right to family reunification by third country nationals residing lawfully in the territory of the Member States.

Article 2

For the purposes of this Directive:

(a) 'third country national' means any person who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty;

(b) 'refugee' means any third country national or stateless person enjoying refugee status within the meaning of the Geneva Convention relating to the status of refugees of 28 July 1951, as amended by the Protocol signed in New York on 31 January 1967;

(c) 'sponsor' means a third country national residing lawfully in a Member State and applying or whose family members apply for family reunification to be joined with him/her;

(d) 'family reunification' means the entry into and residence in a Member State by family members of a third country national residing lawfully in that Member State in order to preserve the family unit, whether the family relationship arose before or after the resident's entry;

(e) 'residence permit' means any authorisation issued by the authorities of a Member State allowing a third country national to stay legally in its territory, in accordance with the provisions of Article 1(2)(a) of Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third country nationals [1];

[1] OJ L 157, 15.6.2002, p. 1.

(f) 'unaccompanied minor' means third country nationals or stateless persons below the age of eighteen, who arrive on the territory of the Member States unaccompanied by an adult responsible by law or custom, and for as long as they are not effectively taken into the care of such a person, or minors who are left unaccompanied after they entered the territory of the Member States.

Article 3

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

2. This Directive shall not apply where the sponsor is:

(a) applying for recognition of refugee status whose application has not yet given rise to a final decision;

(b) authorised to reside in a Member State on the basis of temporary protection or applying for authorisation to reside on that basis and awaiting a decision on his status;

(c) authorised to reside in a Member State on the basis of a subsidiary form of protection in accordance with international obligations, national legislation or the practice of the Member States or applying for authorisation to reside on that basis and awaiting a decision on his status.

3. This Directive shall not apply to members of the family of a Union citizen.

4. This Directive is without prejudice to more favourable provisions of:

(a) bilateral and multilateral agreements between the Community or the Community and its Member States, on the one hand, and third countries, on the other;

(b) the European Social Charter of 18 October 1961, the amended European Social Charter of 3 May 1987 and the European Convention on the legal status of migrant workers of 24 November 1977.

5. This Directive shall not affect the possibility for the Member States to adopt or maintain more favourable provisions.

CHAPTER II

Family members

Article 4

1. The Member States shall authorise the entry and residence, pursuant to this Directive and subject to compliance with the conditions laid down in Chapter IV, as well as in Article 16, of the following family members:

(a) the sponsor's spouse;

(b) the minor children of the sponsor and of his/her spouse, including children adopted in accordance with a decision taken by the competent authority in the Member State concerned or a decision which is automatically enforceable due to international obligations of that Member State or must be recognised in accordance with international obligations;

(c) the minor children including adopted children of the sponsor where the sponsor has custody and the children are dependent on him or her. Member States may authorise the reunification of children of whom custody is shared, provided the other party sharing custody has given his or her agreement;

(d) the minor children including adopted children of the spouse where the spouse has custody and the children are dependent on him or her. Member States may authorise the reunification of children of whom custody is shared, provided the other party sharing custody has given his or her agreement.

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

By way of derogation, where a child is aged over 12 years and arrives independently from the rest of his/her family, the Member State may, before authorising entry and residence under this Directive, verify whether he or she meets a condition for integration provided for by its existing legislation on the date of implementation of this Directive.

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

(a) first-degree relatives in the direct ascending line of the sponsor or his or her spouse, where they are dependent on them and do not enjoy proper family support in the country of origin;

(b) the adult unmarried children of the sponsor or his or her spouse, where they are objectively unable to provide for their own needs on account of their state of health.

3. The Member States may, by law or regulation, authorise the entry and residence, pursuant to this Directive and subject to compliance with the conditions laid down in Chapter IV, of the unmarried partner, being a third country national, with whom the sponsor is in a duly attested stable long-term relationship, or of a third country national who is bound to the sponsor by a registered partnership in accordance with Article 5(2), and of the unmarried minor children, including adopted children, as well as the adult unmarried children who are objectively unable to provide for their own needs on account of their state of health, of such persons.

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

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

By way of derogation from paragraph 1(c), Member States may limit the family reunification of minor children of a further spouse and the sponsor.

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

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

CHAPTER III

Submission and examination of the application

Article 5

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

2. The application shall be accompanied by documentary evidence of the family relationship and of compliance with the conditions laid down in Articles 4 and 6 and, where applicable, Articles 7 and 8, as well as certified copies of family member(s)' travel documents.

If appropriate, in order to obtain evidence that a family relationship exists, Member States may carry out interviews with the sponsor and his/her family members and conduct other investigations that are found to be necessary.

When examining an application concerning the unmarried partner of the sponsor, Member States shall consider, as evidence of the family relationship, factors such as a common child, previous cohabitation, registration of the partnership and any other reliable means of proof.

3. The application shall be submitted and examined when the family members are residing outside the territory of the Member State in which the sponsor resides.

By way of derogation, a Member State may, in appropriate circumstances, accept an application submitted when the family members are already in its territory.

4. The competent authorities of the Member State shall give the person, who has submitted the application, written notification of the decision as soon as possible and in any event no later than nine months from the date on which the application was lodged.

In exceptional circumstances linked to the complexity of the examination of the application, the time limit referred to in the first subparagraph may be extended.

Reasons shall be given for the decision rejecting the application. Any consequences of no decision being taken by the end of the period provided for in the first subparagraph shall be determined by the national legislation of the relevant Member State.

5. When examining an application, the Member States shall have due regard to the best interests of minor children.

CHAPTER IV

Requirements for the exercise of the right to family reunification

Article 6

1. The Member States may reject an application for entry and residence of family members on grounds of public policy, public security or public health.

2. Member States may withdraw or refuse to renew a family member's residence permit on grounds of public policy or public security or public health.

When taking the relevant decision, the Member State shall consider, besides Article 17, the severity or type of offence against public policy or public security committed by the family member, or the dangers that are emanating from such person.

3. Renewal of the residence permit may not be withheld and removal from the territory may not be ordered by the competent authority of the Member State concerned on the sole ground of illness or disability suffered after the issue of the residence permit.

Article 7

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

(a) accommodation regarded as normal for a comparable family in the same region and which meets the general health and safety standards in force in the Member State concerned;

(b) sickness insurance in respect of all risks normally covered for its own nationals in the Member State concerned for himself/herself and the members of his/her family;

(c) stable and regular resources which are sufficient to maintain himself/herself and the members of his/her family, without recourse to the social assistance system of the Member State concerned. Member States shall evaluate these resources by reference to their nature and regularity and may take into account the level of minimum national wages and pensions as well as the number of family members.

2. Member States may require third country nationals to comply with integration measures, in accordance with national law.

With regard to the refugees and/or family members of refugees referred to in Article 12 the integration measures referred to in the first subparagraph may only be applied once the persons concerned have been granted family reunification.

Article 8

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

By way of derogation, where the legislation of a Member State relating to family reunification in force on the date of adoption of this Directive takes into account its reception capacity, the Member State may provide for a waiting period of no more than three years between submission of the application for family reunification and the issue of a residence permit to the family members.

CHAPTER V

Family reunification of refugees

Article 9

1. This Chapter shall apply to family reunification of refugees recognised by the Member States.

2. Member States may confine the application of this Chapter to refugees whose family relationships predate their entry.

3. This Chapter is without prejudice to any rules granting refugee status to family members.

Article 10

1. Article 4 shall apply to the definition of family members except that the third subparagraph of paragraph 1 thereof shall not apply to the children of refugees.

2. The Member States may authorise family reunification of other family members not referred to in Article 4, if they are dependent on the refugee.

3. If the refugee is an unaccompanied minor, the Member States:

(a) shall authorise the entry and residence for the purposes of family reunification of his/her first-degree relatives in the direct ascending line without applying the conditions laid down in Article 4(2)(a);

(b) may authorise the entry and residence for the purposes of family reunification of his/her legal guardian or any other member of the family, where the refugee has no relatives in the direct ascending line or such relatives cannot be traced.

Article 11

1. Article 5 shall apply to the submission and examination of the application, subject to paragraph 2 of this Article.

2. Where a refugee cannot provide official documentary evidence of the family relationship, the Member States shall take into account other evidence, to be assessed in accordance with national law, of the existence of such relationship. A decision rejecting an application may not be based solely on the fact that documentary evidence is lacking.

Article 12

1. By way of derogation from Article 7, the Member States shall not require the refugee and/or family member(s) to provide, in respect of applications concerning those family members referred to in Article 4(1), the evidence that the refugee fulfils the requirements set out in Article 7.

Without prejudice to international obligations, where family reunification is possible in a third country with which the sponsor and/or family member has special links, Member States may require provision of the evidence referred to in the first subparagraph.

Member States may require the refugee to meet the conditions referred to in Article 7(1) if the application for family reunification is not submitted within a period of three months after the granting of the refugee status.

2. By way of derogation from Article 8, the Member States shall not require the refugee to have resided in their territory for a certain period of time, before having his/her family members join him/her.

CHAPTER VI

Entry and residence of family members

Article 13

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

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

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

Article 14

1. The sponsor's family members shall be entitled, in the same way as the sponsor, to:

(a) access to education;

(b) access to employment and self-employed activity;

(c) access to vocational guidance, initial and further training and retraining.

2. Member States may decide according to national law the conditions under which family members shall exercise an employed or self-employed activity. These conditions shall set a time limit which shall in no case exceed 12 months, during which Member States may examine the situation of their labour market before authorising family members to exercise an employed or self-employed activity.

3. Member States may restrict access to employment or self-employed activity by first-degree relatives in the direct ascending line or adult unmarried children to whom Article 4(2) applies.

Article 15

1. Not later than after five years of residence, and provided that the family member has not been granted a residence permit for reasons other than family reunification, the spouse or unmarried partner and a child who has reached majority shall be entitled, upon application, if required, to an autonomous residence permit, independent of that of the sponsor.

Member States may limit the granting of the residence permit referred to in the first subparagraph to the spouse or unmarried partner in cases of breakdown of the family relationship.

2. The Member States may issue an autonomous residence permit to adult children and to relatives in the direct ascending line to whom Article 4(2) applies.

3. In the event of widowhood, divorce, separation, or death of first-degree relatives in the direct ascending or descending line, an autonomous residence permit may be issued, upon application, if required, to persons who have entered by virtue of family reunification. Member States shall lay down provisions ensuring the granting of an autonomous residence permit in the event of particularly difficult circumstances.

4. The conditions relating to the granting and duration of the autonomous residence permit are established by national law.

CHAPTER VII

Penalties and redress

Article 16

1. Member States may reject an application for entry and residence for the purpose of family reunification, or, if appropriate, withdraw or refuse to renew a family member's residence permit, in the following circumstances:

(a) where the conditions laid down by this Directive are not or are no longer satisfied.

When renewing the residence permit, where the sponsor has not sufficient resources without recourse to the social assistance system of the Member State, as referred to in Article 7(1)(c), the Member State shall take into account the contributions of the family members to the household income;

(b) where the sponsor and his/her family member(s) do not or no longer live in a real marital or family relationship;

(c) where it is found that the sponsor or the unmarried partner is married or is in a stable long-term relationship with another person.

2. Member States may also reject an application for entry and residence for the purpose of family reunification, or withdraw or refuse to renew the family member's residence permits, where it is shown that:

(a) false or misleading information, false or falsified documents were used, fraud was otherwise committed or other unlawful means were used;

(b) the marriage, partnership or adoption was contracted for the sole purpose of enabling the person concerned to enter or reside in a Member State.

When making an assessment with respect to this point, Member States may have regard in particular to the fact that the marriage, partnership or adoption was contracted after the sponsor had been issued his/her residence permit.

3. The Member States may withdraw or refuse to renew the residence permit of a family member where the sponsor's residence comes to an end and the family member does not yet enjoy an autonomous right of residence under Article 15.

4. 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 as defined by paragraph 2. Specific checks may also be undertaken on the occasion of the renewal of family members' residence permit.

Article 17

Member States shall take due account of the nature and solidity of the person's family relationships and the duration of his residence in the Member State and of the existence of family, cultural and social ties with his/her country of origin where they reject an application, withdraw or refuse to renew a residence permit or decide to order the removal of the sponsor or members of his family.

Article 18

The Member States shall ensure that the sponsor and/or the members of his/her family have the right to mount a legal challenge where an application for family reunification is rejected or a residence permit is either not renewed or is withdrawn or removal is ordered.

The procedure and the competence according to which the right referred to in the first subparagraph is exercised shall be established by the Member States concerned.

CHAPTER VIII

Final provisions

Article 19

Periodically, and for the first time not later than 3 October 2007, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States and shall propose such amendments as may appear necessary. These proposals for amendments shall be made by way of priority in relation to Articles 3, 4, 7, 8 and 13.

Article 20

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by not later than 3 October 2005. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

Article 21

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Union*.

Article 22

This Directive is addressed to the Member States in accordance with the Treaty establishing the European Community.

Done at Brussels, 22 September 2003.

For the Council

The President

F. FRATTINI