

# Family Reunification of TCNs in the EU: National Practices

## Common Template of EMN Focussed Study 2016

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

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

## 1 STUDY AIMS AND RATIONALE

### 1.1 STUDY AIMS

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

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

In particular, the Study will:

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

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

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

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

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

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

## 1.2 RATIONALE FOR THE STUDY

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

One of the main migration-related challenges the EU is currently tackling is the rise in the number of asylum seekers: in 2014, 626,960 requests for asylum were received in the EU as a whole, rising substantially to 1,321,600 in 2015. The increase of permits issued for protection reasons in some Member States may lead to an increase in the number of family reunification requests as beneficiaries of international protection are generally entitled to ask for family reunification and, among them, refugees enjoy particularly favourable conditions for obtaining it.<sup>10</sup> In this context, the Commission's goal is to promote safe and legal avenues for migration and thereby discourage people from embarking on risky journeys to reach Europe. To achieve this objective, in the EU Agenda on Migration, the Commission has called for the full use of the legal avenues for migration, including family reunification.<sup>11</sup> In light of these developments, some Member States have introduced private sponsorship programmes which are similar to family reunification arrangements (EMN, 2016 Synthesis Resettlement and Humanitarian Admission Programmes in Europe – what works?).

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

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

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

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

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

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

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

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

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

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

## 2 SCOPE OF THE STUDY

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

*Figure 1. Scope of the Study*

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

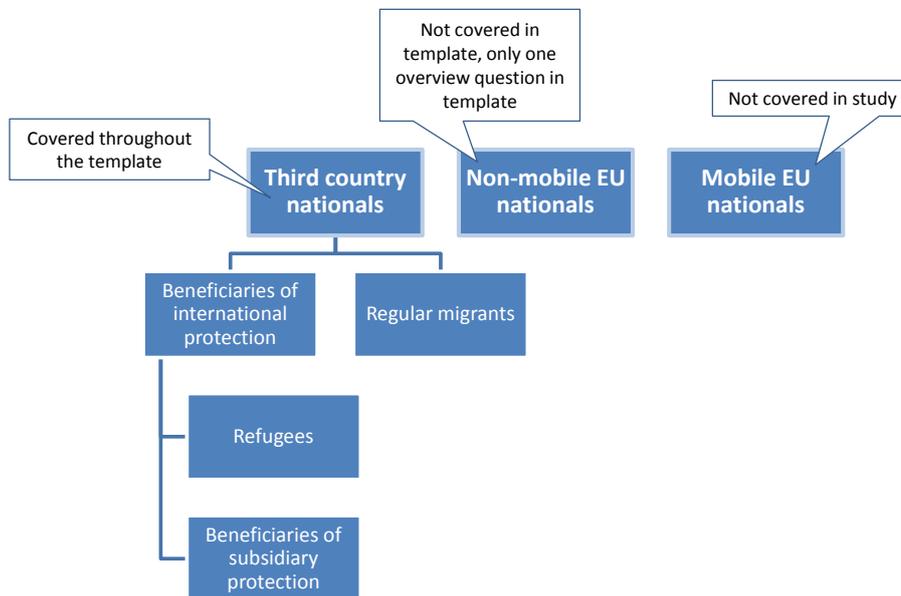
<sup>13</sup> The Second Implementation Report is expected in 2017 and main implementation/application issues will be covered in the 'fitness check' of the legal migration acquis which is ongoing in the Commission.

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

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

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

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



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

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

### 3 EU LEGAL AND POLICY CONTEXT

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

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

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

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

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

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

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

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

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

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

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

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

In 2014, the [First Implementation Report](#) of the Directive highlighted several issues of incorrect transposition or misapplication and noted that the impact of the Directive on harmonisation had been limited, due to the high number of discretionary clauses. As a consequence, the Commission launched a wide [public consultation](#), in the form of a Green Paper, which received 120 contributions.<sup>21</sup> To ensure the full implementation of the existing rules and to guide the application of the Directive, the Commission published in 2014 the [Communication from the Commission to the European Parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification](#).<sup>22</sup> The Communication, following CJEU case law, emphasised that "derogations must be interpreted strictly [and] the margin of appreciation [...] must not be used in a manner that would undermine the objective of the Directive, which is to promote family reunification and the effectiveness thereof".

#### 4 RELEVANT CASE LAW

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

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

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

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

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

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

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

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

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

<sup>27</sup> Article 8.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 5 PRIMARY QUESTIONS TO BE ADDRESSED BY THE STUDY

The primary questions the Study will address include:

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

## 6 RELEVANT SOURCES AND LITERATURE

### **EMN Studies**

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

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

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

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

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

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

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

Other relevant, though less recent, EMN studies include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 7 AVAILABLE STATISTICS

### **EU level**

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

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

### **National level**

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

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

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

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

## 8 DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

*Synonymous:* family reunion

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 9 ADVISORY GROUP

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

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

- ★ AT EMN NCP: [rlukits@iom.int](mailto:rlukits@iom.int)
- ★ ES EMN NCP: [cblanogaz@meyss.es](mailto:cblanogaz@meyss.es); cc: [sara.corres@meyss.es](mailto:sara.corres@meyss.es)
- ★ FI EMN NCP: [johanna.vaananen@migri.fi](mailto:johanna.vaananen@migri.fi); cc: [Kielo.Brewis@migri.fi](mailto:Kielo.Brewis@migri.fi)
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- ★ NL EMN NCP: [hpm.lemmens@ind.minvenj.nl](mailto:hpm.lemmens@ind.minvenj.nl); cc: [EMN@ind.minvenj.nl](mailto:EMN@ind.minvenj.nl); [H.Wormann@ind.minvenj.nl](mailto:H.Wormann@ind.minvenj.nl); [L.Seiffert@ind.minvenj.nl](mailto:L.Seiffert@ind.minvenj.nl); [L.Cleton@ind.minvenj.nl](mailto:L.Cleton@ind.minvenj.nl)
- ★ NO EMN NCP: [ditj@udi.no](mailto:ditj@udi.no); [rha@udi.no](mailto:rha@udi.no); cc: [oyvind.jaer@jd.dep.no](mailto:oyvind.jaer@jd.dep.no); [eho@udi.no](mailto:eho@udi.no); [magne.holter@jd.dep.no](mailto:magne.holter@jd.dep.no); [tmh@udi.no](mailto:tmh@udi.no); [kac@udi.no](mailto:kac@udi.no); [Ane-Kristine.Djupedal@jd.dep.no](mailto:Ane-Kristine.Djupedal@jd.dep.no); [ditj@udi.no](mailto:ditj@udi.no); [torill.myhren@mfa.no](mailto:torill.myhren@mfa.no)

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## 10 TIMETABLE

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

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

## 11 TEMPLATE FOR NATIONAL CONTRIBUTIONS

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

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

# EMN FOCUSED STUDY 2016

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

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

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

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

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

The Czech Republic has **2 parallel schemes for admission of family members** of the third-country nationals for which different terminology is used:

- **National scheme** of admission for the "**family purpose**" since **1999**: a twofold system in which a family member is required to obtain a national long-term visa first (maximum validity period is 12 months) and a long-term residence permit (for the "family purpose") subsequently.
- Scheme of admission for the **purpose of "family reunification"** based on the **Directive 2003/86/EC** since **2005** in which a family member directly applies for a long-term residence permit (for the purpose of family reunification, not "family purpose"!).

Both schemes are regulated by the Act No. 326/1999 Coll., on Residence of Foreign Nationals in the Territory of the Czech Republic (hereinafter "The Act on Residence of Foreign Nationals").

Family members may decide which migration channel they prefer. National scheme is popular because it is more flexible but the scheme based on the Directive gives family members more rights. A family member admitted in the national scheme may later switch his/her status into the regime of the Directive.

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

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

The number of admitted family members slightly increased in the last few years (2011 – 2015), but never exceeded 4 200 per year (if summing up both migration schemes). The current **refugee crisis** has had **almost no statistical impact** on family-related migration inflows to the Czech Republic. At the end of October 2016, there were 25,300 family members temporarily residing in our country and approx. 77,500 family members residing permanently. The Czech Republic registers data on sponsors but does not aggregate them in the statistical form. No significant new migration trends (both negative and positive) have been identified lately.

Since this migration channel proved to be efficiently regulated, the legislation on family reunification has remained almost unchanged since the implementation of the Family Reunification Directive. Holders of a long-term residence permit for the purpose of family reunification were given free access to the labour market in 2014. This measure supports their integration and reduces administrative burden.

In July 2015, the Czech Government adopted “The Strategy of Migration Policy” which sets principles, priorities, goals and tools of the migration management. The document does not mention the term family reunifications at all which demonstrates that this topic it is not considered as an issue which needs to be broadly discussed, reassessed or re-regulated. Standard monitoring and ad hoc evaluation is deemed to be sufficient to tackle potential challenges.

## Executive Summary (Synthesis Report) [maximum 3 pages]

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

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

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

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

The Act on Residence of Foreign Nationals, which was adopted in 1999, provided a primary legal basis for regulation of immigration of foreign nationals and their family members. Czech national long-term visas were granted to foreign nationals applying for admission for the purpose of the preservation of the family unit (“family purpose”). Holders of visas could extend their stay in the Czech Republic by applying for a long-term residence permit for the same purpose before the expiration of the validity of their visa.

After the accession of the Czech Republic to the EU in 2004, the European legislation was incorporated into the Czech legal system in the following years and new types of permits were introduced:

- Long-term residence permit for the purpose of family reunification – due to the implementation of the Directive 2003/86/EC on the right to family reunification.
- Residence card of a family member of a Union citizen (also called “temporary residence permit for a family

member of an EU citizen”) – according to the Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (See Q11). However, the provisions of the Act on Residence of Foreign Nationals on the temporary residence of a family member of an EU citizen are also adequately applied on third-country nationals who are the family members of the Czech citizens and who do not exercise free movement within the EU. These foreigners are also granted temporary residence permits.

The original twofold system of admission on the basis of long-term visas and further extension of stay on the basis of a residence permit was not cancelled nor replaced by the implementation of the Family Reunification Directive 2003/86/EC but remained functional as a parallel national scheme. Therefore, family members of third-country nationals may choose to apply for a national visa or a long-term residence permit for the purpose of family reunification. In fact, the majority of third-country nationals’ family members choose to apply for the national visa because of its more favourable eligibility criteria:

- no “waiting period” (period of sponsor’s prior stay in the Czech Republic) is required, unlike in the case of reunification according to the Directive (15 months),
- an applicant has to prove he/she has sufficient funds for his/her stay in the Czech Republic (fixed amount of money demonstrated by the bank account statement) instead of proving sufficient regular income of a household after family reunification (sponsor’s regular income) which is required in the case of family reunification according to the Directive.

Moreover, an average processing time is approximately only a half of an average period of processing the application according to the Directive. Family members find this fact very attractive.

If family members are admitted as national visa holders, they must subsequently apply for a long-term residence permit before the expiration of a maximum validity period of a visa (1 year) in order to be eligible to remain in the Czech Republic. When applying for extension of their stay (or anytime later), they can switch their national status (“family purpose”) into the Directive-based status (purpose of “family reunification”). This typically happens once their sponsor completes the required waiting period.

The Czech immigration system does not distinguish between family reunification and family formation.

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

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

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

No substantial changes to the Czech legislation/policy concerning family reunification have been realized since 2011, except one: in 2014, holders of a long-term residence permit for the purpose of family reunification were given free access to the labour market. Currently, minor changes to the legislation are planned; however, they rather clarify the legislative text. Family reunification is not a current priority of the Czech national migration policy. No private sponsorship programme has been introduced.

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

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

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

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

CZ statistics include only data on applicants, not on sponsors.

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

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

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

Sponsor is a third country national who is in possession of valid long-term or permanent residence permit or a person who was granted refugee status. No further distinction is made.

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

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

No. There is possibility for family members of BSPs to obtain BSPs status based solely on the fact that they are family members of person who was already granted subsidiary protection. In case a family comes together to the territory, asks for international protection and subsidiary protection is granted to the father, his wife and children will be granted subsidiary protection for the purpose of family reunification. In case family members are still abroad, they can ask for long-term visas for the "family purpose" (this procedure is outside the Family

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

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

Reunification Directive as it does not apply to beneficiaries of subsidiary protection).

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

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

- Parents? Y/ N

Yes. Parent must be older than 65 years and solitary (unmarried, widowed) or his/her medical status does not allow him/her to take care of him/herself. Also parents of a minor child who was granted refugee status are eligible for family reunification.

- Adult children? Y/ N

Yes. Adult children up to the age of 26 if they are constantly studying.

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

Yes. If the Act on Residence of Foreign Nationals uses a term "spouse" or "marriage", it shall mean also "partner" and "partnership". For the purpose of the Act a "partner" shall mean a person who proves that he/she entered into an officially certified permanent partnership of two persons of the same gender.

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

Yes. Registered partners are treated the same way as married couples.

- Non-married partners? Y/ N

No.

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

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

Yes. State of dependency between sponsor and his/her family member is not defined in the Czech legislation and is not itself a condition for family reunification. However, minor children of sponsor or his/her parents who cannot take care of themselves due to their health conditions are eligible for family reunification as well as sponsor's adult

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

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

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

children (younger than 26 years). Dependency on the sponsor in those cases is in fact tacitly presumed by the law.

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

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

Yes. Any one of the parents of minor children who has been granted asylum under the special legal regulation; if such minor children does not have parents, then any other relative in the direct ascending line, and if such a relative does not exist a guardian of such minor children. Minor children who are in custody of a sponsor by the decision of respective authorities.

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

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

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

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

Yes.

- Healthcare insurance? Y/ N

Yes.

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

Yes. Exemption can be made only when prolongation of the residence permit is concerned.

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

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

- Civic integration exams? Y/ N

If yes, please specify:

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

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

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

No. No integration measures are mandatory in the Czech Republic unless a third-country national applies for a permanent residence permit.

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

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

- If/ What costs are incurred by applicants:

- Language tests? Y/ N

If yes, please specify:

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

No.

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

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

- If/ What costs are incurred by applicants:

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

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

No.

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

If yes, please provide further information below:

No. Currently, no changes are planned.

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

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

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

Yes, the waiting period for family reunification is:

- 15 months if a sponsor is a holder of a long-term or permanent residence permit;
- 6 months if a sponsor is a holder of an Employee Card (a long-term residence permit for the purpose of employment according to the Single Permit Directive 2011/98/EU);

No waiting period is required if a sponsor is

- a Blue Card holder
- a person who was granted international protection
- a holder of a long-term residence permit for the purpose of scientific research
- a long-term resident in the EC in another Member State.

Waiting period also does not apply to certain categories of applicants (for instance dependent children of the sponsor or his/her ancestors).

Application can be submitted shortly before the waiting period, otherwise it will be rejected.

National scheme (long-term visa for the family purpose) does not require any waiting period.

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

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

Yes, on grounds of public security and health. Reasons for rejection based on public security and health are rarely used in practice. No statistical data are currently available.

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

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

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

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

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

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

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

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

No. There is a 3-month grace period.

- Restriction to relationships established before entry into the (Member) State?<sup>47</sup> Y/ N  
If yes, please specify:

No more favourable provisions - the marriage shall exist before the refugee entered the territory.

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

Yes. The Czech Republic applies both situations mentioned in Article 10 par. 3, i.e. letters a) as well as b).

- Have any of these family reunification rules for refugees been changed recently?? Y/ N  
If yes, please provide further information on these changes below:

No.

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

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

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

Eligible family members are the same and there is no waiting period. Concerning requirements, there are no exemptions for applicants who wish to reunify with BSPs – they have to fulfil all conditions as other foreigners. Family Reunification Directive does not apply.

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

The Czech Republic applies the Directive 2004/38/EC also in the situation when the right of free movement has not been exercised. That means the Directive is applicable on family members of Czech nationals. Therefore, the requirements are more favourable in comparison to family members of third-country nationals.

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

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

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

No challenges have been identified.

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

No practices to be shared.

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

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

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

No.

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

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

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

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

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

<sup>49</sup> Art. 4(5) of Directive 2003/86/EC stipulates that Member States may require the sponsor and his/ her spouse to be of a minimum age, and at maximum 21 years, before the spouse is able to join him/ her, in order to ensure better integration and to prevent forced marriages.

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

Family member (an applicant) her/himself exclusively.

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

An application has to be lodged at consular mission abroad. In case the family member is already in possession of a long-term visa or a long-term residence permit, he /she is entitled to lodge the application in the territory of the Czech Republic. Application can be lodged in the territory also by the family member of a person who was granted status of a long-term resident by another Member State and by a family member of a holder of a Blue Card issued by other Member State.

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

I) Travel document (passport, travel document etc.)

II) Official documents (birth certificate, marriage certificate etc.)

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

Interview with an applicant/sponsor.

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

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

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

The applicant is obliged to provide a proof of the fulfilment of the conditions. Certain conditions cannot be proven by documentary evidence, therefore the interviews are conducted for that purpose. The police inspection can also be conducted in the sponsor's place of residence.

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

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

Any applicant for admission may be required to submit a document proving the fulfilment of conditions set by measures of the Ministry of Health on prevention of the spread of infectious illnesses (especially if a foreigner comes from a region where such infections are common or currently reported).

Medical report or rather the statement of medical specialist is required in order to prove the health status of the family member regarding his/her dependency on the care of another person.

A proof of accommodation (rental agreement, document on ownership of a flat/house etc.) must be submitted along with any application for admission. The accommodation building must be approved for habitation or recreation in accordance with the Building Act. Number of persons sharing a flat/house must be proportional to its size in square meters registered in the Cadastre of Real Estate. An inspection might be carried out in the relevant place in the case of doubts.

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

Public healthcare insurance is accessible to all third-country nationals who are employed. All holders of a permanent residence permit and persons granted refugee status have automatic access to the public healthcare insurance. Family members who do not meet these criteria are required to pay private healthcare insurance.

- Please specify the following in relation to the minimum income requirement sponsors must meet in your (Member) State:
  - The amount of the minimum income requirement in the relevant currency and year:

If a family member applies for a long-term residence permit for the purpose of family reunification, the minimum income needed for the sponsor is not a single fixed number. It is calculated, depending on the number of family members living together in the Czech Republic and on actual or normative amount of financial means spent on accommodation.

An applicant is required to prove that the aggregate monthly household income of the family after its reunification will not be lower than the sum of:

- the amount of the subsistence minimums of all family members and
- the highest amount of normative costs for housing, which the foreign national can credibly prove as an amount of reasonably justified costs for the accommodation of the family,

The amounts of the subsistence minimum are graduated according to the order of the persons. The order of the persons appraised is determined so that persons who are not dependent children are appraised first followed by dependent children. Within each of these groups of appraised persons, the order is determined by age from the oldest to the youngest person. The decisive age of a person for determining the amount of the existential minimum is the age of the person in the calendar month during which the existential minimum is ascertained.

The amount of the subsistence minimum of a person who is determined to be first in order is CZK 3,140 a month.

The monthly amount of the subsistence minimum of a person who is determined to be second in order is:

- CZK 2,830 for a person over 15 years, who is not a dependent child,
- CZK 2,450 for a dependent child from 15 to 26 years,
- CZK 2,140 for a dependent child from 6 to 15 years
- CZK 1,740 for a dependent child under 6 years.

The highest amount of normative costs for housing since 1 January 2016 is:

- CZK 7,731 for one person
- CZK 11,114 for two people in a family
- CZK 15,114 for three people in a family
- CZK 18,947 for four and more people in a family

If a foreign national credibly proves that the actual cost of accommodation is different (lower) than that determined as the amount of normative costs for housing, the necessary monthly income is calculated by adding the amounts of the existential minimums (see above) and the actually proven housing costs.

Housing costs are formed from the rent or another amount paid for the provision of housing and further the costs for gas, electricity, water, waste water and central heating or for solid fuel, if these costs are not included in the rent for the flat or another room intended for housing or, if needs be into the amount paid for accommodation.

If a family member applies for a national long-term visa for the "family purpose", he/she is obliged to prove the availability of funds that are 15 times the amount of the existential minimum (CZK 2,200) for the first month and double the amount of existential minimum for every month afterwards: for instance, for a stay from 1 January –

30 June, it would be  $(15 \times 2,200) + (5 \times 2 \times 2,200) = 33,000 + 22,000 = \text{CZK } 55,000$ . A foreign national under 18 years proves the availability of half the amount.

- If your (Member) State sets a different income requirement depending on the type of family member being reunited (e.g. minor children):

A foreign national under 18 years applying for a national long-term visa for the "family purpose" proves the availability of half the amount required for an adult.

- The reference period over which this requirement is considered:

No reference period is set. Source of the income might differ (employment, self-employment) and also means of proof of the income. Reference period is not as important as regularity of income and its legal source.

- How any past/ future income of the sponsor is evaluated in practice:

Future income cannot be evaluated since it does not exist. Only past income can be evaluated where on the basis of source of income and its regularity it can be concluded that the past / current income is sufficient and it is likely that sponsor will have at least same income in future.

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

No.

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

At start of the procedure.

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

No integration measures were imposed.

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

The Ministry shall also cancel a long-term residence permit for the purpose of family reunification if (various reasons under letters a) to k))... upon the condition that the consequences of such decision are adequate to the reason for cancelling the validity of the long-term residence permit. When considering the adequacy, the Ministry shall in particular take into account the impact of such decision on both the private and family life of the foreign national concerned.

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

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

An applicant is required to submit an extract from Criminal Register record issued by the state of which the foreign national is a citizen and also by the states in which the foreign national has had continuous residence for over 6 months in the last 3 years. (The extract from the Criminal Register record may be replaced by an affidavit, if the given state does not issue such a document). Information received from security and intelligence bodies is also assessed. As far as public health is concerned, the medical report is required from family members who come from the regions where certain illness is concerned (Q15 b).

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

Minor child is a child younger than 18 years.

The Ministry shall also cancel a long-term residence permit for the purpose of family reunification if (various reasons under letters a) to k))... upon the condition that the consequences of such decision are adequate to the reason for cancelling the validity of the long-term residence permit. When considering the adequacy, the Ministry shall in particular take into account the impact of such decision on both the private and family life of the foreign national concerned.

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

No DNA tests, no special rules or procedures are held.

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

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

National long-term visa for the "family purpose": 90 days.

Long-term residence permit for the purpose of family reunification: 270 days.

- Average duration of the procedure in practice?

Approximately 90 % of applications for a national long-term visa for the "family purpose" are processed within 90 days. Unfortunately, it is a common feature that applications are lodged incomplete and subsequently completed during the procedure which has to be (sometimes repeatedly) temporarily suspended according to the Administrative Procedure Code.

Approximately 20 % of applications for a long-term residence permit for the purpose of family reunification are processed within 3 months, 50 % within 6 months.

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

There is new annex to the legislation that enables quicker delivery of documents abroad.

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

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

Less qualified sponsors with low salaries have problems to meet the criteria of minimum income, especially if normative costs for housing are used for calculation of the expenses of the whole family after reunification.

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

There are no practices to be shared.

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

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

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

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

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

Yes. Children who are subject to compulsory school attendance can be provided with language training and tutoring assistance in order to become better integrated into the Czech educational system. These activities are financed from the national budget on the basis of the Czech "Policy for the Integration of Foreign Nationals".

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

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

Yes. Family members have full access to employment or business activities. Holders of a long-term residence permit for the purpose of family reunification have free access to employment, holders of national long-term visas or residence permits for the "family purpose" do not.

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

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

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

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

No.

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

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

Yes. Family members admitted on the basis of national visa are not allowed to switch their status unless they obtain a long-term residence permit.

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

If yes, please specify what such access entails in practice in your (Member) State.

Access to public funds. Family members have access to social benefits (e. g. parental allowance) after 1 year spent in the Czech Republic.

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

It is a "derived" permit; the validity period copies the validity of the sponsor's permit.

In case refugee status or subsidiary protection for the purposes of family reunification is granted, the rights attached to both statuses are exactly the same as if independent refugee status/subsidiary protection was granted.

If a long-term visa is granted, the rights are the same as for other long-term visa holders.

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

If yes:

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

Yes. Extension of a permit.

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

Yes. Age, health status, family members present at the territory, length of stay, reason for rejection (why the conditions are not fulfilled) are taken into account.

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

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

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

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

No challengers experienced.

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

No practices to be shared.

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

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

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

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

No changes.

**Q23.** Has any national case law led to changes in policy and/ or practice in family reunification in your (Member) State since 2011 onwards? Y/ N

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

individual examination of specific circumstances and leading to an amendment of the national legislation on family reunification.<sup>57</sup>

No changes.

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

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

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

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

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

## [Annex 1 Statistical Annex](#)

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

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

Statistics provided in DS1 include applications for long-term residence permits for the purpose of family reunification and national long-term visas for "family purpose" which were lodged at embassies abroad and processed in the relevant years 2011 - 2015 and 2016 (January - October). The Czech Republic keeps statistics on applications, not applicants; numbers are quite similar since each person has to submit his/her own application but multiple applications made by the same person constitute a certain difference.

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

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

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



New FR stats annex  
28Oct16.xlsx