

# Right to family reunification

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

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

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

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 Decisions to bring cases before the European Court of Justice (ECJ) were taken for 4 Member States: 3 were withdrawn and a judgment was given for one.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

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

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

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

- the provisions on visa facilitation;

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

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

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

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