

Right to family reunification

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

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

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

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

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

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

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

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

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

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

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

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

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

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