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## **The Netherlands as the black sheep of the family? How the Dutch response to the Commission's Green Paper on Family Reunification compares to the reactions of other member states**

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*How the Dutch response to the Commission's Green Paper on Family Reunification compares to the reactions of other member states*

# *The Netherlands as the black sheep of the family?*



In its reply to the Green Paper on Family Reunification, the Dutch government proposed some controversial amendments. Does it make the Netherlands the black sheep in the European herd? Mark Klaassen en Johanne Søndergaard analyzed the data and conclude that the Netherlands does not stand completely alone in its views. Chances are thin, however, that the Dutch restrictive proposals will become reality any time soon.

On 15 November 2011 the European Commission (hereafter “the Commission”) published its Green Paper on the right to family reunification.<sup>1</sup> This started a public consultation in which the Commission gathered the opinions of the member states and civil society on perceived problems in the implementation of Directive 2003/86 on the right to family reunification (hereafter “the Directive”).<sup>2</sup> The Commission posed fourteen questions to stakeholders, which could submit their written responses until 1 March 2012.<sup>3</sup> The Dutch government submitted a reply to the Commission’s Green Paper, in which it gave its broad view on family reunification policy and answered the questions asked by the Commission. In its contribution, the Dutch government proposes some controversial amendments of the Directive, which would make the rules on family reunification stricter.

In order to find out whether the Netherlands stands alone in this respect, or whether there is an emerging consensus in taking a more restrictive stance on family reunification, the research question addressed in this article is how the Dutch response to the Green Paper compares to the contributions of other member states.

After a short background of the Green Paper in Section 1, the methodology of the research is outlined in Section 2. Section 3 gives an overview of the Dutch response compared to the other countries’ responses and in Sections 4-9 six selected issues are analysed in greater depth. In Section 10, one of the findings on substantive recommendations without evidence is discussed in detail. The future of the Directive is discussed in Section 11, before the concluding remarks in Section 12.

## 1 Background of the Green Paper

After more than three years of negotiations, the Family Reunification Directive (2003/86) entered into force in 2003. From the beginning of the negotiations, there was friction between the Commission and the member states on a number of issues.<sup>4</sup> The Commission pushed for a regime similar

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1 COM(2011)735 final, Green Paper on the right to family reunification of third-country nationals living in the European Union (Directive 2003/86/EC, ve03001574).

2 Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification. *OJ L251/12*, ve03001574.

3 See for an analysis of the Green Paper, M. Klaassen, G. Lodder & P. Rodrigues, Groenboek Gezinshereniging, *Asiel & Migrantenrecht* 1, 2012, ve12000463.

4 See T. Strik, *Besluitvorming over asiel- en migratierichtlijnen: de wisselwerking tussen nationaal en Europees niveau*, Den Haag: Boom Juridische Uitgevers, 2011, chapter 3.

to the family reunification rules covering mobile EU citizens (Directive 2004/38) which would apply to both third country nationals and immobile EU citizens. The member states could not agree on for example the extension of the scope of the Directive to include immobile EU citizens, a common definition of the family and the degree of protection that should be given to cross-border family relations.<sup>5</sup> The member states aimed to preserve a wide margin of discretion. At the time when the Directive was being negotiated, the role of the European Parliament was limited to consultation, restricting the influence of the Parliament on the decision-making process. When finally a compromise was reached, the initial proposals of the Commission were significantly adjusted by the member states, resulting in a low level of harmonisation with the Directive setting only minimum standards.<sup>6</sup> The scope of the Directive was moreover limited to third country nationals.

## *The Court of Justice made clear that the purpose of the Directive is to promote family reunification.*

The European Parliament challenged the Directive in front of the Court of Justice of the European Union ('the Court') claiming that some of the provisions of the Directive were incompatible with fundamental rights. In its ruling, the Court rejected the action by the Parliament, but did lay down principles on the interpretation of the Directive.<sup>7</sup> For instance, the Court established that the Directive grants a subjective right to family reunification.<sup>8</sup> When the Court delivered its ruling on a preliminary reference by a Dutch court regarding the level of the income requirement, the Court made clear that the purpose of the Directive is to promote family reunification. The right to family reunification may be subject to the conditions of the Directive, but since family reunification is the general rule, these conditions should be interpreted strictly.<sup>9</sup>

The Directive requires the Commission to periodically report on the implementation of the Directive in the member states and to propose amendments to the Directive when required.<sup>10</sup> When the Commission published an implementation report in 2008, it noticed that some member states had applied derogatory clauses concerning administrative fees, the waiting period, income requirements and integration measures in a too broad way, going against the *effet utile* of the Directive.<sup>11</sup> In the report, the Commission further announced the publication of a Green

Paper to start a public consultation on the future of the family reunification regime.<sup>12</sup>

It took three years after the announcement for the Commission to finally publish the Green Paper on family reunification in 2011. In the Green Paper, the Commission decided not to address the issue of the future of the Directive. Instead the Commission aimed to gather the views of all stakeholders on selected issues in family reunification policies. In anticipation of the Green Paper, the Netherlands published a Position Paper on EU migration policy, in which family reunification has a prominent role.<sup>13</sup> The Netherlands was the only member state to take such an initiative. In the position paper, the Netherlands, among other proposals, called for the possibility to require family migrants to comply with more stringent substantive requirements on income and integration. When the Commission published the Green Paper, the Dutch gov-

ernment formally replied to the request of the Commission to put forward the Dutch positions. In its contribution, the Dutch government repeated the standpoints formulated in the Position Paper, as well as answering the specific questions asked by the Commission.

## 2 Methodology

The documentation used to examine the relation between the response of the Dutch government and the replies of the other member states are the 24 available written responses from the member states<sup>14</sup> and the summary report drafted by the Commission.<sup>15</sup>

The Dutch contribution went beyond the questions asked by the Commission, as it also provided a general reflection on EU family reunification policy. For example the issue of family reunification under Directive 2004/38 was not discussed in the Green Paper, but plays an important role in the Dutch contribution. This article only considers the Dutch answers to the Commission's questions in the Green Paper, because the other member states hardly mention any of the additional issues raised by the Dutch government and therefore it is not possible to compare these Dutch proposals with the views the other governments express in their contribution to the public consultation. Ireland,<sup>16</sup> Slovenia and Spain have not submitted

5 See for example A. Walter, *Familienzusammenführung in Europa: Völkerrecht, Gemeinschaftsrecht, Nationales Recht*, Baden-Baden: Nomos, 2009, p. 166-171.

6 K. Groenendijk, R. Fernhout, D. van Dam, R. van Oers & T. Strik, *The Family Reunification Directive in EU Member States: the First Year of Implementation*, Nijmegen: Wolf Legal Publishers, 2007, p. 62.

7 Case C-540/03 *European Parliament v Council* [2006] ECR I-5769, ve06000854.

8 *ibid.*, para. 60, ve06000854.

9 Case C-578/08 *Chakroun v Minister van Buitenlandse Zaken* [2010] ECR I-1839, para. 43, JV 2010/77, m. nt. C.A. Groenendijk, ve10000350.

10 Article 19 Family Reunification Directive.

11 COM(2008)610 final, Report from the Commission to the European Parliament and the Council on the application of Directive 2003/86/EC on the right to family reunification, p. 14, ve08001724.

12 *ibid.*, p. 15, ve08001724.

13 'Position paper – Nederlands inzet EU migratiebeleid', available via <http://www.rijksoverheid.nl/bestanden/documenten-en-publicaties/kamerstukken/2011/03/16/position-paper---nederlandse-inzet-eu-migratiebeleid/position-paper-nederlande-inzet-eu-migratiebeleid-nederlands.pdf>, ve11000620.

14 All written responses can be accessed at [http://ec.europa.eu/dgs/home-affairs/what-is-new/public-consultation/2012/consulting\\_0023\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-is-new/public-consultation/2012/consulting_0023_en.htm).

15 European Commission DG Home Affairs, Summary of stakeholder responses to the green paper on the right to family reunification of third-country nationals, 2012, available at [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).

16 In the summary report by the European Commission the Irish position is mentioned at several questions. However on the website of the Commission there is no Irish contribution available. The Commission has not (yet) been able to confirm or reject the existence of an Irish contribution.

a reply to the Green Paper, and are therefore excluded from the analysis. The reactions from Denmark and the United Kingdom in the analysis here, even though through opt-outs the Directive is not applicable in these member states. The reason for this decision is that in a possible renegotiation of the Directive, these member states would play their normal role in the decision-making process, even though the same opt-out may still apply in a revised directive.

In order to systematically analyse the twenty-four responses to the fourteen questions, a coding scheme was developed. The fourteen questions were divided into sub-questions, in order for the coding to capture as much of the information in the reports as possible. The categories are based on the standpoints of the member states on the future of the relevant Directive provision. The five categories used are: 'Stay the same', 'Change – to be more restrictive', 'Change – to be less restrictive', 'Clarification' and 'No answer'. 'Restrictive' in the coding refers to the effect the proposed amendment would have on applicants for family reunification. 'Clarification' is used when a member state argues that the Directive provision is unclear and suggests that it should be clarified, for example through interpretative guidelines. Four of the sub-questions do not address potential changes to the Directive, but address rather whether the member state can provide evidence of certain problems. This is the case for the questions on forced marriages, on the effectiveness of integration measures, on fraud and on marriages of convenience. For these questions, two categories were used: 'yes, evidence' and 'no evidence'. For these questions, the 'no answer' category was not used; if countries did not mention any evidence, it was coded as 'no evidence'. For all questions, notes were included in the table on the reasoning behind the coding.

### *The Dutch contribution went beyond the questions asked by the Commission, as it also provided a general reflection on EU family reunification policy.*

After an initial pilot test of the scheme using the government response reports from the Netherlands, Portugal and the United Kingdom, a few adjustments were made, including expanding the list of sub-questions to twenty-four (see Appendix A for the full list of sub-questions) and developing a series of instructions for the remaining coding. The reports in French (Belgium, France and Luxembourg) and Italian (Italy) were read and coded by French- and Italian speaking colleagues.

Both authors read and coded all remaining country reports.<sup>17</sup> When all twenty-four reports had been coded, the answers were examined for possible inconsistencies, using the reasoning notes, the country reports and the European Commission's summary report.<sup>18</sup> Table B1 in Appendix B shows the coding of countries' responses.

17 Except the Austrian country report, which was only coded by the author who reads German.

18 To see the completed spreadsheet of codes with reasoning notes, please contact the authors.

The coding of the different answers to the Green Paper questions formed the basis of answering the research question of the relation between the Dutch response and the responses of the other member states. One approach to answering the research question using this coding scheme could be to systematically categorise countries by the level of restrictiveness suggested by their answers (e.g. comparing the number of questions for each country where the response called for more restrictive measures in the Directive). Because of the lack of depth that this type of analysis would allow, the categorisation of all countries based on countries' answers to all of the Green Paper's questions was deemed infeasible and undesirable for answering the research question. A methodology was therefore developed to ensure an overview of the relations between the Dutch response and other responses as well as an in-depth discussion of some key questions. Questions were selected for further in-depth analysis by developing and employing a case-selection technique. The selection was intended to ensure a discussion of questions with the two key characteristics that help answer the research question: the type of response of the Netherlands (Directive to be more restrictive, less restrictive or stay the same<sup>19</sup>), coupled with the position of the Netherlands versus all other countries (whether the Dutch position is in a majority<sup>20</sup> or minority<sup>21</sup>).

Making a selection of questions does mean that not all issues in the Green Paper would be discussed in the paper. To partly remedy this, it was therefore decided that each question selected would be discussed alongside all related sub-questions. This also allowed for depth and context to the analysis of each issue. In question-selection, priority was given to questions that included related evidence/no-evidence sub-questions. This was done in order to include in the discussion, the expected dynamics between the evidence questions and the substantive

questions (see below). Questions with contingent sub-questions were selected with priority to represent categories where change to the Directive was advocated, as opposed to where no change was advocated.

The most common category of agreement (for eight questions) was where the Netherlands suggested that the Directive should stay the same and where a majority of countries agreed with the Netherlands (see footnote 22). This gave an early indication that the Netherlands may not be deviant in its answers. Even when the above-mentioned selection criteria were used, there were still four questions remaining for selection in this cat-

19 Because there are very few cases where countries wanted clarification, these questions were not included in the question-selection.

20 A majority is defined as 50% or more of countries that answered the question (i.e. countries coded as 'no answer' were not included) fell into the same category as the Netherlands.

21 A minority is defined as less than 50% of countries that answered the question (i.e. countries coded as 'no answer' were not included) fell into the same category as the Netherlands.

egory. The question with the highest level of agreement that the Directive should stay the same was then selected. This was question 4 on the definition of the family, where 90% of countries that answered the question agreed that the Directive should stay the same. Using this necessary additional selection criterion in this category enabled the analysis to examine the most extreme case of the category of agreement with the Netherlands on the Directive staying the same.

Out of the twenty substantive questions, six questions, with their related sub-questions, were thus selected based on the above criteria. Below are the selected questions of each category, as well as a note on the section in the article where the ques-

*Strikingly, none of the member states quote comprehensive statistical data concerning the occurrence of fraud.*

tion will be discussed. If there were more questions to choose from in a category, the questions that were not selected are listed in the footnotes.

- 1 Dutch government argues for the Directive to stay the same and...
  - a. A *majority* of countries agree with the Dutch position on this issue. Question selected: a wider **definition of the family** (Q4),<sup>22</sup> discussed in Section 4;
  - b. A *minority* of countries agree with the Dutch position on this issue. Question selected: rules on **fraud** (Q10)<sup>23</sup>, discussed in Section 5.
- 2 Dutch government argues for the Directive to be more restrictive and...
  - c. A *majority* of countries agree with the Dutch position on this issue. Question selected: the effectiveness of **integration** measures to facilitate integration (Q5), discussed in Section 6;
  - d. A *minority* of countries agree with the Dutch position on this issue. Question selected: the effectiveness of an **age requirement** to combat forced marriages (Q2),<sup>24</sup> discussed in Section 7.
- 3 Dutch government argues for the Directive to be less restrictive and...
  - e. A *majority* of countries agree with the Dutch position on this issue. Question selected: **subsidiary protection** and family reunification (Q8) discussed in Section 9;
  - f. A *minority* of countries agree with the Dutch position on this issue. Question selected: **refugees** and family reunification (Q9), discussed in Section 10.

22 Questions not selected:  
 Q5b – integration measures at EU level;  
 Q9a – favourable provisions for refugees;  
 Q9c – refugees providing evidence;  
 Q12 – administrative fees;  
 Q13 – administrative deadline;  
 Q14 – horizontal clauses.

23 Questions not selected:  
 Q3 – standstill clause on children older than 15;  
 Q6 – three-year waiting period.

24 Questions not selected:  
 Q1a – reasonable prospect for the right of permanent residence;  
 Q10c – regulating rules of interviews at EU level.

### 3 Dutch positions compared to other member states

The Netherlands is the only country that answered all questions posed by the Commission. In 12 out of the 20 substantive questions, the view held by the Netherlands is the most common view among all member states. In 8 out of 20 questions, the Netherlands is in a minority position. This gives another indication that the position of the Netherlands is not consistently deviant from other member states.

In 5 out of 20 questions the Netherlands express that they would like to make the Directive *more restrictive* for family reunification applicants. In 4 out of these 5 questions, the

Netherlands is in a minority position. The questions in which the Netherlands expresses the wish to make the Directive more restrictive are the questions on the reasonable prospect of permanent residence as a requirement for family reunification, the age requirement, the pre-entry integration measures, measures to combat fraud at the EU level and measures to combat marriages of convenience. The Netherlands is only supported by other member states in its wish to be able to require applicants for family reunification to comply with pre-entry integration measures.

In 3 out of 20 questions, the Netherlands proposed amendments which would make the Directive *less restrictive*. In 2 of these 3 cases, the Dutch view is supported by a majority of the member states. Only the Dutch government's wish to adapt the Directive in order to create a more inclusive definition of the family for holders of international protection, is not shared by a majority of the member states. The questions in which the Netherlands expressed the view to make the Directive less restrictive are the questions on the inclusion of subsidiary protection holders within the scope of the Directive, the regime that should apply to subsidiary protection holders and the widening of the definition of the family for the family reunification of holders of international protection.

In 11 out of 20 questions, the Netherlands argued that the Directive should *remain unchanged*. In only 2 out of these 11 cases, the Dutch view is this *not* supported by a majority of the member states. In 1 out of 20 questions, on the validity of a residence permit, the Netherlands requested clarification. This position was only supported by three other countries (CY, EE, RO).

In four questions – concerning the age requirement and forced marriages, the effectiveness of integration measures, fraud and marriage of convenience – the Commission requested stakeholders to provide evidence instead of a substantive view on the Directive. An overwhelming majority of the member states did not provide any evidence. The Netherlands provided evidence on the effectiveness of the age requirement to combat forced marriages, the effectiveness of integration measures to facilitate integration and fraud. Only on the question

on marriage of convenience did the Netherlands not provide any evidence. A closer look at the evidence provided by the Netherlands and, where applicable, the other member states is necessary to assess whether the evidence provided is meaningful evidence for the problem put forward for discussion by the Commission. In the following section this is done for both the effectiveness of the age requirement to combat forced marriages, fraud and the effectiveness of pre-entry integration measures to facilitate integration. Tables with an overview of the answers to the questions marriages of convenience, fraud and the effectiveness of pre-entry integration measures to facilitate integration can be found in Appendix B (Tables B2-B4).

*The Dutch proposal for the definition of ‘marriage of convenience’ would mean that marriages would be considered fraud even if residence rights were a mere cursory consideration in getting married.*

#### 4 A wider definition of the family

The scope of the Directive is currently limited to the core family, while the member states retain the competence to extend the scope of the Directive to wider categories of family members. In question 4 the Commission asks whether the rules on the eligible family members are adequate and broad enough to take into account different definitions of the family other than the nuclear family.

A large majority of the member states feel that the definition of the family as currently laid down in the Directive is sufficiently wide. Out of the 24 member states, 20 countries answered this question. Out of these 20 countries, 18 would like to keep the current eligibility provisions unaltered. For example **the Netherlands** believes the current wording of the Directive is adequate and broad enough and feels that it should remain up to the discretion of the member states to allow for the family reunification of family members outside the core family. **Romania** is the only member states which favours the extension of the definition of the family, in order to allow the member states to provide for the family reunification for wider categories of the family. Romania would already be allowed under the Directive to use a more inclusive definition; the amendment of the Directive is therefore not necessary to accommodate this policy preference. Because Romania specifically argues for the original list of eligible family members to be widened, Romania is coded as wanting the Directive to be less restrictive. **Czech Republic** is the only country asking for clarification. The Czech Republic states that the rules on eligible family members are adequate and broad enough in terms of inclusiveness, but that the definitions used in the Directive could be more precise.

#### 5 Rules on fraud

Question 10 of the Commission concerns fraud in the context of applications for family reunification within the scope of the Directive.

In the first sub-question the Commission asks whether there is clear evidence of problems of fraud and how big the problem is. Only 5 out of the 24 member states report that they have evidence on the nature and scale of fraud (CZ, FI, IT, NL, PT). Strikingly, none of the member states quote comprehensive statistical data concerning the occurrence of fraud.

The **Netherlands** asserts on this issue that the importance of statistical data is limited, as ‘it is impossible to make a reliable estimate of the total scope of the problem on the basis of the data we have.’ However, despite a lack of quantitative data regarding the nature and scale of fraud, the Netherlands

conclude that ‘fraud and abuse take many forms and are widespread.’ It is curious to claim that there is no evidence on the scale of fraud and to conclude in the next paragraph that it is widespread. To substantiate this statement, the Netherlands provides the example of applications for family reunification of Somali non-relatives. The Netherlands does not provide any information regarding the nature of this fraud, such as for example whether forged documents were used. Neither does the Netherlands refer to any statistics on the scale of this detected fraud. Instead, the Netherlands reports a higher number of rejected applications, without linking those rejected applications to fraud. The **Czech Republic** comments that most cases of fraud have been found in the context of applications for family reunification of mobile EU citizens. Most of the fraud within the scope of the Directive regards false documents proving family relationships, such as marriage and birth certificates. **Finland** submits that a common form of abuse consists of providing false information regarding circumstances that affect residence permits, such as the reasons for contracting a marriage or child custody arrangements. This is, according to Finland, partly unrelated to the documents produced in applications. **Italy** and **Portugal** do mention the existence of problems with fraud, but admit that there is no data to support this.

In the second sub-question the Commission asks whether rules on interviews and investigations, including DNA testing, can be instrumental to solving problems of fraud. The answers provided by the member states on this question each have their own focus. Many member states, such as for example **Latvia**, indicate that interviews and investigations are a useful tool, but do not answer the question whether *rules* on interviews and investigations would be useful. Of the 16 countries that answered the question, 5 countries stated the Directive should remain as it is (DE, EL, HU, LU, NL). The **Netherlands** specifically address the issue of rules, and considers that no procedural rules should be laid down as techniques constantly develop.



In the third sub-question the Commission asks whether rules on interviews and investigations should be laid down at EU level. This question yielded mixed responses from the member states. Five member states favour EU rules on interviews and investigations (BU, CY, CZ, PT, RO). **Bulgaria** argues that only through EU rules will the principles of proportionality and respect for private and family life be respected in practice. **Portugal** also favours rules coordinated at EU level to ensure a harmonised procedure, but these rules must not compromise the sovereignty of the member states. In the opinion of seven member states, the combat of fraud and abuse should remain a domestic competence (AT, FI, DE, EL, LV, LT, MT, NL). **Greece** feels that rules on interviews and investigations at EU level would probably restrict the competence of the member states to combat fraud, where actually flexibility is required.

The **Netherlands** fears that rules laid down at EU level would limit the scope for investigations. But, the Netherlands does propose to change the definition currently laid down in the

*Eleven member states, including the Netherlands, argue that integration policy is a national competence.*

Directive. In the definition of a marriage of convenience (MOC), the Directive currently defines MOC as a marriage contracted for the sole purpose of acquiring residence rights.<sup>25</sup> The Netherlands proposes to delete the word 'sole', so that the definition of MOC would be: a marriage contracted with the purpose of enabling the person concerned to enter or reside in a member state. Such a definition would make the Directive more restrictive, as it would mean that marriages would be considered fraud even if residence rights were a mere cursory consideration in getting married.<sup>26</sup> Strictly speaking, this answer is not directly about common rules on interviews and investigations to combat fraud, but is rather related to what constitutes a MOC, but as the Dutch government has brought forward this point in the context of fraud, it is included in the analysis here.

## 6 The effectiveness of integration measures to facilitate integration

Question 5 concerns integration measures. The Commission seeks to find out whether integration measures efficiently serve the purpose of integration and which measures are most effective, whether it would be useful to further define these measures at EU level, whether pre-entry integration measures are recommended and how it can be prevented that these measures will lead to an undue barrier for family reunification. This question was selected because a majority of countries (11 out of the 19 countries that answered the question) agree with the Dutch position that the Directive should be made more restrictive.

In question 5a, the Commission implicitly asks for evidence on the efficiency and effectiveness of integration measures. Only 3 out of the 24 member states comment in some way on the efficiency and effectiveness of integration measures (DE, DK, NL). Out of the three member states that do provide some form of evidence, two governments (DE, NL) state that they have introduced pre-entry integration requirements in their domestic legislation, and comment on the effectiveness of these measures.

The **Netherlands** first clearly states that it has evidence on the effectiveness of integration measures. It mentions that 'a range of evaluations have shown that there is a broad support for integration measures.' However this statement is not substantiated with references to reports or research. Specifically on the effectiveness of pre-entry integration measures, the Dutch government points out that the prospective migrants who are obliged to pass the pre-entry exam consider this a useful preparation for their move to the Netherlands. Also this finding

is not supported by any cited studies, which is problematic as it would be important to see how the research deals with the measurement error caused by social desirability. **Germany** also claims that it has evidence for the effectiveness of integration measures. The German contribution refers to an initial survey which shows that the immigrants who learn German in their country of origin integrate more easily in German society.<sup>27</sup> This study does however not include an analysis on the effectiveness of the pre-entry integration exam for the integration in German society. The **Danish** government states that a report commissioned by the government shows that Danish language skills are considered essential for a person to be able to relate to politics and the Danish society in general. Although the statements provided are more normative than factual, the Danish government does claim that it has evidence. The Danish contribution does not say anything specifically on the effectiveness of integration measures for the integration of family migrants.

Overall, the member states that attempt to provide evidence on the efficiency and effectiveness of (pre-entry) integration measures, point to evidence which often does not specifically concerns family reunification. The assertion that language proficiency facilitates integration moreover does not automatically show that there is a relationship between pre-entry integration measures and integration.

It is important to determine whether there is evidence on the effectiveness of integration measures, as the Commission

<sup>25</sup> Article 16(2) Family Reunification Directive.

<sup>26</sup> H. Wray, An Ideal Husband? Marriage of Convenience, Moral Gate-keeping and Immigration to the UK. 8(3-4) European Journal of Migration and Law, 2006, p. 304.

<sup>27</sup> The German government states in their contribution that this survey would be attached to the Green Paper, but on the website of the Commission it is not published. The German government most likely refers to: Unterrichtung durch die Bundesregierung, Bericht über die Evaluierung des Nachweises einfacher Deutschkenntnisse beim Ehegattennachzug nach dem Aufenthaltsgesetz – Sprachlern- und Sprachtestangebote, Visumverfahren, *Drucksache 17/3090*, 2010.

contends that the admissibility of such measures depends on whether the purpose of facilitating integration of the family member in the host society is achieved.<sup>28</sup> In case the member states would be able to produce convincing evidence on the effectiveness of integration measures, most likely the Commission would support possible amendments of the Directive specifying and elaborating the provision on integration measures in the Directive. However, in the absence of such evidence, the Commission will most likely not be eager to grant the member states more leeway in formulating (pre-entry) integration measures.

In question 5b, the Commission asks whether integration measures should be further defined at EU level. The responses to these questions are mixed. Eleven member states, including the **Netherlands**, argue that integration policy is a national competence and therefore integration measures should not be further defined at EU level. **Germany** and **Czech Republic** believe that under the current wording of Article 7(2) of the Directive, pre-entry integration measures are permissible, but that it would be useful for it to be worded less ambiguously in order to make sure that these measures can be defended before the Court of Justice of the European Union. **Greece** and **Poland** point at the need for individual consideration of applications and would not favour amendments which would make the measures obligatory. **Cyprus**, **Estonia** and **Portugal** believe the Directive could be clearer on the meaning of integration measures.

*The Dutch government does not provide any quantitative evidence on the problem of forced marriages nor on the relationship between the age requirement and forced marriages.*

In question 5c, the Commission specifically asks whether there should be pre-entry integration measures and what could be done to prevent pre-entry integration measures becoming a barrier to family reunification. Eleven member states argue that member states should have the option to impose pre-entry integration measures. Nine of those 11 member states would like to be able to impose pre-entry integration measures even though they do not have any evidence that these integration measures facilitate the integration of family migrants in their society. It seems that these member states see integration measures as a means to restrict immigration rather than to promote integration. **Germany** points at their hardship clause as a mechanism to guarantee proportionality. The **Netherlands** argues it is up to the domestic implementation to ensure that the requirements do not become an undue barrier for family

reunification. Six member states oppose pre-entry integration measures. **Portugal** argues that there is no evidence that the pre-entry integration measures facilitate integration. **Romania** and **Bulgaria** point to the importance of the right to family reunification and oppose pre-entry integration measures.

## 7 The effectiveness of an age requirement to combat forced marriages

In question 2, the Commission asks whether it is justified to require spouses to be at least 21 years old, as a way of preventing forced marriages. Article 4(5) of the Directive gives member states the option to require both the sponsor and the spouse to be older than the age of majority, setting a maximum of 21. The rationale is that the older both partners are, the less likely a forced marriage would be. The Commission asks whether there is evidence on the problem of forced marriages. This question was selected for analysis because a majority of the member states did not agree with the Dutch proposal that the Directive should be made more restrictive (only three other countries agreed with the Netherlands).

Nineteen member states indicate that they have no evidence of the problem of forced marriages. Only five member states have indicated that there is such evidence (DE, DK, NL, SE, UK).

The contribution of the **Netherlands** states that there is evidence, but that no large scale studies on the effectiveness of the age requirement for family reunification for the prevention

of forced marriages have been conducted. Several reports are quoted, but these reports either do not quantify the problem or are not related to family reunification.<sup>29</sup> The Dutch government refers to a German survey<sup>30</sup>, and states that it is plausible to assume that the situation in both countries is comparable. It however does not list the limitations of the German survey, which are outlined below. The Dutch government does not provide any quantitative evidence on the problem of forced marriages nor on the relationship between the age requirement and forced marriages.

The **Danish** government notes that there is evidence, but that this evidence is not clear and complete. The response does list a few statistics, such as the number of honour-related crimes reported to the police. The government does not substantiate whether these cases are in any way related to forced marriages and family reunification. The government furthermore states

28 COM(2008)610 final, p. 7-8. cf. De Vries argues that the purpose of integration measures not necessarily needs to be the improvement of the integration in the host society of the individual, but that the purpose may also be the improvement of the integration of immigrants in the host country in general. If that view is correct, evidence of the effectiveness of integration measures on individuals is less relevant. This would also mean that it would not be possible to provide empirical evidence of the relationship between integration measures for a small group and integration of immigrants in society in general. See K. de Vries, *Integration at the border: The Dutch Act on Integration Abroad in relation to International Immigration Law*, PhD dissertation, 2012, p. 123.

29 For example the WODC report on forced marriages does not in any way reflect on the effectiveness of an age requirement. See WODC, *Huwelijksdwang – een verbintenis voor het leven? Een verkenning van de aard en aanpak van gedwongen huwelijken in Nederland*, available via [http://www.wodc.nl/images/volledige-tekst\\_tcm44-167298.pdf](http://www.wodc.nl/images/volledige-tekst_tcm44-167298.pdf) en *Migratiweb*: ve09001794. Also the other reports are limited with regard to quantifying the problem of forced marriages and do not at all elaborate on the relationship between the age requirement and the perceived reduction of forced marriages.

30 See footnote 18.



that in a four-year period 235 applications for family reunification were rejected on the ground of perceived forced marriages. However, the Danish government notes that marriages between cousins are automatically rejected and registered as forced marriages. Denmark does not provide any evidence on the effectiveness of the 24-year age requirement against forced marriages.

**Germany** refers to a survey, which showed that in 2008, 3400 counselling cases regarding forced marriages were registered.<sup>31</sup> According to the survey, almost all persons covered by the sur-

### *Eleven member states agree with the Dutch proposal to apply the same rules on family reunification for refugees to holders of subsidiary protection.*

vey have an immigrant background. From this information it can, however, not be inferred that those counselling cases have anything to do with family reunification. The fact that almost all persons covered by the survey have an immigrant background does not say anything about the extent to which family reunification would contribute to forced marriages and even less on the relevance of age in this respect.

**Sweden** notes that it has clear evidence of forced marriages, but the number of registered cases by the Migration Board is limited.<sup>32</sup> As the age requirement in Sweden is 18, the statistics therefore do not provide any insight in the effectiveness of a higher age requirement.

The government of the **United Kingdom** mentions that the age requirement has been lowered from 21 to 18 years after a ruling of the Supreme Court.<sup>33</sup> In terms of evidence, the government's contribution refers to the findings of the Forced Marriage Unit, which provided advice and support in almost 1500 cases in 2011. The contribution states that research showed that in 2009 there were 5000-8000 cases of forced marriage in England. The source of this research is not disclosed in the contribution. Both figures are not specifically related to applications for family reunification.

Curiously the Commission does not explicitly ask for evidence of whether the age requirement is actually an effective mechanism to combat forced marriages. The contributions of the member states show that there is very limited evidence of the problem of forced marriages. This could be explained by the fact that it is difficult to prove forced marriages. However in the contributions of the member states there is no evidence at all on the effectiveness of the age requirement in the prevention of forced marriages. In this regard it is striking that the United Kingdom does not refer to a report by Professor Marianne Hester et al. (2007), which was actually commissioned by the Home Office, in which the authors argue that it is *unlikely* that

increasing the age requirement from 18 to 21 years old would prevent forced marriages.<sup>34</sup> Actually, the report mentions that raising the age requirement could lead to counterproductive effects, as young British brides could be forced to join their husband in his country of origin, only increasing the dependency.<sup>35</sup> This is the only report which specifically addresses the effectiveness of an age requirement for family reunification in the prevention of forced marriages and it played an important role in the reasoning of the UK Supreme Court. No member state made a reference to this report.

With the possibility for the member states to require a minimum age of 21, the Directive allows for the possibility to limit the right to family reunification even if the member states cannot substantiate the effectiveness of this requirement. Despite the lack of evidence, fourteen member states are in favour of maintaining an age requirement higher than the age of majority. Only five of these countries state that they have evidence to support this.

## **8 Subsidiary protection and family reunification**

Question 8 concerns the family reunification of holders of international protection. Question 8a refers to whether holders of subsidiary protection should be within the scope of the Directive. If so, the Commission asks in question 8b whether subsidiary protection holders should fall under the more favourable regime as is applied to refugees. The question was selected for analysis here because a majority of the member states agree with the Netherlands that the Directive should be made less restrictive on this issue (11 out of the 17 countries that answered the question).

Currently the Directive applies to recognised refugees, but not to holders of subsidiary protection.<sup>36</sup> Some member states, like the **Netherlands**, do not distinguish between refugees and holders of subsidiary protection. For that reason in Dutch legislation there is no distinction between refugees and subsidiary protection holders with regard to family reunification. In the EU context, the Netherlands proposes to apply the same rules on family reunification for refugees to holders of subsidiary protection. Eleven member states agree with the Netherlands. **Germany** takes the view that there should be a flexible regime in which subsidiary protection holders should be within the scope of the Directive if it is to be expected that they will remain in the member state. Six member states would like to keep subsidiary protection holders outside the scope of the Directive. **Czech Republic** points out that subsidiary protec-

31 Bundesministerium für Familie, Senioren, Frauen und Jugend, Zwangsverheiratung in Deutschland – Anzahl und Analyse von Beratungsfällen, 2011, summary available at [http://www.bmfsfj.de/RedaktionBMFSFJ/Broschuerenstelle/Pdf-Anlagen/Zwangsverheiratung-in-Deutschland-Anzahl-und-Analyse-von-Beratungsf\\_C3\\_A4llen.property=pdf.ereich=bmfsfj.sprache=de.rwb=true.pdf](http://www.bmfsfj.de/RedaktionBMFSFJ/Broschuerenstelle/Pdf-Anlagen/Zwangsverheiratung-in-Deutschland-Anzahl-und-Analyse-von-Beratungsf_C3_A4llen.property=pdf.ereich=bmfsfj.sprache=de.rwb=true.pdf).

32 Only 8 cases in one year.

33 [2011] UKSC 45.

34 M. Hester, K. Chantler, G. Gangoli, J. Devgon, S. Sharma & A. Singleton, Forced marriage: the risk factors and the effect of raising the minimum age for a sponsor, and of leave to enter the UK as a spouse or fiancé(e), 2007, available via <http://www.bris.ac.uk/sps/research/projects/completed/2007/rk6612/rk6612finalreport.pdf>.

35 *ibid.*, p. 21.

36 Article 3(2)(c) Directive 2003/86.

tion is temporary by nature and should therefore remain outside the scope of the Directive. According to the Czech Republic, family reunification of subsidiary protection holders should be possible, but it should be a national competence. The strongest opponent of the inclusion of subsidiary protection holders in the scope of the Directive is **Malta**. This can be explained by the fact that Malta grants a relatively large number of subsidiary protection statuses compared to the number of refugee statuses granted.<sup>37</sup> For that reason, Malta would be affected by the inclusion of subsidiary protection holders more than other countries. Seven member states did not express any opinion on this question.

The Commission furthermore asks whether subsidiary protection holders should enjoy the more favourable regime which is applicable to refugees (Q8b). As mentioned above, in the **Netherlands** there is no distinction between refugee status and subsidiary protection status and it is in this light that the Dutch government proposes to also apply the more favourable regime to subsidiary protection holders. From the ten member states which agreed with the Netherlands that subsidiary protection holders should be within the scope of the Directive, four would also like to see the more favourable regime applicable. Table 1 illustrates that three member states are in favour of including subsidiary protection holders within the scope of the Directive, but oppose applying the more favourable regime. **Slovakia** is the only country which explicitly explains why they do support the inclusion of subsidiary protection holders in the scope of the Directive but do not support applying the more favourable regime. They argue that placing subsidiary protection holders under the more favourable regime would place an undue burden on the welfare system.

**Table 1** Countries' responses to whether subsidiary protection holders should be within the scope of the Directive (Q8a) compared to responses on whether a more favourable regime should apply (Q8b)

		Within the scope of the Directive?		
		No	Yes	No answer
Enjoy the more favourable regime?	No	AT, LV	HU, LT, SK	
	Yes		BG, CY, FR, NL, RO	
	No answer	BE, CZ, FI, MT	EE, DE, PT	DK, EL, IT, LU, PL, SE, UK

37 In Malta in 2011, 78% of the international protection statuses granted are for subsidiary protection. The average rate in all the member states that have contributed to the public consultation is 45%. Data obtained from Eurostat.

## 9 Refugees and family reunification

Three sub-questions concern the specific regime applying to refugees. Question 9a relates to the option that the member states have to require that family relationships predate entry for the more favourable regime to apply. Question 9b concerns the definition of the family. Question 9c addresses the three-month time limit for refugees' applications to fall under the more favourable regime. Question 9 was selected because a majority of the member states did not agree with the Netherlands that the definition of the family should be widened for refugees who apply for family reunification (only three other countries agreed with the Netherlands).

According to the Directive, member states may limit the application of the more favourable regime to refugees whose family relationship predates their entry.<sup>38</sup> Fourteen member states wish to retain this competence. The **Netherlands** reasons that the rationale behind the more favourable regime was that families which were forced to separate can reunite. When the relationship is established *after* entry, this cannot be the case. **Latvia** and **Hungary** are afraid that abolishing this requirement would encourage fraud and abuse. **Cyprus** is the only member state which would like to abolish this requirement. Cyprus points out that in particular circumstances refugees were not able to create a family in their country of origin for the same reasons that urged them to seek asylum, and should therefore still be able to form a family. Nine member states did not answer this question.

The Commission asks whether family reunification should be ensured for wider categories of family members who are dependent on refugees. In the **Netherlands** eligible family members are spouses, minor children, life partners, foster children and adult children.<sup>39</sup> This definition is wider than the definition used in regular family migration policy, in which only spouses, registered partners and minor children are eligible.<sup>40</sup> To the question whether the definition in the Directive should be widened, the Dutch government answers "yes". This position is shared by three member states.<sup>41</sup> It is curious that the Netherlands proposes to widen the definition of the family in this context, as there are proposals to narrow the definition of the family in domestic legislation.<sup>42</sup> Twelve member states disapprove of widening the definition of the family for family reunification of refugees (see Graph 1). Germany proposes a flexible approach in which cohabitation in the country of origin should be the decisive criterion.

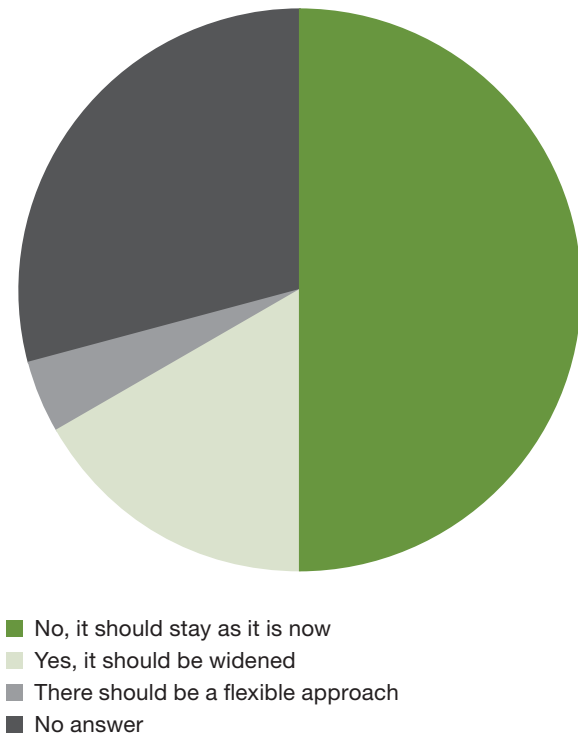
38 Article 9(2) Directive 2003/86, ve08001724.

39 Article 29(e)&(f) Vw.

40 With this answer the Dutch government anticipates a change in domestic legislation which excludes unmarried partners from family reunification.

41 CY, HU, SK.

42 Parliamentary Documents II 2011/12, 32 175, nr. 21, ve12000456.



**Graph 1** Proportion of member states' answers on whether the definition of family should be widened for refugees (Q9b)

Under the Directive, member states may limit the more favourable regime for refugees to applications made within three months after the status was granted.<sup>43</sup> The Commission asks whether this clause should be maintained. The **Netherlands** believes that it cannot be expected from refugees who just obtained their status to comply with the substantive requirements from Article 7 of the Directive. However after the three-month period this can be expected from them, according to the Dutch reaction. Eight member states agree with the Netherlands that the three-month period should stay in the Directive. Five member states do not agree with this. **Lithuania** proposes to make the time period in which the application must be submitted as long as the integration program. The rationale behind this proposal is that a refugee cannot be expected to comply with the substantive requirements if he or she has not yet properly integrated. **Cyprus** also opposes the three-month period because other factors might make it impossible for refugees to file an application in such a short time period.

Table 2 illustrates that member states which answered the question on refugee family reunification generally oppose amendments in the Directive that would place fewer restrictions on the family reunification of refugees. **Cyprus** is the only

43 Article 12(1) Directive 2003/86, ve08001724.

country which favours a less restrictive regime. It is surprising that in this context the **Dutch** government actively pleads for a more inclusive definition of the family. Other member states, e.g. **Sweden**, just mention the domestic legislation without proposing that the Directive should be amended to be in line with domestic legislation. The Netherlands is already allowed to have more favourable provisions in domestic law, and it is unclear what the reasoning behind the proposal is.

**Table 2** The positions of the member states on the different questions on asylum

	Q9a Predate requirement	Q9b Widening of family definition	Q9c Three month application period
Stay the same	AT, BE, BG, EE, FI, FR, HU, LV, LT, MT, NL, PT, RO, SK	AT, BE, BG, EE, FI, FR, LV, LT, LU, MT, PT, RO	AT, EE, FR, DE, HU, LV, MT, NL, SK
Less restrictive	CY	CY, HU, NL, SK	CY, LT, LU, PT, RO
Clarification		DE	
No answer	CZ, DE, DK, EL, IT, LU, PL, SE, UK	CZ, DK, EL, IT, PL, SE, UK	BE, BG, CZ, DK, EL, FI, IT, PL, SE, UK

**10 Restrictions without evidence?**

One of the findings from this research is that many member states favour or already operate certain requirements for family reunification, such as age requirements and pre-entry integration tests, without quantitative evidence that such measures are actually an effective mechanism to achieve the sought objective.

It should be noted that in any decision within the scope of the Directive, the principle of proportionality must be respected. Furthermore, the competence to impose substantive requirements on applicants must be strictly interpreted.<sup>44</sup> It is questionable whether without evidence of the effectiveness of integration measures, such requirements are permissible in individual cases.

As mentioned above, the UK Supreme Court has already ruled that an age requirement of 21 years was incompatible with the

44 Case C-578/08 *Chakroun v Minister van Buitenlandse Zaken* [2010] ECR I-1839, para. 43. In his note in *Jurisprudentie Vreemdelingenrecht* (JV 2010/177, ve10000350), Groenendijk argues that the principles set out in *Chakroun* should be applied for all substantive requirements, including the pre-entry integration requirement.

principle of proportionality enshrined in Article 8(2) ECHR.<sup>45</sup> This ruling was based on the lack of evidence of the effectiveness of the age requirement in combating forced marriages. The substantive requirements in the Directive could as well be challenged on the same basis. The finding that the member states are not able to substantiate the effectiveness of substantive requirements therefore invites questions on the legitimacy of the imposed substantive requirements. As in this context this is a matter of EU law, domestic judges could, or depending on the status of the court should, request guidance on this issue in a preliminary reference procedure at the Court. A possible preliminary reference could read: Do Article 4(5) and Article 7(2) of the Family Reunification Directive preclude domestic legislation requiring applicants for family reunification to comply with respectively age and pre-entry integration requirements where the member state is not able to provide evidence on the effectiveness of these requirements on respectively the aim of preventing forced marriages and the aim of facilitating integration in the host member state?

The Dutch government raised the age requirement from 18 to 21 years in 2010.<sup>46</sup> If a case concerning the higher age requirement would reach the Dutch courts, this would be a good moment to ask the Court of Justice for a preliminary ruling on the matter of maintaining the age requirement without its effectiveness having been proven.

## 11 The future of the Directive

In the Green Paper, the Commission sketches several possible outcomes, namely the modification of the Directive, the establishment of interpretative guidelines or maintaining the status quo. The Commission plays a decisive role in the future of

*The UK Supreme Court has already ruled that an age requirement of 21 years was incompatible with the principle of proportionality enshrined in Article 8(2) ECHR.*

the Directive. In EU decision-making, the Commission is the only actor that can propose new legislation or revision of existing legislation. If the Commission does not initiate revision, the member states will not be able to amend the Directive.

On 31 May–1 June 2012 a consultation meeting took place in Brussels where the Green Paper and the contributions of stakeholders were discussed.<sup>47</sup> At the end of that meeting the Director General of the Commission's DG Home Affairs, Stefano Manservigi, said that the Commission does not intend to initiate revision of the Directive. Instead the Commission announced that it will closely monitor the implementation of the Directive by the member states, which might result in infringement proceedings. Furthermore, the Commission is planning to produce interpretative guidelines in cooperation with the member states and civil society. One of the items on

which the Commission plans to issue interpretative guidelines is pre-entry integration measures. This is interesting as the member states' responses to the Green Paper did not highlight the need for interpretive guidelines on this issue. The Commission might feel that actually these measures are not permissible under the Directive because the member states are unable to substantiate the effectiveness of compulsory pre-entry integration measures. It is therefore highly questionable whether the wish of a majority of the member states to be able to impose pre-entry integration requirements on family members<sup>48</sup> will be reflected in the interpretative guidelines of the Commission.<sup>49</sup>

During the consultation meeting, Manservigi stressed that the main objective of the Directive is to allow for family reunification, and not to set up barriers.<sup>50</sup> The fact that the Commission takes a reserved position on renegotiating the Directive can only be explained by the fear that the right to family reunification would be weakened in the process. This was expressly recognised in the Swedish response, which stated that it 'is of the opinion that the Directive best be left the way it is, since it is difficult to predict the outcome of a reviewing process, which might result in stricter provisions being introduced.' During the consultation meeting, many NGOs also expressed their preference to not reopen the Directive, motivated by the fear that their policy preferences would not be realised. In case the Commission remains unwilling to reopen the negotiations on the Directive in the absence of a clear consensus among the member states, according to the findings of this article, restrictive amendments such as proposed by the Dutch government are unlikely to be included in the Directive.

## 12 Conclusion

The research question addressed in this article was how the response of the Netherlands to the Green Paper compares to the contributions of the other member states. In order to answer this research question, a systematic comparison was conducted of member states' answers to the questions asked by the Commission.

It was infeasible to categorise all member states by the level of restrictiveness of their answers, nor was it possible to compare the views of the Dutch government on issues outside the scope of the questions asked by the Commission, considering that the other member states did not address those issues in their responses. Furthermore, it was not possible to identify certain member states which generally shared the views ex-

45 [2011] UKSC 45.

46 Royal Decree 24.07.2010, Staatsblad 306, ve10001128.

47 See <http://www.eesc.europa.eu/?i=portal.en.events-and-activities-european-integration-forum-7>.

48 See section 4.

49 See the submission of the Commission in the strike-out CJEU case C-155/11 PPU Imran, ve11001451.

50 Summary Report on the Seventh meeting of the European Integration Forum: Public Hearing on the Right to Family Reunification of Third Country Nationals Living in the EU.

pressed by the Netherlands. The methodology developed was, however, able to show the Dutch position on the issues raised in the Commission's Green Paper in relation to the views of other member states. When the Dutch views were compared with the opinions of the other member states, in 12 out of the 20 substantive questions, the view held by the Netherlands was the most common view among all member states. Only in 8 out of 20 questions the Netherlands was in a minority position.

*If the Commission does not initiate revision, the member states will not be able to amend the Directive*

This indicated that the Netherlands does not stand completely alone its views on the answers to the questions posed by the Commission. In order to grasp more fully where the Netherlands stands in relation to the other member states, six issues were selected for in-depth analysis. This showed that the Dutch answers to the Commission's questions were very mixed in terms of the proposed future of the Directive and in terms of which member states supported the Dutch position.

The Netherlands pleaded that the Directive should not be amended in fields where it considered that the member states currently have a wide discretionary competence under the Directive. On several other questions the Dutch government proposed to make the Directive more restrictive, for example by requiring the sponsor and the family migrant to be at least 24 years old. In the field of family reunification for holders of international protection, the Netherlands argued for less restrictive provisions in the Directive. The responses of the other member states on these issues were mixed. The member states did largely agree with standpoint of the Dutch government with regard to pre-entry integration measures, which, according to a majority of member states, should continue to be permissible. In many questions, especially where the Netherlands did not express the wish to change the Directive, the Dutch standpoint was shared with a majority of the member states.

Although some of the Dutch government's (restrictive) proposals are shared by other member states, this does not mean that it will result in the Directive being amended. In the Green Paper itself, the member states were not asked whether they would like to reopen the negotiations of the Directive. From the answers of the member states, no emerging consensus on this issue can be inferred. The reactions on the Green Paper by the member states therefore do not put clear pressure on the Commission to reopen the negotiations of the Directive. If there would have been such consensus, and if the member states would have clearly expressed the wish to reopen the Directive, it is not likely that the Commission would have ignored such a message. Without such signals from the member states, it is not very likely that the Commission will take initiative to reopen the negotiation of the Directive. In the absence of legislative action by the Commission, the Netherlands will not be able to incorporate its restrictive proposals in the Directive. Based on the findings in this research, it is unlikely that interpretative guidelines to be issued by the Commission

will be in line with the restrictive proposals of the Dutch government.<sup>51</sup> Instead, it seems more likely that the Commission will consider starting infringement proceedings against the Netherlands for example on the issue of excessive administrative fees.

Another finding of the analysis of the member states' responses to the Commission's Green Paper was the inability of the

member states to provide evidence on the effectiveness of integration measures, the age requirements and the occurrence of fraud and abuse. It is questionable whether restrictions on the right to family reunification are in line with the proportionality principle in case that there is no evidence that the restrictions are effective in reaching the desired objective.

Most of the proposals of the Dutch government to make the Directive more restrictive are not supported by a majority of the member states, and the Commission, in the absence of consensus among the member states, does not appear eager to make more restrictive measures possible. Therefore the restrictive Dutch proposals are unlikely to be realised in the near future.

#### Appendix – List of sub-questions

**Q1a** Are these criteria (**reasonable prospect for the right of permanent residence at the time of application as regulated in Article 3** and a waiting period until reunification can actually take place as regulated in Article 8) the correct approach and the best way to qualify the sponsors?

**Q1b** Are these criteria (reasonable prospect for the right of permanent residence at the time of application as regulated in Article 3 and **a waiting period until reunification can actually take place as regulated in Article 8**) the correct approach and the best way to qualify the sponsors?

**Q2a** Is it legitimate to have a minimum age for the spouse which differs from the age of majority in a Member State? Are there other ways of preventing forced marriages within the context of family reunification and if yes, which?

**\*Q2b** Do you have clear evidence of the problem of forced marriages? If yes how big is this problem (statistics) and is it related

51 The Dutch Minister on Immigration, Integration and Asylum stated that he is happy that the Commission will use the findings of an expert group on improvements of the implementation of Directive 2003/86 in formulating interpretative guidelines. Even though this expert commission will consist of public officials from the member states, it is unclear whether the conclusions from this Commission will support the views held by the Dutch government and whether the interpretative guidelines to be issued by the Commission will be in line with the recommendations by the expert commission. See Parliamentary Documents II 2011/12, 32 175, nr. 36, p. 11, ve12001556.



to the rules on family reunification (to fix a different minimum age than the age of majority)?

**Q3** Do you see an interest in maintaining those standstill clauses which are not used by Member States, such as the one concerning children older than 15?

**Q4** Are the rules on eligible family members adequate and broad enough to take into account the different definitions of family existing other than that of the nuclear family?

**\*Q5a** Do these measures efficiently serve the purpose of integration? How can this be assessed in practice? Which integration measures are most effective in that respect?

**Q5b** Would you consider it useful to further define these measures [integration measures] at EU level?

**Q5c** Would you recommend pre-entry measures? If so, how can safeguards be introduced in order to ensure that they do not de facto lead to undue barriers for family reunification (such as disproportionate fees or requirements) and take into account individual abilities such as age, illiteracy, disability, educational level?

**Q6** In view of its application, is it necessary and justified to keep such a derogation in the Directive to provide for a three year waiting period as from the submission of the application?

**Q7** Should specific rules foresee the situation when the remaining validity of the sponsor's residence permit is less than one year, but to be renewed?

**Q8a** Should the family reunification of third country nationals who are beneficiaries of subsidiary protection be subject to the rules of the Family reunification Directive??

**Q8b** Should beneficiaries of subsidiary protection benefit from the more favourable rules of the Family reunification Directive which exempt refugees from meeting certain requirements (accommodation, sickness insurance, stable and regular resources)?

**Q9a** Should Member States continue to have the possibility to limit the application of the more favourable provisions of the Directive to refugees whose family relationships predate their entry to the territory of a Member State?

**Q9b** Should family reunification be ensured for wider categories of family members who are dependent on the refugees, if so to which degree?

**Q9c** Should refugees continue to be required to provide evidence that they fulfil the requirements regarding accommodation, sickness insurance and resources if the application for family reunification is not submitted within a period of three months after granting the refugee status?

**\*Q10a** Do you have clear evidence of problems of fraud? How big is the problem (statistics)?

**Q10b** Do you think rules on interviews and investigations, including DNA testing, can be instrumental to solve them?

**Q10c** Would you consider it useful to regulate more specifically these interviews or investigations at EU level? If so, which type of rules would you consider?

**\*Q11a** Do you have clear evidence of problems of marriages of convenience? Do you have statistics of such marriages (if detected)?

**Q11b** Are they [MoC] related to the rules of the Directive? Could the provisions in the Directive for checks and inspections be more effectively implemented, and if so, how?

**Q12** Should administrative fees payable in the procedure be regulated? If so, should it be in a form of safeguards or should more precise indications be given?

**Q13** Is the administrative deadline laid down by the Directive for examination of the application justified?

**Q14** How could the application of these horizontal clauses be facilitated and ensured in practice?

\*Evidence/no evidence questions

## Appendix B – Tables with all responses

Table B1 Coding of countries' responses to all substantive sub-questions

	Stay the same	More restrictive	Less restrictive	Clarification	No answer
Q1a	AT, BE, CY, DE, EE, EL, FI, FR, LU, MT, PL, SK	CZ, DK, NL	BG, HU, PT	LV, LT, RO	IT, SE, UK
Q1b	AT, BE, BG, CY, EE, EL, FI, FR, LT, MT, NL, PL, SK	CZ, DK	HU, PT	RO	DE, IT, LV, LU, SE, UK
Q2a	AT, BE, CY, EE, FI, DE, IT, LV, MT, UK	CZ, DK, LT, NL	BG, FR, EL, LU, PL, PT, SK		HU, PL, SE
Q3	AT, BE, CY, DK, FR, DE, LV, MT, NL		BG, CZ, HU, IT, LT, PL, PT, RO, SK		EE, FI, EL, LU, SE, UK
Q4	AT, BE, BG, CY, DK, EE, FI, FR, DE, EE, LV, LT, LU, MT, NL, PL, PT,		RO	CZ	HU, IT, SE, UK
Q5b	AT, BE, BG, EE, FR, HU, LV, LT, MT, NL, SK	CZ, DE, RO	CY, EE, PL	FI, PT	DK, IT, LU, SE, UK
Q5c	BG, LU	AT, BE, CZ, EE, FR, DE, EL, LV, MT, NL, UK	CY, FI, LT, PT, RO, SK		DK, HU, IT, PL, SE
Q6	AT, BE, CZ, FR, LV, MT, NL		BG, CY, FI, DE, HU, LT, PL, PT, RO		DK, EE, EL, IT, LU, SK, SE, UK
Q7	AT, BE, FI, FR, LV, LU	BG, CY, DE, EL, HU, LT, MT, PT, SK, SE	PL	CZ, EE, NL, RO	DK, IT, UK
Q8a	AT, BE, CZ, FI, LV, MT		BG, CY, EE, FR, DE, HU, LT, NL, PT, RO, SK		DK, EL, IT, LU, PL, SE, UK
Q8b	AT, HU, LV, LT, SK		BG, CY, FR, NL, RO		BE, CZ, DK, EE, FI, DE, EL, IT, LU, MT, PL, PT, SE, UK
Q9a	AT, BE, BG, EE, FI, FR, HU, LV, LT, MT, NL, PT, RO, SK		CY		CZ, DK, DE, EL, IT, LU, PL, SE, UK
Q9b	AT, BE, BG, EE, FI, FR, LV, LT, LU, MT, PT, RO		CY, HU, NL, SK	DE	CZ, DK, EL, IT, PL, SE, UK
Q9c	AT, EE, FR, DE, HU, LV, MT, NL, SK		CY, LT, LU, PT, RO		BE, BG, CZ, DK, FI, EL, IT, PL, SE, UK
Q10b	DE, EL, HU, LU, NL	CZ, DK, LV, MT, PT, RO		AT, BG, CY, EE, FR	BE, FI, IT, LT, PL, SK, SE, UK

	Stay the same	More restrictive	Less restrictive	Clarification	No answer
Q10c	AT, FI, DE, EL, HU, LV, LT, LU, MT	BE, CZ, NL, PT, RO	BG	CY, EE, FR	DK, IT, PL, SK, SE, UK
Q11b	BE, FR, EL, HU, LV, LT, RO	AT, BG, DE, IT, NL, PT		EE	CY, CZ, DK, FI, LU, MT, PL, SK, SE, UK
Q12	AT, BE, CY, CZ, EE, FI, FR, DE, EL, HU, LV, LT, LU, MT, NL, SK		BG, RO	PL, PT	DK, IT, SE, UK
Q13	AT, BE, BG, CZ, EE, FR, EL, LT, LU, MT, NL, PL, SK, SE	FI	CY, HU, PT, RO	DE	DK, IT, LV, UK
Q14	AT, BE, CZ, FI, FR, LT, LU, MT, NL, RO		CY, PT	EE, SK	BG, DK, DE, EL, HU, IT, LV, PL, SE, UK

**Table B2** The relationship between governments' responses to the existence of evidence of fraud (Q10a) and whether it would be useful to have rules at the EU level (10c)

	Stay the same	Change - More restrictive	Change - Less restrictive	Clarification	No answer
No evidence	AT, DE, EL, HU, LT, LU, MT	BE, RO	BG,	CY, EE, FR	DK, PL, SE, SK, UK
Evidence	FI, LV	CZ, NL, PT			IT

**Table B3** The relationship between governments' responses to the existence of evidence of fraud (Q10a) and whether rules on investigations are instrumental to solving it (10b)

	Stay the same	Change - More restrictive	Change - Less restrictive	Clarification	No answer
No evidence	DE, EL, HU, LU	DK, MT, RO		AT, BG, CY, EE, FR	BE, LT, PL, SE, SK, UK
Evidence	NL	CZ, LV, PT			FI, IT

**Table B4** The relationship between governments' responses to the existence of evidence of marriages of convenience (Q11a) and whether the provisions in the Directive could be more effectively implemented (11b)

	Stay the same	Change - More restrictive	Change - Less restrictive	Clarification	No answer
No evidence	BE, EL, FR, HU, LT, RO	AT, BG, DE, NL, PT		EE	CY, CZ, LU, MT, PL, SE, UK
Evidence	LV	IT			DK, FI, SK