



# **EU Commission – work on family reunification**

**COFACE conference  
'FAMILIES ON THE MOVE'**

**12 May 2017**

**KATRI NISKANEN  
European Commission  
DG Migration and Home Affairs  
Unit B1: Legal migration and integration**

# Legal framework

## EU level:

- **Directive 2003/86/EC: Family members of legally residing third-country nationals**
- Directive 2004/38/EC: Family members of mobile EU citizens (free movement rights)

## National level:

- Implementation of the Directives
- Falling under national law: family members of non-mobile EU citizens, beneficiaries of subsidiary protection etc.

# Family Reunification Directive 2003/86/EC

## The essence of the Directive:

- To define the conditions for the exercise of the ensured right to family reunification
- A legally residing TCN who fulfils certain conditions as laid down by the Directive should be able to be joined by his/her nuclear family members.

## Challenges:

- "First generation Directive", low level of harmonisation, many optional clauses, gaps in personal scope
- MS tendency to opt for more restrictive policies in recent years

## CJEU: inherent limits to the discretion of MS

C 540/03, Parliament v. Council:

*"imposing a precise obligation on MSs requiring them in cases determined by the Directive to authorise family reunification of certain family members leaving them no leeway in this"*

C 578/08 Chakroun:

*"may clause in question must be interpreted strictly and the margin for manoeuvre which the MS are recognised as having must not be used in a manner which would undermine the objective of the Directive which is to promote family reunification and the effectiveness thereof"*

+ Art. 7 CFR, Art. 8 ECHR and other fundamental rights provisions

## Implementation of the Directive

- A. Implementation reports (2008)
- B. Public consultation: Green paper & Public hearing (2011-2012)
- C. Application guidelines (2014) and expert group
- D.** Fitness Check on legal migration (2017-2018)
- E.** Conformity assessments and handling of complaints: follow-up with individual MS potentially leading to infringement procedures

# Fitness check on legal migration: principles

- Retrospective analysis: from adoption to current situation, with some forecasts
- Evaluation criteria: relevance, coherence, effectiveness, efficiency, EU added value
- Assessing gaps, inconsistencies, overlaps...
- Analysis follows different stages of migration: from pre-application to residence and potential end of stay
- Differentiated approach on scope:
  - In-depth study of the implementation of Directives on Single Permit; Long-term residents; Family reunification
  - Partial study, focusing on relevance and coherence, of more recent Directives (Intra-corporate transfers, Seasonal workers), recently recast (Students & Researchers) and subject to review (EU Blue Card)

# Fitness check: structure and timeline

Support study (until February 2018):

- Evidence gathering and consultations on practical implementation

Wide consultations

- Many targeted consultations to stakeholders both on practical application of current legislation and on views on its functioning
- Open public consultation: online questionnaire coming up during spring/summer 2017

The second implementation report of the Family Reunification Directive will be integrated in the Fitness check outcome

# Continuous conformity control

## Own-initiative monitoring

- The latest full round of conformity studies on family reunification was completed in 2016: follow-up with MS is ongoing
- Contact Group, bilateral meetings
- EU Pilot system
- Infringement procedures

## Individual complaints

- Channel through which individuals, lawyers and NGOs bring conformity issues to the Commission's attention
- Initial standardised form + potential follow-up with more information and annexed documents
- COM may address general issues in transposition or application of EU law – this does not replace national redress mechanisms



***Thank you for your attention!***

**More information:**

DG HOME

[https://ec.europa.eu/home-affairs/index\\_en](https://ec.europa.eu/home-affairs/index_en)

Fitness Check Legal Migration - link to OPC when launched :

[http://ec.europa.eu/home-affairs/what-we-do/policies/legal-migration/fitness-check\\_en](http://ec.europa.eu/home-affairs/what-we-do/policies/legal-migration/fitness-check_en)

EU Immigration Portal

<http://ec.europa.eu/immigration>