SUMMARY REPORT
Seventh meeting of the European Integration Forum:
Public Hearing on the Right to Family Reunification of Third Country Nationals living in the EU
Brussels, 31 May – 1 June 2012

The seventh meeting of the European Integration Forum (EIF) took the form of a public hearing on the right to family reunification of third country nationals (TCNs) living in the EU. The meeting was also the oral part of the public consultation on the family reunification Directive (2003/86/EC), to allow for further discussion to complement the written part, i.e. the European Commission's Green Paper on family reunification, and the responses thereto. The public hearing, operated as an extended forum, involving both members of the Forum who are experts on integration, as well as all those who contributed in writing to the public consultation, including representatives of national governments. Four thematic panel sessions were organised, each with the aim of addressing questions formulated in the Green Paper. The following themes were addressed: integration measures; the right to family reunification in the application process (need for individual assessment, best interest of the child, length of the procedure, fees); asylum related issues; and forms and scale of fraud.

The **opening speeches** were given by **Cecilia Malmström**, European Commissioner for Home Affairs, **Henrik Ankerstjerne**, Deputy Permanent State Secretary of the Danish Ministry of Justice, **Salvatore Iacolini**, Member of the European Parliament, Vice Chair of the Committee on Civil Justice and Home Affairs (LIBE), and **Staffan Nilsson**, President of the European Economic and Social Committee (EESC).

In her opening speech and the answers to follow-up questions, Ms Malmström emphasised that she saw family reunification as an asset and a right that must be both genuinely used and protected. Barriers to this right must therefore be removed. Ms Malmström, and with her Mr Nilsson, stressed the value of family reunification for migrant integration, as integration will be much easier when migrants do not have to worry about the well-being of their family members in a different country. In addition, children going to school in the receiving country support the integration of the parents as well as the children themselves. Commissioner Malmström referred to the tension between the right to family reunion, and the Member States' concerns with preventing misuse of this right, stating that the right balance needs to be struck and that Member States should be supported to fight misuse. At the same time she stressed that the European Commission will continue to closely monitor Member States' legislative and administrative practices to ensure compliance with the Directive, if necessary through infringement procedures. Ms Malmström mentioned the need for the dissemination of best practices and acknowledged the call, expressed in the written responses to the Green Paper and highlighted in the discussions following the opening session, for guidelines on the interpretation of the Directive's provisions. She thought of such guidelines as a good alternative to re-opening negotiations on the Directive, which most stakeholders in the debate, Member States and NGOs alike, do not favour, while stressing the difficulties the preparation of such guidelines will entail, due the small number of relevant judgments of the European Court of Justice.

Mr Ankerstjerne explained the recent change in integration policy which occurred under the new Government in Denmark. These changes included abolishing the points system and the requirement to pass a test as a condition for family reunification for being unnecessary barriers to family reunification. At the same time, the Danish Government is keen to combat fraud, abuse and forced marriages, calling for cooperation between Member States via the introduction of a committee of experts dealing with these issues. Mr Iacolino subsequently questioned the value of certain measures taken to prevent fraud, such as raising the age limit for family formation to 24 years. He suggested a liberalisation of visa policies as a more effective way of preventing fraud than introducing stricter policies which will infringe on the right to family reunification. A liberalised visa policy will furthermore open up possibilities for people to move back and forth between the EU and their country of origin, enabling rather than hampering circular migration which has been identified as a priority by the Commission. Commissioner Malmström subsequently stated that visa and greater possibilities for mobility are issues that need to be looked into.

In the **first panel** on integration measures, chaired by **Tineke Strik** (Council of Europe Parliamentary Assemblee), presentations were given by **Bernardo Sousa** from the Portuguese High Commission for Immigrants and Intercultural Dialogue (ACIDI), **Christian Klos** of the German Federal Ministry of the Interior, **Sylvie Guillaume**, MEP for the social democrats, **Doris Peschke** of the Churches' Commission

for Migrants in Europe (CCME), **Hiltrud Stöcker-Zafari** of the Verband binationaler Familien (DE) and **Ricky van Oers** of the Centre for Migration Law of the Radboud University Nijmegen. As the Green Paper states that integration measures are only admissible in case they serve the purpose of facilitating integration and respect the principles of proportionality and subsidiarity, the main questions this panel aimed to answer were whether integration measures efficiently serve the purpose of integration and whether they in practice constitute barriers to the right to family reunification. In answering these questions, two different points of view were expressed. There was the point of view, expressed by Mr Klos, that pre-entry language tests are permissible and that the 'margin of appreciation' given in the Directive allow considerable room for manoeuvre which cannot be limited by interpretative guidelines. The other point of view, expressed by the other panelists as well as the majority of the participants in the discussion that took place after the presentations, was that there are some constraints when it comes to introducing pre-entry integration tests.

Mr Klos gave the first presentation in the panel. In his contribution, he emphasised the importance the German government attaches to pre-entry language tests as they are administered now, as these tests should increase language skills and, as a consequence, promote social acceptance. Mr Klos furthermore argued that the pre-entry tests, as applied in Germany, allow women to escape social isolation and resist forced marriage, and promote exchange of experiences and information with people in similar situations. For those who cannot fulfil the requirement by passing the test, hardship clauses have been drafted. In the discussions that took place after the presentations of panel 1, a discussant from the floor mentioned examples of positive impacts of the requirement in terms of helping the migration-process already in the country of origin, awakening an interest for the country and the language, giving migrants more self-confidence, and forging social bonds for future life. At the same time, the other panelists, as well as a number of participants from the floor, stressed the difficulties that some people experience when trying to reach the required level and to pass the test. The following issues were raised in particular:

According to the speaker from CCME, as well as to a participant in the Q&A session, by asking for a certain level of language skills to be attained, certain Member States in fact require immigrants to fulfill an intergration condition rather than comply with an integration measure, which is not in line with Article 7(2) of the Directive. Ms Guillaume in this regard argued that the Directive, and Article 7(2) in particular, should not be used as an instrument to manage migration.

With the exception of Mr Klos, all panellists, as well as the majority of the participants in the Q&A session, emphasised the importance of drafting guidelines on this issue, as the pre-entry integration requirements currently appear to form obstacles to family reunification. According to a participant in the debate, the integration requirements thereby breach the principles laid down in recital (2) of the Directive. The results from the INTEC study (funded by the European Integration Fund), which analysed the effects of language and integration testing in nine EU Member States, presented by Ms Van Oers also found that that the pre-entry integration requirements often form barriers to family reunification. Based on an examination of statistical data and interviews with stakeholders and immigrant participants in the relevant courses, this study showed that pre-entry tests had led to a decrease in (applications for) visas issued for family reunification in some Member States. The requirements proved especially burdensome for certain categories of immigrant, such as the elderly, and those with low education or literacy levels. Like the CCME, the Verband binationaler Familien and Ms Guillaume, Ms Van Oers furthermore pointed at the difficulties which people from rural areas or from war zones experience in getting access to appropriate courses or travelling to the embassy or the test centres to sit the pre-entry tests. The costs of fulfilling the integration requirements, in terms of paying for courses, loss of income, travelling to these courses, and paying the actual test fees, can also be an insurmountable barrier to meet. Additionally, the obligation to fulfil a pre-entry integration requirement will lead to delays in family reunification, which will hamper rather than foster integration. According to the Verband binationaler Familien, as well as another participant in the debate, exemption clauses are often applied very strictly in practice, offering no valid 'escape' for those for whom meeting the pre-entry requirements was hard or basically impossible.

As regards the effectiveness of pre-entry integration requirements in terms of integration, the CCME pointed to the lack of any study proving that such requirements lead to improved integration. Such an effect was in any case not found in the INTEC study. This study showed that much, if not all, of the knowledge acquired in the country of origin to fulfil the pre-entry requirements was lost by the time the family member arrived in the country of destination, due to the long time that usually passes between

taking the test and arriving in the country. This finding was confirmed by several panellists and discussants from the floor. The INTEC study furthermore did not find any evidence that pre-entry integration requirements combat forced marriages or that they decrease the influence of the family in law in the country of destination over the spouse, goals which, besides improved integration, were put forward as justifications for the introduction of pre-entry integration requirements in Germany.

According to the CCME, the negative effects of prolonged separation caused by the pre-entry integration requirements cannot be counterbalanced by the (possible) positive effects. As alternatives to pre-entry integration tests, CCME and the Verband binationaler Familien, as well as Mr Sousa, promoted language learning after arrival. As a proper learning of the language requires experience and participation, the INTEC study indeed showed that language learning in the country of destination would be much more effective. As an alternative, CCME furthermore proposed to offer free language courses in the country of origin during the waiting period after the application has been submitted.

In terms of action to be undertaken, the CCME called on the European Commission to evaluate the integration measures more systematically, and to start infringement procedures in cases where the requirements do not respect the principle of proportionality. Ms Guillaume was not opposed to pre-entry integration requirements on principle, but insisted on an investigation of the questions of whether Article 7(2) of the Directive is currently interpreted too widely, and to what extent the tests form barriers to family reunification.

Panel 2, chaired by **Yves Pascouau** (European Policy Centre), discussed the right to family reunification in the application process, focusing on implementation of the so-called horizontal clauses in the Directive, i.e. Article 5(5) (the best interest of the child), and Article 17 (case by case assessment), as well as the length of the procedure, and payable fees. Presentations were given by **Judith Sargentini**, MEP (NL/ALDE), **Massimo Frigo** of the International Commission of Jurists (ICJ), **Jorg Werner** from Defence for Children, and Professor **Kees Groenendijk**, chair of the Dutch Meijers Committee, an independent committee of experts in international immigration, refugee and criminal law.

Prof Groenendijk kicked off his presentation by emphasising that without a full and correct implementation of these procedural issues, there is no real right to family reunification. He signalled problems in all three of the issues touched upon by the panel.

As regards the horizontal clauses, Prof Groenendijk stressed that Article 5(5) and Article 17, together with the EU Charter, grant more extensive rights and a higher level of procedural protection than the UN Convention on the Rights of the Child and Article 8 ECHR. The Directive introduced a Union law right to family reunification, and the horizontal clauses relate to this right. Even though the criteria mentioned in Articles 5(5) and 17 are derived from the Convention of the Rights of the Child and Strasbourg case law, they have a different meaning in the context of the Directive and no longer depend on a balancing of interests as is usually done by the Strasbourg Court under Article 8. Prof Groenendijk, and with him the ICJ, therefore thought that Member States transposing the horizontal clauses by referring to international human rights obligations, often have not transposed these provisions correctly. In this regard, the speaker from Defence for Children pointed at the practice in one Member State of attaching only a subordinate role to the provision on the best interest of the child. They explained that the competent Minister in that state claims that the policy in general gives attention to the best interest of the child, concluding that an examination in individual cases is not necessary. In addition, Ms Sargentini highlighted that in her view individual assessment only happens in that state in cases which receive public and political attention.

As regards the length of the procedure, Prof Groenendijk argued that for Member States who fail to take a decision on an application for family reunification within the deadline of nine months set by the Directive, there are only two consequences: the refusal to take a decision should either be seen as a refusal of the application, in which case an effective remedy should be provided for, or as implying that third country nationals meeting the conditions should be treated as if they have been granted the residence permit for family reunification they are entitled to under the Directive. In Prof Groenendijk's view, the European Court of Justice will not accept Member States making no decision, since this means effectively withholding the right to family reunification granted by the Directive.

On the issue of fees, Ms Sargentini, Mr Frigo and Prof Groenendijk made clear that these should not form a barrier to the realisation of the right of family reunification. A discussant from the floor raised the question why the issue of fees should not be dealt with in the Directive. Ms Sargentini was not in favour of opening the Directive, and together with Prof Groenendijk, stated that opening the Directive is not necessary, as the issue of fees has has effectively been decided by the European Court of Justice on 26 April 2012 in *Commission/NL* (C-508/10). The case was about Directive 2003/109, but in their view the judgment also indirectly applies to the Directive on family reunification, as the Court repeatedly refers in the judgment to family members. According to the European Court of Justice, Member States may not apply national rules that jeopardise the achievement of the objective pursued by a Directive, thereby depriving it of its effectiveness. This means that the discretion granted to Member States to levy fees is not unlimited. According to Prof Groenendijk, this line of reasoning, applies not only to the issue of fees, but also to other conditions where Member States tend to over-estimate the level of discretion they have, such as income and integration requirements.

In terms of action to be undertaken by the European Commission to stimulate full and correct application of the procedural rules, the following suggestions were made by panellists and contributors from the floor: 1) The European Commission was urged to start infringement procedures. In cases brought before the European Court of Justice, Prof Groenendijk felt that it would be helpful for the Commission to publish its reasoned opinions, as this will enhance the support in the Member State for the decision to start an infringement procedure, and for compliance in other Member States. 2) It was furthermore advised that the European Commission checks whether the Member States have implemented Article 5(5) in explicit provisions in their national immigration law, and to start infringement procedures against Member States who have not done so. The ICJ in this regard advocated the introduction of a database in which it is registered how national courts and administrations apply the horizontal clauses. 3) All panellists argued for interpretative guidelines on the procedural rules, asking the EU institutions to make clear which principles they apply to assess whether a Member State is in compliance with the Directive. Defence for Children in this regard went a step further by asking for the drafting of a Rights-Of-The-Child-Effect Report for the Directive, with, for each article, a clear description of how the interests of the child are best served. 4) A discussant from the floor, as well as Prof Groenendijk, called for effective systems or mechanisms to be introduced for individuals to complain about the application in Member States of the Directive's provisions. In this regard, Prof Groenendijk referred to SOLVIT, a mechanism established by the European Commission several years ago, allowing Union citizens to complain on the incorrect application of free movement law and get information about the relevant rules and about avenues for redress. A similar system could also be helpful in the field of family reunification, as it will help individuals, but also give the European Commission a more precise insight into where problems lie.

The **third panel**, chaired by **Anne Bathily** (ECRE), discussed asylum related issues, including coverage of beneficiaries of subsidiary protection, favourable conditions for refugees and the role of DNA testing. Presentations were made by **Jean Lambert**, MEP for the Greens, **Laure Batut** from the European Economic and Social Committee, **Pauline Chaigne** from UNHR and **Anki Carlsson** from the Swedish Red Cross. The panellists, who generally agreed on the topics discussed, stressed that the right to family reunification was very important for refugees, who have no possibilities of exercising their family life in the country of origin. It was furthermore stressed that family reunification promotes integration particularly in the case of refugees, and that the possibility to reunite with one's family is crucial to rehabilitate from traumas.

The issue of the possible inclusion of beneficiaries of subsidiary protection was broadly discussed. All panellists, as well as many of the participants in the discussion that took place after the presentations, argued that beneficiaries of subsidiary protection should be treated the same way as refugees because there is no evidence of genuine differences in terms of length of stay and level of protection required between the two statuses. Member States can hence not justify differences in treatment between refugees and beneficiaries of subsidiary protection. The problem would not be as urgent if there was a harmonised asylum system, but this is not the case now, as some Member States grant the subsidiary protection status much more easily than the refugee status. Ms Lambert furthermore pointed to a possible unintended discriminatory effect emanating from the Directive on this issue, as women, at least as a study has shown in two Member States, are more likely to be granted subsidiary protection status rather than refugee status than men.

As regards the more favourable treatment of refugees in the Directive, the EESC made clear that refugees need to be able to benefit from these, regardless of when and where the family was formed. The UNHCR argued for a wider interpretation of the nuclear family. The Swedish Red Cross emphasised that the option in the Directive to limit more favourable family reunification conditions to three months is unrealistic: because family members of beneficiaries of international protection originate from conflict zones, a lot of time is involved in tracing their families. Participants from the floor stressed that, at the very least, favourable conditions should apply if the application is made within the three months even in case documents are lacking or the family members have not been traced yet. This 'three months light' regime already applies in the Netherlands, but refugees often are not aware of this. Member States were consequently urged to step up their communication towards refugees, to inform them about their rights and the conditions for applications for family reunification.

The issue of DNA testing was addressed from two different angles. On the one hand, the Swedish Red Cross, as well as various participants in the Q&A session, approached the issue from the point of view of combating fraud and misuse, claiming that DNA testing should only take place when it is very difficult to gather other proof and that exceptions should be provided where such tests are inaccessible. On the other hand, the UNHCR, as well as several participants in the discussion, pointed to the usefulness of DNA testing if it is the only way for refugees to prove family relationships, as required documentation is often lacking. The EESC pointed out that DNA tests do not take account of emotional ties that can exist between persons who do not have blood ties, and that they might infringe on privacy rights. It therefore opposes DNA tests under any circumstances. The panellists furthermore stressed that the costs of DNA tests should be reasonable, or that DNA tests should be available at no cost at all, especially in refugee camps, where saving lives is the highest priority.

As regards proof of family relations other than DNA tests, the UNHCR argued that many refugees do not have access to documentation proving family ties, but that Member States in practice attach little weight to other forms of proof than documentation. A participant in the discussions referred to the paradox of asking refugees for documentation when they cannot be expected to turn to the authorities they fled to collect these documents. While the Directive takes account of this paradox, Article 11(2) nevertheless creates a certain hierarchy in the value of evidence of family relationships. It was furthermore stressed that Member States should play a pro-active role in giving refugees information on how family relationships can be proven. The UNHCR urged Member States to provide for more training for persons in charge of conducting interviews to establish whether family relationships are genuine.

In terms of action to be undertaken, the NGOs that undersigned the declaration of 31 May 2012 on the safeguarding of family life for migrants and refugees, as well as the Swedish Red Cross, argued for a new evaluation of the implementation of the Directive to update the 2008 implementation report, which should be followed by infringement procedures. Furthermore, the NGOs, as well as UNHCR and the Swedish Red Cross, welcomed that interpretative guidelines will be drafted.

The **fourth panel**, chaired by **Katerina Kratzmann** (IOM Vienna), addressed the issue of forms and scale of fraud, asking to what extent the right to family reunification is misused, and what can be done to prevent this misuse. Presentations were given by **Stephen Davies** from the European Commission on the European Migration Network (EMN) study on the misuse of the right to family reunification, **Richard Bradley** from the UK Home Office, **Peter Diez** from the Dutch Ministry of Interior and Kingdom Relations, **Sergio Soave** of the Committee of the Regions, **Amandine Bach** from the European Women's Lobby and **Antonio Garatto** from CoordEurop (European Coordination for Foreigners' Right to Family Life).

In this panel, and during the discussion that took place afterwards, two distinct points of view were expressed. In general, the Member States called for better possibilities for the authorities to detect and combat fraud. In contrast, other panellists as well as people intervening from the floor reiterated the need to ensure the right to family reunification and questioned the proportionality of some of the measures operated or proposed by some Member States. Furthermore, the rationale for investing large amounts of public money in a problem that is small in scale in relation to the numbers of family reunification migrants overall, and compared to other immigration related crimes, e.g. human trafficking, and services such as integration support, was questioned.

The panel kicked off with the presentation by Mr Davies of an EMN study on the misuse of the right to family reunification[1], which tried to identify the scale and scope of marriages of convenience and false declarations of parenthood. The study furthermore included an overview of the different reasons for suspicion and techniques to detect fraud, stating that these vary widely. In general, a case by case approach is taken and the burden of proof lies with the authorities. The study showed that there is some statistical evidence of fraud, but on the basis of non-comparable indicators. Data were furthermore not available for all Member States. In those Member States that did provide data, the number of detected cases of marriages of convenience varied from a few cases per year to over a thousand.[2] In general, compared to the number of residence permits for family reunification issued, the number of marriages of convenience only made up low percentages. There was no information on false declarations of parenthood, which, according to the EMN, means that these were either undetected, or only used on a very limited scale. A participant from the floor argued to distinguish the issue of false declarations of parenthood from fraud and marriages of convenience, as it should not be considered a problem in case someone want to take care of children who have no-one else who can take care of them.

Contributions from the Member States focused on the concerns in terms of fraud and the misuse of the right to family reunification. Mr Bradley stated that it is difficult to assess the scale of fraud, but suggested that there was evidence that this problem is increasing. In similar vein, Mr Diez did not have systematic statistical evidence of fraud, but referred to examples from the practice as only being 'the tip of the iceberg'. The UK called for action to be taken at EU level, arguing that combating abuse should become an area of EU policy. The UK urged the Member States to exchange information on best practice in terms of tackling fraud, and to share information on the scale of fraud, for which a common methodology should be agreed upon. Mr Diez called for an adjustment of the Directive to enable Member States to make better use of possibilities to tackle fraud. According to Mr Diez, the phrase 'reasons to suspect fraud or relationship of convenience' should not be limited to actual evidence of fraud. It should be possible to use 'risk profiles', attached to digital data. These risk profiles were opposed to by several participants in the discussion as such profiles make it hard to take individual circumstances into account, and as general indicators for fraud are too difficult to draw up. The fact that a marriage was concluded quickly is for instance often the result of people being forced to do so to be able to reunite, rather than being an indicator for a sham marriage.

Regarding burden of proof, Mr Diez argued that the obligation of the Member States to prove that getting or keeping a residence permit was the *sole* purpose of contracting a marriage should be removed. Finally, mention was made of preventing the misuse of EU law on free movement, better known as the 'Europe route', to prevent individuals from exercising their free movement rights for the sole purpose of escaping national regulations on family reunification. Mr Diez therefore proposed that all cases of family reunification with a third country national should be regulated under Directive 2003/86/EC, even when the sponsor is an EU citizen using his or her right to free movement.

In their presentations, Mr Soave from the Committee of the Regions, Ms Bach from the European Women's Lobby and Mr Garratto from CoordEurop stressed the lack of data on fraud, which makes it impossible to prove how extensive the phenomenon is, while pointing at the limited scale of fraud in cases where data have been provided. The European Women's Lobby (EWL) criticised the huge amounts of resources spent on detecting fraud, which have produced only meagre results. The EWL furthermore pointed at the disproportionate consequence measures to combat fraud may have on the right to family life and on women's rights, focusing particularly on the issue of dependency where rules aimed at preventing fraud may cause victims of domestic violence to remain in abusive relationships.

Concluding remarks were made by **Luis Miguel Pariza Castanos** of the EESC, **Peter Verhaeghe** from Caritas Europe and **Ayse Kosar** from the Danish Council for Ethic Minorities, both elected members of the Bureau of the Forum, **Andreas Ashiotis**, Permanent Secretary of the Ministry of Interior of Cyprus, which will succeed Denmark in the presidency of the EU, and **Stefano Manservisi**, Director General of the European Commission's DG Home Affairs.

[1] The study can be found on www.emn.europa.eu

[2] The study mentioned a total of 745,000 residence permits issued for reasons of family reunification in the EU in 2010, which amounts to 30% of the total number of residence permits issued.

These speakers again stressed that the right to family life is a fundamental right to be protected and expressed the consensus not to reopen the Directive,, but to focus on implementation and the production of interpretative guidelines.

The upcoming Cypriot presidency announced that it will put family reunification on the political agenda, putting forward the intention to discuss it at the informal SCIFA meeting in July 2012. The Cypriot presidency considers fraud to be a general phenomenon, and not an issue specific to the area of family reunification, since no specific connection of fraud with the family reunification Directive has been proved. It nevertheless acknowledged the concerns of Member States and the need to follow-up on them. Regarding the plea to include beneficiaries of subsidiary protection, Cyprus stated that it did not see any need to take action in this regard.

The Director General of DG Home Affairs expressed the Commission's position to create a credible system that addresses public fears of abuse, but the main objective of which is to allow family reunification and not to create new barriers and to avoid "turning the pathology into the objective". In practical terms, the European Commission does not think that it is the right time to reopen the Directive but is committed to step up its efforts to ensure its correct implementation, including monitoring the way Member States have implemented the Directive, which might result in infringement procedures. The European Commission intends also to produce interpretative guidelines for the Directive to ensure a better and more coherent application in Member States. The guidelines will be prepared in cooperation with Member States and other stakeholders. Mr Manservisi referred to the issues touched upon in the panels as examples of areas where further action is particularly needed, referring to the issue of pre-entry tests as a key example.

General conclusions on action to be taken

Participants to the debate, both panellists and discussants from the floor, urged the European Commission to take action to ensure the Directive is correctly implemented and that the right to family reunification is effectively guaranteed. Reference was also made to a statement of 15 May 2012 entitled 'NGOs call the EU Member States and the European Commission to safeguard family life of migrants and refugees' which set out potential areas to be covered in guidelines.

The following concrete points of actions were suggested in the course of the public hearing:

1) Monitor implementation; the European Commission was called upon to more closely monitor and evaluate the correct implementation of the Directive. There was also a suggestion that this may include providing for an update of the 2008 report on the implementation of the Directive in the EU MSs.
2) Start infringement procedures, in particular in relation to non-transposition or incorrect transposition of the Directive with regard to excessive requirements on fees for family reunification, proportionality of integration measures and the material conditions for family reunification (income, housing, health insurance), visa facilitation and evidence requirements, in particular for beneficiaries of international protection.
3) Publish the reasoned opinions in cases before the CJEU in order to enhance support in the Member State for the European Commission's decision to start an infringement procedure, and for compliance in other Member States.
4) Draft interpretative guidelines; even though such guidelines are not legally binding, such guidelines could be used by the national administrations, judges, lawyers and organisations working with immigrants and will therefore have a great effect in practice. Comparable guidelines drafted in the framework of Directive 2004/38/EC have proven to be very useful throughout the Member States. Even though there is not a lot of case law on the family reunification Directive, the Commission can use ample CJEU case law on other EU Directives on migration as well as on the EU Charter, as a basis for interpretative guidelines.

Issues that require attention and clarification in interpretative guidelines:

During the public hearing, the following issues were mentioned as requiring attention and clarification through the publication of interpretative guidelines:

- strengthen the general message that the Directive grants a Union law right to family reunification, and entails more protection of the right to family life than Article 8 of the ECHR.

- clarify the definition of family members and of the dependent relatives entitled to family reunification, based on proportionality and non-discrimination.

- give guidance to Member States that would like to include under 'family members' also other persons than married couples and minor children, allowed by the Directive.

- clarify the application of horizontal clauses of Articles 5(5) and 17: get through the general message that these Articles, together with the EU Charter, grant more extensive rights and a a higher level of procedural protection than the UN Convention on the Rights of the Child and Article 8 ECHR. The guidelines should clarify how the balancing of interests in individual cases needs to be carried out.

- clarify under which circumstances pre-entry integration requirements respect the principle of proportionality and serve the purpose of improving integration. The guidelines should also set out to what extent Article 7(2) allows requirements of results, i.e. the passing of a test, or the possibility to introduce obligations to make an effort, i.e. follow language courses. They should further specify whether non-compliance with this pre-entry requirements/test justifies the denial of an application for family reunification.

- clarify the issue of 'dependency' in Article 10(2), considering different types of dependency, e.g. emotional as well as financial.

- clarify the kind of documentation that can be used as evidence of family relationship under Article 11(2). The guidelines should provide more clarity in the conducting of interviews to establish whether genuine family relationships exist with refugees.