

# WRR

SCIENTIFIC COUNCIL FOR GOVERNMENT POLICY

## **DUTCH EU-POLICIES WITH REGARD TO LEGAL MIGRATION**

### **THE DIRECTIVE ON FAMILY REUNIFICATION**

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# **1 DUTCH EU-POLICY REGARDING THE DIRECTIVE ON FAMILY REUNIFICATION**

## **1.1 Background**

During the period under scrutiny (2000-2003)<sup>1</sup>, migration motivated by considerations of family reunification or family formation accounted for approximately 45% of total immigration in the Netherlands.<sup>2</sup> Family (re)unification has thereby overtaken asylum as primary motivation for immigration in the Netherlands. As part of a wider and highly politicized debate around integration and immigration, family migration has been a controversial and regularly discussed issue in the Dutch public realm since at least the mid-nineties. The issue encompasses and closely relates to themes as enforced marriages [*uithuwelijkingen*], integration criteria [*inburgerinsvereisten*] and the impact of immigration policies on chances of successful integration. According to a CBS study of 2003<sup>3</sup>, between 50 and 60 percent of second generation immigrants of the two largest immigrant groups, Turks and Moroccans, bring their partners from their parents country of origin. This high percentage has been a major cause for concern of successive Dutch governments.

Since 2000, family migration has taken up a prominent position on the Dutch political agenda at least at three defining moments: during the preparation of the new Alien's Act [*Vreemdelingenwet*], adopted in November 2000; during the preparation and implementation of the directive on family reunification, adopted in September 2003; and during the preparation on the Act integration abroad [*Wet inburgering in het buitenland*], adopted in March 2006. It is important to note that the Dutch EU-policy regarding the directive on family reunification thus took place in the wider context of continuing debates on the general question under what conditions third country nationals are allowed to reside in the Netherlands to be able to enjoy family life.

## **1.2 Impact of the Directive on family reunification on Dutch discretionary powers**

From a legal point of view, the Netherlands – but the same holds for every European State – have traditionally enjoyed much leeway in regulating family migration. This leeway stems from the premise embedded in public international law that States can, by and large, decide for themselves which non-nationals it allows to enter and reside on its territory. The number of international obligations with regard to immigration law are limited and mainly sprout from certain human rights provisions.<sup>4</sup> With regard to family migration, State discretionary powers are predominantly curtailed by article 8 of the European Convention on Human Rights (hereafter: ECHR), which lays down the principle that everyone has the right to respect for his family life. The European Court of Human Rights (hereafter: ECtHR) has

interpreted this provision as encompassing, under circumstances, an obligation for State Parties to grant a right of residence to non-nationals for reasons of family reunification, for example when it is impossible for the family to enjoy family life in one of the spouses countries of origin.

The adoption of the EC Directive on family reunification in September 2003 has further circumscribed the discretionary powers of European States in this field of law. The drafting of the directive took place as a direct consequence of the entry into force of the Amsterdam Treaty (1999), which placed the issues of migration, asylum, visa and border controls in a new title IV in the EC Treaty and set out an ambitious time-table within which results on these policy fields should be achieved. The topic of family reunification is expressly mentioned in art. 63 (3)(a) in the EC Treaty, thus obliging Member States to take concerted actions in this field.

The Commission presented its first proposal on 1 December 1999<sup>5</sup>, political agreement was not reached until February 2003, paving the way for adoption of the directive in September that year. The directive lays down under what circumstances Member States are obliged to grant a right of family reunification to non EU-nationals who reside legally on their territory. The fact that a right to family reunification has been agreed upon on European level is in itself a major political achievement, since such a right has never been recognized before on the international plane. Nevertheless, the end-result of the negotiating process is rather modest. The directive only lays down minimum standards, from which Member States can deviate in favor of the immigrant(s) concerned, and the directive did not force most of the Member States, including the Netherlands, to carry through major adaptations of existing immigration legislation.

The directive applies to third country nationals (non-EU nationals) legally residing in one of the Members States who want to be (re)united with family residing outside EU territory. Fundamental background of the directive is the establishment of a compromise between the individual right to be able to enjoy family life and the discretionary power States want to maintain in issues of immigration in order to promote and protect interests of public order, security and social cohesion. The outcome of this compromise in the directive is that members of the nuclear family (the spouse and minor children) must be granted a right to family (re)unification, provided that both the sponsor and the family member meet certain conditions, like age-, income- and integration requirements and do not pose a threat to public order, public security or public health. Alternatively, the directive lays down a regime according to which Member States are allowed to grant a right to family (re)unification to other family members, such as parents or children of age. When Member States decide to

extent the right to family reunification to these categories, they are obliged to abide by the minimum standards enshrined in the directive.

### **1.3 Stakeholders of the directive: winners & losers**

Roughly two categories of stakeholders of the directive can be defined. The obvious first one is comprised of *third country nationals who wish to develop family life in the Netherlands*. As said above, the final version of the Directive did not force the Netherlands into major adaptations of its family migration laws. Nevertheless, some restrictions for family reunification have been scaled down as a result of adoption of the directive. The existing waiting period of three years before being able to assert the right to family reunification for third country nationals who themselves had come to the Netherlands for reasons of family reunification, has been abolished. The directive furthermore made it necessary to insert a new provision in the Ministerial Act concerning Aliens [*Vreemdelingenbesluit*] with regard to the right of family reunification for minor refugees, stipulating that this category enjoys a less strict regime of conditions than 'ordinary' immigrants.<sup>6</sup> Perhaps more importantly, in December 2005, the District Court of Haarlem [*Rechtbank Haarlem*] ruled that the existing condition in Dutch law of the presence of a 'factual family relationship', which was deemed to be inexistent when children had been separated from their parents for a period longer than five years, was in conflict with the corresponding provision in the directive.<sup>7</sup>

On the other hand, the generally low standards enshrined in the directive allowed the Dutch government to carry through a number of reforms which have severely restricted the possibilities for third country nationals to apply for family reunification from 2003 onwards. In 2004, the Netherlands raised the age requirement for spouses wishing to be united from 18 to 21 years and raised the income requirement of the sponsor residing in the Netherlands from 100% to 120% of the minimum wage. And in March 2006, a new Act on integration abroad [*Wet inburgering buitenland*] was adopted, which obliges family migrants to follow certain integration courses/tests (in Dutch language and on practices in Dutch society) in their host country before they are allowed entry in the Netherlands.

The second category of stakeholders can best be defined as Dutch society, represented by the Dutch parliament and the Dutch government. Since the late nineties, migration policies in the Netherlands got increasingly politicized due to factors which lie outside the scope of this paper. It suffices to say here that the societal support for taking in new immigrants has significantly decreased. The Dutch government, correspondingly, has sharpened its laws on entry and residence of immigrants (most notably with the adoption of the new Alien's Act [*Vreemdelingenwet*] in 2000). With regard to family migration, the high financial and societal costs involved in processing and harboring these newcomers, led to the common

conception that the influx of family migrants had to be curtailed, without denying certain categories of individuals basic rights however. The final version of the directive on family reunification can generally be regarded as paying due regard to Dutch societal interests. Although the discretionary powers of Dutch government have been reduced and minor aspects of Dutch family migration rules have in fact been liberalised as a result of the directive, the directive did not put a stop to the comprehensive and weighty reforms which took place after 2003 with regard to requirements attached to the right to family reunification.

#### **1.4 Decision-making at EU-level: key decisions and the role of the Netherlands**

In figure 1, a timetable is presented with key dates and events in the negotiating process on the directive on family reunification on both EU and national level. This subparagraph focuses on the negotiations on the family reunification directive which took place between 1999 en September 2003 at EU level and will describe the position of the Dutch government during these negotiations. The next paragraph will analyze the discussions at national level.

The Commission presented its first proposal on 1 December 1999<sup>8</sup>. On 6 September 2000 the European Parliament (EP) adopted its opinion in plenary.<sup>9</sup> The EP supported the general approach and main orientations of the Commission but called for a restriction with regard to so-called subsidiary protection beneficiaries and requested the introduction of a stand-still clause. Based on the EP's amendments, the Commission presented an Amended proposal on 10 October 2000.<sup>10</sup> During the years 2000 and 2001, the Commission's proposals were heavily debated in the Council. In 2000, mainly in the Working Party on Migration and Expulsion and the Strategic Committee on Immigration, Frontiers and Asylum;<sup>11</sup> and in the year 2001 COREPER got increasingly involved.

The Dutch negotiations conducted during the years 2000 and 2001 took place under responsibility of State Secretaries of Justice Cohen (PvdA) and Kalsbeek (PvdA).<sup>12</sup> The government's (Kok-II: PvdA, VVD, D66) position on family migration in these years was not clear-cut. The coalition agreement of 1998 only contained one (Chapter VI-1-i) sentence on the subject of family migration, which held that the income requirement of the sponsor who wishes to be united with family living outside the EU should be set at the social assistance level [*bijstandsniveau*]. A close reading of Council documents of the years 2000-2001 shows that the Dutch delegation has not been overly active at the start of the negotiations, which at that time mainly evolved around questions of the personal scope of the directive.<sup>13</sup> What does become clear from the relevant documents is that the Dutch delegation tried to accomplish that the directive would not be confined to family reunification but would also apply to family

formation, i.e. situations where family relationships come into existence after the sponsor has left his country of origin. Another Dutch objective was to uphold the Commission's intention to extend the scope of the directive to non-married partners.<sup>14</sup> It must be noted here as well that, from the start, the Dutch delegation upheld a parliamentary scrutiny reservation, in accordance with the agreement between Dutch Parliament and government concluded during the ratification process of the Treaty of Amsterdam.<sup>15</sup>

In the year 2001, the Dutch negotiators took a more distinct position, which can perhaps best be described as driven by the goal to uphold standards and procedures as enshrined in the then recently adopted Alien's Act [*Vreemdelingenwet 2000*] and the ministerial Act on Aliens [*Vreemdelingenbesluit 2000*].<sup>16</sup> The negotiating position of the Dutch government was further based on a policy paper adopted in January 2001 '*Integratie in het perspectief van immigratie*' [Integration in the perspective of immigration], in which some clear goals with regard to family migration were formulated.<sup>17</sup> Two prominent Dutch demands were (1.) to lengthen the term within which immigration authorities had to decide on a request for family reunification (from 6 to 9 months) and (2.) to insert a requirement in the directive that children should not only have legal, but also genuine ties with the family.<sup>18</sup> Both demands were in conformity with Dutch practice at that time.

Council negotiations in 2001 eventually resulted in a deadlock. Major controversies existed around a number of subjects, the most important ones being (1.) the category of persons eligible for family reunification; (2.) the legal position of non-married partners; and (3.) the maximum age of minor children eligible for family reunification. In order to give the negotiations a new impetus, the European Council in Laeken (December 2001) requested the Commission to present a second Amended proposal, which the Commission made public on 2 May 2002.

At that time, the Dutch political scene underwent some drastic changes. The assassination of Pim Fortuyn (6 May 2002), who had advocated a far more stringent position on immigrants, could not prevent the huge electoral success of his right-wing LPF-party at the parliamentary elections of 15 May 2002. The new political landscape eventually resulted in the installment of the centre-right cabinet Balkenende-I on the 22<sup>nd</sup> of July 2002, which included the LPF-party. In contrast with the rather extensive coalition agreement of 1998, which only contained one sentence on family migration, the rather short Strategic agreement [*Strategisch Akkoord*] of the new cabinet contained an extensive paragraph on immigration, with three outspoken goals regarding family migration.<sup>19</sup> All three goals were drafted with a view to promote chances of successful integration of newcomers in the Netherlands. The first one was to raise the minimum age requirement for family formation (marriages with partners living abroad) from 18 to 21 years. Secondly, the new cabinet agreed to raise the



minimum income requirement of the sponsor to 130% of the minimum wage. Thirdly, the goal was set to lower the maximum age of minor children eligible for family reunification, without stipulating what this maximum exactly should be.

The installment of the new cabinet coincided with the resumption of Council discussions in the summer of 2002. Direct responsible for the negotiations was the new Minister of Aliens Affairs and Integration, Nawijn (LPF). The outspoken cabinet goals in issues of migration and integration led to an increased sense of involvement on the side of the Dutch at the negotiating table. The Dutch government was aware of the fact that the present form of the draft directive could impede the intended reforms to the Dutch regime of family migration. The primary goal of cabinet Balkenende-I was therefore to ensure that no new provisions which could possibly hamper planned reforms got inserted and more importantly, to amend a number of provisions which were deemed not to be in accordance with the coalition agreement. During the last months of 2002 and the first months of 2003, Dutch negotiators – clearly conscientiously instructed by the Minister/government – took up a firm negotiating position and persisted in their efforts to reach certain results. Hereunder, the most pregnant examples of the more resolute Dutch stance in Brussels are presented.

At a meeting of the Working Party on Migration and Expulsion on 26 July 2002, the Dutch delegation made a scrutiny reservation to the provision on the minimum age of spouses who want to form a family, in order to pay due regard to the government's intention to raise this minimum age to 21 years.<sup>20</sup> In concerted action with the German and Austrian delegation, at a meeting of the Working Party in the beginning of October 2002<sup>21</sup>, the Netherlands proposed to insert a new 'integration' requirement in the Directive, which was driven by Dutch government intentions to oblige newcomers to follow integration tests before they are allowed entry in the Netherlands. During all negotiations in the last months of 2002, the Dutch delegation furthermore upheld a scrutiny reservation on the provision regarding the minimum income of the sponsor.

The final negotiations on the directive took place in January and February 2003, eventually leading to a political agreement reached at ministerial level (Council of Ministers of Justice and Home Affairs) on 27-28 February 2003. In these defining first two months of 2003, the Dutch delegation booked a couple of remarkable successes. The first one was that the provision concerning the possibility to make use of an integration requirement was maintained, even though a number of Member States strongly objected to it.<sup>22</sup> Secondly, the Austrian demand which was supported by the Dutch, that the maximum age for children eligible for family reunification could be lowered to 15 years of age was inserted in the directive. Thirdly, notwithstanding the pressure of some southern Member States (most

notably Greece and Spain), a provision on the possibility of equal treatment of non-married partners was maintained.<sup>23</sup> Furthermore, the Dutch delegation booked two clear victories with the insertion of two entirely new provisions, agreed upon during the Council meeting of 27-28 February. The first one was that the less strict regime for refugees would not apply when the request for family reunification was submitted after three months of the grant of a residence permit. This Dutch demand directly originated from the state of Dutch law at the time. Perhaps more importantly, the provision on the minimum age for spouses eligible for family formation was altered in order to allow Member States to raise this age requirement to 21 years.<sup>24</sup>

From the point of view of the Dutch government, the political agreement reached clearly lived up to the goals as set in the summer of 2002. The end-result was by and large in conformity with present Dutch practices on family migration requirements and, more importantly, would not hamper the planned reforms.

The Directive got formally adopted unchanged at the Council meeting of 22 September 2003. At special request of the Dutch Parliament [*Eerste Kamer*] however, the Dutch government added a declaration to the Council minutes, stipulating that 'the directive should be applied in conformity with article 8 of the European Convention on Human Rights and Fundamental Freedoms'.<sup>25</sup> Reasons for this declaration are presented in the next paragraph.

In Council meetings between March 2003 and the date of formal adoption, no regard was paid to the European Parliament's opinion of 9 April 2003<sup>26</sup> whereby the EP had presented 71 amendments to the second Amended proposal of the Commission. These amendments for the large part tried to undo some of the more strict conditions which the Commission had introduced in May 2002. In fact, preparatory EP discussions in the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, on the Commission's proposal had taken place at the same time as the crucial Council meetings in January and February 2003, without any cross-fertilization between the two EU institutions however. The opinion adopted by the EP did not even contain a reference to the political agreement reached at the Council one month earlier. The EP's work was therefore completely in vain and testimony of the shortcomings of the advisory procedure.

*Figure 1. Key events in the negotiation process on the directive on family reunification*

Year	Dutch level	EU level
1999		1/12/1999 First proposal by Commission
2000	23/11/2000 Adoption of Vreemdelingenwet	During the year Discussions at Council 25/5/2000 ESC opinion 6/9/2000 EP opinion 10/10/2000 Amended proposal by Commission
2001	29/5/2001 session of Commission Justice and Home Affairs Tweede Kamer 26/9/2001 session of Commission Justice and Home Affairs Tweede Kamer	During the year Discussions at Council
2002	29/1/2002 Presentation by government of policy paper "Integratie in het perspectief van immigratie" 15/5/2002 Dutch parliamentary elections 22/7/2002 Cabinet Balkenende-I into office 26/11/2002 session of Commission Justice and Home Affairs Tweede Kamer 3/12/2002 Motie van Sterk c.s 18/12/2002 session of Commission Justice and Home Affairs Tweede Kamer	During the year Discussions at Council 2/5/2002 Second amended proposal by Commission 17/7/2002 ESC opinion 21/11/2002 Committee of Regions opinion
2003	26/3/2003 session of Commission Justice and Home Affairs Tweede Kamer 7/5/2003 session of Commission Justice and Home Affairs Tweede Kamer 13/5/2003 session of Commission Justice and Home Affairs Eerste Kamer May/June 2003 exchange of letters between Eerste Kamer and Minister of Alien's Affairs and Integration 27/5/2003 Cabinet Balkenende-II into office 13/6/2003 withdrawal of Dutch Parliamentary reservation to the directive	January/February 2003 Discussions at Council 27/2/2003 political agreement in the Council 9/4/2003 EP opinion 22/9/2003 Formal adoption by the Council
2004	Implementing measures in	

	Vreemdelingenbesluit	
2005		
2006	15/3/2006 Adoption of Wet inburgering in het buitenland	

### **1.5 Decision-making at national level: key decisions and the interplay between government and parliament**

The Directive on family reunification was subject of debate on a number of occasions in Dutch Parliament. This paragraph will describe the way Dutch parliament has controlled and tried to assert influence over the Dutch government's position in Council discussions. Formally, Dutch parliament had a firm control over the eventual outcome, since Dutch approval was made conditional on Parliamentary approval.<sup>27</sup> Dutch parliamentary scrutiny over the Dutch government's policy with regard to the directive on family reunification took place mainly during combined sessions of the permanent committees on Justice and Home Affairs [*Algemeen overleg vaste commissies voor Justitie en voor Binnenlandse Zaken en Koninkrijksrelaties*] on activities of the Council of Ministers of Justice and Home Affairs [*JBZ-raad*]. These sessions are meant to assert control over EU developments in the sphere of Justice and Home Affairs and take place in between Council meetings, on the basis of reports of past Council meetings and the agenda for upcoming meetings.

In 2000, the Commission's proposal for a directive on family reunification was referred to during two sessions of the permanent committees on Justice and Home Affairs.<sup>28</sup> Questions asked by various MP's<sup>29</sup> concerned the desirable scope of the directive – minimum- or total harmonization – and the conformity of the Commission's proposal with the draft of the new Dutch Aliens Act. No discussions on the actual contents of the Commission's proposal took place during these meetings. The government's response was confined to the statement that requirements relating to family (re)unification would be inserted in the Ministerial Act on Aliens [*Vreemdelingenbesluit*] and that, with a view to the present stage of negotiations in Brussels, no concrete answers could be given about consequences of the directive for Dutch practice.<sup>30</sup> Parliament did not mandate government, nor force the government to take up certain bargaining positions.

As concluded in the paragraph above, the input of the Dutch government during Council meetings in 2001 can in general be said to be driven by the goal to uphold standards and requirements as laid down in the *Vreemdelingenwet* and *Vreemdelingenbesluit*, which were enacted in November 2000. During parliamentary debates which took place in May and September 2001, the government's input in the Council was criticized by left wing parties Groen Links and PvdA, who considered the government's reservations as an undesirable

downgrading of the right to family reunification.<sup>31</sup> MP's Vos (Groen Links) and Albayrak (PvdA) expressed concerns with regard to the Dutch demand to insert the requirement of a 'factual family relationship' in the directive and the lengthening of the decision period within which immigration services had to decide on an application. Other factions in parliament did not scrutinize the actual negotiating position of Dutch government in Council meetings, although a discussion did evolve around the question whether non-married partners should receive equal treatment as spouses.<sup>32</sup>

After the Laeken decision to request the Commission to present a second Amended proposal, Council negotiations did not resume before July 2002. The politicization of the issue of family migration at national level had by then become increasingly manifest, with a number of parties (VVD, CDA, LPF) advocating a far more strict regime for family migrants, while the PvdA and Groen Links maintained a more moderate position. In November and December 2002, family migration was heavily debated in Parliament,<sup>33</sup> with one of the most prominent outcomes the adoption by majority of Parliament of *Motie-Sterk*,<sup>34</sup> which called for the drafting of legislation obliging certain categories of family migrants to follow integration courses before they are allowed entry in the Netherlands. During these debates on integration and entry requirements, no referrals were made to the directive on family reunification.

Perhaps more strikingly, parliamentary scrutiny with regard to Council discussions on the directive during or before the crucial Council negotiations in the last months of 2002 and the first months of 2003 was practically absent. Only the VVD (Blok) did on two occasions in November and December 2002 request responsible Minister Nawijn to make sure that the directive would not hamper the Dutch intention to set up integration tests in the country of origin.<sup>35</sup> The reasons for absence of closer parliamentary control at this stage are rather plain. During the parliamentary session on the JHA Council of 18 December 2002, the directive was not discussed since the JHA Council had withdrawn the directive from its agenda of 19 December 2002. The Council preferred to await the outcome of preparatory discussions at working group level at that stage. The agenda of the permanent committees of the *Tweede Kamer* had simply mirrored the Council's agenda and obviously, did not mirror the agenda of discussions at working group level – as conducted by the Working Party on Migration and Expulsion, the Strategic Committee on Immigration, Frontiers and Asylum and COREPER. Furthermore, no joint session of the permanent committees on activities of the JHA Council took place before the crucial Council meeting of 27-28 February 2003, due to the fact that parliament was in holiday recess and decided not to reschedule the joint parliamentary session.<sup>36</sup>

This meant that parliamentary scrutiny over the directive did resume only after political agreement at EU level was reached. By letter of 17 March 2003, the Minister had asked parliament to withdraw its reservation to the directive.<sup>37</sup> During a session of the permanent committees on Justice and Home Affairs on 26 March 2003, the by far most substantial debate on the directive since the start of EU negotiations took place in the *Tweede Kamer*.<sup>38</sup> The political agreement was heavily discussed, with a clear dichotomy in parliament between PvdA, D66 and Groen Links on the one hand, whose general proposition was that the amended directive fell short of human rights standards, and the coalition parties VVD, LPF and CDA on the other hand, who in general were satisfied with the result and who complimented the Minister with the Dutch negotiating successes. The left wing-parties referred to a letter of the Standing committee of experts on international immigration, refugee and criminal law [*commissie-Meijers*],<sup>39</sup> sent to both the *Eerste* and *Tweede Kamer*, in which the committee had stressed that the amendments made by the Council with regard to i.e. waiting periods, decision terms and the right to a legal remedy, did not meet the minimum standards of article 8 ECHR.

Discussions were resumed in the *Tweede Kamer* at 7 May 2003,<sup>40</sup> which in fact was the last debate in the *Tweede kamer* on the merits of the directive. PvdA and Groen Links repeated their arguments and concluded that they could not agree with the withdrawal of the parliamentary reservation. Since the *Eerste Kamer* had by then raised a number of questions regarding the directive, the *Tweede kamer* decided to leave the decision whether parliament should lift its reservation to the *Eerste Kamer*.

The involvement of the *Eerste Kamer* with the scrutiny over the directive started with a letter sent by this Chamber on 18 February 2003 to Minister Nawijn, in which it demanded a written reply to the comments made about the directive by the *commissie-Meijers*.<sup>41</sup> The Minister replied on 24 March 2003 and maintained that the directive did not fall short of the standards of art. 8 ECHR.<sup>42</sup> An extensive debate on the question whether the directive was compatible with 8 ECHR ensued on the 13<sup>th</sup> of May in the *Eerste Kamer's* special commission on the Council of Justice and Home Affairs [*bijzondere commissie voor de JBZ-raad*].<sup>43</sup> A majority (CDA, Groen Links, PvdA, D66) expressed grave concerns about the level of protection offered by the directive and regretted that the directive did not contain an explicit reference to article 8 ECHR.<sup>44</sup> The Minister defended the political agreement by stipulating that the agreed text was reached after years of hazardous negotiations and that a higher level of harmonization had simply not been feasible. The Minister did bring forward that he agreed with the *Eerste Kamer* that a reference to art. 8 ECHR in the directive would have been preferable.

The *Eerste Kamer* persisted in its opinion that at least an explicit reference to art. 8 ECHR should be inserted in the directive and requested the Minister on 20 May to re-open the negotiations in the Council in order to amend the directive accordingly.<sup>45</sup> The *Eerste Kamer* made this request in full awareness of the fact that this would place the Minister in an awkward and unpopular position in the Council, but the serious and legitimate concerns outweighed these risks, according to the *Eerste Kamer*. The Minister, however, was by no means inclined to comply with the *Eerste Kamer's* demand. In his reply of 27 May 2003,<sup>46</sup> the Minister for the sake of convenience dismissed his earlier statement that an insertion of an explicit reference to art. 8 ECHR would have added value and moreover warned the *Eerste Kamer* that a request for further amendment of the directive would open Pandora's box. Not only would a re-opening of negotiations severely delay the process of harmonizing migration law at European level but it would also undermine the reached compromise, thereby risking that other Member States would follow the Dutch example and propose amendments on their behalf as well.

A majority of the *Eerste Kamer* decided not to press on from here, apparently to avoid the risk of being scapegoated for another standstill, or at least substantial delay, of the harmonization process. Instead of a request for an amendment to the directive itself, the *Eerste Kamer* reported to the Minister – by now ms. Verdonk (VVD), who had replaced Nawijn on the 27<sup>th</sup> of May – that it would lift its reservation to the directive, but only if the Minister would add a declaration in public to the Council minutes, in which she would indicate that the directive should at all times be interpreted in accordance with the standards enshrined in art. 8 ECHR.<sup>47</sup> Apparently satisfied that conflict could be avoided by this proposal, the Minister decided to settle the dispute accordingly.<sup>48</sup> The Dutch government's declaration was made at the Council of Justice and Home Affairs of June 2003,<sup>49</sup> thereby taking away the last obstacle for formal adoption of the Directive.

## **1.6 Interim conclusions on Dutch decision-making**

The narrative presented above offers a fairly comprehensive description of the decision-making process of the directive both at EU and Dutch level. A number of conclusions can be drawn with regard to the role played by Dutch government and parliament, respectively.

### *Role of Dutch government*

With regard to the Dutch government, the main conclusion is that, apart from the year 2000, its role in Council negotiations has been fairly active and driven by a number of clearly defined goals. The attitude of government did change during the negotiations, mainly as a result of the installment of cabinet Balkenende-I. During Kok-II, the government pleaded for a high level of harmonization in the directive and wanted the scope of the directive to extent

to issues such as subsidiary protection, family formation and non-married partners. At the same time however, the Dutch government conscientiously tried to ensure that it could uphold its recently adopted migration laws and, consequently, pressed for the sharpening of a number of procedural rules in the directive.

The entry into office of cabinet Balkenende-I, which was founded on a coalition agreement in which clear objectives with regard to family migration were formulated, resulted in an increased sense of involvement and steadfastness on the side of the Dutch at the negotiating table. Undoubtedly, the clear and resolute stance taken by the Dutch delegation cultivated the negotiating successes of the first months of 2003. A conclusion which can be added here – and which can be drawn from a close reading of the relevant Council documents – is that both cabinet Kok-II and Balkende-I have closely instructed the Dutch negotiators and have at all times defended Dutch interests – as defined and interpreted by government.

#### *Role of Dutch parliament*

The role of Dutch parliament in the negotiating process on the directive can in general be described as reactive rather than proactive. At no time before or during the negotiations at EU level, did parliament spend an exclusive debate on the directive, in which it could have laid down or at least discussed the preferred negotiating position of the Dutch government. In the *Tweede kamer*, debates on the directive took place as part of general debates on the results of past JHA Council meetings and the agenda of future meetings. The structure of these debates is guided by a pick-and-choose mentality of MP's, who – understandably – only discuss the items on the JHA agenda they consider most relevant. Although a number of MP's did regularly comment on the directive on family reunification (most notably Albayrak (PvdA) and Vos (GL)), these comments therefore often took the character of solemn declarations or footloose remarks, since a concrete follow-up in parliamentary discussions was absent. At no time during parliamentary sessions were any votes cast on the directive, for example on *moties* expressing preferred negotiating positions. The end-result was that Dutch government had a fairly wide discretionary power in devising its own negotiating position, without a firm control asserted by Dutch parliament.

A close parliamentary scrutiny of the directive did take place, but only after political agreement at EU level was reached on 27-28 February 2003. The outcome was first extensively discussed in the *Tweede kamer* on 26 March 2003, with elaborate contributions by a majority of parties (PvdA, CDA, VVD, GL, LPF, D66).<sup>50</sup> Most remarkable aspect of the Dutch parliamentary role is undoubtedly the pronounced position of the *Eerste Kamer* on the question of compatibility of the directive with art. 8 ECHR in the period March-May 2003. Nevertheless, the proposition that this pronounced position came too late in the day



[*'mosterd na de maaltijd'*] can certainly be defended. Council negotiations on the directive had been going on for over three years and had suffered from deadlock on a number of occasions. Two amended proposals by the Commission had been necessary to facilitate a break-through. Although the *Eerste Kamer* did have the possibility – and perhaps very good reason – to make its approval conditional on an amendment to the directive, such a course of action would have brought the Dutch government in an awkward position and could have lead to another stalemate at EU level.

What is striking in this respect is that the Dutch government's negotiators had not, at least since the summer of 2002, insisted that an explicit reference to article 8 ECHR got inserted in the directive. Since such a reference could probably count on the support of a number of other Member States, the European Parliament and the Commission, an earlier Dutch request – for instance at the end of 2002 – for such a reference would not have been without chances. This conclusion implies that an earlier involvement of the *Eerste Kamer*, or a more proactive attitude of the *Tweede kamer*, could have lead to a result which did contain a reference to art. 8 ECHR.

#### *Embedding of the directive on family reunification in Dutch migration policies*

While the topic of family migration became increasingly politicized in the Netherlands since the late nineties, the EU family reunification directive did not play an important role in debates relating to family migration in the Dutch political realm.<sup>51</sup> Instead of an integral approach to the topic at both national and EU-level, the issue of family reunification was treated as a pure national issue with the EU directive being perceived mainly as possible obstacle to national policies and policy proposals. While with regard to the national policies on family reunification fundamental debates and the drafting of numerous reports concerning, *inter alia*, integration-, age- and income-requirements formed an integral part of the national decision-making process, eventually fueling legislative changes; the negotiating position of government in Brussels and the parliamentary scrutiny over this position was mainly based on existing conditions in Dutch law and practice, with as goal to uphold national standards and to incorporate proposed changes of the national regime in the directive. This approach become more manifest with the installment of cabinet Balkenende-I.

The directive on family reunification was therefore perceived both by government and a majority of Parliament – with as possible exception left-wing parties Groen Links and PvdA – mainly as an obstacle – or threat – to the Dutch regime of family reunification instead of a chance to lay down a common European regime which would ensure both fair treatment of third country nationals equally across the EU while at the same time promoting sociocultural

stability by way of facilitating the integration of third country nationals in the Member States.

### 1.7 Media Coverage

For reasons of expedience, this paragraph confines itself to an analysis of coverage by three daily newspapers in the Netherlands on the topics of family reunification in general and the directive on family reunification in particular. Selected newspapers are *de Volkskrant*, *de Telegraaf* and *Trouw*. Both this selection and the choice not to analyze other forms of media are rather arbitrary, but the premise is that a scrutiny of the coverage in these three newspapers will nevertheless serve the purposes of this paragraph; that is to establish to what extent the directive has played a role in debates in Dutch media, and to what extent the coverage on the directive formed an integral (or embedded) part of the wider debate in the Netherlands on the issue of family migration.

A quick glance at figure 2 immediately presents an obvious answer to both questions. The general picture is that, although the topic of family migration as such has received huge media attention since the year 2000, coverage on the directive on family reunification has been practically non-existent. A quantitative analysis further shows that coverage on the general topic of family migration takes place at least weekly, with often several articles per week, and with a culminating point in the year 2002, the year of the rise of Pim Fortuyn and entry into office of cabinet Balkenende-I. In contrast, the directive on family reunification has been subject of coverage only sporadically and, paradoxically, only after the negotiations and formal adoption of the directive. Almost all articles referring to the directive were published in the years 2004 and 2005, most notably as a consequence of possible obstacles which the directive raised with regard to new government policies or policy proposals on the issue of family migration.

Figure 2. Quantitative analysis of coverage in 3 selected newspapers on family reunification and the directive on family reunification (period 1/1/2000-1/6/2006)<sup>52</sup>

	Volkskrant	Telegraaf	Trouw
# Articles on <u>general topic</u> of family reunification/family migration) (keywords 'gezinshereniging', 'gezinsmigratie', 'huwelijksmigratie')	230	58	188
# Articles mentioning the <u>directive</u> on family reunification (keywords 'gezinsherenigingsrichtlijn', 'richtlijn gezinshereniging', 'europese regel(s) gezinshereniging')	5	2	8

A qualitative analysis of coverage in the three selected newspapers shows that, in the years 2000 and 2001, articles on the topic of family reunification often dealt with inherent dangers and potential merits of requirements imposed on family migrants and, as such, were part of the wider debate with regard to the sharpening of Dutch immigration rules. Policy proposals regarding, i.e. DNA-tests of potential family migrants and the introduction of an income requirement were discussed in all selected newspapers. On a more general level, the dangers (and merits) of the phenomenon of family formation were commented upon, in close connection to the impact of this phenomenon on the integration of immigrants (especially Turks and Moroccans) in Dutch society.

In the years 2002 and 2003, the above trend of coverage continued, but the topic of family migration was increasingly placed in the context of the parliamentary elections which took place in May 2002 and January 2003. The issue of family migration played a major role during the electoral campaigns leading up to both elections, mainly due to the fact that Pim Fortuyn/LPF wanted to severely restrict the possibilities for family (re)unification, for example with regard to second generation immigrants who prefer to marry a partner from their parents home country and children above 12 years of age. All selected newspapers reported extensively on the family migration-paragraph in the coalition agreements of cabinets Balkenende-I and II. Policy proposals concerning integration requirements, income requirements and age requirements were extensively scrutinized and debated.

In the period 2004-2006, coverage on the topic of family reunification got increasingly diversified, reflecting – perhaps – the comprehensive nature of the issue. Family reunification in all selected newspapers was discussed in relation to: integration requirements, terrorism, chances of successful integration, fundamental rights, enforced marriages, knowledge migrants [*kennismigranten*], etc. Especially de *Volkskrant* and *Trouw* regularly reported on problems ensuing from recently adopted family migration rules, for example by way of narratives of individual cases. In general, the coverage in 2004-2006 can be said to be of a more ‘reflective nature’.

The directive on family reunification did not play a role of significance in the media coverage on the general topic of family reunification. None of the newspapers reported on the negotiating process on the directive (at EU or national level), the formal adoption of the directive, nor on the political agreement reached in February 2003. With only very few exceptions, the articles referring to the directive were published in the years 2004/2005 and, without exception, all these latter articles concerned the question of compatibility of recently adopted Dutch legislation with the directive. In 2004 both the *Volkskrant* and *Trouw* reported on the proposed Dutch prerequisite for family reunification to follow integration

tests abroad in relation to the directive. In 2004 and 2005 a handful of articles were devoted to the Dutch practice of considering a period of separation of children and parents of more than 5 years as testimony of the non-existence of a genuine family relationship, and the ruling of the District Court Haarlem (December 2005) that this practice was contrary to the directive. Another article (published in *de Volkskrant*) concerned the question whether administrative fees imposed on family migrants were allowed by the directive.

### **1.8 Role of Dutch society, NGO's, expert groups.**

Based on deductive reasoning and common knowledge, the conclusion that a large majority of Dutch citizens was ignorant – and still is ignorant – about the existence of the directive on family reunification is presented here as fact. This fact implies that public debates on the directive during the negotiating process have only rarely taken place and did not have a substantial impact on Dutch EU-policy-making with regard to the directive. This conclusion is supported by the above presented analysis of media coverage on the directive.

In fact, societal – or non-parliamentary – influence over the Dutch EU-policy with regard to the directive was channeled through a fairly limited number of actors, consisting of NGO's, expert groups and advisory institutions. The most prominent role in this respect was played by the Standing committee of experts on international immigration, refugee and criminal law [*commissie-Meijers*], who had on 17 February 2003 (before the crucial JHA Council meeting of 27-28 February) sent a letter to Dutch parliament in which it called for rejection of the directive in the present form. The motivations of the *commissie-Meijers* were set out in a letter dated three days later, which it sent to EU Commissioner Vitorino of Justice and Home Affairs.<sup>53</sup> The debates in the *Eerste Kamer* and exchange of letters between the *Eerste Kamer* and the Minister of Aliens Affairs and Integration, eventually leading to the formal Dutch declaration inserted in a special Council document, can be directly attributed to the activities of the *commissie-Meijers*, with which it lived up to its statutory goals.<sup>54</sup>

Apart from the role of the *commissie-Meijers*, non-parliamentary influence over the decision-making process was occasionally asserted by NGO's protecting rights of migrants and minorities. A number of relatively small NGO's in the Netherlands deal exclusively with matters of family reunification/-formation. Two of these, the *Stichting Lawine* (organization for Dutch women with foreign partners) and *Buitenlandse Partner/Actiecomité Referenten* (interest group for Dutch citizens with foreign partners), presented in May 2002, in a combined effort, a report to parliament recommending a number of amendments to Dutch practices regarding family reunification, on the basis of which questions were asked to the Minister.<sup>55</sup> The recommendations laid down in the report were partly based on the draft directive on family reunification, which at that time was less strict than Dutch practice.

However, both interest groups clearly lost interest in the directive when it became clear that the directive would not apply to Dutch nationals.

A number of bigger NGO's traditionally play a very active role in the Dutch public realm with regard to migration issues: especially Amnesty International, Vluchtelingenwerk and Defence for Children. All these NGO's have regularly reported on issues of family migration, most notably in reaction to the new Aliens Act of 2000 and the additional restrictions imposed on the right to family (re)unification by cabinets Balkenende-I and II.<sup>56</sup> However, analogous to conclusions drawn above with regard to media coverage and parliamentary discussions, most NGO activities related directly to cabinet proposals and practical consequences of the stricter national regime of family reunification, with only occasional referrals to the directive on family reunification. Whereas international NGO's like the European Council on Refugees and Exiles (ECRE)<sup>57</sup> did have a keen eye for the potential impact of the EC Directive and closely monitored developments in the negotiating process; key discussions or differences of opinion between EU institutions (Council/Commission/EP) and between Member States were only scarcely commented upon by Dutch NGO's. Again, a close scrutiny of reports, policy statements and press releases shows that in the cases whereby NGO's did comment on the directive, these comments, in general, related to new government's proposals or current practices which were in potential conflict with the adopted text.

With regard to European harmonization in the sphere of family migration, two formal advisory bodies to the government have presented reports upon past and future developments: the Advisory council for International Affairs [*Adviesraad Internationale Vraagstukken*](AIV) and the Advisory commission for Aliens Affairs [*Adviescommissie voor Vreemdelingenzaken*](ACVZ). The ACVZ was set up in November 2001 as prescribed by the new Aliens Act and has, in its limited years of existence, presented numerous advises on or relating to family migration.<sup>58</sup> At the government's request, one advice (February 2004) was given on Dutch changes in the regime of family reunification as agreed to in the coalition agreement of 2003 and necessitated by the adoption of the family reunification directive. In this advice, the ACVZ examined the compatibility of proposed policy changes with conditions laid down in the directive.<sup>59</sup> Furthermore, several ACVZ advices on the issue of integration tests [inburgering], referred to standards enshrined in the directive.<sup>60</sup> General tendency of the advices was that additional requirements imposed on family migrants can in principle be justified, but with due regard to minimum standards as guaranteed by both the directive and the ECHR.

Neither the AIV nor the ACVZ commented upon the Commission proposals for the directive of 1999, 2000 and 2002, nor on the decision-making process on the directive in general. In

2004 however, both advisory bodies presented at their own initiative separate advises to government about future EU policies with regard to asylum and migration (the so-called second phase of integration from 2004 onwards).<sup>61</sup> These advises were presented with a view to the Dutch presidency of the Council in the last six months of 2004. In both documents the achievements of integration in the field of asylum and migration are evaluated and recommendations are made with regard to future EU policies on family migration. Both documents contain an appraisal of the directive on family reunification and present a fundamental perspective on future harmonization efforts in the sphere of family migration. The conclusions of the ACVZ and the AIV are fairly similar: apart from minor aspects, the present directive offers a sufficient level of harmonization; guaranteeing basic rights and a common level of protection to third country nationals on the one hand, and leaving an appropriate amount of discretion to Member States to protect national interests relating to social security and public order on the other hand. Both bodies therefore propose to maintain the current level of integration; Member States must continue to cooperate and share best practices, but the EU should not further circumscribe State sovereignties in this respect.<sup>62</sup>



## **2 ASSESSMENT OF POLITICIZATION AND POLITICAL UNCERTAINTY REGARDING THE DIRECTIVE ON FAMILY REUNIFICATION**

As outlined above, the directive on family reunification has scarcely been politicized in the Dutch public realm. Explanations for the lack of politicization of the issue and the relating lack of 'embedding' in both the political and societal sphere are presented hereunder.

### **2.1 Media**

The lack of embedding of the directive in Dutch media can be ascribed to two interrelating factors. The first one lies in the nature of the directive. The directive laid down only minimum standards with a wide amount of discretion left to Member States and did, therefore, not lead to major changes in Dutch policies. The directive was obviously not perceived as producing concrete rights and obligations which were not already existent in Dutch laws. In that sense, the directive scarcely had 'news-value'. The relating second factor explaining a lack of embedding of the directive in the media is the nature of media coverage itself. A scrutiny of the relevant coverage shows that when the directive did draw media attention, this happened at occasions when the Directive put a stop to certain Dutch practices, with as clear examples the possibility of the Dutch proposal of setting up integration tests abroad or the Dutch interpretation of a 'genuine family band' being in breach with the directive. Dutch media obviously had a keen eye for 'Brussels encroaching upon Dutch sovereignties' (be it labelled as either a positive or negative development), but considered it far less attractive to comment upon complicated and incremental negotiating processes which were moreover often dealt with in a technocratic manner. The complicated nature of the Directive and the absence of clear-cut winners and losers therefore hampered the embedding of the topic in Dutch media, a process which has certainly been fueled by a lack of proper understanding of the directive.

As illustrative example of this last remark, an article published in *De Volkskrant* on 17<sup>th</sup> June 2006 is presented and commented upon hereunder. The article concerns the recent judgment of the Court of Justice of the European Community (ECJ) on an action against the Council brought before the ECJ by the European Parliament. The EP had asked the ECJ to annul a number of provisions in the family reunification directive as adopted by the Council, on the grounds that these provisions were in conflict with inter alia art. 8 ECHR. This judgment has already been labeled a landmark judgment by a number of leading human rights experts in Europe, not only because it is the first judgment of the ECJ on a EU directive agreed upon in the field of migration and asylum but, more importantly, because the ECJ lays down an extensive human rights framework for the implementation and interpretation of the directive, a framework which holds value for all directives adopted in the area of migration



and asylum and does, perhaps ironically, pay due regard to the Dutch declaration as has been inserted in the Council minutes. Although the ECJ considered the appeal of the European Parliament unfounded, the judgment in effect severely circumscribes the discretionary power the directive was initially thought to leave to Member States. The ECJ makes clear that when Member States make use of the leeway the directive offers, they are obliged to pay due regard to art. 8 ECHR and other human rights obligations and must make an individual assessment of each application. In practical terms, this means for example that the Netherlands are not allowed to categorically exclude all partners younger than 21 years of age from the possibility of family formation. And Austria, for example, may not refuse family reunification for the simple reason that its immigration quota has been reached. It can be inferred from the judgment that, when taking such decisions, both countries must individually examine all relevant interests and circumstances; an assessment which must moreover be able to overrule policy rules. In sum, the judgment is nothing less than a pyrrhus-victory for the Council. The tone of the article in the *Volkskrant* is completely different and contains a stunning number of inaccurate statements.

*(source: De Volkskrant – 27 juni 2006)*

## **EU-land mag ouder kind weigeren bij gezinshereniging\***

*ANP*

**BRUSSEL/LUXEMBURG - EU-lidstaten mogen kinderen van twaalf jaar of ouder weigeren een verblijfsvergunning te geven bij gezinshereniging van families van buiten de Europese Unie. Ook kunnen lidstaten eisen dat een verzoek voor gezinshereniging altijd wordt gedaan voor kind van maximaal vijftien jaar oud.\*\***

**Dat heeft het Europees Hof van Justitie in Luxemburg dinsdag besloten.**

Het Hof behandelde een klacht van het Europees Parlement tegen een regeling voor gezinshereniging. De EU lidstaten besloten in 2003 dat kinderen van buiten de Unie van twaalf jaar of ouder een integratietoets moeten doorstaan voor hereniging met hun ouders als deze al een Europese verblijfsvergunning hebben.\*\*\*/\*\*\*\*

Het Europees Parlement vond dit in strijd met 'het grondrecht op eerbiediging van het gezinsleven'.

Het Hof stelt de lidstaten echter in het gelijk,\*\*\*\*\*

omdat 'een kind van boven de twaalf jaar niet noodzakelijkerwijs lang bij zijn

ouders zal blijven'.\*\*\*\*\*

### **Comments**

\* The header suggests a new development, while in fact EU Member States have always enjoyed certain discretionary power to refuse elder minors for family reunification. The directive merely retains this margin of appreciation for Member States.

\*\* Due to a stand still clause, only Austria may make use of the possibility to exclude children above the age of 15 from family reunification.

\*\*\* The directive does not lay down that children above the age of 12 must comply with integration requirements, but allows Member States to (under very strict conditions), employ such a policy. In fact, due to a stand still clause only Germany is allowed to make use of this provision.

\*\*\*\* There is no such thing as a 'European residence permit'.

\*\*\*\*\* As outlined above, although the ECJ does dismiss the EP's action, the judgment by no means will please the Member States but in reality is a victory for the right to family reunification and, acting as its 'guardian' in this case brought before the ECJ, also for the EP.

\*\*\*\*\* The last sentence is a quotation of the ECJ's judgment which is incomprehensible when placed out of its context and as such only likely to create a sense of alienation on the side of the reader of the article.

## **2.2 Political realm**

Explanations for a lack of embedding of the directive in the Dutch political realm have in part been presented in par. 1.7. It was concluded there that the Dutch EU-policy regarding the directive (both in government as in parliament) had been disconnected from the general debate on family migration in the Netherlands and was mainly perceived as a threat to Dutch sovereignties rather than as an opportunity for laying down a common European framework facilitating the rule of law and promoting interests of third country nationals on the one hand and safeguarding interests of state security and societal cohesion on the other hand.

This 'disconnection' between Dutch EU-policies and national policies and the perception of the EU-level being a 'threat' to the national level which had to be countered stems partly from a lack of synchrony in the decision-making processes in the field of family migration on the national and the European plane. The major Dutch reforms to the regime of family reunification were only agreed upon in the summer of 2002 and further elaborated during the years 2003 and 2004, *after* political agreement on the directive at EU level was reached. This means that the directive was negotiated upon during a period in which the Dutch regime on family migration was still very much 'under construction', without having however, an accompanying final building plan. This did in fact lead to a sense of political uncertainty on the side of Dutch ministers and MP's regarding the EU negotiations and an increased perception of the EU directive potentially encroaching upon Dutch sovereignties. Negotiations on the Directive in the Council show that only on those issues where agreement on national level had been reached, the Dutch were able to take up clear negotiating positions and to achieve successes.

The lack of an encompassing vision or a government 'blueprint' on a desirable European regime on family reunification is also likely to be one of the reasons of the directive being dealt with as a technocratic issue, with only those provisions being targeted which could frustrate Dutch practices. During the negotiating process, the merits of the directive were tested by both Dutch government and a majority of parliament on their conformity with Dutch law and with proposed policy changes on which agreement had been reached; thereby

omitting a full-fledged scrutiny of the directive and in fact denying that the directive essentially regulates a subject of major importance: the framing of a set of rights and obligations for the main source of immigration in the Netherlands and the set up of a compromise between fundamental rights of third country nationals with interests of state security and social cohesion.

### **2.3 Society**

The presented explanations above with regard to the lack of coverage in Dutch media on the directive hold value for the lack of embedding of the directive in Dutch society as well. The incremental process of decision-making, the lack of concrete winners and losers of the directive and the often technical nature of main points of argument in the decision-making process (e.g. on the level of harmonization, and the pros and cons of stand still clauses) are all factors which have impeded public awareness and a sense of involvement with the directive. Another possible explanation which should be mentioned is that the stakeholders which are directly targeted by the directive are third country nationals. While it is true that issues of immigration and integration have been the subject of high politicization in the Dutch public realm and the directive in fact does have implications for issues of social coherence and policies of integration in the Netherlands, the subject of family reunification itself does not relate directly to Dutch nationals, since it only creates direct rights and obligation for third country nationals.

### **3 RECOMMENDATIONS & COUNTERFACTUAL**

In the final paragraph of this paper, the main conclusions on Dutch EU-policies with regard to the directive on family reunification will be summarized, while at the same time presenting a number of recommendations for future Dutch EU-policies.

#### **3.1 Negotiations in the Council: recipe for success**

A positive conclusion which can be drawn from the Dutch negotiations on EU level is that the Dutch delegation did in fact obtain a number of negotiating successes. One reason for these successes is undoubtedly the nature of the directive itself. From the First Amended Proposal presented by the Commission onwards, it was clear that the directive would allow a large number of Member States to retain national practices and to derogate from standards enshrined in the directive. Southern Member States like Greece, Italy and Spain retained the possibility to exclude same sex partners from the possibility of family reunification, Germany was allowed to impose integration requirements on children above 12 years of age and Austria could lengthen the waiting term for family migrants, in accordance with the quota system it employed. From this perspective, one should not overstate the Dutch negotiating successes. Dutch demands could fairly easily be reconciled in the minimum harmonization scheme the directive offered and did not transgress upon sovereignties or rights and duties of other Member States.

On the other hand, it does become clear from the negotiating process that a clear stance on certain issues, backed by concrete national policies and/or interests does create a bargaining position which is instrumental for negotiating successes. Although negotiations in the Council have not been made public, it seems that the clear goals formulated in the government's *Strategic Agreement* and the Dutch practice which was demonstrable not in conformity with a number of provisions in the draft directive, helped persuading other Member States to give in to the Dutch demands.

#### **3.2 Putting flesh to the bone of the right of parliamentary approval**

A second conclusion concerns the functioning of the right of approval Dutch parliament has with regard to EU policies in the sphere of Justice and Home Affairs.<sup>63</sup> This right of veto of Dutch parliament was granted to compensate for a lack of control of the European Parliament in the Justice and Home Affairs-policy area. The Council of State [*Raad van State*] has on an earlier occasion concluded that the right of approval has never achieved much results; and that, with a view to the nature of the European policymaking procedure, the right as such is incapable of producing concrete results [*Daarbij heeft deze procedure nooit tot heel veel resultaten geleid noch, gelet op de krachtsverhoudingen in de Europese besluitvorming, kunnen leiden. Het daadwerkelijk gebruikmaken van een vetorecht moet in*

*de praktijk ook als een weinig realistische aspiratie worden gezien.'].<sup>64</sup> This position of the Council of State has, however, been criticized by the Commissie-Meijers.<sup>65</sup>*

From the negotiations on the family reunification directive it can be inferred that the parliamentary right of approval is capable of producing at least some effects, be it on this dossier only a declaration of questionable legal status in the Council minutes. The proper conclusion which must be drawn from the way Dutch parliament has used its right to intervene in the European negotiating process is however, that parliament has done so after the European battle had been fought. The Council of State makes an important point in its advice to government when commenting that agreements reached at ministerial level in the Council do in principle not lend themselves for further scrutiny or amendment. When Dutch parliament would make use of its veto right after political agreement has been reached, this would indeed render the already cumbersome negotiating process even more ineffective and could very well lead to permanent postponement of certain decisions, especially since ministerial agreement at Council level has always been the backbone of progress in European integration. Illustrative of the importance of Council agreements is the fact that even in the co-decision procedure the European Parliament's right of approval is not always capable of producing effects. With regard to the directive on free movement of EU citizens and their family members<sup>66</sup>, for instance, the EP rapporteur noted that it would be highly unlikely that the Council would alter its position on the basis of possible EP amendments, not least owing to the fact that some Member States have said they would prefer to reject the directive outright rather than to make any other concessions.<sup>67</sup> Accordingly, the common position was approved by the EP without the tabling of further amendments.

Thus, an institutional arrangement like a parliamentary right of approval is in itself not sufficient to guarantee proper involvement and a power to effectively influence the decision-making process. The right of approval is only capable of producing effects when it is used at the appropriate moment in time, paying due regard to the dynamics of negotiations at EU level. It is therefore necessary that, when Dutch parliament is inclined to alter the outcomes of EU decision-making, it uses its right of veto before crucial agreements have been concluded. This is easier said than done and requires both a proper understanding and a close scrutiny of negotiations going on not only at ministerial, but also at working group level in Brussels. Parliament must be aware of crucial moments in time in the decision-making process and identify windows of opportunity for the Dutch delegation to alter the outcomes of negotiations. For this mechanism to work effectively, parliament needs (1.) to be informed in time by government about the present state of negotiations; (2.) to identify a window of opportunity for government to influence EU negotiations; (3.) to agree on a majority position

regarding the desired outcome of negotiations and (4.) make clear that it will not hesitate to use its parliamentary veto right as enforcing instrument.

When applying these 4 'success-factors' to Dutch parliamentary involvement with the family reunification directive, it is clear that the first factor (information) was not a major obstacle in this dossier. Information about progress in the negotiations, draft texts, working documents, etc. had been made available to both the *Eerste* and *Tweede kamer* in accordance with standing procedures. On the basis of this information, Dutch parliament should in principle have been able to assert proactive influence over the eventual outcome.

With regard to the second point (the identification of a window of opportunity) a number of remarks can be made. The first is that Dutch parliament apparently was unaware of the sudden acceleration of negotiations in the final months of 2002 and first months of 2003. While important discussions had taken place on Working Group level on 23 October 2002 and 26 November 2002<sup>68</sup>, sessions in which a number of important amendments to the directive had been discussed, Dutch parliament decided not to debate the directive in its December session because the directive – to quote MP Blok (VVD) – *'is nu op het laatste moment van de agenda [van de Raad-MdH] afgehaald'* ['has been removed from the agenda of the Council'].<sup>69</sup> A second remark concerns the appropriate moment in time for Dutch parliamentary intervention. While it cannot be concluded that a demand for insertion of a provision referring explicitly to art. 8 ECHR would have been without chances in the final stage of negotiations, such a demand would likely have been more effective at an earlier moment in time. Especially in the commencing stages of negotiations, the relationship between art. 8 ECHR and standards to be incorporated in the directive were regularly discussed. In response to the Commission's first proposal, for instance, the question was debated whether the directive should actually install a fundamental right which would go further than obligations emanating from the ECHR.<sup>70</sup> A prominent stance on the exact meaning of art. 8 ECHR for the directive taken up by Dutch government is therefore logically to have been the most effective in these commencing stages.

With regard to the third point (devising a common position, mandate or instruction to government), two problems can be identified. The first one is that, with regard to a demand for an explicit reference to art. 8 ECHR, a majority of the *Tweede kamer* did not seem to consider such a reference as a necessity. The reason a majority in the *Eerste Kamer* did agree on its necessity was the different stance taken by CDA in this Chamber. A perhaps more important observation is that the structure of parliamentary scrutiny over JHA-issues seems to hamper the construction of a common position on the basis of which government can be instructed. While one can blame individual MP's for not asserting a higher intensity of

control over government's actions, for instance by way of presenting *moties* on which votes are cast, the structure of debates in the combined sessions of the permanent committees on Justice and Home Affairs seems simply less suitable for achieving a common position or the drafting of a mandate to government. In general – also due to the ever increasing activity of the EU in the sphere of Justice and Home Affairs – a huge number of items are on the agenda, thereby frustrating integral and in depth discussions on a single topic. In fact, before political agreement in the Council was reached, no 'exclusive' debate on the directive had taken place in parliament.

With regard to the fourth 'success-factor' (using the parliamentary veto right as enforcing instrument) it is clear from the position taken up by the *Eerste Kamer* in the period March-May 2003 that this veto right can be instrumental in enforcing government to take up a certain position in the Council. From earlier discussions in the *Tweede kamer* it can be derived however, that this right is ineffective without an accompanying common position taken up by parliament.

Two remarks to conclude with. The first one concerns the specific role the *Eerste Kamer* has in the Dutch parliamentary system. Since the *Eerste Kamer* will normally only occupy itself with the decision-making process after the *Tweede kamer* has presented its final opinion, the right of parliamentary approval with regard to JHA-issues will remain largely ineffective when asserted by the *Eerste Kamer*, since scrutiny of the *Eerste Kamer* will de facto only take place after agreement at EU level has been reached. This implies that, when the *Eerste Kamer* is inclined to use its veto right, it must involve itself earlier with EU negotiations – thereby admittedly encroaching upon the democratic primacy of the *Tweede kamer*. This last objection could in part be removed when the *Eerste Kamer* confines this earlier scrutiny to the 'non-political' merits of EU proposals, such as the conformity with fundamental rights and with Dutch laws and practice.

The final remark concerns the propelling role the Commissie-Meijers played in the scrutiny over the directive by the *Eerste Kamer*. It is highly unlikely that without the firm attitude and concrete objections raised by the Commissie-Meijers, the *Eerste Kamer* would have persisted in its demand for re-opening of Council negotiations. In this respect, the importance of the role of the Commissie-Meijers is twofold. Firstly, the Commissie-Meijers – as an expert committee in JHA-issues – pinpointed to the main drawbacks of the directive, thereby explaining the concrete meaning of certain provisions in the directive and their relation to human rights. Such a policy assessment was clearly better manageable and understandable than the 'dry' text of the draft directive and on the basis of this assessment the *Eerste Kamer* felt confident to request for amendment of the directive. Secondly, the Commissie-Meijers

was aware of the crucial importance of the upcoming JHA-council of 27-28 February 2003 and sent its advice to parliament on 17 February 2003. Whereas parliamentary follow-up to the letter sent by the Commissie-Meijers only ensued after the JHA-council had taken place, the Commissie-Meijers obviously had a keener eye than parliament for the window of opportunity for amendment which was still very much present at that time.

Strikingly, the Commissie-Meijers thus seems better able to make a critical assessment of draft proposals and to identify *windows of opportunity* for asserting influence over EU negotiations than Dutch parliament. This conclusion is not meant to downgrade the quality of Dutch MP's, but instead to emphasize the apparent effectiveness of the monitoring role the Commissie-Meijers plays with regard to JHA-policies. The Commissie-Meijers was founded especially to counter the lack of democratic control and transparency of the EU decision-making process in this policy field and has on numerous occasions presented timely and elaborate advices to both Dutch and European Parliament. These comments are at least potentially effective in changing the outcomes of EU negotiations. On the basis of a Commissie-Meijers scrutiny of the new Asylum Procedures Directive, for example, the EP has started an action for annulment of part of the Asylum Procedures Directive in March 2006.<sup>71</sup>

Due to its functioning as expert body and 'insider' in the intricate policy field of Justice and Home Affairs, the Commissie-Meijers is thus able to set certain issues on the political agenda; issues and/or courses of action which might otherwise be overlooked. Moreover, expert groups like the Commissie-Meijers might therefore be able – better than 'ordinary' NGO's – to fuel debates on certain issues, thereby politicizing European policies in the national arena.

### **3.3 Different approaches to new EU legislation: viewing European integration as chance instead of a danger; politicizing European issues; communicating Europe to Dutch citizens.**

The last conclusion of this paper concerns the lack of embedding of the directive both in Dutch society and in debates in the national political arena on the topic of family migration. With regard to the lack of embedding of the directive in Dutch society, it is certainly true that, if there is an impression the directive has left among Dutch citizens, it is, owing to media coverage, the impression of EU rules dictating the course of action of Dutch government and frustrating new Dutch policies, whereby an ignorant citizen could be tempted to think that these EU rules have 'popped out of space'. Paradoxically, a fairly similar conclusion can be drawn with regard to the attitude of Dutch government and a majority of the *Tweede Kamer* towards the directive. Being occupied with the construction of a far more stringent regime for



family migrants, the predominant attitude of government towards the directive was that the directive potentially was a threat to Dutch sovereignties and the government's actions were therefore first and foremost directed at countering this threat.

The perception of the directive being a threat or running counter to Dutch interests stands in sharp contrast with the positive spirit in which the Member States had agreed to intensify their cooperation in the sphere of Justice and Home Affairs at the end of the 1990s. At Tampere, the European leaders agreed to transform Europe into an 'Area of Freedom, Security and Justice', which should especially be designed to address the daily concerns of citizens and to bring 'Europe closer to its citizens'. The European Council stated that:

*'The challenge of the Amsterdam Treaty is now to ensure that freedom, which includes the right to move freely throughout the Union, can be enjoyed in conditions of security and justice accessible to all. It is a project which responds to the frequently expressed concerns of citizens and has a direct bearing on their daily lives';*

and:

*'The area of freedom, security and justice should be based on the principles of transparency and democratic control. We must develop an open dialogue with civil society on the aims and principles of this area in order to strengthen citizens' acceptance and support. In order to maintain confidence in authorities, common standards on the integrity of authorities should be developed.'*<sup>72</sup>

One can truly wonder what, approximately seven years later, has become of these objectives. When we look at the family reunification directive the question can be asked in what sense this directive has bolstered the citizens' sense of belonging to the Union and in what way civil society has been involved in the decision-making process. The same questions can be asked, however, with regard to the entire policy field of Justice and Home Affairs. Admittedly, this is a field of 'high-politics', traditionally belonging to the heart of State sovereignties, so one should not expect huge achievements in such a relatively short period of time. And in fact, some legislative achievements as such can be called quite remarkable, not only in the sphere of judicial and police cooperation, but also in the area of migration where, apart from the family reunification directive, a directive on long-term residents has been adopted and a range of regulations and directives laying down a common – minimum – regime for the protection of asylum seekers on EU territory.

But have these achievements brought the EU closer to its citizens? Do citizens perceive the EU as more than a mere economic union and has cooperation in policy fields 'directly relating to citizen's interests' increased the EU citizen's sense of involvement with the European project? Regarding the Netherlands – looking at the outcome of the referendum on the European Constitution – the answer is obviously negative. While part of the explanation

for this answer must be that the Area of Freedom, Security and Justice has as yet produced insufficient concrete benefits for Dutch citizens (or, at least, Dutch citizens haven't recognized these benefits as such), another part of the explanation lies in the way the Dutch government has communicated this new integrationist project to its citizens. If we look at the government's approach to the family reunification directive the obvious rhetorical question is: How can government bolster a sense of belonging to the Union, or a sense of involvement with this concrete directive, when government itself perceives the directive as a threat rather than as a chance to promote common European interests? And how can government expect citizens to feel 'involved' with the European project, while it fails itself to treat this specific directive as elementary and integral component of the Dutch regime on family migration? This is not to say that Dutch government should automatically embrace every Commission proposal, on the contrary, but a proper embedding of 'Europe' in the public realm obviously starts with the political acknowledgement of the importance of new integrationist projects and accordingly, a proper embedding of Europe in the political realm. There still is an important barrier between the EU political playing field and the national political playing field. Tearing down this barrier does seem a *conditio sine qua non* for an increased sense of involvement on the side of Dutch citizens.

In this regard, it needs to be mentioned that the family reunification directive certainly 'deserved' more attention than it has received. Not only because it touches upon a sensitive policy area, but also because it touches upon a new European policy area. In fact, the fundamental question whether the EU should play a role in issues of asylum and migration has been answered at the level of European elites – albeit with differences in opinion on the level of integration – but has scarcely been debated in civil society. Figures show that although 83% of Dutch citizens consider the combat of illegal migration a priority of EU action and 81% considers the protection of human rights a priority for EU action, citizens remain divided on the question whether the EU should be competent in the general field of immigration; with 59% answering this question in the positive and 39% in the negative.<sup>73</sup>

The question is therefore not: did citizens care about the directive on family reunification and what are their opinions on it?; the fundamental questions which have to be addressed – and resolved – are: how can citizens care and when can they care about such a directive? Obviously, for citizens to 'feel' involved with Europe it is necessary that European developments are communicated to Dutch citizens at the appropriate moment in time, which obviously starts with a politicization of the issue on the national political level as soon as negotiations in Brussels have started. Full-fledged parliamentary scrutinies *after* political agreements have been reached are incapable of promoting 'an open dialogue with civil

society' and are on the contrary more likely to advance a sense of alienation with the European project.

## NOTES

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- <sup>1</sup> The period under scrutiny is defined here as the period during which negotiations on the directive on family reunification took place at both EU and national level. On the 21<sup>st</sup> of januari 2000, the Commission launched its first proposal for the directive (5396/00 MIGR 6 (COM(99 638 final)); the directive eventually got adopted on 22 September 2003.
- <sup>2</sup> For figures see CBS Statline and CBS report, 'Allochtonen in Nederland', Voorburg/Heerlen, 2004.
- <sup>3</sup> CBS, 'Onderzoek gezinsvorming', Voorburg/Heerlen, 2003.
- <sup>4</sup> E.g. The 1951 Refugee Convention, the European Convention on Human Rights, the International Covenant on Civil and Political Rights.
- <sup>5</sup> COM/99/0638 final.
- <sup>6</sup> Art. 3.24a Vb
- <sup>7</sup> LJN AU8416, 21 December 2005.
- <sup>8</sup> COM/99/0638 final.
- <sup>9</sup> 11040/00 ADD 1 PE-RE 56.
- <sup>10</sup> COM(2000) 624 final.
- <sup>11</sup> See documents 9739/00 MIGR 49, 9738/00 MIGR 48, 11122/00 MIGR 67.
- <sup>12</sup> Kalsbeek replaced Cohen as State Secretary at 20 December 2000.
- <sup>13</sup> See e.g. doc. 5772/00 MIGR 12, in which the Dutch delegation reported that it needed more time to study the draft text before it could give a well-founded opinion on a number of subjects.
- <sup>14</sup> Supra note 12.
- <sup>15</sup> This agreement is laid down in art. 3 (1) of the Rijkswet tot goedkeuring van het Verdrag van Amsterdam (Stb. 1998, 737).
- <sup>16</sup> Both were enacted on 23 November 2000.
- <sup>17</sup> Kamerstukken II, 2001/02, nr. 28198, nr. 2, par. 1.3.2.
- <sup>18</sup> See for example Council docs. 5682/01 MIGR 5 and 7144/01 MIGR 18.
- <sup>19</sup> Strategisch akkoord Balkenende-I, 3 juli 2002.
- <sup>20</sup> Doc. 10857/02 MIGR 66 (9 August 2002).
- <sup>21</sup> Doc. 13053/02 MIGR 96 (23 October 2002)
- <sup>22</sup> See discussions in doc. 14272/02 MIGR 119 (26 november 2002).
- <sup>23</sup> Doc. 5508/03 MIGR 1 (23 January 2003).
- <sup>24</sup> See docs. 6216/03 MIGR 10 (10 feb. 2003); 6585/03 MIGR 13 (25 feb. 2003), 6912/03 MIGR 16 (28 feb. 2003).
- <sup>25</sup> Doc. 10755/03 MIGR 58 ADD 1 (14 July 2003).
- <sup>26</sup> Doc. A5-0086/2003.
- <sup>27</sup> Supra note 17.
- <sup>28</sup> Kamerstukken II 1999/00, 23 490, nr. 54; Kamerstukken II 1999/00, 23 490, nr. 158.
- <sup>29</sup> Albayrak (PvdA), Weekers (VVD), De Haan (CDA), Hoekema (D66), Halsema (GL), see documents in note above.
- <sup>30</sup> Kamerstukken II 2000/01, 26 732, nr. 5d, p. 5.
- <sup>31</sup> Kamerstukken II 2000/01, 23 490, nr. 193, pp. 5, 7-8; Kamerstukken II 2001/02, 23 490, nr. 203, p. 3.
- <sup>32</sup> Kamerstukken II 2001/02, 23 490, nr. 203. CDA, VVD, SGP were opposed to equal treatment of non-married partners, while PvdA, GL and D66 supported the government's position.
- <sup>33</sup> E.g. Handelingen II 2002/03, pp. 2011-2014.
- <sup>34</sup> Kamerstukken II 2002/03, 27083, nr. 25, pp.3-4, 6.
- <sup>35</sup> Kamerstukken II 2002/03, 23490, nr. 252, pp. 3, 6; Kamerstukken II 2002/03, 23490, nr. 257, p. 3.
- <sup>36</sup> See 'besluitenlijsten' procedural meetings of Tweede Kamer at 5 and 19 February 2003.
- <sup>37</sup> Letter of Minister of Justice to Parliament, 17 March 2003, doc. 5216478/03/BIZ.

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- <sup>38</sup> Kamerstukken II 2002/03, 23490, nr. 266.
- <sup>39</sup> Commissie-Meijers, letter to Eerste and Tweede Kamer, dated 17 February 2003.
- <sup>40</sup> Kamerstukken II 2002/03, 23490, nr. 270.
- <sup>41</sup> Letter to Minister of Aliens Affairs and Integration, doc. 129679.03, 26 februari 2003.
- <sup>42</sup> Kamerstukken I 2002/03, 23490, nr. 8aa.
- <sup>43</sup> Kamerstukken I 2002/03, 23490, nr. 8w.
- <sup>44</sup> References to art. 8 ECHR were only made in the preamble of the directive, not in the provisions themselves.
- <sup>45</sup> Letter of the bijzondere commissie voor de JBZ-raad to the Minister of Aliens Affairs and Integration, 20 May 2003, doc. 130102. See also Kamerstukken I 2002/03, 23490, nr. 8aa. This request was in accordance with an advisory email sent to the Commission by the vice chairman of the Commissie-Meijers, prof. P. Boeles: e-mail 'Ontwerp richtlijn gezinshereniging' sent to the bijzondere commissie voor de JBZ-raad on 15 May 2003, no doc. no. attached.
- <sup>46</sup> Kamerstukken I 2002/03, 23490, nr. 8aa.
- <sup>47</sup> Letter of Eerste Kamer to Minister of Aliens Affairs and Integration, 4 June 2003, doc.130108.
- <sup>48</sup> Kamerstukken II 2002/03, 23 490, nr. 282, p. 16.
- <sup>49</sup> Doc. 10755/03, ADD 1.
- <sup>50</sup> Supra note 40.
- <sup>51</sup> The Directive was remarkably absent, for instance, during debates on the setting up integration tests for family migrants abroad, e.g. Handelingen Tweede Kamer 2002/03, nr. 34 p. 2538 and Kamerstukken II 2002/03, 27083 and 28612, nr. 32.
- <sup>52</sup> The table suffers from a certain bias due to the choice of keywords, since the general topic of family migration covers a wide range of issues which do not lend themselves for precise definition. De Telegraaf, for example, regularly employs descriptions of the phenomenon of family migration (such as 'immigrants who bring their partners from abroad' without labeling this as family migration, -formation, or -unification.)
- <sup>53</sup> Letter of Standing committee of experts on international immigration, refugee and criminal law (commissie-Meijers) to Dr. A. Vitorino, European Commissioner for Justice and Home Affairs, February 20, 2003.
- <sup>54</sup> The Standing Committee of experts on international immigration, refugee and criminal law was founded in 1990 by the Nederlandse Orde van Advocaten (NOvA), VluchtelingenWerk Nederland (VWN), het Nederlands Centrum voor Buitenlanders (NCB), het Landelijk Bureau ter bestrijding van Rassendiscriminatie (LBR) and het Nederlands Juristen Comité voor de Mensenrechten (NJCM). The installment of the Committee was motivated by an increased sense of concern about lack of transparency and democratic control over European policymaking in the field of free movement of persons, as demonstrated by the negotiations on and conclusion of the Schengen Treaty. Primary goal of the Committee is to assemble and disperse relevant information as soon as possible, in order to provide timely and scientifically based perspectives on European proposals in the sphere of immigration-, asylum- and criminal law.
- <sup>55</sup> Actiecomité Referenten and Stichting Lawine, 'Ongewenste Liefde', report published May 2002. Tweede Kamer 2001/02, file (niet-dossierstuk) just020427, 3 May 2002.
- <sup>56</sup> E.g. Letter and annex of Vluchtelingenwerk Nederland to mr. J.P.H. Donner and prof. dr. F. Leijnse [bureau Kabinetsformatie], 25 February 2003; Defence for children (K. Braat), Ik ben er wel, maar ze zien me niet Ervaringen van 'illegale' kinderen in Nederland, Amsterdam: Defence for Children International Nederland, report published 2004, pp. 35-38, 51; Defence for Children International Nederland, 'Open brief aan de leden van de Tweede Kamer betreffende het conceptregeerakkoord Vreemdelingenbeleid en kinderrechten, eerst kind en dan pas vreemdeling.', Amsterdam 2 juli 2002; see for reports/comments of Amnesty International Nederland and Vluchtelingenwerk their respective websites [www.amnesty.nl](http://www.amnesty.nl) and [www.vluchtelingenwerk.nl](http://www.vluchtelingenwerk.nl). Also: NJCM [Dutch section of the International Commission of Jurists], 'Commentaar aanleiding van afspraken in het informatieoverleg betreffende het vreemdelingenbeleid', 28 June 2002.
- <sup>57</sup> 'ECRE Information Note on the Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification', November 2003; 'Comments from the European Council on Refugees and Exiles on the Amended Proposal for a Council Directive on the right to family reunification, September 2002'; 'Comments from the European Council on Refugees and Exiles on the European Commission proposal for a Council directive on the right to family reunification', April 2000. All documents accessible through [www.ecre.org](http://www.ecre.org).
- <sup>58</sup> E.g. ACVZ, 'Buitenlandse documenten en de toepassing van DNA-identificatie in het Nederlandse Vreemdelingenbeleid', The Hague, December 2002; ACVZ, 'Advies gezinshereniging en enkele andere onderwerpen betreffende gezinshereniging, gezinsvorming en openbare orde, RL 2003/86/EG', The Hague, February 2004; ACVZ (briefadvies), 'Inburgeringseisen als voorwaarde voor verblijf in Nederland', The

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Hague, March 2004; ACVZ, 'Tot het huwelijk gedwongen', The Hague, September 2005; ACVZ (briefadvies), 'Motie Dittrich c.s., tweede onderdeel', The Hague, February 2006.

<sup>59</sup> ACVZ, 'Advies gezinshereniging en enkele andere onderwerpen betreffende gezinshereniging, gezinsvorming en openbare orde, RL 2003/86/EG', The Hague, February 2004.

<sup>60</sup> ACVZ, 'Advies inburgering in het buitenland', The Hague, November 2004; ACVZ (briefadvies), 'Advies Besluit inburgering', The Hague, 24 November 2005; ACVZ (briefadvies), 'Motie Dittrich c.s., tweede onderdeel', The Hague, February 2006.

<sup>61</sup> AIV (Briefadvies), 'Van binnengrenzen naar buitengrenzen – ook voor een volwaardig Europees asiel- en migratiebeleid in 2009', The Hague, March 2004; ACVZ, 'Voorbij de horizon van 'Amsterdam'', The Hague, February 2004.

<sup>62</sup> Ibid., pp. 15,17 and pp. 37-39.

<sup>63</sup> Supra note 19.

<sup>64</sup> Kamerstukken II 2003-2004, 28 473, nr. 35, p. 10.

<sup>65</sup> Commissie Meijers, brief aan de leden van de Bijzondere Commissie voor de JBZ-Raad van de Eerste kamer der Staten-Generaal, CM04-03, 9 February 2004 (by e-mail).

<sup>66</sup> Council Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, Official Journal L.158, 30/4/2003.

<sup>67</sup> PE 339.595, 15 January 2004.

<sup>68</sup> See docs 13053/02 MIGR 96 and 14272/02 MIGR 119.

<sup>69</sup> Kamerstukken II 2002-2003, 28 490, nr. 257, p. 3.

<sup>70</sup> See especially 5772/00 MIGR 12 but also later on 6540/01 MIGR 11.

<sup>71</sup> Case C-133/06; See Standing committee of experts on international immigration, refugee and criminal law, letter to European Parliament, 'Comment regarding an article 230 TEC action directed against the recently adopted Directive on Minimum standards on procedures in Member States for granting and withdrawing refugee status', CM-0505, 9 December 2005.

<sup>72</sup> Presidency Conclusions of the Tampere European Council, 15 and 16 october 1999, SN 200/1/99 REV1, points 2 and 7.

<sup>73</sup> Standard Eurobarometer 60.1, Autumn 2003 – National Report The Netherlands. See also the accompanying comment on page 12: 'De meningen met betrekking tot immigratie, vluchtelingen en politiek asiel lijken te zijn verdeeld, er zijn iets meer mensen die vinden dat dit binnen de EU zou moeten worden besloten, maar dit is geen grote meerderheid.'