

### A. General questions

- *Has the Directive been implemented in your country? If so, please add the references and the texts of relevant legislative and administrative measures and the dates they entered into force.*

The Directive has been implemented in Poland. In 2003 the new Aliens Act was adopted jointly with the Act on granting protection to aliens within the territory of the Republic of Poland both of 13 June 2003 (*Ustawa o cudzoźciemcach*, *Journal of Laws 2003*, No. 128, item 1175 as amended; *Ustawa o udzieleniu cudzoźciemcom ochrony na terytorium Rzeczpospolitej Polskiej*; *Journal of Laws 2003*, No. 128, item 1176 as amended; hereafter referred to as the AA and the APA respectively). Both acts entered into force on 1 September 2003. The AA included provisions on family reunification which generally corresponded with the standards of the Directive as they were modelled on the basis of its draft version. However, further adjustments appeared to be necessary. In consequence, the Act amending the AA and the APA and some other acts was adopted on 22 April 2005 (*Ustawa o zmianie ustawy o cudzoźciemcach i ustawy o udzieleniu cudzoźciemcom ochrony na terytorium Rzeczpospolitej Polskiej oraz niektórych innych ustaw*, *Journal of Laws 2005*, No. 94, item 788; hereafter referred to as the 2005 Amendment Act) and subsequently entered into force on 1 October 2005. The 2005 Amendment Act was generally aimed at adjusting Polish migration regulations to the EU standards including the implementation of the Family Reunification Directive. The present report is based on binding regulations as of 30 November 2006.

- *Has there been a political or public debate on the implementation of the Directive? If so, please summarize the main issues of the debate.*

There have been no such debates. However, it should be noted that migration issues in Poland generally arouse very limited public interest. Also, political parties are hardly interested in migration issues and generally do not have any immigration policy. It is characteristic that, especially in both electoral campaigns (parliamentary and presidential) of Autumn 2005, as well as in self-government electoral campaign of Autumn 2006 in Poland, the migration issues were hardly debated. Thus, the debate on the implementation of the Directive was limited to expert circles only and generally took place within the legislative process.

Interestingly enough, some authors claim that the lack of public or political debates on migration issues is a positive phenomenon in the sense that the *'status quo is rather beneficial for all the actors involved in the shaping of migration policy'* because the public discourse on immigration issues *'usually results in the radicalisation of attitudes towards 'others', and to growing xenophobia.'* [I. Koryś, 'Poland: Dilemmas of a Sending and Receiving Country', in: International Organisation for Migration, *Migration Trends in Selected Applicant Countries*, Vol. 3, Vienna 2004, p. 50]. It seems,

however, that the lack of such discourse on the present stage will only result in ‘radicalisation of attitudes’ on intensified scale in later stages.

- *What have been the main changes in the national law or practice due to the Directive. Please indicate for each change whether it improved or deteriorated the legal status of third country nationals and their family members? Did it make the national rules more strict or more liberal?*

As it was mentioned above, already provisions on family reunification of 2003 AA were modelled on the then draft Directive. It should be noted that comprehensive migration and asylum regulations in Poland are rather of recent origin and reach 1997 only when the first comprehensive regulation was adopted (the 1997 Aliens Act). As such, the creation of migration and asylum law in Poland has been strictly connected with developments within the EU and answering the question what Polish migration and asylum law would be like without the adjustment process is hardly possible. The same applies to regulation of the family reunification issue and therefore it is very hard to assess whether the Directive generally improved or deteriorated the legal status of third country nationals in Poland. However, it should be noted that some of the standards, such as these regarding possibility to apply for family reunification while already within the territory, waiting period, equal treatment, have become more liberal in the adjustment process. Moreover, Poland has not taken the opportunity to introduce some optional restrictive standards and exemptions, such as these regarding age of children, minimum age of a spouse or equal treatment. On the other hand the family reunification provisions do not apply to persons enjoying subsidiary protection and some standards have been implemented on minimal required level only, just to mention the scope of family members eligible to reunite.

- *Are there already judgments of national courts applying or interpreting the Directive? If so on which issues?*

No judgements regarding the Directive have been delivered so far.

- *Did the judgment of the Court of Justice of 27 June 2006 in the case Parliament v. Council (C-540/03) already have any effect on the implementation of the Directive, the national practice or case-law or the legal literature? If so, please specify the effects.*

No.

- *In case the Directive has not yet been implemented in your country or your country is not bound by the Directive (Denmark, Ireland and the UK), please answer the following questions on the basis of the existing national legislation.*

**B. Questions on specific provisions**

## Article 3(1)

- *How is the clause 'who has reasonable prospects of obtaining the right of permanent residence' implemented in the national law?*

Under the AA the sponsor eligible to reunite must hold a permanent residence permit (settlement permit or long-term EC resident permit), refugee status or temporary residence permit (residence permit for a specified period; hereafter referred to as the residence permit). In the last case the two-year waiting period is provided before becoming entitled to reunite, as well as the residence permit must be issued for a minimum period of one year. No direct references to the above mentioned clause are provided for. However, prospects for renewal of the sponsor's residence permit are taken into account in the decision process by the relevant authority.

## Article 3(3)

- *Will a third country national also having the nationality of your country be able to rely on the Directive?*

No, according to the 1962 Polish Nationality Act (Art. 2; *Ustawa o obywatelstwie polskim, Journal of Laws 2000, No. 28, item 353 as amended*) a person having Polish nationality is treated as a Polish national only no matter whether he or she has other nationality or nationalities. Consequently the AA does not apply to such persons.

- *Are nationals of your country and their third country national family members entitled to the same treatment, to a more privileged treatment or to less favourable treatment as provided in the Directive? Please specify the differences.*

Treatment of a third country spouse of a Polish national is under Polish regulations close to the treatment of a spouse of a third country national residing lawfully in the territory of Poland. The former is also to be granted the residence permit and general rules apply, including for instance provisions on marriages of convenience. However, to some extent the treatment of a third country spouse is more favourable as, e.g., he or she is not obliged to have stable and regular resources, sickness insurance or to provide information on legal title to the current or intended place of housing as well as documents confirming the costs of housing. Other third country family members of a Polish national are not included into categories of aliens eligible to be granted the residence permit on the basis of their family relationships. However, they may apply for the residence permit under the Art. 53.5.2 AA which may be discretionally granted to them (on Art. 53.5.2 AA see below answer to Article 4.3) and the family relationships with a Polish national are directly mentioned as an example of a premise which may justify the positive decision. Moreover, rules under the 1962 Polish Nationality Act on the acquiring of Polish nationality by a child whose one parent is a Polish national should be also taken onto account in this respect (a general rule is that such a child acquires Polish nationality by birth; Art. 6 of the 1962 Polish Nationality Act).

Article 4(1)

- *Has the right to family reunification of spouses and minor children been codified in national law? If so, please mention the relevant provisions of national law.*

Yes, it has been codified in art. 53.2 AA and is directly based on Art. 4.1.a-d of the Directive.

Article 4(1) and 4(6) (children over 12 or 15 years)

- *Does the national law of your country provide special rules concerning the admission of children aged over 12 or 15 years?*
- *If children over 15 are prevented from applying for family reunification under what conditions are they entitled to reside considering the obligation for Member States second sentence of Article 4(6)?*
- *Is your country barred from using the exceptions in Article 4(1) last sentence and Article 4(6) by the standstill-clauses in those two provisions?*

No such special rules have been provided for.

Article 4(3) (unmarried partners)

- *Has the provision on the admission of unmarried partners been implemented in national law? If so, under what conditions do they have a right to family reunification?*

No, unmarried partners are not eligible to reunite. Yet, they could apply for residence permit under the clause provided in the Art. 53.5.2 AA which states that residence permit may be granted if an alien concerned demonstrates circumstances other than these constituting premises under the AA to grant residence permit, which justify his or her residence in Poland extending three months. The power of Art. 53.5.2 is of discretionary character; however, the scope of discretionality is limited by the relevant rules of administrative procedure and administrative courts case-law. The latter demands, among others, that a discretionary administrative decision must be properly justified by referring to public interest. The obligations of Poland under Art. 8 of the 1950 European Convention on Human Rights must be taken into account in this regard.

Article 4(5) (minimum age spouse)

- *Does the national law require a minimum age for the admission of spouses that is higher than 18 years? If so what is the minimum age?*

No such requirement has been provided for.

Article 5(2) (documents and fees)

- *What kind of documentary evidence has to be presented with a family reunification application?*

There is no separate family reunification application as such and application for reunification takes form of an application for residence permit. Therefore general rules on documentary evidence to applications for residence permit apply. The application is to be submitted on a special form (Art. 40.4a AA) which is determined together with technical specification for required photos in the Regulation of the Minister of Interior and Administration on a specimen application form for granting the residence permit for specified period and photos attached to the application of 5 August 2003 (*Rozporządzenie Ministra Spraw Wewnętrznych i Administracji w sprawie wzoru*

*formularza wniosku o udzielenie zezwolenia na zamieszkanie na czas oznaczony oraz fotografii dołączonych do wniosku, Journal of Laws 2003, No. 147, item 1435 as amended*). There is only one regular form and there is no special form for residence permit application in order to reunite. This should be assessed critically as the form does not account directly for a situation in which the sponsor is the applicant on behalf of his or her family members. As a consequence the form lacks clarity and may cause practical difficulties for aliens concerned.

Art. 60.4 AA states that the application for residence permit includes: the alien's personal data as well as personal data of children covered by the application and other persons covered by the alien's travel document with respect to issuance of residence permit; place of intended residence in Poland; personal data of the alien's family members residing in Poland including the level of consanguinity; information on visits and stays abroad within previous five years, as well as on previous stays in Poland; and indication of maintenance means. Under Art. 60.5 AA the applicant is obliged to justify the application, provide valid travel document, as well as to attach to the application photos of persons covered by the application and all relevant documents confirming data included in the application as well as circumstances on which the application is based. The additional requirement, which applies also in context of family reunification, demands providing information on legal title to the current or intended place of housing as well as documents confirming the costs of housing (Art. 60.5a AA).

Practically the process of submitting the residence permit application in order to reunite is easier when the family members are already on the territory of Poland. Otherwise the sponsor who is the applicant may face difficulties providing some of the required documents (e.g. copies of travel documents; technically specified photos etc.). It happens that the relevant officials informally suggest that it would be easier to apply for reunification when family members concerned have already legally entered the territory of Poland.

- *Does the applicant have to pay any fees and, if so, what is the (total) amount of those fees?*

Regular rules in this respect concerning the application for residence permit apply. If the permit is granted the fee is 300,- PLN (approximately 75,- Euro). Additionally 50,- PLN (approximately 12,50 Euro) is charged for issuing a residence card. Also, there are minor state charges (*opłata skarbową*) on every submitted document.

Article 5(3) (place of application)

- *May an application be submitted when the family members are already residing in the Member State?*

Yes, according to Art. 53.1.7 AA an application may be also submitted when a family member concerned is already on the territory of Poland. Such option was introduced by the 2005 Amendment Act.

Article 5(4) (length of the procedure)

- *Is there any time limit for the decision on the application by the administration?*

General rules of administration procedure apply, i.e. a decision should be taken without delay within one month in regular cases and within two months in complex cases

in the first instance and within one month in the second instance (Art. 35 of the 1960 Code of Administration Procedure, *Kodeks Postępowania Administracyjnego*; consolidated text: *Journal of Laws 2000, No. 98, item 1071 as amended*).

Article 5(5) (interest of the child)

- *How is the provision that Member States 'shall have due regard to the best interests of minor children' implemented in national law?*

There is no general statutory provision regarding family reunification which would directly implement the clause of Art. 5.5 of the Directive. Notwithstanding, it must be stressed that the principle of the best interest of the child is established in very foundations of the Polish legal system. Children rights are guaranteed by the Constitution (Art. 72) which also establishes the Ombudsman for the Rights of the Child. Also, Poland is the state-party to the 1989 Convention on the Rights of the Child.

Article 6 (public policy exception)

- *How has the public policy and public security exception been implemented and defined in the national law?*

Art. 57.1.5 AA provides that a negative decision on granting residence permit (including that granted in order to reunite) is issued if it is demanded by factors regarding state's defence or security or regarding protection of public security and order or the interest of Poland. On the same basis residence permit is to be withdrawn (Art. 58.1.2 in conjunction with Art. 57.1.5 AA). In both cases the alien concerned may be obliged to leave the territory of Poland (Art. 57.6 and Art. 58.4 AA respectively).

According to the case-law of the Supreme Administrative Court regarding public security clauses in law on aliens, the concrete premises justifying the real danger caused by an alien must be identified (*Judgement No. V SA 155/2002 of 22 October 2002, unpublished*; all references to judgements quoted from J. Chlebny, 'Komentarz do art. 57' [Commentary on Art. 57], in: J. Chlebny (ed.), *Prawo o cudzoziemcach. Komentarz* [Law on Aliens. A Commentary], Warszawa 2006, p.133). Also, the Supreme Administrative Court stated for instance that not every breach of law constitutes the danger for public order (*Judgement No. V SA 3480/02 of 12 November 2003, unpublished*); yet, residence of an alien who had been drink-driving was identified as constituting the danger to public order (*Judgement No. V SA 3488/02 of 30 July 2003, unpublished*).

Moreover, it should be noted that a negative decision on granting residence permit (including that granted in order to reunite) is also issued if the alien concerned is listed in the register of aliens undesirable within the territory of Poland (Art. 57.1.2 AA). Also, the aliens listed in the register are not entitled to enter the territory of Poland. Thus, aliens listed in the register are not eligible to reunite. The data of an alien are temporarily placed in the register of aliens undesirable within the territory of Poland when he or she is issued with an expulsion decision, as well as a decision obliging to leave voluntarily (an alien may be issued with an expulsion decision or in some cases alternatively with a decision obliging an alien to leave the territory of Poland voluntarily; however, also an alien issued with an expulsion decision is obliged to leave the territory of Poland on his or her own account within the time limit set in the decision; thus, an alien is generally forcibly escorted to the border by competent authorities only if he or she does not comply with the obligation to leave). If an alien

complies with the decision obliging to leave voluntarily the data is placed in the register for one year. If an alien complies with an expulsion decision the data is placed in the register for three years. And if an alien is forcibly expelled (to be precise, the AA speaks more generally of a situation when the costs of expulsion are covered by the authorities) the data is placed in the register for 5 years (Art. 128.3 AA).

In the above context, the premises for issuing the expulsion decision should be considered as they limit the eligibility to reunite. An expulsion decision is issued if one of the following premises provided in Art. 88 AA occurs: a) illegal residence; b) illegal employment or self-employment; c) lack of sufficient financial means necessary for maintenance while in Poland; d) the alien's data are in the register of aliens undesirable within the territory of Poland; e) the alien's further stay would constitute a threat to state's defence or security or the protection of public security and order or would endanger the interest of Poland; f) illegal entry or attempt to enter illegally; g) non-compliance with a decision obliging an alien to leave the territory of Poland voluntarily; h) non-compliance with fiscal obligations towards Poland; i) completion of an imprisonment sentence for intentional criminal offence or fiscal offence; j) a final sentence of imprisonment if there are grounds for the transfer abroad procedure. Also, under Art. 89 AA an expulsion decision must not be issued, nor executed if previously issued, if, among others, an alien is a spouse of a Polish national or of an alien holding a settlement permit or a long-term EC resident permit and his or her further stay in Poland does not endanger state's defence or security or the protection of public security and order, save the cases in which the marriage was aimed at avoiding the expulsion.

- *What are the similarities and differences compared to the definitions of the same notions in the context of free movement of EU citizens?*

The Act of 14 July 2006 on entry into, residence in and exit from the Republic of Poland of nationals of the European Union Member States and their family members (*Ustawa o njeżdżie na terytorium Rzeczypospolitej Polskiej, pobytcie, oraz wyjeżdżie z tego terytorium obywateli członkowskich państw Unii Europejskiej*; *Journal of Laws 2006, No. 144, item 1043*) uses the clause almost in the same wording while referring to the basis of the EU citizens (and their non-EU family members) residence in Poland (Art. 31.1.2; Art. 35.2; Art. 56.1.2; Art. 60.1.2; Art. 60.2.2). However, in contrast to the above mentioned clauses used in the AA, the premise of endangering 'the interest of Poland' is omitted.

As far as the expulsion of the EU citizens and their non-EU family members, the 2006 Act modifies the clause by grading the danger caused and issuing the expulsion decision is not obligatory. Firstly, the EU citizen or his or her non-EU family member who does not enjoy the right to permanent residence may be issued with the expulsion decision if he or she endangers state's defence or security or protection of public security and order or public health (Art. 66.1.1 of the 2006 Act). Secondly, the EU citizen or his or her non-EU family member who enjoys the right to permanent residence (i.e. resides more than five years in Poland) may be issued with the expulsion decision if he or she seriously endangers state's defence or security or protection of public security and order (Art. 67 of the 2006 Act). Finally, the EU citizen who resides more than 10 years in Poland may be issued with the expulsion decision if he or she endangers state's defence or security or protection of public security and order

by endangering peace, humanity, independence or defence of Poland or by terrorist activity (Art. 68 of the 2006 Act). Thus, the UE citizens and their non-EU family members are privileged in this respect in comparison with other aliens.

Article 7(1)(a) and (c) (income and housing)

- *How is the income requirement specified in the national law?*

Under Art. 53.7.1 a family member to be reunited is obliged to have stable and regular resources which are sufficient for his or her maintenance as well as of his or her dependent family members. This requirement is regarded to be met if the costs of maintenance are covered by a family member of such a person on whom he or she is dependant if such a person resides in Poland and is able to do so (Art. 53.8 AA).

- *What is the level of net monthly income required (in euros)?*

The level of monthly income required, after deduction of housing costs and calculated per person including all dependant family members, must extend the income which forms a basis for granting social assistance in accordance with relevant regulations (i.e. Act on social assistance of 12 March 2004, *Ustawa o pomocy społecznej, Journal of Laws 2004, No. 64, item 593 as amended*). As of 1 October 2006 the net monthly income forming a basis for granting social assistance is 477 PLN (approximately 119 Euro) per lonely person or 351 PLN (approximately 88 Euro) per each family member.

- *Is there a housing requirement in force, and if so, what is the minimum surface of the accommodation (in square meters)?*

According to Art. 60.5a AA, information on legal title to the current or intended place of housing as well as documents confirming the costs of housing must be included in the application. As far as the mentioned legal title is concerned the contract of free lending for use (*umowa użyczenia*) is excluded save it is concluded with the determined close relatives (Art. 60.5b AA). However, no minimum surface of accommodation is specified.

Article 7(2) (integration measures)

- *Are family members required to comply with integration measures? If so, do they have to comply before or after admission and what are they actually required to do (follow a course, pass a test, etc.)*

- *Are there any positive or negative sanctions (privileges, subsidies, fines, residence rights or other) attached to the integration measures?*

- *Does the national law distinguish between the concepts 'integration conditions' and 'integration measures' (compare Article 4(1) last indent and 7(2))?*

No integration measures are provided for.

Article 8 (waiting period)

- *Is there any waiting period before the family reunification application can be filed?*

Art. 54 the AA requires the sponsor - save a person granted refugee status, as well as persons granted permanent residence permits (the settlement permit or the long-term EC resident permit) - before becoming entitled to reunite with family members to have stayed in the territory on the basis of residence permits for a period of at least



two years. Previously the above mentioned waiting period reached three years and was changed accordingly by the 2005 Amendment Act in order to meet the Directive standard. However, it should be noted that the 2005 Amendment Act introduced additional requirement corresponding to the Art. 3.1 of the Directive: directly before submitting the application for family reunification the sponsor is required to reside on the residence permit issued for minimum period of one year.

Article 9(2) (privileges for refugees)

- *Which privileges granted by the Articles 10-12 are in the national law limited to family relationship that predate the entry of the refugees?*

No such confinement has been provided for.

- *Do other protected persons than Convention refugees benefit from the provisions of Chapter V of this Directive?*

No, they apply to Convention refugees only.

Article 10(3) (family members of unaccompanied minors)

- *Are the parents, legal guardians or other family members of a refugee who is an unaccompanied minor, entitled to a residence permit under national law?*

According to Art. 53.3 AA the scope of family members eligible to reunite in case of a refugee who is an unaccompanied minor is extended to relatives in direct ascending line. Thus, a standard of the AA is more liberal than the standard of Art. 10.3.a of the Directive which limits the extension to relatives in direct ascending line of first-degree. No other categories of persons, such as legal guardians or any other members of the family are eligible to reunite. Yet, they could apply for residence permit under the clause provided in the Art. 53.5.2 AA which states that the residence permit may be granted if an alien concerned demonstrates circumstances other than these constituting premises under the AA to grant the residence permit, which justify his or her residence in Poland extending three months.

Article 11 (lack of documents)

- *Which rules on alternatives to official documents in case of lack of official documents proving the family relationship are provided for in the national law?*

There are no statutory rules on alternatives to situations where a refugee cannot provide official documentary evidence of the family relationship. Thus, the standard of Art. 11 of the Directive is not met in the AA. However, it should be noted that Art. 60.6 AA generally states that if an alien does not have valid travel document and is unable to obtain it, he or she may deliver other document confirming his or her identity. This is more liberal standard than one provided for in Art. 5.2 of the Directive which requires the application for reunification to be accompanied by certified copies of family member(s)' travel documents.

Article 12 (exemption from requirements)

- *From which requirements for family reunification, mentioned in Article 7 or Article 8, are refugees or their family members explicitly exempted by national law?*

Family members of a refugee who is a sponsor are exempted under Art. 53.9 AA from the requirements of demonstrating that he or she or the sponsor possesses

stable and regular resources and sickness insurance if the application for the residence permit in order to reunite is submitted within a period of three months after the granting of the refugee status. However, the exemption does not extend to the obligation required under 60.5a AA to provide the information on legal title to the current or intended place of housing as well as documents confirming the costs of housing that must be included in the application. Thus, the Directive standard of first subparagraph of Art. 12.1 is not met in this respect.

The standard of Art. 12.2 of the Directive is met as there is no waiting period for a refugee wishing to become sponsor.

Article 13(1) (visa facilitation)

- *How has the obligation to grant third country family members 'every facility for obtaining the required visas' been implemented in national law?*

As the process of family reunification is put into effect by applying for the residence permit, the family member concerned who stays outside the territory of Poland will be issued with the entry visa if only he or she is granted the residence permit in order to reunite (Art. 26.3.c AA).

It should be noted that entry visas issued on the basis of the prior grant of residence permit are not exempted from consular fees. The consular fees including fees for issuing visas are regulated in Regulation of the Minister of Foreign Affairs on Consular Fees of 1 August 2003 (*Rozporządzenie w sprawie opłat konsularnych, Journal of Laws 2003, No. 156, item 1530 as amended*). The Regulation provides, among others, exemption from consular fees for issuing visas for family members of the EU citizens, which was recently introduced by the Regulation of the Minister of Foreign Affairs Amending the Regulation on Consular Fees of 31 March 2006 (*Rozporządzenie zmieniające rozporządzenie w sprawie opłat konsularnych, Journal of Laws 2006, No. 63, item 444*). It seems that failing to provide exemptions for issuing entry visas in context of family reunification is not in conformity with the Directive obligation to grant every facility for obtaining the required visa.

Article 14 (equal treatment)

- *How has the right of admitted family members to 'access to employment and self-employment in the same way as the sponsor' been implemented in national law?*

The admitted family members enjoy access to employment and are exempted from the obligation to obtain the employment permit on the same basis as, among other categories, aliens granted the settlement permit, the long-term EC resident permit and refugee status. Aliens residing under residence permit are obliged, save statutory exemptions, to be granted the employment permit (Art. 87 and 88; the Act on the Promotion of Employment and on the Labour Market Institutions of 20 April 2004; *Ustawa o promocji zatrudnienia i instytucjach rynku pracy, Journal of Laws 2004, No. 99, item 1001 as amended*). Thus, the admitted family members enjoy even more favourable treatment than the sponsor if the latter resides under the residence permit. Access to self-employment of admitted family members, as well as - among other categories - aliens granted the settlement permit, the long-term EC resident permit and refugee status, has been made equal with that enjoyed by Polish nationals (Art. 13.2; the Act on Freedom of Self-Employment of 2 July 2004; *Ustawa o swobodzie gospodarczej, Journal of Laws 2004, No. 173, item 1807 as amended*). Again, the

admitted family members enjoy even more favourable treatment than the sponsor if the latter resides under residence permit.

Notwithstanding the standard of the Directive requiring the equal treatment in access to employment and self-employment is met.

- *Did your country make use of the exception to that equal treatment allowed under Article 14(2) of the Directive?*

No such exemptions have been provided for.

Article 15 (autonomous residence permit)

- *After how many years are spouses, unmarried partners and children entitled to an autonomous residence permit under national law? What other conditions are they required to fulfil in order to obtain such a permit?*

According to Art. 53.1.9 AA the spouse and the child who has reached majority are entitled to an autonomous residence permit after five years of residence on the basis of reunification residence permits.

- *Under what conditions can an autonomous residence permit be obtained before the period of time normally required under national law?*

Obtaining of an autonomous residence permit before the required period of five years may occur when the rule of Art. 53.1.10 AA applies. Under Art. 53.1.10 AA an autonomous residence permit is to be granted in case of widowhood, divorce, separation or death of first-degree relatives in the direct ascending or descending line. However, granting such an autonomous residence permit is conditioned on special interest of an alien concerned.

Also, the family member may apply for the residence permit on regular basis for reasons other than family reunification if only he or she meets the requirements and wishes so.

Article 16(1)(a) (resources)

- *Is the income of family members taken into account for the calculation of the sufficient resources at the time of the renewal of the permit?*

General rules for granting residence permit – including the requirement of stable and regular resources, which could be also covered by the family member on whom he or she is dependant if such a person resides in Poland and is able to do so – apply for renewing the residence permit of the admitted family members. Also, when the sponsor is required to possess stable and regular resources, they may be covered by his or her family member on whom he or she is dependant if such a person resides in Poland and is able to do so (art. 53.7 and 53.8 AA).

Article 16(1)(b) (real family relationship)

- *Does the national law allow for refusal or withdrawal of a residence permit on the ground that the family member does no longer live in a real marital or family relationship? If so, which criteria have to be fulfilled under national law? Is the ground applicable to the relationship between parents and minor children?*

No special rules requiring demonstration of real family relationship exist, save provisions on the marriage of convenience, which constitutes the premise of both refusal

and withdrawal of the residence permit (Art. 57.1.4 and Art. 58.1.2 AA). Also, it should be noted in this context, that application for granting the family members to be admitted the residence permit in order to reunite must be submitted by the sponsor.

Article 16(4) (marriage of convenience)

- *Does the national law contain provisions on fraud or on marriages or partnerships of conveniences? If so are the definitions, checks and practices in conformity with Article 16(4)?*

The residence permit is to be refused or withdrawn if an alien submitted an application or attached documents which included false personal data or false information, as well as if an alien gave false evidence or concealed the truth or forged a document or used a forged one as authentic (Art. 57.1.6 and Art. 58.1.2 AA).

The residence permit is to be refused or withdrawn if marriage was contracted for the sole purpose to be granted the residence permit (Art. 57.1.4 and Art. 58.1.2 AA). According to Art. 55.1, the relevant authority competent for granting the residence permit is to established whether the marriage is of convenience if circumstances demonstrate that: a) one of the spouses has derived material benefit from his or her consent to contract marriage if this is not a consequence of an established custom in the state or a social group concerned; b) spouses neglect their marital duties based on law; c) spouses do not live in one household; d) spouses had met never before getting married; e) spouses do not speak a language understandable for both; f) spouses are not unanimous in presenting their personal data and other important circumstances which regard them; g) one or both spouses have previously contacted marriages of convenience. The relevant authority pursues the evidence procedure in accordance with relevant provisions of the 1960 Code of Administration Procedure save the standards of Art. 79 of the Code, which ensure rights to be informed of and involved in the evidence procedure.

Article 17 (relevant considerations)

- *How has this clause, requiring that certain specific elements are to be taken into consideration in the decision making on residence permits and removal orders, been implemented in the national law?*

There is no statutory provision directly implementing the clause of Art. 17 of the Directive. Yet, it seems that all provisions of the AA relevant for family reunification create a legal framework in which due account of the mentioned elements, especially in context of rejection, withdrawal or refusal to renew, is ensured. Also, administrative judicial control should be taken into account in this context. On the other hand, the direct implementation, especially by referring to the mentioned elements, would strengthen the required standard and eliminate some ambiguity.

## Article 18 (judicial review)

- *Are the sponsor and his family members entitled to have a negative decision reviewed by a court or independent tribunal? If so, please specify the relevant provisions in the national law and the scope of the judicial review (full review, review on legality or marginal control only)?*

An authority competent for issuing the decision on residence permit is relevant voivod (*wojewoda*; a local representative of government; Poland is divided into 16 regions named voivodships/*województwo*). The Head of the Repatriation and Aliens Office is the appellate authority. From the decision of the Head of the Repatriation and Aliens Office an appeal to an administrative court may be lodged. Since 1 January 2004 and following the reform of the Polish administrative judicial system the administrative judicial procedure consists of two instances. Administrative courts are not entitled to make decisions on the merits of a case.

- *Is (publicly funded) legal aid available for an appeal against a decision to refuse family reunification or to withdraw the residence permit of a family member?*

No.

### C. Final question

- *What are in your view the main strengths and weaknesses of the Directive?*

The main strength of the Directive is that it provides the comprehensive legal framework for family reunification in the Member States. Undoubtedly the Polish comprehensive regulations on family reunification were introduced to the aliens law due to the Directive including its earlier draft versions. However, as it was mentioned above, it is hardly possible to assess the eventual influence of the Directive on the relevant Polish regulations because of their recent origins and the unanswerable question what they would be like without the adjustment process.

Among main weaknesses one should firstly mention that the Directive does not apply to persons enjoying subsidiary protection, which results in differentiating the legal status of aliens granted protection in the Member States.

Secondly, even if the reasoning of the European Court of Justice judgement of 27 June 2006 (C-540/03) that challenged standards are not running counter to fundamental right to respect for family right is to be accepted, many standards of the Directive remain undoubtedly very restrictive and as such should be assessed most critically. The example of Poland may be characteristic in this respect: many optional restrictive standards have not been implemented into Polish regulations so far; however, it remains open whether the mentioned standards would not encourage the future deteriorating amendments.

Moreover, the minimal standard approach on which the Directive, as well as other migration and asylum directives, is based definitely does not help in introducing uniform legal regime in the Member States.

**D. Table**

This table refers only to mandatory provisions of the Directive. Please choose for each article one of the four alternative labels:

correct transposition/ no transposition/ violation of the Directive/ unclear.

If you choose the label 'violation' or 'unclear', please add a footnote with a short explanation.

<b>ARTICLES OF THE DIRECTIVE</b>	<b>OPINION ABOUT TRANSPOSITION</b>
5 (5)	correct transposition
10 (3) (a)	correct transposition
11	no transposition
13 (1)	violation <sup>1</sup>
14 (1)	correct transposition
15	correct transposition
16 (1) (a)	correct transposition
17	unclear <sup>2</sup>
18	correct transposition

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1 No exemption from consular fee for issuing the entry visa.

2 Lack of direct implementation; however, the legal framework for family reunification as a whole seems to ensure due account for the mentioned elements.