Chapter 4

The Directives on Legal Migration of Third-Country Nationals

The following section will give an overview on the adoption process and the most important provisions of the five Directives on legal migration that have been adopted since the Treaty of Amsterdam, and the draft Directive on a single application procedure for a single permit for third-country nationals. It serves as a general introduction to the content of the six legal instruments, whereas a more detailed analysis and assessment of individual provisions, as well as their transposition into national law, will follow in Chapters 6 and 7.

4.1. Directive 2003/86/EC on the right to family reunification

In December 1999 the Commission undertook the first draft proposal of a Directive on family reunification under Article 63(3) (a) of Title IV of the EC Treaty. Yet, it took a period of three years of negotiations until the final Directive was eventually adopted by the Justice and Home Affairs Council in 2003. This was due to a rather complicated legislative procedure. It was only possible to come to an agreement in the Council after the Member States had been guaranteed a certain degree of flexibility in respect of a number of provisions.

In its initial proposal the Commission envisaged an almost complete harmonisation of the conditions for family reunification of third-country nationals, with little scope for discretion left to the Member States. As a first response to the legislative proposal, the European Parliament issued its opinion on the Directive on 6 September 2000, suggesting eighteen amendments. Eleven of these amendments were taken up by the Commission and incorporated into a second proposal, adopted in October 2000. Particularly controversial aspects


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during the Council negotiations were the family reunification of unmarried partners, and residence requirements for sponsors to become eligible for family reunification.

Consequently, in the second proposal, the Commission undertook a number of modifications. Instead of stating as the objective of the Directive the *creation of a right* to family reunification for third-country nationals, the second proposal speaks of the determination of the *conditions for the exercise of the right* to family reunification. Moreover, the personal scope of the proposal was restricted by excluding from the scope of the Directive, EU citizens who have not made use of their right to free movement. The categories of third-country nationals eligible to be reunited with the sponsor were also limited by abandoning the right to family reunification of direct relatives in the ascending line, and unmarried partners. In more general terms, the second proposal granted states a greater degree of flexibility in implementing the provisions of the Directive.\(^5\) In December 2001, the Laeken European Council invited the Commission to revise its proposal once again, which led to the presentation of a second modified proposal by the Commission in May 2002.\(^6\) Even though the Parliament had not yet given its opinion on the draft Directive, the Justice and Home Affairs Council came to a political agreement on the matter on 27 February 2003.\(^7\)

On 9 April 2003 the European Parliament eventually issued its opinion on the draft.\(^8\) Although backing the Directive in general, the Parliament proposed 70 amendments to it. These comprised widening the scope of family members eligible for family reunification to include unmarried partners, adult children and relatives in the ascending line, as well as granting the right of family reunification to third-country nationals residing in a Member States on the grounds of 'subsidiary protection' status. Yet the European Parliament’s opinion was ignored and, on 22 September 2003, the Council formally adopted Directive 2003/68/EC on the right of third-country nationals, residing lawfully in the territory of a Member State, to family reunification.\(^9\)

The Directive applies to all Member States with the exception of Denmark, the UK and Ireland. As already mentioned, the whole of Title IV of the EC Treaty does not apply to Denmark, whereas the UK and Ireland might decide to opt in, which has not been done in case of the Directive on family

\(^{5}\) For instance Article 4(1), Article 4(6), Article 8.
\(^{7}\) 6912/03, 28 February 2003.