Chapter 6

Corresponding Provisions on Legal Migration in Member States with an Opt-Out

The four Directives on legal migration discussed above are not applicable to all Member States of the European Union, as Denmark, the UK and Ireland have negotiated opt-outs from any measures adopted under Title IV of the EC Treaty. The UK and Ireland have secured an opt-out from the entire Title IV EC with the ‘Protocol on the position of the United Kingdom and Ireland’ annexed to the Treaty of Amsterdam.1 Both countries have the possibility to ‘opt-in’ for the adoption of any measure adopted under Title IV within three months of a new proposal.2 Article 8 of the Protocol grants Ireland the right to opt-out from the entire Protocol. The Irish government has, however, declared its intention to participate in measures adopted under Title IV EC, as long as those are compatible with the maintenance of the Common Travel Area with the UK.3

The 1992 Edinburgh decision and the ‘Protocol on the Position of Denmark’, annexed to the Treaty of Amsterdam4 establish that Denmark will not participate in the supranational framework of JHA co-operation.5 Denmark has an opt-out for all measures adopted under Title IV EC, without the opt-in procedure available to the UK and Ireland. The Danish government may, however, decide to join measures adopted under Title IV EC on an intergovernmental basis. Intergovernmental co-operation takes place in the form of so-called ‘parallel agreements’ concluded between Denmark and the EU. However, the conclusion of such parallel agreements is a far more time-consuming process than the British/Irish opt-in procedure and the approval of the Council is required.6 Parallel agreements have been concluded in three cases. In the area

1 Protocol No. 4 annexed to the Treaty of Amsterdam.
2 Article 3 of the Protocol.
4 Protocol No. 5 annexed to the Treaty of Amsterdam.
of asylum, Denmark participates in the Dublin system\(^7\) and the Eurodac fingerprint database.\(^8\) In the area of civil matters, Denmark takes part in the two regulations replacing former intergovernmental conventions that Denmark has signed. However, parallel agreements can be seen as an “exception to the exception.”\(^9\) Denmark will acquire the opportunity to change its complete opt-out to the opt-out/opt-in situation that applies to the UK and Ireland under the Lisbon Treaty.\(^10\) Special rules apply to developments of the Schengen acquis, as Denmark is a member of Schengen. According to Article 5 of the Protocol on the position of Denmark, the country may decide, within a period of six months, to transpose a measure building on the Schengen acquis into its national law. In such a case, obligations under international law between Denmark and the other Schengen signatory states arise.\(^11\)

As they were adopted under Title IV of the EC Treaty, and thus fall under the general Danish and British opt-outs, Directive 2003/86/EC, Directive 2003/109/EC, Directive 2004/114/EC and Directive 2005/71/EC are not binding on Denmark and the UK. However, both countries have adopted legislation on the four categories of legal migrants covered by the Directives (family migrants, students, researchers and long-term residents). This chapter provides an overview of the rules concerning legal migration in Denmark and the United Kingdom, indicating similarities and differences to the EU Directives.

6.1. Family reunification

6.1.1. Definition of family members eligible for reunification

In Denmark, rules on family reunification are contained in the Danish Aliens (Consolidation) Act (Udlændingeloven, Udl) of 8 July 2008.\(^12\) Section 9(1) Udl

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7 Council Regulation (EC) No. 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, OJ L 50/1, 25 February 2003.


12 Bekendtgørelse af udlændingeloven LBK nr 808 af 08/07/2008.