

**QUESTIONNAIRE FOR THE NATIONAL REPORT  
ON THE IMPLEMENTATION OF THE DIRECTIVE  
FAMILY REUNIFICATION OF 22 SEPTEMBRE 2003**

CYPRUS

by

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30/5/07

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### COMMENTARIES

1. Council directive 2003/86 on the right to family reunification faced hard negotiations requiring the presentation of revised proposals from the Commission before final adoption in 2003. The European Court of Justice rejected in June 2007 an action for annulment introduced by the European Parliament against the Council directive (C-540/03).

2. Transposition of the directive must be assessed regarding the nature of the provision concerned. So as to help you, those provisions are coloured within the questionnaire as follows: obligatory provision (Q.XX), optional provision (Q.YY), provision which set up a derogation (Q.ZZ)

3. The Court of justice has defined the margins of discretion awarded to the member States even in situations where the directive allows the member States to depart from the directive. The Court states :

*"Article 4(1) of the Directive imposes precise positive obligations, with corresponding clearly defined individual rights, on the Member States, since it requires them, in the cases determined by the Directive, to authorise family reunification of certain members of the sponsor's family, without being left a margin of appreciation" (cons. 60).*

*"Note should also be taken of Article 17 of the Directive which requires Member States to take due account of the nature and solidity of the person's family relationships and the duration of his residence in the Member State and of the existence of family, cultural and social ties with his country of origin. As is apparent from paragraph 56 of the present judgment, such criteria correspond to those taken into consideration by the European Court of Human Rights when it reviews whether a State which has refused an application for family reunification has correctly weighed the competing interests" (cons. 64)*

*The fact that the concept of integration is not defined cannot be interpreted as authorising the Member States to employ that concept in a manner contrary to general principles of Community law, in particular to fundamental rights. The Member States which wish to make use of the derogation cannot employ an unspecified concept of integration, but must apply the condition for integration provided for by their legislation existing on the date of implementation of the Directive in order to examine the specific situation of a child over 12 years of age arriving independently from the rest of his or her family" (cons. 70).*

4. The main difficulty according to the transposition of the directive relies on the systematic opportunities offered to member States to depart from the provisions of the directive when applying it.

5. Article 19 indicates which themes were the most sensitive during the negotiations of the Directive (art. 3, 4, 7, 8 and 13).

**FIRST PART**

**1. NORMS OF TRANSPOSITION AND JURISPRUDENCE**

**Q.1.A.** Identify the **MAIN** (because of its content) norm(s) of transposition and indicate its legal nature

*The main norm of transposition is the Migration Law as amended in 2007. It is a statutory instrument (legislative), N 8 (I)/2007.*

*Please **duplicate** the table below if there is more than one **MAIN** norm of transposition*

<b>This table is about:</b> <input checked="" type="checkbox"/> a text already adopted <input type="checkbox"/> a text which is still a project to be adopted
<b>TITLE:</b> MIGRATION LAW as amended in 2007
<b>DATE:</b>
<b>NUMBER:</b> 8(I)/2007
<b>DATE OF ENTRY INTO FORCE:</b> 14/2/07
<b>PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive):</b>  The main body of the Migration Act ( in addition to the specific amendment mentioned above as 8 (I)/2007 _which covers the relevant directive) covers also matters affecting Removal by Air, Long Term , Illegal employment of Migrants , White Marriages, Carriers Liability )
<b>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:</b>
<b>LEGAL NATURE (indicate a cross in the correct box):</b> <input checked="" type="checkbox"/> LEGISLATIVE: <input type="checkbox"/> REGULATION: <input type="checkbox"/> CIRCULAR or INSTRUCTIONS:

**Q.1.B.** List the others norms of transposition by **order of importance of their legal nature (first laws, secondly regulations; thirdly circulars or instructions):**

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)

**There are no other norms of transposition**

*Please use one table per norm and **duplicate** as much as necessary*

<b>TITLE:</b>
<b>DATE:</b>
<b>NUMBER:</b>
<b>DATE OF ENTRY INTO FORCE:</b>
<b>PROVISIONS CONCERNED :</b> (for example if the norm is not devoted only to the transposition of the concerned directive)
<b>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:</b>
<b>LEGAL NATURE</b> (indicate a cross in the right box):
<input type="checkbox"/> LEGISLATIVE
<input type="checkbox"/> REGULATION
<input type="checkbox"/> CIRCULAR OR INSTRUCTIONS

**Q.2.** THIS QUESTION IS IN PRINCIPLE ONLY FOR FEDERAL OR ASSIMILATED MEMBER STATES LIKE AUSTRIA, BELGIUM, GERMANY, ITALY, SPAIN

**Q.2.A.** Explain which level of government is competent to adopt the norms of transposition.

*Please include your answer in the tables below*

<b>LEGISLATIVE RULES</b>
<b>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</b>
<b>COMPETENCES OF THE COMPONENTS:</b>
<b>EXPLANATIONS IF NECESSARY:</b>

<b>REGULATIONS</b>
<b>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</b>
<b>COMPETENCES OF THE COMPONENTS:</b>
<b>EXPLANATIONS IF NECESSARY:</b>

<b>CIRCULAR OR INSTRUCTIONS</b>
<b>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</b>
<b>COMPETENCES OF THE COMPONENTS:</b>
<b>EXPLANATIONS IF NECESSARY:</b>

**Q.2.B.** In case, explain if the federal structure and the distribution of competences between the different levels pose any problem or difficulty regarding the transposition and/or the implementation of the directive.

**Q.3.** Explain which authorities are competent for the practical implementation of the norm of transposition by taking the decisions in individual cases.

*Please use one table per competence concerned and duplicate it if necessary*

<b>COMPETENCE CONCERNED:</b>	
<b>CENTRAL MINISTRY OF:</b>	MINISTRY OF INTERIOR
<b>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</b>	MIGRATION DEPARTMENT
<b>OTHER LEVEL OF ADMINISTRATION:</b>	
<b>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</b>	The migration department is integral part of Ministry of Interior.

**Q.4. A.** Has the main regulation foreseen explicitly by the main norm of transposition already been adopted or not:

No other norms of transposition

YES

NO

**Q.4.B.** If the main norm(s) of transposition foresees the adoption of one or several regulations, indicate if they have all been adopted:

No other norms of transposition

YES

NO

**If NO, please indicate the missing text(s) in the table below**

*Please use one line per missing text and duplicate it if necessary*

<b>MISSING TEXTS</b>
<i>INDICATE HERE THE MISSING TEXTS</i>

**Add if necessary some explanations (specify in particular if the missing texts are at least under preparation or foreseen in the very near future):**

## SECOND PART

### AIM (ARTICLE 1)

*The purpose of the Directive is to determine the conditions for the exercise of the right to family reunification. In case C-540/03, the Court of justice recognizes that, in some cases, member States do not have any margin of appreciation to grant the right to family reunification.*

**Q.5** – Is family reunification considered as a right in your Member State?

OUI

NON

Please explain

*It is a statutory right provided in :*

<b>TITLE:</b> MIGRATION LAW as amended in 2007
<b>NUMBER:</b> 8(I)/2007
<b>DATE OF ENTRY INTO FORCE:</b> 14/2/07

**Q.5. A** – Are there any figures available relating to the exercise of the right to family reunification between 2002 and 2006? If yes, what are the trends, including nationality assessment?

*This right is a new one in Cyprus Law. It has been enacted in 14/2/07 and therefore there are no available figures.*

### DEFINITIONS (ARTICLE 2)

### SCOPE (ARTICLE 3)

*The scope of the Directive is defined by article 3. We recall that:*

- § 1 "reasonable prospect..." aims at excluding persons residing on a temporary basis (stagiaires, etc...)
- European citizens are excluded (§ 3)
- Comparison with existing legislation is of importance so as to assess the added value of the harmonization process (§ 5)

**Q.6.** Period of validity of the sponsor's residence permit:

**Q.6. A.** Is the period of validity of the sponsor's residence permit of one year or more according to article 3 § 1 of the Directive?

OUI Section 18 KI (1)

NON

**Q.2.B.** Quote precisely the period enshrined in national law:

Period is 1 years (section 18 KI (1) )

**Q.6.C.** How does your Member State translate in national law the requirement for the sponsor to have "reasonable prospects of obtaining the right of permanent residence" (a 3 § 1)?

Section 18 KI (1) "reasonable prospects of obtaining the right of permanent residence" ( exact translation of the directive)

**Q.7.** – Members of the family concerned:

**Q7. A.** Are they third country nationals as required by article 3 § 1 of the Directive ?

OUI

NON

If not, explain

**Q.7.B.** How has your Member State translated in national law the wording of "whatever status" included in article 3 § 1 of the Directive?

Section 18 KI (1) "independent from his status "

**Q.8** – Did the transposition of the Directive in your Member state breached provisions of international law more favourable to individuals (a 3 § 4)?

OUI

NON

**Q.9** – If yes, are those provisions based on:

**Q.9.A** - Bilateral and multilateral agreements between the Community or the Community and its Member States, on the one hand, and third countries, on the other?

OUI

NON

Specify which provisions

**Q.9.B** - The European Social Charter of 18 October 1961 (a 3 § 4)?

OUI

NON

Specify which provisions

**Q.9.C.** The amended European Social Charter of 3 May 1987 (a 3 § 4)?

OUI

NON

Specify which provisions

**Q.9.D.** The European Convention on the legal status of migrant workers of 24 November 1977 (a 3 § 4)?

OUI

NON

Specify which provisions

**Q.10** – Does the transposition of the Directive affect national provisions more favourable to individuals (a 3 § 5)?

OUI

NON

If yes, please specify which provisions

Note however that before the transposition of the directive the right of family reunification was exercised on an unofficial basis especially for employees/directors of off shore companies or other multinational companies located in Cyprus . There were no requirements to submit all the documents required by this directive (e.g prove of accommodation, insurance coverage etc ) . It was enough to prove that they have the means to support their family by producing work permit and pay slip.

#### **BENEFICIARIES (ARTICLE 4)**

- *Article 4 of the Directive contains numerous "may clauses". It is therefore important to pay attention on the way Member States use them and on the legal modalities adopted thereof.*
- *Article 4 § 1 a) and b) enacts a right to family reunification for some members of the sponsor's family. The Member State does not have any margin of discretion regarding those persons.*
- *Article 4 § 1 last indent foresee one derogation regarding child over 12 years on the basis of an integration criterion. This is one of the most sensitive questions encompassed by the directive beside the issue of the limit of age in § 6.*
- *Regarding article 4 § 6, the Court states ""It does not matter that the final sentence of the contested provision provides that the Member States which decide to apply the derogation are to authorise the entry and residence of children in respect of whom an*

*application is submitted after they have reached 15 years of age 'on grounds other than family reunification'. The term 'family reunification' must be interpreted in the context of the Directive as referring to family reunification in the cases where family reunification is required by the Directive. It cannot be interpreted as prohibiting a Member State which has applied the derogation from authorising the entry and residence of a child in order to enable the child to join his or her parents". (cons. 86) The Court adds " Article 4(6) of the Directive must, moreover, be read in the light of the principles set out in Article 5(5) thereof, which requires the Member States to have due regard to the best interests of minor children, and in Article 17, which requires them to take account of a number of factors, one of which is the person's family relationships" (cons. 87)*

**Q.11** – Does your national law recognize the right to family reunification to:

**Q.11. A** – The sponsor's spouse (a. 4 § 1 a)?

OUI Section 18 A

NON

The marriage must have taken place at least 1 year before the application is submitted.

**Q.11. B** - Minor children of the sponsor and of his/her spouse (a. 4 § 1 b)?

OUI

NON

**Q.11.C.** Minor children adopted of the sponsor and of his/her spouse (a. 4 § 1 b)?

OUI

NON

**Q.11.D.** Minor children of the sponsor (a. 4 § 1 c)?

OUI

NON

**Q.11. E.** If yes, does your national law foresee that the sponsor shall have children custody and children are dependant on him or her?

OUI

NON Section 18 A(2) ΣΤ This is necessary only for adopted children.



Specify if necessary the proofs required (Non applicable)

**Q.11 F.** Minor children adopted of the sponsor (a 4 §1.c) ?

OUI

NON

**Q.11. G.** If yes:

h. does your national law foresee that the sponsor shall have children custody and children are dependant on him or her?

OUI Section 18 AA(2) ΣΤ This is necessary only for adopted children.

NON

Specify if necessary the proofs required (Non applicable)

**g.g.** Does national law provide that those children shall be adopted "in accordance with a decision taken by the competent authority in the Member State concerned or a decision which is automatically enforceable due to international obligations of that Member State or must be recognised in accordance with international obligations'

OUI Section 18 AA(2) E

NON

Specify if necessary the proofs required

Adoption Certificate is needed

**Q.11. H.** Minor children of the spouse (a 4 §1.d.)?

OUI

NON

**Q.11. I.** If yes, does your national law foresee that the spouse shall have children custody and children are dependant on him or her?

OUI

NON

Specify if necessary the proofs required

**Q.11. J.** Minor children adopted of the spouse (a 4 §1.d) ?

OUI

NON

**Q.11. K.** If yes,

k. Does your national law foresee that the spouse shall have children custody and children are dependant on him or her?

OUI Section 18 A(1)(d) This is necessary only for adopted children.

NON

Specify if necessary the proofs required (Non applicable)

**k.k.** Does national law provide that those children shall be adopted "in accordance with a decision taken by the competent authority in the Member State concerned or a decision which is automatically enforceable due to international obligations of that Member State or must be recognised in accordance with international obligations"?

OUI

NON

Specify if necessary the proofs required

Adoption certificated is needed

**Q.12** – Has your Member State transposed the option opened by article 4 § 1 c:

**Q.12A.** To authorise reunification of minor children of the sponsor – including also adopted children – of whom custody is shared (a 4 §1.c)?

OUI

NON

Specify if necessary

**Q.12.B.** If yes, has your legislation transposed the condition that the other party sharing custody has given his or her agreement (a 4 §1. c)?

OUI

NON

Specify if necessary

**Q.13** – Has your Member State transposed the option opened by article 4 § 1 d):

**Q.13.A.** to authorise reunification of minor children of the spouse – including also adopted children – of whom custody is shared (a 4.1.d. in fine)?

OUI

NON

Specify if necessary

**Q.13 B.** If yes, has your legislation transposed the condition that the other party sharing custody has given his or her agreement (a 4. 1.d) ?

OUI

NON

Specify if necessary

**Q.14** – In any case referred to in questions 7 to 9, is the age of the minor children below the age of majority set up by the law of your Member State (a.4 §1, second indent)?

OUI Section 18 L

NON

If yes, indicate the age required

Eighteen years old

**Q.15** – In any case referred to in questions 7 to 9, has the prohibition of marriage of minor children been transposed (a.4 §1, second indent)?

OUI Section 18A

NON

If not, explain Si non, expliquez

**Q.16** – Is the derogation set up in article 4 § 1 last indent relating to the conditions for integration of children over 12 years arrived independently from the rest of the family used by your Member State?

OUI

NON

However note that the age is 15 and not 12 (Section 18 A (3) )

How the criterion "arrives independently from the rest of his/her family" has been transposed in your national legislation?

Section 18 K Θ translates the term as follows “ minor under 18 who arrives in the territory without being accompanied by an adult who is responsible in law for the minor in question”

**Q.17** – If yes, did this integration condition already exist in your national legislation before the date of transposition of the Directive?

OUI

NON

**Q.18** – Describe briefly the content of this condition, the date of its creation and the conditions of its examination

Entry into force : 14/2/07

**Q.19** – Are the children of refugees required to an integration test by your Member State (in contradiction with article 10 § 1)?

OUI

NON

If yes, explain

**Q.20** – Does your Member State authorise:

**Q.20 A** – Reunification of first-degree relatives in the direct ascending line of the sponsor (a 4§2 a)?

OUI

NON

**Q.20 B** – If yes, shall they be dependant and not enjoy proper family support in the country of origin?

OUI

NON

How each of those criterions is transposed and checked?

**Q. 20.C.** Reunification of first-degree relatives in the direct ascending line of the spouse (a 4§2 a)?

OUI

NON

**Q.20.D.** If yes, shall they be dependant and not enjoy proper family support in the country of origin?

OUI

NON

How each of those criteria is transposed and checked?

**Q.20.E.** Reunification of adult unmarried children of the sponsor? (a 4§2 b) ?

OUI

NON

If necessary, explain how this procedure is organised

**Q.20.F.** If yes, does the national legislation impose that those adult unmarried children of the sponsor are objectively unable to provide for their own needs on account of their state of health (a 4 §2 b) ?

OUI

NON

If necessary, specify how each of those criteria ("objectively" and "unable to provide for their own needs") is transposed and checked?

**Q.20. G.** Does your Member State authorise reunification of adult unmarried children of the spouse (a 4§2 b)?

OUI

NON

If necessary, specify how this condition is assessed

**Q.20.H.** If yes, does the national legislation impose that those adult unmarried children of the sponsor are objectively unable to provide for their own needs on account of their state of health (a 4 §2 b) ?

OUI

NON

If necessary, specify how each of those criteria ("objectively" and "unable to provide for their own needs") is transposed and checked?

**Q.20. I.** Did your Member state use the by law or regulation norms to implement article 4 § 2 a et b?

OUI

NON

**Q.21** – Does your Member State authorise reunification of the unmarried partner of the sponsor, being a third country national (a 4 §3)?

OUI

NON

**Q.22** – If yes:

**Q.22 A** – This partnership shall be based on a duly attested stable long term relationship?

OUI

NON

If yes, specify how your Member State assess this situation

**Q.22 B** – This partnership shall be registered?

OUI

NON

**Q.23** – Does your national law consider the registered partner as the husband/spouse (a 4 §3 alinéa 2)?

OUI

NON

**Q.24** – Does your Member State authorise:

**Q.24. A** – Reunification of minor children of the partner, including adopted children (a 4§3)?

OUI

NON

**Q. 24. B** – Reunification of adult unmarried children of the partner, including adopted children (a 4§3)?

OUI

NON

**Q.25** – Does your Member State allow reunification of adult unmarried children who are objectively unable to provide for their own needs on account of their state of health (a 4§3)?

OUI

NON

If yes, specify how the conditions, and more particularly the "objectivity", are assessed.

**Q.26** – Did your Member state use the by law or regulation norms to implement article 4 § 3?

**Q.27** – Is the prohibition of polygamous marriage enshrined in your national legislation (a. 4§4)?

OUI

NON

**Q.28** – Does your Member State limit family reunification of minor children of a further spouse and the sponsor (article 4§4 dernier alinéa.)?

OUI

NON

**Q.29** – Does your Member State use the option set up by article 4 § 5 requiring the sponsor and his/her spouse to be of a minimum age of 21 years old before reunification?

OUI Section 18 A (5)

NON

**Q.30** – If yes,

**Q.30 A** – What is the age required?

The age required is 21 years old (Section 18 A (5))

**Q.30 B** – Is the derogation founded on integration criteria and/or prevention of forced marriage?

There is no such indication in the national law .

**Q.31** – Does your Member State use the derogation of article 4 § 6 by requesting that the applications concerning family reunification of minor children have to be submitted before the age of 15?

OUI

NON 18 A (3)

Explain : The application can be submitted even after the age of 15 (up to 18) but the minor must not live independently from the sponsor. If the minor who is above 15 lives independently from the sponsor then the entry and stay is allowed on other grounds other than family reunification.

**Q.32** – If yes, was it provided by existing legislation on the date of implementation of the directive?

No provision in existing legislation before the implementation of the directive.

**Q.33** – If the application is not introduced before the age of 15, do Member States authorise entry and residence on grounds other than family reunification?

OUI

NON

Which grounds and which conditions?

No specific provision in national law.

#### **PROCEDURE (ARTICLE 5)**

*We draw attention on the major importance given by the Court of justice regarding § 5 relating to the best interest of minor children.*

**Q.34** – Did your Member State institute a procedure regarding family reunification (a 5 §1) ?

OUI

NON

**Q.35** – If yes,

**Q.35. A** – Which authorities are in charge of this issue?

Migration Department (Ministry of Interior)

**Note that** this procedure which is clearly provided in the law has not been implemented yet in practice because the necessary application documents for family reunification have not been issued by the migration department .



**Q.35. B** – Are NGO's associated to this procedure?

OUI

NON

If yes, describe the procedure

**Q.35. C** – Is the application submitted by the sponsor or by family members?

The application is submitted by the sponsor .

**Q.35. D** – Is this procedure exclusive from other possibilities to grant family reunification?

OUI

NON

If other procedural possibilities exist, please describe them

**Q. 35. E** – Was this procedure existing before the adoption of Directive 2003/86?

OUI

NON

**Q.36** – Which documentary evidence are required to prove (a 5 §2):

**Q.36. A** – Family relationships according to article 4?

The following documentary evidence is needed which must be issued by official authorities :

Marriage Certificate to verify the husband- wife relationships

Birth Certificate to verify child – parent relationship

Adoption Certificate to verify child – parent relationship

Custody Certificate to verify child – parent custody relationship

**Q.36. B** – Accommodation conditions laid down in article 7?

Visits will be made if necessary . No other evidence is officially required by law.

**Q.36. C** – Sickness insurance conditions?

Only a valid insurance for health. Nothing else is officially required.

**Q.36. D** – Certified copies of family member(s)' travel documents?

Certified Copy of a Valid Passport with validity period of at least two years

**Q.37** – Is the possibility foreseen to proceed to:

Interviews:

OUI Section 18 AA (4)

NON

Investigations:

OUI Section 18 AA (4)

NON

If yes, describe them briefly

The law provides that the Director is authorised to carry interviews if he/she considers necessary.

**Q.38** – When examining an application concerning the unmarried partner of the sponsor, which evidences are taken into account by Member States on the basis of national law to prove family relationship (article 5§2 dernier alinea) ?

Non Applicable

**Q.38. A** – Existence of family ties and other elements such as a common child?

OUI

NON

Specify

**Q.38. B** - Previous cohabitation?

OUI

NON

**Q.38. C** - Registration of a partnership

OUI

NON

**Q.38. D** - Any other reliable means of proof foreseen in national law?

OUI

NON

If yes, specify which ones:

**Q.39** – Are family members obliged to reside outside the territory of the Member State while the application is being examined (a5 §3) ?

OUI Section 18 AA (1)

NON

Is this obligation sanctioned and how?

No it is not

**Q.40** – If the answer is yes, is a derogation organised according to article 5 § 3 second indent?

OUI

NON

Please specify

**Q.41** – Does your national legislation include a maximum period of 9 month to answer to the application by way of written notification (a5 §4)?

OUI

NON

If necessary, please specify

**Q.42** – This time limit can be extended (a 5 §4 alinea 2) ?

OUI

NON

Section 18 AA (5)

**Q.43** – If yes,

**Q.43. A** – Because of the complexity of the examination of the application?

OUI

NON

If yes, please specify

**Q.43. B** – What is the length of the extension?

The extension is for three months . Section 19 AA (6)

**Q.44** – If no decision is taken by the end of the 9 months period provided, what are the consequences for the applicant?

The national Law does not provide for any consequences

**Q.45** – Is the decision rejecting the application notified? Does this written notification contain the reasons of rejection?

OUI

NON

Section 18 AA (5)

Specify if only one condition is not required

**Q.46** – How is the best interest of minor children taken into account by your Member State's legislation and authorities during examination of the application (article 5§5) ?

Section 18 AA (7) provided that the best interest of the minor are taken into account but there is no explanation of interpretation of the term in the law.

#### **CONDITIONS REQUIRED (ARTICLES 6 AND OTHERS)**

- *Questions relating to accommodation and resources will be carefully examined to assess if Member States use them, either as a migration tool or as an integration tool.*
- *The same assessment applies regarding the option to set up a period of lawful residence not exceeding two years before applying for family reunification.*
- *According to article 8, the Court of justice states: "That provision does not therefore have the effect of precluding any family reunification, but preserves a limited margin of appreciation for the Member States by permitting them to make sure that family reunification will take place in favourable conditions, after the sponsor has been residing in the host State for a period sufficiently long for it to be assumed that the family members will settle down well and display a certain level of integration. Accordingly, the fact that a Member State takes those factors into account and the power to defer family reunification for two or, as the case may be, three years do not run counter to the right to respect for family rights set out in particular in Article 8 of the ECHR as interpreted by the European Court of Human Rights*
- *"It should, however, be remembered that, as is apparent from Article 17 of the Directive, duration of residence in the Member State is only one of the factors which*

*must be taken into account by the Member State when considering an application and that a waiting period cannot be imposed without taking into account, in specific cases, all the relevant factors" (cons. 99). "The same is true of the criterion of the Member State's reception capacity, which may be one of the factors taken into account when considering an application, but cannot be interpreted as authorising any quota system or a three-year waiting period imposed without regard to the particular circumstances of specific cases. Analysis of all the factors, as prescribed in Article 17 of the Directive, does not allow just this one factor to be taken into account and requires genuine examination of reception capacity at the time of the application" (cons. 100) "When carrying out that analysis, the Member States must, as is pointed out in paragraph 63 of the present judgment, also have due regard to the best interests of minor children" (cons. 101).*

**Q.47** – Can public policy, public security or public health grounds be taken into account to (a 6 §§1 et 2):

**Q.47. A** – Reject an application for family reunification?

Section 18 AZ  OUI  
 NON

If yes, which ones?

All of them : Public security, public policy and public health.

**Q.47. B** – Withdraw an application for family reunification?

Section 18 AZ  OUI  
 NON

If necessary, please specify

**Q.47. C** – Refuse to renew a family member's residence permit?

OUI  
 NON

If necessary, please specify

Section 18 AZ (2)

Note however that in order to refuse to renew the application on grounds of public security the seriousness of the offence is examined and the danger that follows. Further in the event that health problem **appears after the residence permit is issued the permit will be renewed.**

**Q.48** – Does national legislation take into account:

**Q.48. A** – The severity or type of offence against public policy or public security?

OUI Section 18 AZ (2)

NON

**Q.48. B** – The solidity of family relationships regarding article 17 of the Directive?

OUI

NON

If necessary, please specify

Section 18 Α ΣΤ ( 4 ) - The director of Migration in the event he/she will issues a negative decision (revocation refusal to renew the license or expulsion ) takes into account – among other things- the solidity of family relationships. The law however does not define this term.

**Q.49** – Does your Member State withdraw the residence permit or remove the third country national on the sole ground of illness or disability suffered after the issue of the residence permit (a 6 §3)?

OUI

NON Section AZ (3)

**Q.50** – Are accommodation conditions required from the applicant (a7 §1a) ?

OUI

NON

**Q.51** – If yes:

**Q.51. A** – What are those conditions?

Ownership title or tenancy lease must be provided by the sponsor

**Q.51. B** – How are they assessed? Section 18 AB (b)

The housing must fulfill certain requirements such as to be similar to other houses in the same area , to be safe and to guarantee descent living. The Director of Migration may carry on investigations if necessary

**Q.51 C** – Are they comparable to the conditions required to a normal family living in the same region?

OUI Section 18 AB (b)

NON

If not, please specify the differences

**Q.52** – Is a sickness insurance required from the applicant (a. 7 §1b) ?

OUI Section 18 AB

NON

**Q.53** – Are stable resources required (a7 §1c) ?

OUI Section 18 AA

NON

Specify their nature and content

Contract of employment is needed valid for at least 18 months, contributions to the social security system and tax authorities.

**Q.54** – How is the condition "sufficient" assessed by your Member State? Is it in comparison with national wages?

There is no specific provision in the law as to the term ‘sufficient’. However there is a provision in the law that the sponsor must be able to support his family without any support from the state (section 18 AB (δ) )

**Q.55** – Are integration criterions required to allow family reunification (a 7 §2)?

OUI

NON

**Q.56** – If yes:

**Q.56. A** – What are those criterions?

**Q.56. B** – Do they apply indistinctly to all potential beneficiaries of reunification? (Spouse, dependant people, etc.)

**Q.56. C** – How are they evaluated by your Member State?

**Q.56. D** – Are refugees and their family members required to fulfil them (a 7 §2, second indent)?

OUI

NON

**The law is silent .**

**Q.57** – Is a minimal period of lawful reside is required before reunification (a 8 §1)?

OUI Section 18 AB

NON

**Q. 58** – Does this period exceed two years?

Please specify

**The time limit is two years before an application is submitted.**

**Q.59** – Does your Member State apply the derogation set up by article 8 § 2 allowing Member States to impose a waiting period of maximum three years due to reception capacities between the submission of the application and the issuance of a residence permit?

OUI

NON

Please specify

**Q.60** – If yes, did this derogation exist in national law before the 22nd of September 2003?

OUI

NON

## **FAMILY REUNIFICATION OF REFUGEES**

*The legal regime applicable to refugees derogates from the one applicable to family reunification. The scope of those derogations (minimal lawful residence, members of the family, accommodation requirements) shall be assessed on the basis of national law.*

**Q.61** – Does your Member State allow family reunification of refugees on the basis of Directive 2003/86 (a 9 §1) ?

OUI Section 18 KI (d)

NON



**Q.62** – Is this right limited to family relationships predating the entry on the territory (a 9 §2)?

OUI

NON

**Q.63** – Does your Member State allow family reunification of family Members not quoted in article 4 of the Directive (a 10 §2) ?

OUI

NON

Which members of the family and under which conditions?

The same conditions as other applicants. No special treatment for refugees.

**Q.64** – According to the specific case of unaccompanied minor refugees, does your Member State authorise family reunification of first degree relatives in the direct ascending line without applying the conditions laid down in article 4 § 2 (a10 §3 a) ?

OUI

NON

What conditions are required?

**Q. 65** – Does your Member State authorise entry and residence of the legal guardian or any member of the family where the unaccompanied minor refugee has no relatives in the direct ascending line or such relatives cannot be traced (a10 §3 b) ?

OUI

NON

If yes, please specify who the member of the family targeted is and which proofs are required to prove family ties?

**Q.66** – Does your Member State take into account other evidence of family relationship where the refugee cannot provide official evidence (a 11 §2) ?

OUI

NON

Which ones?

**Q.67** – Does the examination of the refugee application take into account their specific situation:

**Q.67. A** – Are proofs regarding accommodation conditions, sickness insurance or resources required (a 12 §1)?

OUI

NON

If yes, are those requirements comparable to those imposed to other third country nationals?

Exactly the same

**Q.67. B** – If one of the person concerned (sponsor or family member) has special links with a third country within which reunification is possible, does your member state require those proofs according to article 12 § 1 second indent.

OUI

NON

If necessary specify

**Q.67. C** – If a refugee has introduced its application after a period of three months, does your Member State require the refugee to meet the conditions or one of them (accommodation, sickness insurance, resources (a 12 §1 alinea 3) ?

OUI

NON

If yes, which ones?

**Q.68** – Does your Member State apply the prohibition to impose a residence condition before reunification (a 12 §2)?

OUI

NON

If not, what is the length of this period? Is it different from the one normally applied?

## EXERCISE OF THE RIGHT TO FAMILY REUNIFICATION

*The granting of an autonomous residence permit is one of the most sensitive issues of this part of the Directive.*

**Q.69** – Is entry and residence facilitated by your Member State, as soon as the application for family reunification has been accepted, including the issue of obtaining visas (a13 §1) ?

OUI Section 18 ΛΓ (1)

NON

If yes, how?

**Q.70** – Is a residence permit of at least one year's duration granted to the family members (a 13 §2)?

OUI Section 18 ΛΓ (2)

NON

What is the duration of the residence permit?

**Q.71** – Is this residence permit renewable?

OUI

NON

**Q.72** – Is the duration of the residence permit aligned with the duration of sponsor's residence permit (a 13 §3) ?

OUI Section 18 ΛΔ (1)

NON

If no, please specify

**Q.73** – Are the rights awarded to family members' equivalent to those granted to the sponsor (a14 §1):

**Q.73. A** – Regarding access to education?

OUI

NON

If no, please specify

**Q.73. B** - Regarding access to employment?

OUI Section 18 ΛΔ (2)

NON

Please specify the content of this access

They have the right to work as self employed or as employees and the have the same rights as the sponsor. This right however can only be exercised after the passing of a year from the granting of the residence permit.

**Q.73. C** – Regarding access to vocational guidance, initial and further training and retraining?

OUI

NON

Section 18 ΛΔ (1)

If no, please specify

**Q.74** – Does your Member State grant specific rights in social matters to reunified family members?

OUI

NON

If yes, please describe them and specify if a time limit is established to take advantage from them

**Q.75** – Has Member State set up conditions regarding specific access to employment for family members (a 14 §2)?

OUI

NON

If yes, how?

They have the right to work as self employed or as employees and the have the same rights as the sponsor. This right however can only be exercised after the passing of a year from the granting of the residence permit

**Q.76** – If yes, do those conditions exceed 12 months (a 14 §2)?

OUI

NON Section 18 ΛΓ (3)

Which ones?

**Q.77** – Is access to employment limited in your Member State

**Q.77.A** – Regarding first-degree relatives in the direct ascending line?

OUI

NON

If yes, how?

**Q.77. B** – Regarding adult unmarried children objectively unable to provide for their own needs on account of their state of health (a 14 §3)?

OUI

NON

If yes, how?

**Q.78** – Are spouses, unmarried partners and child who has reached majority entitled to an autonomous residence permit at least five years after lawful residence on the basis of the residence permit issued for family reunification (a15 §1)?

OUI Section 18 ΛΕ (spouses and children)

NON

If yes, please specify when and how for each category

**Spouces are entitled to an autonomous residence permit 5 years after lawful residence on the basis of the residence permit issued for family reunification. The spouse must apply individually . In the event of divorce the director of migration may give such an independent permit only to the spouse .**

**Children who reached the age of majority are entitled to an autonomous residence permit 5 years after lawful residence on the basis of the residence permit issued for family reunification. The children must apply individually.**

**Such an independent permit may also be issued where the sponsor dies or where there is a situation of domestic violence , sexual harassment or other similar situations.**

**Q.79** – Does your Member State limit the granting of the autonomous residence in cases of breakdown of the family relationship (a 15 §1 alinea 2)?

OUI

NON Section 18 A E

Please explain : This right is extended also in the case of death of the sponsor, in cases of domestic violence, sexual harassment

**Q.80** – Does your Member State grant autonomous residence permit:

**Q.80. A** – To first-degree relatives in the direct ascending line (a15 §2)

OUI

NON

If necessary specify

**Q.80. B** – To adult unmarried children objectively unable to provide for their own needs on account of their state of health (a15 §2) ?

OUI

NON

If necessary specify

The adult children can apply for an autonomous resident permit but there is no need to ‘be unable to provide for their needs on account of their state of health. They must be in Cyprus however for 5 years.

**Q.81** – Does your member State grant autonomous residence permit in the event of widowhood, divorce, separation or death of first first-degree relatives in the direct ascending or descending line (a 15 §3) ?

OUI

NON

If necessary specify :

**Section 18 AE (3) does provide for autonomous permit in the event of death but does not limit this to first degree relatives. Spouses may also be entitled to this kind of permit. Section 18 AE (2) provides that in the event**

**of divorce the director of migration may issue such a permit to the source only.**

**Q.82** – Has your Member State adopted rules granting autonomous residence permit "in the event of particularly difficult circumstances" (a 15 §3)?

OUI

NON

If yes, how is this provision defined and transposed?

Section 18 AE (3)

**Such an independent permit may also be issued in the event of particularly difficult circumstances such as : where the sponsor dies or where there is a situation of domestic violence , sexual harassment of minors and human trafficking .**

**PENALTIES AND REDRESS**

*Those provisions must be read in parallel with those relating to the conditions to be fulfilled to obtain family reunification (articles 6, 7, 8)*

*Questions relating fraud, false or falsified documents are of importance to assess their impact.*

**Q.83** – What are the legal grounds to reject, withdraw or refuse to renew a family member's residence permit (a16 §1 et 2):

**Q.83. A** – Conditions required by the directive not satisfied?

OUI

NON

**Q.83. B** – Absence of real marital or family relationship?

OUI

NON

If yes, how is this hypothesis assessed?

A number of Certificates must be submitted together with the application . If there is a suspicion that the marriage is not real the Director of Migration is statutory authorised to carry out a number of investigation in order to verify the absence of real family relationship.

**Q.83. C** – Stable long term relationship with another person?

OUI Section 18 Α ΣΤ

NON

If yes, how is this hypothesis assessed?

The Director of Migration is statutory authorised to carry out a number of investigation in order to verify the absence of real family relationship.

**Q.83. D** – False or falsified documents?

OUI

NON

**Q.83. E** – Marriage, partnership or adoption contracted for the sole purpose of enabling reunification?

OUI

NON

**Q.83. F** – If yes, how is this hypothesis assessed?

The Director of Migration is statutory authorised to carry out a number of investigation in order to verify the absence of real family relationship.

**Q.83. G** – When the sponsor's residence comes to an end and the family member does not yet enjoy an autonomous right of residence (a 16 §3) ?

OUI

NON

**Q.83. H** – What type of control are organised thereof?

**Q.84** – Are resources of the family taken into account when renewing residence permit where the sponsor does not have sufficient resources without recourse to the social assistance system of the member state?

OUI section 18 Α ΣΤ 1 (α)

NON



If yes, under which modalities? **The law only provides that ‘when renewing the residence permit and the sponsor does not have sufficient resources without recourse to the social assistance system of the member state, contributions of the family are taken into account’**

**Q.85** – Does your Member State's legislation take into consideration (a. 17) :

**Q.85. A** – The nature and solidity of the person's family relationships and the duration of his residence in the Member State?

OUI

NON

If yes, please specify how and on the basis of which norm (legislation, regulation, jurisprudence, ...)

Legislation (**Migration Act as amended in 2007 , section 18 Α ΣΤ (4) .** **The law does not define “solidity of the person's family relationships and the duration of his residence in the Member State”** but it states that these are taken into account.

**Q.85. B** - The existence of family, cultural and social ties with his/her country of origin where they reject an application, withdraw or refuse to renew a residence permit or decide to order the removal of the sponsor or members of his family?

OUI

NON

If yes, please specify how and on the basis of which norm (legislation, regulation, jurisprudence, ...)

Legislation **Legislation ( Migration Act as amended in 2007 , section 18 Α ΣΤ (4) ) . The law does not define “the existence of family, cultural and social ties with his/her country of origin”** but it states that these are taken into account.

**Q.86** – Do the sponsor and/or members if his/her family have the right to mount a legal challenge where an application for family reunification is rejected (a18 §1)?

OUI

NON

**Q.87** – Is this right to legal challenge considered as a right to a judicial review according to jurisprudence C-540/03 (a18 §1) ?

OUI

NON

**THIRD PART**

**XX. IMPACT OF THE DIRECTIVE ON NATIONAL LAW**

**Q.88 A** Did the transposition of the directive made the rules related to the best interest of minor children (a. 5 § 5) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

*Please use one box per object and duplicate it if necessary*

<b>OBJECT</b>		<b>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</b>	<b>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</b>
<b>Due regard to the best interest of minor children during examination of the application a. 5 § 5</b>			
There was no legislation or regulations before the transposition .	Family reunification for minor children (including adopted minor children) of the sponsor and spouse provided that they have the sole custody . They minor children must be under 18 and single.	Complete this box by keeping the right appreciation and deleting the two others: <ul style="list-style-type: none"> <li>• <i>More favourable than previous national rules</i></li> </ul>	Complete this box by keeping the right appreciation and deleting the other one: <ul style="list-style-type: none"> <li>• <i>In line with the directive</i></li> </ul>

**Q.88 B** Did the transposition of the directive made the rules related to the beneficiaries of the right to family reunification become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

*Please use one box per object and duplicate it if necessary*

<b>OBJECT</b>		<b>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</b>	<b>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</b>
<b>Definition of the beneficiaries of the right to family reunification a. 4 § 4</b>			
No laws or regulation before the transposition	The national "rules" are in line with the definition of beneficiaries as stated in the directive. For the issue of custody , national law requires that the minor children must be in the exclusive custody of	Complete this box by keeping the right appreciation and deleting the two others:	Complete this box by keeping the right appreciation and deleting the other one:

	the sponsor or spouse. Further the spouse must be above 21 and they must be married for at least one year .	<ul style="list-style-type: none"> <li>• <i>More favourable than previous national rules</i></li> </ul>	<ul style="list-style-type: none"> <li>• <i>In line with the directive</i></li> </ul>
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**Q.88 C** Did the transposition of the directive made the rules related to reunification of minor children between 12 (a. 4 § 1) and 15 (a. 4 § 6) years old become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

*Please use one box per object and duplicate it if necessary*

<b>OBJECT</b> <b>Limitation of reunification of minor children of 12 and 15 years of age (a. 4 § 1 and 4 § 6)</b>		<b>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</b>	<b>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</b>
No laws or regulation before the transposition	<p>A. The national law does not require a child who is aged over 12 years and arrives independently from the rest of his/her to meet a conditions for integration .</p> <p>B. If the application is submitted after the age of 15, Cyprus applies the derogation of 4.6 and authorises the entry and residence of such children on grounds other than family reunification.</p>	<ul style="list-style-type: none"> <li>• <i>More favourable than previous national rules</i></li> </ul>	<ul style="list-style-type: none"> <li>• <i>In line with the directive</i></li> </ul>

**Q.88 D** Did the transposition of the directive made the rules related to requirements to the exercise of family reunification (article 7) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

*Please use one box per object and duplicate it if necessary*

<b>OBJECT</b> <b>Requirements for the exercise of family reunification (a. 7)</b>	<b>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</b>	<b>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</b>

<p>No laws or regulations before transposition</p>	<p>When the application for family reunification is submitted, national law requires the person who has submitted the application to provide evidence that the sponsor has:</p> <p>(a) accommodation regarded as normal for a comparable family in the same region and which meets the general health and safety standards in force</p> <p>(b) sickness insurance in respect of all risks normally covered for its own nationals</p> <p>(c) stable and regular resources which are sufficient to maintain himself/herself and the members of his/her family, without recourse to the social assistance system</p> <p>No integration measures are needed.</p>	<ul style="list-style-type: none"> <li>• <i>More favourable than previous national rules</i></li> </ul>	<ul style="list-style-type: none"> <li>• <i>In line with the directive</i></li> </ul>
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**Q.88 E** Did the transposition of the directive made the rules related to margins of manoeuvre awarded to Member States (a. 5 § 5, 17, C-540/03) become from the point of view of the third-country national concerned more favourable or less favourable regarding the evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

*Please use one box per object and duplicate it if necessary*

<p><b>OBJECT</b></p> <p><b>Limitation of margins of manoeuvre (a. 17, a.5 §5, C-540/03)</b></p>	<p><b>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</b></p>	<p><b>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</b></p>
<p>No laws or regulations before transposition</p>	<p>When examining an application, the competent authorities must have due regard to the best interests of minor children. (there is no definition or guidelines as to the meaning of the "best interest")</p>	<ul style="list-style-type: none"> <li>• <i>More favourable than previous national rules</i></li> <li>• <i>In line with the directive</i></li> </ul>

**Q.88 F** Did the transposition of the directive made the rules related to integration objectives and criterions more favourable or less favourable regarding the

evolution of national law. Make also a comparison with the standard of the directive in the last column of the table below

Please use one box per object and duplicate it if necessary

OBJECT Attention draw upon integration objectives (considérant 15) and criterions of integration (a.4 §1 dernier alinéa, a. 7 §2)		EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW	EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE
No laws or regulations before transposition	Criterion in 4. 1 ( no integration conditions are required by national laws for children above 12)  Criterion 7.2 ( no integration measures are needed)	<ul style="list-style-type: none"> <li>• <i>More favourable than previous national rules</i></li> </ul>	<ul style="list-style-type: none"> <li>• <i>In line with the directive</i></li> </ul>

**Q.89** From your point of view, did the transposition of the directive imply other interesting changes for the third national country regarding other elements than the ones mentioned in the previous question. Make also a comparison with the standard of the directive in the last column of the table below

If they want to do so, the thematic coordinators should complete this question by indicating the number of examples that they ask the national reporter to give.

Please use one box per object and duplicate it if necessary

OBJECT (to be <u>precisely</u> indicated by the national rapporteur)		EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW	EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE
No laws or regulations before transposition	Non applicable	<i>Non applicable</i>	<i>Non applicable</i>

**Q.89. A.** Mention if there is a general tendency to just copy the provisions of the directive into national legislation without redrafting or adaptation them to national circumstances.

NO

YES

**Q.89.B.** **If yes, please indicate if this general tendency may or not create problems (for example difficulties of implementation, risk that a provision remain unapplied).**

NO

YES

**Q.89.C.** **If yes, give some of examples:**

**Q.89.D.** **If only some provisions of the directive have been copied and if this may create any problem, please quote them and explain the problem.**

**Q.90.** **Quote *interesting decisions of jurisprudence* related to the directive, its transposition or implementation (so this question concerns in principle decisions later that the directive, but previous ones might be quoted if relevant). Quote in particular decisions of supreme Courts; limit yourself to the appeal Courts and ignore the first resort if there are too many decisions at this level, unless there is a certain jurisprudence made of a group of decisions.**

NON APPLICABLE: no cases have been presented before Cyprus Courts with reference to this directive because it has been enacted in March 2007 and its implementation did not start yet due to the fact that the necessary application documents have not been prepared by the authorities yet.

*Please use one box per decision and duplicate it if necessary*

<b>DECISION OF SUPREME COURTS</b>	<b><u>DATE:</u></b>	<b><u>REFERENCE OF PUBLICATIONS:</u></b>	<b><u>SUMMARY OF CONTENT:</u></b>
<b>DECISION OF APPEAL COURTS</b>	<b><u>DATE:</u></b>	<b><u>REFERENCE OF PUBLICATIONS:</u></b>	<b><u>SUMMARY OF CONTENT:</u></b>
<b>DECISION(S) IN FIRST RESORT</b>	<b><u>DATE:</u></b>	<b><u>REFERENCE OF PUBLICATIONS:</u></b>	<b><u>SUMMARY OF CONTENT:</u></b>

ANY SUPPLEMENTARY COMMENT ABOUT THE TREND OF THE JURISPRUDENCE:

**Q.91** Specify if there are or not problems with the translation of the text of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated.

There are no problems with the translation of the directive

There are some problems with the translation of (indicate the number of the articles concerned) of the directive.

Explain the difficulties that this could create:

**Q. 92 ANY OTHER INTERESTING ELEMENT**

**Q.92 A.** Following your personal point of view, mention from the point of view of third country nationals and/or from the Member State any interesting or innovative practice in your Member State

*Please use one table per practice and duplicate it if necessary*

OBJECT OF THE PRACTICE	EXPLANATIONS

**Q.92 B.** Please add here any other interesting element in your Member State which you did not had the occasion to mention in your previous answers