Ad-Hoc Query on Main National Case Law Regarding EU Directives on Legal Migration

Requested by COM on 27th March 2014

Reply requested by 24th April 2014

Responses from Belgium, Bulgaria, Estonia, Finland, France, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Romania, Slovak Republic, Sweden, United Kingdom, plus Norway (18 in Total)

Disclaimer: The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.

1. Background Information

An EMN Inform is going to be launched with the aim of providing information on existing case law concerning the interpretation and application of legal instruments within the EU *acquis* on legal migration. The EMN Service Provider has already collected information on relevant case law of the Court of Justice of the European Union (EUCJ) from the entry into force of the Treaty of Lisbon, in December 2009, onwards. However, some previous judgments were also highlighted, where relevant, due to their impact on future judgments.

Regarding the case-law at national level, the EMN NCPs are asked to provide with the most relevant judgements/rulings that had a major impact on the field of legal migration. With the aim of tailoring the scope of this query, the first question takes into consideration only judgments given at the upper level of national jurisdictions and concerning the area of legal migration covered by EU law. The second question is formulated in a way to inform us of any and which case-law had a relevant impact on national legislation or caused a main change in Member States' policy or practise, again in the area

of legal migration. The case-law to which we refer in the second question could be either a ruling of national judges or, as well, a ruling of the EU Court of Justice. For example, we know that some Member States changed the requirements for family reunification following recent EUCJ case-law or national judgements.

Questions:

1. Please provide a short summary of main national case law given by upper judiciary bodies concerning the area of legal migration which is covered by EU law. As a term of reference you can use the following list of EU Directives:

- **Directive 2003/86/EC** of 22 September 2003 on the right to family reunification;
- **Directive 2003/109/EC** of 25 November 2003 concerning the status of third-country nationals who are long-term residents;
- **Directive 2004/114/EC** of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service;
- **Directive 2005/71/EC** of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research;
- **Directive 2009/50/EC** of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment;
- **Directive 2011/98/EU** of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State.

2. Please inform of any main change/shift in national policy, law or practise in the area of legal migration which was caused, inspired or influenced by national or EU case law on this field. You may refer to a ruling of national jurisdictions or, as well, issued at EU level, *i.e*, a ruling of the Court of Justice of the European Union (EUCJ), or a ruling of the European Court of Human Rights (ECHR).

Note: this second question aims to know whether any main change/shift in Member States' policies, law or practises took place as a (even partial) consequence of a national or EU case law, without necessarily referring to EU Directives or other pieces of EU law.

We would very much appreciate your responses by **24th April 2014**

2. Responses

		Wider Dissemination?	
	Belgium	**Yes**	1. Belgium has relevant case law only with respect to the scope of application of Directive 2003/86/EC from 22 September 2003 on the right to family reunification. In fact, the Constitutional Court, in its ruling 121/2013 from 26 September 2013, examined the conditions attached to the family reunification. The Court inter alia interpreted, in the light of the Directive 2003/86/EC, certain provisions of the Law of 15 December 1980 (relating to access to the territory, residence, establishment and removal of foreigners) establishing conditions for family reunification of family members of third-country nationals. The provisions concerned in particular include : - Article 8, 1st paragraph of the Directive and Article 10, 1st paragraph, 1°, 4° and 5° subparagraphs of the Law of 15 December 1980. The Constitutional Court pointed out that the period of lawful stay (fixed in the Directive to a period not exceeding two years) that is required before family members may join the TCN, must take into account periods of authorization to stay in Belgium for a limited duration preceding the granting of the authorization of unlimited stay or settlement. - Article 5, 4th paragraph, 2nd subparagraph of the Directive and Article 10ter, 2nd paragraph of the Law of 15 December 1980. The Constitutional Court stressed that circumstances, in which the time limit (9 months) is extended for the Member States' authorities to notify the decision on the application, are exceptional and linked to the complexity of the examination of the application as stipulated in the Directive. - Article 16, 1st paragraph, (a) of the Directive and Article 11, 2nd paragraph, 1st subparagraph, 1° of the Law of 15 December 1980. When renewing the residence permit, Member States shall take into account not only the resources from the sponsor but also the contributions of family members. - Article 12, 1st paragraph, 1st subparagraph of the Directive and Article 13, 1st paragraph, 4th subparagraph of the Law of 15 December 1980. The proof of sufficient means of subsistence can't be required for the extension of the residence (right) of the father and mother of the foreigner who has been recognized as refugee or beneficiary of subsidiary protection. The above-mentioned ruling of the Constitutional Court hasn't led to legislative changes given the fact that no provision relating to family reunification of family members with third-country nationals has been annulled. However a Circular (of 13 December 2013) clearly explained how certain provisions of the Law of 15 December 1980 were interpreted by the Court. To the best of our knowledge, there is no relevant case law in the area of the other Directives. 2. The most noteworthy legislative change was caused by a ruling of the Court of Justice of the EU. Following the judgment in the

			Zambrano case (EUJC, C34/09, 8 March 2011), Article 40ter of the Law of 15 December 1980 (relating to access to the territory, residence, establishment and removal of foreigners) was supplemented by a provision allowing for family reunification of Belgian minors with their two parents. Two other legislative changes are underway: - Modification of Article 40bis of the Law of 15 December 1980, which in its 2nd paragraph, 1st subparagraph, is supplemented by a provision allowing for family reunification of the father or mother of a minor EU citizen, provided that the latter is dependent on his father or mother and placed in his/her custody. This enshrines in Belgian law the judgment of the Court of Justice of the European Union on the Zhu & Chen case (CJEU, C-200/02, 19 October 2004). - Modification of Article 15bis of the Law of 15 December 1980, relating to the long-term residence status. The change is a result of the judgment of the Court of Justice of the European Union in the SINGH case (CJEU, C-502/10, 18 October 2012) and removes the requirement of the right of residence of indefinite duration to be able to request the long-term residence status. Sources: - Litigation Unit of the Immigration Department - Directive 2003/86/EC from 22 September 2003 on the right to family reunification - Law 15 December 1980 relating to access to the territory, residence, establishment and removal of foreigners - Belgian Constitutional Court, Ruling 121/2013 from 26 September 2013 - Circular of 13 December 2013 relating to the application of provisions of the Law of 15 December 1980, that concern conditions for family reunification, that were interpreted by the Constitutional Court in its ruling n°121/2013 from 26 September 2013. - http://www.emnbelgium.be/news/implementation-family-reunification-provisions-interpreted-belgian-constitutional-court - Judgment in case C-34/09, Court of Justice of the European Union, 8 March 2011. - Judgment in case C-200/02, Court of Justice of the European Union, 19 October 2004. - Judgment in case C-502/10, Court of Justice of the European Union, 18 October 2012.
	Bulgaria	**Yes**	➢ Directive 2003/86/EC of 22 September 2003 on the right to family reunification; National laws and practices in the Republic of Bulgaria are highly harmonized with the European legislation in terms of the principle of family reunification as well as in terms of issues related to marriages of convenience. Specific measures are introduced to facilitate and better manage the family reunification. These measures are: specific secondary legislative acts to refine national legislation in this direction. Specific hypotheses are determined defining the negative opinion of the responsible bodies at the request of a TCN to be granted right of residence in Bulgaria.A residence permit or extension of the stay shall be denied to a TCN who has married a Bulgarian citizen or a TCN or who is adopted by a Bulgarian citizen or foreigner who has obtained a residence permit if there is evidence that the marriage is concluded or adoption is made solely to circumvent the norms regulating the regime of aliens in the Republic of Bulgaria and obtaining a residence permit.The decision to refuse a residence permit shall be made by the services for administrative control of foreigners based on

			data giving rise to a reasonable conclusion that the marriage was contracted or adoption was made solely to circumvent the norms regulating the regime of aliens in the Republic of Bulgaria and to obtain a residence permit. Such data may be circumstances that the spouses or the adoptee and the adopter does not live together; the lack of contribution to the obligations of marriage; the spouses did not know each other before the marriage; given conflicting information about the personal data of the spouse or adopted child (name, address, nationality, profession), the circumstances of their acquaintance or other important personal information; the spouses or the adoptee and adoptive parent does not speak a language understood by both; the payment of money for marriage outside the usual dowry; the presence of previous marriages or adoptions concluded to circumvent the rules governing the regime of aliens; the fact that the marriage was contracted or adoption took place after the alien has obtained a residence permit.All those data may be found out through interviews (conducted by officers of the administrative control of foreigners), in the written statements of the concerned or of third persons, by means of official documents or by inspections and investigations made by public authorities. The services for administrative control of foreigners are obliged to hear the parties affected (LFRB, art.26).In respect with the tendencies that in previous years many cases of marriages of convenience have been observed, and in order to prevent further cases of circumvention the rules of the law, national legislation adopted changes in the respectivel laws that the right of permanent residence is granted to a foreigner on ground of affiliation or adoption - three years after affiliation or adoption occurred. ➢ Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment; The exercise of highly qualified employment of foreigners in Bulgaria occurs in accordance with the Bulgarian and European labour and social security legislation. The latest policy change regarding the admission of highly-qualified TCN labour force in the Republic of Bulgaria was made in relation to the Council Directive 2009/50/EC – the so called EU Blue Card Directive. The EU Blue Card for highly-qualified workers was introduced by the Bulgarian Government in June 2011. Although the admission of highly-qualified TCN labour force is a priority of the national policy in the field of migration, the migrant inflow of this group of TCNs in Bulgaria is relatively small compared to other EU Member States.[1] Main factors to explain this tendency relate to the low wage levels in the country, again compared to the rest of the EU, the relatively high home unemployment rate in the past few years and the high ratio of highly-qualified specialists already on the home labour market. A leading priority in Bulgaria's policy of attracting TCNs for the purposes of highly-qualified employment is to attract TCNs of Bulgarian descent, especially from the historic areas with population of Bulgarian background. The presumption of this policy is that these are persons with strong relations with the country, speaking the Bulgarian language and familiar with the Bulgarian culture. Another approach under discussion is to facilitate the employment for TCN graduates from Bulgarian universities. In 2013 several projects were carried out in the framework of the annual EIF programmes with the aim to familiarize employers in the major cities of the country with the EU Blue Card Directive and its transposition in the Bulgarian national legislation. As a result, it was found that larger companies implement the new regulations, while small and medium sized enterprises don't have sufficient information about the matter, thus verifying to the need to continue implementing such information programmes.

[1] Under the EU Blue Card a total of 23 permits for highly qualified workers were issued to citizens of Rusia, Kazahstan, Albania, Armenia, Turkey, India, US, South Africa, Japan and Ukraine.

			Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State In 2013 the Bulgarian authorities undertook steps to fully transpose into Bulgarian legislation Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State (transposition required by 25 December 2013). To this end amendments to the following legal acts were made: Law on Employment Promotion, Law on Foreigners in the Republic of Bulgaria, Ordinance for the Conditions and Order of Issuance, Refusal and Revocation of Work Permits for Foreigners in the Republic of Bulgaria, the Regulation on the Implementation of the Law on Foreigners and the Regulation on the Implementation of the Law on Employment Promotion. ➢ Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service; ➢ Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research; In 2013 no regulation change was implemented in the field of admission of students and researchers. Bulgaria has been working on the new proposal for codification of Council Directive 2004/114 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service and Council Directive 2005/71/EC on the specific procedure for admitting third-country nationals for the purposes of scientific research in a single new directive. According to the Regulation of the state requirements for the recognition of higher education and completed periods of study in foreign universities, the right to recognition of higher professional qualifications is given to Bulgarian citizens, foreigners and persons with refugees' status. Recognition of higher education, acquired in foreign universities, in order to facilitate access to the labour market or for other purposes, if the applicant has a legal interest, is organized by the Ministry of Education and Science through the National Centre for Information and Documentation. The recognition procedure takes two months from submission of the necessary documents. Cooperation with other Member States and the exchange of information on academic recognition is carried out within the European network of academic recognition and recognition of professional qualifications (ENIC/NARIC). In the national legislation of the Republic of Bulgaria the relevant Community legislation in the area of migration and asylum has been introduced and implemented. It has been reflected in a number of legal acts in the primary, secondary and tertiary national legislation. Implementing the criteria set out in fundamental directives of the European Union is a key element of a common immigration policy aimed at ensuring, at all stages efficient management of migration flows, fair treatment of third-country nationals residing legally in Member - States, and prevents illegal migration. The development of migration processes will result in transforming Bulgaria from a country emitting emigrants to a country accepting immigrants. Creating a policy framework will build a comprehensive and sustainable legal and institutional basis for ensuring the successful management of legal migration and integration, and prevention and countering illegal migration. The implementation of the overall objective results in: effective prevention and combating illegal migration; more effective management of economic migration and integration; making migration and mobility drivers for development in economic and demographic plan.

			Illegal migration /Return directive/ - Kadzoev, case C-357/09 The first case was decided by the ECJ even before the deadline to transpose the directive had expired (Kadzoev, case C-357/09 PPU) and dealt with the issue of pre-removal detention. The case regarded an irregular immigrant who had been detained for removal by the Bulgarian authorities for a protracted period of time, and whose removal appeared impossible to achieve given the fact that the Russian Federation did not recognize his documents and was not willing to accept his repatriation. In this first case, the ECJ clarified that pre-removal detention may not be extended after expiration of its maximum length and that it ceases to be justified when it appears that a reasonable prospect of removal no longer exists. As scholars immediately pointed out, however, while this decision clearly required immediate liberation of Mr. Kadzoev, the legal framework of EU law on irregular immigration did not answer the question of his legal status: EU law does not require Bulgaria to issue him even temporary documents recognizing his position, and less so to regularize it.
	Estonia	**Yes**	There have been some cases in Estonian courts where EU law on legal migration has been analysed 1) Directive 2003/86/EC of 22 September 2003 on the right to family reunification – there are some cases in Estonian courts and one case that changed the law and practice of the law a. Estonian Supreme Court decision 3-3-1-44-11 from 03.07.2012 (available in Estonian http://www.riigikohus.ee/?id=11&tekst=222548349) where the court did not accept the Police and Boarder Guard Boards appeal in a case where a residence permit to settle with an adult child living in Estonia was refused to an elderly couple. This couple lived in Estonia before 1990 and up to 1996 (husband served in the Soviet Union military forces) when they accepted financial support (money and an apartment in Russia) from USA reintegration program and accepted to leave Estonia and not to return. According to Estonian Aliens Act, foreigners who participated in these programs will not receive a residence permit to settle in Estonia. This couple applied for a residence permit to settle under the right to family reunification with their adult child living in Estonia since they need care. Police and Boarder Guard Board refused to issue the residence permit, since the family had participated in the reintegration program and given an acceptance never to return. Estonian Supreme Court analyzed many rulings of the European Court of Human Rights and the right of family reunification and found the Aliens Act to be unconstitutional in part where administrative body does not have discretionary power to decide family reuinification cases where a person has participated in the reintegration program. The Aliens Act was changed after this ruling: i. Aliens Act § 125 point 1'1 "If an alien has committed to leaving the Republic of Estonia, has received a dwelling in a foreign state through an international aid programme or has received support for leaving Estonia, the alien may be issued a temporary residence permit as an exception if he or she is applying for a residence permit to settle with a close relative on the basis provided for in clause 150 (1) 3) of this Act. [RT I, 02.07.2013, 3 – entry into force 01.09.2013]" b. Estonian Supreme Court decision 3-3-1-61-09 from 09.11.2009 (available in Estonian http://www.riigikohus.ee/?id=11&tekst=RK/3-3-1-61-09) where the court did not accept a persons appeal against the decision to refuse temporary residence permit to settle with a cohabitee with whom the person met while staying in Estonia and was not legally married. The court found that Estonian legislation was in accordance with the directive.

			2) Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents – there are some cases in Estonian courts but no case law that would change the law or practice of the law a. Estonian Supreme Court decision 3-3-1-1-14 from 27.02.2014 (available in Estonian http://www.riigikohus.ee/?id=11&tekst=RK/3-3-1-1-14) where the court needed to evaluate whether the Police and Boarder Guard Board had followed the directive 2003/109 when withdrawing the long term resident status. The Supreme Court Decided that the decision to withdraw the long term resident status was justified. b. Estonian Supreme Court decision 3-3-1-42-09 from 18.06.2009 (available in Estonian http://www.riigikohus.ee/?id=11&tekst=RK/3-3-1-42-09) where the court needed to evaluate whether the Police and Boarder Guard Board had been justified when not considering a person as a long term resident. The Supreme Court Decided that the decision to deny temporary residence permit was justified. 3) Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service – no case law in Estonian courts (neither first instance nor Supreme court); 4) Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research – no case law in Estonian courts (neither first instance nor Supreme court); 5) Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment – no case law in Estonian courts (neither first instance nor Supreme court); 6) Directive 2011/98/EU of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State – no case law in Estonian courts (neither first instance nor Supreme court).
	Finland	**Yes**	1. ➢ Directive 2003/86/EC of 22 September 2003 on the right to family reunification; Regarding the implementation of Section 35§ of the Alien's Act, which stipulates that a foreigner must have a valid travel document in order to be granted a residence permit, the Supreme Administrative Court ruled (6th of Feb. 2014) that a person can, in the circumstances prsented, be issued a residence permit even without having a travel document accepted by Finland. In this case a family member of a Finnish citizen was applying for a residence permit on the basis of family reunification. As the conditions for family reunification were otherwise met according to Section 50§ of the Alien's Act the Supreme Court considered that refusing the residence permit was unduly restricting the right to family reunification, as the person was not able to obtain a valid travel document that is accepted by the Finnish authorities from the person's country of origin (Somalia). Art. 8 of the European Convention on Human Rights was mentioned in the ruling by the Supreme Court. Regarding the best interests of the child, Finland has implemented its legislation along the lines of the rulings by the European Union Court of Justice (TFEU art. 20) already previously, therefore there has been no need to change the implementation.

<table>
<tr>
<td></td>
<td></td>
<td></td>
<td>

Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents; Finland does not have relevant case law on the issue.
Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service; Finland does not have relevant case law on the issue.
Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research; Finland does not have relevant case law as the procedure has rarely been used. Even before the implementation of the Directive, the FI national procedure was easier and faster for the applicant.
Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment; Finland does not have relevant case law as the procedure has rarely been used. Even before the implementation of the Directive, the FI national procedure was easier and faster for the applicant.
Directive 2011/98/EU of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State. Finland does not yet have relevant case law as the procedure entered into force on the 1st of January 2014

2. The above mentioned issue with the obligations for a valid travel document, has been clarified by national case law as well EU case law (how art. 20 TFEU has been evoked).
</td>
</tr>
<tr>
<td></td>
<td>France</td>
<td>Yes</td>
<td>1.
<table>
<tr><td colspan="2">Directive 2003/86/EC of 22 September 2003 on the right to family reunification</td></tr>
<tr><td>Case-law of the Conseil d’Etat</td><td>Summary</td></tr>
<tr><td>Conseil d'Etat, 19 May 2010, CIMADE/GISTI, request n°323758</td><td>1) The provisions introduced by Articles 4 and 5 of Decree n°2008-1115 of 30 October 2008 on the preparation of integration of foreign nationals wishing to settle permanently in France, which add an evaluation and training period of six months maximum to the regular residence period of 18 months minimum necessary in order to submit an application for family reunification, do not impose on the sponsor to stay on the national territory for a period of more than two years before the visa application is processed. These provisions are thus in accordance with Articles 8 and 13 of Directive 2003/86/EC;

2) The application of these provisions to minors aged between 16 to 18 years is not contrary to either the best interests of the child protected by</td></tr>
</table>
</td>
</tr>
</table>

	Article 3-1 of the Convention on the Rights of the Child or the principle of equality.
Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents	
Case-law of the Conseil d'Etat	*Summary*
Conseil d'Etat, 26 December 2013, M. Nouri-Shakeri, request n°366722	Whilst being not specifically excluded from the calculation of the applicant's resources who applies for an EC long-term residence permit, the solidarity allowance for the elderly and the disabled adult allowance shall not be taken into account.
Conseil d'Etat, 5 March 2014, Mme B., request n°374145	By requiring foreign nationals who apply for a long-term residence permit to have a minimum amount of resources other than the ones coming from social aid, without providing exemption for disabled persons, the legislator did not failed to observe the principle of equality.
Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service	
Case-law of the Conseil d'Etat	*Summary*
Conseil d'Etat, 13 February 2013, GISTI, request n°353864	By aligning the level of resources required for a foreign national to obtain a residence permit as a student with the basic monthly allowance paid to scholarship students of the French Government, the Decree No. 2011-1049 of 6 September 2011, which is not intended to exclude an individual examination of each case, set out a condition of appropriate level of minimum resources to cover living and study costs of a student in France.

2.

Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents	
Case-law of the Conseil d'Etat or Court of Justice of the European Union	*Changes in national law/practice*
ECJ, 26 April 2012, C-508/10, European Commission v Kingdom of the Netherlands	From 1 January 2013, taxes related to the issuance of a temporary residence permit to a third-country national, who has been granted the EC long-term resident status in another Member State and who wishes to settle in France, have been reduced:
	Specific tax and duty stamp

			Temporary residence permits delivered to third-country nationals who have been granted the EC long-term resident status in another Member State and who wishes to settle in France: 2012: 2013 Student: 77€: 77€ Scientist/Researcher: 368€: 260€ Employment: 368€: 260€ Temporary worker: 19€: 19€ Artistic and cultural professions: 368€: 260€ Commercial, industrial or craft occupation: 368€: 260€ Other professional activity not subject to authorization: 368€: 260€ Visitor: 368€: 260€ Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service Case-law of the Council of State or Court of Justice of the European Union: *Changes in national law/practice* *Conseil d'Etat, 15 April 1996, Mme Rakotomavo, request n° 136079*: The student temporary residence permit can only be renewed if the applicant justifies that the proposed studies are genuine and serious.
	Hungary	**Yes**	Directives listed below have entirely been transposed in the national law on time. Legal practice has been adjusted to the legal regulations in force, no hitches have arisen in practice. In terms of directives concerned, we do not have information about judicial practice either at EU or at national level that would have defined the legal practice of proceeding in cases of students, researchers, or those having EC permanent residence permit conceptually. Moreover, in case of EC Blue Card and Single Permit use of appeal is not typical either. There have only been ad hoc decisions, with low relevance, made at national judicial levels so far that have not required full reform of the judicial practice. In vast majority of the cases, courts share the point of our Office.

	Ireland	**Yes**	Directive 2003/86/EC of 22 September 2003 on the right to family reunification *Hamza v. Minister for Justice [2013] IESC 9* *Minister not entitled to rely on fact that marriage had taken place by proxy as basis for refusing application for family reunification.* The applicant was a national of Sudan who had been granted refugee status. He applied to the Minister for Justice pursuant to s. 18 of the Refugee Act 1996 for family reunification with his spouse. In the course of his application he submitted a certificate which indicated that the marriage had taken place by proxy. The application was refused by the Minister on that account, it being held that the spouse did not qualify as a member of his family by reason of that. The High Court (Cooke J.) quashed the decision on two bases, namely that the marriage was a proxy marriage and as such was not valid in Irish law; and that an incorrect test for recognition of a subsisting marital relationship between the refugee and the "spouse" had been applied for the purpose of Section 18(3)(a) of the *Refugee Act 1996*. The Minister unsuccessfully appealed the decision of the High Court to the Supreme Court, which held that proxy marriages which were valid according to the law of the locality in which they took place would be recognised as valid in Irish law, provided the parties had the capacity to contract them at the time and unless some factor of public policy applied to prevent or to relieve the State from recognising them. It is of interest to note that, in the course of the High Court's decision, it examined the purpose behind s. 18(3)(a) of the Act of 1996 and indicated that it should be interpreted in the light of the provisions of Directive 2003/86/EC, notwithstanding that Ireland does not participate in that Directive. It said at paragraphs 31 to 34 of its judgment that it appeared reasonable to assume that s. 18 had been incorporated into the Act of 1996 in the interests of facilitating the reception of refugees and ensuring their personal wellbeing whilst in the State. It noted that the legislation had not been enacted in discharge of any binding obligation of international law because family reunification, as such, was not provided for in the Geneva Convention of 1951 or the 1967 Protocol thereto, and that Ireland had not opted into Council Directive 2003/86/ECon the right to family reunification. It observed, however, that the UNHCR, by means of various instruments, had encouraged the Contracting States to recognise and respect the "essential right" of refugee families to unity and to facilitate its achievement. It also pointed to the rationale of family reunification, as expressed in Recital (4) to the Council Directive, which provided that:- *"Family reunification is a necessary way of making family life possible. It helps to create socio-cultural stability facilitating the integration of third country nationals in the Member State, which also serves to promote economic and social cohesion, a fundamental Community objective stated in the Treaty."* Notwithstanding the non-binding nature of those sources, the High Court stated that it was desirable that the provisions of s. 18 should be

			construed and applied, to the extent that statutory interpretation permitted, in a manner which was consistent with those policies and with the consensus apparent among the Member States of the Union in the objectives of the Council Directive. As regards the circumstances in which a claimed marital relationship should be recognised by the Minister for Justice, the High Court went on to note that the Article 4(1) of the Directive required the participating Member States to authorise the entry and residence of immediate family members, including the "sponsor's spouse", without defining the term "spouse". It pointed to the fact that Article 4.3 provided that the participating Member States might authorise entry and residence of the sponsor's "unmarried partner, being a third country national, with whom the sponsor is in a duly attested stable, long-term relationship…" and that Article 5.2 provided that when an application concerning an unmarried partner was examined, "Member States shall consider, as evidence of the family relationship, factors such as a common child, previous cohabitation, registration of the partnership and any other reliable means of proof". Finally, it noted that Article 16(1), in listing the grounds upon which the participating Member States might reject or withdraw the residence permit of a family member, included the situation where the sponsor and his/her family member(s) do not or no longer live in a real marital or family relationship. The High Court held that it was therefore clear that the approach of the Directive towards the relationship between the refugee (sponsor) and his or her spouse was based upon the assessment of the reality of the conjugal relationship rather than upon the availability of formal verification of the legality of the marriage contract, and that that corresponded closely with the approach recommended by the UNHCR. It therefore concluded that, in the absence of any contrary requirement imposed by the literal interpretation of s. 18(3)(b) of the Act of 1996, a purposive construction of the provision, consistent with what it termed the "authoritative guidance" provided by the Directive and the UNHCR, led to the conclusion that the recognition of the marital relationship of spouse and refugee ought not to be confined to cases in which proof was forthcoming of a marriage validly solemnised in foreign law and recognisable in Irish law. A refugee who was able to demonstrate the existence of a subsisting and real marital relationship with the person the subject of the application was entitled to have the martial relationship recognised for the purposes of reunification under s. 18 of the Act of 1996, unless some reason of public policy intervened to prevent its recognition. It held that that would be particularly so in cases such as the one before it, where it could be demonstrated that the relationship had subsisted over many years; that the marriage had been consummated and where it was not disputed that there were children of the relationship of whom the refugee was a parent. In its judgment, it was incumbent on the Minister, in those cases, to give due weight to those factors above all, notwithstanding deficiencies that might be apparent in formal documentary proofs of the ceremony. *Hassan v. Minister for Justice* [2013] IESC 8 *Minister not entitled to rely on religious nature of marriage as basis for refusing application for family reunification and had failed to take account of explanation for inability to produce marriage certificate* The applicant was a national of Somalia and was granted refugee status. He then applied to the Minister for Justice pursuant to s. 18 of the Refugee Act 1996 for family reunification with his spouse. He indicated in his application that his marriage was religious in nature but he

			was unable to provide any documentary evidence of it on account, he said, of the ongoing conflict in Somalia. His application was refused by the Minister on the basis of insufficient documentary evidence. The applicant's solicitors sought a review of the decision and submitted what was claimed to be an original marriage certificate, which had been obtained from the Somali embassy in Ethiopia. The application was then refused because the marriage was religious in nature. The applicant took proceedings to challenge that decision and the High Court quashed it. It held that the explanation for the failure to register the marriage in Somalia, namely the lack of any civil registration system owing to the conflict there, was confirmed by country of origin information. In quashing the decision, it held, first, that the statement that the marriage was not recognised in Irish law because it was religious was not correct. Even if the formal requirements of the *lex loci celebrationis* had not been complied with, the marriage was still potentially capable of being recognised in the State as a valid common law marriage. Secondly, it held that the decision was based upon an incorrect interpretation of the test of a marital relationship applicable under s. 18(3)(b) of the Refugee Act 1996. Where a refugee was in a position to prove by alternative means that, since the date of the claimed marriage ceremony, a real marital relationship based on cohabitation and exclusivity in the relationship had subsisted between the two parties in question over a substantial period, the Minister might be entitled to consider that the requirement of Section 18(3) was satisfied. The Minister appealed unsuccessfully to the Supreme Court. The Supreme Court held, first, that the Minister was not entitled to rely on the fact of the marriage as being religious as a ground for refusal and, secondly, that he had not taken sufficient account of the explanation given for the inability to produce a marriage certificate from Somalia in the circumstances of that country at the relevant time. It acknowledged that the question of whether an applicant was married, as alleged in a family reunification application, was a matter for the Minister to decide, but that he had to apply the law properly in doing so. It held that it was not open to the Minister to decline to decide that question by suggesting that the applicant seek a declaration pursuant to Section 29 of the Family Law Act 1995. In its decision, the Supreme Court differed slightly with the approach taken by Cooke J. in *Hamza* with regard to the circumstances in which a claimed marital relationship might be recognised. The Supreme Court noted that there might be good reason for adopting a broad and flexible approach to proof of the fact of a marriage ceremony, where the very difficult personal circumstances of a refugee so required. It held, however, that the considerations which prompted such openness to proof of marriage did not suggest, at least not necessarily, that such proof could be dispensed with entirely, in favour of what Cooke J. called "the reality of the conjugal relationship." It held that, in the case before it, the Minister for Justice had been confronted with an application based on a clear assertion of a marriage ceremony with legal effect in Somalia, combined with the total loss of any possibility of producing documentary proof. It stated that the Minister was required to make an assessment based on all the evidence and with the assistance of the report prepared on foot of the investigation of the application. He was required to consider the assertion made by the applicant that a marriage had taken place and to assess its credibility, based on all the circumstances. He was not bound to accept a bald assertion but should consider it in combination with all other circumstances. One of those circumstances would be the reason offered for inability to produce a certificate. It held that he should take into account such evidence as might be provided that the parties have cohabited as a married couple. None of those

			considerations was decisive. It observed that he was not bound to accept the certificate which purported to emanate from the embassy in Ethiopia, but that there was nothing to prevent the applicant submitted explanation as to how the embassy came to issue it. *Aslam v. Minister for Justice* [2011] IEHC 512 *Application of approach inspired by Directive 2003/86/EC in deciding whether or not couple should be regarded as married* The applicant was a Pakistani national. She was with child arising out of a relationship with her fiancée, Fakherr Udin, also a Pakistani national. The couple had gone through a form of Islamic marriage by proxy in Rabwah in Pakistan in February, 2011, and one of the issues which arose in the proceedings was whether the marriage should be regarded as valid by Irish law. Having referred to the flexible approach of the High Court in *Hamza v. Minister for Justice*, and to the evidence before it, the court concluded that the couple should be regarded as married. *AAM v. Minister for Justice [2013] IEHC 68* *No objective yardstick used by Minister for Justice when refusing to accept that payments made by applicant to alleged dependants were sufficient to conclude that they were actually dependent on him, resulting in unlawful decision* The applicant, a national of Somalia, had been granted refugee status in the State and he applied for family reunification with his mother and four siblings under Section 18 of the *Refugee Act 1996*, who lived in a camp in Somalia. He sent them approximately €157 *per* month. Whilst the court accepted the claimed family relationship, his application was refused on the basis that his family members were not financially dependent on him. It was considered that the applicant might be in a position to continue to provide financial assistance to his family in Somalia given that the cost of living in Somalia would be lower than that in Ireland. He was granted leave to challenge the refusal on the basis, first, that the Minister had erred in finding that transfers of €2830 from him to the family members in Somalia over the period September, 2009 to May, 2011 were not enough to establish financial dependency. The court noted that €157 a month was almost three times the gross minimum wage in neighbouring Kenya and a very substantial amount given the circumstances of the subjects of the application in a camp in Somalia; and, secondly, that the Minister had applied the wrong test with respect to dependency. The court, in granting leave, noted that the test posited in the Refugee Act was not forward looking and did not relate to the possible position in Ireland in the future. Accordingly, the finding that the subjects of the application would, in effect, be better off in Somalia, where the cost of living was lower, was not a relevant consideration in deciding whether they were dependent upon the applicant. The court held that an inability to maintain family members in Ireland was not relevant to the assessment of dependency. It noted that Ireland had opted out of Council Directive 2003/86/EC, but it said that it was nevertheless of value to consider that the Directive allowed Member States which were party to it to impose pre-conditions for the family reunification of refugees who failed to apply promptly for

			family reunification. In this regard, it pointed to Article 7(1) of the Directive, which provided: *"When the application for family reunification is submitted, the Member State concerned may require the person who has submitted the application to provide evidence that the sponsor has:* *(a) accommodation regarded as normal for a comparable family in the same region and which meets the general health and safety standards in force in the Member State concerned;* *(b) sickness insurance in respect of all risks normally covered for its own nationals in the Member State concerned for himself/herself and the members of his/her family;* *(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 of the Member State concerned. Member States shall evaluate these resources by reference to their nature and regularity and may take into account the level of minimum national wages and pensions as well as the number of family members.* It observed in the light of this that the potential burden placed on the host Member State arising from unconditional family reunification was a matter of concern to the drafters of the Directive. In turn, it opined that the potential burden of admitting foreign nationals likely to become reliant on social welfare might also be a matter of concern for the Minister when he was exercising his discretion under s. 18(4) of the Refugee Act 1996 to grant an application for family reunification. However, the court was critical of the system for determining family reunification before it, stating that, in contrast to what it termed the total absence of guidance available to refugees in Ireland, refugees recognised by other Member States which had transposed Directive 2003/86/EC would be fully aware of which, if any, of the criteria outlined in Article 7 of that Directive that applied to them. By way of example, it stated that if a refugee had not acted promptly and could not meet those criteria, then a goal could be set for achievement in the future by rapidly seeking employment. If that option is not available, the refugee could be resigned to sending remittances and the waiting expectant family members could adjust their expectations. In its opinion, no such clarity was available for such persons in the State. It stated that such a process lacked clarity and transparency and needed to be overhauled, suggesting that resources could be saved if the Minister for Justice were to draw up guidelines on what was required to establish "dependency" and, where such dependency was established, under what conditions family members would be permitted to join the refugee. *Ducale v. Minister for Justice* [2013] IEHC 25 *Refusal of application for family reunification application on basis that claim of dependency not made out. Decision quashed by High Court on basis that no objective criteria available by which to assess dependency and that an inadequate investigation of the claimed dependency had occurred* The first named applicant was declared a refugee in Ireland in 2004. In 2007 te second named applicant, her husband, and their two biological children were granted permission to enter and reside with her in Ireland pursuant to s. 18(3) of the Refugee Act 1996. The applicants claimed, in addition, to be the *de facto* parents of her niece and nephew who were allegedly orphaned as infants and had been part of their family ever since. The first named applicant had unsuccessfully applied twice for permission for them to be reunited with her

			and her husband and their two children in Dublin. They obtained leave to quash the second refusal of the Minister for Justice, which was based on his finding that they had failed to establish that the niece and nephew were dependent on the first named applicant, as required under s. 18 of the Refugee Act 1996. At the post-leave stage, the High Court quashed the Minister's decision. The High Court noted that although the concept of dependency was central to the discretionary powers of Member States established under Directive 2003/86/EC, the Directive contained no definition of the term. It observed, however, that the UNHCR specifically recommended consideration of dependent persons who the refugee family has taken in and cared for, such as unaccompanied children or elderly neighbours with whom there was no blood relation. That approach, it pointed out, had been echoed by the European Council on Refugees and Exiles (ECRE) in an Information Note on Directive 2003/86/EC published in 2003 which expressed the view that "*the dependence of an adult unmarried child on its parents should not be assessed only in terms of their state of health and ability to materially sustain themselves, but should be seen in its financial, as well as psychological and cultural aspects."* The court went on to refer to the UNCHR's 2011 Response to a Green Paper prepared by the European Commission on Directive 2003/86/EC, where the UNHCR expressed its concern that some Member States had adopted a very strict interpretation of dependency and required a "*very high level*" of proof, and urged that "*the element of dependency among family members, physical and financial, as well as psychological and emotional, should find its appropriate weight in the final determination*." The court concluded that there was objective support for the contention that "dependency" was not confined to total financial dependence but involved a wider concept, taking account of all relevant economic, social, personal, physical, familial, emotional and cultural bonds between the refugee and the family member who was the subject of the family reunification application. Moreover, it held that there was support for the contention that financial dependency had to be seen as a flexible state of affairs which was not necessarily determined by the size of a contribution, but rather on its effect in the context of the specific country of residence and personal circumstances of the person in receipt of it. Turning to the facts of the case before it, the court noted that although the first named applicant could not find all of her receipts, her evidence was that she regularly sent $70 to $100 monthly to her niece and nephew, and had repeatedly informed the Family Reunification Section of the Department of Justice that living conditions were very poor in the part of Addis Ababa where they resided and that they were not permitted to work. The Family Reunification Section had also been informed by her that the money sent to them was all the money they had. Twenty-one phone cards had also been furnished as evidence that the applicants had a strong parental relationship with them and rang them regularly. The court concluded that it could not be an appropriate measure of dependency simply to add up a selection of receipts and declare that the total could not amount to dependency. It noted that the Irish Embassy had not conducted any investigation into the cost of living in an illegal camp in Addis Ababa, that no country of origin information had been consulted with regard thereto or to whether the residents in the camp received any humanitarian food or clothing aid. In those circumstances, it held that the Minister's assessment seemed to be no more than an arbitrary evaluation based on no identified criteria. It found that no discernible objective yardstick had been identified by which the measure of dependency had been assessed, and it quashed the decision.

			T. v. Minister for Justice [2008] IEHC 361 *Refusal of family reunification application by Minister for Justice. Refusal quashed by High Court on basis that decision reached in breach of fair procedures. Court noting provisions of Directive 2003/86/EC regarding importance of the right to family reunification, which informed its interpretation of s. 18 of Refugee Act 1996.* The applicant was recognised as a refugee in Ireland and in 2003 he applied for family reunification with his wife and three children. The Minister for Justice refused the application in 2007, on the basis of certain discrepancies in the evidence and documentation pertaining to it. The applicant obtained leave of the High Court to quash the decision, and it was ultimately quashed at the post-leave stage. In its decision, the High Court held that the Minister's decision had been reached in breach of fair procedures. It was not persuaded by an argument that the applicant could submit a further application and address the concerns outlined by the Minister in his refusal decision. In reaching that conclusion, the court had regard to the recital 4 of Directive 2003/86/EC. It said that the matter of family reunification was one of great urgency and importance. The fundamental importance of the family unit and its right to be protected was enshrined at the heart of the Irish Constitution, and was further protected by Article 16 of the Universal Declaration of Human Rights and Article 8 of the European Convention on Human Rights, among other domestic, regional and international instruments. It noted that the right of a refugee to apply for family reunification was protected by s. 18 of the Refugee Act 1996 and under Council Directive 2003/86/EC, recital 4 to which provided that:- *"Family reunification is a necessary way of making family life possible. It helps to create sociocultural stability facilitating the integration of third country nationals in the Member State, which also serves to promote economic and social cohesion, a fundamental Community objective…"* Bearing this in mind, the court pointed out that that family reunification was not only a way of bringing families back together, but also essential to facilitating the integration of third-country nationals into the State and into the EU. It observed that refugees finding themselves alone in a foreign country which has admitted them, traumatised by the events that brought them there, more than ever needed the society and support of their immediate family, and that every effort had to be made to ensure such reunification occurred as quickly as possible. In that regard, it stated that it found the timeline pertaining to the making of the decision to be disturbing, noting that it had taken four years from the date of application. It held that a person like the applicant was entitled to a decision within a reasonable time and that what had happened represented an unsatisfactory state of affairs. *AMS v. Minister for Justice* [2014] IEHC 57 *Refusal by Minister for Justice of application for family reunification. High Court quashed decision and adopted interpretation of s. 18 of*

			Refugee Act 1996 consistent with purpose of family reunification as set out Directive 2003/86/EC The applicant was a citizen of Somalia and was declared a refugee in Ireland in 2009. That same year, he applied for family reunification in respect of his mother, wife, daughter, two sisters and two brothers. The application was refused. The challenge was concerned only with the applicant's mother, born in 1950, and his remaining siblings, born in 1992, 1993 and 1997 The Minister for Justice's refusal decision accepted that the family members were financially dependent on the applicant and that his mother was suffering from a physical disability to such an extent that it was not reasonable for her to maintain herself fully. In refusing the application, the Minister emphasised the desirability of immigration control, the economic well-being of the country, and its health and welfare systems, having regard, *inter alia*, to the ill-health of the applicant's mother. The applicant complained that the Minister has exceeded the discretion conferred on him under s. 18(4) of the Refugee Act 1996 to grant permission to a dependent member of the family of a refugee to enter and reside in the State. The court accordingly sought to ascertain the breadth of the discretion with a view to determining if it had been exercised lawfully. The High Court (MacEochaidh J.) professed itself aided in its task by the decision of the High Court (Cooke J.) in *Hamza v. Minister for Justice*, discussed above, where it considered the legislative purpose of s.18 of the Act of 1996. The court in *AMS* noted that Cooke J. had held that s. 18 of the Act of 1996 should be construed harmoniously with the Directive insofar as possible. It agreed with him that s.18 had been enacted in the interests of facilitating the reception of refugees and ensuring their personal well-being whilst in the State. In its view, s.18(4) constituted legislative recognition that some family relationships required personal proximity. It considered that to grant a person asylum, but to refuse the family the access needed in order to meet various moral obligations would fail to achieve the object of "facilitating the reception of refugees and ensuring their personal wellbeing while in the State". It concluded that what it termed the "central and often exclusive focus" placed on financial dependency in family reunification decisions was misplaced. In its view, if the externally located family member only needed money, there would be no point in allowing him or her to come to Ireland. It considered that the giving financial support to family members in the country of origin was often an expression of the relationship of dependency, but that it was not necessary for such assistance to be given in order for dependency to exist. It formed the view that the drafters of s. 18 of the Act of 1996 had acknowledged the benefit of facilitating family reunification for refugees where dependency was established, and had not intended that such advantages would be available only to the lucky few refugees who had sufficient resources to support not only themselves, but also their dependents in Ireland. It accordingly held that the Minister for Justice was not entitled to refuse entry to the State to qualifying dependent family members of a declared refugee because of the likelihood that such persons would be dependent on the State for material support, and it quashed his decision. Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents;

			Hussein v. Minister for Justice [2014] IEHC 34 *Refusal of application for long-term residence made pursuant to administrative scheme in circumstances where applicant convicted of motoring offence for which maximum penalty was six months in prison. Refusal quashed by High Court on basis that scheme was to be interpreted in accordance with s. 4 of Immigration Act 2004, which only permitted a refusal of permission on the basis of a criminal conviction carrying potential penalty of imprisonment of twelve months or more.* The applicant was a citizen of Bangladesh and had been working in Ireland since 2005. He initially worked in accordance with the terms of a work permit which was subsequently renewed on a number of occasions over a period of five years. On 16th March, 2010, he applied for long term residence with exemption from work permit conditions which would enable him to reside and work in the State for a period of five years. This was a non-statutory scheme, pursuant to which a number of conditions were provided, one of which was that an applicant had to be of good character. In 2011, the applicant wrote to the Department of Justice informing it that he had been convicted of driving a motor car without insurance and fined €300, which he had paid. Later that year, he was informed that his application for long-term residence had been refused by the Minister. He was told that in the course of a character check carried out by the Garda National Immigration Bureau, a report had been received from An Garda Síochána indicating that he had come to their adverse attention, having been convicted of the offence of driving without insurance. He instituted proceedings and obtained leave from the High Court to quash the Minister's decision. The High Court (McDermott J.) noted that in a previous decision, *Saleem v. Minister for Justice* , Cooke J. had observed that the grant of permission under the scheme was a matter for the exercise of discretion by the Minister for Justice under s. 4 of the Immigration Act 2004. McDermott J. noted that s. 4(1) of the Act of 2004 permitted an immigration officer on behalf of the Minister to give a non-national permission to land or be in the State, and that s. 4(3) provided the grounds upon which permission might be refused. Section 4(6), he stated, provided that an immigration officer might, on behalf of the Minister, attach to a permission to land or remain "such conditions as to duration to stay and engagement in employment, business or a profession in the state as he or she may think fit" and that s. 4(10) provided that, in performing functions under subs.(6), an immigration officer was to have regard to all of the circumstances of the non-national concerned known to him or represented to him by the non-national. McDermott J. pointed out that the "circumstances" of the non-national clearly included any convictions recorded against him. He noted that the decision of the immigration officer to give a non-national permission to land or be in the State was also subject to the proviso that the permission (or its renewal) might be refused under s.4(3) if the officer was satisfied that the non-national had been convicted (whether in the State or elsewhere) of an offence that capable of being punished under the law of the place of conviction by imprisonment for a period of one year or by a more severe penalty. He concluded that it was clear that before the administrative parameters for long-term residency were conceived, the issue of previous convictions had been considered as a matter of policy by the legislature and discretion was specifically vested in the immigration officer to

			refuse leave to be in the State or to remain in it following its renewal to an applicant convicted of an offence to which a penalty of twelve months imprisonment or more might apply. McDermott J. noted that the penalty provided for in respect of the offence of which the applicant had been convicted rendered him liable on summary conviction to a fine not exceeding €5,000 or, at the discretion of the court, to imprisonment for a term not exceeding six months or to both such fine and imprisonment. In his view, it was the clear that the possible penalty fell well short of the twelve month period of imprisonment referred to under s. 4(3) of the Act of 2004, and that the parameters for the grant of long-term residency did not indicate that a previous conviction of a lesser kind might be taken into account under s. 4. In his view, s. 4(3) indicated the extent to which the legislature intended previous convictions to be taken into account. McDermott J. formed the view that a policy existed in the Department of Justice of refusing applications from those convicted of offences such as driving without insurance because it was considered to be a serious offence. He noted that the applicant's application was refused as a result of his criminal conviction alone. He held that the refusal was inconsistent with the spirit, terms and intention of s. 4(3). The "good character" condition of the residency scheme, insofar as it permitted a refusal because of a conviction for a s. 56 offence, was at variance with the policy of the legislature as expressed under the Act. He was satisfied that the Minister had unlawfully and unreasonably restricted his discretion by adopting such a policy and moreover, in refusing the application on the sole ground of the conviction, had acted contrary to the intention of the legislature as set out in s. 4(3) which, in his view, precisely delineated the nature of a criminal conviction which might result in a refusal. He noted that it had been submitted in the course of the hearing that the court should have regard to the provisions of Council Directive 2003/109/EC concerning the status of third country nationals who are long term residents. Although Ireland opted out of this Directive, it was contended that regard should be had to its terms and that s. 4 of the Act of 2004 should be interpreted in a manner consistent with it and the consensus apparent among other European Union members and furthermore, that those principles should inform the discretion to be exercised in the applicant's case. Reliance was placed on the decision of Cooke J. in *Hamza v. Minister for Justice* [2010] IEHC 427 where he considered the provisions of Council Directive 2003/86/EC on the right to family reunification when construing s. 18 of the Refugee Act 1996, even though Ireland had not opted into the Directive. McDermott J. noted that paragraph 8 of the recital to the Directive provided that third country nationals who wished to acquire and maintain long-term residency status "should not constitute a threat to public policy" and that the notion of public policy might cover a conviction for committing a serious crime. Article 6 conferred on Member States discretion to refuse long-term residence status on grounds of public policy or public security and provided:- *"When taking the relevant decision, the Member State shall consider the severity or type of offence against public policy or public security, or the danger that emanates from the person concerned, whilst also having proper regard to the duration of the residence and the existence of links with the country of residence."* However, McDermott J. held that s. 4(3) was clear in that it only permitted a refusal of permission on the basis of a criminal conviction

			which carried a potential penalty of imprisonment of twelve months or more. He considered that s. 4(3) was a more precise provision than Article 6 of the Directive in that it clearly identified the seriousness of the offence of which the applicant had to be convicted before it was permissible to consider a refusal on that basis. It conferred discretion to refuse to grant a long-term residency status on grounds of public policy. Although the State had opted out of the Directive, he noted that s. 4 appeared to accord with its general principles. He was therefore satisfied that it was not necessary to employ the provisions of the Directive as an aid to interpretation. The ordinary words of s. 4 were clear, as was the purpose of the section to define the nature of the discretion vested in the Minister to refuse an application for permission to remain and to confine it to the defined class of convictions. Accordingly, he held that a less serious conviction could not be relied upon as the sole reason for a refusal and he quashed the refusal decision. Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service *Ireland has not participated in this Directive and it is not discussed in any Irish caselaw.* Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research; *Ireland is participating in this Directive, but it is not discussed in any Irish caselaw.* Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment; *Ireland has not participated in this Directive and it is not discussed in any Irish caselaw.* Directive 2011/98/EU of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State. *Ireland has not participated in this Directive and it is not discussed in any Irish caselaw.* Impact on Irish immigration system of decision of Court of Justice of the European Union (CJEU) in C-34/09 *Zambrano* The case of *Zambrano* concerned a Columbian father of children with Belgian nationality where the family were all living in Belgium. The children, having Belgian nationality, were accordingly Union citizens. The Belgian authorities denied the father residence and he was also obliged to cease working. The opinion of the Advocate-General and the judgment of the CJEU make clear that the effect of his removal from Belgium would have been that his wife and their Belgian national children would also have to leave the country. *Refoulement* considerations prevented the father from returning to Colombia, and the children did not have Colombian nationality. In

			effect, therefore, the proposed removal of their father compelled the children to leave Belgium in circumstances where no apparent right to enter any other country was available to them. The key passage of the decision of the CJEU is to be found at paragraph 45, where it said:- *"Article 20 TFEU [Treaty on the functioning of the European Union] is to be interpreted as meaning that it precludes a Member State from refusing a third country national upon whom his minor children, who are European Union Citizens, are dependent, a right of residence in the Member State of residence and nationality of those children, and from refusing to grant a work permit to that third country national, in so far as such decisions deprive those children of the genuine enjoyment of the substance of the rights attaching to the status of European Union citizen".* That the inability of the minors to choose to stay in Belgium was critical to the CJEU's decision is apparent from its subsequent decisions clarifying the ambit of *Zambrano*. Developments in Ireland There were a number of cases before the Irish courts at the time of the delivery of the CJEU's decision in *Zambrano* challenging deportation orders made against third country national parents of Irish citizen children. Following the decision in *Zambrano*, the Minister for Justice decided to review all cases involving third country national parents of Irish citizen children. His approach was publicised on the Department of Justice's website and the operative part of it was set out in the case of *Amobi (An infant) v. Minister for Justice* [2013] IEHC 47 by Clark J, as follows.:- "*'Ireland's Approach to Implementing the Judgement* *First it is important to state that this judgement applies only where the child is a citizen. It has no implications whatever for Irish Citizenship law. The granting of citizenship remains a matter entirely for the Oireachtas under the Constitution […].* *Given the importance of the ruling in the Zambrano case, I have decided, with the support of my Government colleagues, to make a brief public statement outlining the consideration being given to cases involving Irish minor dependant citizen children who have a non-national third country parent or parents.* *One possible approach in these matters is to wait for pending cases to be determined by the Irish Courts and for the Courts to interpret and apply the Court of Justice ruling. That is an entirely justifiable approach from a legal standpoint. However in this case the Government has agreed that there needs to be a more proactive approach and that it should make a clear statement of its intention to take early action in these cases, insofar as it is unnecessary to await rulings of the Courts. We should not tie up the courts unnecessarily or ask eligible families to wait longer than necessary.*

			Accordingly I have asked my officials to carry out an urgent examination of all cases before the courts (approximately 120 at present) involving Irish citizen children to which the Zambrano judgment may be relevant. *The Government has agreed with my proposal that early decisions in appropriate cases to which the Zambrano judgement applies be made without waiting for further rulings of the Courts.* *I have also asked my officials to examine the cases in the Department in which the possibility of deportation is being considered in order to ascertain the number of cases in which there is an Irish citizen child and to which the Zambrano judgment is relevant. In addition, consideration will be given to those cases of Irish Citizen children who have left the State whose parents were refused permission to remain.*" In *Amobi* Clark J. explained that the deportation order against the deported father, Mr. Amobi, had been revoked and that he had been given leave to remain in the State. Some subsequent CJEU developments concerning *Zambrano* and impact on Irish law In C-434/09 *McCarthy*, the CJEU addressed the question of whether a dual Irish / British national of the United Kingdom was entitled to have her third country national husband reside with her in the United Kingdom. It decided that she did not, and that *Zambrano* had no applicability to her, saying:- *"48. As a national of at least one Member State, a person such as Mrs McCarthy enjoys the status of a Union citizen under Article 20(1) TFEU and may therefore rely on the rights pertaining to that status, including against his Member State of origin, in particular the right conferred by Article 21 TFEU to move and reside freely within the territory of the Member States (see Case C-33/07 Jipa [2008] ECR I-5157, paragraph 17 and case-law cited).* *49. However, no element of the situation of Mrs McCarthy, as described by the national court, indicates that the national measure at issue in the main proceedings [i.e. the refusal to her of a residence permit which would have enabled her third country national husband to reside with her in the United Kingdom] has the effect of depriving her of the genuine enjoyment of the substance of the rights associated with her status as a Union citizen, or of impeding the exercise of her right to move and reside freely within the territory of the Member States, in accordance with Article 21 TFEU. Indeed, the failure by the authorities of the United Kingdom to take into account the Irish nationality of Mrs McCarthy for the purposes of granting her a right of residence in the United Kingdom in no way affects her in her right to move and reside freely within the territory of the Member States, or any other right conferred on her by virtue of her status as a Union citizen.* *50. In that regard, by contrast with the case of Ruiz Zambrano, the national measure at issue in the main proceedings in the present case does not have the effect of obliging Mrs McCarthy to leave the territory of the European Union. Indeed, as is clear from paragraph 29 of the present judgment, Mrs McCarthy enjoys, under a principle of international law, an unconditional right of residence in the United*

			Kingdom since she is a national of the United Kingdom." In C-256/11 *Dereci and Others* the CJEU reiterated this position from paragraph 59 of its decision onwards. It pointed out at paragraph 65 that in *Zambrano*, the children would have had to leave Belgium in order to accompany their parents and would have been unable to exercise the substance of the rights conferred on them by virtue of their status as citizens of the Union. It then said at paragraph 66 that:- *"…it followed that the criterion relating to the denial of the genuine enjoyment of the substance of the rights conferred by virtue of European Union citizen status refers to situations in which the Union citizen has, in fact, to leave not only the territory of the Member State of which he is a national but also the territory of the Union as a whole."* It held that the case before it was not one where no such obligation to leave arose, saying at paragraph 68:- *"Consequently, the mere fact that it might appear desirable to a national of a Member State, for economic reasons or in order to keep his family together in the territory of the Union, for the members of his family who do not have the nationality of a Member State to be able to reside with him in the territory of the Union, is not sufficient in itself to support the view that the Union citizen will be forced to leave Union territory if such a right is not granted."* These later decisions of the CJEU were influential in the decision of the High Court (Cooke J.) in *Smith v. Minister for Justice* [2012] IEHC 113. In that case, the sixth named applicant (Mr. Smith) was a Nigerian national. The fifth named applicant was his Nigerian born wife and the remaining applicants were their children. Mr. Smith and his wife arrived in the State in 2002 and unsuccessfully applied for asylum. The first named applicant was born in the State in 2002, and was an Irish citizen. The second, third and fourth named applicants were born in 2006, 1999 and 1993. Mr. Smith's wife was granted residency in the State in March 2005, under the IBC/05 scheme, which was designed to enable non-national parents of Irish citizen children to obtain residence. In September 2006, Mr. Smith entered the State unlawfully with the fourth named applicant. In 2010, deportation orders were made against each of them. In 2011, following the delivery of the judgment in *Zambrano*, solicitors on behalf of Mr. Smith and the fourth named applicant applied on their behalf for permission to reside in the State on foot of that judgment. The application was refused, the view being taken that if the deportation order was not revoked, the most likely outcome was that the citizen child would remain in the State in the care of his mother, thus ensuring that (he) would continue to enjoy the substance of the rights attaching to his status as a European Union citizen. It was noted that his mother had permission to remain in the State until 2013, and that she could apply to renew it. The court concluded that the Minister had correctly and lawfully decided that the case was not one in which the *Zambrano* principle was

			applicable, because the deportation of Mr. Smith would not result in any other member of his family leaving the European Union. *JS and Others v. Minister for Justice* [2014] IEHC 195 *High Court upheld refusal of application for revocation of deportation order based on Zambrano decision. Refusal noted that EU citizen would not have to leave territory of Member States if his third country national father was deported, as mother was Irish citizen and therefore entitled to remain in Ireland / EU territory if she wished* The applicants sought to quash the decision of the Minister for Justice to affirm a deportation order made against the second named applicant, a Nigerian national who had been granted permission to enter the State in 2002 in order to work. He failed to observe the conditions of his permit and committed a number of criminal offences. He formed a relationship in the State which resulted in the birth of a number of children, who were Irish and EU citizens. A deportation order was made against him and two applications for revocation were unsuccessfully made on his behalf, the second of which sought to rely on the decision of the CJEU in *Zambrano*. As part of the examination by the Minister for Justice of cases involving the non-national parents of Irish citizen children, the second named applicant's case was considered to see if he met the *Zambrano* criteria. It was considered that his Irish citizen children were residing in the State with their Irish mother and that they were not going to be forced to leave the jurisdiction and deprived of the genuine enjoyment of the substance of their rights as European Union citizens if the applicant was deported. It noted that the CJEU in *Dereci* had clarified that such denial would arise if the refusal of residence and ultimate removal of the parent meant that the EU citizen child would inevitably have to leave the EU and move to a third country. It was held that it was not inevitable that that would happen in the instant case, as the children's mother was an Irish citizen. The High Court (McDermott J.) upheld the legality of that decision. Citizens' Directive 2004/38/EC – concept of "dependence" *Kuhn v. Minister for Justice* [2013] IEHC 424 *Refusal by Minister for Justice of application for visas for third country nationals to join EU national and his wife, to whom they were related, in Ireland. Refusal held that applicants not dependent on Irish-based family for essentials of life in their country of origin, Egypt. High Court quashed decision on basis that it failed to apply test for dependency as laid down by ECJ in C-1/05 Jia.* The first named applicant was a German national who lived in Ireland and was married to the second named applicant who is Egyptian. They ran a business in the State. The third and fourth named applicants were Egyptian citizens who were the parents of the second named applicant, and the fifth and sixth named applicants were also Egyptian nationals and were the adult sisters of the second named applicant. In 2010, the Egyptian based family applied to the Irish Embassy in Cairo for a short stay visa (C-class). The application was refused but, on appeal, visas were granted to the third and fourth named applicants for a period in 2010.

			Further visa applications were made by the Egyptian-based family, and were refused *inter alia* on the basis that it was not considered that the applicants were dependent on the first and second named applicants. The applicants obtained leave to quash the refusals and at the post-leave stage, the High Court granted the reliefs sought. In the course of the proceedings, the second named applicant became an Irish citizen and, on the basis of this, a further application was made for long-term visas. These were refused and the proceedings were amended to include a challenge to that decision. The High Court (MacEochaidh J.) noted that Article 3 of the Citizens' Directive extended the category of persons who might enter and reside in the host State chosen by the Union citizen to include "any other family members, irrespective of their nationality, not falling under the definition in point two of Article 2 who, in the country from which they have come, are dependants or members of the household of the Union citizen having the primary right of residence, or where serious health grounds strictly require the personal care of the family member by the Union citizen." It considered that the last line of Article 3 was significant for the proceedings, which provided that *"The host Member State shall undertake an extensive examination of the personal circumstances and shall justify any denial of entry or residence to these people."* The court noted that neither the Directive nor the domestic implementing measure provided a definition of "dependence." However, it had regard to the decision of the ECJ in C-1/05 *Jia* where this was discussed. In that case, the ECJ had held that, in order to determine whether relatives in the ascending line of the spouse of a Community national were dependant on the latter, the host Member State had to assess whether, having regard to their financial and social conditions, they were not in a position to support themselves. The need for material support had to exist in the State of origin of those relatives. The ECJ also held that the phrase "dependent," in an analogous legal context, meant that members of the family of a Community national established in another Member State needed the material support of that Community national or his or her spouse in order to meet their essential needs in the state of origin of those family members or the State from which they had come at the time when they applied to join the Community national. The court was not persuaded that the concept of "meeting" the essential needs of the persons should be interpreted as meaning that dependence required that assistance be given for *all* of a person's essential needs, concluding that such an interpretation would greatly restrict the category of persons entitled to claim to be dependants. It took the view that where outside help was needed for the essentials of life (for example, enough food and shelter to sustain life) then regardless of how small that assistance was, if it was needed to attain the minimum level to obtain the essentials, then that was enough to establish that the recipient was dependent. The submissions in support of the visa applications had stated that without the support of the Irish family, basic living conditions could not be maintained for the Egyptian-based family. In refusing the applications, the Minister for Justice had taken the view that Egyptian family had failed to show that they required financial assistance from Ireland for the essentials of life. Having regard to the evidence before it, the court held that the impugned decisions had failed to assess whether or not the Egyptian based family required the material support of the Irish based family "in order to meet their essential needs" in Egypt, which it considered to

			reflect the test in *Jia*. It held that the Egyptian family had not been given a reason why the assistance they received from the Irish-based family to meet the monthly shortfall between their income and expenditure was not evidence of dependence. It may be noted that it had been argued on behalf of the Minister for Justice that the sisters in Cairo were not the sisters of a Union citizen and therefore not members of the family of a Union citizen. Rather, they were the sisters are sisters of a Union citizen's spouse. The court held that that was not the basis upon which the sisters' applications for visas were rejected and that it was therefore not required to decide whether a Union citizen's sisters-in-law could be deemed to be "any other family members" within the meaning of Article 3 of the Directive. 2. Please inform of <u>any main change/shift in national policy, law or practise in the area of legal migration</u> which was caused, inspired or influenced by <u>national or EU case law</u> on this field. You may refer to a ruling of national jurisdictions or, as well, issued at EU level, *i.e*, a ruling of the Court of Justice of the European Union (EUCJ), or a ruling of the European Court of Human Rights (ECHR). Note: this second question aims to know whether any main change/shift in Member States' policies, law or practises took place as a (even partial) consequence of a national or EU case law, <u>without necessarily referring to EU Directives or other pieces of EU law</u>. As indicated above, the main change/shift in national practice in the area of legal migration which was inspired by EU case law was the decision of the Minister for Justice, following the *Zambrano* decision of the CJEU, to review cases involving the non-national parents of Irish citizen children, most of which concerned challenges to the validity of deportation orders outstanding against such parents. As the case of *Amobi* indicates, a decision was taken to revoke such orders and grant permission to reside in the State to such parents. Permissions were granted on the basis of domestic law. However, as the decision of McDermott J. in *JS v. Minister for Justice* [2014] IEHC 195 indicates, as matter of public policy, the Minister was not going to apply the terms of the *Zambrano* judgment to any third country parent of an Irish born citizen child who had been convicted of serious offences or was a persistent criminal offender. In terms of other caselaw, the most significant developments included the application by the courts, when assessing whether or not a couple could be regarded as married, of a fact-based approach inspired by Directive 2003/86/EC, as in *Hamza v. Minister for Justice* and *Aslam v. Minister for Justice*. However, the Supreme Court in *Hassan* indicated that it would not necessarily be appropriate to eschew documentary requirements in favour of such an approach, meaning that it will still be open to the Minister for Justice, in appropriate cases, to require documentary evidence of marriage. The courts also drew inspiration from Directive 2003/86/EC when reviewing decisions refusing applications for family reunification on the basis that there was no dependency between the refugee and the family member with whom reunification was sought, the main consequence of which was a desire on the part of the High Court for greater transparency to be shown by the Minister for Justice in assessing concepts such as dependency, in order to enable applicants to have some degree of foresight as to whether their applications might be successful and what they should do in order to improve their chances of success in that regard.

			Lastly, the High Court in *Kuhn v. Minister for Justice* sought to apply the test for dependency laid down by the ECJ in *C-1/05 Jia* which is potentially significant for the Minister for Justice when deciding whether or not to admit what are termed "permitted family members" in Irish law (see the EC (Free Movement of Person)(No. 2) Regulations 2006, as amended) to enter and reside in the State on the basis of claimed dependency with a Union citizen exercising EU Treaty Rights in the State.
	Latvia	**Yes**	1. Latvia has no relevant national case law that is given by upper judiciary bodies concerning the area of legal migration which is covered by EU law. 2. There are no changes in national policy, law or practise in the area of legal migration which were caused, inspired or influenced by national or EU case law concerning the area of legal migration which is covered by EU law.
	Lithuania	**Yes**	In Lithuania the court decisions didn't have any major influence onto the national legislation or administrative practice.
	Luxembourg	**Yes**	1. Family reunification (Directive 2003/86/EC) *European Union Court of Justice* European Court of Justice, Alopka Case, C-86/12 of 10 October 2013 European Court of Justice, Kreshnik Ymeraga, C-87/12 of 8 May 2013 (See also C-529/11 of 8 May 2013) *Administrative Court* Administrative Court, n° 33597 of 11 February 2014; See also First instance Administrative Court, 3rd Chamber n° 28972 of 22 October 2013 Administrative Court, n° 33494C of 18 October 2013; See also First instance Administrative Court, 3rd Chamber, n° 31593 of 24 September 2013. Administrative Court, n° 33067C of 16 January 2014; See also First instance Administrative Court, 2nd Chamber, n° 30866 of 27 June 2013 and First instance Administrative Court n° 30867 of 23 July 2012 Administrative Court, n° 32328C of 22 April 2013; See also First instance Administrative Court, 2nd Chamber, n° 30462 of 11 March 2013 Administrative Court, n° 31949C of 2 May 2013; See also, First instance Administrative Court, 3rd Chamber, n° 29881 of 5 December 2012. Administrative Court, n° 31852C of 28 February 2013; See also First instance Administrative Court, 3rd Chamber, n° 29821 of 21 November 2012. Administrative Court, n° 30555 of 12 July 2012; see also First instance Administrative Court,2nd chamber, n° 28035 of 29 March 2012.

			Administrative Court, n° 28952CA of 11 July 2013 Administrative Court n° 26685C of 17 June 2010 Administrative Court n° 29435C of 16 February 2012; See also First instance Administrative Court, 3rd Chamber, of 21 September 2011 Administrative Court n° 27397C of 4 January 2011; See also First instance Administrative Court, 3rd Chamber, n°26594 of 15 September 2010. Administrative Court n° 26548C of 4 May 2010; See also First instance Administrative Court, 1st Chamber, n° 24131 of 18 January 2010 Administrative Court n°26685C of 17 June 2010; See also First instance Administrative Court, 1st Chamber, n° 25826 of 10 February 2010 Administrative Court, n° 26520C of 25 January 2010; See also First instance Administrative Court, 3rd Chamber, n° 25416 of 16 December 2009 Administrative Court, n° 25503C of 10 March 2009; See also First instance Administrative Court, Chamber, n°24612 of 19 February 2009 Administrative Court, n° 25369C of 6 February 2009; See also First instance Administrative Court, 2nd Chamber, n° 24203 of 8 January 2009 Administrative Court, n° 25146C of 9 June 2009; See also First instance Administrative Court, 2nd Chamber, n° 24202 of 23 October 2008 Administrative Court, n° 24137C of 27 May 2008; See also First instance Administrative Court, 2nd Chamber, n° 23344 of 21 January 2008 *First instance Administrative Court (Positive decisions). These cases are mainly related to recognized refugees and the issues addressed by the courts are related to the evaluation of financial resources and documents proving the family links.* First instance Administrative Court, 1st Chamber, n° 31989 of 3 March 2014. First instance Administrative Court, 1st Chamber, n° 29414 of 25 October 2011 and 3rd Chamber, n° 29176 of 2 May 2012. First instance Administrative Court, 2nd Chamber, n° 28685 of 15 October 2012. First instance Administrative Court, 3rd Chamber, n°28972 of 22 October 2013 First instance Administrative Court, 2nd Chamber, n° 26466 of 24 January 2013 First instance Administrative Court, 2nd Chamber, n° 25286 of 19 October 2009 *First instance Administrative Court (rejected decisions). In general terms these decisions addressed situations of ascendants relatives, adult children under the charge of the applicant and other family members. They analysed also the notion of "effective family life", "dependency" and " being under the responsibility of the applicant and not having financial aid in the country of origin."* First instance Administrative Court, 3rd Chamber, n° 29730 of 6 November 2012 First instance Administrative Court, 2nd Chamber, n° 29059 of 25 October 2012 First instance Administrative Court, 3rd Chamber, n° 29046 of 24 April 2012 First instance Administrative Court, 2nd Chamber, n° 28549 of 21 June 2012 First instance Administrative Court, 2nd Chamber, n° 28177 of 8 March 2012 First instance Administrative Court, 2nd Chamber, n° 26916 of 10 March 2011

			First instance Administrative Court, 3rd Chamber, n° 26803 of 15 of December 2010 First instance Administrative Court, 3rd Chamber, n° 26538 21 July 2010 First instance Administrative Court, 3rd Chamber, n° 26364 of 14 July 2010 First instance Administrative Court, 3rd Chamber, n° 25834 of 9 March 2010 First instance Administrative Court, 2nd Chamber, n° 25696 of 16 November 2009 First instance Administrative Court, 2nd Chamber, n° 25291 of 25 February 2009 First instance Administrative Court, 1st Chamber, n° 25139 of 13 July 2009 First instance Administrative Court, 3rd Chamber, n° 24854 of 11 February 2009 First instance Administrative Court, 2nd Chamber, n° 24203 of 8 January 2009 First instance Administrative Court, 1st Chamber, n° 24006 of 8 October 2008 Long-term residence (Directive 2003/109/EC) *Administrative Court. It is important to mention that most of these decisions addressed questions in relation to the criteria of regular and stable financial resources during the 5 years period before the application without having depended of the social assistance system.* Administrative Court, n° 32158C of 21 May 2013; see also First instance administrative court, 1st Chamber, n° 30342 of 20 February 2013 Administrative Court, n° 30445C of 12 July 2012; see also First instance administrative court, 3rd Chamber, n° 29065 of 14 March 2012. Administrative Court, n° 27941C of 5 April 2011; see also First instance administrative court, 1st Chamber, n° 27012 of 19 January 2011(stateless) *First instance Administrative Court* First instance administrative court, 3rd Chamber, n° 25947 of 24 February 2010 (Positive decisions) Students (Directive n° 2004/114/EC) *Administrative Court* Administrative Court n° 33047C of 19 December 2013; see also First instance Administrative Court, 1st Chamber, n° 31869 of 12 June 2013 *First instance Administrative Court. Most of these decisions addressed the issue s of the use of false documents to prove financial resources and in general the verification of the financial resources.* Positive decisions

			First instance Administrative Court, 3rd Chamber n° 32078 of 8 July 2013; see also n° 32079 of 28 February 2013. First instance Administrative Court, 3rd Chamber n° 32076 of 5 June 2013; see also n° 32077 of 28 February 2013. Negative decisions First instance Administrative Court 2nd Chamber n° 32187 of 11 July 2013 First instance Administrative Court 1st Chamber, n° 31869 of 12 June 2013 First instance Administrative Court 1st Chamber, n° 31817 of 24 February 2014 First instance Administrative Court 1st Chamber, n° 28941 of 2 July 2012 Researchers (Directive 2005/71/EC) No data available. The Directive 2005/71/EC was transposed by the Law of 29 August 2008 on Free movement of persons and immigration. Highly qualified workers (Directive 2009/50/EC) No data available. The Directive n° 2009/50/EC was transposed by Law of 8 December 2011 and entered into force after its publication on the Memorial n° 19 of 3 February 2012. Until now there has not been any single case on this issue. Single permit (Directive 2011/98/EU) No data available. The Directive n° 2011/98/EU was transposed by Law of 19 June 2013 and entered into force after its publication on the Memorial n° 106 of 25 June 2013. Until now there has not been any single case on this issue. Financial aid to cross-border workers These decisions have a direct impact on TCN who are cross-border workers. *European Union Court of Justice* European Court of Justice, C-20/12 of 20 June 2013 *First instance Administrative Court* First instance Administrative Court, 1st Chamber, n° 28182 of 2 December 2013 First instance Administrative Court 1st Chamber n° 29345 of 2 December 2013

			First instance Administrative Court, 1st Chamber, n° 28366 of 2 December 2013 First instance Administrative Court, 1st Chamber, n° 28442 of 14 October 2013 First instance Administrative Court, 1st Chamber, n° 27689 of 14 October 2013 First instance Administrative Court, 1st Chamber, n° 27679 of 14 October 2013 First instance Administrative Court, 1st Chamber, n° 27576 of 14 October 2013 2. Decision 31949C and 28549 above mentioned were influenced by the decision of the ECJ C-1/05 of 9 January 2007 and C-83/11 of 5 September 2012 (The notion of "depended family member" established by the court is sufficient for not requesting a preliminary ruling). Decision n° 28952CA was influenced by the decision of the ECJ C-87/12 of 8 May 2013. Decision n° 29435C generated the preliminary ruling for the ECJ C-86/12 of 10 October 2013 Decisions 28442, 27689, 27679 and 27576 generated the preliminary ruling for the ECJ C-20/12 of 20 June 2012. Decisions n° 28182, 29345, 28366, 28442, 27689, 27679 and 27576 were influenced by ECJ C-20/12. Also with this decision the Law of 26 July 2010 was abrogated and replaced by a new law on 19 July 2013[2]. However, decision 29345 had already mentioned that the Law of 29 July 2013 is not complying with the decision of the ECJ C-20/12 of 20 June 2012. Decision n° 25834 on family reunification makes reference to the decisions of the European Court of Human Rights of 28 May 1985, (Abdulazis, Cabales et Balkandali), 19 February 1996, (Gül,), 28 November 1996, (Ahmut) and 17 April 2003 (Yilmaz).
	Netherlands	**Yes**	1. A short summary of main national case law given by upper judiciary bodies (i.e. Raad van State – Council of State) concerning the area of legal migration which is covered by EU law. ➢ Directive 2003/86/EC of 22 September 2003 on the right to family reunification; ▪ Fees: AbRS 9 October 2012, 201008782/1; AbRS 16 October 2012, 201200075/1. On fees for Provisional Residence Permit (mvv – a national visa) for family reunification. Reference is made to EcJ 26 April 2012 C-508/10. ▪ Art. 3, par. 1 and 2: AbRS 12 March 2008, 200705142/1. On the scope of Directive 2003/86/EC. Does the directive apply to family members of refugees? ▪ Art. 3, second paragraph, introduction and c: AbRS 10 October 2012, 201200907/1; AbRS 10 October 2012, 201108774/1; AbRS 18 March 2013, 201202732/1; AbRS 1 August 2013, 201202165/1; AbRS 23 January 2013, 2012001101/1; AbRS 23 January 2013, 201112350/1; AbRS 28 November 2013, 201210021/1; AbRS 23 December 2013, 201211336/1. Directive does not apply to subsidiary protection. ▪ Art. 3, par. 3: a.o. AbRS 29 March 2006, 200510214/1; AbRS 24 October 2011, 201009597/1; AbRS 23 November 2006, 200604478/1. Directive does not apply to EU citizens. ▪ Art. 3, par. 5: AbRS 12 March 2008, 200705142/1; AbRS 13 January 2011, 201002653/1; AbRS 28 May 2013, 201209349/1; AbRS 4 December 2013, 201300183/1; AbRS 23 December 2013, 201211336/1; AbRS 26 April 2013, 201108649/1. the

[2] Mémorial A-132 of 25 July 2013

			possibility for the Member States to adopt or maintain more favourable provisions. ▪ Applicability of the Directive and the application of the Charter of Fundamental Rights: AbRS 1 December 2010, 201003052/1; AbRS 8 August 2013, 201203552/1. ▪ Art. 4, par. 2: AbRS 6 December 2007, 200703563/1. Extended family reunification. ▪ Art. 5: AbRS 8 April 2013, 201111404/1; AbRS 3 April 2012, 201107209/1. Submission and examination of the application. ▪ Art. 7: AbRS 18 November 2011, 201011551/1; AbRS 20 November 2009, 200808437/1; AbRS 27 mei 2013, 201202042/1. Requirements for the exercise of the right to family reunification. Reference is made to EcJ 4 March 2010 C-578/08 (Chakroun). ▪ Art. 7, par. 2: AbRS 201211916/1 and 201300404/1. Requirements to comply with integration measures. Prejudicial questions on integration requirements before entering the Netherlands (Civic Integration Abroad Act) were asked on 1 April 2014. Reference is made to EcJ 10 June 2011, C-155/11 PPU. ▪ Art. 9: AbRS 12 March 2008, 200705142/1. Family reunification of refugees. ▪ Art. 13: AbRS 21 July 2009, 200802953/1; AbRS 4 September 2009, 200901966/1; AbRS 17 September 2009, 200808794/1. Entry and residence of family members. ▪ Art. 16: AbRS 6 March 2014, 201305993/1; AbRS 21 July 2009, 200802953/1; AbRS 17 September 2009, 200808794/1; AbRS 6 May 2010, 200904656/1; AbRS 12 July 2006, 200601302/1. Penalties and redress. ➢ Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents; ▪ Fees: AbRS 28 November 2008, 200802173/1; AbRS 29 June 2010, 200906408/1; AbRS 9 October 2012, 201008782/1; AbRS 16 October 2012, 201200075/1; AbRS 23 June 2010, 200806637/1. Reference is made to EcJ 26 April 2012 C-508/10. ▪ Art. 3: AbRS 23 June 2010, 200806637/1; AbRS 22 January 2010, 200808772/1. On the scope of Directive 2003/109/EC. ▪ Art. 4: AbRS 3 April 2012, 201101225/1. Duration of residence. ▪ Art. 5: AbRS 5 December 2008, 200802115/1; AbRS 1 November 2013, 201211142/1. Conditions for acquiring long-term resident status. ▪ Art. 7: AbRS 5 December 2008, 200802115/1. Acquisition of long-term resident status. ▪ Art. 8: AbRS 21 May 2012, 201100853/1. Long-term resident's EC residence permit. ▪ Art. 14 and 15: AbRS 12 February 2014, 201302284/1; AbRS 18 January 2012, 201005222/1; AbRS 18 January 2012, 201104254/1; AbRS 21 May 2012, 201100853/1. Residence in a second Member State. ➢ Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service; ▪ Art. 17, par. 1: AbRS 4 April 2012, 201100107/1. Economic activities by students. ➢ Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research; ▪ No national case law given by upper judiciary bodies (i.c. Raad van State – Council of State). ➢ Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of

highly qualified employment;

- No national case law given by upper judiciary bodies (i.c. Raad van State – Council of State).

➢ Directive 2011/98/EU of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State.

- No national case law given by upper judiciary bodies (i.c. Raad van State – Council of State).

2. Main change/shift in national policy, law or practise in the area of legal migration which was caused, inspired or influenced by national or EU case law on this field.

➢ Directive 2003/86/EC of 22 September 2003 on the right to family reunification;

- Fees:

G.R. v. The Netherlands, Application no. 22251/07, Council of Europe: European Court of Human Rights, 10 January 2012
Because of the judgment of the European Court of Human Rights in the case of G.R. v the Netherlands (Application no. 22251/07, date of decision 10 January 2012), the Netherlands changed the fees for an application for family reunification and formation in case the family member (sponsor) received welfare on the ground of the Wet werk en bijstand (Act on Work and Assistance). The fees were reduced from € 830 to € 250.

On 26 April 2012, in case C-508/10 (EC vs Kingdom of the Netherlands), the Court of Justice of the European Communities declared that, by applying excessive and disproportionate administrative charges which are liable to create an obstacle to the exercise of the rights conferred by Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, the Kingdom of the Netherlands has failed to fulfil its obligations under that directive. After this judgment the Netherlands lowered the fees for third-country nationals who are long-term residents and their family members from € 188 - € 830 to € 130.
On 9 October 2012 the Administrative Jurisdiction Division of the Council of State ruled that the decision of the Court of Justice of the European Communities correspondingly applied to directive 2003/86 on the right to family reunification.
Therefore the fees for familiy reunification were reduced to € 225. Because of this alteration the fees as mentioned above (family member receiving welfare) did not apply anymore, since the new fees for family reunification were lower than € 250.
On 1 October 2013 the fees for a residence permit for continued residence, as far as the application was based on directive 2003/86 on the right of family reunification, was lowered to € 225 as well.

- Art. 7: Requirements for the exercise of the right to family reunification. Reference is made to EcJ 4 March 2010 C-578/08 (Chakroun).

The judgement of the Court of Justice of the European Communities in case C-578/08 (Chakroun vs Minister of Foreign Affairs, date of decision 4 March 2010) has caused changes in Dutch policy concerning familiy reunification. No longer a distinction can be drawn

			according to whether the family relationship arose before (family reunification) or after (family formation) the sponsor entered the territory of the Netherlands. Income requirements that have to be met when applying for family reunification have also been altered after "Chakroun". Most important changes: *Age requirements* Both partners have to be 21 years or older. Before the "Chakroun" ruling, the age requirement for reunification in cases in which the relationship arose before the sponsor entered the Netherlands, was set at 18 years. *Income requirements: general changes* Proof of sufficient long-term means of support has to be provided; after "Chakroun" the amounts to be met for family reunification and family formation are the same. Evaluation of sources of income: the IND (Immigration and Naturalisation Service) now takes into account the gross amounts: so called "SV-loon" (Wage for social insurance purposes). Similar for sponsors who are (independent) entrepreneurs: gross profit instead of net profit is taken into account. Before the Chakroun ruling, income requirements followed the net amounts laid down in the "Wet werk en bijstand" (Act on work and assistance) for families, singles and single parents. *Income requirements, some specific amounts* - For families, 100% of the gross "WML" (Minimum Wage and Minimum Holiday Allowance Act) needs to be earned. Single parents and singles need to meet slightly lower amounts (a certain percentage of the 100% "WML"). - Students need to meet the standard amount for residence as a student, related to the Student Finance Act. After the "Chakroun ruling" no more supplementary means (eg. for tuition fees) are required. ▪ Art. 8 ECHR: *EHRC cases of Rodrigues da Silva, Nunez, Osman and Udeh (among others)* When assessments are made in the framework of article 8 of the Convention, The Dutch Government makes a full examination of all interests in the light of Article 8 of the Convention concerning the question whether an alien should obtain a residence permit or can be expelled. The EHRC case law and case law of the Council of State are used as guidelines for these assessments. The very exceptional circumstances in – for example – the EHRC cases of Rodrigues da Silva, Nunez, Osman and Udeh – are considered in similar cases concerning family life involving minor children. ➢ Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents; ▪ Fees: On 26 April 2012, in case C-508/10 (EC vs Kingdom of the Netherlands), the Court of Justice of the European Communities declared that, by applying excessive and disproportionate administrative charges which are liable to create an obstacle to the exercise of the rights conferred by Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, the Kingdom of the Netherlands has failed to fulfil its obligations under that directive. After this judgment the Netherlands lowered the fees for third-country nationals who are long-term residents and their family members from € 188 - € 830 to € 130. ➢ Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service;

			▪ To our knowledge there is no main change/shift in national policy, law or practise in the area of legal migration which was caused, inspired or influenced by national or EU case law on this field. ➢ Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research; ▪ To our knowledge there is no main change/shift in national policy, law or practise in the area of legal migration which was caused, inspired or influenced by national or EU case law on this field. ➢ Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment; ➢ To our knowledge there is no main change/shift in national policy, law or practise in the area of legal migration which was caused, inspired or influenced by national or EU case law on this field. ➢ Directive 2011/98/EU of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State. ▪ To our knowledge there is no main change/shift in national policy, law or practise in the area of legal migration which was caused, inspired or influenced by national or EU case law on this field.
	Poland	**Yes**	**1.** Judgments of Polish administrative courts affecting the interpretation and application of the national legislation on legal migration, regulated by the EU law: Judgments of administrative courts had a practical impact on the competent public administration authorities' understanding and application of the requirement to have a stable and regular income as the condition for acquiring long-term resident status in the EU, pursuant to Article 5(1)(a) of the Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents. Pursuant to the judgment of the Voivodeship Administrative Court in Warsaw of 29 November 2006 (file No V SA/Wa 1374/06, LEX No 326227): *Income required to obtain a long-term resident's EU residence permit should be understood as total financial receipts of an individual within a specific period, obtained from various sources and sufficient to maintain, within a specific period, the individual and the dependant members of his/her family, in line with the requirements laid down in the Act. The source of income must be legal and stable, i.e. constant over a longer period of time, returning to equilibrium after a possible period of disruption, and regular, i.e. repeating at specific or equal time intervals. The determination of whether in a specific, individual situation the foreigner has a stable and regular income allows to forecast whether he/she may obtain such income in the future. Such assessment is possible i.a. based on a thorough analysis of income obtained by the foreigner in the past.* The Court ruled similarly also in the judgment of 19 February 2007 (file No V

			SA/Wa 1506/06, LEX No 318081). Subsequent judgments pointed to the need to go beyond the simple assessment of the actual situation with respect to income obtained by the foreigner, since the residence permit, granted as a result of determining whether the foreigner meets the requirement of having a stable and regular income which is sufficient to maintain himself/herself and the dependant members of his/her family, is issued for an indefinite period. Pursuant to the judgment of the Voivodeship Administrative Court in Warsaw of 30 November 2011 (file No V SA/Wa 1285/2011 Lex Polonica No 3941479): *The assessment of stability and regularity of the foreigner's income in the context of the long-term resident's EC residence permit should take into account its legality, constancy within a longer period of time, the level of income in a longer time perspective and its repeatability at specific time intervals. It is not sufficient to demonstrate that the party will have a stable and regular income in a shorter time perspective, which would be sufficient, if the fixed-period residence permit was applied for; while in the case of the long-term resident's residence permit, the fact that the permit is granted for an indefinite period must be taken into account.* The same opinion was delivered by the Voivodeship Administrative Court in Warsaw in its judgment of 24 January 2012 (file No V SA/Wa 1284/11, http://orzeczenia.nsa.gov.pl). On 1 May 2014, the Polish legislation on migration was completely transformed. On that date, the Act of 12 December 2013 on foreigners (Dz. U. [Journal of Laws] item 1650 and of 2014 item 463) entered into force, replacing the previous Act of 13 June 2003 on foreigners (Dz. U. of 2011, No 264, item 1573). The provisions of the new Act i.a. adjust the Polish law to the EU regulations, including the case-law of the Court of Justice of the European Union, as well as to the relevant judgments of the Polish administrative courts. The authorities conducting proceedings on granting the long-term resident's EU residence permit had some doubts regarding the interpretation of the condition of a stable and regular income required from a foreigner applying for the permit. It was unclear what time perspective should be taken into account while assessing the requirement. Taking into account the above doubts and interpretation guidelines in the judgments of administrative courts to analyse the income of the foreigner obtained in the past over a longer time perspective, as well as in order to facilitate the application of the law, the new Act regulates the period to be taken into account while determining whether the requirement of having a stable and regular income is met. The new Act on foreigners specifies that, while determining whether a foreigner meets the requirement of having a stable and regular income, the public administration authority shall take into account the last three years of the foreigner's stay on the territory of Poland. In the case of a foreigner having a temporary residence permit for the purposes of highly qualified employment in the Republic of Poland, who previously resided on the territory of other EU Member States on the basis of the EU Blue Card, the last two years of his/her stay on the territory of the Republic of Poland will be taken into account. **2.** Judgments of the Court of Justice of the European Union and of Polish administrative courts which had a direct impact on the Act of 12 December 2013 on foreigners, regulating the rules of entry and stay of third country nationals on the territory of Poland:

			- Judgment of the Court in EIND case (Case C-291/05) The provisions of the Act of 12 December 2013 on foreigners adjust the Polish legal system to the judgment of the Court of Justice (Grand Chamber) of 11 December 2007 (reference for a preliminary ruling by Raad van State – Netherlands) - Minister voor Vreemdelingenzaken en Integratie v R.N.G. Eind (Case C-291/05) (OJ C 51, 23.2.2008, p. 8). The provisions of Article 9(2) and (3) and Articles 11-14 of the Act of 14 July 2006 *on the entry into, stay in and exit from the Republic of Poland of citizens of the European Union Member States and their family members* (Dz. U. No 144, item 1043, as amended), implementing the Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, will apply to the right of entry and the refusal to issue a visa for a member of the family of a Polish citizen returning to the territory of the Republic of Poland after residing in another European Union Member State, a member state of the European Free Trade Association (EFTA) - a party to the Agreement on the European Economic Area or the Swiss Confederation, where he/she was employed or self-employed. The hitherto provisions did not include the solutions regulating those issues. - Judgment of the Court (Third Chamber) of 18 October 2012, Staatssecretaris van Justitie (Netherlands) v Mangat Singh (Case C 502/10 Singh). Pursuant to the new Act, foreigners staying on the territory of Poland on the basis of a temporary residence permit for the purpose of family reunification and on the basis of a temporary resident permit for a member of the family of a migrant worker, referred to in the European Social Charter, may apply for a long-term resident's EU residence permit. The previous legal regulations did not provide such an opportunity to the abovementioned group of foreigners. The above solution is compliant with the judgment of the Court of Justice of the EU in the case C-502/10 Singh. - Judgment of the Court (Grand Chamber) of 5 September 2012 in the case of Secretary of State for the Home Department (United Kingdom) v Muhammad Sazzadur Rahman and others (Case C-83/11). The result of implementing the above judgment was the specification of criteria pursuant to which third country nationals who are members of the family of an EU citizen, covered by Article 3(2) of the Directive 2004/38/EC, may apply for a residence permit in Poland. The new Act on foreigners stipulates that the temporary residence permit may be granted to a foreigner staying on the territory of the Republic of Poland together with a Polish citizen or a citizen of another European Union Member State, a member state of the European Free Trade Association (EFTA) - a party to the Agreement on the European Economic Area or the Swiss Confederation, residing on the territory of the Republic of Poland, who, in the country from which he/she has come, is a dependant or a member of the household of that citizen or where serious health grounds require the personal care of the foreigner by that citizen. The temporary residence permit may also be granted to a foreigner who leads a family life within the meaning of the Convention for the Protection of Human Rights and

			Fundamental Freedoms, done in Rome on 4 November 1950 (Dz. U. of 1993, No 61, item 284, as amended), with a Polish citizen or a citizen of another European Union Member State, a member state of the European Free Trade Association (EFTA) - a party to the Agreement on the European Economic Area or the Swiss Confederation, residing on the territory of the Republic of Poland, with whom the foreigner stays on that territory. In order to obtain a temporary residence permit, the abovementioned foreigners must present documents confirming that they have health insurance and a stable and regular income. The aim of the above solution is to implement the judgment of the Court of Justice of the European Union C-83/11 Rahman into the Polish legal system. The previous legal regulations provided for the possibility to grant a temporary residence permit to a foreigner, who due to family ties intends to join a Polish citizen or a citizen of another European Union Member State, a member state of the European Free Trade Association (EFTA) - a party to the Agreement on the European Economic Area or the Swiss Confederation, residing on the territory of the Republic of Poland or stay with that citizen. - Judgment of the Court (First Chamber) of 21 September 2006. Commission of the European Communities v Republic of Austria (Case C-168/04) Foreigners having the right to reside and work on the territory of a European Union Member State, a non-EU country belonging to the European Economic Area or the Swiss Confederation, who are employed by an employer having its registered office on the territory of that country or temporarily posted by the employer to provide services on the territory of the Republic of Poland will be exempted from the obligation to obtain a work permit. All abovementioned foreigners will have an obligation to present documents confirming that they have health insurance, a stable and regular income and a place of residence in the Republic of Poland. In the case of this category of foreigners, illegal stay on the territory of Poland will not be the basis for refusal of a temporary residence permit in Poland. Impact of the case-law of the Court of Justice of the European Union on the Act of 14 July 2006 on the entry into, stay in and exit from the Republic of Poland of citizens of the European Union Member States and their family members which implements the provisions of the Directive 2004/38/EC in the Polish legal system: - Judgment of the Court of 26 February 1991 in the case of Antonissen (Case C-292/89) In order to adjust the Polish law to the judgment of the Court of Justice of the European Union in the case of Antonissen, the right to stay without the need to meet the requirement applicable to the right to stay for longer than three months will be granted to the EU citizens who entered the territory for the purpose of seeking employment - for the period of up to 6 months, unless after that period of time they provide evidence that they are continuing to seek employment and have genuine chance of being engaged. The EU citizens subject to the regulation will not have an obligation to register their stay.
	**Portugal**	**Yes**	There has not been properly a case law to substantiate a legal solution in Portugal. However – with a research regarding only the Supreme Administrative Court (STA - Supremo Tribunal Administrativo) – it was possible to detect a set of rulings on the several proposed subjects.

			More specifically STA's rulings concerning family reunification, of which the most relevant one concerns the legitimacy to apply for the court summons to the spouse or relative that is already staying in Portugal and does not hold the right to the visa that is going to be granted to the person that is going to reunify with him/her. This is a quite important result as regards fundamental rights, while at the same time it may be a good practice worth to be mentioned. The other researched rulings are more demonstrative of the state of law, more specifically: - The distinction between technical and non-technical functions for purposes of accessing public posts and positions; - The application of a Brazilian citizen that wants to enjoy the status of equal rights; - The requirement of permanent residence in Portugal; - The requirement of attendance of an internship, or of the right to degree recognition, which may afterwards enable working in Portugal; - Specific situations of highly qualified work, more particularly, within the context of access to academic careers in higher education.
	Romania	**Yes**	1. Following an analysis of the decisions taken by the national judiciary bodies, there were no cases of unfavourable decisions related to aliens' regime where a violation of European legal framework was stated. According to art. 148 of the Romanian Constitution the European legal framework takes precedence over the provisions of the national legislation. 2. Following an analysis of the litigations related to aliens' regime, where the courts issued positive decisions in favour of the aliens, the upper judiciary bodies did stated any violations of the European legal framework. Also there were no situations where the jurisprudence of the Court of Justice of the European Union determined changes/shifts in national policy, law or practise in the area of legal migration.
	Slovak Republic	**Yes**	As for the legal residence of third country nationals and the Slovak jurisdiction, no ruling in the area of legal migration subject to the EU legislation has been detected which would influence the Slovak law or practice. As far as the jurisdiction of the European Court of Justice is concerned, the case C-370/90 of the European Court of Justice has had an impact on the Slovak legislation. Based on the ruling, a new category of a family member of an EU citizen has been added. Specifically, it concerns Artlicle 2 (5h) of the Act No.404/2011 Coll. on Residence of Aliens and on Amendments to Certain Laws : (5) A family member of the Union citizen is understood as the third country national who is a) his/her spouse; b) his/her child younger than 21 years of age, his/her dependent child and dependent children of his/her spouse; c) his/her dependent direct relative in descending or ascending line and such a person of his/her spouse; d) any other family member to whom paragraphs (a) to (c) do not apply and s/he is a dependent person in the country of his/her origin; e) any other family member to whom paragraphs (a) to (c) do not apply and s/he is the member of his/her household; f) any other family member to whom paragraphs (a) to (c) do not apply and s/he depends on his/her care due to serious health reasons; g) his/her partner with whom the Union citizen is in a permanent, duly certified relationship; h) third country national with the right of residence in the Member State in which the Union citizen has the right to reside and the Union

			citizen is the Slovak Republic national with whom the third country national returns or joins him/her to reside back in the Slovak Republic territory and fulfils some of the conditions specified in par. (a) to (g) in relation to the Slovak Republic national. From the Explanatory Report to the Act No. 75/2013 Coll. amending and supplementing Act No.404/2011 Coll. on Residence of Aliens and on Amendments to Certain Laws, amending and supplementing Certain Laws): "A change in the term family member of the EU citizen has been established due to the ruling of the European Court of Justice case C-370/90 Singh. The suggested amendment changes the condition according to which the third country national should be considered a family member of the EU citizen if they have a common right to reside in another Member State as the EU citizen and his/her family member. Based on the suggested amendment, it is sufficient if the third country national, who is supposed to be considered in the Slovak Republic as a family member of the EU citizen, has any right to reside in another Member State.
	Sweden	**Yes**	1. It´s difficult for the Migration Board to identify and report all rulings from the Migration Court of Appeal (the upper level of national jurisdictions in Sweden concerning the area of legal migration) which by any means concerns the interpretation and application of the Directives of legal migration. For that reason the list below is not exhaustive but rather a number of examples. Directive 2003/86/EC: - Marriage of convenience is an exception from the right of the Directive 2003/86/EC for married third country nationals to obtain a residence permit (ruling by the Migration Court of Appeal on 19 April 2007, UM 1004-06). - The Directive 2003/86/EC do not apply when the sponsor is authorized to reside in Sweden on the basis of subsidiary protection based on national legislation (ruling by the Migration Court of Appeal on 15 September 2009, UM 8477-08). - When there is a legal marriage there is a presumption to grant the third country national spouse a residence permit. The competent authority has the burden of Proof it they consider to deny a residence permit based on the belief that the applicant and the spouse in Sweden are not going to live together (ruling by the Migration Court of Appeal on 3 September 2013, UM 8192-12). - The ruling by the Migration Court of Appeal from 27 November 2008 (UM 691-07) addresses the issue of "false or misleading information" according to Article 16.2 a of the Directive 2003/86/EC. - The ruling by the Migration Court of Appeal from 26 November 2008 (UM 2072-08) addresses the issue of "rejection on grounds of public policy and public security" according to Article 6.1 of the Directive 2003/86/EC. Directive 2003/109/EC: In order to grant a residence permit to a third country national in his/her capacity as a long-term resident in another Member State, according to Directive 2003/109/EC the third country national must show a EU-residence permit according to the directive (ruling by the Migration Court of Appeal on 29 May 2008, UM 895-08). Directive 2004/114/EC: The rulings by the Migration Court of Appeal 6 February 2009 (UM 2446-08 and UM 4691-08) addresses the issue of "acceptable progress in his/her studies". Concerning the other Directives of legal migration (researchers, EU Blue Card and single application procedure) the Migration Board can not report any case law given by upper judiciary bodies. 2. The Migration Board can not provide any examples of such mail changes or shifts.

	United Kingdom	**Yes**	1. There is no UK case law on the EU Directives listed as the UK has not opted into these Directives. 2. The UK continually develops its immigration policy. Sometimes these developments are in response to UK case law, sometimes for other reasons, and sometimes due to a combination of the two. It is not possible to provide a comprehensive list of every policy change due to case law. However, there have not been any major, fundamental changes in policy as a result of case law in recent years.
	Norway	**Yes**	1. The above mentioned directives are not legally binding for Norway. There is no relevant jurisprudence given by upper judiciary bodies regarding Directives 2003/86/EC, 2003/109/EC, 2004/114/EC, 2005/71/EC, 2009/50/EC and 2011/98/EU. There is no case law where Norwegian upper courts refer to or mention EU's secondary legislation listed above. 2. There are a number of rulings from the Norwegian Supreme Court that were inspired and influenced by both national rulings in other countries and by the case law of the European Court of Human Rights. 1. The Norwegian Supreme Court's plenary decisions (19 justices) of 21 December 2012 The Supreme Court of Justice clarified in its plenum sessions of 21 December 2012 several aspects of national public administration law, asylum and immigration law regarding asylum-seeking children. The Supreme Court also clarified legal issues concerning the competence of the courts in reviewing administrative decisions, and assessed whether the decisions of the Norwegian Appeal Board (UNE) breached the European Convention on Human Rights (ECHR). The Supreme Court held that the UNE's decisions were valid. The two cases before the Supreme Court of Justice concerned two families from Iran and Bosnia. Both families had lived in Norway for a long time at the time of the refusal from the Immigration Appeals Board. In both plenary decisions, some of the justices dissented from the majority opinion. The English versions of the Supreme Court's judgments and summaries of the cases are available online here: http://www.domstol.no/en/Enkelt-domstol/-Norges-Hoyesterett/Summary-of-Recent-Supreme-Court-Decisions/Summary-2012/ 2. Norwegian Supreme Court judgment of 29 march 2012 The case concerned the validity of a decision by the Immigration Appeals Board and raised the question as to whether an Iraqi citizen is entitled to asylum on the grounds that he as a homosexual has a well-founded fear of persecution in Irak. The Court of Appeal found that it was not known in Irak that the asylum seeker was homosexual. The court further assumed that upon his return he would adapt his life so as to avoid persecution. In this light the Court of Appeal held that neither the conditions for asylum contained in section 17 of the Immigration Act of 1988, nor the conditions for protection against return in section 15 were satisfied. The Supreme Court quashed the Court of Appeal's judgment with appeal proceedings because the Court of Appeal had not made a decision as to what the reason was for

			the asylum seeker wanting to keep his sexual inclination a secret. If there were real grounds for fearing persecution and the fear of persecution was crucial to his choice, the condition that there must be a "well-founded fear of being persecuted", cf. Article 1 A of the Refugee Convention, cf. Protocol 31 January 1967, would be satisfied. The ruling refers to the judgment of July 2010 from UK's Supreme Court 7– HJ (Iran) and HT (Cameroon) v Secretary of State for the Home Department and EU secondary legislation. Following the judgment the Norwegian Department of Justice issued Circular, No.: GI-07/2012 of 22. June 2012 regarding the assessment of asylum applications from LGBTI asylum seekers. 3. The Norwegian Supreme Court judgment in Zarife Kashtanjeva The ruling was handed down on the 28 of June 2011 a decision in the case of Zarife Kashtanjeva (HR-2011-01280-A). The appellant originally from Kosovo arrived in Norway in 1999 at the age of 18. She made several unsuccessful claims for asylum. In 2004 she formed a relationship with an Iraqi citizen, holder of a permanent stay permit in Norway. The couple ended up having a son. She separated and she established a new relationship resulting in a new child. Both children are permanent residents of Norway. The immigration authorities decided that she should be expelled and prohibited from re-entry for two years for illegal entry and stay in Norway. She also worked without a valid work permit. The central issue that the Supreme Court addressed in the present case was whether the interests of children affected by the decision to expel their mother from Norway was given sufficient weight in accordance to section 29(2) in the Norwegian Immigration Act. The Supreme Court held unanimously that the decision to expel the mother was a disproportionate measure in relation to the children. Examining the interests of the children, the Supreme Court pointed out firstly that the immigration offences committed by the appellant were serious. However the interest of the small children to continue to grow up together with their mother, who was found to be their primary caregiver, can not be set aside by the fact that the mother committed the above mentioned immigration offences. 4. Nunez v. Norway (ECtHR) The European Court of Human Rights decided on the 28 of June 2011 that Norway's decision to expel a mother (Dominican national) of two young children would violate article 8 of the European Convention since the expulsion order would separate her from her small children living in Norway. Shortly after her arrival in Norway in 1996 she was fined for shop-lifting. She was then deported from Norway with a two-year ban on her re-entry into the country. She returned to Norway with a different passport bearing different names. She married a Norwegian national and applied for a residence permit stating that she had never visited Norway before and had no previous criminal convictions. She was granted first a work permit and then, in 2000, a settlement permit. She then separated from her husband and she started living with another man.

			The new couple had two daughters. Upon finding out that she gave misleading information to the immigration authorities, the Directorate of Immigration decided to revoke her work permits and expel her from Norway. She was also prohibited from re-entry for two years. She was given the daily care of the children. The daily care was later transferred to the father who was also granted sole parental responsibility. In the light of the concrete and exceptional circumstances of the present case the Court pointed out that the expulsion and re-entry prohibition would have an excessively negative impact on her children. In view of the children's long-lasting and strong bond to their mother, the decision granting their custody to their father, the stress they had experienced and the long time it had taken the authorities to decide to expel her and ban her from re-entry into the country, the Court concluded that the authorities had not struck a fair balance between the public interest in ensuring effective immigration control and the applicant's need to remain in Norway in order to continue to have contact with her children. The decision to expel the mother will violate article 8. Comments Following the ruling of the European Court of Human Rights in the Nunez-case and the Norwegian Supreme Court's ruling in the Kashtanjeva-case the Ministry of Justice and Public Security issued a circular regarding the use of discretion afforded by section 70 of the Norwegian Immigration Act in assessing the proportionality requirement in expulsion cases involving children. The new instructions attempt among other things to clarify the law with regards to the best interests of the children with respect to immigration law. The instructions set specific assessment criteria that must be considered individually in all cases when determining whether expulsion of a foreign national is a disproportionate measure in relation to his/her children. While all enlisted criteria were already used in practice, some of them will be afforded more weight according to the instructions. This is the case when assessing the criteria of "the best interests of the child".

****