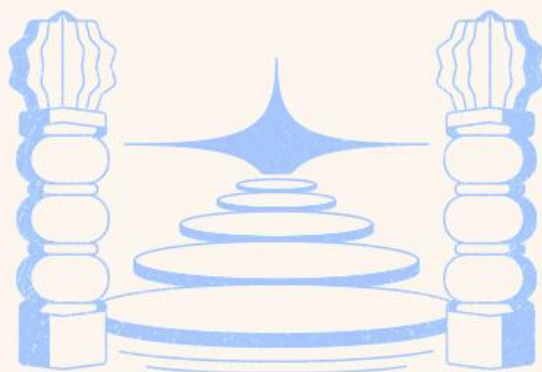




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## Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (FRD)

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# What is meant by the right to family reunification?

“Family reunification” means the **entry into and residence** in a Member State by **family members** of a **third country national residing lawfully** in that Member State in order to preserve the family unit, whether the family relationship arose before or after the resident's entry.



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# EU legal framework

- The Treaty of Rome
- Treaty of Maastricht
- Treaty on the functioning of the European Union
- Charter of Fundamental Rights of the European Union
- **Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification**
- Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States

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# Overall principles

The member states preserve a wide margin of discretion.

**"Shall" clauses/ "May" clauses**



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# Overall principles

- Availability of information - Recital 13
- Best interests of the child – Article 5(5)
- Fighting abuse and fraud - Articles 16(2) and 16(4)
- Individual assessment
  - *CJEU: MSs obliged to make a balanced and reasonable assessment of all the interests in play, both when implementing Directive 2003/86 and when examining applications for family reunification (Cases C-356/11 and C-357/11, O. & S.)*
- Right to legal challenge
  - *Article 47 of the Charter of Fundamental Rights applies to all rights of the Directive*



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# Who can apply? The sponsor

- A non-EU national
  - hold a residence permit valid for at least one year
  - have the legal option of long-term residence

Discussion corner



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# Who can apply? Sponsor's family

## NUCLEAR FAMILY

### Mandatory – shall clauses

- The spouse
  - Minimum age of spouse
  - Prohibition of polygamy
- Minor children

### Optional – may clauses

- The unmarried partner
- Adult single children
- First-degree relatives in the direct ascending line

Discussion corner



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# Procedure

- Submission of the application
  - *article 5(1) - the MS determine whether an application shall be submitted either by the sponsor or by the family member*
- Supporting documents
  - *Article 5(2) - the family reunification request is completed by documentary evidence proving the existence of family ties*
- Length of procedures – **9 months**
- Entry, long-stay visas and residence permits - facilitate





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# Procedure

- Best interest of children
  - Article 5(5): "when examining an application, the Member States shall have due regard to the best interests of minor children".



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# Conditions for family reunion

- Clause of public order, security and public health - Article 6(1) and (2)
- Accommodation conditions - Article 7(1)(a)
- Sickness insurance conditions - - Article 7(1)(b)
- Resources conditions - Article 7(1)(c)
- Integration criteria - Article 7(2)
- Minimal period of lawful residence - Article 8
- Reception capacities of Member States - article 8 § 2

Discussion corner



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# Family members' rights

- Entry, long-stay visas and residence permits
- Access to employment
- Access to autonomous residence permit

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# Exceptions - refugees and beneficiaries of subsidiary protection

- Family reunification by refugees
  - derogations from Articles 4, 5, 7 and 8, creating more favourable conditions for family reunification of refugees
    - Family members of refugees
    - Absence of official documentary evidence
    - Exceptions to the more favourable provisions of Chapter V
    - Travel documents and long-stay visas



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# Case study – Minors under Directive 2003/86/EC

- CJEU, European Parliament v Council of the European Union, case C-540/03
- CJEU, Marjan Noorzia v Bundesministerin für Inneres, case C-338/13
- CJEU, A and S v Staatssecretaris van Veiligheid en Justitie, case C-550/16
- CJEU, K and B v Staatssecretaris van Veiligheid en Justitie, case C-380/17



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## Links for further information

- Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification - <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:52019DC0162>
- DG Migration and Home Affairs - [https://home-affairs.ec.europa.eu/family-reunification\\_en](https://home-affairs.ec.europa.eu/family-reunification_en)



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# Thank you for your attention!

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