



**Monitoring and influencing the transposition of EU immigration law**

**The family reunion and long term residents Directives**

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## 1. Introduction<sup>1</sup>

Out of the range of instruments proposed by the European Commission on immigration, the Council has so far adopted two of the main Directives. One is the Directive on the right to family reunification<sup>2</sup>, the other is the Directive concerning the status of third-country nationals who are long-term residents<sup>3</sup>. Member states must implement the family reunion directive by 3 October 2005. There is, however, a challenge by the European Parliament against some of its provisions.<sup>4</sup> The long-term residents directive must be implemented by 23 January 2006.

In their final form, these documents leave considerable leeway to Member States and could be interpreted restrictively if governments choose to take advantage of the derogations and flexible wording. National advocacy is needed to monitor and influence the implementation of these Directives. The European Migration Dialogue can play an important role in identifying the challenges for transposition, monitoring legislative changes and pushing for a timely and favourable implementation of the Directives.

This issue paper first addresses the transposition of Directives in general terms, including the initiation of infringement procedures. It then looks at the two Directives in turn, pointing out specific areas which should be closely observed during the transposition process. Finally, it returns to the role of civil society in monitoring implementation.

## 2. Transposition of Directives and infringement procedures

Article 249 of the EC-Treaty provides the following with regard to the legal nature of the Directive: "A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed but shall leave to the national authorities the choice of form and methods." In contrast with a Regulation, which implies the adoption of true Community law with direct effect, a Directive has to be transposed at the national level. Directives, making up about eighty percent of EU legislative output, are unique legislative instruments in so far as they are not binding in their entirety, only "as to the result to be achieved". Thus transposition is affected greatly by legal features, administrative procedures, and political processes within each of the Member States.

Nevertheless, the European Court of Justice has underlined the fact that the 'correct application' of directives is particularly important since the implementing measures are left to the discretion of the Member States. Full effect ('effet utile') must be given to directives following the aims pursued.<sup>5</sup> Above all, there is a requirement that Member States 'should implement the directives in question in a way which fully meets the requirements of clarity and certainty in legal situations'. For instance, regulation through administrative practices which can be changed depending on the will of the authorities and which are not publicised widely enough is not sufficient. Implementation has to take

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<sup>1</sup> This paper benefited greatly from the comments and suggestions of Eke Gerritsma, FORUM (Netherlands)

<sup>2</sup> Directive 2003/86 of 22 September 2003, OJ 2003 L 251/12

<sup>3</sup> 2003/109 of 25 November 2003, OJ 2004 L 16/44

<sup>4</sup> OJ 2004 C 47

<sup>5</sup> Court of Justice, C-190/90, Jur. 1992 p. I-3265.

place through national provisions having the same legal status as those which regulated the particular subject beforehand.

Already during the negotiation process, governments typically seek to insert a degree of flexibility into the wording of a directive to help it fit with existing national mechanisms and reduce the costs of implementation. A UK government 'transposition guide'<sup>6</sup> recommends a timely implementation which achieves the objectives of the European measure while also being in accordance with other national policy goals. The latter element comes into play especially when a directive contains minimum standards. Here, it is recommended to avoid over-implementation of the directive unless the benefits of exceeding the standard are clearly greater than the associated costs. Over-implementation (also called 'gold-plating') means, for instance,

- Extending the scope, adding in some way to the substantive requirement, or substituting wider national legal terms for those used in the directive.
- Not taking full advantage of any derogations which keep requirements to a minimum
- Providing sanctions and enforcement mechanisms that go beyond the minimum needed.
- Implementing early, before the date given in the directive.

The guide also specifies two approaches to implementing a provision where there is doubt about the precise legal obligation. The first approach, 'copy-out', entails that the implementing legislation simply adopts the same, or very similar, language as the directive itself. The second approach, 'elaboration', means choosing a particular meaning, in accordance with the traditional approach in national legislation, according to what the draftsman believes the provision to mean. In effect, it aims to work a provision into something clearer. Ultimately, the way in which such provisions are implemented is a policy decision, and departmental drafters are urged to communicate with their ministers about their policy goals regarding the transposition of the directive.

In many countries, an important aspect of transposition is the spread of the directive's impact across different levels of national and sub-national governance. States which have federal structures or decentralised legislative competences often argue that under national constitutional law the implementation of certain directives has to be accomplished by regional or local entities. In fact, Member States are 'free to delegate powers to [their] domestic authorities as [they] see consider fit and to implement the directive by means of measures adopted by regional or local authorities'. However, the Commission always dialogues with the Member States' central authority, notwithstanding the question of which authority is competent for the implementation of the directive under national constitutional law.

The implementation of many directives is not completed on time. Member States put forward various justifications when delays occur. For instance, they may attribute direct effect to the provisions of the directive concerned and therefore allege that this is equivalent to normal transposition. They may complain that the time allowed for implementation is too short, or that other Member States have not implemented the directive either in due time. Governments may also argue that the non-implementation was due to the anticipated end of the legislature, or that constitutionally independent institutions were responsible for difficulties.

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<sup>6</sup> <http://www.cabinetoffice.gov.uk/regulation/docs/europe/pdf/tpguide.pdf>

In fact, non-implementation can sometimes constitute ‘opposition through the back door’ by Member States which were unhappy with the adoption of the Directive or specific aspects of it. However, non-implementation can also be due to administrative shortcomings or interpretation problems. A frequent cause is ‘issue linkage’, where the transposition of a directive is attached to an ongoing but extremely controversial decision process with many stakeholders and veto-players, such as a national reform project.<sup>7</sup>

The Court of Justice has described the obligations of Member States during the transposition period: ‘Although the Member States are not obliged to adopt [those] measures before the end of the period prescribed for transposition, it follows from the Article 5 para.2 in conjunction with the Article 189 para.3 of the Treaty and from the directive itself that during that period they must refrain from taking any measures liable seriously to compromise the result prescribed.’<sup>8</sup> It is a matter for national courts to assess the legality of national provisions which could be incompatible with the directive. A Member State has the right to adopt transitional measures or to implement directives in stages. The national court must consider the effects in practice of applying the contested provisions, whether it is possible to amend them in time, and whether they ultimately compromise the result prescribed in the directive.

Following Article 211 EC-Treaty, the Commission has competence to control the implementation of Directives. The Commission checks whether the deadline for transposition is respected and whether the measures adopted comply with the terms of the Directives. It also verifies whether the national provisions are a correct and complete implementation of each Directive. Under Article 226 EC-Treaty, the Commission has power to take action against Member States which have not respected their obligations under EU law. Such an ‘infringement procedure’ can take place when a Member State does not communicate to the European Commission the measures it has taken to transpose the directive into its national law, or when a Member State has transposed a Directive into its national law, but has not done so correctly. In both cases, the procedure has three stages.

The first stage is the sending of the ‘letter of formal notice’. In this letter, the Commission puts down in writing the allegation that the Directive may be infringed and gives the Member State the opportunity to express its views normally within a period of two months. If there is no reply, or the Commission is unsatisfied with the reply, it can issue a ‘reasoned opinion’. This means that it prepares a somewhat more detailed analysis of the facts and concludes that in legal terms the Member State has committed an infringement, requiring the Member State to remedy this. The deadline for reply is also two months, at which point the Commission can refer the Member State to the European Court of Justice for a formal finding that it has failed to fulfil its obligations under EU law. (Article 226 EC-Treaty). At each stage of the procedure a formal decision of the College of Commissioners is required.

If the Court finds that the application of the Commission is well founded, the procedure finishes with a declaratory judgment. The consequences resulting from such a statement are limited: according to Article 228 EC-Treaty, the Member State ‘shall be required to take the necessary measures to comply with the judgment of the Court of Justice.’

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<sup>7</sup> Falkner et.al., ‘Non-Compliance with EU Directives in the Member States: Opposition through the Back Door?’, <http://www.mpi-fg-koeln.mpg.de/socialeurope/downloads/2004WestEuropeanPolitics.pdf>

<sup>8</sup> Court of Justice, Inter-Environnement Wallonie judgement (case C-129/96, Jur. 1997, p. I- 7411)

However, if the Member State does not comply within appropriate time, it commits another violation of the Treaty. This might lead to another infringement procedure, at the end of which the Commission can ask the Court to impose a lump sum or penalty payment. According to Article 228 para.2, the Commission also specifies the amount it considers appropriate in the circumstances. If the Court finds that the Member State has not complied with its judgment it may impose the fine.

The Commission can take action in response to either a complaint or indications of infringements which it detects itself. Where the infringement consists in failing to notify the Commission of transposition by the end of the implementation period stated in the directive, detection is straightforward. However, in other cases the Commission needs information and assistance from third parties. Often, the Commission receives relevant information from private complainants or via questions put to it by members of the European Parliament. Anyone may lodge a complaint with the Commission against a Member State about any measure (law, regulation or administrative action) or practice which they consider incompatible with a provision or a principle of Community law.<sup>9</sup> Complaints often prepare the ground for infringement procedures.

A complaint is valid if it shows there has been an infringement of the Community law. Complainants do not have to demonstrate a formal interest in bringing proceedings. Neither do they have to prove that they are principally and directly concerned by the infringement complained of. Individuals may file complaints, but any infringement of the Community law established by the Court of Justice does not affect the complainant's rights, since the procedure is not designed to determine individual matters. The sole purpose is to oblige the Member States to comply with the Community law. The public is not entitled to consult the communication between Member States and Commission during an infringement procedure.

As an example of an infringement procedure, on 19 July 2004 the Commission announced that it has referred five Member States to the European Court of Justice for failing to transpose two anti-discrimination Directives. The Directives, which prohibit discrimination on racial or ethnic origin, age, disability, religion and sexual orientation, were due to be incorporated into national law in 2003. The countries concerned are Austria, Germany, Finland, Greece, and Luxembourg. For those Member States which have already adopted legislation transposing the Directives, the Commission is now in the process of examining the national laws in question to ensure they conform in full with the provisions of EU law. The infringement proceedings rely substantially on information generated by the Network of Independent legal experts on anti-discrimination.<sup>10</sup>

Infringement procedures are a lengthy and complicated process. Member States and the Commission should start discussing implementation problems and possible solutions before the time set down has elapsed. Early drafts of national legislation should be scrutinised with a view to their compatibility with European directives.

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<sup>9</sup> A complaint can be lodged using the standard form available on [http://europa.eu.int/comm/secretariat\\_general/sgb/lexcomm/](http://europa.eu.int/comm/secretariat_general/sgb/lexcomm/). Also see European Commission, Communication on relations with the complainant in respect of infringement of Community law, COM(2002)141 final, OJ 2002 C 166

<sup>10</sup> This group was established and is managed for the European Commission by MPG and MEDE European Consultancy. It consolidates three previous expert groups on Race and Religion, Sexual Orientation and Disability.

In the case of the family reunion directive, compatibility with EU legislation is not the only concern during the transposition period. There is also the possibility that Member States will use transposition processes to justify lowering their standards towards the minimum ones agreed at EU level. EU legislation does not require the lowering of standards, but allows it. Member States may well adopt a 'harmonising down' approach to avoid secondary movements to their territory from other EU Member States with lower standards. In this way, standards which have been presented as a minimum would instead become the norm.

### 3. Family reunion

The directive on the right to family reunification was agreed after a negotiating period of three years. The Commission submitted no less than three different proposals of this directive, moving from a rather liberal approach in the first one presented in 1999<sup>11</sup> to more restrictive texts presented in 2000<sup>12</sup> and 2002<sup>13</sup>. In 2003, an agreement was reached on a compromise text and the directive was adopted on 22 September. Denmark, Ireland and the UK have exercised their right to opt out. On 22 December 2003, the European Parliament brought an action regarding this directive against the Council before the European Court of Justice, based on the new powers granted to the Parliament since the entry into force of the Nice Treaty on 1 February 2003, Article 230 EC.

The purpose of the directive is to determine the right to family reunification of third-country nationals who reside lawfully in the territory of a European Union Member State, and to determine the conditions under which family members can enter into and reside in a Member State in order to preserve the family unit. The directive also determines the rights of the family members once the application for family reunification has been accepted.

Which are the provisions of the directive that deserve particular attention during the transposition process? The clauses specified in the European Parliament's challenge are a good indication of what the controversial aspects of the directive are. The European Parliament claims that the Court should annul the last subparagraph of Article 4(1), Article 4(6) and Article 8 of the directive.

- Article 4 defines the family members eligible for family reunion under the directive, specifying spouses and minor children (unmarried and below the age of majority set by the law of the Member State concerned) of a person legally residing in a Member State. Member States may also authorize reunion of first-degree relatives in the direct ascending line, as well as of unmarried children (who are unable to provide for their own needs for health reasons) and unmarried partners (with a stable long-term relationship with the applicant). Member States may require the applicant and his/her spouse to be of minimum ages, and at maximum 21 years old.

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<sup>11</sup> COM(1999) 638.

<sup>12</sup> COM(2000) 624.

<sup>13</sup> COM(2002) 225.

According to Article 4(1), where a child is over 12 years and arrives independently from the rest of his/her family, the Member State may, before authorising entry and residence, 'verify whether he or she meets a condition for integration provided for by its existing legislation on the date of implementation' of the directive. According to Article 4(6), Member States may require that requests for the reunion of children be made before they reach the age of 15. If such a request is made after the age of 15, entry and residence of the person concerned may be authorised on other grounds than family reunion. These age limits have to be implemented in national law by 3 October 2005; it is not possible to implement such criteria after this date.

- Article 8 of the directive concerns the requirements for the exercise of the right to family reunification. It provides that 'where the legislation of a Member State relating to family reunification in force on the date of the adoption of this Directive takes into account its reception capacity, the Member State may provide for a waiting period of no more than three years' between submission of the application and the issue of a residence permit to the family members.

The feature common to all three clauses is that they start with the expression 'by way of derogation,..'. The 'Report on the Situation of Fundamental Rights in the European Union in 2003' confirms that 'the most problematical provisions of Directive 2003/86/EC have in common that they allow certain exceptions to the Member States, which remain free to rely upon them or not'. The Report notes that 'the fact that the Directive provides for these exceptions does not mean that they are admissible from the viewpoint of the requirements of fundamental rights'. Because the right to family reunification is not provided expressly in any of the directive's provisions, considerable discretion is left in the hands of Member States.

Therefore, in monitoring transposition, care should be taken that no measures relying upon these exceptions threaten to infringe the fundamental rights recognised in the European Union. The directive itself does not *oblige* Member States to infringe any fundamental rights. Indeed, Article 3(5) states that it does not affect 'the possibility for the Member State to adopt or maintain more favorable provisions'. Therefore, 'the difficulty lies not in what the Directive imposes on the Member States as an obligation, but in the margin of appreciation that it allows the States'.<sup>14</sup>

In the case of Article 4(1), Member States are in danger of applying the 'integration condition' in such a way that it infringes the right to respect for family life as recognized by Article 8 of the European Convention on Human Rights, for example if family life cannot continue elsewhere. Similarly, if there is no possibility for family life to be continued elsewhere, the waiting period of up to three years envisaged in Article 8(2) infringes the right to respect for family life.

- Other clauses are also problematical. For instance, on access to the labour market Article 14(2) says that 'Member States may decide according to national law the conditions under which family members shall exercise an employed or self-employed activity. These conditions shall set a time limit which shall in no case exceed 12 months, during which Member States may examine the situation

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<sup>14</sup> EU Network of Independent Experts on Fundamental Rights, Report on the Situation of Fundamental Rights in the European Union in 2003, January 2004, submitted by Prof. Olivier De Schutter

of their labour market before authorising family members to exercise an employed or self-employed activity'. Prolonged exclusion from the labour market is likely to have a negative effect on the integration of family members and contravenes the integration goals set by Member States themselves.

- Article 15 (1) stipulates that no later than after five years of residence, the spouse or unmarried partner and a child who has reached majority are entitled to an autonomous residence permit, independent of that of the sponsor. However, Article 16 provides that before that time, Member States may refuse to renew the residence permit of the spouse or of other family members who have been admitted for the purpose of family reunification where it is found that the sponsor and his/her family member(s) no longer live in a real marital or family relationship, which is the case for instance if the sponsor has begun a stable long-term relationship with another person. This provision puts the spouse - statistically, this is in most cases the wife - in a particularly vulnerable position. Member States should use a broad definition when assessing the 'particularly difficult circumstances' which justify the grant of an autonomous residence permit (Article 15(3)), including for instance cases of domestic violence.
- One may also take exception with Article 18 of the directive, which provides that 'the member states shall ensure that the sponsor and/or the members of his/her family have the right to mount a legal challenge where an application for family reunification is rejected or a residence permit is either renewed or is withdrawn or removal is ordered'. The precise limits of the expression 'legal challenge' are not fully clarified within the directive. In transposition, it should be applied to mean 'right of appeal'.
- It is important to note that in the adopted version of the directive, the standstill clause contained in Article 3(6) of the (second) amended Commission Proposal prohibiting Member States to introduce less favourable conditions than those existing on the date of adoption was deleted.

An overview of the possible impact of the family reunion directive has been carried out by International Federation for European Law (FIDE).<sup>15</sup> The questionnaire given to 20 national rapporteurs asked the following questions regarding family reunion: Do you consider the proposed standards below the principles of family reunification applicable in your country? And:

Will the implementation of the directive, once it is adopted, lead to changes in the national law on family reunification downgrading the standard of protection? If so, what changes are envisaged?

From the FIDE general report, which refers to the February 2003 proposal, it appears that the standards contained in the directive are either similar to or lower than those which currently apply in many countries. The following differences are stated:

– Scope of application of the right to family reunion is broader in national law than under the Directive (UK, Portugal, Croatia)

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<sup>15</sup> International Federation for European Law, Migration and Asylum Law and Policy in the European Union, FIDE 2004 National Reports, Edited by Imelda Higgins, General Rapporteur Kay Hailbronner, CUP 2004

- The Directive permits countries to retain minimum age requirements of up to 21; under national law the minimum age is 18 for the sponsor and 16 for the spouse (UK)
- No possibility under national law to apply an integration test for children over 12 who arrive independently of the rest of the family: States have the option of applying such a test under the Directive (UK, Italy, Portugal, the Netherlands)
- No restriction on the admission of children over 15 (UK, the Netherlands)
- Period of lawful residence under national law less than the maximum permitted by the Directive (Portugal, Croatia)
- Directive permits Member States to subject the right of a spouse to an autonomous residence period to a longer waiting period than that envisaged under national law (Portugal)
- Under Article 5(5) of the Directive, Member States are required to have ‘due regard’ to the best interests of minor children whereas national law requires their interests to be a ‘primary consideration’ (the Netherlands).

Overall, the family reunion directive contains many controversial points where the actual transposition into national law and the subsequent application of that law in practice will determine much of the impact on immigrants and their family members.

#### **4. Long-term residents**

Following a draft prepared by the Commission in 2001<sup>16</sup>, the Council approved a changed version of the Directive on the status of third-country nationals who are long-term residents on 25 November 2003<sup>17</sup>. Denmark, Ireland and the UK have opted out of this directive. The original proposal included refugees and persons benefiting from subsidiary protection but in the subsequent negotiations in the Council these persons were removed as beneficiaries of their right. It was decided that a separate Directive shall deal with them.

According to the directive, the status of long-term resident will be obtained after legal and continuous residence of 5 years. The directive gives long-term residents a more secure status and also allows them to move under certain conditions from one Member State to another while maintaining the rights and benefits acquired in the first Member State. The status of long-term residence is permanent as evidenced by a permit valid for at least 5 years and automatically renewable. The fees are not specified. Member States are therefore not required to issue the permit at the same price as a national ID.

The final adopted version of this directive contains a number of ‘may’ – formulations which grant a high degree of flexibility to Member States. As is the case with family reunion, the transposition period will be a crucial time for advocating high standards in the application of these provisions.

- Article 4, which specifies the periods of residence taken into account for granting long-term resident status, allows Member States to reject applicants who have been absent for longer than six consecutive months (or a total of ten months). Member states may accept longer absences for ‘specific and exceptional reasons’. It is important that in verifying the existence of such reasons Member

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<sup>16</sup> COM(2001) 127.

<sup>17</sup> Council Doc 2003/109. O.J. of the E.U. of 23.01.2004, L 16

State authorities avoid subjecting third-country nationals seeking long-term resident status to unfair questioning and investigations concerning their motivations for lengthier absences.

- Article 5 concerns the conditions for acquiring long-term residence status, with Article 5(1) including the same resource requirement as Article 7(1) of the directive on family reunion. The notion of ‘regularity’ of resources is problematical because of its wide scope. The evaluation of the sufficiency of the resources is left to the Member States (the criteria mentioned are not compulsory). No recourse is allowed to social assistance to reach the necessary level of resources. The requirement to possess sickness insurance covering ‘all risks’ in the Member State concerned is arguably too stringent. However, in the preamble the directive also states that ‘economic considerations should not be a ground to refuse to grant long-term resident status’.
- Article 5(2) gives Member States the option to require third-country nationals to comply with integration conditions. These conditions are to be ‘in accordance with national law’, but are not specified further.
- Article 6 contains a public policy exception, which should be applied using a narrow definition. Article 9 deals with withdrawal or loss of status. Withdrawal can take place after an absence from the territory for 12 consecutive months, with a qualifying ‘specific and exceptional reasons’ clause. With regard to equal treatment (Article 11), Member States may restrict its application in a number of cases. As far as the labour market is concerned, Member States may give preference to EU nationals or to third-country nationals who reside on their own territory.

Regarding protection against expulsion (Article 12), there is no exception covering persons with more than 20 years of residence as long term residence permit holders, and no exception for minors or residents who were born in the Member State or who immigrated as children. There is no provision on the suspensory effect of judicial redress procedures. Emergency expulsion procedures are not expressly prohibited.

- Chapter 3 of the directive deals with residence in the other Member States. This chapter contains many limitations, which could be implemented very restrictively. For instance, long-term residents coming from another Member State may have limited access to employed activities in the second Member State. The second Member State may impose quotas for granting the right of long-term residence to third-country nationals if a provision already exists in national law when the Directive is adopted (Article 14(4)). The second Member State may also, for a period of up to one year, restrict the long-term resident’s access to employed activities different than those for which they have been granted their residence permit. Article 15(3) provides that third-country nationals moving to a second Member State may be required to attend language courses or comply with other integration measures. This integration requirement is a restriction to the free movement of workers; there is no such condition for EU citizens moving from one Member State to another.

Taken together, these limitations result in a significant departure from the goal, as formulated in Tampere, of giving third-country nationals a comparable legal status to EU Citizens. This is particularly true with regard to free movement rights. Though it remains possible for Member States to retain or develop a more favourable national status for those long-term resident third-country nationals residing within their territories, the existence of lower minimum standards at the EU level may well have a negative and adverse impact in practice on the situation of this particular group of persons in the long term.

The FIDE report, in its questionnaire, asks whether the implementation of the directive would involve major legal and policy changes in the countries concerned. It notes that changes would indeed be required in many countries and that the national rapporteurs refer in particular to the following changes necessary for transposition:

- Reasons for which expulsion may be ordered (Luxembourg, Greece)
- Factors taken into account with regard to expulsion (Luxembourg, Greece)
- Right of residence in another EU Member State (the vast majority of countries)
- The concept of civic citizenship and the integration of third country nationals (Italy, Greece).

In view of the difficult negotiation process, there is a recognition among Member States that the provisions of both directives are in many cases insufficiently precise. The directive on family reunion therefore contains a clause stating that ‘periodically, and for the first time not later than 3 October 2007, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States and shall propose such amendments as may appear necessary. These proposals for amendments shall be made by way of priority in relation to Articles 3,4,7,8 and 13.’ Similarly, the directive on long term residents contains a ‘report and rendez-vous clause’ setting the date for the first report at 23 January 2011 and asking for amendments relating to Articles 4,5,9,11 and to Chapter 3. These reports and amendments may yield positive results. However, the time frames involved suggest that attention should focus primarily on the implementation on the provisions as they currently stand.

### **Civil society role in monitoring transposition**

The adopted directives on family reunion and on long term residents contain some valuable legal standards as well as clauses which allow for wide-ranging derogations. For this reason, it is essential to monitor their transposition carefully and to influence the implementation process at national level to the greatest extent possible.

This issue paper has set out the key ‘areas to watch for’ during transposition and has drawn attention to those articles which give the most flexibility to Member States. The goal of civil society actors over the coming months will be to push for the ‘best possible’ interpretation of the Directives’ provisions. Two main challenges can be identified: the application of terms without clearly defined meaning in the Directives, and the application of clauses which allow for derogations. Terms such as ‘integration conditions’ or ‘integration measures’ have no clear interpretation in the Directives. The role of civil society will be to support an application which corresponds to the goals of an inclusive and non-discriminatory integration policy. Several provisions, particularly in the Directive on family reunification, allow for derogations by Member States. In the absence of a

standstill clause, the role of civil society actors will be to guard against possible violations of the ECHR and to identify and criticise any lowering of standards towards the minimum standards set out in the Directive.