



*Directorate-General for Library,  
Research and Documentation*

## **RESEARCH NOTE**

**Decisive date for assessing the ‘unaccompanied minor’ status of a refugee in order for his parents to enjoy a preferential right to family reunification with him**

[...]

**Subject:** Determination of the date which the competent authorities and courts of the various Member States consider to be decisive in order to establish whether a refugee has ‘unaccompanied minor’ status within the meaning of Article 2(f) of Directive 2003/86/EC, in order for his parents to enjoy the preferential right to family reunification with him provided for in Article 10(3)(a) of that directive

[...]

*September 2017*

[...]



## SUMMARY

### I. INTRODUCTION

1. The aim of this research note is to determine which date the competent authorities and/or the national courts consider to be decisive when assessing the ‘unaccompanied minor’ status of a refugee in order for his first-degree relatives in the direct ascending line to enjoy the right to family reunification with him, within the meaning of Article 10(3)(a) of Directive 2003/86/EC. To that end, the legal systems of nineteen Member States were examined.
2. The legal systems that were not selected for this research note are, inter alia, those of States which are not bound by Directive 2003/86/EC, as noted in recitals 17 and 18 thereof, namely **Denmark, Ireland** and the **United Kingdom**.<sup>1</sup>
3. When carrying out the review, the administrators concerned from the Research and Documentation Directorate were asked to identify which date is regarded as decisive, within their legal system, to assess whether a refugee is indeed under the age of 18, in order for his parents to enjoy a preferential right to family reunification with him. The research findings are presented in the tables and diagram below, classifying the legal systems according to whether or not the research identified any relevant legislation, case-law or practice.
4. In twelve of the nineteen Member States that were examined, a specific date could be identified. In the remaining seven Member States, it was not possible to identify a specific date.

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<sup>1</sup> The legal systems in the following Member States were not considered either: **Estonia, Cyprus, Lithuania, Malta, Slovakia** and **Finland**.

## II. ANSWERS PROVIDED BY THE LEGAL SYSTEMS EXAMINED

### A. SEVEN SPECIFIC ANSWERS: NO ANSWER, UNCLEAR ANSWER, DELAYS DUE TO THE AUTHORITIES OR A QUESTION OF STATUS

5. In seven of the Member States subject to the note, the answer to the question raised is not limited to providing a specific date. In some cases there is no relevant case-law and no accessible administrative practice. In addition, in some Member States legislation does exist but the interpretation of that legislation by the competent national authorities is unclear. Where possible, information was sought from the authorities indicated.

SUBSTANTIVE SOLUTION
CROATIA
<p>No relevant administrative practice exists in respect of that question given the very low number of asylum applications made by minors. <i>It appears that, in respect of the Croatian legal system, it is difficult to provide an answer to the question raised.</i></p> <p>National authority concerned: Ministry of the Interior</p>
POLAND
<p>No relevant administrative practice exists in respect of that question given the very low number of asylum applications made by minors. <i>It appears that, in respect of the Polish legal system, it is difficult to provide an answer to the question raised.</i></p> <p>National authority concerned: The Office for Foreigners, falling under the Ministry of the Interior and Administration</p>

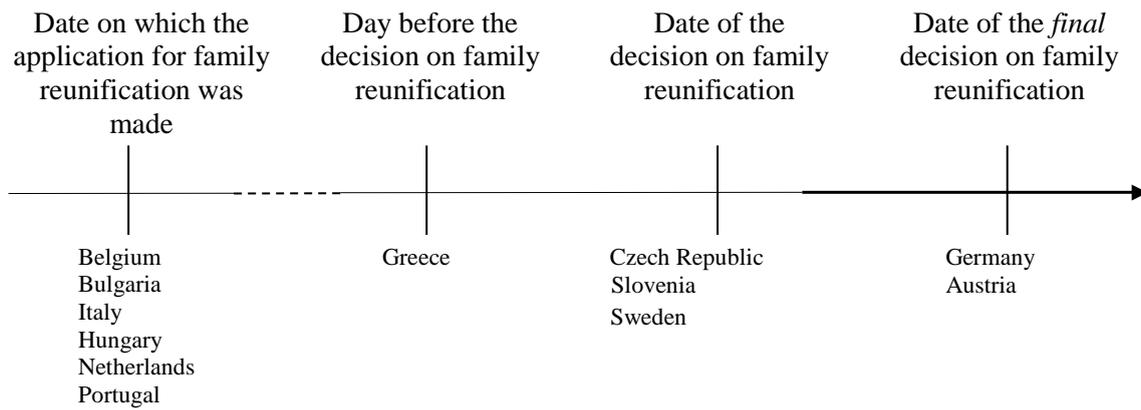
SUBSTANTIVE SOLUTION
FRANCE
<p>No administrative practice or relevant case-law has been identified. It should be noted that very few applications for family reunification have been made where the child is the refugee and the parents make the application for family reunification.</p> <p>Although <i>the French legal system offers no clear answer to the question raised</i>, it can be inferred from subparagraphs 2 and 3 of paragraph I of Article L. 752-1 of the code de l'entrée et du séjour des étrangers et du droit d'asile (Code on the Entry and Residence of Foreign Nationals and the Right of Asylum) (CESEDA) and from Article R. 752-3 of that code that <i>the refugee must be a minor at least at the time when the application for family reunification is made</i>. It cannot be ruled out that, in practice, the authorities use a later date, namely the date of their decision on family reunification, but it has not been possible to reach that conclusion from the research.</p> <p>National authority concerned: Bureau des familles de réfugiés (Refugee Families Office), falling under the Ministry of the Interior</p>
LATVIA
<p>Although <i>the Latvian legal system offers no clear answer to the question raised</i>, it can be inferred from two provisions of national law — namely Article 54 of the Law on asylum and Government Regulation No 564 of 21 June 2010, paragraph 12.7 — that <i>the refugee must be a minor at least at the time when the application for family reunification is made</i>. In practice, it cannot be ruled out that <i>the refugee must also still be a minor at the time when the decision on family reunification is taken</i>, but since no practice or case-law has been found, it is difficult to draw such a conclusion. It should be noted that a very low number of asylum applications are made each year in Latvia and that the asylum applications made by minors are practically theoretical cases in that State.</p>
ROMANIA
<p>No relevant administrative practice exists in respect of that question given the very low number of asylum applications made by minors.</p> <p>It appears that <i>the Romanian legal system offers no clear answer to the question raised</i>. However, it would seem that, in a situation in which a person who has been granted refugee status reaches the age of majority after having obtained that status, <i>the decisive date is the date on which the application for asylum was made, provided that that person reached the age of majority shortly before the application for family reunification is made, which is assessed on a case-by-case basis by the competent authority</i>.</p> <p>National authority concerned: Inspectorate-General for Immigration</p>

SUBSTANTIVE SOLUTION
SPAIN
<p>The number of asylum applications from unaccompanied minors is extremely low in Spain. Very limited administrative practice exists in respect of the question raised and, prima facie, there is no relevant case-law. It should also be noted that Spanish national law requires the authorities to deal with asylum applications from unaccompanied minors as a matter of urgency.</p> <p>In respect of the (rare) administrative practice, two situations may be distinguished.</p> <p>(1) Where a minor reaches the age of majority during the course of the asylum procedure, family reunification will be granted to his parents without it being necessary to prove whether or not the parents are dependent on the minor if, first, a delay in processing the file in question is attributable to the authorities and, secondly, if the minor has already declared, in the asylum application, that his parents were residing in his country of origin.</p> <p>(2) Where a minor reaches the age of majority during the course of the family reunification procedure, family reunification will be granted to his parents without it being necessary to prove whether or not the parents are dependent on the minor if a delay in processing the file in question is attributable to the authorities.</p> <p>In any event, the Spanish authorities do not seem to refer to a specific ‘criterion’ or date in the few decisions that have been adopted in that regard. The view may be taken nonetheless that unaccompanied minors may have been granted more favourable treatment in respect of family reunification with their parents in <i>situations where delays in processing applications for asylum or family reunification are attributable to the authorities</i>.</p> <p>National authority concerned: Asylum and Refugee Office (Oficina de Asilo y Refugio), falling under the Ministry of the Interior</p>
LUXEMBOURG
<p>In Luxembourg, entitlement to family reunification is determined by the <i>acquisition of refugee status</i>. Whether the statutory refugee is a minor or an adult is of little importance. When the asylum applicant is granted refugee status, he may request that his parents be granted family reunification.</p> <p>National authorities concerned: Ministry of Foreign Affairs and Luxembourg Reception and Integration Agency (ministère des Affaires étrangères et Office Luxembourgeois de l’Accueil et de l’Intégration; OLAI)</p>

## B. DETERMINING THE DECISIVE DATE

### 1. CHRONOLOGICAL PRESENTATION OF THE RESULTS

6. The diagram shows, in chronological order, for the Member States in which a decisive date has been identified, the date on which the sponsor [...] must still be under the age of 18 in order for the respective national authorities to recognise him as an ‘unaccompanied minor’ entitling him to family reunification with his (reunited) parents.



## 2. SUMMARY TABLES

7. The tables below set out, for each of the legal systems in which a specific date could be identified, in chronological order, the date on which the respective national authorities consider that the child must actually be under the age of 18 in order for him to be categorised as an ‘unaccompanied minor’, since that status entitles his parents to family reunification. The way in which the answer to the question was obtained is also stated.

## (a) SIX MEMBER STATES USING THE DATE ON WHICH THE APPLICATION FOR FAMILY REUNIFICATION WAS MADE

COMMENTARY	SOURCE
<b>BELGIUM</b>	
<p>Although the Council for asylum and immigration proceedings held that the relevant date was the date on which the application for family reunification was made, it should nevertheless be noted that the authorities, for their part, have considered, in family reunification cases in respect of a child where one of the parents had been granted refugee status in Belgium, that the decisive date, for consideration of the facts (and, in particular, for determination of the child’s age), was the date on which they had adopted their decision (in those cases, in respect of family reunification), which has also been confirmed by the Belgian Council of State (Conseil d’État).</p> <p>It should also be noted that, although the judgment of the Council for asylum and immigration proceedings of February 2010 is case-law which is applicable to the question raised, that judgment was not the subject of an appeal (before the Belgian Council of State).</p>	<p>Judgment of the Council for asylum and immigration proceedings (Conseil du Contentieux des Étrangers) (administrative court) of 25 February 2010, No 39.369).</p>
<b>BULGARIA</b>	
	<p>Administrative practice National authority concerned: State Agency for Refugees</p>

COMMENTARY	SOURCE
<b>ITALY</b>	
	Administrative practice National authorities concerned: Ministry of the Interior and National Commission for International Protection
<b>HUNGARY</b>	
When examining the cases submitted to them, the national authorities attach fundamental importance to the criterion of the best interests of the child seeking asylum.	Administrative practice National authorities concerned: National Office for Immigration and Asylum and its regional bodies, the local authorities for refugees
<b>THE NETHERLANDS</b>	
Notwithstanding the position taken by the Netherlands Council of State and the practice of the State Secretary for Justice and Security, it can be observed that some courts of first instance have adopted a different position. Thus, in two judgments of the Court of First Instance, The Hague, of 26 April 2016 and 16 August 2016, the date on which the third-country national entered the national territory was regarded as decisive for the persons concerned to be categorised as ‘unaccompanied minors’ in order for their parents to enjoy the right to family reunification within the meaning of Directive 2003/86/EC.	<ul style="list-style-type: none"> <li>- Practice of the State Secretary for Justice and Security,</li> <li>- Decision of the Netherlands Council of State of 23 November 2015.</li> </ul>
<b>PORTUGAL</b>	
	Administrative practice National authority concerned: Immigration and Borders Service (Serviço de Estrangeiros e Fronteiras)

## (b) ONE MEMBER STATE USING THE DAY BEFORE THE DECISION ON FAMILY REUNIFICATION

COMMENTARY	SOURCE
<b>GREECE</b>	
<p>According to circular No 38/2005, an application for family reunification by the parents of a refugee who is a minor must be lodged ‘within a reasonable time’, which is defined as no later than nine months before the refugee reaches the age of majority (the Greek authorities have a statutory period of nine months to examine an application for family reunification). For family reunification to be granted to his parents, the refugee concerned must be a minor up to the day before the decision on family reunification is taken.</p> <p>No relevant case-law could be identified.</p>	<p>Law No 3386/2005 and two circulars:</p> <ul style="list-style-type: none"> <li>- interpretative circular of the Ministry of Internal Affairs No 38/2005 of 23 December 2005,</li> <li>- circular of the Ministry of Foreign Affairs No F3//2010 of 12 November 2010.</li> </ul> <p>Law No 4251/2014.</p>

## (c) THREE MEMBER STATES USING THE DATE OF THE DECISION ON FAMILY REUNIFICATION

COMMENTARY	SOURCE
<b>CZECH REPUBLIC</b>	
<p>The issue of which regime applies to a refugee who is an unaccompanied minor is practically a theoretical case. There is currently no case-law on that subject.</p> <p>In practice, reference is made to principles which fall under the Code of Administrative Procedure, pursuant to which, in theory, the competent authority considers the facts, including the age of a person, on the date its decision is adopted. Moreover, the competent authority, namely the Ministry of the Interior, may apply a ‘measure of flexibility’ (a more favourable regime, which is not defined in the legislation) in cases concerning minors.</p>	<p>Administrative practice</p> <p>National authority concerned: Ministry of the Interior</p>

COMMENTARY	SOURCE
<b>SLOVENIA</b>	
	Judgment of the Administrative Court of 12 June 2013 (I U 899/2013), paragraphs 7 and 14.
<b>SWEDEN</b>	
	Judgment of the Court of Appeal responsible for matters relating to migration (Migrationsöverdomstolen) of 21 February 2017, case UM651-06. National authority concerned: Migration Agency (Migrationsverket)

(d) TWO MEMBER STATES USING THE DATE OF THE *FINAL* DECISION ON FAMILY REUNIFICATION

COMMENTARY	SOURCE
<b>GERMANY</b>	
<p>The date which is regarded as decisive is the date on which the <i>final</i> decision on family reunification is adopted, that is to say:</p> <ul style="list-style-type: none"> <li>- either the date of the last decision by the competent authority ruling on the right to family reunification,</li> <li>- or the date of the last decision by the court ruling on the merits of the case (first or second instance) before which an action has been brought against the decision refusing to allow family reunification.</li> </ul> <p>In order to prevent delays in the proceedings caused by the competent authorities, German law provides that the parents of the refugee who is an unaccompanied minor may apply for a visa, for the purposes of family reunification, in the context of interlocutory proceedings, in particular when the child is nearing the age of majority.</p>	<p>Judgment of the Federal Administrative Court (Bundesverwaltungsgericht), 18 April 2013 – 10 C 9/12. Confirmed on a number of occasions:</p> <ul style="list-style-type: none"> <li>- judgment of the Higher Administrative Court, Berlin-Brandenburg (Oberverwaltungsgericht Berlin-Brandenburg), 11 July 2016 – OVG 3 B 18.15,</li> <li>- orders of 22 December 2016 – OVG 3 S 106.16 and of 27 February 2017 – OVG 3 S 9.17.</li> </ul>

COMMENTARY	SOURCE
<b>AUSTRIA</b>	
<p>The decisive date is the date on which a <i>final</i> decision on the grant of a visa for the purposes of making an application for family reunification on Austrian territory is adopted, that is to say:</p> <ul style="list-style-type: none"> <li>- either the date of the last decision by the competent authority on whether to grant a visa for the purposes of family reunification,</li> <li>- or the date of the last decision by the court ruling on the merits of the case before which an action has been brought against the decision refusing to grant a visa for the purposes of family reunification.</li> </ul>	<p>Judgment of the Administrative Court (Verwaltungsgericht) of 28 January 2016 (Ra 2015/21/0230).</p> <p>Confirmed by the orders of the Administrative Court of 26 January 2017 (Ra 2016/20/0231) and of 21 February 2017 (Ra 2016/18/0253).</p>

### III. GUIDANCE AND CONCLUSION

- (A) It is clear from the research, in the first place, that in at least seven of the nineteen States whose legal systems have been examined (**Czech Republic, Spain, France, Croatia, Latvia, Poland** and **Romania**), the issue of which regime applies to refugees who are unaccompanied minors is practically a theoretical case, given the very low number or even lack of asylum applications from those persons on their territory.
- (B) In the second place, although the diversity in the answers provided by the national legal systems to the question raised may be noted, it would appear that, in order to determine which date is regarded as decisive for a refugee to be categorised as an ‘unaccompanied minor’, in order for his parents to enjoy the right to family reunification with him, in six of the nineteen Member States concerned by the study, the relevant date is the date on which the application for family reunification was made (**Belgium, Bulgaria, Italy, Hungary, Netherlands** and **Portugal**). In six other Member States, the competent authorities refer to a later date, namely the day before the decision on family reunification (**Greece**) or the date of the decision on family reunification (**Czech Republic, Germany,**

**Austria, Slovenia and Sweden**); and two of those States even use as the decisive date the date of the *final* decision on that family reunification (**Germany, Austria**). In **Spain**, in order to grant entitlement to family reunification to the parents of young and unaccompanied refugees, it would appear that the authorities rely, albeit without mentioning it, on the existence of a delay which is attributable to them in processing the application for asylum or the application for family reunification. In **Luxembourg**, the competent authorities reason in terms of refugee status and not in terms of relevant date (obtaining refugee status confers entitlement to family reunification, irrespective of the age of the person concerned). In **France** and in **Latvia**, a conclusive response could not be given. It would appear, however, that the relevant date is, at the earliest, the date on which the application for family reunification is made, but it cannot be ruled out that, in practice, the authorities use the date of the decision on family reunification as the decisive date. Similarly, in **Romania**, a conclusive response could not be identified. However, it would seem that, in a situation in which a person who has been granted refugee status reaches the age of majority after having obtained that status, the decisive date is the date on which the application for asylum was made, provided that that person reaches the age of majority shortly before the application for family reunification is made, which will be assessed on a case-by-case basis by the competent authority. In respect of **Croatia** and **Poland**, no answer to the question raised could be identified.

[...]