FAMILY MIGRATION POLICIES IN THE EU

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## EU LEGAL FRAMEWORKS

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<th>BETWEEN EU CITIZENS &amp; BETWEEN EU CITIZEN + THIRD COUNTRY NATIONAL</th>
<th>BETWEEN THIRD COUNTRY NATIONALS</th>
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<td>DIRECTIVE 2004/38 ON FREEDOM OF MOVEMENT AND OF RESIDENCE</td>
<td>DIRECTIVE 2003/86 ON THE RIGHT TO FAMILY REUNIFICATION</td>
<td>NATIONAL LAW</td>
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<tr>
<td>INTERNAL MARKET (certain discretion)</td>
<td>IMMIGRATION POLICY (very large discretion)</td>
<td>NATIONAL IMMIGRATION POLICY (WITH RISK OF REVERSE DISCRIMINATION)</td>
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<td>WHY ALSO TCNs?</td>
<td>NOT FOR UK, IRL &amp; DK</td>
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WHY ALSO TCNs?

IMMIGRATION POLICY

(certain discretion)

(very large discretion)

(WITH RISK OF REVERSE DISCRIMINATION)
## WHICH FAMILY MEMBERS?

<table>
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<tr>
<th>BETWEEN EU CITIZENS &amp; BETWEEN EU CITIZEN + TCN</th>
<th>BETWEEN TCNS</th>
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<tbody>
<tr>
<td>Spouse, Partners if registered partnership equivalent to marriage</td>
<td>Mandatory for spouse, Optional for partners (national law)</td>
</tr>
<tr>
<td>Children under 21 years</td>
<td>Minor children following national law (often 18 years)</td>
</tr>
<tr>
<td>Parents if dependent</td>
<td>Optional under national law</td>
</tr>
<tr>
<td>Facilitation for: - any family member IF dependant OR member of household OR sickness requires family care - Partner de facto</td>
<td>National law</td>
</tr>
</tbody>
</table>
SAME-SEX COUPLES

• Both directives speak about the “spouse”
• Impossible to interpret this as including same-sex spouses
• Under directive 2004/38, they are considered as de facto partners (facilitation)
• What about article 21 EUCFR prohibiting any discrimination based on sex?
QUOTAS & WAITING PERIODS

• Quotas not allowed under EU law
• TCN Sponsor must have a residence permit valid for at least one year & “reasonable prospects of obtaining the right of permanent residence” (article 3, §1 of directive 2003/86)
• Decision to be taken within 9 months from date on application (article 5, §4)
• Waiting period: Member States may require the TCN sponsor to have stayed maximum 2 years before family joins him (article 8, §1)
INADMISSIBILITY

• Case Metock (CJEU C-127/08 of 25 July 2008):
  “Directive 2004/38 precludes legislation of a Member State which requires a TCN who is the spouse of a Union citizen to have previously been lawfully resident”

• Article 5, §3 of directive 2003/86:
  “The application shall be submitted and examined when the family members are residing outside the territory of the Member State in which the sponsor resides. By way of derogation, a Member State may, in appropriate circumstances, accept an application submitted when the family members are already in its territory”.
## CONDITIONS

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<th>DIRECTIVE 2003/86</th>
<th>DIRECTIVE 2004/38</th>
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<tr>
<td><strong>INCOME</strong></td>
<td>“Stable and regular resources” in relation to minimum wage/pension</td>
<td>“Sufficient resources” not to become burden on social assistance</td>
</tr>
<tr>
<td><strong>SICKNESS INSURANCE</strong></td>
<td>Insurance in respect of risks covered for nationals</td>
<td>Comprehensive insurance cover</td>
</tr>
<tr>
<td><strong>ACCOMMODATION</strong></td>
<td>Normal accommodation for comparable family in same region</td>
<td>NO</td>
</tr>
<tr>
<td><strong>INTEGRATION</strong></td>
<td>Integration “measures” (Case EP v Council C-540/03 + Dogan?)</td>
<td>NO</td>
</tr>
</tbody>
</table>
CONCLUSIONS

European pact on Immigration & asylum (2008):

“The European Council agrees to regulate family migration more effectively by inviting each Member State, in compliance with the ECHR, to take into consideration in its national legislation, except for certain specific categories, its own reception capacities and families' capacity to integrate, as evaluated by their resources and accommodation in the country of destination and, for example, their knowledge of that country's language”
PRESSURE OF JURISPRUDENCE

• In relation with TCN families (directive 2003/86): Case Chakroun (C-578/08):
  – goal of directive “to promote family reunification”!
  – possible conditions are exceptions to right
  – individualisation of examination (power/duty)
+ best interests of child (EUCFR more than Convention 1989)
PRESSURE OF JURISPRUDENCE

• In relation with TCN family members of EU citizens (directive 2004/38):
  – case Metock (C-127/08): illegal entry not problem
  – Case Zambrano (C-34/09): EU law applies to internal situation “in case of deprivation of genuine rights of EU citizenship”

• Actually battle on division of competences between EU and its Member States
 BLOCKAGE OF REFORMS

• Willingness of Member States to restrict family reunification under directive 2004/38 blocked by Commission right of initiative

• Willingness of Commission to revise directive 2003/86 blocked by Member States (+ opposition between Council & Parliament)

• Method of non-binding guidelines:
  – about directive 2003/86: upcoming in March 2014 after consultation on basis of green paper in 2011