

Part II
**COMPARATIVE ANALYSIS OF THE LEGISLATION AND THE PROCEDURES GOVERNING
THE IMMIGRATION OF FAMILY MEMBERS IN CERTAIN OECD COUNTRIES**

Introduction

This study¹ focuses mainly on the following OECD countries: Australia, Belgium, Canada, the Czech Republic, Finland, France, Germany, Italy, the Netherlands, Norway, Spain, Sweden, Switzerland, the United Kingdom and the United States, as well as on Bulgaria and the Slovak Republic. These countries have had to deal with the presence and growth of substantial groups of foreign workers who have been settled there for long periods of time; they have accordingly introduced family reunion, and turned it into a specific right that is generally restricted to foreigners, although some countries apply this procedure to the foreign families of their own nationals.

The arrival of families enables immigrant workers to lead normal family lives, contributes to their security, and integrates them into the countries where they have settled. Furthermore, since restrictions were applied to immigration in several OECD countries in Europe, family reunion has become the main legal means of entering certain countries. However, in non-European OECD countries such as Australia, Canada and the United States, permanent immigration is not subject to major restrictions. In 1998, family immigration accounted for two-thirds of all immigration into the United States, and over a quarter of all immigration into Australia and Canada (see Table II.1). In all three countries, the most common form of family immigration is when permanent migrants enter the country accompanied by their families. It should be noted, however, that this is not usually an automatic right in the case of temporary migration.

The legal basis for family reunion is set out in international instruments and national laws (A), but since the principle was first established, it has been interpreted in different ways in all the countries under discussion.

A distinction is generally drawn between permanent and temporary workers in European countries; the exception is the United Kingdom. As far as permanent workers are concerned, the process involves authorising family members to join the worker when he has been settled in the country for a shorter or longer period of time, and issuing them with residence permits. Temporary workers are normally denied this option, although exceptions may be made in the case of highly skilled workers, who may be accompanied by their families (accompanying families); the latter are not allowed to enter the labour market.

This question is tackled quite differently in non-European countries (*i.e.* Australia, the United States and New Zealand) and the United Kingdom. These countries do not issue residence permits, and authorisation to remain in the country is linked to visas of which there are many categories (*e.g.* in the United States), and whose number is limited by pre-determined quotas. This means that it is no longer the immigrant who applies for reunion, but the family member who puts in for the visa that is appropriate to his category; this will be issued to him if he meets the qualifying conditions. Visas certainly favour members of the families of permanent residents, but they may also be issued to temporary workers,

particularly when they enable foreigners to arrive directly with their families (accompanying families). This situation is generally more like to arise in the above countries than in European countries.

The large number of visas and the programmes that have been specially designed to cater for certain categories of immigrant foster a kind of casuistry that makes it difficult to draw comparisons and develop syntheses. Reference should also be made to the frequent use of the 'sponsor' technique whereby family members may obtain a visa if they are sponsored, that is to say if a citizen or permanent resident undertakes to provide for all their needs for a variable period of time. This approach opens up a broader interpretation of the family that encompasses a sponsor's fiancé(e), cousins and more distant relatives such as nephews, nieces, grandchildren or orphans.

It follows that family reunion is a protean concept that varies according to economic factors and to more or less restrictive conceptions of the family. There is hence a need to identify those who are likely to benefit from reunion (B), and we shall then examine the conditions governing family reunion and the entry of the accompanying family (C). Lastly, family members come under legal systems that may vary from one country to the next, for example in respect of access to the labour market and social welfare (D).

A. THE LEGAL FOUNDATION OF FAMILY REUNION

1. International conventions

Many international agreements contain references to the individual's right to family life: Article 16 of the Universal Declaration of Human Rights of 10 December 1948 says that anyone has the right to marry and found a family; Article 8 of the European Convention for the Protection of Human Rights says that everyone has the right to respect for his private and family life; Article 19 of the European Social Charter of 8 October 1961 says that countries must make every effort to facilitate the family reunion of migrant workers who themselves have permission to stay in the country; Article 12 of the Convention on the Legal Status of Migrant Workers of 24 November 1977 makes provision for family reunion; and lastly, the United Nations Convention on the Rights of the Child of 26 January 1990² stresses the protection of the child's interests, which in turn relates to family life. The same applies to bilateral agreements, but these go no further than articulate the principle of family reunion, and leave practical details to national laws.³

2. National laws

Many countries have brought in legislation on family reunion during the last 25 years or so. It should be pointed out in this context that as family reunion was introduced at the same time as a ban on permanent immigration, it is the only means, apart from asylum, of enabling foreigners to settle permanently in most of the countries under examination.

Germany refused to be an immigration country for a long time, but it has now finally accepted family immigration. Family reunion was initially the responsibility of the *Länder*, but a right now covers it under a federal Law on foreigners of 9 July 1998.

Since 1989, the question of which visa should be issued to members of a foreigner's family has been dealt with in Australia by the *'Migration Regulations'*, backed up by the *'Procedure Advice Manual'* and the *'Migration Series Instructions'*. The *'Migration Regulations'* were amended on 1 November 1999. In Belgium, the right to family reunion is covered by the Law of 15 December 1980, as amended in this respect by the Laws of 6 May and 6 August 1993. In Bulgaria, the issue comes under Article 8(a) of the

Law on foreigners living in Bulgaria; family reunion is also covered in Article 25 of the draft law on foreign citizens in Bulgaria and Article 24 of the draft law on refugees.

In Canada, immigration rules R2 (1), R4 (1) and A6 (2) cover family reunion. A draft reform of immigration law is currently under way. In Spain, the conditions for family reunion are set out in Article 54 of Royal Decree 155/1996 of 2 February 1996 and the Implementation Decree of Organic Law 7/1985 on the rights and freedoms of foreigners in Spain. Family reunion is not understood in the same way in the United States and Canada as it is in European countries.

American law is traditionally favourable to family immigration. The *US Immigration Act* deals with family immigration, and manages the situation through the issue of visas. As far as immigrant workers are concerned, the entry of family members is based on the 'family preference' system (see Table II.2), and most immigration quotas have promoted family reunion. The *US Immigration Act 1990* also contains a long list of visas to suit various circumstances, particularly those that are issued to family members who are deemed to be non-immigrants.

The 1990 Act also introduces quotas for members of families of American citizens who are not 'immediate relatives', that is to say relatives other than spouses, children under the age of 18 and parents. This provision previously existed for foreigners' family members, the foreign members of families of American citizens not being covered by quotas. However, the 1990 Act provides that the total number of an American's immediate family members who entered the country in the previous year must be set against the total number of visas issued for family reunion or family preference in the previous year. This has had the effect of further reducing the number of visas issued to members of foreigners' families.

In Finland, the question is governed by the Law on foreigners of 1997, and by Ministerial Instructions of 1993 relating to family reunion for refugees and residence and work permits. In France, apart from a Decree of 24 December 1945 enabling the families of foreigners to settle, it was not until 1976 that a desire to integrate foreigners prompted regulations on family reunion designed to enable foreign people to lead normal family lives. A Decree of 26 April 1976 set out the conditions under which family members of a foreigner living legally in France could come and join him or her. The right of foreigners in a regular situation to be joined by their families⁴ has had legal protection since the Law of 24 August 1993 and is also covered by Articles 29-30 *bis* of the Ordinance of 2 November 1945 as amended by the Law of 11 May 1998.

Family reunion in Italy is dealt with by Law No. 40 of 19 February 1998 and a Presidential Decree of 30 December 1965. In Norway, it is covered by the Immigration Law of 24 July 1988. In the Netherlands, the main legislation is contained in the Law on foreigners of 13 January 1965 (recently amended in 1998), the Decree and Regulation on foreigners, and a Circular with no real legal standing which contains the instructions given to the immigration and nationality services and to the local immigration police.

In the United Kingdom, the 1984 Immigration Rules have been amended on several occasions, the most recent being in 1997. Slovakia has legal provisions on family reunion in Law 73/95 on foreigners' residence, Law 283/95 on refugees, Law 387/96 on employment, and Law 70/97 on ethnic Slovaks. In Sweden the relevant provisions are set out in the 1989 Law on foreigners. The relevant legislation in Switzerland is the Law of 26 March 1931 on the residence and settlement of foreigners, and its Implementation Ordinances, particularly the Ordinance of 6 October 1986. In the Czech Republic, the Law of 1992 on foreigners living in the Republic, as amended in 1994 and 1996, contains provisions relating to family reunion.

B. BENEFICIARIES OF FAMILY REUNION

Generally speaking, a distinction may be drawn between permanent and temporary workers, in that the former have a right to family reunion whereas the latter do so only rarely. Family reunion for temporary workers appears to be out of kilter with the temporary nature of their residence.

That is why family reunion is denied to temporary workers in Germany where, like temporary residents, family members must have a work permit. In Canada, temporary workers may usually be accompanied by members of their family but these are not entitled to work. However, a recent law relating to high-level temporary workers allows spouses to seek employment in Canada without specific leave. The spouses of foreign students do not need a permit to work, even if they are not full-time students.

The United States takes a more lenient line by allowing temporary workers to be joined by their families, but it does not give them an entitlement to work. In France, family reunion for temporary workers is not normally possible unless it is subject to the accompanying family procedure: it may only be used in exceptional cases where those concerned appear to have a good chance of adapting to life in France; it does not give them a right to get a job.

Switzerland excludes certain categories – seasonal workers, people with short-stay residence permits, trainees and people taking the waters – from any entitlement to family reunion. Some countries also include members of the families of their own nationals in specially amended family reunion laws. Examples of this include Bulgaria, Canada, the United Kingdom where permanent residents are assimilated as nationals, Australia and the United States where nationals have preference over foreigners, and Finland, the Netherlands, Slovakia, Switzerland and the Czech Republic where the criterion for a worker (whether a national or a foreigner) to be joined by his family is permanent residence.

By contrast, under French and Belgian law, foreign members of a national's family receive a residence permit automatically. In Germany, protection of the family is covered by Article 6 of the Fundamental Law; although it covers everyone, it is designed to apply to nationals first and foremost. The foreign members of the family of a German living in Germany are entitled to a residence permit (Article 23 of the Law of 1990).

Australia distinguishes between two kinds of immigration: that of family members and that of skilled workers. The former are allowed to enter Australia on the basis of their family links⁵ with a 'sponsor' who may be a national, a permanent immigrant (Canada is the same in this respect) or a New Zealand national; the latter have to meet specific criteria relating to skills and knowledge of the language. Several types of visa reflect different kinds of family link, but nationals have priority when it comes to being joined by their families.

The concept of the family, whether it is that of a worker, a student or a refugee, is open to broad interpretation. In all the countries under consideration, the family includes the spouse and children under the age of 18, but it is sometimes extended to embrace older relatives and, in certain cases, other family members (see Table II.3).

However, a special point needs to be made in connection with member countries of the European Community: strictly speaking, under EC law, there is no such thing as family reunion, as family members have a right to follow or join an EC national who exercises his right to freedom of movement; they receive a residence permit immediately. In addition to the spouse and children under the age of 21, the family (irrespective of the members' nationalities) includes an EC national's dependent relatives in the ascending line and his spouse.

1. The worker's family

a) The spouse

The notion of spouse is open to a large number of definitions. In practice, the question is whether it incorporates co-habitees or the wives of a polygamous foreigner. Replies vary. Most countries insist on married couples living together.

The status of spouse

The status of spouse has to be proved; it is usually contained in a certificate that sets out the holder's civil status. Where the marriage has taken place abroad, or if there is any doubt as to the authenticity of the certificate that has been produced, in Belgium, France, Germany and the Netherlands, the diplomatic or consular authorities may be asked to authenticate the claim.

A marriage of convenience acts as an impediment to family reunification in France, the Netherlands, Spain, and Switzerland, whether it is between foreigners or between a Swiss national and a foreigner. The marriage must have taken place at least two years earlier for family reunion to be permitted in Bulgaria. By way of combating the forced marriages of very young children, Belgian law states that both spouses must be at least 18 years of age.

Co-habitees

A distinction may be drawn between countries that reject co-habitees for family reunion and those that accept them. The former category includes Belgium, Bulgaria, the Czech Republic, France, Germany, Italy and the United States.⁶ here, particularly in the case of homosexual unions, co-habitees have no right to family reunion. However, it should be noted that, under France's Law of 15 November 1999,⁷ two adults of the same or different gender may sign a 'civil covenant of solidarity' (*Pacte civil de solidarité, or PACS*) as a basis for co-habitation. The new arrangements will probably have implications for family reunion. For the time being, they entitle co-habitees to a temporary residence permit (marked "*vie privée et familiale*"), provided that the two have already lived together for at least three years in the case of co-habitation with a French or EU national, or five years for co-habitation with a non-EU national.

By contrast, in Canada, Finland, Norway, and the United Kingdom if the relationship has existed for at least two years, Switzerland, Australia, the Netherlands and Sweden, co-habitees do have entitlement to family reunion. In the two last-named countries, a homosexual relationship is no obstacle to family reunion, while in Australia it must have been in existence for a year. A homosexual relationship is acceptable as long as one of the parties is a national, or has a settlement permit, or has been given asylum.⁸ There is no reference to this criterion in Bulgaria.

Polygamous husbands

The question as to whether polygamous families should benefit from family reunion has been raised in many countries, particularly in European countries. The current situation is quite clear: lawmakers only acknowledge the European family, and polygamous marriages are therefore ruled out. This is the solution that has been adopted in all the legislative systems examined.⁹ Justification for this exclusion is based on the idea that family reunion is designed to further the integration of foreigners in the society in

which they are living, and polygamy, a matter on which western law is totally silent, makes integration into western society much more difficult, not to say impossible. Generally speaking, polygamous husbands may only be joined by one wife and her children. However, in Australia, polygamous husbands do not meet the statutory definition of 'spouse' and they are therefore unable to take advantage of any family link; however, they may bring over all of their (natural and adopted) children as long as they are dependent.

In France, the Council of State decided in 1980¹⁰ that the right to lead a normal family life meant that a polygamous husband could bring his wives into the country. This solution was replaced by the Law of 24 August 1993,¹¹ and the regularisation exercise carried out in June 1997 excluded foreigners living in polygamous relationships.

An obligation to co-habit

To be sure that a marriage has really taken place, many countries insist that the spouses (or co-habitees) live together for a period of time. Failure to do so may encourage suspicions that it is a marriage of convenience (*e.g.* in the Netherlands, Switzerland and the United States). Separation and divorce therefore affect the spouse's leave to remain, particularly if it happens during a waiting period following effective reunion. Countries respond differently to death: some (*e.g.* Australia, Canada, the Netherlands, Slovakia and Switzerland) assimilate it into divorce; in Canada, death does not affect the right to remain, and most of the other countries in the survey adopt the same attitude.

In most countries, divorce means that the spouse's right to stay is withdrawn. This is the situation in Spain, for instance, unless the spouses had been living together for the previous two years, in France if the divorce occurs within one year of reunion, in the Netherlands and in Sweden when it occurs within two years of reunion, and in Switzerland when it occurs within five years of reunion. A similar solution is employed in Slovakia where the residence permit cannot be renewed, particularly if the couple have no children of their own.

A waiting period of one year applies in Belgium and France. Under Belgian law,¹² the Minister has a one-year waiting period that may be extended by three months during which he may decide whether a spouse may stay; he may therefore check on the cohabitation rule during this period.¹³ If the spouses no longer live together, or if they are in the process of getting divorced during the year following their entry into France, the card issued to the spouse may not be renewed (temporary card) and may even be withdrawn (resident's card).

In Finland, divorce within two years of family reunion cancels the entitlement to stay if the spouses have no children of their own. In the Netherlands, if the marriage (or co-habitation) breaks up in the three months that follow family reunion, the spouse no longer has any right to stay except for humanitarian reasons. After three years of marriage, the spouse has a personal entitlement to stay as long as he has lived legally in the Netherlands for a year as a result of his marriage, and can support himself. He also has free access to the labour market without the need for authorisation. A refusal to grant leave to remain must take account of Article 8 of the European Convention on Human Rights. Finally, when the spouse or co-habitee has been living in the country legally for five years, he is entitled to a permanent residence permit as long as he has the means to support himself, and is no threat to public order and public or national security.

In Germany, failure to comply with the co-habitation rule results in the residence permit being withdrawn if the couple have lived in the Federal Republic for under four years. In Bulgaria, the right to family reunion is cancelled if the marriage breaks up within five years, or there is sufficient evidence that co-habitation has ceased. However, in the case of refugees, divorce does not terminate the right to stay of

spouses and children. In Norway, the right to stay terminates if the marriage ends within three years of reunion, through either divorce or death.

In Switzerland, the right to stay granted to spouses terminates as soon as they cease living together or get divorced within five years of family reunion. The government then has discretionary powers to allow the individuals to stay. Different provisions apply to spouses who have been given an entitlement to settle: they only lose their right to stay if they commit breaches of public order or if their settlement entitlement is revoked. Children have the same status as the parent in whose charge they are.

However, in some countries, the break-up of a marriage and death make no difference to family members. This is true of Australia or Italy (where the residence permit may be altered to include a right to work or follow a course of study). It is also true of the United Kingdom if the spouse or children have been granted permanent leave to remain. The solution is more uncertain for those with only temporary leave to remain. In the Czech Republic, a foreigner's residence permit may expire if he fails to declare an absence of more than 180 days. Fraud and failure to comply with criminal law will similarly cause a residence permit to be withdrawn. In most countries, when a couple no longer live together as a result of a death, this does not result in the refusal of a residence permit.

In Germany, the death of a spouse does not automatically lead to the loss of a residence permit; this can be renewed from the time that the co-habitation became effective. The same provisions apply in Belgium and in Spain where people who have benefited from family reunion have a right that cannot be taken away from them: spouses and children are entitled to their own residence permit if the initiator of family reunion was a legal resident in the country at the time of death. In the Netherlands, the residence permits of family members are not renewed following the death of the initiator of family reunion. Death has no effect on the right to stay in Bulgaria, Canada (in the case of a Canadian's family members), Finland, Italy and the Czech Republic. In France, where there are no specific provisions, cases are looked at compassionately.

Conversely, in Norway the death of a spouse within three years of reunion leads to the loss of a residence permit. In Sweden, death within two years of reunion is an obstacle to further residence in the country, while in Switzerland death has the same effect as divorce if it occurs within five years of reunion.

In many countries, the government may refuse to issue residence permits to foreigners who have entered marriages of convenience. Examples include Germany,¹⁴ Spain, France,¹⁵ Switzerland and the United States where a fraudulent marriage blocks rights to family reunion,¹⁶ or even invalidates them. In order to establish whether it is fraudulent, the US authorities (Immigration and Naturalization Service) check on the facts surrounding the co-habitation.

b) Children

The children taken into consideration are usually legitimate or natural children with a legally established relationship. Children who have been adopted (in Australia, France, Germany and Spain) or are in the process of being adopted (Canada) may benefit from family reunion procedures (See for the case of France, the distribution of persons who have benefited from family reunion according to their family ties in Table II.4). Australia also allows in stepchildren. If the adoption has taken place abroad, the decision to adopt must have been regular, and meet certain conditions, if it is to be effective in the country concerned (in Spain and France). Adoption can give rise to problems with Moslem countries, which have no legislation covering adoption.¹⁷

Generally speaking, family reunion concerns the applicant's unmarried children, under the age of 18, or who do not live independently of their parents (Spain), but the age limit varies from country to country: 16 years of age in Germany (raised to 18 in the case of the children of refugees); 18 in Belgium, Bulgaria, Finland, France, Italy, the Netherlands, Slovakia, Spain, Switzerland and the United States; and 19 in Canada. The age limit is 21 for the children of nationals of a country that was signatory to the European Social Charter of 18 October 1961.¹⁸ In Australia the age limit is 25 if the child is a full-time student or disabled person. Some countries, like the Czech Republic, have no age limit for children.

The right to family reunion is often extended to children who are dependent on the applicant's spouse, and who must obviously meet the same entry requirements as the applicant's children (Australia, Canada, the Czech Republic, Finland (as long as they arrive with the foreigner's spouse), France, Italy, Germany, the Netherlands and Switzerland). Specific conditions are sometimes attached: for example, in Germany, family reunion is an entitlement for children both of whose parents live legally in the country, while the reunion of children aged over 16 is at the discretion of the relevant authorities; in Bulgaria, the children of Bulgarian citizens and of permanent residents are included under family reunion procedures, although adopted children aged over 18 are excluded.

In France, as in Canada, family reunion also concerns children under the age of 18 of an earlier marriage of the applicant or his spouse, whether their relationship has been established in that parent's name or the other parent has died or has no longer any claim to his parental rights (in France, this also includes polygamous people). In Switzerland, family reunion rights are open to children under 20 of nationals of Portugal, Spain and Italy. However, if the parents and children have been living separately for many years and only come together as the children reach their majority, requests for family reunion are turned down on the grounds of suspected fraud. In the Czech Republic, all children qualify for family reunion, whether they are the children of the couple or just one of the parents, and whether they are dependent on these parents or are independent.

In some countries, older children also qualify for family reunion if they are dependent on their parents and/or have a disability: they include Belgium, Bulgaria, Canada, the Czech Republic, Finland, Germany, Italy (when reunion is requested by an Italian citizen, his children – and those of his spouse who are over the age of 18 and independent – may also benefit), the Netherlands, Spain and Switzerland. Australia allows children who are over the age of 18 and are not dependent on their parents to apply for a skilled worker's visa, and not one that covers family immigration. Generally speaking, the break-up of a marriage makes no difference to the children's leave to remain, although the Netherlands insists that the child should have resided in the country for at least a year.

c) *Relatives in the ascending line*

Relatives in the ascending line, or elderly dependants, are often excluded from family reunion, except in unusual circumstances where the government has discretionary powers. In this context, some countries draw a distinction between the parents of foreign nationals who have no right to family reunion, and the parents of their own nationals who do qualify: they include Belgium, Bulgaria (new Bulgarian legislation restricts the right to family reunion to the parents of Bulgarian citizens; in the past, it had also been granted to the parents of permanent residents), the United States (it is much more difficult for the foreign parents of a foreigner living in the United States than for the foreign parents of an American citizen to obtain a visa) and Switzerland.

In Germany, family reunion of an immigrant's parents is normally not allowed except where refusal could have serious consequences, when the foreigner requesting family reunion is under 18 years of age, and when the decision is justified by humanitarian considerations. In Australia, there are no provisions

specifically dealing with parents and grandparents, although they may be permitted to enter the country as ‘family members dependent’ on the foreigner or national. They qualify for a special visa issued under family immigration rules, but it may only be requested if the ‘sponsor’ has been ‘established’ in Australia for two years.

Canada and Finland permit family reunion where the beneficiaries are parents. Canada even allows reunion for grandparents when the request is made by a Canadian national or a permanent resident aged 19 or over. In France, the elderly dependants of a foreign national may not use family reunion procedures, and may only enter the country as visitors if they can show that they have sufficient means to live and pay for health insurance. A statement that their children living in France will see to their needs may be taken into account in determining financial contribution.

Spain allows the family reunion of a foreigner’s elderly dependants on condition that they are financial dependent on the foreigner and there are reasons justifying their continued stay in Spain. Italy, the Netherlands, Sweden and the Czech Republic allow family reunion of parents and grandparents; the latter country also allows the reunion of close family members and, for humanitarian reasons, elderly persons and people living alone. The parents of a child under 18 years of age qualify for family reunion rights in Slovakia.

d) *Brothers and sisters*

Most countries exclude brothers and sisters from family reunion: they include Belgium (except under terms set out in an agreement¹⁹); Finland (although the close relative of a foreigner may exceptionally be allowed to enter Finland if he is entirely dependent on the foreigner living there); France; Germany; Slovakia; and Switzerland. However, certain countries do admit brothers and sisters: in Australia, for instance, the category of brothers and sisters is larger than that of “remaining relatives” and “carers”. This latter group consists of people who wish to, and are able to, give substantial assistance to a family member, or to an Australian if he has a serious handicap that would disable him/her for at least two years. However, there must be no Australian person or organisation able to cover this cost. The family of a foreigner’s fiancé(e) is also allowed to enter.

Canada provides for the family reunion of brothers and sisters, of a nephew or a niece, and of grandchildren if they are orphans, single or under 19 years of age. It also allows family reunion for the applicant’s fiancé(e)²⁰ and for anyone else related to the applicant if he has no relatives, whether Canadians or permanent residents. Italy also offers this option to family members up to the third degree of consanguinity providing that the applicant takes responsibility for him (this condition is not required of Italian citizens requesting family reunion), and, as prescribed by Italian law, to family members with disabilities. The Netherlands and the Czech Republic also allow the family reunion of brothers and sisters: if the applicant is a Czech national, he may also ask for his uncles, aunts and cousins to join him as well.

2. The families of students

Wide ranges of solutions are adopted according to the country. Some countries deny students the right to family reunion; this is the case in Spain and Switzerland. Others allow it, or only do so in certain circumstances: the United States and the Netherlands allow a student’s family to enter the country as long as they do not work. In Canada, where family reunion mainly concerns permanent immigrants, a student’s spouse may work if the couple are experiencing financial problems. In France, students normally have a right to family reunion since the Constitutional Court quashed the Law of 24 August 1993 (they were

denied under this latter legislation²¹), but in practice they rarely qualify because they are unable to show that they have sufficient financial resources. In Italy, only students with residence permits qualify.

Like Belgium, Germany gives no right of family reunion to the spouses of foreign students, but does not rule out the possibility either.²² Under Belgian law, reunion of a student's family is conditional on the student having sufficient means to live and satisfactory accommodation. In Finland, students only have entitlement to family reunion if their studies extend over a period of several years, and if they have permanent leave to remain.

3. The families of refugees and asylum-seekers

The conditions governing the family reunion of refugees are usually set out in more flexible terms than in common law. In Germany, a refugee's spouse and family members have a full entitlement to family reunion.

In other countries, family reunion may be granted to refugees more easily than to other foreigners: in Bulgaria, this applies to refugees, foreigners with humanitarian status, and asylum-seekers providing they have acquired this status; in Finland, family reunion is open to refugees and people who have been given a permit for humanitarian reasons, or because they are in need of protection, and who have permanent leave to remain. In the Netherlands, a refugee's children under the age of 18 and his spouse qualify for family reunion without having to meet conditions relating to income and accommodation, if they have the same nationality as the refugee and asked to enter the Netherlands at the same time as him/her, or have the same nationality as the refugee and have followed him to the Netherlands from their country of origin or a third country within a short space of time.

Some countries issue residence permits without making the refugees pass through the family reunion procedure; these include Belgium and France. In Belgium, the family members of a foreigner who has asked for refugee status receive a statement of registration that has the same duration as the foreigner's residence permit. In France, the families of refugees are not covered by family reunion provisions, but by Article 15(10) of the Ordinance of 1945. This law grants a full resident's card, except where there is a threat to public order, to a refugee recognised as such by the OFPRA (*Office français de protection des réfugiés et apatrides*), to his spouse, to children who are under the age of 18 or will celebrate their 18th birthday in the following year, when the marriage has taken place prior to this recognition as a refugee. If the marriage has taken place subsequently, the resident's permit is issued under the conditions that would apply to the foreign spouse of a French person, the marriage must have taken place at least a year before, and the couple must effectively be living together. They must also obtain a temporary residence permit during the first year of their marriage.

In the Czech Republic, a refugee's spouse qualifies for reunion, and both here and in Slovakia, reunion may be authorised for reasons linked to the interests of foreign policy.

The definition of family reunion beneficiary varies considerably from one country to the next, but there is an increasing convergence of practice on the conditions.

C. THE CONDITIONS FOR FAMILY REUNION

Although the conditions for family reunion vary from country to country, they share certain features with regard to the basic conditions and procedure. These conditions do not apply to members of

the families of EC nationals exercising their right of freedom of movement: they are covered by the same provisions as EC nationals.

1. The basic conditions

The basic conditions needed for family reunion cover both the immigrant and his family members.

a) *Conditions that must be met by an immigrant requesting family reunion*

Three conditions are normally asked of the foreign applicant, who is known in Australia and Canada as the 'sponsor': they relate to length of stay, means of subsistence and accommodation (see Table II.5). However, in Slovakia, only foreigners of Slovak origin, refugees, members of the diplomatic corps and representatives of international government organisations may have their families join them.

Length of stay

A minimum period of stay is normally required before a foreigner can be joined by his family (except in Slovakia). This often involves applying for a particular residence permit that is not obtainable until after a certain period of stay: for example, in Germany, the spouse's entry and residence are protected by law if the first-generation immigrant holds either a resident's card (obtainable after a stay of seven years) or a simple permit to stay if he was married when he entered the country. An exception is made in respect of migrants who are allowed to come into Germany for humanitarian reasons and who have exceptional leave to remain: in such cases, family reunion may be granted if it is not possible in the country of origin (Article 31 of the *Ausländer Gesetz*).

However, family reunion is not open to foreigners who have received the court's 'tolerance' (*Duldung*) or have been found guilty of a criminal offence. Second-generation foreigners must be over the age of 18, they must have lived in Germany for eight years, and they must have indefinite leave to remain; this permit is only issued after five years of living in a regular situation. In Australia and Canada, the 'sponsor'²³ is a national or a foreigner with resident status (*i.e.* someone who has a visa entitling him live in the country on a regular basis). For a foreigner to be joined by his family in Belgium, he must have been given authorisation either to stay for over three months or to settle. Family members may stay, but they must meet the same conditions as other foreigners, that is to say they must have permission to stay for over three months or permission to settle.

In Canada and Australia, the holder of a permanent residence permit may act as sponsor. This right is highly restricted in the case of temporary migrants. In Bulgaria, Spain, Italy and the Czech Republic, foreigners must have permanent leave to remain; this means that they have already been in the country for a certain time. To obtain the documentation, they must have spent at least six months in Spain, and five years²⁴ in Italy. In Italy, foreigners may also hold permits allowing them to spend at least a year in the country for the purpose of taking employment or working in self-employment, or other documentation giving them asylum status, allowing them study, and granting them entry for religious reasons.

In Finland and the Netherlands, foreigners must have permanent leave to remain for at least a year. The same rule applies in France where the applicant must have lived there legally and had at least a one-year permit²⁵ (*i.e.* leave to remain or a resident's card). In Switzerland, a foreigner has no entitlement

to family reunion unless he holds a permission to settle: this permit is only issued after a stay of ten years (five years in the case of some foreigners).

Financial resources

Family members must not be a charge on the public purse of the receiving country. For this reason, the applicant must provide evidence of regular and sufficient personal financial resources to cater for his family's needs: in most cases this means he must have a job and be covered by a social insurance scheme. This is a normal condition for permanent or long-term leave to remain. These provisions also apply in Germany and the Netherlands where the right to family reunion is withheld from people who are in receipt of benefits and social assistance.

In Australia, the sponsor has to make an undertaking to pay for his family members' needs for at least two years, and possibly take out an insurance policy against having to rely on social aid. In Canada, although state aid can be taken into account, the sponsor normally has to prove that he had enough money during the twelve months preceding the application, and promise to cater for his family's needs for a period of ten years. Failure to comply with this undertaking will prevent him from standing again as a sponsor.

In Switzerland and the Czech Republic, it is necessary for an applicant to provide evidence of sufficient financial resources accruing from his goods or his spouse's job, or else set out in a bank statement that he has the equivalent of the monthly minimum wage each month for a year. In Slovakia, the person receiving family members must also pay for their expenses.

No condition attached to money or having a job is imposed in Belgium (family members are not covered by Article 3(1) of the Law of 15 December 1980 whereby, to enter the country, a foreigner must manifestly have means of subsistence) and in Bulgaria.

In Finland, means-testing is applied, but there is no obligation to have a job. Means-testing is not required of refugees, people who are in need of protection, or those who have been granted entry for humanitarian reasons.

In France, an entrant's financial resources must be no less than the SMIC²⁶ and these are assessed independently from any family contributions he may receive. A regular source of income is the sole condition demanded of EC nationals.

In Italy, with the exception of refugees, foreigners who seek family reunion must show evidence of a legal income of no less than the Family Assistance Benefit (*i.e.* FRF 1 500 per month) if they want to bring in only one family member; this minimum is doubled for two or three people, and tripled for four or more. Total income is calculated on the basis of the incomes of all the people living with the foreigner, but this condition does not apply to Italian citizens who request reunion.

The Netherlands say that a foreigner who has worked uninterruptedly for three years, and earned the minimum wage set by law, is deemed to have sufficient means of subsistence²⁷ as long as the payment of this minimum wage is guaranteed for six months. Compensation payments received for short periods of unemployment are counted as employment income.

Special conditions apply to four particular types of applicant: Dutch nationals, refugees, refugees with leave to remain (status C), and people with permanent leave to remain. Furthermore, the means-testing condition is waived in respect of some people: people aged 57 and over, a parent living alone with one or more children aged under 5, people with a total, permanent disability, and some cases of long-term

unemployment. These exceptions only apply to the family reunion of the spouse and children of a couple belonging to the four aforementioned categories.²⁸

Accommodation

In Australia, Canada, Germany and the Netherlands, the applicant must show evidence of adequate accommodation in which to house his family when he makes the application.

This condition is waived in the Netherlands in the case of people with Dutch nationality, refugees and those who have been granted asylum; the same condition is required in France where the applicant must, when the family reunion takes effect, have accommodation deemed to be normal for a similarly constituted family living in France. In Italy, applicants must have suitable accommodation that meets statutory requirements. The consent of the owner of the accommodation is necessary in the case of family reunion affecting children under the age of 14, although this condition is waived for Italian citizens seeking reunion; refugees are not covered by this rule. Similarly, in Switzerland, suitable accommodation and child-care arrangements are compulsory.

In the Czech Republic, the applicant must own the property, and be able to present the title deed or lease. This accommodation test is not applied in Belgium, Bulgaria, Spain, the United States, Finland or Slovakia.

b) Conditions that must be met by family members who come in under a family reunion scheme

No threat to public order

In no country may family members constitute a threat to public order, public security or national security (see Table II.6). In France, they must not have been expelled from a country or banned from entering another, and in Canada, Finland and the Czech Republic they must not have a criminal record. In Italy, family members must not be a threat to public order either in Italy or in another country that implements the Schengen agreements. In the Netherlands, family members over the age of 18 must hand in a signed statement that they do not have a criminal record; imprisonment for a criminal offence with no possibility of remission may be grounds for refusing reunion. More lenient rules apply to a Dutch person's family members, refugees and those who have been given asylum. In Slovakia, a family member must not have committed a serious offence or worked in the country illegally.

The health test

In some countries, people covered by a family reunion procedure must not have an illness or condition that endangers public health, public order or public security. In Canada, Spain, France and the Netherlands, they must produce a medical certificate. This condition is not enforced in other countries.

'Once-and-for-all' reunion and cascade reunion

Only some countries have regulations covering this. Australia limits sponsoring the reunion of a spouse, fiancé(e) or homosexual partner to two occasions within a space of five years. Moreover, a spouse, fiancé(e) or homosexual partner who has been sponsored may not act as a sponsor for another five years.

There are a few exceptions to this rule in the case of death and in the event of separation where there are children.

Since the law of 1984, Belgian law has banned cascade reunion except where a treaty states to the contrary.²⁹ Therefore, when a foreigner has been given permission to stay under provisions relating to family reunion, he is not allowed to benefit from this procedure again. Moreover, when family reunion has been requested in respect of some family members, the reunion of other members may not be requested during that year or in the year following the initial reunion.

The Law of 1993 in France states that family reunion may be requested in respect of all family members, but lawmakers included an exception when they decided the family reunion could be granted for reasons linked to the child's interests. The law provides for Prefects to have wide powers of discretion in this regard; these provisions do not apply to Algerians. In the Netherlands, family members who have entered the country under family reunion procedures since 17 September 1993 cannot themselves apply for family reunion for another three years.

Regularisation of family members already in the country

Family members frequently need not have lived in the country in order to use the family reunion procedure, but this right is subject to amendment in certain countries; it is even abolished when the law provides for possible regularisation. In Germany, regularisation very rarely applies in the event of a marriage that takes place after immigration and when a child is born in the country; however, regularisation is out of the question if the family member holds an ordinary tourist visa.

In France, no regularisation is possible under family reunion rules for foreigners already living in the country; however, the Circular of 25 June 1997 on the regularisation of certain foreigners provides for the regularisation of children under 16 who entered France in breach of the family reunion procedure.³⁰ The principle of non-regularisation has applied in the Netherlands since the Law of 11 December 1998 whereby foreigners have to request a long-stay visa from their country of origin. Exceptions are made in the case of refugees. Regularisation is officially impossible in Switzerland.

By contrast, some countries allow the regularisation of family members who are already in the country. For example, Australia allows them to apply for a permanent visa when they are already in Australia. In Belgium, a check is made to ensure that entry into the country was regular, but a foreigner who presents papers proving that he falls into one of the categories contained in Article 10 of the Law of 1980 must be listed on the register of foreigners. The local authority informs the Minister and gets his agreement; this means that the foreigner's presence in the country is no obstacle to family reunion.

In Finland, regularisation is possible if a refusal would be unreasonable. This is also true in Italy where a valid permit to stay may be turned into a permit to stay issued for family reasons, although it does not apply to members of an Italian's family who hold a residence card and therefore have an entitlement to live in Italy. Bulgaria and Slovakia dispense with this limitation.

2. The procedure

In most countries, the government has wide discretionary powers to allow or reject family reunion, although there are cases where reunion is a right (Germany) or where the government cannot turn down an application for reunion if the conditions are met (Belgium and France). The procedures vary: in some countries they are operated by special organisations; in others the immigration authorities control them. The latter system applies in Australia, Belgium and Canada.

a) *The competent authorities and the processing of requests*

Competence to decide on family reunion lies with the Federal governments (Foreign Ministries), Foreigners' Offices in the *Länder*, and authorities specialising in the status of foreigners in certain cities. The application is made to the department at the Mayor's Office in the main town in the region with responsibility for foreigners. The applicant must provide all necessary documentary evidence. Because of the wide powers of discretion available to the government, failure to meet these conditions does not necessarily mean that the application will be turned down.

In Australia, the Department of Immigration and Multicultural Affairs has authority to grant immigration papers and issue permanent entry visas. In Belgium, the normal procedure for foreigners entering the country is used. A foreigner with leave to remain only has to provide the government with proof that he falls into one of the categories listed in Article 10 of the Law, and in particular paragraph 4. He is given full leave to remain if he meets these conditions, the government's role being simply to check that the conditions are met. An initial examination phase looking at the admissibility of the application to remain is the task of local authority; a second phase that focuses on the cogency of the request is the responsibility of the Foreigners' Office.

In Bulgaria, the application is addressed to the Ministry of the Interior, the national law-and-order enforcement department with authority to issue visas and passports. In Finland, the Director of Immigration (Ministry of the Interior) has authority to allow family reunion; he takes advice from the Foreign Embassy and local law-and-order agencies. In Canada, family members are given permission to enter the country by the immigration authorities or by the immigration services in Quebec for people wishing to settle there. If there is a crime or security issue, responsibility is passed to the Canadian Mounted Police and the *Security and Intelligence Service*.

In France, a request for family reunion is submitted to the DDASS (*Direction départementale de l'action sanitaire et sociale*), which examines admissibility. If the applicant meets the conditions relating to stay and period of stay, and family members meet conditions set out in Article 29 of the Ordinance of 1945, the DDASS issues the applicant with a statement in support and sends a copy of the file to the Prefecture, and to the OMI (*Office des Migrations Internationales*) which oversees conditions relating to the applicant's accommodation³¹ and finances. The Prefecture is then contacted to check that family members are no threat to public order.

In Italy, the Commissioner of Police grants permission in the applicant's town of residence; the applicant may appeal against refusal to the court in the area where he lives. If the applicant is an Italian citizen, the visa is issued by the Italian embassy or consulate abroad. In the Netherlands, the competent authorities are the Department of Immigration and Naturalisation (at national level), which comes under the Ministry of Justice, and the Foreigners' Police (at local level). In Switzerland, authority lies with cantonal governments.

In Slovakia, the responsibility rests with the Ministry of Foreign Affairs, as far as people of Slovakian origin are concerned, and the Ministry of the Interior for the others. Similarly, in the Czech Republic, it is a matter for the Ministry of the Interior's Department of Foreigners' and Frontier Police. The request is submitted in the first instance to representatives of the district.

b) *The decision*

In general terms, there is hierarchical and/or administrative, and sometimes legal, recourse to decisions blocking family reunion. Finland is the only exception. In Germany, reasoned decisions are taken by the local or regional government to which the application was made; a refusal, or the absence of a reply

after a period of three months, brings the matter to the attention of the Administrative Tribunal. This challenge must be preceded by a hierarchical approach, and it is not possible if the applicant is abroad.

If a visa application is refused in Australia, application can be made for review by the *Migration Internal Review Office (MIRO)* and for appeal to the *Immigration Review Tribunal (IRT)*. In Belgium, the decision is taken by the competent Minister within one year; this period may be extended once by three months; the foreigner's name is then listed on the local authority's register of foreigners. Refusal to grant permission triggers a hierarchical recourse in law by way of a review before the Minister; the latter must seek an opinion from the Consultative Commission of Foreigners, and possibly seek annulment before the Council of State.

In Bulgaria, the person who is refused family reunion may take his case to the Regional Court within 7 days of being notified of the decision, or to the Supreme Administrative Court within 14 days, depending on the department that took the decision.

In Canada, the person whose family reunion has been requested may appeal to the Federal Court or to the appeals section of the Commission of Immigration and the Status of Refugees (CISR). After 15 days, the *Immigrations Appeal* division sends the decision and reasons for refusal to the government department responsible for visas.

In France, the Prefect may, within six months of the initial application being submitted, decide in a reasoned argument to permit family reunion if the conditions are met. Appeals against possible refusals are heard by the Ministry of the Interior (*Direction des libertés publiques et des affaires juridiques, or DLPAJ*), the Ministry of Social Affairs (*Direction de la Population et des Migrations, or DPM*), depending on the competence of each of its departments. Actions *ultra vires* may be brought before Administrative Tribunals at a later date.

In Italy, appeals against a decision to refuse family reunion are heard by the regional administrative tribunal of the foreigner's legal hometown. In the Netherlands, an administrative challenge may be made to the Ministry of Justice's Department of Immigration and Naturalisations; the case may then go on to the district tribunal specialising in immigration law. In Switzerland, cantonal decisions that are also administrative decisions may be challenged under each canton's procedural law. Where the federal authorities have competence, a challenge is possible under federal procedural rules. Lastly, when a foreigner has a permit to stay, he can take his case to the Federal Tribunal.

In Slovakia, a decision must be taken within 60 days of the application being made; ordinary administrative procedures may be invoked in the event of refusal. In the Czech Republic, the applicant may appeal against the district authorities' decision to the Minister of the Interior's Department of the Foreigners' and Frontier Police; their decision is final. In Finland, there is no way of appealing a refusal to grant entry. Draft legislation provides for the possibility of an appeal, but it has not yet been voted on; however, the family member who is already in the country may go to the administrative tribunals to appeal against a decision to refuse.

D. THE EFFECTS OF FAMILY REUNION

When permission to grant family reunion is granted, it brings with it a number of rights: they include leave to remain, the right to work, social protection, and protection from being removed from the country. The situation varies considerably from country to country (see Table II.7).

1. The granting of a permit to stay

Generally speaking, family members are granted the same permit to stay as the person they have come to join; it may be temporary or permanent, although there are sometimes exceptions. In Germany, for example, when the foreigner has a permit that has limitations of time or space (*Aufenthaltsbesichtigung*), family members are only entitled to limited leave to remain renewable every year (*Aufenthalterlaubnis*). He may be issued with an *Aufenthaltsbewilligung* (*Ausländer Gesetz*, Article 29), a temporary residence permit for a maximum of two years if the initiator of family reunion is on mission or has a specific activity to conduct in Germany for a limited period (e.g. a course of studies), or a special permit for family reunion (*Familienzusammenführung*). The spouse or other family members are entitled to an indefinite residence permit once they have lived in the country for five years with a temporary permit, provided that they speak sufficient German, meet the relevant accommodation criteria, have sufficient means and are not likely to be deported. With regard to the foreign members of the family of a German citizen living in Germany, they are given an indefinite permit after three years' residence, provided that they speak sufficient German and have not committed breaches of the peace. Children allowed into the country on grounds of family reunion are entitled to an unlimited residence permit if, on their sixteenth birthday, they have held a temporary residence permit for eight years.

A one-year permit is issued in most countries, but a permanent visa is issued in Australia and Canada. In Australia, this is issued within the limits of the quota applying to specific categories of foreigners and it entitles the holder to live in the country for an indefinite period. In Canada, the holder may take out Canadian citizenship after a permanent stay of three years.

In Belgium, like ordinary foreigners, family members may ask to be listed in the register of foreigners when they receive a permit to stay; this permission is granted for an unlimited period, but the leave to remain that gave the initial entitlement is valid for only one year. The applicant must seek extension or renewal from the local authority for his place of residence. Family members qualify for a settlement permit if the foreigner for whose benefit the family reunion has taken place also has one. In Spain the first residence permit is valid for one year and renewable for two further years. The ordinary permit is valid for three years. A permanent residence permit is issued to foreigners after six years in the country as a legal resident. In Finland, family members receive the same kind of leave to remain as foreigners, but for a maximum of one year. The spouse of a Finnish citizen receives permanent leave to remain that is based on the marriage; the permit is valid for one year and is renewable.

In France, family members receive a one-year, unconditional temporary permit to stay³² (family member rules) or a ten-year resident's card, depending on the circumstances. When the Prefect rules in favour of family reunion, the OMI is handed the task of bringing the family into the country. The Prefect also makes a small charge. The permit is rendered null and void if reunion does not take place within six months of the Prefect announcing his favourable decision.

In the Netherlands, the permit to stay sets out the purpose of the stay (e.g. marriage or co-habitation); it is valid for one year and is renewable. A refugee's spouse and children are entitled to a derived refugee status with the right to permanent stay. After five years as a legal resident, the spouse or co-habitee may apply for a permanent settlement permit, provided that the family has an adequate, stable income and that no serious offence has been committed. The children obtain a settlement permit on their eighteenth birthday, with no conditions in respect of resources, if they have been legal residents in the country for five years.

In the United Kingdom, if the person at the origin of family reunion is a British national or has permanent leave to remain in the country, family members will be given unlimited leave to remain.

Otherwise, the family members will be given temporary leave to remain and will only be able to obtain unlimited leave to remain after four years in the country.

In Slovakia, the stay is normally permanent, but the permit is issued for one year renewable. In Italy, the validity of a permit to stay issued for family reasons is copied from the foreigner's leave to remain, and is renewable at the same time. If the applicant is an Italian citizen, the authorisation given to family members takes the form of a permanent resident's card unless they commit certain offences (Articles 380 & 381 of the Italian Criminal Code). Under legislation applying the Strasbourg Convention of 5 February 1992 on the Participation of Foreigners in Public Life at Local Level, this card allows the holder to enter the country without a visa, take any job in Italy, make use of public services, and exercise the right to vote.

In Switzerland, a spouse who joins a foreigner with settlement papers has a right to the same entitlement as long as the couple lives together; the settlement permit allows permanent stay, but is renewable after two years. After a regular and uninterrupted stay of five years, the spouse has a personal right to a settlement permit. If the foreigner only has permission to stay, his family members are only entitled to a permit to stay for one year renewable as long as reunion conditions are complied with. The same one-year permit is issued to the foreign spouse of a Swiss citizen, although he has a right to a settlement permit after he has lived in the country for five years. The law makes no provision for a Swiss citizen's foreign, single children under the age of 18. Analogously, case law contains legislation covering the children of foreigners who have settled in Switzerland subject to keeping public order and abuse of rights. A child qualifies for a settlement permit, although in certain circumstances he may only receive a permit for one year renewable.

In Bulgaria, there are foreigners' identity cards valid for five years, permanent residents' cards and refugee cards. Travel documents are given to refugees and stateless persons.

2. The right to work

In this area, there is a difference in approach between countries that allow family members to work, and those that deny them this right or apply more or less stringent conditions.

a) *Countries that allow family members to work*

In many countries, family members have the right to work as soon as they arrive in the country. A distinction is sometimes drawn depending on whether family members come to join a foreigner, a national or a refugee. In Belgium, Work Permit A, which gives unlimited leave to remain, is issued to the spouse and children of foreigners who already hold that Permit. In Bulgaria, foreigners with an identity card may perform any job except one that foreigners are banned from taking under the Constitution. In both Canada and Australia, a foreigner may work as soon as he has a permanent resident's visa.

Spain allows family members to work and places no obstacles in their way. In Finland, the right to work immediately is only extended to people who have refugee status, are in need of protection, or are the spouse of a Finnish citizen. In France, both the temporary permit to stay and the resident's card give the holder the right to take any kind of employment permitted by current legislation. In Italy, a person with leave to remain for family reasons is allowed to start work immediately in employment or self-employment.

The Netherlands allows family members to start work immediately; the same right applies to the family members of refugees, of people with Dutch nationality, of foreigners with permanent or one-year

leave to remain with no restrictions, and of foreigners with limited leave to remain. However, a student's family is not allowed to work.

In the United Kingdom, the right to work stems from the right to remain and, as soon as family members have been authorised to stay, they may take up employment. In Slovakia, foreigners of Slovakian origin who have a right to stay may take employment without a work permit; the same applies to refugees. Otherwise, only long-term permits give a right to work, but only if they have been issued for that purpose. Both Sweden and Norway require family members to hold work permits if they are to be authorised to work, unless they have settlement permits. In Switzerland, a permit to stay includes the right to start work immediately. In the Czech Republic, a foreigner with permanent leave to remain is deemed to be a Czech citizen except in respect of the right to vote and conscription.

b) Countries that do not allow family members to work

There are very few countries in this category. In fact, only in Germany are family members not allowed to enter the labour market immediately. Holders of an *Aufenthalterlaubnis* must wait for four years, whereas those with a permit specifically linked to family reunion (*Betugnis*) may enter the labour market after one year. The employment situation is uneven as far as they are concerned: on the one hand, family members may only obtain a work permit without restriction after being in the country legally for six years.³³ On the other hand, a foreign family member of a German person who lives in Germany and holds an *Arbeitsberechtigung* faces no restrictions to labour market access. A similar situation is found in Switzerland where family members cannot enter the labour market immediately. They have to wait for a work permit to be issued by the cantonal authorities. However, there is no minimum waiting period before the permit is granted.

Generally speaking, in the United States, the family members of non-immigrants are not allowed to work. Some distinctions need to be drawn according to the different visas that family members hold. The following family members may not work: temporary workers holding an H-4 visa, employees on inter-company transfers (L-1 visa), investors and businessmen with entitlements under a treaty (E-1 and E-2 visas), foreigners with exceptional skills, athletes and performers (O-3 and P-4 visas), representatives of the information sector and news media (I visa), students (F-1 and M-1 visas), religious (R-2 visa), and exchange visitors (*i.e.* researchers and university teachers) (J-2 visa); the latter may be allowed to work in certain circumstances. The same procedure is applied on a case-by-case basis, and, subject to reciprocal arrangements, to the family members of a foreign diplomat (visas A-1 and A-2) and the families of foreign representatives of international organisations (visas G-1 and G-4). Those holding visas G-2 and G-3 may not work.

In France, the accompanying family³⁴ admitted for exceptional reasons with a temporary worker (particularly an executive on secondment) may not work.

3. Entitlement to social protection

Foreign workers in Belgium, France, Germany, Italy, the Netherlands and Spain normally qualify for the same social protection as nationals; this protection is extended to family members who live legally in the country, particularly with regard to social benefits. However, there are differences in the kind of protection sought. In Australia, social protection is only made available after a period of two years starting from the date of arrival in the country, or from the issue of a permanent visa. In the United Kingdom, entitlement to social protection varies according to the category of leave to stay. Furthermore, the situation regarding access to social security and social assistance is highly complex.

4. Protection against being removed from the country

Not all countries have a system of protecting family members from removal, but such protection is relative as it only makes removal more difficult, and does not rule it out altogether. The fault often lies with the kind of permit. In Germany, in the event of removal, Article 45(2) of the Law on foreigners obliges the government to take account of the foreigner's period of stay, particularly any family links he may have with the country, and the consequences that exclusion may have for the family members with whom he lives legally in Germany.

In Belgium, the husband or wife of a Belgian, foreigners living in Belgium legally and uninterruptedly for at least ten years, foreigners settled in Belgium but becoming incapable of working, and foreigners permanently incapable of working are protected against removal or expulsion except where there is a threat to public order or public security (Article 21 of the Law of 1980). Similarly, in France, Article 25 of the Ordinance of 1945 expressly provides for those affected to be accompanied to the frontier, and for expulsion never to be used in the case of the following: a child under the age of 18, a foreigner who can show he has lived normally in France since the age of 10 at the most (or at least 15 years), the spouse of a French person where they are still living together and the spouse still has French nationality, the foreign mother or father of a French child, or a foreigner in receipt of an occupational accident or illness pension paid by a French organisation, or who has a permanent disability of at least 20%.

There is no question of absolute protection as committing a crime that results in an unsuspended sentence of five years' imprisonment leads to a loss of immunity (except in the case of children under the age of 18), and to expulsion because of the need to ensure the safety of the state or public security.³⁵ In this context, it is important to refer to the protection given in European countries under Article 8 of the European Convention of Human Rights: it has been frequently used to place restrictions on the removal of family members.

In Canada, once migrants have obtained the status of permanent resident, the conditions under which they are protected against removal from the country are the same, regardless of their status upon entry.

In the United States, family members cannot avoid expulsion, but, in seeking to have the immigration judge's decision overturned, they may point to the particular 'hardship' that the measure is causing to family life. In Spain, the removal of family members after two years' legal residence is subject to restrictions. In particular, the family members of a migrant with a permanent residence permit may not be removed. The same applies if the migrant was previously Spanish or was born in Spain and has lived there for five years, or if he receives a pension in respect of an occupational disease or accident.³⁶

In Norway, settlement permit holders are protected against expulsion, unless they have committed serious offences³⁷ and provided that the sanction is not disproportionate with the family life of the person concerned. In the Netherlands, children aged under 18 living with a parent may not be removed, nor can foreigners born in the Netherlands or allowed in before the age of ten if they have lived in the country for at least 15 years. After 10 years' residence, removal is only possible if the person has been convicted of a major drug-dealing offence.

In Sweden, those who have spent more than four years in the Kingdom will only be subject to expulsion under exceptional circumstances. Expulsion is not possible for foreigners who entered Sweden before the age of 15 and have lived there for over five years.

Conclusions

This comparative study of family reunion highlights certain lines of convergence: the recent introduction of legislation covering family reunion, the exclusion of temporary workers from entitlement, the more favourable status given to refugees, the rejection of polygamy, the obligation to cohabit, and the right of family members to have a job. There are also great similarities in the requirements that the applicant must meet with respect to financial resources and accommodation, and the absence of any threat to public order by the incoming family members. Governments play a key role in allowing reunion, and their decisions are usually appealable before the courts. Appeals against refusals to issue a visa stand little chance of success.

This similarity that marks family reunion law does not mean that, for example, there are no divergences affecting the definition of family members: there is widespread agreement that this term includes the spouse and children of a foreigner or even a national, but a wider range is achieved by extending the family, for example to include co-habitees, elderly dependants, brothers and sisters. The concept of the accompanying family, too, triggers differences. There is also disagreement in respect of the length of stay giving entitlement to family reunion, the possibility for family members already in the country to be legalised by procedures other than those governing family reunion, and the kinds of permit issued to family members.

This study has not provided scope to look in depth at the social protection afforded to family members. Furthermore, the concept of the family needs to be more clearly defined. This is because there would appear to be a number of situations that do not necessarily require the same solutions:

- The immigrant's **family**, consisting of no more than the spouse and children, may already exist when the immigrant arrives. This leaves us with two scenarios: either the immigrant arrives with his family, and we are dealing with an accompanying family, or he leaves his family in his country of origin and seeks family reunion as soon as he settles in the receiving country.
- The **immigrant** settles his family in the receiving country, and this in turn gives rise to three situations: either the immigrant marries a national of the receiving country, or he marries someone who has the same nationality but who lives in the receiving country, or he returns to his country temporarily in order to marry someone with his nationality. All three possibilities could give rise to quite different legal approaches.
- A sponsored **family** avoids this dichotomy, as ultimately this is a purely financial matter.

Depending on how the law and regulations deal with these various situations, the economic impact will always vary, particularly as far as access to the labour market and social protection are concerned. Consideration might also be given to how much account is taken of the status of the family in the country of origin, as this would result in a more accurate picture of the status of legally constituted polygamous families in countries of origin.

NOTES

1. This part was written by Mrs Nicole Guimezanes, Professor at the Faculty of Law of Paris-Saint-Maur, Université de Paris XII. This study is based on certain laws and on replies to a questionnaire sent to national representatives.
2. Art. 9. 1. Parties shall ensure that a child shall not be separated from his or her parents against his or her will...
2. Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis.
3. O DE SCHUTTER, *Le droit au regroupement familial au croisement des ordres juridiques européens*, Rev. dr. des étrangers, 1996, p. 531.
4. The Constitutional Council has acknowledged that the right to have a normal family life is incorporated into the fundamental constitutional freedoms and rights accorded to all who live in the country and enjoy the protection of the provisions of public order: Discussion No. 93-325 DC, 13 August 1993: OJ of 18 August 1993; JCP 1993, Ed. G III, 66372.
5. The amendments made to the “Migration Regulations” in 1999 restructured and simplified the visa categories for family members.
6. US Court of Appeals, 9th Circuit, 1982, 673 F.2d 1036.
7. Law No. 99-944, 15 November 1999, published in the *Journal Officiel* 16 November 1999.
8. In the Netherlands, the relevant legislation is at Article 47 of the Decree on foreigners of 19 September 1966, and Article 24 of the Prescription on foreigners of 22 September 1966.
9. This limitation on the reunion of polygamous families is expressly covered in Germany (Article 17 of the Law of 1990, Administrative Court of Lower Saxony 6 July 1992, InfAuslIR 1992), Belgium (Council of State 9 July 1986, Rev. dr. étr 1986, No. 40, p. 114), Canada, Spain (Article 54.6 of the Implementation Regulation of the Law of 1985 on foreigners – this legislation states that a residence permit may only be issued to one spouse), France (Article 30 of the Ordinance of 2 November 1945), Italy, the Netherlands, Switzerland and the Czech Republic (where foreigners may only be joined by one spouse, although the problem has not really arisen yet in practice).
10. Council of State, 11 July 1980.
11. This ban was backed up by a dual sanction: on the one hand, a polygamous husband who brings more than one wife into the country will have his residence permit withdrawn whether it is a temporary authorisation or a resident’s card; on the other hand, the resident’s permit will be refused, or even withdrawn, if it has been issued to the second wife. Only resident’s permits issued after the 1993 Act came into force may be withdrawn. The Prefect has a linked competence in this matter as long as the conditions legally associated with the withdrawal are met. However, attention should also be drawn to an exception in that Algerians are not covered by the 1945 Ordinance, but by the Franco-Algerian Accord of 27 December 1968. The

Marseille Administrative Tribunal determined that the ban on polygamy did not only apply to them: 28 March 1997, Mr. Drizi, No. 95-6277.

12. Article 10.4 of the law of 15 December 1980. Council of State, 20 October 1989 and 24 November 1989.
13. Article 12 *bis* of the Law of 15 December 1980, as incorporated by the Law of August 1993.
14. Requesting a residence permit when the marriage is one of convenience is an offence punishable by up to a year's imprisonment or a fine.
15. Council of State 16 June 1995. It has been decided that, where family reunion has been authorised for the benefit of a foreigner residing in France, the aim is to make it possible for the couple to live together. However, if they cease to live together between the point at which the spouse enters the country and the date when the government decides on the request for a residence permit, the conditions for family reunion are no longer met on that date.
16. S.H. LEGOMSKY, *Immigration and Refugee Law and Policy*, Foundation Press 1997, p. 146.
17. That is why there is an exception in France that is enshrined in the Franco-Algerian Accord of 27 December 1968, as amended on 22 December 1985; this relates to children under the age of 18 whose applicant has legal responsibility arising out of a decision handed down by an Algerian court. It is set out in a judgement (Circular of 14 March 1986) sanctioning a child's legal adoption ('kafala').
18. This convention covers Cyprus, Iceland, Malta, Norway and Turkey in addition to members of the European Union.
19. Under the terms of an agreement between Belgium and Turkey relating to the jobs of Turkish workers in Belgium, Turkish workers qualify for the right to have elderly dependants join them (Council of State 29 November 1991).
20. The proportion of fiancé(e)s entering Canada was 5.72% in 1996, 5.14% in 1997 and 3.77% in 1998.
21. Constitutional Court 13 August 1993, Dec. No. 93-325 DC.
22. Article 10 (final paragraph) of the Law of 15 December 1980: this provision does not outlaw family reunion; it requires the authorisation of the Minister of Justice (Article 10 *bis*). The Federal Constitutional Court in Germany has decided that a foreigner who wants to be joined by his spouse while pursuing his studies in Germany may be refused.
23. The same idea is to be found in Italian legislation of 1998 which appoints a 'Garante' to 'sponsor' foreign citizens wishing to come into Italy to find work.
24. In this case, the applicant asks for permits to be issued directly for his family members.
25. The period of one year is waived in the case of Algerians with a one-year or ten-year certificate of residence.
26. The monthly SMIC (Salaire minimum interprofessionnel de croissance) has stood at FRF 6 797.18 since 1 July 1998.
27. The following money is deemed to be income: income from employment or self-employment; payments that replace income when liable for deductions, income for work carried out under the aegis of the Law on social work, income from capital where it has enabled the foreigner to live for a year with enough left over for another year.

28. People under the age of 23 are also deemed to have enough money if they can show evidence of receiving a salary for a job lasting at least 32 hours a week, irrespective of the size of the salary. As for those aged over 23, a salary of 70% of the minimum wage is deemed to be enough if it has been earned over the course of at least a year.
29. Council of State 15 July 1992: the entitlement to family reunion under the terms of the Belgo-Moroccan agreement is broader than that provided for under the Law of 15 December 1980; it does not ban cascade reunion.
30. Exceptional regularisation measures were introduced from 28 July 1989 to cover Algerian nationals who were under the age of 18 when they entered France before 22 December 1985 in breach of family reunion procedures.
31. OMI staff carry out on-the-spot checks to ensure that accommodation conditions are complied with: they may only enter the premises with the occupant's consent in writing; if the occupant refuses entry, the accommodation conditions are deemed not to have been met.
32. Article 12 *bis* of the Ordinance of 1945, as amended by the Law of 11 May 1998, provides for unconditional temporary leave to remain to be granted both to foreigners under the age of 18, or in the year following their 18th birthday, if at least one parent has temporary leave to remain and as long as there is no threat to public order, and to a foreigner who enters the country legally and whose spouse holds the same permit.
33. Article 27 of the Law on foreigners, 1990.
34. There is draft EC legislation (1991) designed to regulate the status of the joining family in a more restrictive manner.
35. Article 26 of the Ordinance of 2 November 1945.
36. Article 99 (4) of Royal Decree 155/1996.
37. Article 12 (2) of the Immigration Act.