



Guidelines on Family Reunification

**NGO Platform EU Migration and Asylum Policy
19-20 May 2014 Brussels**

Communication from the Commission to the European Parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification

**European Commission
DG Home Affairs
Unit B1: Immigration and Integration**

0. Intro and overall principles
1. Conditions for family reunion
2. Procedural obstacles and fees
3. Conditions for refugees and beneficiaries of subsidiary protection

Purpose of the Communication

- Provide guidance to Member States on how to better apply Directive 2003/86/EC.
- The aim of the guidelines is
 1. to clarify the issues identified in the implementation report and during the public consultation,
 2. to ensure a transparent and clear understanding of family reunification rules and common standards at EU level, and
 3. to contribute to the coherent application of these rules across Member States.
- Balance the right to family reunification, stemming from the fundamental right to family life, with a need to ensure that this right is genuinely applied according to the rules of the Directive, and support Member States to fight possible misuse.



Legal value of a Communication?

Legislative act of the Union? No

Interpretation of a Directive? No

Interpretation of the legal acts of the Union is the role of the CJEU

What is it then?

- Non-legally binding "opinion" of the Commission
- Soft law
- Persuasive value

What are the guidelines based on?

CJEU Case-law on Directive 2003/86/EC:

- C-540/03, EP v Council of the European Union, 27 June 2006

[...] Article 4(1) of the Directive imposes precise positive obligations, with corresponding clearly defined individual rights, on the Member States, since it requires them, in the cases determined by the Directive, to authorise family reunification of certain members of the sponsor's family, without being left a margin of appreciation (para 60)

[...] as is apparent from Article 17 of the Directive, duration of residence in the Member State is only one of the factors which must be taken into account by the Member State when considering an application and that a waiting period cannot be imposed without taking into account, in specific cases, all the relevant factors. (para 99)

- C-578/08, Chakroun, 4 March 2010

Since authorisation of family reunification is the general rule, the faculty provided for in Article 7(1)(c) of the Directive must be interpreted strictly. Furthermore, the margin for manoeuvre which the Member States are recognised as having must not be used by them in a manner which would undermine the objective of the Directive, which is to promote family reunification, and the effectiveness thereof. (para 43)

[...] necessity of not interpreting the provisions of the Directive restrictively and not depriving them of their effectiveness, [...] (para 64)

- C-356/11 and C-357/11, O. and S. and L., 6 December 2012

It is for the competent national authorities, when implementing Directive 2003/86 and examining applications for family reunification, to make a balanced and reasonable assessment of all the interests in play, taking particular account of the interests of the children concerned. (para 81)

[...] that faculty must be exercised in the light of Articles 7 and 24(2) and (3) of the Charter, which require the Member States to examine applications for family reunification in the interests of the children concerned and also with a view to promoting family life, and avoiding any undermining of the objective and the effectiveness of that directive. [...] (para 82)

Cancelled cases: C-513/12 Ayalti; C-155/11 Imran

Pending cases: C-138/13 Dogan; C-338/13 Noorzia

Analogies with case-law on Free Movement and Long-Term Residents Directives

The guidelines offer:

1. Clarifications and explanations

- **Text of Directive or CJEU case law**
- ***"The CJEU confirmed"* , *"has held"* , *"specified"***

2. Interpretations based on CJEU case-law

- ***"By analogy with"***

3. Recommendations by the Commission

- ***"Member States are encouraged"***

Within the
boundaries of the
Directive

**"Shall"
clauses**

**"May"
clauses**

Outside



7. Overall principles

7.1. Availability of information - Recital 13

7.2. Best interests of the child – Article 5(5)

7.3. Fighting abuse and fraud - Articles 16(2) and 16(4)

7.4. Individual assessment

- CJEU: *MSs obliged to make a balanced and reasonable assessment of all the interests in play, both when implementing Directive 2003/86 and when examining applications for family reunification (Cases C-356/11 and C-357/11, O. & S.)*

7.5. Right to legal challenge

- Article 47 of the Charter of Fundamental Rights applies to all rights of the Directive

1. Conditions for family reunion

2.3. Minimum age of spouse

Article 4(5):

“In order to ensure better integration and to prevent forced marriages Member States may require the sponsor and his/her spouse to be of a minimum age, and at maximum 21 years, before the spouse is able to join him/her”

When?

- 21 years at the moment when family reunion effectively takes place
- not when the application is submitted

4.1. Public policy, public security and public health - Article 6(1) and (2)

4.2. Accommodation requirement - Article 7(1)(a):

"accommodation regarded as normal for a comparable family in the same region and which meets the general health and safety standards in force in the Member State concerned;"

- Evaluation of accommodation is discretion of MS
- Criteria adopted may not be discriminatory
- Upper limit of what may be required
- Criteria of MS: transparent and clearly specified in the national legislation
- Fulfilment? moment of the application or a reasonable prognosis of later availability
- COM encourages flexibility from MSs

4.3. Sickness insurance requirement - Article 7(1)(b)

"sickness insurance in respect of all risks normally covered for its own nationals in the Member State concerned for himself/herself and the members of his/her family;"

- If MS has compulsory universal health insurance: fulfilment must be assumed
- If MS has voluntary contribution-based scheme: fulfilled when
 - (a) "conditional" health insurance granted upon the acceptance of an application for family reunification of a family member; or
 - (b) private health insurance

4.4. Sufficient resources requirement - **Article 7(1)(c)**

"(c) stable and regular resources which are sufficient to maintain himself/herself and the members of his/her family, without recourse to the social assistance system of the Member State concerned. Member States shall evaluate these resources by reference to their nature and regularity and may take into account the level of minimum national wages and pensions as well as the number of family members."

CJEU:

- "to be interpreted strictly" (Chakroun)
- "Not undermine the objective and effectiveness of the Directive" (Chakroun)
- "Examine applications in interest of children and with a view to promoting family life" (O., S. & L.)

'Stable and regular':

- evaluation based on a prognosis that the resources can reasonably be expected to be available in the foreseeable future, so that the applicant will not need to seek recourse to the social assistance system
- Permanent employment contract: sufficient proof
- MSs encouraged to take realities of the labour market into account

'without recourse to the social assistance system' (Chakroun)

Reference amount: no automatic rejection; individual assessment necessary

Resources of the sponsor

4.5. Integration measures - Article 7(2)

"Member States may require third country nationals to comply with integration measures, in accordance with national law."

- Margin of appreciation of MSs
- Admissibility?
 - Objective: facilitate integration
 - Proportional
- No absolute condition upon which the right to family reunification is dependent
- Require certain effort to demonstrate willingness to integrate
 - E.g.: requiring participation in language or integration courses, prior to or after arrival
- Effective "hardship clause":
 - Proportionate, necessary flexibility, case-by-case in view of specific circumstances
- Recommendation: language and integration courses accessible

4.6. Waiting period - Article 8

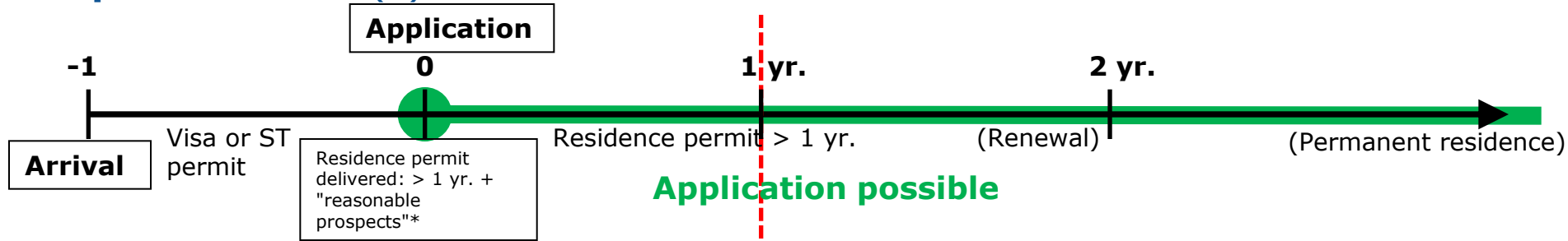
- Limited margin of appreciation MSs: option to require max. 2 years lawful residence
- No general blanket waiting period applied in the same way to all applicants
- CJEU:

"duration of residence only one of the factors to be taken into account; [also take] into account, in specific cases, all the relevant factors, while having due regard to the best interests of minor children" (C-540/03, EP v Council)

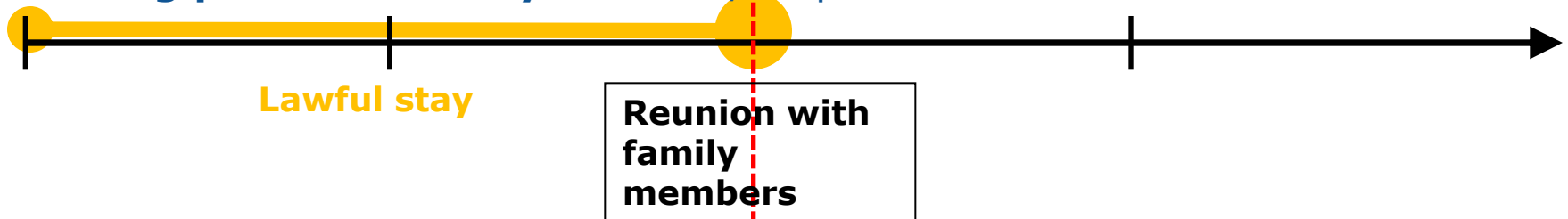
Purpose: *"to make sure that family reunification will take place in favourable conditions, after the sponsor has been residing in the host State for a period sufficiently long for it to be assumed that **the family members will settle down well** and display a certain level of **integration**" (C-540/03, EP v Council)*

- "Lawful stay"?
- Continuity?
- Waiting period ≠ examination period(Art. 5(4))

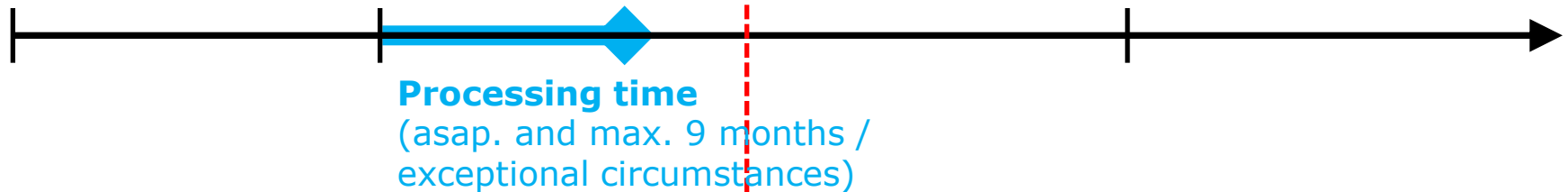
Sponsor - Art. 3(1)



Waiting period: max. 2 yr. - Art. 8, 1st para

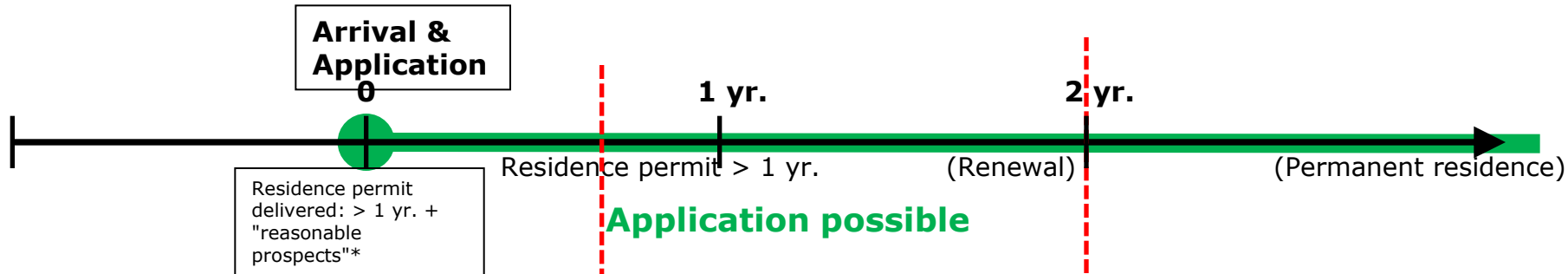


Processing - Art. 5(4)

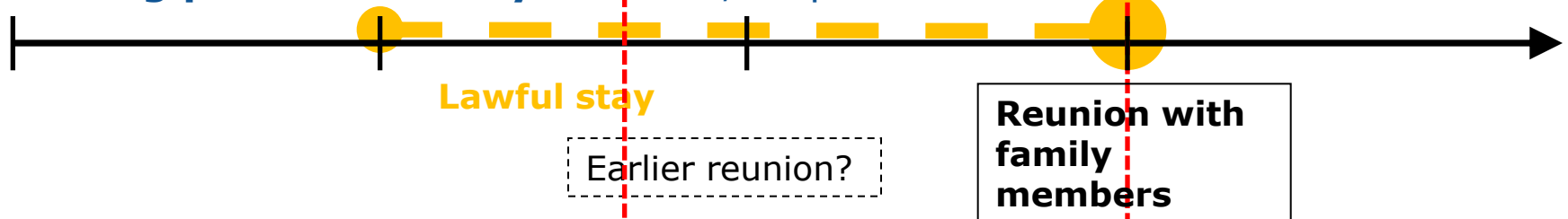


* Not: temporary workers, tourists, au pairs, students, seasonal workers, irregular,...

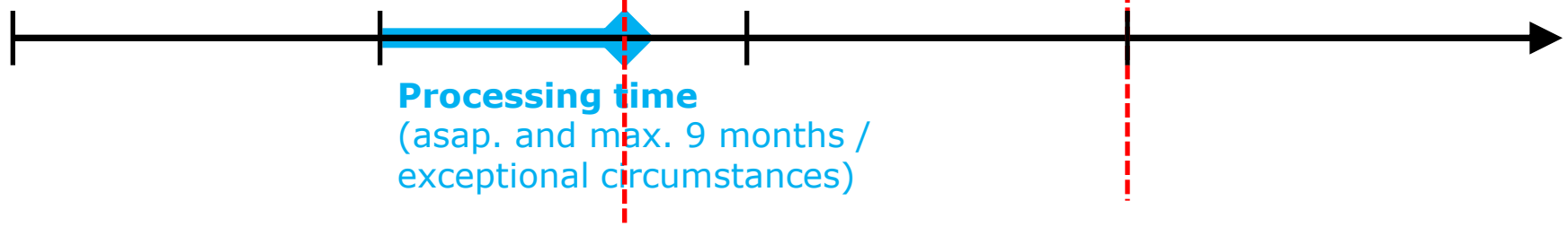
Sponsor - Art. 3(1)



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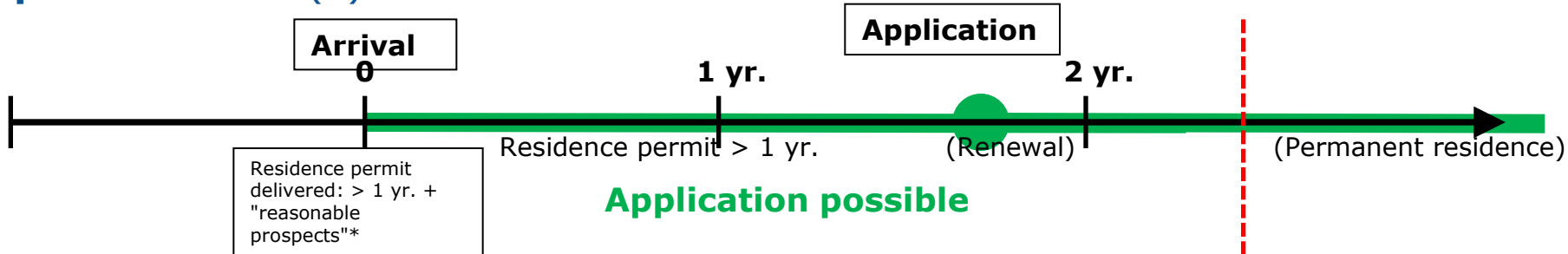


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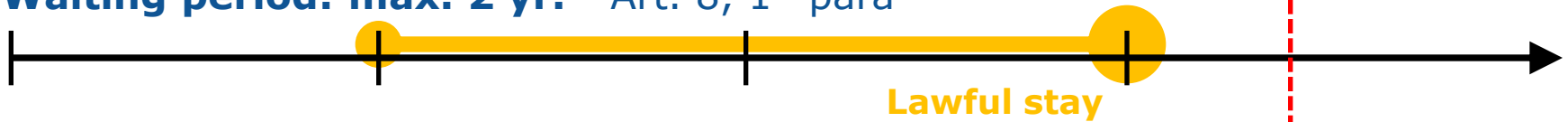


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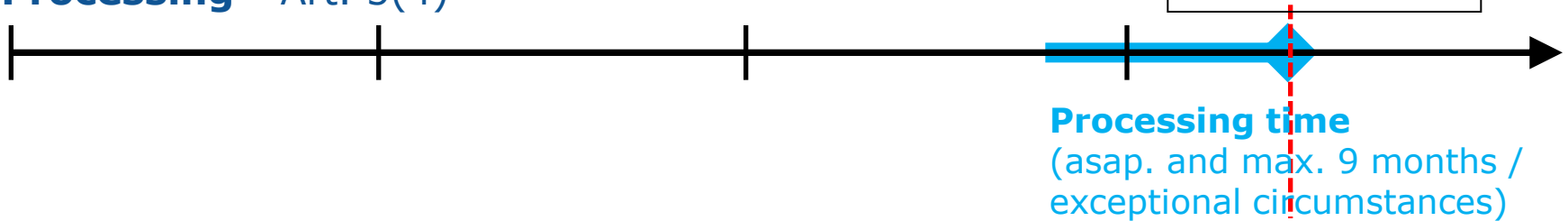
Sponsor - Art. 3(1)



Waiting period: max. 2 yr. - Art. 8, 1st para



Processing - Art. 5(4)



* Not: temporary workers, tourists, au pairs, students, seasonal workers, irregular,...

2. Procedural obstacles and fees

3.1. Submission of the application - Article 5(1) - Article 5(3)

Who?

- MSs determine submission by sponsor or family member(s)

Where?

- General rule: applications to be submitted and examined when the family members outside of MS
- Derogation: "in appropriate circumstances" application in territory
- MSs have margin of appreciation
- Examples

Fees

- Reasonable and proportional administrative fees are allowed
- Limited margin of discretion for Member States

Limitations:

- Not jeopardise the achievement of the objectives and the effectiveness of the Directive
- Level of fees: no obstacle to the exercise of the right to family reunification.

Proportionate?

Comparison with similar national permits (but not identical situations)

(Analogy with Long-Term Residents Directive: Case C-508/10, European Commission v Kingdom of the Netherlands, 26 April 2012)

3.2. Accompanying evidence - Article 5(2)

In accordance with Article 5(2), an application for family reunification shall be accompanied by

- (a) documentary evidence to prove the family relationship;*
- (b) documentary evidence to prove compliance with the conditions of Articles 4 and 6 and, where applicable, 7 and 8;*
- (c) certified copies of the family member(s)' travel documents.*

Interviews or other investigations?

- to verify the evidence of the family relationship
- MSs margin of appreciation whether appropriate and necessary

Appropriateness and necessity?

Not if there are other suitable and less restrictive means to establish the existence of a family relationship

Case-by-case assessment

Unmarried partners?

3.3. Length of procedures - Article 5(4)

- General rule: a standard application under normal workload circumstances should be processed **promptly without unnecessary delay**
- Exceptional workload that exceeds the administrative capacity or when the application necessitates further examination: **maximum time limit of nine months** may be justified
 - 9 months from the date of first submitted, not moment of notification of receipt of the application
- Extension beyond 9 months only justified "*in exceptional circumstances **linked to the complexity of the examination of [a specific] application***" (Article 5(4) second subparagraph)
 - Derogation to be interpreted strictly and on a case-by-case basis
 - Member States must justify this extension

5.1. Entry, long-stay visas and residence permits - Article 13(1)

'Every facility for visa':

- speedy visa procedure, reduce administrative burden to a minimum and avoid double-checks on requirements for family reunification

Particularly difficult or dangerous access to travel documents and visas?

MSs encouraged to consider the individual situation and the circumstances in the country of origin in case access to travel documents and visas is particularly difficult or dangerous

Fees for visa are allowed but not excessive or disproportionate

3. Conditions for refugees and beneficiaries of subsidiary protection

6.1. Refugees

- Chapter V : derogations from Articles 4, 5, 7 and 8, creating more favourable conditions for family reunification of refugees
- Limitations:
 - (1) family relationships that predate the entry (Article 9(2)),
 - (2) applications made within three months of the granting of refugee status (Article 12(1) third subparagraph), and
 - (3) families for whom family reunification is impossible in a third country with which the sponsor and/or family members has special links (Article 12(1) second subparagraph).
- Not undermine the objective of the Directive and the effectiveness thereof
- Special attention to the particular situation of refugees required
- COM encourages not to apply the optional restrictions or allow for more leniency

6.1.1. Family Members of refugees

- Wider definition of family members for refugees
- COM encourages MSs to use margin of appreciation in the most humanitarian way
- COM encourages MSs to consider individuals who are not biologically related but are cared for within the family unit
- Dependency is the determining factor

6.1.2. Absence of official documentary evidence

Article 11

1. Article 5 shall apply to the submission and examination of the application, subject to paragraph 2 of this Article.

2. Where a refugee cannot provide official documentary evidence of the family relationship, the Member States shall take into account other evidence, to be assessed in accordance with national law, of the existence of such relationship. A decision rejecting an application may not be based solely on the fact that documentary evidence is lacking.

- Particular situation of refugees: often impossible or dangerous to produce official documents
- ‘Other evidence’ of the existence of the family relationship
 - ‘other evidence’ is "*to be assessed in accordance with national law*": MSs have certain margin of appreciation but must adopt clear rules
- Individual assessment
- Serious doubts remain or strong indications of fraudulent intent?
 - DNA testing can be used as a last resort
 - Observe the principles on DNA testing of UNHCR

6.1.3. Exceptions to the more favourable provisions of Chapter V

(1) Family reunification is possible in a third country with which the sponsor and/or family member has special links (Article 12(1) second subparagraph)

- Realistic alternative: safe country for the sponsor and family members
- Burden of proof: on the MS, and not the applicant.
- No risk of persecution or of refoulement
- "special links"?

(2) Within three months of the granting of refugee status (Article 12(1) third subparagraph)

- COM considers not applying this limitation is most appropriate solution
- if MSs opt to apply this provision, COM considers MSs should
 - take into account objective practical obstacles faced by the applicant as one of the factors when assessing an individual application
 - allow for the possibility that the sponsor can submit the application in MS
 - allow the introduction of a partial application

6.1.4. Travel documents and long-stay visas

- Pay special attention to this particular situation of refugees
- MSs encouraged to accept ICRC emergency travel documents, Convention Travel Documents, issue one-way laissez-passer documents, and offer the possibility to family members to be issued a visa upon arrival

6.2. Beneficiaries of subsidiary protection

- Article 3(2) excludes the application of the Directive
- However, this does not oblige MSs Member States to deny the right to family reunification under more favourable conditions
- COM considers humanitarian protection needs not different from refugees and differences in rights and treatment should therefore be eliminated
- MSs encouraged to adopt rules that grant similar rights to beneficiaries of temporary or subsidiary protection as to refugees



THANK YOU FOR YOUR ATTENTION