Europaudvalget 2011
KOM (2011) 0735 Bilag 3
Offentligt

JUSTITSMINISTERIET
Ministry of Justice

Date:
Office: Det Internationale Kontor
Contact: Michelle Steffensen
Our ref..: 2012-308-0003
Doc.: 340992

Denmark's response to the Commission Green Paper on the right to Family Reunification of third-country nationals living in the European Union

Denmark welcomes the consultation process initiated by the Commission with the Green Paper on the right to Family Reunification of third-country nationals living in the European Union.

From the discussions during the lunch at the informal Meeting in Copenhagen on 26 January 2012 it has become clear that there is not a uniform opinion on the need for a revision of the Family Reunification Directive (2003/86/EC) between the Member States.

Denmark therefore looks forward to learn the outcome of the consultation process and avails itself to the Commission for cooperation on the follow-up to the Green Paper.

Due to the Danish reservation in the area of Justice and Home Affairs Denmark is not bound by the Family Reunification Directive.

Thus, Denmark's response to the Green Paper will focus on the Danish legislation and practice regarding family reunification.

It should be noted that in Danish legislation same-sex (registered) partners and cohabitating partners are equal to married spouses. In the text below, the term "spouse" will therefore cover all of these. Likewise the term "marriage" also covers registered partnerships and cohabitations.

However, cohabitation is only equal to marriage, if the partners have lived

Slotsholmsgade 10
DK-1216 København K.

Phone +45 7226 8400
Fax +45 3393 3510

www.justitsministeriet.dk
jm@jm.dk

together in the same household for a longer period of time, usually 18 months.

Question 1: Who can qualify as a sponsor
Current rules in the Danish Aliens Act

According to Section 9 (1) (i) of the Danish Aliens Act the spouse in Denmark must either be a Danish national, a national of one of the other Nordic countries, hold a residence permit as refugee or subsidiary protection, or have held a permanent residence permit for Denmark for more than the last 3 years.

Question 2: Eligible family members - spouses
Current rules in the Danish Aliens Act

The points system and the 24-year-rule
A general age requirement of 24 years, according to which both spouses must be at least 24 years old before spousal reunification can be granted, was introduced in June 2002.

An amendment to the Danish Aliens Act in 2011 (Act No 601 of 14 June 2011) altered this general 24 year-rule and introduced a point system, which entered into force on 1 July 2011.

The applicant must – regardless of his/her age – obtain a certain amount of points in relation to a number of criteria in order to qualify for spousal reunification. Points are inter alia given for work experience, language skills and completed education. If an applicant obtains a sufficient amount of points he/she may be granted a residence permit on the grounds of spousal reunification.

The amount of points required differs depending on whether both spouses are 24 years old or younger. The applicant must obtain 120 points if either of the spouses is under the age of 24 years. The applicant must obtain 60 points, if both spouses are 24 years or older, cf. Section 9 (15) of the Danish Aliens Act.

Forced marriages
According to Section 9 (8) of the Danish Aliens Act spousal reunification can, as a general rule, *not* be granted if it is considered doubtful that the marriage was contracted at both parties' own desire.

When assessing whether a marriage was entered into against the wishes of one or both of the spouses, the immigration authorities will consider all relevant information in the case. If the spouses are closely related (e.g. cousins), the immigration authorities will as a general rule assume that they did not marry of their own free will. As a result, such applications will usually be refused.

Previous examples of spousal reunification within the spouses' closest families is considered a circumstance which may indicate a forced marriage.

In addition, the immigration authorities will pay particular attention to the following indicators:

- Circumstances surrounding the wedding and the spouses' personal contact and relationship prior to the marriage
- The age of the spouses
- The duration of the marriage
- The spouses' contact and relationship with their prospective families-in-law prior to the marriage
- The spouses' personal situations, including financial situation and professional and educational backgrounds
- Information about any contact that may have been made by either spouse to a crisis or counselling centre

It will also be taken into consideration if the spouses' families have been actively involved in arranging the marriage. However, a marriage will not automatically be characterised as 'forced' merely because it takes place with the cooperation of the two families.

If, when receiving the application, the diplomatic mission becomes suspicious that a marriage may have been forced, the applicant will be interviewed about the circumstances of the marriage.

Planned revision of the current rules

It is stated in the Government Platform "A Denmark that stands together" from October 2011 that the Government inter alia wants to abolish the point system regarding spousal reunification and reverse the 24-year rule into the definition it had before Act No 601 of 14 June 2011.

Effects of the rules

One of the purposes of the 2002 amendment was to enhance the efforts to combat forced marriages. The reasoning was that the older the people involved are, the better equipped they are to resist pressure to enter into an unwanted marriage. The purpose is described in the explanatory notes to the relevant bill (Bill No 152 of 28 February 2002).

A study from 2009[1] indicates that the introduction of a 24 year age limit in connection to family reunification has helped to further a progress towards a higher age of the partners at the time of marriage. In the report experts state that in their opinion being in the early-mid 20s rather than in the late teens women are found better able to argue their way out of an unwanted marriage.

Other efforts to prevent forced marriages

Denmark has implemented several initiatives outside the regulation of access to family reunification to prevent forced marriages and other honour-related conflicts.

The Danish Immigration Service has an advisory service for young people under the age of 24, who is facing a forced marriage or an arranged marriage, which is not fully according to the young person's own wishes. Young persons, who have not decided whether they want to enter into an arranged marriage, can call the Immigration Service for guidance.

The municipalities are also obligated under the Danish Act on Social Services to offer guidance and support to young persons in order to prevent social problems. This obligation applies inter alia in cases of forced marriages and family reunification.

Other initiatives include a special hotline offering guidance and support to young persons facing forced marriages or other honour related conflicts, mediation for families involved in forced marriages, and a shelter for young women and young couples, where they can seek refuge from a forced marriage or other honour related conflicts.

[1] *"Ændrede familiesammenføringsregler – Hvad har de nye regler betydet for pardannelsesmønstret blandt etniske minoriteter?", SFI, October 2009*
http://www.sfi.dk/rapportoplysninger-4681.aspx?Action=1&NewsId=2337&PID=9267

Evidence of the problem with forced marriages

There is no clear and complete evidence on forced marriages, because not all cases of forced marriages are – inherently – reported to the authorities. There exists therefore no exact number on the amount of forced marriages. The Danish police registers crimes, which could be honour related. In 2009 the police registered 194 such cases.

Honour related conflicts includes forced marriages and inter alia threats and violence in the name of honour.

The Women Shelter Organisation (LOKK) in Denmark is responsible for the hotline about honour related conflicts and a national consulting unit, which can offer advice and help to youngsters, who experience honour related conflicts. In 2011 LOKK had 1035 inquiries about honour related conflicts, 833 inquiries in 2010 and 440 inquiries in 2009. The rising amount on inquiries is seen as an indicator of growing awareness among the youngsters on their own rights and the possibilities of getting help from the authorities.

In 2011 the Ministry of Social Affairs and Integration published a report on social control with youngsters in immigrant families. The report was based on a survey among almost 3000 youngsters in Denmark between the ages of 15 to 20 years. The report concludes that around 25 % of the young immigrants and descendants experience their families taking part in choosing their spouse and around 25 % are afraid that their families will choose a spouse for them against their own will.

There have been cases where one of the spouses confidentially informed the Danish Immigration Service about a forced marriage and requested that the application for spousal reunification be refused.

During 2008-2011 the Danish Immigration Service has refused a total of 235 cases on the grounds that it was not considered indisputable that the marriage was contracted or the cohabitation was established at both parties' own desire. Statistically it is not possible to differ between refusals based on evidence and refusals based on an assumption of forced marriages (e.g. under the 'cousin-rule').

The refusals are divided over the three years as follows:

Year	No. of refusals according to Section 9 (8) of the Danish Aliens Act.
2008	41 (out of a total of 842 refusals for family reunification with a spouse/partner)
2009	88 (out of a total of 1733 refusals for family reunification with a spouse/partner)
2010	106 (out of a total of 1863 refusals for family reunification with a spouse/partner)

The numbers are based on final registrations in the Aliens Register for 2008-2010. A degree of uncertainty is connected to the numbers as the Aliens Register is a recording and case management system and not a statistical system as such.

Question 3: Eligible family members –children

Current rules in the Danish Aliens Act

Age limit

In order for a child to be granted a residence permit on the grounds of family reunification, it is normally a condition that the child is under the age of 15, cf. Section 9 (1) (ii) of the Danish Aliens Act. However, if special reasons apply – such as considerations for the unity of the family – it is possible for a child between the ages of 15 and 18 to be granted family reunification in Denmark.

The age limit was reduced from 18 years to 15 years in 2004 by an amendment to the Danish Aliens Act. The purpose of the lowering of the age limit was to counteract both re-education travels and incidents where parents deliberately choose to let a child stay in another country until the child is almost an adult. Another purpose was to ensure that children moved to Denmark at a young age in order to have as much of their upbringing in Denmark as possible and thus have the opportunity to achieve successful integration in Denmark. This is stated in the explanatory notes to the relevant bill (Bill No 171 of 20 February 2004).

Potential for successful integration

In certain cases a special so-called attachment requirement applies. This requirement stipulates that a residence permit will, as a general rule, only be granted if the child has, or has the opportunity to achieve, ties to Denmark, which are sufficient to constitute a basis for successful integration in Denmark, cf. Section 9 (17) of the Danish Aliens Act.

This requirement applies if the other parent is still living in the child’s country of origin – or another country where the child is also living – and if the child’s application for a residence permit is submitted more than two years after the parent in Denmark meets the requirements for family reunification with the child.

When assessing whether this requirement is met, attention is paid to the length and nature of the child’s stay in the country of origin and his/her attachment to the parent there. Furthermore, the child’s age and previous visits to Denmark, e.g. visa stays, are considered. Attention is also paid to inter alia how well the parent in Denmark is integrated and to his/her intentions and willingness to let the child stay in the country of origin.

Planned revision of the current rules

It is stated in the Government Platform from October 2011 that the Government inter alia wants to change the current rules regarding family reunification with children.

On 9 February 2012 the Danish government and the parties Enhedslisten and Liberal Alliance concluded an agreement regarding family reunification with children. The agreement aims at balancing the rules regarding family reunification with children better and strengthening the possibilities of obtaining a residence permit on this basis.

The main points of the agreement concerns a change to the application of the special requirement regarding a child’s “potential for successful integration”, which only applies to situations where a child's other parent is still living in the home country, and the child's application for a residence permit is submitted more than two years after the parent in Denmark meets the requirements for family reunification with the child. Thus, this requirement is no longer going to apply to children aged 8 or younger. Furthermore, when the immigration authorities consider whether a child meets this requirement, special attention will in future be paid to the situation of the parent in Denmark in terms of employment and Danish language proficiency. In the future, greater importance will also be attached to the willingness of the parent in the home country to care for the child.

A bill regarding a revision of the rules regarding the family reunification with children is expected to be presented in the Danish Parliament during the present sitting.

Question 4: Eligible family members – other family
<u>Current rules in the Danish Aliens Act</u>

Spousal reunification is regulated in Section 9 (1) (i) of the Danish Aliens Act.

Family reunification with children under the age of 15 is regulated in Section 9 (1) (ii) of the Danish Aliens Act. Residence permits for children for the purpose of adoption, foster family relationship etc. is regulated in Section 9 (1) (iii) of the Danish Aliens Act.

Other family members – e.g. children over 15 years of age or parents whose adult children live in Denmark – can apply for family reunification with a person residing in Denmark under Section 9 c (1) of the Danish Aliens Act. According to Section 9 c (1), a residence permit can only be granted if special reasons, such as considerations for the unity of the family, apply.

Question 5: Integration measures
<u>Current rules in the Danish Aliens Act</u>

Attachment requirement
It is, as a general rule, a condition for obtaining spousal reunification that the spouses combined have significantly greater ties to Denmark than to any other country, cf. Section 9 (7) of the Danish Aliens Act.

However, this so-called attachment requirement does not apply if the spouse in Denmark has held Danish citizenship for more than 28 years. Nor does the requirement apply if the spouse in Denmark was either born or raised in Denmark or has lived in Denmark since early childhood and has resided legally in Denmark for more than 28 years.

The purpose of this requirement is to further integration. This is stated in the explanatory notes to the relevant bill (Bill No 208 of 29 February 2000, which contained the proposal for the original attachment requirement which entered into force in June 2000 and which has subsequently been amended).

Self-support requirement
It is, as a general rule, a condition for obtaining spousal reunification that the spouse in Denmark is able to support him/herself. This means that the spouse in Denmark may not have received public support under the terms of the Active Social Policy Act or the Integration Act for the past three years.

Moreover, it is a condition for spousal reunification that neither of the spouses receives any public support under the terms of the Active Social Policy Act or the Integration Act until a permanent residence permit is issued to the foreign spouse, cf. Section 9 (5) of the Danish Aliens Act.

The purpose of this self-support requirement is inter alia to enhance integration. It is stated in the explanatory notes to Bill No 152 of 28 February 2002 that a person living in Denmark will generally have the best possibilities of making a positive contribution to the integration of his/her foreign spouse into the Danish society and the Danish labour market, if he/she has work him/herself and has had so for a period of time. The purpose of the self-support requirement is also stated in the explanatory notes to Bill No 17 of 4 October 2006.

If special reasons apply, a child's residence permit can be made contingent upon the parent in Denmark documenting that he/she can support him/herself. This requirement will be met if the parent in Denmark does not receive public support under the terms of the Active Social Policy Act or the Integration Act until the time when child is granted a permanent residence permit, cf. Section 9(16) of the Danish Aliens Act.

The collateral
In order for a third country national to be granted a resident permit on the basis of spousal reunification, the spouse in Denmark must post DKK 100,000 (July 2011 level) in collateral in the form of a bank guarantee, cf. Section 9 (4) of the Danish Aliens Act.

This guarantee is designed to cover any future public support paid to the foreign spouse by his/her municipality under the terms of the Active Social Policy Act or the Integration Act after he/she relocates to Denmark.

In order to meet this collateral requirement, a Danish financial institution must issue a guarantee, known as a demand guarantee.

Accommodation requirement
It is in general a condition for obtaining spousal reunification that the spouse in Denmark documents that he/she has accommodation of an adequate size at his/her disposal, cf. Section 9 (6) of the Danish Aliens Act.

The purpose of this accommodation requirement is to ensure a good starting point for a successful integration of the family member wanting to be reunited with their family in Denmark and of those family members already residing in Denmark.

Furthermore, this requirement serves to ensure that a family reunion can be implemented on a secure residential basis and to avoid that people who resides in Denmark gets social housing problems. This is stated in the explanatory notes to the relevant bill (Bill No 208 of 29 February 2000).

If special reasons apply, a child's residence permit can be made contingent upon the parent in Denmark documenting that he/she has adequate accommodation at his/her disposal, cf. Section 9 (16) of the Danish Aliens Act.

Immigration test
A third country national who applies for spousal reunification must normally pass an immigration test in order to be granted spousal reunification, cf. Section 9(2) of the Danish Aliens Act.

The immigration test is an oral test consisting of two parts: a language test testing the applicant's Danish language skills and a knowledge test testing the applicant's knowledge about Denmark and Danish society.

Declaration of active participation
According to Section 9 (2) of the Danish Aliens Act it is a condition for spousal reunification that the applicant and spouse in Denmark both sign a declaration stating that they will, to the best of their ability, both make active efforts to ensure that the foreign spouse and any accompanying children will acquire Danish language skills and integrate into Danish society.

Dispensation
One or more of the above mentioned requirements can be suspended if special reasons apply. This could be the case, if the spouse in Denmark:

- is a refugee or has protected status and still risks persecution in his/her country of origin.

- has children under 18 living in the home who have formed an individual attachment to Denmark, or has children from a previous relationship and has custody of the child or has visitation rights and sees the child on a regular basis.
- is seriously ill.

The immigration authorities will in the process of handling an application for family reunification assess whether or not one or more of the conditions can be suspended.

Planned revision of the current rules

It is stated in the Government Platform from October 2011 that the Government inter alia things wants to change the current rules regarding spousal reunification.

The Government wants to change the attachment requirement to the definition it had before Act No 601 of 14 June 2011 entered into force, change the 28-year rule, which dispenses from the attachment requirement, to a 26-year rule, lower the amount that the spouse in Denmark has to post as collateral from DKK 100.000 to DKK 50.000, and abolish the immigration test.

It is also stated in the Government Platform that migrants, who has been issued with a residence permit based on family reunification, should receive Danish language tuition as soon as they move to Denmark and that they should pass a Danish language test.

Effects of the rules

A report published by the previous Ministry for Refugee, Immigration and Integration Affairs in August 2011[2] shows that Danish language skills are considered essential for a person to be able to relate to politics and the Danish society in general.

The report also shows that mastering the Danish language indirectly furthers participation in the society through employment, and that the chance of getting a better position and higher income is improved by better knowledge of the Danish language.

[2] ”Medborgerskab i Danmark. Regeringens arbejdsgruppe for bedre integration”. Ministeriet for Flygtninge, Indvandrere og Integration, August 2011.

Question 6: Waiting period

Denmark does not apply any waiting period.

Question 7: Duration of the residence permit
Current rules in the Danish Aliens Act

Period of validity of residence permits to a spouse/partner
In order for a third country national to be granted a residence permit on grounds of family reunification the spouse living in Denmark must either be a Danish national, a national of one of the other Nordic countries, hold a Danish residence permit granted on the grounds of asylum or subsidiary protection or have held a permanent Danish residence permit for the past three years or more, cf. Section 9 (1) (i) of the Danish Aliens Act.

A time-limited residence permit based on spousal reunification is issued for up to two years at a time, and after four years for up to four years at a time, and after eight years for up to eight years at a time, cf. Section 25 (2) of the Danish Aliens Order.

Period of validity of residence permits to family reunited children
In order for a child to be granted family reunification with a parent in Denmark, the parent in Denmark must either be a Danish national, a national of one of the other Nordic countries, hold a residence permit in Denmark as a refugee or with protected status, hold a permanent residence in Denmark, or hold a temporary residence permit in Denmark, which can be made permanent, cf. Section 9 (1) (ii) of the Danish Aliens Act.

A time-limited residence permit under section 9(1) (ii) of the Danish Aliens Act for children under the age of 18 is issued until the child's 18th birthday, but only until expiry of the period for which one of or both the persons having custody of it hold a residence permit for Denmark, cf. Section 25 (3) of the Danish Aliens Order.

Questions 8 and 9: Refugees and beneficiaries of subsidiary protection
Current rules in the Danish Aliens Act

If the spouse in Denmark holds a residence permit as a refugee or with subsidiary protection (Section 7 or 8 of the Danish Aliens Act) the immigration authorities may defer one or more requirements for spousal reunification.

The conditions for spousal reunification are deferred if the spouse in Denmark cannot be referred to exercise his/her family life in the applicant's country of origin or country of residence. This may e.g. be the case if the spouse in Denmark has applied for spousal reunification with his/her spouse in the country of origin immediately after being granted a residence permit as a refugee or with subsidiary protection.

This may also be the case if the spouse in Denmark has been granted a residence permit as a refugee or with protected status and subsequently to his/her entry into Denmark gets married and does not have the possibility to exercise his/her family life with the applicant in the country of origin because the spouse in Denmark risks persecution, death penalty or being subjected to torture or inhuman or degrading treatment or punishment.

It should be noted though, that the mere fact, that the spouse in Denmark has been granted a residence permit as a refugee or with subsidiary protection does not in itself lead to the deferral of the requirements for spousal reunification. The immigration authorities will in these cases re-examine whether the spouse in Denmark has the possibility to exercise his/her family life with the applicant in the country of origin or if he/she will still risk persecution, death penalty or being subjected to torture or inhuman or degrading treatment or punishment if he/she should return to his/her country of origin.

Question 10: Fraud

Current rules in the Danish Aliens Act

According to Section 40 (1) of the Danish Aliens Act a foreigner shall provide such information as is required for deciding whether a permit pursuant to the Danish Aliens Act can be issued.

Upon receipt of an application for family reunification the Danish immigration authorities assesses in each case whether the applicant and the host living in Denmark has provided accurate and complete information for the processing of the application. If the authorities find that incorrect information of relevance to the processing has deliberately been submitted, the authorities will, as a general rule, file a police report for violation of Section 161 of the Danish Penal Code.

For the examination of an application for a family reunification permit, the immigration authorities may require the applicant and the person with whom the applicant states to be related as a basis for the application, to participate in a DNA examination with a view to determining the family tie, if such tie cannot otherwise be sufficiently evidenced, cf. Section 40 c of the Danish Aliens Act.

When processing applications for family reunification the immigration authorities can also decide to request an age test. A request regarding an age test is relevant if doubt arises as to whether a child's correct age has been given.

If the DNA test and/or the age test leads to the conclusion that the family ties are not considered proven, or that the child is found to not meet the age limit as described above under Q3, the application will be refused as not meeting the requirements for family reunification. Thus, in these cases the refusal will not be given with reference to the fraud.

Evidence of the problem with fraud

Fraud in relation to family reunification under the Danish legislation
As mentioned above fraudulent behaviour in connection to an application for family reunification will lead to the filing of a police report and a refusal on the basis of the applicant not qualifying for family reunification – and not with reference to the fraud in itself.

Hence, it is not possible to produce reliable statistics on the size of this problem.

Fraud in relation to family reunification under the Free Movement Directive (2004/38/EC)
Information about fraud and abuse in connection to applications for family reunification under the Free Movement Directive (2004/38/EC) has only been registered in Denmark since 2008, causing an insufficient amount of data to draw any general and reliable conclusions concerning problems with fraud and abuse in relation to family reunification according to EU legislation.

In the following paragraphs, please note that Denmark makes a distinction between primary and secondary right of free movement. The primary right of free movement relates to an EU citizen and his family members' right to

free movement in Denmark. (These cases are handled by the Regional State Administration.) The secondary right of free movement refers to the situation, where a Danish citizen, who has exercised his right of free movement in another EU/EEA member state or Switzerland, can be eligible for family reunification in Denmark under EU law with his accompanying non-Danish family members. (These cases are handled by the Danish Immigration Service.)

Concerning fraud in regard to the primary right of free movement it is noted that information on e.g. a marriage between an EU citizen from one of the "new" Member States and e.g. a Nigerian national shortly prior to the expiry of the latter's residence permit, can give reason to suspect fraud and lead to further investigations.

As regards the secondary right of free movement no general information about fraud and abuse can be derived. However, it should be noted that many applications are refused with reference to the fact that the Danish citizen has not been able to demonstrate genuine and effective residence in another Member State. This is generally not considered fraud or abuse, as it is often due to a lack of documentation, which can be rectified by the submission of appropriate documentation at a later stage or in connection with a new application. Such cases are therefore not included in statements of cases with fraud and abuse.

Concerning abuse in terms of document fraud, both actual false documents and authentic documents based on fraudulent information is seen. In particular the latter is difficult to detect.

In 2009 and 2011 respectively the Danish immigration authorities conducted a qualitative study on fraud and abuse in cases regarding family reunification in accordance with the EU legislation on the right of free movement. The purpose of the study was to be better able to tackle fraud and abuse. One result of the study is that it is often difficult to prove suspected fraud or abuse, as it is not possible to set clear criteria for assessing whether a marriage is a sham marriage. Thus, in each case a specific and individual assessment must be conducted.

During 2010 and the first six months of 2011 only one application for residence permit in accordance with the EU legislation on the right of free movement (primary right of free movement) was refused on grounds of fraud. This was due to document fraud.

Typically these cases have concerned so-called “look-a-likes”, where a third country citizen has presented a genuine personal identification document of an EU-citizen, who resembles the applicant or by exchanging the photo in the passport. Under the secondary right to free movement no decision to deny right of entry or residence on the grounds of document fraud has been registered in 2010 and the first six months of 2011.

Question 11: Marriages of convenience

Current rules in the Danish Aliens Act

According to Section 9 (9) of the Danish Aliens Act a residence permit based on spousal reunification cannot be issued if there are definite reasons for assuming that the decisive purpose of contracting the marriage or establishing the cohabitation is to obtain a residence permit (sham marriage).

When assessing if a marriage is a sham marriage the following six indicators are considered:

a. The spouses have not lived together at the same address.
b. The spouses cannot communicate in the same language.
c. A big age difference.
d. The degree of personal knowledge of the other spouse.
e. The prior marriages of the spouses (if any).
f. Unusual travel patterns.

Other indicators that the marriage is not genuine can also be considered.

Detection of abuse in the form of relationships of convenience is based on compliance of at least three of the six indicators listed above.

If the immigrations authorities suspect a sham marriage interviews will be conducted with the spouses in order to assess if the spouses have the level of personal knowledge of each other that is to be expected (indicator d).

The spouses’ prior marriages (indicator e) can be of relevance if the spouse living in Denmark has previously been married to a third country national and was divorced from this person soon after he/she was granted a permanent residence permit.

If the immigration authorities suspect a sham marriage, but do not have sufficient grounds to refuse the application for family reunification, the immigration authorities can request the police to control whether the spouses are actually living together. This control will take place some time after the granting of the residence permit and if it shows that the spouses do not share a household the immigration authorities can consider to revoke the residence permit. If the residence permit is revoked it will be with reference to the lack of cohabitation, not that the marriage is considered a sham marriage.

Evidence of the problem with fraud

Fraud in relation to family reunification under the Danish legislation
The Danish immigration authorities do not have complete information on the size of the problem with sham marriages. It is generally considered that there is a considerable amount of cases, which are not known to the authorities, as the people involved will try to deflect from any indication of a sham marriage.

During 2008-2011 the Danish Immigration Service has rejected a total of 96 cases with reference to the fact that there were reasons to consider that the decisive purpose of contracting the marriage or establishing the cohabitation is to obtain a residence permit.

The numbers below indicate an increase of cases in 2009 and 2010, which is due to an increased focus on this problem and increased efforts to identify the cases and organise the interviews.

The refusals are divided over the three years as follows:

Year	No. of refusals according to Section 9 (9) of the Danish Aliens Act.
2008	5 (out of a total of 842 refusals for family reunification with a spouse/partner)
2009	31 (out of a total of 1733 refusals for family reunification with a spouse/partner)
2010	60 (out of a total of 1863 refusals for family reunification with a spouse/partner)

The numbers are based on final registrations in the Aliens Register for 2008-2010. A degree of uncertainty is connected to the numbers as the Aliens Register is a recording and case management system and not a statistical system as such.

Fraud in relation to family reunification under the Free Movement Directive (2004/38/EC)
As mentioned, the Danish immigration authorities in 2009 and 2011 respectively conducted a qualitative study on fraud and abuse in cases regarding family reunification in accordance with the EU legislation on the right of free movement. The purpose of the study was to be better able to tackle fraud and abuse. One result of the study is that it can often be difficult to prove suspected fraud or abuse, as it is not possible to set clear criteria, which can be used to assess whether there is a sham marriage. Thus, in each case a specific and individual assessment must be conducted.

In 2010 and the first six months of 2011eight cases were registered as refusals on the grounds that the marriage was considered a sham marriage. With such a small amount – where the cases are also different – it is not possible to deduce any general trends.

Question 12: Fees
Current rules in the Danish Aliens Act

According to Section 9 h of the Danish Aliens Act a processing fee will as a general rule be charged when a third country national applies for family reunification.

The fee will be deferred if such a requirement could interfere with Denmark's international obligations or EU regulation.

Planned revision of the current rules

It is stated in the Government Platform from October 2011 that the Government inter alia wants to abolish the fees regarding family reunification.

The application fees for residence permits for family members of a foreign national who is to work or study in Denmark are not part of the planned revision but are currently maintained as fees equivalent to the administrative expenses for processing the applications.

Question 13: Length of procedure

Current processing times for applications for family reunification (service goals)

For the most common types of applications the immigration authorities have maximum time limits for how long applicants should expect to have to wait for a decision (service goals). The stated maximum processing time is calculated from the date when the immigration authorities receive a fully completed application. An application is considered fully completed if it contains all required information, has been signed correctly and includes the required documentation.

Simple applications are expected to be processed within a maximum of three months. An application is considered simple if it appears that the normal conditions for family reunification are met or, conversely, that a basic requirement is not met – for example if the marriage is invalid.

Complicated applications are expected to be processed within a maximum of seven months. An application is considered complicated if it requires further investigation in order to ascertain if the normal requirements for family reunification are met, or if there is a need to carry out further enquiries, such as to confirm familial relations or age.

Q14: Horizontal clauses

Current rules in the Danish Aliens Act

It is stipulated in Section 9 (19) of the Danish Aliens Act that a child cannot be granted a residence permit on the grounds of family reunification if it is clearly at odds with the interests of the child.

The consideration for the family unity is directly mentioned in the legislation regarding family reunification in Sections 9 and 9 c (1) of the Danish Aliens Act.