EXECUTIVE SUMMARY

No migration policy can ignore the issue of family reunification. It is a central component of the rules governing the entry and residence of foreign nationals in countries' national territory. Consequently, any amendment to the legislation on foreign nationals, whether national or European, strikes to the heart of the family structure. Family reunification also has an impact on the structure and organisation of the host society. Given its critical, sensitive and complex nature, therefore, it is important to have a clear understanding of the dynamics and forces that structure the issue of family reunification in both European and Belgian law. That is the aim of this publication.

Family reunification is legally complex because it is the product of continual tensions: legal tensions, first and foremost, deriving from the conflict between opposing rights. On the one hand, there is the right of family reunification, understood as the rules and conditions governing the possibility of a person being joined by members of his or her family. On the other hand, there is the right to family reunification, a subjective right that a person is deemed to possess and which he or she may demand to exercise. This opposition of legitimate interests – the need to manage immigration and the respect for fundamental rights – means that a balance has to be struck. That balance can sometimes be hard to find. Moreover, given that family reunification is the main path of legal entry into the European Union and Belgium, the scale of the phenomenon and of its consequences fuels tensions.

Alongside this, the gradual increase in European Union (EU) control over the issue is leading to the emergence of another form of tension, one that opposes the European and national levels. Here, the issue is the vertical distribution of powers between the EU and the Member States. This complexity increases as the two levels interact and the constraints of the one impact on the other and vice versa.

The first part of this publication examines the European legal framework, which is torn between the desire of Member States to better regulate family reunification and a protective case-law reflecting the commitment of the European Court of Justice to safeguard respect for the right to family reunification. It notes that Directive 2003/86 on the right to family reunification is not a harmonising text, preserving as it does Member States' freedom for manoeuvre in this area. However, following the intervention of the Court of Justice, it has become a binding text capable of calling into question the validity of provisions existing in some Member States and the guidelines laid down by the European Council in the European Pact on Immigration and Asylum of 2008.

The second part focuses on the legal framework in Belgian law. This is characterised by the complexity of the family reunification provisions of the law of 15 December 1980, resulting in particular from amendments to the law which have significantly undermined the coherence of the text. Another important factor is the case-law on this issue, which recently led to several provisions being annulled by the Constitutional Court and the Council of State. This part begins by considering the beneficiaries of family reunification in Belgium, with a focus on non-EU nationals; it moves on to examine the conditions that beneficiaries must meet in order to qualify; a third section is devoted to the application procedure for family reunification, while the fourth looks at the status of family members.