Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

12 April 2018*

(Reference for a preliminary ruling — Right to family reunification — Directive 2003/86/EC — Article 2(f) — Definition of 'unaccompanied minor' — Article 10(3)(a) — Right of a refugee to family reunification with his parents — Refugee below the age of 18 at the time of entry into the Member State and at the time of application for asylum, but over 18 at the time of the decision granting asylum and of his application for family reunification — Relevant date for assessing 'minor' status of the person concerned)

In Case C-550/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Rechtbank Den Haag (District Court, The Hague, Netherlands), made by decision of 26 October 2016, received at the Court on 31 October 2016, in the proceedings

**A,**

**S**

v

**Staatssecretaris van Veiligheid en Justitie,**

THE COURT (Second Chamber),

composed of M. Ilešič (Rapporteur), President of the Chamber, A. Rosas, C. Toader, A. Prechal and E. Jarašiūnas, Judges,

Advocate General: Y. Bot,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 14 September 2017,

after considering the observations submitted on behalf of

– A and S, by N.C. Blomjous and S. Wierink, advocaten,

– the Netherlands Government, by M.K. Bulterman, A.M. de Ree and H.S. Gijzen, acting as Agents,

– the Polish Government, by B. Majczyna, acting as Agent,

– the European Commission, by C. Cattabriga and G. Wils, acting as Agents,

* Language of the case: Dutch.

after hearing the Opinion of the Advocate General at the sitting on 26 October 2017,

gives the following

## Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 2(f) of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ 2003 L 251, p. 12).

2 The request has been made in proceedings between A and S, who are Eritrean nationals, and the staatssecretaris van Veiligheid en Justitie (State Secretary for Security and Justice, Netherlands) ('the State Secretary') concerning the latter's refusal to grant them and their three minor sons a temporary residence permit for the purposes of family reunification with their elder daughter.

## Legal context

### *EU law*

*Directive 2003/86*

3 Council Directive 2003/86 determines the conditions for the exercise of the right to family reunification by third country nationals residing lawfully in the territory of the Member States.

4 Recitals 2, 4, 6 and 8 to 10 of Directive 2003/86 are worded as follows:

'(2) Measures concerning family reunification should be adopted in conformity with the obligation to protect the family and respect family life enshrined in many instruments of international law. This Directive respects the fundamental rights and observes the principles recognised in particular in Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms [signed in Rome on 4 November 1950] and in the Charter of Fundamental Rights of the European Union.

…

(4) Family reunification is a necessary way of making family life possible. It helps to create sociocultural stability facilitating the integration of third country nationals in the Member State, which also serves to promote economic and social cohesion, a fundamental Community objective stated in the Treaty.

…

(6) To protect the family and establish or preserve family life, the material conditions for exercising the right to family reunification should be determined on the basis of common criteria.

…

(8) Special attention should be paid to the situation of refugees on account of the reasons which obliged them to flee their country and prevent them from leading a normal family life there. More favourable conditions should therefore be laid down for the exercise of their right to family reunification.

(9) Family reunification should apply in any case to members of the nuclear family, that is to say the spouse and the minor children.

(10) It is for the Member States to decide whether they wish to authorise family reunification for relatives in the direct ascending line, adult unmarried children ...'

5 Article 2 of Directive 2003/86 provides:

'For the purposes of this Directive:

(a) "third country national" means any person who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty;

(b) "refugee" means any third country national or stateless person enjoying refugee status within the meaning of the Geneva Convention relating to the Status of Refugees of 28 July 1951, as amended by the Protocol signed in New York on 31 January 1967;

(c) "sponsor" means a third country national residing lawfully in a Member State and applying or whose family members apply for family reunification to be joined with him/her;

(d) "family reunification" means the entry into and residence in a Member State by family members of a third country national residing lawfully in that Member State in order to preserve the family unit, whether the family relationship arose before or after the resident's entry.

…

(f) "unaccompanied minor" means third country nationals or stateless persons below the age of eighteen, who arrive on the territory of the Member States unaccompanied by an adult responsible by law or custom, and for as long as they are not effectively taken into the care of such a person, or minors who are left unaccompanied after they entered the territory of the Member States.'

6 Article 3 of Directive 2003/86 provides:

'1. This Directive shall apply where the sponsor is holding a residence permit issued by a Member State for a period of validity of one year or more who has reasonable prospects of obtaining the right of permanent residence, if the members of his or her family are third country nationals of whatever status.

2. This Directive shall not apply where the sponsor is:

(a) applying for recognition of refugee status whose application has not yet given rise to a final decision;

(b) authorised to reside in a Member State on the basis of temporary protection or applying for authorisation to reside on that basis and awaiting a decision on his status;

(c) authorised to reside in a Member State on the basis of a subsidiary form of protection in accordance with international obligations, national legislation or the practice of the Member States or applying for authorisation to reside on that basis and awaiting a decision on his status.

…

5. This Directive shall not affect the possibility for the Member States to adopt or maintain more favourable provisions.'

7 Article 4(2) of Directive 2003/86 provides:

'The Member States may, by law or regulation, authorise the entry and residence, pursuant to this Directive and subject to compliance with the conditions laid down in Chapter IV, of the following family members:

(a) first-degree relatives in the direct ascending line of the sponsor or his or her spouse, where they are dependent on them and do not enjoy proper family support in the country of origin;

…'

8 Article 5 of Directive 2003/86 provides:

'1. Member States shall determine whether, in order to exercise the right to family reunification, an application for entry and residence shall be submitted to the competent authorities of the Member State concerned either by the sponsor or by the family member or members.

…

4. The competent authorities of the Member State shall give the person, who has submitted the application, written notification of the decision as soon as possible and in any event no later than nine months from the date on which the application was submitted.

In exceptional circumstances linked to the complexity of the examination of the application, the time limit referred to in the first subparagraph may be extended.

Reasons shall be given for the decision rejecting the application. Any consequences of no decision being taken by the end of the period provided for in the first subparagraph shall be determined by the national legislation of the relevant Member State.

5. When examining an application, the Member States shall have due regard to the best interests of minor children.'

9 Article 7(1) of Directive 2003/86 provides that Member States may require a person who submits an application for family reunification to provide evidence that the sponsor has accommodation, sickness insurance and resources that meet the requirements enumerated in that provision.

10 Chapter V of Directive 2003/86, entitled 'Family reunification of refugees', comprises Articles 9 to 12 thereof. Article 9(1) and (2) of the directive provides:

'1. This Chapter shall apply to family reunification of refugees recognised by the Member States.

2. Member States may confine the application of this Chapter to refugees whose family relationships predate their entry.'

11 Article 10 of Directive 2003/86 provides:

'1. Article 4 shall apply to the definition of family members except that the third subparagraph of paragraph 1 thereof shall not apply to the children of refugees.

2. The Member States may authorise family reunification of other family members not referred to in Article 4, if they are dependent on the refugee.

3. If the refugee is an unaccompanied minor, the Member States:

(a) shall authorise the entry and residence for the purposes of family reunification of his/her first-degree relatives in the direct ascending line without applying the conditions laid down in Article 4(2)(a);

(b) may authorise the entry and residence for the purposes of family reunification of his/her legal guardian or any other member of the family, where the refugee has no relatives in the direct ascending line or such relatives cannot be traced.'

12 Article 11 of Directive 2003/86 reads as follows:

'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.'

13 Article 12(1) of Directive 2003/86 provides:

'By way of derogation from Article 7, the Member States shall not require the refugee and/or family member(s) to provide, in respect of applications concerning those family members referred to in Article 4(1), the evidence that the refugee fulfils the requirements set out in Article 7.

Without prejudice to international obligations, where family reunification is possible in a third country with which the sponsor and/or family member has special links, Member States may require provision of the evidence referred to in the first subparagraph.

Member States may require the refugee to meet the conditions referred to in Article 7(1) if the application for family reunification is not submitted within a period of three months after the granting of the refugee status.'

*Directive 2011/95/EU*

14 Recitals 18, 19 and 21 of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ 2011 L 337, p. 9) state that:

'(18) The "best interests of the child" should be a primary consideration of Member States when implementing this Directive, in line with the 1989 United Nations Convention on the Rights of the Child. In assessing the best interests of the child, Member States should in particular take due account of the principle of family unity, the minor's well-being and social development, safety and security considerations and the views of the minor in accordance with his or her age and maturity.

(19) It is necessary to broaden the notion of family members, taking into account the different particular circumstances of dependency and the special attention to be paid to the best interests of the child.

…

(21) The recognition of refugee status is a declaratory act.'

15 Article 2 of Directive 2011/95 provides:

'For the purposes of this Directive:

…

(d) "refugee" means a third country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, and to whom Article 12 does not apply;

(e) "refugee status" means the recognition by a Member State of a third-country national or a stateless person as a refugee;

…'

16 Article 13 of Directive 2011/95, entitled 'Granting of refugee status', provides that 'Member States shall grant refugee status to a third-country national or a stateless person who qualifies as a refugee in accordance with Chapters II and III.' Those chapters cover the assessment of applications for international protection and the conditions for qualifying as a refugee respectively.

*Directive 2013/32/EU*

17 Recital 33 of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ 2013 L 180, p. 60) provides:

'The best interests of the child should be a primary consideration of Member States when applying this Directive, in accordance with the Charter of Fundamental Rights of the European Union (the Charter) and the 1989 United Nations Convention on the Rights of the Child. In assessing the best interest of the child, Member States should in particular take due account of the minor's well-being and social development, including his or her background.'

18 Article 31(7) of Directive 2013/32, headed 'Scope', provides:

'Member States may prioritise an examination of an application for international protection in accordance with the basic principles and guarantees of Chapter II in particular:

(a) where the application is likely to be well-founded;

(b) where the applicant is vulnerable, within the meaning of Article 22 of Directive 2013/33/EU [of the European Parliament and of the Council, of 26 June 2013, laying down standards for the reception of applicants for international protection (OJ 2013 L 180, p. 96)], or is in need of special procedural guarantees, in particular unaccompanied minors.'

*Netherlands law*

19 Pursuant to Article 29(2)(c) of the Vreemdelingenwet 2000 (Law on foreign nationals 2000), a temporary residence permit for persons granted asylum, as referred to in Article 28 of that law, can be issued to the father and mother of a foreign national who is an unaccompanied minor within the meaning of Article 2(f) of the Directive 2003/86, where they, at the time of the arrival of the foreign national concerned, were members of his or her nuclear family and arrived at the same time as the foreign national in the Netherlands or joined him within three months following the issue to that foreign national of a temporary residence permit pursuant to Article 28.

**The dispute in the main proceedings and the question referred for a preliminary ruling**

20 The daughter of A and S arrived unaccompanied in the Netherlands when she was still a minor. On 26 February 2014, she applied for asylum. On 2 June 2014 she attained her majority.

21 By decision of 21 October 2014, the State Secretary granted her a residence permit for persons granted asylum, valid for five years, with effect from the date on which her application was submitted.

22 On 23 December 2014, the organisation VluchtelingenWerk Midden-Nederland, acting on behalf of the daughter of A and S, submitted an application for temporary residence permits for her parents and her three minor brothers for the purposes of family reunification.

23 By decision of 27 May 2015, the State Secretary rejected that application on the ground that, at the date on which it was submitted, the daughter of A and S had reached the age of majority. The objection lodged against that refusal was declared unfounded by decision of 13 August 2015.

24 On 3 September 2015, A and S lodged an action against that refusal before the rechtbank Den Haag (District Court, The Hague, Netherlands).

25 In support of their claim, A and S submit that it follows from Article 2(f) of Directive 2003/86 that, in order to determine whether a persons may qualify as an 'unaccompanied minor' within the meaning of that provision, it is the date on which the person concerned entered the Member State concerned that is decisive. Conversely, the State Secretary considers that it is the date on which the application for family reunification was submitted which is determinative in that regard.

26 The referring court notes observes that the Raad van State (Council of State, Netherlands) has held, in two judgments of 23 November 2015, that the fact that a foreign national has attained the age of majority after arriving on the national territory may be taken into account for determining whether he or she falls within the scope of Article 2(f) of Directive 2003/86.

27 The referring court considers, in that regard, that it is clear from Article 2(f) of Directive 2003/86 that, in principle, the status of an unaccompanied minor must be determined by reference to the moment of entry of the person concerned into the territory of the Member State. It is true that that provision, according to the referring court, lays down two exceptions to that principle, namely that of a minor initially accompanied but then left alone and that of a minor who is unaccompanied on arrival but

then taken into the care of a responsible adult. However, the facts of the present case do not raise either of those two exceptions and nothing in the text of that provision supports the idea that it allows other exceptions to the principle.

28 In those circumstances, the rechtbank Den Haag (District Court of The Hague) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'In matters relating to family reunification for refugees, must the term "unaccompanied minor", within the meaning of Article 2(f) of [Directive 2003/86] also cover a third-country national or stateless person below the age of 18 who arrives on the territory of a Member State unaccompanied by an adult responsible by law or custom and who:

– applies for asylum,

– during the asylum procedure, attains the age of 18 on the territory of the Member State,

– is granted asylum with retroactive effect to the date of the application, and

– subsequently applies for family reunification?'

**Consideration of the question referred**

29 By its question, the referring court asks, in essence, whether Article 2(f) of Directive 2003/86 must be interpreted as meaning that a third-country national or stateless person who is below the age of 18 at the time of his or her entry into the territory of a Member State and of the submission of his or her asylum application in that State, but who, in the course of the asylum procedure, attains the age of majority and is, thereafter, granted asylum with retroactive effect to the date of his or her application must be regarded as a 'minor' for the purposes of that provision.

30 A and S consider that that question calls for an answer in the affirmative, whereas the Netherlands and Polish Governments and the European Commission take the opposite view. More specifically, the Netherlands Government submits that it is for Member States to define the relevant moment for determining whether a refugee must be regarded as an unaccompanied minor within the meaning of Article 2(f) of Directive 2003/86. Conversely, the Polish Government and the Commission consider that that moment may be determined on the basis of that directive. According to the Commission, that moment is when the application for family reunification is submitted, whereas, for the Polish Government, it is when the decision on that application is adopted.

31 It must be recalled that the aim of Directive 2003/86, according to Article 1 thereof, is to determine the conditions for the exercise of the right to family reunification by third-country nationals residing lawfully in the territory of the Member States.

32 In that regard, recital 8 of that directive states that it provides more favourable conditions for refugees for the exercise of their right to family reunification, on account of the reasons which obliged them to flee their country and prevent them from leading a normal family life there.

33 One of those more favourable conditions concerns family reunification with first-degree relatives in the direct ascending line of the refugee.

34 Whereas, under Article 4(2)(a) of Directive 2003/86, the possibility of such reunification is, in principle, left to the discretion of each Member State and subject, in particular, to the condition that first-degree relatives in the direct ascending line are dependent upon the sponsor and do not enjoy proper family support in the country of origin, Article 10(3)(a) of that directive lays down, by way of exception to

that principle, a right to such reunification for refugees who are unaccompanied minors which is not subject to a margin of discretion on the part of the Member States nor to conditions laid down in Article 4(2)(a).

35 The concept of 'unaccompanied minor' which, in the context of Directive 2003/86, is used only in Article 10(3)(a), is defined in Article 2(f) of that directive.

36 According to that latter provision, the term 'unaccompanied minor', for the purposes of Directive 2003/86, means 'third country nationals or stateless persons below the age of 18, who arrive on the territory of the Member States unaccompanied by an adult responsible by law or custom, and for as long as they are not effectively taken into the care of such a person, or minors who are left unaccompanied after they entered the territory of the Member States'.

37 That provision thus lays down two conditions, namely that the person concerned is a 'minor' and he or she is 'unaccompanied'.

38 While, as regards the second condition, that provision refers to the moment of entry of the person concerned into the territory of the Member State, it is however clear from that provision that circumstances arising later must also be taken into account, which is the case in relation to both of those conditions. Thus, a minor who is unaccompanied at the time of his or her entry but who is then taken into the care of an adult responsible for him or her by law or custom does not satisfy the second condition; whereas, a minor who was initially accompanied but who is later left alone is regarded as unaccompanied and therefore satisfies that condition.

39 In respect of the first of those two conditions referred to in paragraph 37 above, which is the only one at issue in the dispute in the main proceedings, Article 2(f) of Directive 2003/86 merely states that the person concerned must be 'below the age of eighteen' without specifying the moment at which that condition must be satisfied.

40 However, it by no means follows from that fact that it is for each Member State to determine which moment it wishes to choose for the purposes of assessing whether the condition in question is satisfied.

41 It must be recalled that, in accordance with the need for a uniform application of EU law and the principle of equality, a provision of EU law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the European Union, and that interpretation must take into account, inter alia, the context of the provision and the objective pursued by the legislation in question (judgment of 26 July 2017, *Ouhrami*, C-225/16, EU:C:2017:590, paragraph 38 and the case-law cited).

42 In that regard, it must be observed, first, that neither Article 2(f) nor Article 10(3)(a) of Directive 2003/86 contains any reference to the national law or to Member States, which is unlike other provisions in the same directive, such as Article 5(1) and Article 11(2), which suggests that, if the EU legislature had wished to leave to the discretion of each Member State the responsibility for determining the moment until which the person concerned must be a minor in order to benefit from the right to family reunification with his or her parents, it would have included such a reference in that context also.

43 Next, Article 10(3)(a) of Directive 2003/86 imposes on the Member States a precise positive obligation, to which a clearly defined right corresponds. It requires them, on the hypothesis set out in that provision, to authorise the family reunification of first-degree relatives in the ascending line of the sponsor, without any margin of discretion being available.

44 Finally, Directive 2003/86 pursues not only, in a general way, the objective of promoting family reunification and granting protection to third-country nationals, in particular minors (see, to that effect, judgment of 6 December 2012, *O and Others*, C-356/11 and C-357/11, EU:C:2012:776, paragraph 69) but, by Article 10(3)(a) thereof, seeks specifically to guarantee an additional protection for those refugees who are unaccompanied minors.

45 In those circumstances, while Directive 2003/86 does not explicitly determine the moment until which a refugee must be a minor in order to be able to benefit from the right to family reunification referred to in Article 10(3)(a), it follows however from the objective of that provision, the fact that it confers no discretion on Member States and the lack of a reference to the national law in that regard, that the determination of that moment cannot be left to each Member State to assess.

46 It is necessary also to add that the situation at issue in the main proceedings is not, on that point, comparable to that, invoked by the Netherlands Government, which gave rise to the judgment of 17 July 2014, *Noorzia* (C-338/13, EU:C:2014:2092), and in which Article 4(5) of Directive 2003/86 was at issue, which provides that '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'.

47 Unlike Article 10(3)(a) of Directive 2003/86, Article 4(5) thereof is optional and, moreover, explicitly leaves to Member States a discretion for determining the minimum age of the sponsor and his or her spouse that they wish, as the case may be, to require for the legitimate aim of ensuring better integration and preventing forced marriages. Therefore, the disparities that follow from the fact that each Member State is free to define the date by reference to which the national authorities must assess whether the condition as to age is satisfied are perfectly reconcilable within the nature and purpose of Article 4(5) of Directive 2003/86, contrary to the position for Article 10(3)(a) thereof.

48 The question, more precisely, as to what is the specific moment by reference to which the age of a refugee must be assessed in order for him or her to be regarded as a minor and be able therefore to benefit from the right to family reunification under Article 10(3)(a) of Directive 2003/86 must be answered by reference to the wording, general scheme and objective of that directive, taking into account the regulatory context in which it is found and the general principles of EU law.

49 In that regard it follows from paragraphs 38 and 39 above that the wording of neither Article 2(f) nor Article 10(3)(a) of Directive 2003/86 in itself enables an answer to be given to that question.

50 As regards the general scheme of Directive 2003/86, it must be observed that, pursuant to Article 3(2)(a), it does not apply where the sponsor is a third-country national applying for recognition of refugee status whose application has not yet given rise to a final decision. Article 9(1) of that directive states that Chapter V thereof, in which Article 10(3)(a) is situated, applies to the family reunification of refugees recognised as such by the Member States.

51 While the possibility for an asylum applicant of submitting a family reunification application on the basis of Directive 2003/86 is thus subject to the conditions that his or her application for asylum has already been the object of a positive final decision, it must however be observed that that condition is easily explained by the fact that before the adoption of such a decision it is impossible to know with certainty whether the person concerned fulfils the conditions to be granted refugee status.

52 In that regard, it should first be recalled that refugee status must be granted to a person where he or she meets the minimum standards set by EU law. Pursuant to Article 13 of Directive 2011/95, Member States are to grant refugee status to all third country nationals or stateless persons who qualify as a refugee in accordance with Chapters II and III of that directive, without having any discretion in that respect (see, to that effect, judgment of 24 June 2015, *H. T.*, C-373/13, EU:C:2015:413, paragraph 63).

53 Recital 21 of Directive 2011/95 states, in addition, that recognition of refugee status is a declaratory act.

54 Thus, after the application for international protection is submitted in accordance with Chapter II of Directive 2011/95, any third-country national or stateless person who fulfils the material conditions laid down by Chapter III of that directive has a subjective right to be recognised as having refugee status, and that is so even before the formal decision is adopted in that regard.

55 In those circumstances, to make the right to family reunification under Article 10(3)(a) of Directive 2003/86 depend upon the moment at which the competent national authority formally adopts the decision recognising the refugee status of the person concerned and, therefore, on how quickly or slowly the application for international protection is processed by that authority, would call into question the effectiveness of that provision and would go against not only the aim of that directive, which is to promote family reunification and to grant in that regard a specific protection to refugees, in particular unaccompanied minors, but also the principles of equal treatment and legal certainty.

56 Such an interpretation would have the consequence that two unaccompanied minors of the same age who have each submitted, at the same time, an application for international protection could, as regards the right to family reunification, be treated differently as a result of the duration of the processing of those applications on which they generally have no influence and which, beyond the complexity of the situations at issue, may depend both upon how much work the competent authorities have and the political choices made by Member States as regards the staff made available to those authorities and the cases to be dealt with as a priority.

57 Furthermore, taking into account the fact that the duration of an asylum procedure may be significant and that, in particular in periods of substantial surges in applications for international protection, the time limits laid down in that regard by EU law are often exceeded, to make the right to family reunification depend upon the moment when that procedure is closed would be likely to deny a substantial proportion of refugees who have submitted their application for international protection as an unaccompanied minor from the benefit of that right and the protection that Article 10(3)(a) of Directive 2003/86 is intended to confer on them.

58 Moreover, instead of prompting national authorities to treat applications for international protection from unaccompanied minors urgently in order to take account of their particular vulnerability, a possibility which is already explicitly offered by Article 31(7)(b) of Directive 2013/32, such an interpretation could have the opposite effect, frustrating the objective pursued both by that directive and by Directives 2003/86 and 2011/95 of ensuring that, in accordance with Article 24(2) of the Charter of Fundamental Rights, the best interests of the child is in practice a primary consideration for Member States in the application of those directives.

59 In addition, that interpretation would have the consequence of making it entirely unforeseeable for an unaccompanied minor who submitted an application for international protection to know whether he or she will be entitled to the right to family reunification with his or her parents, which might undermine legal certainty.

60 Conversely, taking the date on which the application for international protection was submitted as that by reference which it is appropriate to assess the age of a refugee for the purposes of Article 10(3)(a) of Directive 2003/86 enables identical treatment and foreseeability to be guaranteed for all applicants who are in the same situation chronologically, by ensuring that the success of the application for family reunification depends principally upon facts attributable to the applicant and not to the administration such as the time taken processing the application for international protection or the application for family reunification (see, by analogy, judgment of 17 July 2014, *Noorzia*, C-338/13, EU:C:2014:2092, paragraph 17).

61 It is true that, since, as the Netherlands Government and the Commission submit, it would be incompatible with the aim of Article 10(3)(a) of Directive 2003/86 for a refugee who had the status of an unaccompanied minor at the time of his or her application but who attained his or her majority during the procedure to be able to rely on the entitlement under that provision without any time limit in order to obtain a family reunification, his or her application seeking reunification must be made within a reasonable time. For the purposes of determining such reasonable time, the answer given by the EU legislature in the similar context of Article 12(1) third subparagraph of that directive has indicative worth, with the result that it must be held that the application for family reunification made on the basis of Article 10(3)(a) of that directive must, in principle, in such a situation be submitted within a period of three months of the date on which the 'minor' concerned was declared to have refugee status.

62 As to the other dates which were suggested in the context of this procedure for the purposes of determining whether a refugee may be regarded as a minor, it must he observed, first, that the date of entry into the territory of a Member States cannot, in principle, be held to be determinative in that regard, owing to the intrinsic link that there is between the right to family reunification laid down in Article 10(3)(a) of Directive 2003/86 and refugee status, the recognition of which depends on an application for international protection by the person concerned.

63 As regards, second, the date on which the application for family reunification is submitted and the date on which it is decided, it suffices to recall that it is clear in particular from paragraph 55 of this judgment that the right to family reunification laid down in Article 10(3)(a) of Directive 2003/86 cannot depend on the moment at which the competent national authority formally adopts the decision recognising that the sponsor has refugee status. However, that would be precisely the case if one of those dates were taken to be decisive, given that, as observed in paragraphs 50 to 51 of this judgment, the sponsor may only submit an application for family reunification after the adoption of the decision recognising his or her refugee status.

64 In the light of all the foregoing, the answer to the question referred is that Article 2(f) of Directive 2003/86, read in conjunction with Article 10(3)(a) thereof, must be interpreted as meaning that a third-country national or stateless person who is below the age of 18 at the moment of his or her entry into the territory of a Member State and of the introduction of his or her asylum application in that State, but who, in the course of the asylum procedure, attains the age of majority and is thereafter granted refugee status must be regarded as a 'minor' for the purposes of that provision.

## Costs

65 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

**Article 2(f) of Directive 2003/86/EC of 22 September 2003 on the right to family reunification, read in conjunction with Article 10(3)(a) thereof, must be interpreted as meaning that a third-country national or stateless person who is below the age of 18 at the time of his or her entry into the territory of a Member State and of the introduction of his or her asylum application in that State, but who, in the course of the asylum procedure, attains the age of majority and is thereafter granted refugee status must be regarded as a 'minor' for the purposes of that provision.**

[Signatures]