

## EMN INFORM

# Family Reunification of Third-Country Nationals in the EU plus Norway: National Practices

## 1 Introduction

This Inform presents a brief overview of the Study on 'Family Reunification of Third-Country Nationals in the EU plus Norway: National Practices'. The Study aims to compare national policies and/ or practices on family reunification between the different (Member) States, and provide up-to-date information on recent developments in this field (i.e. since 2011 onwards). The Study further aims to provide comparable data on the scale of family reunification in the EU plus Norway at present, as well as over time (2011-2015), supplementing it with national statistics where available.

### KEY POINTS TO NOTE:

- ★ As **one of the main avenues for legal migration to the EU**, family reunification accounts for **approximately a third** of all arrivals of Third-Country Nationals (TCNs).<sup>1</sup> Latest Eurostat data show that, in 2015, **more than 440,000 first permits for family reasons** were issued to TCNs (reuniting with a TCN sponsor) in the EU Member States plus Norway. The **vast majority** of the first permits for family reasons granted to TCNs in 2015 were issued by **Germany, Italy, Spain,**

### France, UK,<sup>2</sup> Sweden, Belgium and the Netherlands altogether.

Though data on the profile of TCNs, both sponsors and family members, are limited (see Annex 1 to 4 of the Synthesis Report of the Study, **the types of sponsors vary from one (Member) State to another**. The share of men and women appears to be **approximately equal**. The Study observes a general lack of comprehensive data on family reunification, particularly at national level.

- ★ The Study identifies **both commonalities and differences** between (Member) States' policies and practices on family reunification over the past few years, which depend to a great extent on (Member) States' discretion, despite being guided by the framework established by the Family Reunification Directive ([2003/86/EC](#)) at EU level. Whilst the Study identifies certain **divergences** in the rights and/ or procedures available to sponsors and/ or family members, it also finds that refugees and beneficiaries of subsidiary protection (who are not covered by the Family Reunification Directive) overall appear to benefit from **a similar level of access to family reunification across the EU**. As many **exceptions** apply, however, overall the Study finds that the right of TCNs to reunite with family could

<sup>1</sup> Based on Eurostat data (2011-2015) (extracted on 19-20 January 2017) concerning TCNs who received a residence permit in the EU and EFTA countries, or an EU Blue Card in the EU countries.

<sup>2</sup> UK does not have residence permits in the same way as other Member States so the UK figures are estimates.

be **expanded, both at EU level and (Member) States' policy and practice.**

- ★ The Study highlights a number of **new (or modified) practices** which have been adopted by some (Member) States since 2011, which could be useful for policy-makers to contribute to policy/ practice to promote the right to family reunification in the EU. Moreover, the **review of some of the relevant case law in the field of family reunification** undertaken within this Study points to the significant impact of courts' interpretation of provisions on (Member) States' policies and practices.

#### *What does the Study aim to do?*

The Study aims to compare **national policies and/ or practices on family reunification** between the different EU Member States plus Norway, and to provide up-to-date information on the **latest developments in this area of legal migration to Europe since 2011 onwards**. The Study further aims to provide comparable **data** on the scale of family reunification in the EU28 plus Norway at present, as well as over time (2011-2015 and 2016 where available), supplementing available Eurostat data with national statistics where available.

#### *What is the scope of the Study?*

The Study covers **all TCNs residing legally within a (Member) State (=sponsors)**. This includes beneficiaries of international protection, notably refugees and beneficiaries of subsidiary protection, as well as holders of other residence permits, such as those issued for the purposes of work or study. Naturally, the Study also covers **sponsors' family members (who are likewise TCNs)** who wish to come to Europe through the legal channel of family reunification.

The Study does *not* cover conditions for family reunification for non-mobile EU nationals,<sup>3</sup> which are governed by national law, as well as for mobile EU nationals.<sup>4</sup>

Nevertheless, in general more favourable provisions (such as a wider definition of family

<sup>3</sup> Non-mobile nationals are nationals that have not exercised their right to free movement within the EU (a German national residing in Germany).

<sup>4</sup> Mobile nationals are nationals that have exercised their right to free movement within the EU (a German national residing in the Netherlands) regulated by Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:158:0077:0123:EN:PDF>

or unrestricted access to the labour market) appear to apply to the TCN family members of non-mobile EU citizens. Family reunification under the Dublin III Regulation is *not* covered by this Study.

#### *How do EU and international legislation provide for family reunification?*

As mentioned above, family reunification in the EU is predominantly regulated by the **Family Reunification Directive**, which applies to all (Member) States except Denmark, Ireland, the United Kingdom and Norway. The following Synthesis Report thus refers to the framework (and relevant provisions) of this Directive. The Directive establishes a right to family reunification and provides for, among other provisions: **a definition of eligible sponsors and family members; optional requirements for exercising the right to family reunification, for example income; guidance on the application procedure for family reunification; and rights following family reunification, such as access to education, vocational training and vocational guidance, employment and self-employment**. Other EU and international instruments protecting the right to family life are elaborated upon in Section 2 of the Study, alongside with an analysis of some of the relevant case law and its impact on (Member) States' policies.

#### *Who can be a sponsor to an application for family reunification?*

A **sponsor** to an application for family reunification in most (Member) States is a TCN who is in possession of a valid continuous or permanent residence permit, including beneficiaries of international protection. **Students** and/ or **workers** may act as sponsors in many (Member) States, provided that they fulfil the general requirements for family reunification. Furthermore, most national laws allow **beneficiaries of subsidiary protection** to apply for family reunification often under the same conditions as **refugees**. All but one (Member) State allow **unaccompanied minors (UAMs)** who have obtained refugee status or subsidiary protection to become sponsors of family reunification.

#### *Is the scope of family reunification extended beyond the nuclear family?*

(Member) States usually **extend the scope of family reunification beyond the nuclear family**, which consists of core members such as the mother, father and their minor unmarried children.

Depending on the specific national legal regime, the scope of family reunification can include

parents, adult children, same-sex partners, non-married partners and/ or foster children.

For example, **parents (of adult sponsors)**, as well as **adult children** may fall under the scope of family reunification in some (Member) States if they are not capable of taking care of themselves, for example due to health issues. In some (Member) States adult children may need to fulfil other conditions in order to fall within the scope of family reunification, such as being below a certain age at the time of application. Most (Member) States allow **same-sex partners (either registered or married)** to apply for family reunification, with many of the States providing same-sex partners with an equal right to family reunification as spouses from opposite sexes. Across (Member) States **non-married partners** are usually not included within the scope of family reunification, unless they have a registered partnership equivalent to a marriage or have been living together in a marriage-like relationship for a minimum number of years. Finally, most (Member) States consider that **dependent relatives**, other than core members of the family, have no right to family reunification defined in law, but may be eligible nonetheless in special circumstances.

#### *What are the requirements for exercising the right to family reunification?*

Most (Member) States require sponsors and/ or family members to fulfil certain **material requirements in order to exercise the right to family reunification**, including accommodation, health insurance and/ or sufficient financial resources. The most common requirement across (Member) States is **accommodation** suitable for the size of the family (which may vary from 6-12 m<sup>2</sup> of living space per family member) and/ or meeting certain health and safety standards. **Health insurance** is a further condition for family reunification in nearly all (Member) States. Last but not least, **sufficient financial resources**, which are assessed against a reference income threshold, are also required for family reunification in most (Member) States.

In most (Member) States the income threshold is either equivalent to or higher than the basic minimum monthly income or minimum subsistence amount per month of that country, whilst in certain (Member) States this often (also) depends on the size of the family.

#### *What are the integration measures TCNs may need to comply with before and/ or after admission for the purpose of family reunification?*

Further to the above-mentioned material requirements, some (Member) States require family members to comply with certain **integration requirements** prior to and/ or after admission in the country. Few (Member) States require compliance with such integration measures prior to family reunification, but the ones which do usually require family members to demonstrate **basic language proficiency** in the national language or **civic knowledge** as relevant to the respective (Member) State. Following admission, a few (Member) States require family members to acquire **further language proficiency** or take a civic integration exam, often as part of the (Member) State's integration programme for TCNs.

#### *Is there a waiting period before a sponsor's family members can reunite with him/ her?*

Many (Member) States do not set a **waiting period** before a sponsor's family is eligible to apply for family reunification, but where this provision applies, the waiting period can vary between **one, one and a half, two or three years** (from the date the sponsor became resident in the country/ received a final decision granting international protection). Numerous **exemptions** from the waiting period can be applied by (Member) States.

#### *Can an application for family reunification be rejected on grounds of public policy, public security or public health?*

By law, the **possibility to reject an application for family reunification on grounds of public policy, public security or public health** exists in nearly all (Member) States (though some national laws may not include public health considerations). In practice, however, (Member) States rarely seem to reject an application for family reunification **solely** on grounds of public policy, public security or public health.

#### *What are the more favourable family reunification rules for refugees and do similar provisions apply for beneficiaries of subsidiary protection?*

Most (Member) States apply **similar family reunification rules** to refugees and beneficiaries of subsidiary protection. **More favourable family reunification provisions** applicable to these groups than to other TCNs may include their **exemption from the material requirements mentioned above, altogether or for a minimum period of**

**three, six or twelve months** depending on the (Member) State.

More than half of the (Member) States restrict the application of the more favourable family reunification rules for beneficiaries of international protection to cases where **family ties precede the arrival of the sponsor** in the (Member) State.

Just over half of the (Member) States further apply more favourable family reunification rules to **UAMs, in particular a wider definition of family members**.

Overall, national laws rarely exclude beneficiaries of subsidiary protection from the possibility to exercise the right to family reunification, though their access to this right has recently been temporarily suspended in **Germany** and **Sweden**.

*Who can be formal party to an application for family reunification? Where can an application for family reunification be submitted and what documentation is required?*

The **formal party** to an application for family reunification is either the sponsor or the family member who would be joining the sponsor in the respective (Member) State. Despite family members being most often the formal party to an application, this can vary across (Member) States, for example depending on the type of family reunification concerned.

As a general rule, where the main party to an application is the family member, s/he should submit the application outside the (Member) State, **at a diplomatic mission or consular office** in the respective country of origin or (permanent) residence. In some cases, family members can submit the application in the country where s/he has been residing legally or in the closest neighbouring country if there is no diplomatic representation in the country of origin. Family members of certain types of TCNs can submit their application **in the (Member) State concerned** if they are already residing there lawfully or where exceptional conditions justify this.

As regards the **documentary evidence required to prove the family relationship**, where the applicant is the **spouse** of the sponsor, s/he must present a **marriage certificate** or equivalent confirming the marriage contract. **Other forms of partnership** are verified through a civil union contract or a registered partnership agreement. Where the applicant is the **child** of the sponsor and/ or spouse, a document proving the family relationship, i.e. a **birth certificate** or a certificate of adoption (where applicable), must be presented. Where the scope of family

reunification has been **extended beyond the core members of the family**, as a general rule applicants must submit relevant documents that support the existence of the relationship. Documentary evidence is also required in the case of extended family members who are **dependent** on the sponsor, for example continuous and long-term wire transfers via a bank to prove material dependency. In **guardianship** cases, the applicant must provide a document certifying the establishment of guardianship.

*What is (are) the procedure(s) that apply to family members when an application for entry and residence for the purpose of family reunification is submitted? Is the best interest of the child taken into account during the examination of the application for family reunification?*

A number of **procedures** apply to sponsors and/ or family members when an application for family reunification is submitted. In order to **verify that certain material requirements are met**, (Member) States usually require from the sponsor documentary proof of ownership or lease as evidence that they possess suitable accommodation. Where health insurance is a requirement, sponsors must show that they have access to health insurance, either public or paid. Where financial resources are a requirement, the person applying for family reunification has to provide evidence of their income, usually through an employment contract or salary slips. As regards **compliance with integration measures**, where such measures exist, applicants are required to provide certificates proving elementary language proficiency and civic knowledge of the (Member) State concerned.

(Member) States apply **several different methods to verify whether or not a family member constitutes a threat to public policy and/ or public security** in the form of background checks or by requesting information from relevant internal intelligence services, other national bodies or databases, for example.

Family members may be requested to present a criminal record certificate issued by the country of origin or residence, or to undergo necessary medical tests as soon as they arrive in the territory of a (Member) State, or to provide a medical report (concerning HIV, Hepatitis B and C, syphilis or TB) from their country of origin in order not to endanger public health.

According to the law and general policy of many (Member) States, **the best interests of the child** must be a primary consideration with regard to institutions dealing with applications

for family reunification. Comprehensive and specific guidelines concerning policy and practice measures in this regard seem somewhat scarce however, except in the case of UAMs.

*What is the duration of the procedure for deciding on an application for family reunification?*

A number of Member States' laws determine that applications for family reunification should be processed **without undue delay**. The time limit prescribed by law, which commences after the submission or complete submission of the application, varies considerably among (Member) States, spanning **from one to twelve months**. This time limit can vary within a (Member) State depending on the category of TCN or type of request, with **more favourable time conditions** laid down especially for family members of a sponsor who is a holder of a particular residence permit. The processing time may be **extended** in certain or exceptional circumstances, for example due to the complexity of the examination of an application.

*What are the rights of family members that follow on from family reunification?*

Family members have access to certain rights following reunification, such as access to education, vocational training and guidance, employment and self-employment. Often the access to these rights can depend on the status of the sponsor. **Access to education** is compulsory for school children in the majority of (Member) States, but appears to be less

prevalent for those TCNs who are above the age of compulsory education.

Less than half of the (Member) States provide unrestricted **access to the labour market** for TCNs and certain countries require family members to obtain a work permit or pass a labour market test. Often family members' access to the labour market depends on the validity of their residence permit. Regarding **self-employment**, with a few exceptions TCNs, including beneficiaries of international protection, are usually not subject to any restrictions across (Member) States.

TCNs have access to the same **general vocational guidance and training services** as other legally staying TCNs in just over half of the (Member) States, whilst in some countries these may be available only for beneficiaries of international protection and their family members. Most (Member) States recognise the **right of TCNs to apply for autonomous residence or permanent residence or citizenship**, provided they fulfil certain requirements. As a general rule, TCNs need to continue satisfying the general conditions for a residence permit required initially, such as existence/ continuation of family ties in order to renew/ extend their residence in the EU. Although a residence permit can be subject to withdrawal or non-renewal, for example due to non-compliance with integration measures in the (Member) States concerned, some (Member) States report taking **individual circumstances** into account to mitigate the negative consequences of any withdrawal or non-renewal.



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