

Migration Policy Group

MPG Briefings for the Green Paper on Family Reunion

Introduction: This series of policy briefings by the [Migration Policy Group](#) helps policymakers and stakeholders to respond to the [European Commission's November 2011 Green Paper](#) on the EU Family Reunion Directive 2003/86/EC

This Directive establishes the right to family reunion for non-EU sponsors and their families with key objectives of promoting integration and comparable rights and obligations.

While the future for immigrant families in Europe remains unclear with the current political climate and impact of far right parties, most Member States today still have policies that the [Migrant Integration Policy Index](#) (MIPEX) finds are 'slightly favourable' for family reunion. The average EU country goes beyond the Directive's minimum standards. The Commission's 2008 Application Report identified key national weaknesses in transposition.

In this document you will find all three MPG Family Reunion Briefings:

- 1: Confronting stereo-types, understanding family life*
- 2: Right to family reunion - the dynamics between EU law and national policy change plus Annexes 1 and 2*
- 3: Impact of new family reunion tests and requirements on the integration process*

November 2011

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Migration Policy Group

Family reunion: confronting stereo- types, understanding family life

MPG briefings for the Green Paper on Family Reunion #1

Abstract: *Who do you imagine when you think of family reunion? You may see Moroccan and Turkish wives arriving in countries with longer histories of family immigration like Austria, Belgium, France, and Germany. You may think family reunion is the way that most immigrants come to your EU Member State. These stereotypes are far from the real lives of these families who are making the EU their home. Any debate on the EU Family Reunion Directive should start with Eurostat's comparable statistics. Around half a million non-EU family members were able to reunite with their non-EU sponsor in 2010 in one of 23 EU Member States (statistics not reported for Cyprus, Estonia, Luxembourg, and The Netherlands). The overall number slightly increased from 2009 to 2010 as many more children joined their parent(s) in Italy and Spain. In most EU countries, the number of reuniting non-EU families is small compared to the many other people arriving legally every year. They are the most important in Sweden and new countries of immigration in Southern and Central Europe. There are more reuniting non-EU families in Italy or Spain than in France or Germany and more in Czech Republic, Greece, or Portugal than in Austria or Belgium. These newcomer families are very diverse, coming from all over the globe. Rarely do the majority in a given EU country come from the same country or region. In most countries, non-EU family reunion involves only the nuclear family and annually affects more children than spouses or partners.*

Thomas Huddleston, MPG Policy Analyst. 9.11.2011

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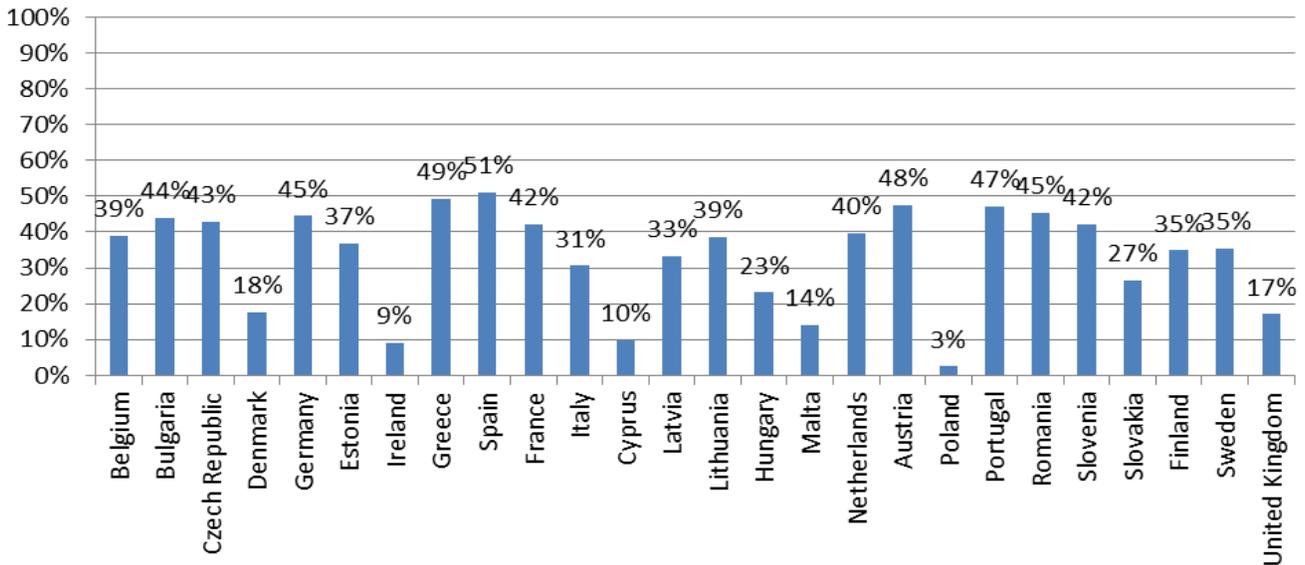
Is family reunion how most people come to my country? No.

Family reunion is often presented as the reason why most people move to an EU Member State. Instead, the European Commission noted that family immigration has progressively decreased from half of all legal immigration in the early 2000s to about one third today. According to Eurostat, most newcomers in 2010 were not reuniting family members. The majority of newcomers came with permits to work, to study, to benefit from international protection, and so on.

People coming with a family permit do not make up the majority of newcomers, but they are a large – and sometimes the largest – group in the majority of EU Member States, as seen below in Table 1. In fact, family reunion is as significant in new countries of immigration like BG, CZ, GR, PT and ES as it is in countries often associated with family immigration like AT, DE, and the NL.

These figures are not the most appropriate for the EU Family Reunion Directive 2003/86/EC. The people counted in EU statistics for each country include the family members of that country’s nationals and of other EU residents who used their free movement rights. The number of family reunions seems so high in countries like AT, BE, FR and DE because nearly every other person who obtained a family permit in 2010 belonged to the family of an EU citizen. EU citizens’ family members accounted for most of the people able to reunite through family reunion in CY, DK, IE, MT, and RO.

Table 1: Permits for family reasons as % of all legal immigration in 2010



Are most people coming to my country reuniting non-EU families? No.

Table 2: Permits for non-EU families as % of all legal immigration in 2010

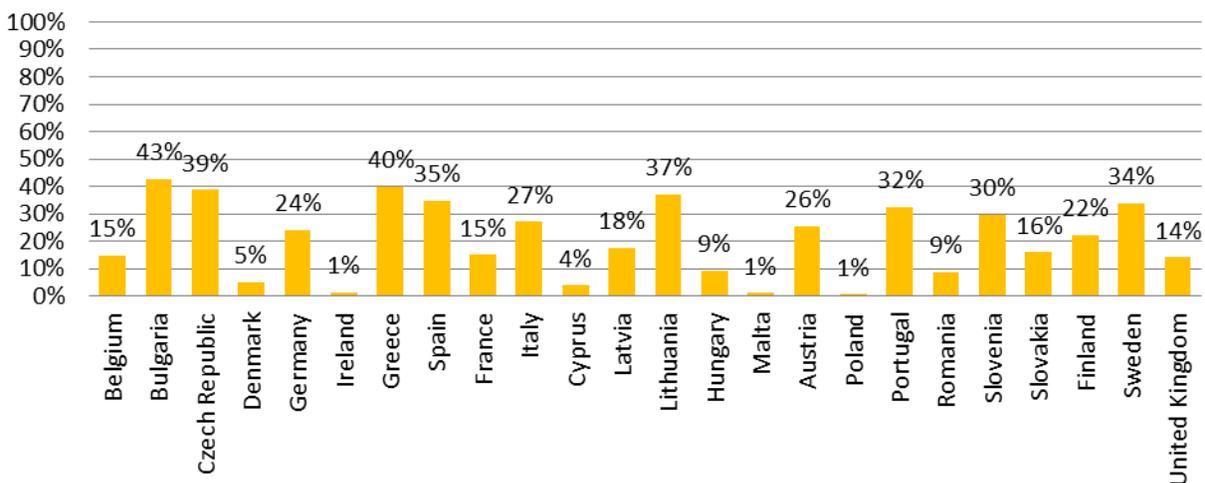


Table 3: Newly reunited non-EU families

	2010
Belgium	9,997
Bulgaria	1,725
Czech Republic	13,398
Denmark	1,490
Germany	28,200
Ireland	300
Greece	13,398
Spain	89,905
France	29,400
Italy	160,200
Latvia	413
Lithuania	691
Hungary	1,349
Malta	30
Austria	7,838
Poland	598
Portugal	11,967
Romania	910
Slovenia	2,231
Slovakia	697
Finland	4,302
Sweden	25,358
United Kingdom	103,187

Table 2 presents the latest Eurostat statistics on how many third-country nationals came to EU countries to join their third-country national sponsor in 2010. These are the people directly affected by Directive 2003/86/EC. *Note: Eurostat does not provide comparable data for CY, EE, LU, and NL.*

In most Member States, the number of reuniting non-EU family members is not very large in comparison to the many other people arriving every year. The countries where reuniting non-EU families are most important in the EU are SE and new countries of immigration. These countries include the Southern European countries that attracted migrant workers like GR, PT, and ES and Central European countries that have very new and very few immigrant communities like BG, CZ, LT, and SI. At most, reuniting non-EU families constituted 43% of newly arriving immigrants in BG. In other countries, only one in three newcomers was family joining a non-EU national in AT, FI, DE, and IT. The number drops to one in six in BE, FR, or the UK. Very few of the newcomers in DK, IE, CY, MT, or PL get a permit for non-EU family reunion.

Table 3 presents the number of people granted a family permit to live with their non-EU sponsor in 2010. The number of new arrivals is modest for most countries. Most are not in countries often associated with family immigration like FR or DE, but in other major countries of immigration today: IT, ES, and the UK.

Table 4: Largest EU destinations for reuniting non-EU families

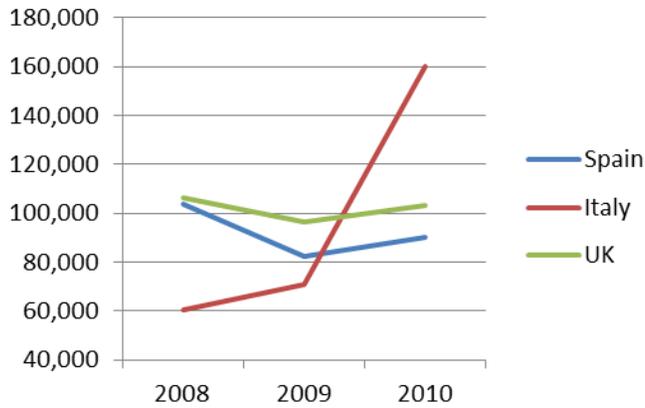


Table 5: Other major destinations for reuniting non-EU families

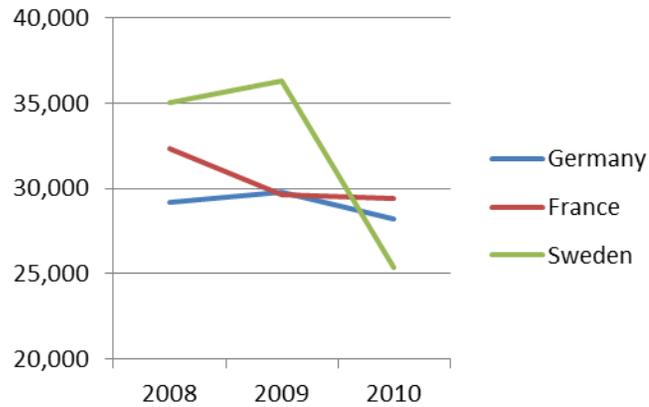


Table 6: Mid-sized destinations for reuniting non-EU families

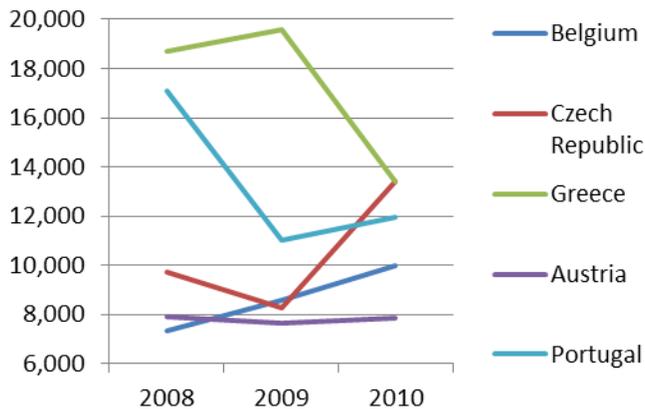


Table 7: Minor destinations for non-EU families

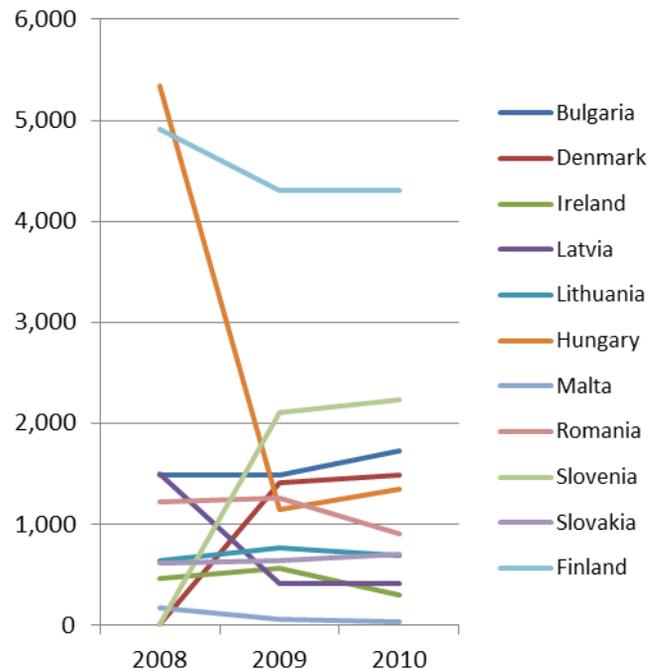
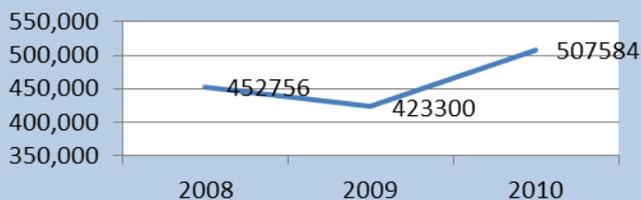


Table 8: EU countries as destinations for reuniting non-EU families



— Total 23 EU Countries (CY, EE, LU, NL excluded.
Note: no data for DK in 2008)

In 2010, over 500,000 non-EU family members are estimated to have reunited with their non-EU sponsor in 23 EU Member States with comparable Eurostat data (Table 8). Many more reunited in 2010 because twice as many were recorded as receiving permits in IT, now the EU's major destination for reuniting non-EU families. As shown in Table 4, over two thirds of these families moved to three countries in 2010: IT (30% of the total), UK (20%) and ES (18%).

FR, DE, and SE also welcome a significant number of non-EU families (together around 16% of the total), but far fewer than the top three destinations. Significantly fewer permits were accorded in smaller countries with significant immigrant populations (Table 6). These countries account for 10%. Among them, there are more reuniting non-EU families in new countries of immigration – CZ, GR, and PT than in countries often associated with family immigration – AT and BE.

The remaining 12 countries in Table 7 have comparatively very few non-EU families reuniting together (only 6%). Most have very new and small immigrant communities. In contrast, CY, DK, and IE grant few non-EU family permits even though non-EU nationals make up between 3-6% of these countries' population.

Between 2008 and 2010, decreases in non-EU family reunion were significant for ES, SE, GR, PT, and HU and slight for FR. Increases were significant for CZ and slight in BE.

Table 9: Reuniting non-EU families in 2010 by top 10 citizenships

	Morocco	India	Albania	Pakistan	China	Ukraine	Turkey	Moldova	USA	Ecuador
Belgium	16%	4%	1%	1%	2%	1%	6%	0%	3%	0%
Bulgaria	0%	1%	1%	0%	2%	9%	28%	7%	3%	0%
Czech Republic	0%	1%	0%	0%	2%	35%	0%	3%	4%	0%
Denmark	1%	0%	0%	2%	3%	3%	10%	0%	1%	0%
Germany	1%	6%	0%	1%	3%	2%	17%	0%	5%	0%
Estonia										
Ireland	0%	1%	2%	3%	2%	1%	0%	2%	1%	0%
Greece	0%	3%	84%	1%	1%	1%	0%	1%	0%	0%
Spain	36%	2%	0%	10%	10%	2%	0%	1%	0%	7%
France	17%	1%	0%	1%	4%	0%	7%	0%	1%	0%
Italy	14%	5%	14%	6%	7%	4%	1%	6%	1%	2%
Cyprus	0%	3%	1%	6%	1%	7%	0%	7%	3%	0%
Latvia	0%	0%	0%	0%	0%	11%	0%	0%	6%	0%
Lithuania	0%	2%	0%	1%	1%	12%	2%	0%	4%	0%
Luxembourg										
Hungary	0%	6%	0%	0%	24%	8%	1%	0%	14%	0%
Malta	0%	17%	7%	0%	0%	3%	13%	0%	7%	0%
Netherlands										
Austria	0%	3%	0%	1%	2%	1%	26%	0%	1%	0%
Poland	0%	3%	0%	0%	7%	30%	5%	1%	1%	0%
Portugal	1%	1%	0%	1%	9%	11%	0%	5%	0%	0%
Romania	0%	2%	0%	1%	27%	1%	23%	4%	5%	0%
Slovenia	0%	0%	0%	0%	2%	1%	0%	0%	1%	0%
Slovakia	0%	0%	0%	0%	12%	17%	2%	0%	6%	0%
Finland	1%	9%	0%	2%	4%	2%	4%	0%	2%	0%
Sweden	1%	1%	0%	1%	3%	1%	4%	0%	0%	0%
United Kingdom	0%	25%	0%	11%	3%	0%	1%	0%	6%	0%
Total 24 EU Countries	12%	8%	7%	6%	6%	3%	3%	2%	2%	2%

Are most reuniting non-EU families from Morocco or Turkey? No.

Although the public associates family reunion with specific countries of origin, the list of the top 10 countries (Table 9) shows that families come from all over the world. The table shows what percent of reuniting non-EU families in each country in 2010 came from a given non-EU country of origin, as indicated by the arriving families' nationality. It also shows total figures for 24 sampled EU Member States.

Moroccans, the largest group, make up only 12% in the 24 EU countries. That's just one in eight reuniting families. For Turks, the figure is much lower, at 3% (or just one in 33).

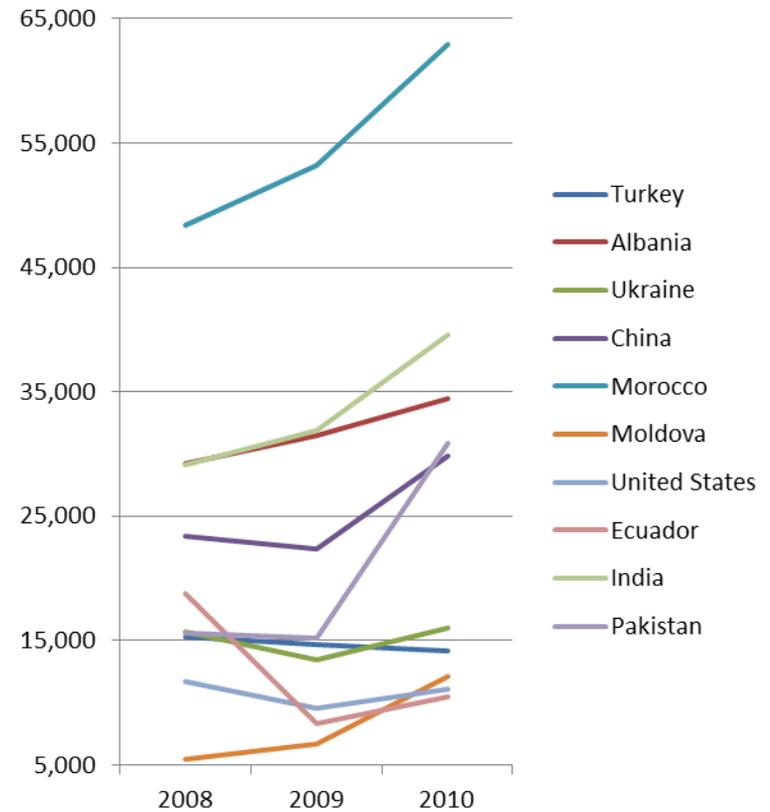
Most recently reunited non-EU families in EU countries came from the world's largest countries, Europe's neighbours, and major countries of origin for immigrants settled in the EU. This top 10 list includes important countries of origin for Europe both near (Albania, Ukraine, Moldova) and afar (India, Pakistan, Ecuador). Indians, Chinese, Americans, and Russians are slightly under-represented compared to their large part in the global population.

Reuniting non-EU families are even more diverse than this list. In most EU countries, each of these 10 nationalities rarely made up more than 10% of all reuniting non-EU families. Only half of these families came from the top 10 origin countries for the sampled 24 EU countries. The top 25 origin countries include countries from Asia, Central and South America, Europe, Middle East, and Sub-Saharan Africa.

Table 10: 3 Top origin countries by citizenship in 2010

	1st	2nd	3rd
<i>Belgium</i>	Morocco 16%	Turkey 6%	Russia 5%
<i>Bulgaria</i>	Turkey 28%	Russia 25%	Ukraine 9%
<i>Czech Republic</i>	Ukraine 35%	Vietnam 20%	Russia 16%
<i>Denmark</i>	Thailand 12%	Turkey 10%	Philippines 6%
<i>Germany</i>	Turkey 17%	Iraq 8%	Kosovo 8%
<i>Ireland</i>	Somalia 18%	Iraq 16%	Nigeria/ Sudan 6%
<i>Greece</i>	Albania 84%	India 3%	Syria 2%
<i>Spain</i>	Morocco 36%	Pakistan 10%	China 10%
<i>France</i>	Algeria 18%	Morocco 17%	Tunisia 8%
<i>Italy</i>	Morocco 14%	Albania 14%	China 7%
<i>Cyprus</i>	Russia 21%	Syria 11%	Ukraine 7%
<i>Latvia</i>	Russia 62%	Ukraine 11%	Belarus 7%
<i>Lithuania</i>	Russia 38%	Belarus 25%	Ukraine 12%
<i>Hungary</i>	China 24%	USA 14%	Ukraine 8%
<i>Malta</i>	India 17%	Nigeria/ Russia/ Turkey 13%	
<i>Austria</i>	Turkey 26%	Serbia 21%	Bosnia 11%
<i>Poland</i>	Ukraine 30%	Vietnam 17%	Russia 10%
<i>Portugal</i>	Brazil 41%	Ukraine 11%	Cape Verde 11%
<i>Romania</i>	China 27%	Turkey 23%	USA 5%
<i>Slovenia</i>	Bosnia 46%	Kosovo 28%	Former Yugoslavia 12%
<i>Slovakia</i>	S. Korea 23%	Ukraine 17%	China 12%
<i>Finland</i>	Russia 26%	Somalia 10%	India 9%
<i>Sweden</i>	Iraq 17%	Thailand 10%	Somalia 6%
<i>United Kingdom</i>	India 25%	Pakistan 11%	USA 6%

Table 11: Trends for top 10 origins of reuniting non-EU families by citizenship



Rarely do most newcomer families in a given EU country (Table 10) come from the same country (GR, LV) or region (LT, SI). They tend to be least diverse in new countries of immigration. A few nationalities are largely limited to one EU country (FR, GR, PT). Others are spreading out to both new countries of work immigration and countries with longer histories of family immigration (Moroccan, Pakistani, Chinese and to some extent Indian and Turkish families). More families from certain nationalities are settling in the EU as new destinations like IT and ES experience family reunion (Table 11 for sampled 24 EU countries). Numbers recently went down for Turks in FR and DE, Algerians in FR, Ecuadorians and several other South Americans in ES, and Iraqis in SE.

Table 12: Composition of reuniting non-EU families in 2010

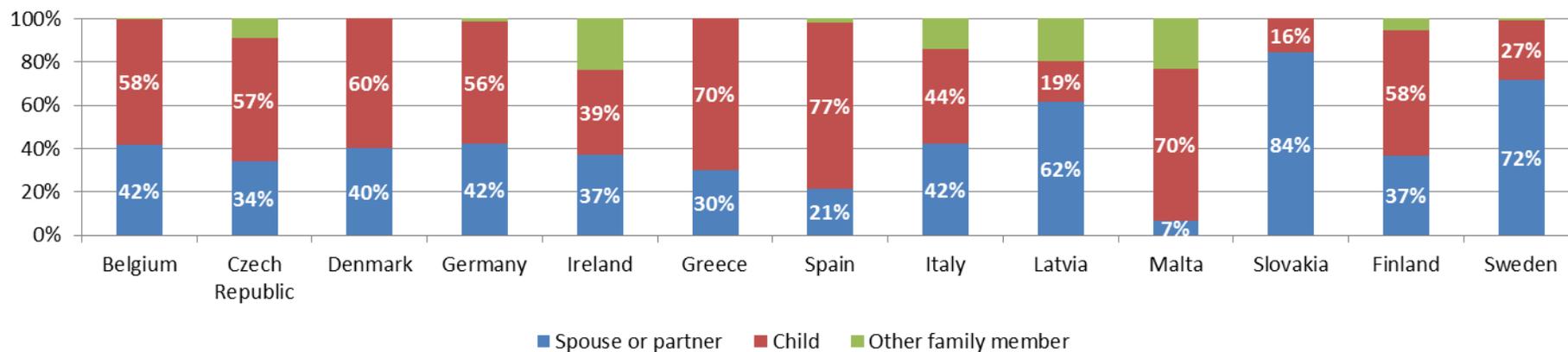


Table 13: Trends on reuniting spouses/partners

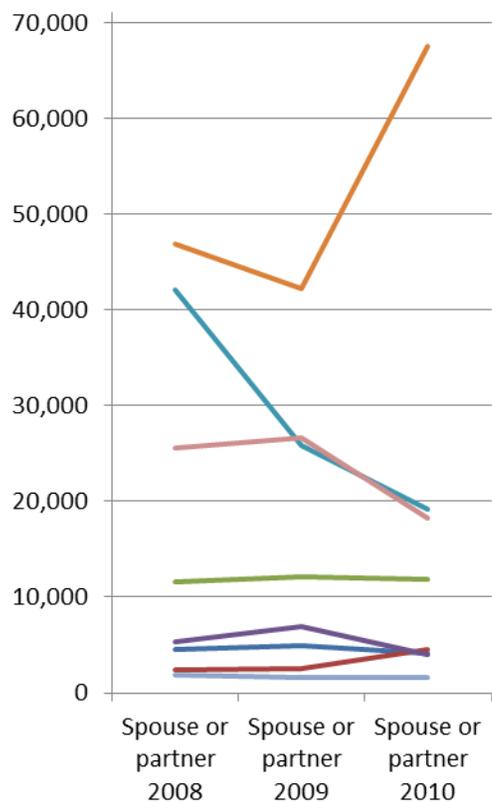
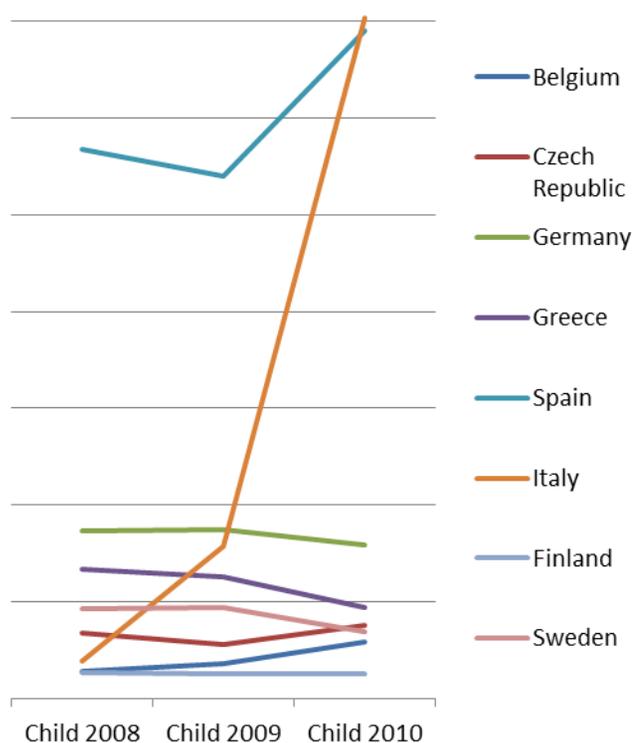


Table 14: Trends on reuniting children



Are most new family permit holders spouses? No.

Family reunion is not just about wives (and husbands) but about children too. The EU Family Reunion Directive affects children as much as it does spouses. Table 12 shows what percent of family permits in 2010 went to non-EU spouses or partners, children, and other family members in various EU countries. In most countries, more children arrived than spouses or partners. The numbers were more even in IE and IT. Spouses and partners made up the majority in LV, SE, and UK. Only the nuclear family is able to reunite in most countries. According to Eurostat's records, few other family members benefit from family reunion, mostly in new countries of immigration like CZ, IE, IT, LV, MT, and PT.

These trends changed little in recent years in most cases (Tables 13 and 14). Significantly more children joined their parents in ES and IT after 2009, while fewer spouses or partners arrived in ES and SE.

Migration Policy Group

Right to family reunion: the dynamics between EU law and national policy change

MPG briefings for Green Paper on Family Reunion #2

Abstract: EU Family Reunion Directive 2003/86/EC establishes the right to family reunion for non-EU sponsors and their families with key objectives of promoting integration and comparable rights and obligations. The Directive recognises that facilitating family reunion facilitates immigrant integration and societal cohesion. The Directive has not only extended basic rights and legal securities to reuniting families in new immigration countries, but also secured them from further policy restrictions in all countries. While the future for immigrant families in Europe remains unclear with the current political climate and impact of far right parties, most Member States today still have policies that MIPEX finds are ‘slightly favourable’ for family reunion. The average EU country goes beyond the Directive’s minimum standards. Vague provisions in the Directive’s text and incorrect transposition in Member States were identified in the 2008 Commission Application Report. These problems have been and can be addressed by national and EU courts. To date, the two ECJ judgments on family reunion reinforced the Directive’s overall objectives that Member States’ policies must respect the right to family life, right to family reunification, equal treatment, and general principles of EU law. The November 2011 Green Paper presents stakeholders with a new choice: either the Commission opens infringement proceedings based on the current Directive, or it reopens negotiations to change the Directive. Infringement proceedings have not yet been fully applied in the areas of legal immigration and residence. Re-negotiation has highly uncertain outcomes since the process may not lead to higher standards or harmonisation. On the contrary, the Netherlands is lobbying other Member States for a renegotiation that leads to more restrictions, less harmonisation, and a fundamental change of scope. These restrictions must be introduced in national and EU law and ultimately halve immigration to the Netherlands as the condition for Geert Wilders’ support of the current Dutch minority coalition. The European Commission will choose between the two options—infringement or renegotiation—after it reviews which and how Member States and stakeholders respond to this Green Paper. Two Annexes to this brief summarise key EU and national findings on family reunion from the 2011 MIPEX and the Commission’s 2008 Application Report.

Thomas Huddleston, MPG Policy Analyst. 9.11.2011



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Objectives

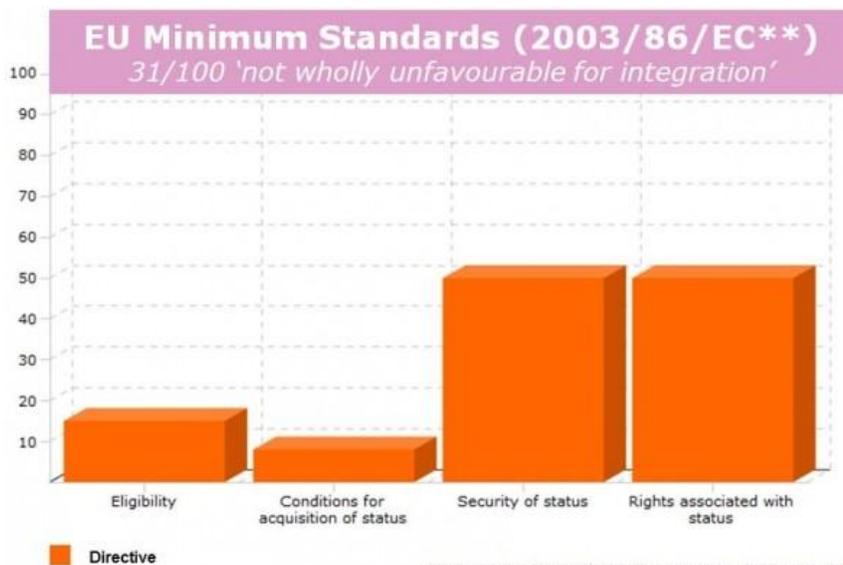
"Family reunification is a necessary way of making family life possible. It helps to create sociocultural stability facilitating the integration of third country nationals in the Member State, which also serves to promote economic and social cohesion, a fundamental Community objective stated in the Treaty."
Preamble 4 to Directive 2003/86/EC

The right to family and family life is enshrined in European and international law, most notably Article 8 of the European Convention on Human Rights and Articles 7 and 9 of the EU's Charter of Fundamental Rights. EU Directive 2004/58/EC guarantees the freedom of movement and residence for all EU and non-EU family members of EU citizens. EU Family Reunion Directive 2003/86/EC goes one step further to protect the right to family life by establishing the right to family reunion for non-EU sponsors and their families. The Directive uses a framework of equal treatment to harmonise national legislation and material conditions. Member States should provide third-country nationals with rights and obligations that are comparable to those of EU citizens. Facilitating family reunion facilitates immigrant integration and societal cohesion in economic, social, and cultural life. The Directive also aims to improve legal guarantees within the family reunion procedure for equal rights of men and women, the best interest of the child, and more favourable conditions for refugees.

The final EU Directive 2003/86/EC is a first-step harmonisation with valuable objectives and minimum standards for the 24 EU Member States concerned (Denmark, Ireland, and UK opt out). The text contains several 'shall' clauses as well as many derogation and 'may' clauses. Not all Member States have properly transposed the Directive and its 'shall' clauses, according to the European Commission's 2008 application report.ⁱ Member States also have different interpretations of the Directive's 'may' clauses, especially on the conditions for family reunion and use of integration conditions in country and abroad. These differences of interpretation between Member States, the Commission, and interested stakeholders are being addressed in cases before the European Court of Justice, from the European Parliament case C-540/03, Chakroun case C-578/08, to the recently withdrawn Imran case C-155/11.

Added value for integration

The current Directive does bring some added value for integration. The Migrant Integration Policy Index (MIPEX) made a retrospective assessment of the Directive's relevance for national policies.ⁱⁱ



Countries that properly transpose the Directive's 'shall' clauses would already have ordinary policies that are not 'wholly unfavourable' for family reunion and reuniting families. Countries whose policies are below these minimum standards can face challenges in court.

The Directive's eligibility provisions and conditions are minimum, but fundamental. Most temporary residents now have a specific *right* to family reunion in the country where they legally reside, if they meet national legal conditions that are in conformity with the EU Directive. Under the Lisbon Treaty, quotas and other policies can be used to limit the amount of discretionary migration such as work migration and study. Under the Family Reunion Directive, these measures cannot be used to limit the number of family reunions, according to the European Commission.ⁱⁱⁱ

Under the Family Reunion Directive, third-country national residents can apply for at least most of their nuclear family. The Directive limits the duration of the procedure and the types of conditions that Member States can impose. Greater harmonisation was attained on the legal security of the family reunion status and the rights associated. EU law limits authorities' discretion and the number of vague grounds for refusal or withdrawal of a permit. Rejected applicants have the right to a reasoned decision and judicial review. Accepted applicants have nearly the same rights as their sponsor to employment, education, and social programmes. Spouses and children reaching the age of majority are entitled to some form of autonomous residence permit after a maximum of 5 years' residence.

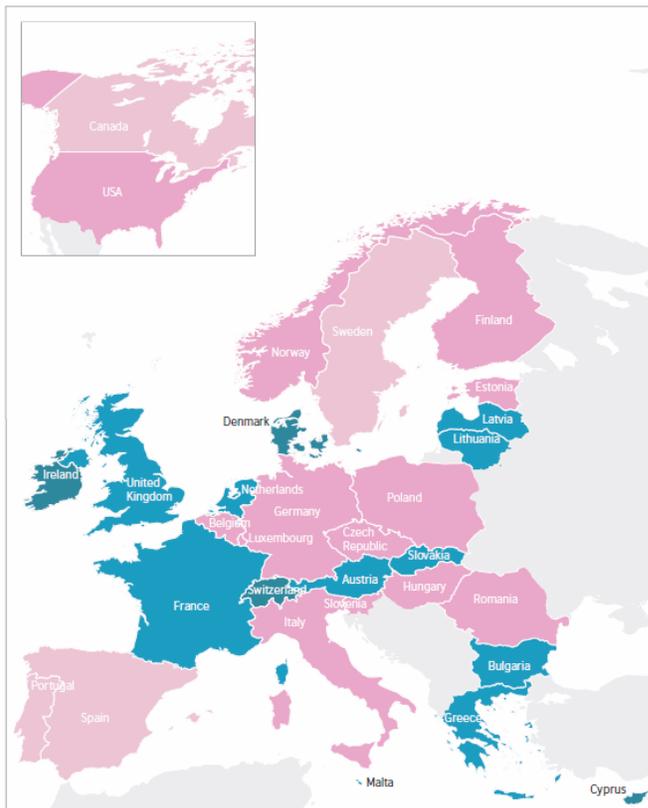
National family reunion policies across the EU are more harmonised and more favourable for integration where the Directive uses 'shall' clauses.^{iv} MIPEX finds that basic residence security and socio-economic rights are now granted to reunited families in most concerned EU countries. These EU strengths reflect both the Directive's limitations as well as its previous and potential impact. In 2003, the then 15 EU Member States agreed to minimum standards on the aspects of family reunion where most of their policies were already very similar and strong. The minor improvements brought by the Directive were most visible in new immigration countries in Southern and Central Europe, where little or no policy existed. The rule of law and judicial oversight was replaced administrative discretion in many elements of the procedure. Many of these countries may not have adopted these standards without the current Directive. For example, Ireland, which opts out of the Directive, still has no law on family reunion and its governments have lacked the political will for reform over the past 8 years.^v In addition, many older countries of immigration may not have maintained these standards without the current Directive. Denmark went back on its policy since 2002 and still seriously restricts eligibility and conditions, much like Switzerland.^{vi} The UK Home Office is currently consulting on proposals similar to Denmark's.^{vii} Indeed, most of the European countries where the Directive does not apply contravene the Directive and obtain some of the lowest MIPEX scores on family reunion. The Directive has not only extended basic rights and legal securities to new immigration countries, but also secured them from future policy restrictions in all countries.

EU Trends: Uncertain future ahead, but small problems today

The future for immigrant families remains unclear in many EU Member States, given the current political climate and influence of far right parties. MIPEX noted little improvement in family reunion policies between 2007 and 2010. Only five of the 24 concerned Member States (Greece, Hungary, Luxembourg, Portugal, and Spain) recently improved family definitions, conditions, time limits, or associated rights. In contrast, more favourable conditions were undermined in six countries (Belgium, France, Germany, Italy, Netherlands, and Sweden), while conditions became even more restrictive in Austria and Malta. MIPEX finds that Member States disagree significantly on how to apply new conditions to immigrants. Countries with favourable policies try to set income or housing requirements based on what all residents are expected to meet in society. For example, Portugal lowered the income requirement because the crisis forced everyone to get by with less, including immigrants. Also, Sweden designed a 2009 income and housing requirement in a way that explicitly aimed to incentivise integration and not reduce family reunion. But increasingly, Europe's major immigration countries are asking immigrants to fulfill conditions that many nationals could not: higher age limits for family reunion than for marriage, higher income requirements, and language tests with high fees and little support. Many of these new conditions may further delay and discourage both the reunion and integration of non-EU families.

Despite these divergences in the concerned Member States, today the majority of them still have policies that are 'slightly favourable' for family reunion and the integration of reuniting families.^{viii} On MIPEX, 14 of the 24 Member States obtained a score of at least 60 out of 100 as of 31 May 2010:

Rank	Country	MIPEX%	
		III	II
1	Portugal	91 ▲ (89)	
2	Canada	89 ■ (89)	
3	Spain	85 ▲ (76)	
4	Sweden	84 ▼ (89)	
5	Slovenia	75 ■ (75)	
6	Italy	74 ▼ (78)	
7	Finland	70 ■ (70)	
8	Belgium	68 ▼ (70)	
	Norway	68 ▼ (72)	
10	Luxembourg	67 ▲ (53)	
	Poland	67 ■ (67)	
	USA	67 ■	
13	Czech Republic	66 ■ (66)	
14	Estonia	65 ■ (65)	
	Romania	65 ■	
16	Hungary	61 ▲ (56)	
17	Germany	60 ▼ (62)	
	EU Average	60 ■	
18	Lithuania	59 ■ (59)	
19	Netherlands	58 ▼ (59)	
20	United Kingdom	54 ▼ (56)	
21	Slovakia	53 ■ (53)	
22	France	52 ▼ (53)	
23	Bulgaria	51 ■	
24	Greece	49 ▲ (47)	
25	Malta	48 ▼ (50)	
26	Latvia	46 ■ (46)	
27	Austria	41 ▼ (43)	
28	Switzerland	40 ■ (40)	
29	Cyprus	39 ■ (39)	
30	Denmark	37 ■ (37)	
31	Ireland	34 ▼ (36)	



Strand results on family reunion, Huddleston et al. Migrant Integration Policy Index (2011)

The average EU country goes beyond the Directive's minimum standards. Most adopt slightly inclusive definitions of the family and only basic conditions for acquisition, out of respect for family life. MIPEX found in the majority of the concerned 24 EU Member States:

- Residence requirement for sponsors of one year or less
- No age limits over 18 years old for sponsors and spouses
- Some entitlement for other dependent adult family members
- Basic housing requirement and economic resource requirement
- No language and integration conditions or pre-entry tests

Europe's established immigration countries in the EU-15 impose slightly more conditions. The more favourable legal conditions in Central Europe are applied through more discretionary procedures. MIPEX found strong correlations between countries' policies on family reunion and their policies on labour market mobility. Countries that facilitate family reunion are also often countries trying to attract work migration (i.e. Australia, Canada, Portugal, Spain, Sweden, US). These countries are less likely to obstruct migrants from reuniting with families and more likely to help all workers and families to find the right job. Countries with restrictive family reunion policies also tend to maintain protectionist labour market policies (i.e. Austria, Cyprus, France, Greece). MIPEX also identifies strong correlations between family reunion and long-term residence. Countries tend to have similar strengths and weaknesses within their policies on family reunion and on long-term residence, where EU law also applies.^{ix}

Hardly any country adopts all the Directive's 'may' clauses. MIPEX finds that the few countries which impose very burdensome conditions also tend to restrict eligibility and family definitions. Countries like Austria, Denmark, France, the Netherlands, and Switzerland have made family reunion policies more politicised, complex, and volatile, often in response to the rising far right. According to MIPEX, such countries are increasingly imposing their demanding conditions for naturalisation onto long-term residence and – to some extent – family reunion. The unstable nature of these political arrangements makes the future hard to predict in these countries. The 2011 Danish elections and new government significantly focused on removing elements of the recent 'Danish model' of family reunion restrictions.^x

Choices for EU Institutions, Member States, and Stakeholders

The Directive certainly has some problems of vague articles in the text and incorrect transposition in Member States. Imprecise wording^{xi} in several 'should' and 'may' clauses allows for unclear and divergent requirements to persist in some Member States. For instance, the level of 'stable and sufficient' income that sponsors must prove is often vague and higher than what nationals need to live on social assistance. The few countries imposing integration conditions increasingly impose them on spouses abroad. Significant waiting periods and conditions limit access to autonomous permits in many countries.^{xii} The Commission's 2008 Application Report identified key national weaknesses in transposition. 'Shall' clauses were incorrectly transposed in many areas like visa facilitation, autonomous permits, best-interest-of-child assessments, legal redress, and favourable provisions for refugees. 'May' clauses are used in some countries in too broad or excessive ways for waiting periods, age limits for sponsors, income requirements, and integration measures.

Vague provisions and incorrect transposition has been and can be addressed by national and EU courts. National and EU-level legal actors can simultaneously pursue various options.^{xiii}

OPTION 1 – Request for a preliminary ruling: Initiate legal proceedings in national courts that set in motion a ‘preliminary ruling procedure.’ Individual families who are directly affected by problematic provisions or transposition can bring cases to court. Non-governmental actors sometimes offer their support. National courts of last instance who have to interpret an aspect of EU Directive must ask the ECJ for a preliminary ruling that clarifies what is the proper interpretation. Since the 2009 adoption of the Lisbon Treaty, any national court has the option to refer to the ECJ. While the ECJ does not decide the case, its response is binding on the national court and all other courts in the EU applying the directive.

OPTION 2 – Individual cases before ECJ: Bring a case directly before the ECJ. Individuals can bring cases. For instance, proceedings of annulment can be initiated by an EU country, Council, Commission, Parliament (under conditions), and directly concerned individuals where they believe that an EU Directive is contrary to EU law. However, such actions are limited in scope and generally not a viable option.

OPTION 3 – Infringement proceedings: Ask the European Commission to take legal action against Member States on transposition. The Commission can ask questions and enter into dialogue with Member States on specific points of potentially incorrect transposition, which can lead to ‘infringement proceedings’ before the European Court of Justice. The ECJ can force compliance, for example through fines.

The first and second options have so far produced two ECJ judgments on family reunion, which reinforced the directive’s overall objectives that Member States’ policies must respect the right to family life, right to family reunification, equal treatment, and general principles of EU law.^{xiv} In Parliament case C-540/03^{xv} seeking annulment of several of the Directive’s clauses, the ECJ confirmed that the right to family life and Article 8 of the European Convention on Human Rights still apply to the Directive’s ‘derogation’ clauses (a.k.a. articles stating “by way of derogation...”). National policies based on these derogations must still involve an individual assessment based on the right to family life. In the Chakroun case C-578/08,^{xvi} the Court confirmed that the Directive’s ‘shall’ and ‘may’ clauses must be strictly interpreted based on the individual’s right to family reunion. Member States’ conditions cannot undermine the Directive’s objective and effectiveness for promoting family reunion. For example, a strict income requirement cannot be the only reason to refuse an application if the person can meet the requirement through other legal means. Along these lines, the recently withdrawn Imran case C-155/11^{xvii} would have provided clarity on whether or not pre-entry tests contravene the Directive. Future ECJ cases can evaluate whether or not national policies are appropriate, proportionate and effective for promoting the right to family reunion and integration for different types of families.

The third option—infringement proceedings—is now on the table with the November 2011 Green Paper on the EU Family Reunion Directive. But the Green Paper will present stakeholders with a choice:

- *EITHER* open ECJ infringement proceedings based on the current Directive

- *OR* reopen negotiations among Member States to change the Directive

The European Commission's legal services are ready to launch infringement proceedings against the Member States that it believes have incorrectly transposed the Directive. The Commission regularly launches infringement proceedings about the quality of transposition in related areas like anti-discrimination and freedom of movement. On legal immigration and asylum, the Commission has yet to take that step, except for Greece and the massive problems with its asylum system.

Instead of infringement proceedings, the Commission could choose the alternative – to propose amendments or an entire recast of the Directive. The proposal could change wording deemed 'vague' or 'problematic.' It could also add, edit, or remove specific objectives in the preamble, derogation clauses, 'may' clauses, or 'shall' clauses. These changes could lead to either higher standards to promote family reunion and integration or to new objectives to control migration. Changing 'may' and derogation clauses to 'shall' clauses would lead to higher levels of harmonisation among Member States. Changing 'shall' to 'may' clauses or adding new derogation and 'may' clauses would lead to lower levels of harmonisation. A renegotiation process would begin with a proposal from the Commission. The Member States and European Parliament would need to negotiate a final text. That the Directive is often referred to as 'minimum standards' reflects the fact that in 2003 Member States needed unanimous agreement in the Council and the European Parliament was only consulted. In any renegotiation, the Council must reach a qualified majority (QMV) and co-legislate with the European Parliament.

Renegotiation has highly uncertain outcomes since the process may not lead to higher standards or harmonisation. Several Member States still have trouble complying with the Directive's minimum standards. The number of States who are interested in going beyond the current standards may be far from a qualified majority. The example of the current EU asylum recasts is not encouraging. Although Member States have committed to establishing a Common European Asylum System by 2012, the recast is requiring several years, modified proposals, intensive government and NGO resources, and arduous negotiations, all of which may result in few substantive improvements.

On family reunion, a few Member States have pushed for greater restrictions and discretion for Member States. The French Presidency's 2008 European Pact on Immigration and Asylum^{xxviii} tried to assign new objectives of migration management to EU family reunion policy. Member States are invited to use the Directive's 'may' clauses to introduce greater income, housing, language, and integration conditions with the aim to regulate family reunion more effectively.^{xxix} Currently the Dutch government is lobbying other Member States^{xxx} for a renegotiation that allows for more restrictions and less harmonisation. Geert Wilders gave the support of his radical right PVV party to the current minority coalition on condition that they meet his target to cut non-Western immigration by 50% by introducing a set of restrictions in all areas of migration, family reunion, asylum, residence, and citizenship.^{xxxi} Denmark's previous government and the role of the radical right Danish People's Party served as the model for this power arrangement and the proposed restrictions. Geert Wilders' support comes with new plans for Europe. The restrictions he wants cannot be implemented without a major recast of EU law. Wilders continues to threaten that he will withdraw his party's support unless the Dutch government succeeds in reducing immigration^{xxxii} and lobbying Member States and the Commission.^{xxxiii}

The Dutch government stated^{xxiv} its lobbying position and justifications to change the Family Reunion Directive. The Danish policies which inspired them were evaluated as incompatible with even the basic premises of the Directive.^{xxv} The idea that they are ‘applied successfully’ in Denmark is seriously contested within Denmark, where the new coalition promises major short- and medium-term reforms. The Dutch proposals are done ‘in the name of integration,’ even though academic and government evaluations in Denmark, Netherlands, and elsewhere suggest that these policies do not effectively help immigrants learn the language, get better jobs or education, or fight forced marriages (*see third brief*):

Dutch proposals for EU Family Reunion Directive	Dutch government’s claims (summary)
Directive would apply to all arriving non-EU family members. Non-EU family of EU citizens would lose the favourable conditions for family reunion under EU 2004/58/EC on freedom of movement.	EU citizens residing in another EU country who want to reunite with family living outside the EU are presented as misusing EU law. Those who move to another EU country expressly to reunite with family are presented as misusing the ‘Europe route’
EDIT: Raise optional maximum age limit from 21 to 24 NEW: Require sponsors to have ‘sufficient’ level of education	Partners will be in better position to choose partner, complete education, and provide for themselves,’ modeled on post-2002 policies of previous Danish minority coalition, supported by Danish People’s Party
NEW: Allow tests to prove whether families’ ties with country are stronger than ties with country of origin	It is possible to establish a definite link between a person and society. Only those with definite link today are likely to successfully integrate over time. The test is applied successfully in Denmark (post-2002 policy).
EDIT: Restrict options for income requirement (e.g. 120% of minimum wage) NEW: Revoke temporary permits if people do not complete integration conditions	Income requirement and integration conditions will improve economic self-sufficiency of family and integration of partner
NEW: Require sponsors to pay deposit of a bond	Sponsor and family must pay for any costs that they incur for the state
NEW: Deny some sponsors right to reunite with a new partner (only 1 partner every 10 years)	Situation presented as a misuse of rights and potentially unofficial polygamous relationships
NEW: Exclude sponsors convicted of certain violent crimes (e.g. domestic violence)	General interest to prevent the misuse of rights

The European Commission will choose between the two options—infringement or renegotiation—after it reviews which and how Member States and stakeholders respond to this Green Paper.

Two Annexes to this brief summarise key EU and national findings on family reunion from the 2011 MIPEX and the Commission’s 2008 Application Report. Firstly, the EU Annex compares key articles of the Directive to the state of play in the 24 Member States to which the Directive applies. MIPEX identifies the policy strengths and weaknesses for the Directive’s objectives on family reunion, integration, and equal treatment. Results for Austria, Netherlands, and Slovenia were updated based on recent MIPEX blog posts. The Application Report identifies areas of potentially incorrect transposition of the Directive. The Second Annex presents the country-by-country results from MIPEX and the Application Report.

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Annex 1: EU overview on right to family reunion (Directive 2003/86/EC)

	Directive 2003/86/EC of 22 September 2003 on right to family reunification Key provisions (http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0086:EN:NOT)	2011 Migrant Integration Policy Index** Key findings for 24 EU Member States (Denmark, Ireland, UK opt out) (www.mipex.eu/family-reunion) **This chart accounts for recent changes in Austria, Netherlands, and Slovenia covered on www.mipex.eu/blog	2008 European Commission Report on application of Directive 2003/86 Key parts on problematic transposition
Eligibility <i>Sponsor residence period</i>	<i>The Member States may, by law or regulation, authorise the entry and residence [of]:</i> Member States may require the sponsor to have stayed lawfully in their territory for a period not exceeding two years , before having his/her family members join him/her. (Chapter IV, Article 8)	Around one year of residence or less: Most Member States concerned (15) allow sponsors to apply with a one-year residence permit or after one-years' residence. Further legal delays are imposed in Cyprus, Estonia, Germany, Greece, Lithuania, Malta, Poland and -- to some extent -- Czech Republic and France.	A few countries have 'problematic' definitions of what 'temporary' permits exclude sponsors from applying for family reunion. A few long residence requirements creates 'implementation problems' and 'delays'
<i>Partners</i>	...a third country national, with whom the sponsor is in a duly attested stable long-term relationship , or of a third country national who is bound to the sponsor by a registered partnership (Chapter II, Article 3)	Long-term and registered relationships of third-country nationals largely ignored for family reunion: In only 10 of 24 Member States concerned, these relationships are recognised for family reunion in one case (Czech Republic, Germany, Lithuania, and Luxembourg) or both cases (Belgium, Finland, Netherlands, Portugal, Spain, Sweden).	
<i>Age limits for spouse & sponsor</i>	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. (Chapter II, Article 4, 5)	No age limit for adult sponsors or partners: Equal treatment remains the international standard. 17 of the 24 treat all married couples over 18 like adults. MIPEX finds that a minimum age for family reunion which is higher than the minimum age for marriage is unfavourable for societal integration.	In several countries, 'too broad or excessive' age limits.
<i>Parents, Grandparents, Adult Children</i>	... first-degree relatives in the direct ascending line of the sponsor or his or her spouse, where they are dependend on them and do not enjoy proper family support in the country of origin; the adult unmarried children of the sponsor or his or her spouse, where they are objectively unable to provide for their own needs on account of their health. (Chapter II, Article 4, 2a, b)	Some entitlement for dependant adult family members: These types of family members are someway entitled to join their sponsor in 18 of 24 Member States concerned. Both parents/grandparents and adult children are entitled in 6 EU countries, similar to traditional immigration countries like Canada and Australia. Their entitlements are more limited in 9 more countries. No clear entitlement exists for third country nationals' parents in Belgium, adult children in Latvia and Luxembourg, or for either group of family members in Austria, Bulgaria, Cyprus, France, Greece, and Malta. Countries that restrict the eligibility of family members also tend to impose burdensome conditions on sponsors.	
<i>Minors</i>	<i>The Member States shall authorise the entry and residence [of]:</i> the minor children of the sponsor and of his/her spouse, including children adopted ...[also] where the sponsor [or spouse] has custody...[or] custody is shared (Chapter II, Article 4, 1b, c, d)	No conditions for children under 18: 14 of 24 Member States do not impose any extra conditions on children. All minor unmarried children are eligible in nearly all countries concerned, although some have different laws on adoption or shared custody.	In many countries, incorrect transposition of best interest of child assessments
Conditions <i>Housing</i>	<i>Member State concerned may require...evidence that the sponsor has:</i> ... accommodation regarded as normal for a comparable family in the same region and which meets the general health and safety standards in force in the Member State concerned (Chapter IV, Article 7, 1a)	Basic housing required: Equal treatment is the benchmark used in 17 of the Member States concerned. Sponsors can use any legal means to prove they have basic accommodation meeting general health and safety standards. Additional bureaucratic procedures are imposed in Austria, France, Italy, and Slovakia. Housing is not specifically required in Finland, Netherlands and Slovenia (like Canada and the US) because the income requirement is deemed sufficient.	Several countries refer vaguely to "normal" housing. Any requirement for sponsor to have family housing throughout entire procedure is 'questionable.'

<p><i>Economic resources</i></p>	<p>...stable and regular resources which are sufficient to maintain himself/herself and the members of his/her family, without recourse to the social assistance system of the Member State concerned. Member States shall evaluate these resources by reference to their nature and regularity and may take into account the level of minimum national wages and pensions as well as the number of family members. <i>(Chapter IV, Article 7 1b)</i></p>	<p>Basic legal economic resources required: Equal treatment is the largely the benchmark used in 18 of the Member States concerned. Sponsors can use any legal source to prove that they have a basic income either around the level of the country's social assistance (5) or minimum wage (12). MIPEX suggests that anything more is unnecessary for promoting equal outcomes for immigrants and nationals, especially in times of economic recession and slow growth. The legal sources are unfavourably restricted to income largely from employment in countries like Austria, (Belgium), Cyprus, France, Greece, and The Netherlands. In many more countries, the required level is often vague and unrelated to peoples' individual circumstances.</p>	<p>In several countries, 'too broad or excessive' requirements on income. Fees may also deemed to be too high if they undermine Directive's effect on right to family reunion.</p>
<p><i>Integration measures</i></p>	<p>Member States may require third country nationals to comply with integration measures, in accordance with national law. <i>(Chapter IV, Article 7, 2)</i></p>	<p>No integration conditions or pre-entry tests: Few countries impose language or integration conditions for family reunion. But as they do, more also impose them abroad for spouses or family members. Integration requirements are absent from the thinking in traditional immigration countries like the US, Australia or Canada, which MIPEX finds will encourage both labour and family migrants to settle and participate. Rare in the EU, pre-entry tests exist in only 4 of the Member States concerned: Austria, France, Germany, and The Netherlands. Hardly any of these countries have been able to design a test for families scattered around the world that will likely improve their integration once they are reunited in the country. None set favourable conditions for learning the language abroad. Tests and courses to learn German or English abroad are expensive and inaccessible for several countries and types of family members. Little support is given abroad to learn a language like Danish --and even less so for Dutch. The Dutch pre-entry test was found to be wholly unfavourable. The only 'slightly' favourable approach was France, with its requirement to pass a free test or attend a free and largely accessible course.</p>	<p>In several countries, 'too broad or excessive' requirements on integration measures. Integration measures can be 'questioned' as to admissibility under Directive if courses and tests not accessible, not well supported, discriminatory e.g. based on age, disproportionately burdensome (e.g. high fees, insufficient free preparatory materials and courses, hard-to-reach venues), and if impact serves purposes other facilitating the integration of family members.</p>
<p>Security of status <i>Additional grounds for refusal or withdrawal</i></p>	<p>Member States may reject an application for entry and residence of family members on grounds of public policy, public security or public health [or] ... Member States may withdraw or refuse to renew a family member's residence permit. When taking the relevant decision, the Member State shall consider, besides Article 17, the severity or type of offence against public policy or public security committed by the family member, or the dangers that are emanating from such person. <i>(Chapter IV, Article 6, 1 & 2)</i></p>	<p>Vague grounds for refusal and withdrawal to be defined by law or courts: Most Member States use all these grounds. These grounds are limited in only 7 of the Member States concerned (Belgium, Estonia, Italy, Poland, Portugal, Spain, and Sweden)</p>	<p>Only some refer to the relevant Schengen acquis provisions.</p>
<p><i>Individual assessment</i></p>	<p>Member States shall take due account of the nature and solidity of the person's family relationships and the duration of his residence in the Member State and of the existence of family, cultural and social ties with his/her country of origin where they reject an application, withdraw or refuse to renew a residence permit or decide to order the removal of the sponsor or members of his family. <i>(Chapter VI, Article 17)</i></p>	<p>Must consider some--if not all--elements of an applicant's background: At least 7 Member States require that decisions to reject, withdraw, or refuse to renew consider the solidity of sponsor's family relationship, duration of their residence, existing links with their country of origin, and evidence of physical or emotional violence. Some--but not all--elements are considered in 11 other countries. The legal requirements are weak or absent in 6 others (Bulgaria, Hungary, Latvia, Lithuania, Poland, and Romania).</p>	<p>In many countries, incorrect transposition of best interest of child assessments</p>

<p><i>Reasoned decision & review</i></p>	<p>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 lodged... Reasons shall be given for the decision rejecting the application. <i>(Chapter III, Article 5, 4)</i> The Member States shall ensure that the sponsor and/or the members of his/her family have the right to mount a legal challenge where an application for family reunification is rejected or a residence permit is either not renewed or is withdrawn or removal is ordered. <i>(Chapter VI, Article 18)</i></p>	<p>Right to written decision and review: 20 of the Member States concerned have established a clear right to a reasoned decision, right to appeal, and representation before an independent administrative body and/or court. Independent representation is not fully guaranteed in Greece, Lithuania, and Slovakia, while broader problems arise with judicial review in Latvia.</p>	<p>In several countries, incorrect transposition of legal redress</p>
<p><i>Permit duration</i></p>	<p>The Member State concerned shall grant the family members a first residence permit of at least one year's duration. This residence permit shall be renewable. <i>(Chapter VI, Article 13, 2)</i></p>	<p>Permits as long and renewable as sponsors': Most Member States concerned (15) apply the principle of equality to the duration of family members' residence permits. Their permits are as long and renewable as their sponsor's. Permits are not as long in Austria, Cyprus, Estonia, France, Germany, Hungary, Latvia, Netherlands, and Slovenia.</p>	<p>In many countries, incorrect transposition in areas like visa facilitation</p>
<p>Rights associated <i>Equal rights as sponsor</i></p>	<p>The sponsor's family members shall be entitled, in the same way as the sponsor, to: (a) access to education; (b) access to employment and self-employed activity; (c) access to vocational guidance, initial and further training and retraining. Member States may decide according to national law the conditions under which family members shall exercise an employed or self-employed activity. These conditions shall set a time limit which shall in no case exceed 12 months <i>(Chapter VI, Article 14, 1 & 2)</i></p>	<p>Equal access to employment, benefits, and education and training: Equal rights for sponsors and family members is the standard in 16 of the Member States concerned. However, family members face restrictions in accessing the labour market in 7 (Austria, Belgium, Cyprus, Hungary, Malta, Slovakia, and Slovenia) as well as in other areas in countries like Austria, Cyprus, Czech Republic, Hungary, and Slovakia.</p>	<p>Only a few countries go beyond the restrictions allowed in the Directive.</p>
<p><i>Autonomous permit</i></p>	<p>Not later than after five years of residence, and provided that the family member has not been granted a residence permit for reasons other than family reunification, the spouse or unmarried partner and a child who has reached majority shall be entitled, upon application, if required, to an autonomous residence permit, independent of that of the sponsor. <i>(Chapter VI, Article 15, 1)</i></p>	<p>Serious delays and obstacles to autonomous permits: Traditional immigration countries like Australia, Canada, and the United States quickly facilitate an autonomous permit for all family members. Only 6 of the Member States concerned (Belgium, Italy, Portugal, Slovenia, Spain, Sweden) do so in all cases for spouses and children reaching the age of majority. In comparison, family members remain dependent on their sponsor for up to five years in 18 of the concerned Member States and face additional obstacles in 9 (Austria, Bulgaria, Cyprus, Finland, Lithuania, Luxembourg, Malta, Netherlands, and Slovakia). Other adult family members have no clear entitlement in a majority of the concerned Member States (14).</p>	<p>In many countries, incorrect transposition of entitlement to autonomous permits</p>
<p><i>Autonomous permit for vulnerable groups</i></p>	<p>In the event of widowhood, divorce, separation, or death of first-degree relatives in the direct ascending or descending line, an autonomous residence permit may be issued, upon application, if required, to persons who have entered by virtue of family reunification. Member States shall lay down provisions ensuring the granting of an autonomous residence permit in the event of particularly difficult circumstances. <i>(Chapter VI, Article 15, 3)</i></p>	<p>Not all vulnerable groups entitled to autonomous permit: In all concerned Member States but Austria and Netherlands, family members are not entitled to an autonomous permit for all cases of widowhood, divorce, separation, death, and emotional or physical violence. In most countries, procedures are discretionary and/or limited to certain cases. No automatic entitlement exists for any of these cases in Bulgaria, Estonia, Latvia, and Romania.</p>	<p>In many countries, incorrect transposition of entitlement to autonomous permits</p>

Annex 2: National overview on Directive 2003/86/EC

	Obstacles to integration of reuniting families identified in 2011 Migrant Integration Policy Index	Problematic transposition of EU family reunion directive identified in 2008 European Commission application report
<i>EU-wide problems</i>	<p>1) Countries with restrictive definitions of family also impose burdensome conditions;</p> <p>2) Income that sponsors must prove is often higher than what nationals need to live on social assistance;</p> <p>3) Few countries impose language conditions on sponsors or reunited families in country of residence. But if they do, more also do so for spouses abroad in country of origin, where they encounter higher costs and less support.</p> <p>4) Hardly any language condition abroad sets favourable conditions for learning the language;</p> <p>5) Reunited families face significant waiting periods and conditions to get an autonomous residence permit.</p>	<p>Incorrect transposition in areas like visa facilitation, autonomous permits, best interest of child assessments, legal redress, & more favourable provisions for refugees</p> <p>'Too broad or excessive' requirements on age limits, income, integration measures</p> <p>Integration measures can be 'questioned' as to admissibility under Directive if courses and tests not accessible, not well supported, discriminatory e.g. based on age, disproportionately burdensome (e.g. high fees, insufficient free preparatory materials and courses, hard-to-reach venues), and if impact serves other purposes other facilitating integration of family members</p>
<i>Austria</i>	<p>Some of most restrictive definitions & conditions in EU</p> <p>German test abroad (2011)</p> <p>21-year-age-limit (2006)</p> <p>Disproportionate income requirements and fees (2006)</p> <p>Obstacles to autonomous residence permit</p> <p>Language & introduction measures not free for all groups</p>	<p>Questionable' requirements for sponsor to have family housing throughout entire procedure</p> <p>Integration measures 'questionable' if 'disproportionate'</p> <p>Fees are too high if they undermine Directive's effect on right to family reunion</p> <p>Need obligatory mention of best interest of minor children during application examination</p> <p>Need clause on due regard for applicants' individual circumstances</p>
<i>Belgium</i>	<p>Complicated legislation</p> <p>No application for parents or grandparents</p> <p>21-year-age-limit (2006)</p> <p>2011 Law contravenes EU family reunion directive & ECJ Chakroun judgement</p>	<p>Questionable' requirements for sponsor to have family housing throughout entire procedure</p> <p>Mandatory provision on visa facilitation not fully implemented</p> <p>'Inadmissible' amount of discretion 'impedes' access to autonomous permit for listed vulnerable groups</p>
<i>Bulgaria</i>	<p>Restrictive family definitions (adult dependents)</p> <p>Very discretionary procedure</p> <p>No autonomous permit besides long-term residence</p>	<p>Mandatory provisions for minor recognised refugees not yet implemented</p> <p>Problematic time limits for procedure</p> <p>Mandatory provision on visa facilitation not fully implemented</p>
<i>Cyprus</i>	<p>3rd most restrictive policies in EU, alongside countries outside EU directive</p> <p>Many sponsors excluded due to interpretation of 'temporary' permits</p> <p>21-year-age limit not accompanied by justification in the law</p> <p>Disproportionate income requirements and fees</p> <p>Very discretionary procedure</p> <p>Obstacles to autonomous permit</p>	<p>Problematic' definition of 'temporary' permits</p> <p>'Questionable' additional requirements for spouses</p> <p>Residence requirement for sponsor creates 'implementation problems' and 'delays'</p> <p>Integration measures 'questionable' if 'disproportionate'</p> <p>'Imprecise' income requirement</p> <p>Fees are too high if they undermine Directive's effect on right to family reunion</p> <p>Not introduced the required more favourable conditions for refugees</p>
<i>Czech Republic</i>	<p>Requirement of permanent residence permit</p> <p>Many grounds for withdrawal of permit</p> <p>Long delays for autonomous permit</p>	
<i>Denmark</i>	<p>2nd most restrictive policies in EU, many would contravene EU law</p> <p>Long residence requirement</p> <p>24-year-age-limit</p> <p>Restriction on application of other adult dependents</p> <p>Attachment requirement</p> <p>Disproportionate income & housing requirements</p> <p>New Immigration Test is slightly unfavourable for integration - high fees, little support</p> <p>No entitlement to autonomous permit for any reunited families</p>	<p>EU family reunion directive does not apply</p>

<i>Estonia</i>	Two-year-waiting period for application Discretionary procedure and grounds for refusal / withdrawal Obstacles to autonomous permit	Residence requirement for sponsor creates 'implementation problems' and 'delays' Particular concerns with income requirement that almost doubles with each additional family member Public health ground too wide to comply with Directive 'Inadmissible' amount of discretion 'impedes' access to autonomous permit for listed vulnerable groups
<i>Finland</i>	Limitations on dependent adult children & relatives Income level higher than in most countries Obstacles to autonomous permit	Particular concerns with income requirement that increases significantly with each reunited child Fees are too high if they undermine Directive's effect on right to family reunion Improper implementation of autonomous permit clause 'Inadmissible' amount of discretion 'impedes' access to autonomous permit for listed vulnerable groups
<i>France</i>	3rd most restrictive conditions & family definitions Restrictions on dependent adult children & relatives Disproportionate income, housing requirements, & fees Discretion within procedure Obstacles to autonomous permit	Integration measures 'questionable' if 'disproportionate' Fees are too high if they undermine Directive's effect on right to family reunion
<i>Germany</i>	No free courses/fests for German test abroad Discretion within procedure Obstacles to autonomous permit	Integration measures 'questionable' if 'disproportionate'
<i>Greece</i>	Two-year-waiting period for application Requirement for permanent residence permit Exclusion of dependent adult children & parents Disproportionate income requirements & fees Very discretionary procedures Obstacles to autonomous permit	Residence requirement for sponsor creates 'implementation problems' and 'delays' Integration measures 'questionable' if 'disproportionate' Fees are too high if they undermine Directive's effect on right to family reunion Need obligatory mention of best interest of minor children during application examination
<i>Hungary</i>	Very discretionary procedure & grounds for refusal & withdrawal Obstacles to autonomous permit	Need obligatory mention of best interest of minor children during application examination 'Inadmissible' amount of discretion 'impedes' access to autonomous permit for listed vulnerable groups
<i>Ireland</i>	Least favourable policy in Europe or North America No right to family reunion Very discretionary procedure No reasoned decision & right to appeal Restricted access to work, benefits, education, training No right to autonomous permit	EU family reunion directive does not apply.
<i>Italy</i>	Obstacles to application for sponsor's parents (2008) Disproportionate housing, income requirements, & fees (2009 Security Act)	Fees are too high if they undermine Directive's effect on right to family reunion 'Inadmissible' amount of discretion 'impedes' access to autonomous permit for listed vulnerable groups
<i>Latvia</i>	Very discretionary procedure & grounds for refusal & withdrawal No reasoned decision & full right to appeal Obstacles to autonomous permit	Missing specifications on reasoned decision
<i>Lithuania</i>	Long residence requirements for sponsor 21-year-age-limit Slightly discretionary procedure Obstacles to autonomous permit	Residence requirement for sponsor creates 'implementation problems' and 'delays' Need obligatory mention of best interest of minor children during application examination

<i>Luxembourg</i>	No entitlement to application for adult children No maximum time limit for processing application Wide grounds for refusal & withdrawal Obstacles to autonomous permit	Need clause on due regard for applicants' individual circumstances Mandatory provision on visa facilitation not fully implemented
<i>Malta</i>	Two-year-waiting period for application 21-year-age-limit Restrictions on application beyond nuclear family Potentially long and costly procedure Wide grounds for refusal & withdrawal No right to work Obstacles to autonomous permit	Not introduced the required more favourable conditions for refugees
<i>Netherlands</i>	21-year-age-limit Restrictions on minor children, adult children & dependents Disproportionate income requirements & fees Dutch test abroad unfavourable for learning Dutch Dutch & introduction courses and tests not free Obstacles to autonomous permit	Particular concern with income requirements, may constitute age discrimination, also require employment contracts and records Integration measures 'questionable' if 'disproportionate' Need obligatory mention of best interest of minor children during application exam Need clause on due regard for individual circumstances in all parts of procedure Mandatory provision on visa facilitation not fully implemented
<i>Poland</i>	Two-year-waiting period for application Potentially long and costly procedure Obstacles to autonomous permit	Housing requirements cannot be imposed on refugees 'Inadmissible' amount of discretion 'impedes' access to autonomous permit for listed vulnerable groups
<i>Portugal</i>	Potential difficulties meeting basic housing requirements & fees Potential obstacles to autonomous permit for certain vulnerable groups	Need obligatory mention of best interest of minor children during application examination
<i>Romania</i>	Very discretionary procedures & wide grounds for refusal & withdrawal Obstacles to autonomous permits	Public health ground to wide to comply with Directive 'Too restrictive' implementation of autonomous permit 'Inadmissible' amount of discretion 'impedes' access to autonomous permit for listed vulnerable groups
<i>Slovakia</i>	Potentially high housing requirements & fees Very discretionary procedures & wide grounds for refusal & withdrawal Limited avenues of appeal Obstacles to autonomous permits Limited access to work, education, social benefits	Fees are too high if they undermine Directive's effect on right to family reunion Need clause on due regard for applicants' individual circumstances
<i>Slovenia</i>	Potentially wide grounds for refusal & withdrawal Limited right to work for reunited families	Public health ground to wide to comply with Directive Mandatory provision on visa facilitation not fully implemented 'Inadmissible' amount of discretion 'impedes' access to autonomous permit for listed vulnerable groups 'Excessive' limitations on right to work
<i>Spain</i>	Restriction on applications for parents/grandparents (2009) Potential obstacles to autonomous permits, especially for vulnerable groups	Problematic time limits for procedure
<i>Sweden</i>	Income and housing conditions for some groups (2009) No maximum time limit for processing application	
<i>United Kingdom</i>	Restriction on application for adult dependents No free English courses/tests for pre-entry test New consultation proposes some of most restrictive conditions in Europe Restrictions on access to public benefits	EU family reunion directive does not apply

Migration Policy Group

Impact of new family reunion tests and requirements on the integration process

MPG briefings for Green Paper on Family Reunion #3

Abstract: *New family reunion requirements, such as pre-entry tests, high income requirements, and age limits above the marriage age, are relatively new and untested. They are limited to a small set of EU Member States, led by Denmark and, more recently, The Netherlands. They are often justified as improving immigrants' socio-economic participation and language knowledge as well as fighting forced marriages. Based on available studies and government evaluations, it cannot be claimed that these requirements effectively promote integration objectives. They do not significantly help successfully reuniting families to integrate much faster into their new country of residence. On the contrary, they are more effective for limiting the number of reuniting families. Many families, no matter their motivation and preparation, cannot persist to meet the new requirements. The drop in applications is highest in countries like Denmark and The Netherlands where the levels and costs are high and state supports are low. These policies have a disproportionate impact on the most vulnerable groups: the elderly, young adults, the less educated, people in certain – often unstable—countries, and—to some extent—women. These people are less likely to apply for family reunion, pass a pre-entry test, or use alternative options like resettling in another EU country. With few families able to resettle somewhere else, some delay their application, while others give up altogether. Making family life harder or even impossible can negatively impact on the well-being and future integration of the entire family.*

Thomas Huddleston, MPG Policy Analyst, & Anders Pedersen, Journalist.
9.11.2011

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This policy brief presents the research findings and gaps on the impact of specific family reunion requirements and tests on the integration process of non-EU immigrants and their reuniting families. The desk research drew on evaluations commissioned by government, studies by universities and think-tanks in English and Danish, and two independent European research projects (PROSINTⁱ and INTECⁱⁱ). The main countries covered are Austria, Denmark, France, Germany, Netherlands, and United Kingdom. This brief focuses on the following policies:

- Age limits over 18 for sponsors and spouses in Denmark, Netherlands, and United Kingdom
- Pre-entry language tests or requirements for spouses in France, Germany, and Netherlands
- Income requirements and fees for sponsors in Denmark and Netherlands
- “Attachment” requirement in Denmark

Pre-entry tests, high income requirements, and high age limits are recent, untested, and limited to very few countries in the European Union. These requirements are absent from the thinking in the most experienced countries of immigration like Australia, Canada, and the United States, which encourage both labour migration and family reunion.

Are new family reunion requirements necessary, proportionate and effective for integration?

Policymakers who introduce these requirements often justify them as necessary for integration. The stated objectives in law or parliamentary debates are to improve immigrants’ motivation to participate in society, their social, economic, and civic participation, and their knowledge of the national language as well as to fight forced marriages.

Although integration stakeholders may agree that these objectives are generally legitimate for integration, public debates need to more strictly scrutinize the implementation of these specific requirements. Any requirement must be proportionate and effective in practice to meet their stated purpose. These policies should not be serving other purposes (namely, to limit the number of immigrants). They also should not have a disproportionate impact on people’s fundamental rights. These rights include their right to family life under the European Convention on Human Rights and their right to family reunion under EU Directives 2003/86/EC and 2004/38/EC.

If evaluations show that a requirement cannot pass this “proportionality test,” then it should be removed or replaced instead with an obligatory or voluntary measure that really works for language learning, socio-economic participation, or fighting forced marriages.

Are pre-entry courses or tests cost effective for learning the language or practical knowledge?

High-quality courses and information sessions in countries of origin often raised spouses' motivation and preparation for their life in their new country of residence. These findings come from migrants, counselor officers, and language teachers who participate in focus groups and government evaluations.ⁱⁱⁱ Migrant respondents thought that learning the language abroad was less useful at this point in their preparation for immigration than receiving practical information. Most want to know what everyday life will be like for themselves, their family, and their children. Questions range from moving to housing, jobs, childcare, available trainings and courses, social and cultural differences, and so on. These services give them more realistic expectations for the future, greater confidence in making choices, and greater social contacts with spouses in the same situation. Migrants appreciated high-quality courses if they were fully accessible and adapted to their needs, especially from official course providers like the Goethe Institute.^{iv} People who have little formal education or foreign language knowledge find courses especially helpful in order to learn how to study, ahead of their enrollment in specialised integration courses in the EU.

However, courses are often unavailable, inaccessible, low-quality, or expensive in many countries and circumstances. Indeed, more spouses are reportedly entering Germany and The Netherlands on tourist visas in order to access a language course and then leave in order to pass the "pre-entry" test.^v For Germany and the Netherlands, these obstacles make "integration from abroad" unfeasible for many spouses. For Germany, spouses were significantly more likely to pass the pre-entry test if they attended high-quality official courses from the Goethe Institute. For the Netherlands, such official courses abroad do not exist. For both countries, even few of the spouses who successfully passed the test had attended a course, according to both governments' evaluations.^{vi} Unfortunately, data is only collected on spouses who try the test. More spouses who could not attend a course may not even apply for family reunion.

Formal Dutch courses hardly exist outside the EU. Emerging private courses are less available in some countries (e.g. China) than in others (e.g. Morocco). Even 39% of the spouses able to pass the test said they needed more preparatory support than the current training package sold by the Dutch government.^{vii} In some countries, it is not safe for spouses to learn everything that the Dutch government considers as essential about life in the Netherlands. In 2009, one in three people who bought the Dutch training package received a censored version of its DVD *'Coming to the Netherlands,'* because their country's government outlaws all movies showing homosexuality or nudity.^{viii} German courses were criticised when courses were inaccessible or low-quality for reuniting families. The Goethe Institute has locations in a majority – but not all – countries, mostly in capitals and a few major cities. The German government evaluation^{ix} found that courses were less accessible for people who lived in certain countries or remote rural areas as well as for people who used non-Latin alphabets or were illiterate. Applicants wait on average two months on Goethe Institute waiting lists and require an estimated 4 months for the course itself. Migrants interviewed in the evaluation reported receiving scarce and inconsistent information from German authorities on the official preparation opportunities, test, and visa procedure.

The high costs make pre-entry tests even more inaccessible. German and Dutch focus groups^x assessed the financial burden as high in many countries of origin. The Dutch government set the costs of their pre-entry test at 350€ and the training package at 41€. People's total costs vary significantly depending on their circumstances. 719€ was the average total cost estimated by Ernst & Young, a global accounting firm.^{xi} One in four people spend more than 719€. 2-3% spend almost 2000€ to meet the requirement. The Goethe Institute's required A1 test costs on average 50€,

ranging from 40€ in New Delhi to 120€ in Rabat.^{xii} Already, these fees amount to 50% of the monthly salary in many countries of origin, according to German focus group participants. In addition, the Goethe Institute's A1-course costs anywhere from 100€ in Sarajevo to 800€ in Hong Kong. Many may need to quit their jobs and forgo an income to attend the estimated 4-month course. People living far from the few cities with a Goethe Institute will face additional travel and accommodation costs for the test and potentially course.

“Self-selection”: disproportionate effect on vulnerable groups

One of the main reasons why some spouses pass the pre-entry test while others fail is referred to as “self-selection.” This process was identified and named in Dutch and German government evaluations of the pre-entry test pass/fail rates.^{xiii} Self-selection means that certain types of people are more likely to fail because of their personal background. These spouses who fail may be just as motivated or prepared to learn as those who pass. But for these type of tests, who they are matters as much – and perhaps more – than what they do. A test abroad will have a disproportionately negative impact on vulnerable groups, especially when faced with high costs and low-levels of support to pass pre-entry requirements.

For example, lower-educated spouses, are less able to learn all the information abroad needed to pass than highly-educated spouses. Passing the test is more difficult in certain countries (e.g. Morocco and Russia for the German test, Afghanistan, Iraq, and Vietnam for the Dutch test). The elderly, refugees, residents of politically unstable countries, and to some extent women also fail at higher rates than other groups. The German government evaluation identified additional factors like limited access to the Goethe Institute, no previous knowledge of any foreign language, and individual vulnerability.

Effective for language learning?

Pre-entry language tests and requirements have only marginal effects on language learning, according to government evaluations and academic focus groups in Germany and the Netherlands.^{xiv} Immigrants and embassy staff in the two countries agreed that the little German or Dutch that spouses can reasonably learn from their hometown in their country of origin is not enough to get by in Germany or the Netherlands. Furthermore, the marginal language learning effects are not very sustainable. Many successful applicants then forgot the little they learned between the pre-entry test, final word on the acceptance of their application, their arrival in their country of destination, and their enrollment in a language course. This process takes between 3-4 months in both countries. When course providers in Germany assessed newcomers' German knowledge, they could not tell the difference between spouses who took the pre-entry test and migrants who did not. Course providers in the Netherlands also found no significant difference, except for slightly better understanding and listening skills in Dutch. The reason why is debated because the process of “self-selection” has changed course providers' sample. Spouses who passed the test may have acquired more language skills during their preparation. But also many more spouses, especially from vulnerable groups, failed the test or no longer applied for family reunion. Course providers in the Netherlands may therefore be encountering fewer vulnerable learners.

Additional requirements on age limits, income, and attachment do not seem to promote language learning. Beyond language learning, other socio-cultural effects were not monitored in evaluations.

Effective for educational progress?

The educational effects of pre-entry tests, age limits, or income requirements appear to be minimal. Preparing for and passing the pre-entry test has little-to-no effect on raising an individual's level of education.^{xv} This finding may be related to the test's minimal effects on language learning. Higher age limits in Denmark had no demonstrable impact on education of immigrants and ethnic minorities, as observed by the Danish National Centre for Social Research (SFI).^{xvi} Education levels of ethnic minority women, which have been improving all the time, made no significant gains since the introduction of this age limit in 2002. Higher income requirements in the Netherlands, which aimed to promote economic participation, may have unintentionally undermined participation in higher education, as some sponsors drop out of long-term education tracks in order to get some income to meet the requirements.^{xvii}

Effective for labour market integration?

Government and academic evaluations find that these new requirements had little-to-no effect on immigrants' position in the labour market. The pre-entry test for the Netherlands did not improve spouses' economic integration, according to the Dutch government evaluation.^{xviii} Higher Dutch requirements on incomes and age limits had little benefit for labour market integration, according to an earlier evaluation by governmental agency WODC.^{xix} The disproportionately high income requirement raised labour market participation for some newcomers, but mostly before and during the application process. After family reunion, labour market participation returned to normal levels. A qualitative Dutch study^{xx} suggests that people who are committed to living with their family often scramble to meet the income requirements in any way possible. These sponsors, especially women and young people, may end up in short-term employment, such as overtime or low-skilled, undesirable, or dead-end jobs. This type of work offers long-term prospects. This minor and momentary uptick in labour market participation is not an indicator of sustainable progress on integration.

In Denmark, analysis by SFI concluded that raising the age limit did not raise the economic participation among young immigrants and Danes with an immigrant background. Their economic participation improved in virtually the same way as comparable groups of Danes without an immigrant background. A 2008 government-funded study by the Danish Institute of Government Research^{xxi} concluded that the spouses immigrating under the stricter post-2002 rules had good labour market potential. However neither the study, nor Integration Ministry, examined their assumption that spouses arriving after 2002 actually had more potential than spouses arriving before. A 2011 broad study on this question^{xxii} analysed registered data from Danish Statistics about 30,000 residents from non-western countries residing in Denmark for at least 6.5 years. Lauritzen and Larsen found no significant difference in the employment rates of residents admitted in the one year before or the one year after the 2002 changes.

Effective for fighting forced marriage?

There is no quantitative and little qualitative data that the number of forced marriages is reduced by pre-entry tests, age limits, or income requirements. Forced marriages are notoriously difficult to detect or to count. In the United Kingdom, raising the age limit from 16-to-18 had no effect on the incidence of forced marriage, according to a government-commissioned analysis of large-scale national databases.^{xxiii} The SFI research also found no effect for that country's 24-year-age-limit.^{xxiv} Anecdotal accounts can be used either for or against the effectiveness of these new requirements. On the one hand, some Goethe Institute teachers abroad speculated^{xxv} that the pre-entry test may offer a chance for people to get out of a forced marriage because they can try to deliberately fail the test. On the other hand, victims who fail to meet family reunion requirements may be forced to marry and live in their or their parents' country of origin. Danish and British embassies have had several cases of their citizens or residents being forcibly taken abroad.^{xxvi} Other victims abroad may be invisible to diplomatic services. Most victims contacting Danish women's shelters were reportedly women frightened of being taken abroad, partly due to the country's restrictive family reunion policy.^{xxvii} These new requirements may thus have the effect of moving forced marriages abroad, where victims have more difficulty accessing protection.

Victims and survivors themselves, who were consulted in UK focus groups,^{xxviii} did not think that age limits of 21 or 24 would prevent forced marriages. The few benefits that they identified – greater maturity, education, and independence – were outweighed in their minds by many more costs and risks:

- Greater physical or psychological harm
- Mental health problems like attempted suicide and self-harm
- Barriers to potential support like child protection legislation and school-based counseling
- Spouses enter the country with false documentation or sponsors are taken abroad by force
- Dual marriage system leading to indirect discrimination against certain ethnic groups

Some Goethe Institute teachers abroad^{xxix} felt that spouses attending their courses were more aware of women's rights and forced marriages. However, teachers are not specifically trained on these issues. Moreover, only a minority of applicants could access Goethe's paid courses. To address the mix of personal, family and community factors behind forced marriages, the UK focus groups of victims suggested that family reunion policies were less effective than direct victim support, preventative work, and educational resources. Interviews with Danish victims' support groups suggest to focus directly on raising education levels among immigrant women in the country and raising everyone's awareness of forced marriages and services. Measures to fight forced marriage may be most effective when spouses can access trained services and women's shelters in the country of destination.^{xxx}

Major disproportionate effect: discourage & delay family reunion

Pre-entry tests, high age limits, and high fees and income requirements have a disproportionate impact on limiting the number of family reunions. Denmark's post-2002 policies further decreased demand for family reunion^{xxxix} and raised the overall marriage age among ethnic minorities.^{xxxix} Higher age limits and income requirements in the Netherlands were major causes of a swift and significant decline in family reunion applications, according to the Research and Documentation Centre of the Dutch Ministry of Justice.^{xxxix} Generally, income or employment requirements disproportionately exclude migrant women from becoming family reunion sponsors, because they have greater childcare responsibilities and depend more on part-time or informal work.^{xxxix} Today, the OECD observes that income requirements may also delay sponsorship among migrant men and youth, who are disproportionately affected by the economic crisis' higher levels of unemployment and poverty.^{xxxv}

Pre-entry tests led to an especially sharp temporary drop in the number of family reunions in France, Germany, and The Netherlands. The drops were greatest for these countries' largest countries of origin. After the introduction of a pre-entry requirement, Germany's application rate dropped by 25% in the first six months, especially from Turkey, Serbia, Kosovo, and Russia. France's dropped by 27% in the first six months of 2009. The Netherlands' dropped by 40% in the first two years, especially from Morocco and Ghana.^{xxxvi} The UK government expects its pre-entry test will cause a drop in applications.^{xxxvii}

After these initial drops, application numbers have slightly improved in Germany and The Netherlands. Whether these numbers are the same as they would have been without the new policies is disputed by analysts. Family reunion flows are regularly fluctuating and hard to predict.

Impact on families: persistence, resettlement, delay, and desistence

The overall effect of this drop on couples and families has been mixed and difficult to quantify. Leerkes and Kulu-Glasgow propose to classify these impacts as persistence, resettlement, delay, and desistence:

- *Persistent families* are still able to apply under the new regulations.
- *Resettling families* have to reunite in one country or another via regular or irregular channels
- *Delayed families* have to wait months or years to pass the new requirements or age limits
- *Desisting families* cannot reunite – either they are separated or break up as a family/couple

Only persistent families are properly captured in family reunion statistics. Few families are likely to try the second option—resettlement—since these routes are limited, costly, and risky: a work or humanitarian permit for the spouse, moving to another country or EU Member State, return to their country of origin, visa overstaying, unauthorised entry, or false documentation. Many more couples may have had to delay, as suggested by family reunion statistics that first dropped after changes like pre-entry tests but then (partially) recovered. For example, the UK government estimated that 15% of couples will be delayed an extra 1-to-2 years for spouses to pass the pre-entry test.^{xxxviii} Recent focus groups in The Netherlands suggest that the pre-entry test, age limit, and income requirements forced the average family to wait 15 extra months. Applicants under 21 waited an average of 30

months to meet not only the new age limit, but also the higher income requirement, which had a disproportionate impact on young people entering the labour market.^{xxxix} The fourth and final group—desisting families—applies to an unknown number of people. Since the number of applications has not fully returned to previous or projected levels, it is safe to conclude that many families are still not able to apply.

While this self-selection effect pushes couples to persist, resettle, delay, or desist, little evidence exists that instead they are pushed to choose a different spouse. If the sponsor already has a spouse or family abroad (family reunification), he or she has few options besides enforced separation or divorce and family breakup. If the sponsor is looking for a spouse abroad (family formation), he or she could instead look for someone in their or another EU country (so-called “substitution effect”). Significant changes in partner choice have been observed in the Netherlands^{xi} but not in Denmark.^{xli}

Many more potential sponsors are simply not marrying anyone. Lower marriage rates have been registered among Danish young men and women of non-Western background.^{xlii} Rates are lower not just for those under the 24-year-age limit, but also for those above 24 who cannot meet the many other requirements. The Rockwool Foundation in 2009 attributed this substantial drop in marriage rates to Denmark’s post-2002 age limit and attachment requirement.^{xliii} However the trend towards lower marriage rates began well before in 1997. Moreover, Sweden has had very similarly low rates since the early 2000s but maintained its more inclusive family reunion policies. In the Netherlands, many more residents of Turkish and Moroccan background are becoming old enough to legally marry, but fewer are getting married than before.^{xliv} Who and when these young people will want to marry are unknown.

It is hard to conclude that changes in partner choices and marriage ages are substitution effects of new family reunion policies. Before these policies were in place, these countries were experiencing less demand for family formation among residents with ethnic minority backgrounds, as new generations became better educated and active in the labour market.

Which families apply and which cannot? “Self-selection” once again

Which families are able to persist or resettle? Which are more likely to be delayed or deterred? The Dutch and German government evaluations^{xlv} find that “self-selection” explains not only the differences in pass/fail test rates but also in application rates. Persistent and resettling families are not necessarily more motivated or prepared than deterred families. But they are more privileged and less vulnerable. Those who have the resources to pass the test are still able to apply. Those without these resources are now less likely to apply. This self-selection effect is less common for Germany than the Netherlands, where the pre-entry test and preparation costs are much higher. The statistically significant factors for self-selection are similar for application and rejection rates. These requirements disproportionately discourage vulnerable groups like the elderly, lower-educated, residents of specific countries, people coming from armed conflicts, and to some extent women. When these people are part of a family, they are not only more likely to fail a pre-entry test, but also less likely to apply. The Dutch evaluation also finds that cases of family reunion are more negatively affected than cases of family formation.

Unintended consequences of resettlement, delay, and desistance

New family reunion requirements give rise to fragmented and insecure forms of transnational family life. These arrangements often come with greater costs and psychological stress for sponsors, spouses, and especially for their children.

The “EU route” occurs among a few families choosing “resettlement” in a neighbouring EU country (e.g. from the Netherlands to Belgium, from Denmark to Sweden, or from Germany to Austria). Sponsors who are EU citizens can move there legally and reunite with their spouse and family under EU law.^{xlvi} The sponsor has three options to pursue this route: legally commute back to work in their home EU country (known as a “commuter marriage”), find a job in the neighbouring country, or live off their own resources. A “semi-legal” marriage occurs when the sponsor legally moves address to a neighbouring EU country, but the family spends their time in the sponsor’s home EU country. Without a legal residence permit there, these disadvantaged families cannot work legally or access many services and opportunities to learn the language and participate in society. Few are likely to attempt a “semi-legal” marriage, as many interviewed spouses considered an illegal stay to be both undesirable and unsafe.^{xlvii}

Qualitative research^{xlviii} identified the major positive and negative effects of the EU resettlement route for Danish couples living in Malmö, Sweden, across the Øresund Bridge from Copenhagen. First of all, couples can finally live together. Secondly, couples saw no future for themselves in their (or their parents’) country of origin. Also, housing is close to Denmark and cheaper. Negatively, commuter marriages can cause great stress in a couple. Sponsors must be able to commute or relocate their job. Spouses can become dependent on their sponsor and isolated from family and friends. If the spouse does well in their new country of residence, their positive integration outcomes may be bittersweet for the sponsor. The spouse and children may start learning a language and putting down roots that is foreign to the sponsor. Over time, return to the sponsor’s own EU country becomes less and less likely.

Resettlement in another EU country is a real option for a very lucky few. For example, only a small number of Dutch couples used the “EU route” between 2005 and 2008.^{xlix} “Self-selection” helps determine which families can choose EU resettlement. Interviews in Denmark and the Netherlands observed that sponsors were mostly EU citizens born in the country (citizens of the second and third generation or citizens without an immigrant background). They tended to be young, relatively successful both socially and economically, and originally living near the border. These people have the basic resources to move, find new housing and jobs, and secure legal advice on family reunion. For example, Denmark’s post-2002 regulations led to higher emigration, but mostly among young Danes with a minority background living in the Greater Copenhagen area.

Most other couples do not have the luxury of resettlement. These delayed or deterred couples must live in “long-distance commuter marriages.” The sponsor must frequently return to their country of origin and/or their family must secure tourist visas to visit. This burden falls particularly hard on poor and working-class families, middle-aged and elderly people, third-country nationals, and residents living far from an EU internal border.

Final conclusions

Pre-entry tests show no signs of long-term effectiveness for their stated integration goals, according to government evaluations in Germany and the Netherlands as well as two independent research teams (PROSINT and INTEC projects) found no evidence of their. Spouses abroad have had to show greater motivation and preparation than before. Many put in disproportionately high costs, time, and stress to pass these tests. Hardly any get anything out of them. Government evaluations, focus groups with migrants, and interviews with course providers conclude that there is no balance between their great efforts abroad and the limited outcomes for their integration.¹ Better formal and informal opportunities for learning and participation await them in the country of destination. In comparison, integration abroad is not a very cost effective option.

Beyond pre-entry tests, it cannot be claimed that other new requirements like age limits, attachment assessments, or high income levels and fees effectively promote language learning, socio-economic participation, and educational progress or fight forced marriages. These new requirements do not really help reuniting families to integrate faster into their new country of residence.

Instead, these new requirements have a disproportionate impact on limiting the number of family reunions. Sharp temporary drops in application rates suggest that restrictions have a significant impact on some families. “Self-selection” filters out vulnerable groups from passing tests, applying for family reunion, and using alternative options like the EU resettlement route. As a result, many sponsors may not choose a different partner or let their family break up. Instead, their family life becomes harder or even impossible through “enforced separation.” Some may give up altogether on the idea of living together, while others may delay their family reunion application or their wedding day. These new requirements delay and discourage many families from reuniting. OECD from PISA finds that every extra year that child spends in country of origin and not in country of destination has a negative impact on their language learning and societal adjustment as children age. Their conclusion is that family reunification should be facilitated as soon as possible. Policy actors must scrutinise more strictly whether recently proposed family reunion requirements exacerbate the very problems that they are supposed to address.

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