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FOR REFORMS AND EQUALITY

Family Reunification

Integration Mapping Research

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Sustainable Management of Migration Flows



Summary

“The family is the natural and fundamental group unit of society and is entitled to protection by society and the State”

Article 23, International Covenant on Civil and Political Rights, 1966



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Family reunification has been one of the main avenues for legal migration into the European Union (EU)



1. The Ethos Behind Family Reunification

Family migration can include various scenarios such as families joining migrants who had emigrated earlier and family members accompanying a newly admitted economic migrant, student or refugee. The possibility to reunite with family members and live as a family unit is an essential component of integration.

The family unit is often the strongest and most effective emotional, economic and social network for migrants in their adjusting to life in a new country¹. Therefore, family reunification helps to create social-cultural stability facilitating the integration of third-country nationals (TCNs) in the host country. Furthermore, besides assisting with the integration of migrants, it also serves to promote the economic and social cohesion of the communities they live in².

Family reunification has been one of the main avenues for legal migration into the European Union (EU). In 2015, almost 38% of all permits were issued on the basis of family reunification and, in 2017³, almost 28%⁴ of all first permits were for the purposes of family

reunification. However, the rates varied depending on the destination Member State, with Croatia issuing the largest proportion of first-time family reunification permits and Poland issuing the least according to the study carried out by the European Migration Network (EMN)⁵. Malta languished in the bottom 5 places, having only 19% of first permits for family reunification reasons out of all first permits issued.



Figure 1: Percentage of first permits for family reasons out of total first permits (2011-2015), EMN, 2017

- 1 Council of Europe Commissioner for Human Rights, Realising the right to family reunification of refugees in Europe, 2017 <https://rm.coe.int/prems-052917-gbr-1700-realising-refugees-160x240-web/1680724ba0>.
- 2 Preamble, para.4. of Directive 2003/86/EC on the right to family reunification, <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=celex%3A32003L0086>.
- 3 European Migration Network, Family Reunification of Third-Country Nationals in the EU plus Norway: National Report, 2017, https://emn.ie/files/p_201704190426462016_family_reunification_synthesis_report_April2017.pdf.
- 4 Report from the Commission to the European Parliament and the Council on the implementation of Directive 2003/86/EC on the right to family reunification, COM/2019/162 final, <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:52019DC0162>.

5 European Migration Network, op.cit.

In a recent report from the Commission into the implementation of family reunification directive across the EU multiple problems were identified. The main concerns related to the refusal to issue visas or permits, lack of proof of identity or family ties as a ground for rejection, long processing times by administration, disproportionate fees for the issuing of permits, the notion of stable and regular resources and access to employment for family members⁶.

With the increase of economic and forced migration into Malta as a country of destination, the numbers of migrants wishing to avail themselves of their rights under family reunification rules has also increased. However, reports on existing practices on the procedures for family reunification have increasingly highlighted shortcomings in local legislation and policy⁷. The international and national legal and policy framework regulating the right to family reunification will be discussed in detail in the following sections.

1.2 The Gender Dimension

The vast majority of family members joining or accompanying a migrant or refugee are women and children, which means that family migration has an important gender dimension⁸. Across OECD countries,

2 out of 3 of adult family migrants are women. Family members usually face more integration challenges than the family member who originally migrated or because of whom the family is migrating.

For those reuniting family members that are women, many come from countries where women in employment is uncommon. In addition to difficulties in accessing the labour market, due to a lack of language proficiency and other skills gap, women face issues relating to childcare, healthcare and other support services which may not be readily available for reuniting family members. There is also evidence that suggests that the better integration of family members, most of them women, then the better the outcomes of their children⁹.

It should be noted that in a recent pan-European study by the EMN it was found, from the very little data available to them, that there is an almost equal share of men and women who are sponsors in family reunification procedures. However, this was qualified by the premise that, in spite of the need, there is very limited disaggregated data available as to the age, gender and status of the sponsor¹⁰.



The vast majority of family members joining or accompanying a migrant or refugee are women and children



6 Report from the Commission to the European Parliament and the Council, op cit.

7 MPG, CIDOB, Migrant Integration Policy Index, 2020; European Migration Network, Family Reunification of Third-Country Nationals in the EU plus Norway: National Report, 2017; JRS Malta, aditus foundation and Integra Foundation, *Family Unity: A Fundamental Right, A Project Integrated 2018 Policy Paper On The Right To Family Reunification For Beneficiaries Of Subsidiary Protection, 2018*; aditus foundation, *Malta Integration Network: a way forward for a National Integration Policy in Malta, 2014*.

8 OECD, *Making Integration Work: Family Migrants*, OECD Publishing, 2017, https://read.oecd-ilibrary.org/social-issues-migration-health/making-integration-work_9789264279520-en#page9

9 Ibid.

10 European Migration Network, op. cit.

2. Legal Background

Human rights law, most notably Article 16 of the Universal Declaration of Human Rights and Article 17 of the International Covenant on Civil and Political rights¹¹, recognise the family as a natural and fundamental group unit of society that is entitled to the protection by society and the state. Article 19 of the European Social Charter requires signatory states to the reunion of family members with foreign workers who reside legally in the country¹².

Furthermore, Article 8 of the European Convention of Human Rights (ECHR)¹³ provides for the right to respect for private life and family life. The objective of Article 8 is that of protecting the individual against arbitrary interference by States and their public authorities. However, Article 8 also imposes on the State the positive obligations inherent in an effective respect for private and family life¹⁴. The rights under Article 8 may be restricted by States if such is necessary in a democratic society and in the interest of national security, public safety or the economic well-being of the country, as well as for the protection of health or morals, or for the protection of the rights and freedoms of others.

Although the abovementioned international human rights documents recognise the right to family life, they fall short of guaranteeing the right to family reunification. The Convention on the Rights of the Child makes reference to family reunification and obliges state parties to deal with application for family reunification “*in a positive, humane and expeditious manner*”¹⁵. The Committee on the Rights of the Child (UNCRC) highlighted that the practice in some countries of failing to ensure family reunification or permitting it with unnecessarily restrictive conditions constitutes a serious protection gap faced by children¹⁶.

2.1 International Refugee Law

The 1951 Refugee Convention makes no reference to refugee’s right to family life. However, the Final Act of the UN Conference of Plenipotentiaries states that, “*the unity of the family ... is an essential right of the refugee*”¹⁷. It urged states to “*take the necessary measures for the protection of the refugee’s family, especially with a view to ... [e]nsuring that the unity of the refugee’s family is maintained particularly in cases where the head of the family has fulfilled the necessary conditions for admission to a particular country*”.

11 Universal declaration of human rights (217 [III] A). Paris; International Covenant on Civil and Political Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966.

12 Council of Europe, European Social Charter (Revised), 3 May 1996.

13 Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950.

14 Dickson v. the United Kingdom [GC], no. 44362/04, ECHR 2007-V.

15 Article 10, UN Commission on Human Rights, Convention on the Rights of the Child., 7 March 1990.

16 UN Committee on the Rights of the Child (CRC), General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin, 1 September 2005, CRC/GC/2005/6.

17 UN Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, 25 July 1951, A/CONF.2/108/Rev.1.



The principle would imply that any difference in treatment of refugees and persons with subsidiary protection, insofar as they are in a similar situation, would require justification

Much has been written on the rights of family reunification for refugees over the years. The United Nations High Commission for Refugees (UNHCR) has issued a significant number of notes and guidelines¹⁸ stressing the importance of family reunification. Whilst these documents are not legally binding, they are considered to be soft law which assists in the interpretation and implementation of refugee law instruments.

In 2001, the UNHCR issued 5 guiding principles to protect family unity, and to promote and facilitate family reunification in the resettlement process¹⁹:

- a. The family is the natural and fundamental group unit of society, and is entitled to protection by States;
- b. The refugee family is essential to ensure the protection and well-being of its individual members;
- c. The principle of dependency entails flexible and expansive family reunification criteria that are culturally sensitive and situation specific;

- d. Humanitarian considerations support family reunification efforts;
- e. The refugee family is essential to the successful integration of resettled refugees.

2.2 European Union Law

The Charter of Fundamental Rights of the European Union mirrors the ECHR and Article 7 protects the right to respect for his or her private and family life, home and communications²⁰. Importantly, Article 21 of the Charter prohibits discrimination on a number of grounds, including race, colour or social origin. The principle would imply that any difference in treatment of refugees and persons with subsidiary protection, insofar as they are in a similar situation, would require justification. This is important and will be examined in further detail below when examining the difference in treatment on the right to family reunification for refugees and persons with subsidiary protection.

2.2.1 Family Reunification for TCNs

Council Directive 2003/86/EC on the right to family

18 UNHCR, *Summary Conclusions on the Right to Family Life and Family Unity in the Context of Family Reunification of Refugees and Other Persons In Need Of International Protection*, 4 December 2017, UNHCR, *Note on family reunification* (UNHCR, August 1981) and UNHCR, *Guidelines on reunification of refugee families* (UNHCR, July 1983).

19 UNHCR, *Background Note on family reunification in the context of resettlement and integration* (UNHCR, June 2001).

20 European Union, *Charter of Fundamental Rights of the European Union*, 26 October 2012, 2012/C 326/02.

What Is A Directive?

A “directive” is a legislative act that sets out a goal that all EU Member States must achieve. However, it is up to the individual countries to devise their own laws on how to reach these goals.

In the case of minimum harmonisation, a directive sets minimum standards, EU countries have the right to set higher standards than those set in the directive.

In the case of maximum harmonisation, EU countries may not introduce rules that are stricter than those set in the directive.

reunification lays down the conditions of entry and residence for TCN family members joining a TCN residing legally in a Member State²¹. Although the Directive has been in force since 2003, its implementation remains a major challenge for the EU in the frame of migration policy. The Commission recently highlighted that Member States need to give specific attention to the “*paramount importance of the fundamental right of respect for family life, the rights of the child and the right to an effective remedy*”²². It also highlighted to Member States not to lower standards when applying the “may” provisions in a too broad or disproportionate way.

21 Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=celex%3A32003L0086>.

22 Report from the Commission to the European Parliament and the Council, op. cit.

The Directive allows for a TCN sponsor, that is any person who is not an EU national, and who is residing lawfully in a Member State to apply for their TCN family member to join them. The sponsor must be residing lawfully on the basis of a permit other than a visa, a pending application for asylum, a temporary protection permit, of a subsidiary form of protection and a permit of less than 6 months.

The sponsor must also have reasonable prospects of obtaining the right of permanent residence, which should be examined on a case-by-case basis, and which also leaves a wide margin of appreciation to the Members States.

Under the Directive, a family member is defined as the spouse and minor children of the sponsor or of the sponsor’s spouse, including adopted children. Member States have the discretion to allow for the inclusion of other family members, such as dependant relatives in the direct ascending line, dependant adult unmarried children, unmarried or registered partners, in the definition of “*family member*”. The Directive also allows for Member States to require that the spouse be not younger than 21, in order to ensure better integration and to prevent forced marriages²³.

Member States may determine whether the application has to be submitted by the sponsor or by the family member/s. It also establishes a general rule that applications must be submitted when the family members are still residing outside the Member State, however derogations are allowed depending on circumstances.

23 Article 4 of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, op cit.

What Constitutes Stable and Regular Resources?

Member States are allowed to take into account the level of minimum national wages and pensions as well as the number of family members when evaluating the sponsor's resources and determining the social assistance level stricter than those set in the directive.

Minimum national wages should be seen as the upper limit of what Member States may require, except if Member States choose to take into account the number of family members.

Communication from the Commission to the European Parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification, COM/2014/0210

The Directive lays down that the application must be accompanied by documentary evidence that proves the family relationship. Although Member States are allowed to use interviews or other investigations, including DNA testing, these must not be used if there are other less restrictive means to establish a family relationship.

Member States may oblige the sponsor to submit documents that shows that the sponsor has appropriate accommodation, health insurance and stable and regular resources. Member States are allowed to indicate a reference amount which would be considered to be stable and regular resources; however, an application cannot be rejected for the sole reason that the sponsor's resources do not reach such reference amount²⁴. Furthermore,

²⁴ Cases C-356/11 and C-357/11, O. & S., 6 December 2012.

at the moment of renewal of a residence permit based on family reunification, the Directive imposes an obligation on the Member States to take into account the contributions of the family members to the household income if the sponsor does not have sufficient resources

It should be noted that national legislation is not permitted to distinguish between family relationships that arose before or after the sponsor began to reside in the territory of a particular Member State.

It should be noted that, as is with the implementation of all Directives into national law, Member States have the possibility to adopt or maintain more favourable conditions than those prescribed by the Directive.

2.2.2 Family Reunification for Persons with International Protection

The Family Reunification Directive foresees the facilitation of the application for family reunification for persons with international protection²⁵. It should be noted that the Directive allows for Member States to restrict the application of more favourable conditions to refugees whose family members predate their entry. Article 3(2) of the Directive excludes the application of the Directive to asylum-seekers and beneficiaries of temporary or subsidiary protection. In fact, when transposing the Directive, the Maltese administration had opted to exclude beneficiaries of subsidiary protection from the rights under the Directive²⁶. However, the European Commission has emphasized that this should not be interpreted as obliging Member States to deny the

²⁵ Chapter V, Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, op. cit.

²⁶ Family Reunification Regulations, S.L. 217.06, <https://legislation.mt/eli/sl/217.6/eng/pdf>.

right to family reunification to persons with subsidiary protection. In fact, it encouraged Member States “to adopt rules that grant similar rights to refugees and beneficiaries of temporary or subsidiary protection”²⁷ and emphasizes that Member States are still obliged to respect Article 8 and Article 14 of the ECHR.

The Directive lays down a number of derogations from the general rules contained in its provisions: it allows for the entry and residence of family members other than spouses or minor children if they are dependent on the refugee, it also allows for the reunification of unaccompanied minors with first-degree relatives in the direct ascending line without the application of conditions and finally it allows for legal guardians or other family members to be reunited with an unaccompanied minor who is a refugee.

Furthermore, the Directive takes into account the special circumstances of refugees and obliges Member States not to reject applications solely on the basis of a lack of documentation attesting to the familial relationship. It also obliges Member States not to require refugees to show evidence of financial resources, health insurance and appropriate accommodation if they apply for family reunification within a period of 3 months after the granting of refugee status.

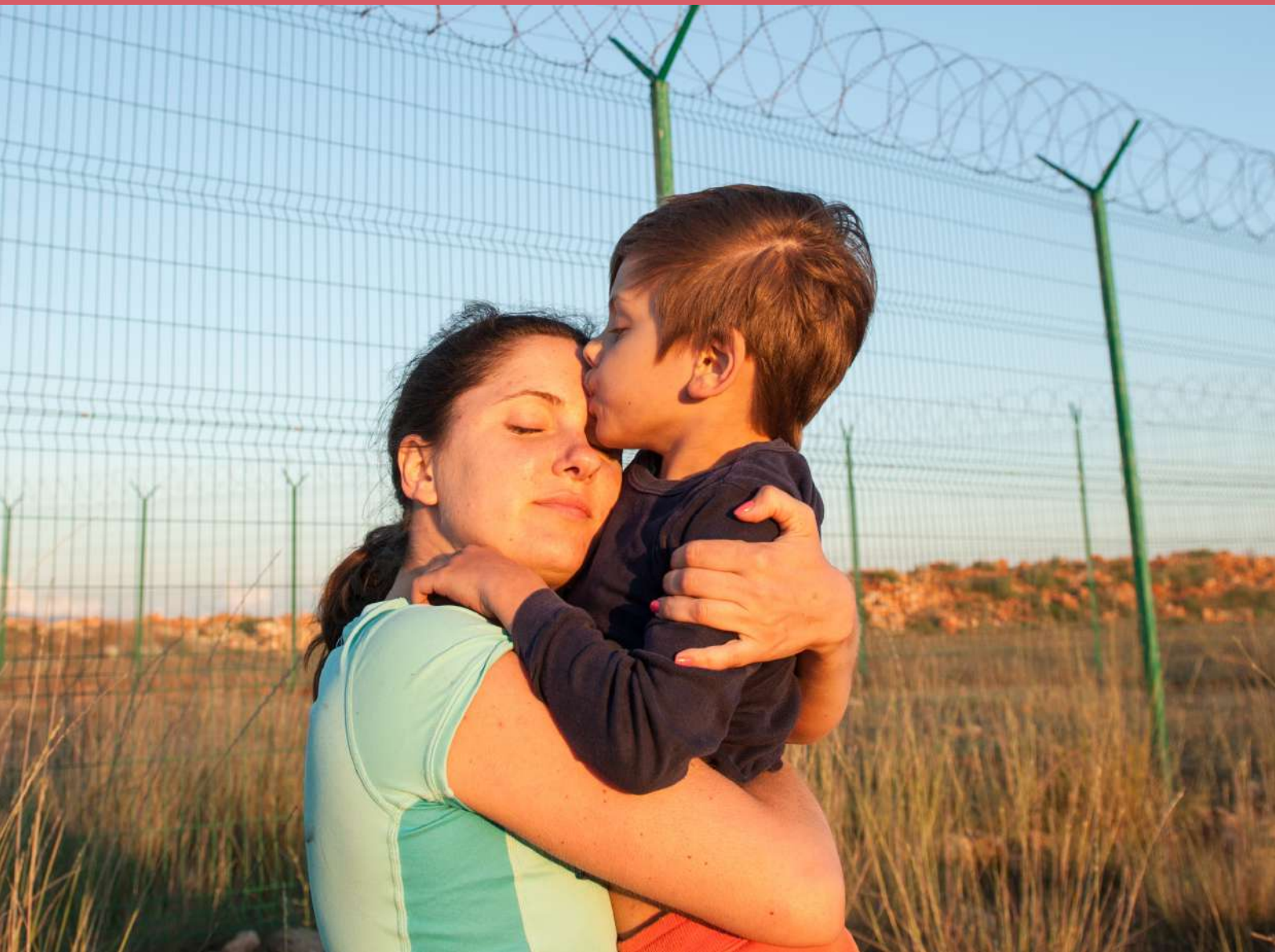


The principle would imply that any difference in treatment of refugees and persons with subsidiary protection, insofar as they are in a similar situation, would require justification



27 Communication from the Commission to the European Parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification, COM/2014/0210 final, 2014 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014DC0210&from=EN>.

**Only Cyprus, the Netherlands and Denmark
from the EU area have more restrictive
policies than Malta**



3. The Maltese situation

Malta transposed the Family Reunification Directive into national law via the Family Reunification Regulations (*hereafter*, the Regulations)²⁸. At the time of transposition in 2007, it was noted that Malta's family reunification laws and policies “*reflect a restrictive orientation and aim at a minimalist implementation*”²⁹. The Regulations were further amended in 2017 and 2018, to include, amongst others, the right of family reunification for refugees and the granting of autonomous residence permits in particularly difficult circumstances. On the Maltese legislation, the Migrant Integration Policy Index noted in 2020 that “[n]on-EU citizens were less likely to reunite with family in Malta than in most European countries, because of its long-delayed, restrictive and discretionary policy”³⁰.

In fact, only Cyprus, the Netherlands and Denmark from the EU area have more restrictive policies than Malta, as can be seen below.

The table below shows the amount of permits issued for family reunification in Malta from the period between 2016 – 2020, disaggregated by the legal basis on which the permit was issued. The majority of family reunification permits granted in Malta relate to minor children of non-EU sponsors, whilst the least number of permits were issued under the family reunification

Directive to refugees, with a total of 51 permits issued in 5 years. As mentioned above, under Maltese law sponsors with subsidiary protection are excluded from the family reunification regulations and therefore, unsurprisingly, no permits were issued to such a cohort. It should be noted that, in 2020, 69 permits were issued to family members of persons with subsidiary protection under the Qualification Directive on the basis of family unity³¹. However, these permits are not based on family reunification legislation but on the premise that family members who do not qualify for international protection individually are entitled to the same rights as their sponsor with protection.



The Regulations were further amended in 2017 and 2018, to include, amongst others, the right of family reunification for refugees and the granting of autonomous residence permits in particularly difficult circumstances



28 Family Reunification Regulations, S.L. 217.06, <https://legislation.mt/eli/sl/217.6/eng/pdf>.

29 International Organisation for Migration, D. Zammit, *Final Report- Consultative assessment of Integration of Third Country Nationals*, 2012, pg. 14. See also: *Migrant Integration Policy Index* (2011), op cit. pg. 136

30 Migrant Integration Policy Index 2020, Malta Key Findings: <https://www.mipex.eu/malta>.

31 Directive 2011/95/EU on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:0009:0026:en:PDF>.

FAMILY REUNION

Family reunification policies determine if and when separated families can reunite and settle in their new home.













Ranking 2019	Score	Ranking 2019	Score	Ranking 2019	Score
 Brazil	94	 Iceland	62	 Ireland	48
 Canada	88	 Japan	62	 Croatia	48
 Portugal	87	 Moldova	61	 Latvia	47
 Estonia	76	 Albania	61	 Russia	46
 Indonesia	75	 Slovakia	59	 Chile	44
 India	75	 Hungary	58	 Jordan	43
 New Zealand	74	 Norway	58	 Saudi Arabia	43
 Slovenia	72	 North Macedonia	58	 France	43
 Sweden	71	 Israel	58	 Lithuania	43
 Spain	69	 Poland	58	 Germany	42
 Argentina	69	 Ukraine	57	 Switzerland	41
 Australia	68	 South Africa	57	 Bulgaria	38
 Finland	67	 China	56	 Austria	36
 Romania	67	 Korea	54	 Malta	36
 Mexico	66	 Turkey	53	 Cyprus	35
 Serbia	65	 United Arab Emirates	52	 Netherlands	31
 Italy	64	 Greece	52	 United Kingdom	29
 Czechia	63	 Luxembourg	52	 Denmark	25
 USA	62	 Belgium	48		

Figure 2 Source: MIPEx, 2020

A TCN who has been living in Malta for over 12 months may apply to have his or her family member join them in Malta, provided certain requirements are satisfied



3.1 Third-Country Nationals

3.1.1 Third-Country National who qualify for family reunification

A TCN who has been living in Malta for over 12 months may apply to have his or her family member join them in Malta, provided certain requirements are satisfied. Family members are defined as:

- a. The sponsor's spouse who shall be 21 years of age who is engaged in a monogamous marriage by law;
- b. The unmarried minor children of the sponsor and the spouse, including children adopted in a manner recognized by Maltese law;
- c. The unmarried minor children, including adopted children, of the sponsor or the spouse where one of the parents has custody and the children are dependent on that parent.

In order to be able to be eligible, the sponsor needs to provide evidence of the relationship with the family member/s.

Furthermore, they need to have accommodation regarded as normal for a comparable family in Malta as well as a sickness insurance. In order to determine whether or not the accommodation satisfies the “*normal for a comparable family in Malta*”³³, the sponsor must be guided by Government Notice No. 750³⁴ which is indicated as a reference point for the standards of appropriate accommodation required under the Status of Long-

33 Regulation 12(b) Family Reunification Regulations, S.L. 217.06, <https://legislation.mt/eli/sl/217.6/eng/pdf>.

34 Government Notice 750 of 2010 https://www.gov.mt/en/Government/DOI/Government%20Gazette/PA%20GN/Documents/2010/GG_23.7_b.pdf

The inclusion of adult family members marks a shift in policy



Term Residents (Third-Country Nationals) Regulations³⁵. Although neither the Regulations nor the application form³⁶ make reference to the Government Notice No. 750, these can be taken generally as the standards by which appropriate accommodation is measured.

Moreover, applicants are requested to prove stable and regular resources that are sufficient to maintain the sponsor and the members of the family without recourse

35 Status of Long-Term Residents (Third Country Nationals) Regulations, S.L. 217.05 <https://legislation.mt/eli/sl/217.5/eng/pdf>.

36 CEA Form G: <https://www.identitymalta.com/wp-content/uploads/2021/04/CEA-Form-G.pdf>; Checklist for Third-Country Nationals applying for family reunification to join their relatives in Malta: <https://www.identitymalta.com/wp-content/uploads/2019/10/Checklist-for-TCNs-applying-for-the-Family-Reunification-status.pdf>.

A More Favourable Approach?

MSs should transpose and apply these provisions with special attention to take into account the particular situation of refugees who have been forced to flee their country and prevented from leading a normal family life there.

Communication from the Commission to the European Parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification, COM/2014/0210



Furthermore, if the refugee is an unaccompanied minor, eligible family members are considered to be first-degree relatives in the direct ascending line or a legal guardian or any other member of the family

to the social assistance system in Malta which would be equivalent to, at least, the average wage in Malta with an addition of another 20% income or resources for each member of the family³⁷. This is blatantly in contrast with what the Directive and the Guidelines stipulate: that Member States should take into account the level of minimum national wages and that such should be seen as the upper limit of what Member States may require, as outlined above.

3.1.2 Policy on family members of third-country nationals who do not qualify for family reunification

In May 2021, Identity Malta issued a new framework which allows family members of third-country nationals who do not qualify for family reunification by means of the Regulations to join their sponsor in Malta³⁸. The policy recognises that it may be difficult for migrants to satisfy the criteria of the regulations, and therefore allow for a facilitated application process as long as the sponsor satisfies the criteria laid down in the policy. This policy only applies to TCNs who have been residing in Malta for over 12 months. It does not apply to EU citizens,

refugees or persons with subsidiary protection, persons with *Specific Residence Authorization* (SRA) or persons with other forms of international protection.

The term family member includes the spouse of the sponsor, the unmarried children of the sponsor and the spouse, or of either one of them if they have custody, and dependent adult family members. In relation to adult family members, the sponsor has to provide evidence that they are dependent on the family's household, mainly financial or physical dependency. The inclusion of adult family members marks a shift in policy and a more inclusive definition of family member. Residence permits issued to family members under this policy will not grant them the automatic right to work in Malta.

One of the most significant differences between the 2 reunification schemes is that under this policy, sufficient resources shall be calculated on the basis of the last published median wage in Malta as estimated by the National Statistics Office, with an addition of 20% for each family member. The median wage was estimated to be €15,354³⁹, which is substantially lower than the average monthly basic salary, which was calculated at €1,706 per

³⁷ Regulation 12 of the Family Reunification Regulations, op. cit.

³⁸ Policy on family members of third-country nationals who do not qualify for family reunification by means of the Family Reunification Regulations S.L. 217.06 <https://www.identitymalta.com/nonefamilypolicy/>.

³⁹ Ibid.

month in the first quarter of 2022⁴⁰ which would amount to a little over €20,000 per year.

It is unclear why a new policy was introduced as opposed to amending the main Regulations to make provision for the lowering of the income threshold, and to include adult family members in the definition of family member.

3.2 Refugees

Maltese legislation allows for family reunification for recognised refugees under the Regulations. However, different conditions apply to refugee sponsors depending on when the family was constituted and when the application is lodged. Refugees whose family existed at moment when they were granted protection and have applied for family reunification within 3 months from recognition are subject to the least stringent requirements and are not required to provide evidence for accommodation, sickness insurance, and stable and regular resources.

The 3-month time limit, which starts to run at a time when the knowledge of the host country's language and procedures may be relatively rudimentary, was found to be in line with EU law by the Court of Justice of the European Union. However, the Court did clarify that a rejection on the ground that the application was lodged more than 3 months after the granting of refugee status cannot apply to situations in which particular circumstances render the late submission of the initial application objectively excusable⁴¹.

40 National Statistics Office, Labour Force Survey, 104/2022, 14th June 2022 https://nso.gov.mt/en/News_Releases/Documents/2022/06/News2022_104.pdf.

41 CJEU, C-380/17, *K and B K and B v Staatssecretaris van Veiligheid en Justitie*, Judgment of 7 November 2018.

Refugees whose marriage post-dates their recognition must satisfy more onerous requirements in order to avail themselves of this right. Any refugees who do not apply within the 3 months from recognition or whose relationship post-date the granting of the status must satisfy a number of material conditions similar to those required by TCNs. They would need to provide evidence of suitable accommodation which is regarded as normal for a comparable family in Malta, sickness insurance and a confirmation of stable and regular resources which have not been obtained by virtue of recourse to the social assistance of Malta⁴². The resources are deemed to be sufficient if they are equivalent to the national minimum wage in Malta. The requirement that the sponsor would need to have lived in Malta for 2 years prior to application does not apply to refugee sponsors.

Furthermore, if the refugee is an unaccompanied minor, eligible family members are considered to be first-degree relatives in the direct ascending line or a legal guardian or any other member of the family, where the minor has no relatives in the direct ascending line or such relatives cannot be traced⁴³.

A number of issues as to the practical application of the Regulations have been noted⁴⁴, namely:

1. Often times the International Protection Agency splits family applicants during the asylum procedure and therefore it is common that families are not granted a uniform protection status. Thus, there could be a family unit consisting of individuals whose applications have been rejected and others that have protection. The former would be considered as

42 Regulation 27 of the Family Reunification Regulations, op. cit.

43 Regulation 24 of the Family Reunification Regulations, op. cit.

44 ECRE, aditus foundation, *Asylum Information Database, Country Report: Malta*, 2021 <accessed 8 June 2022>.

Allow for the processing of applications for family reunification in those instances where a family unit has different residence statuses in Malta



Rights Of Family Members Under Temporary Protection Directive

The Temporary Protection Directive was triggered for the first time by the Council in response to the Russian invasion of Ukraine on 24 February 2022 to offer assistance to people fleeing the war in Ukraine. The Decision to trigger the Directive also applies to the family members of Ukrainian nationals and of stateless persons or persons with international or national protection residing in Ukraine before 24 February 2022. Such family members must have already been present and residing in Ukraine before the aforementioned date.

Family members refers to spouse or partners in a stable relationship, minor unmarried children and dependent close family members. Such family members must be granted Temporary Protection in accordance with the Directive, and are entitled to:

- residence permits;
- access to the labour market and accommodation;
- social and welfare assistance;
- medical care (including, as a minimum essential emergency care and essential treatment of illness); and
- access to education for children and teenagers.

Council Implementing Decision 2022/382 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection

irregular migrants by Identity Malta and therefore would be unable to process the application without clearance from the Principal Immigration Officer.

2. The procedure is a long one and applicants have been reported waiting for over 2 years for a decision on an application. Furthermore, it has also been reported that Identity Malta has requested applicants to reapply after several months or years due to missing documentation. This long waiting time has been found to have an adverse effect on marital and familial relationships⁴⁵.

3.3 Persons with Subsidiary Protection

Maltese law excludes persons with subsidiary protection status from being eligible to apply for family reunification under the Regulations. Malta is one of the few Member States to have excluded this group from the application of the Regulations. The majority of Member States not only allow for beneficiaries of subsidiary protection to apply for family reunification, but also allow for eligibility under the same conditions as refugees⁴⁶. Some Member States provide for family reunification with beneficiaries of subsidiary protection at the earliest 3 years, in Austria, or 2 years, in Latvia, from the date of obtaining subsidiary status, while Germany implemented a monthly quota of 1000 family members⁴⁷.

45 JRS Malta, aditus foundation and Integra Foundation, On Being Moved – Refugee Perspectives on Being Moved to Malta, 2018 https://aditus.org.mt/Publications/onbeingmoved_2019.pdf

46 European Commission, Report from the Commission to the European Parliament and the Council on the implementation of Directive 2003/86/EC on the right to family reunification, op.cit. These countries are Belgium, Bulgaria, Estonia, Greece, Spain, France, Croatia, Hungary, Italy, Latvia, Lithuania, Netherlands, Slovenia and Slovakia.

47 Ibid.

It should be noted that the Commission's Guidance on the application of the right to family reunification stressed that the Directive should not be interpreted as obliging Member States to deny beneficiaries of temporary or subsidiary protection the right to family reunification. The guidance also encouraged Member States to adopt rules that grant to those categories of people family reunification rights that are similar to the rights of refugees⁴⁸.

Local NGOs have criticised the absolute ban on family reunification for beneficiaries of subsidiary protection as been unclear in scope and aim, whilst also being questionable under human rights law⁴⁹. In particular, it has been pointed out that this ban may breach Article 8 of the ECHR in that it interferes with the enjoyment of family life and in addition, that such a difference in treatment based merely on legal status may constitute discrimination in terms of Article 14 of the ECHR.

Concern was also shown by the Council of Europe Commissioner for Human Rights who raised the issue with the Maltese government and highlighted that the law *"clearly disadvantage persons with subsidiary protection may be ill-founded and discriminatory"*⁵⁰. The Commissioner urged Malta to *"put an end to this form of unfair distinction and establish family reunification procedures able to guarantee flexibility, promptness and effectiveness in order*

to secure all international protection holders' right to respect for family life under Article 8 of the European Convention on Human Rights".

3.4 Autonomous Residence Permits

After a period of 5 years residence in Malta, the spouse or the child who has reached majority shall be entitled, upon application, to an autonomous residence permit under the Regulations. In the case of breakdown of marriage, the granting of the permit can be limited to the spouse.

Furthermore, autonomous residence permits in the event of particularly difficult circumstances may be issued by Identity Malta. In this regard, in the event of the death of the sponsor an autonomous residence permit will be issued to the widow/widower, to the minor child and to the child who has reached the age of majority⁵¹.

An autonomous residence permit may also be issued to a person who is subsequently found to be in particularly difficult circumstances following a breakdown of the marriage and other similar difficult circumstances, such as domestic violence against spouses and children, forced marriages and the forced return by the sponsor of family members to the country of origin⁵². This provision was introduced further to the ratification of the Istanbul Convention into Maltese Law which urges states to ensure that victims of domestic violence whose residence status depends on that of the spouse or partner are granted autonomous residence permit⁵³.

48 European Commission, Communication from the Commission to the European Parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification, op.cit.

49 JRS Malta, aditus foundation and Integra Foundation, *Family Unity: A Fundamental Right, A Project Integrated 2018 Policy Paper On The Right To Family Reunification For Beneficiaries Of Subsidiary Protection*, 2018.

50 Council of Europe Commissioner for Human Rights, Letter to the Minister for Home Affairs, National Security and Law Enforcement of Malta, CommHR/NM/sf 043-2017, 14 December 2017, <http://bit.ly/2o5Bwr6>.

51 Regulation 17(1) of the Family Reunification Regulations, op. cit.

52 Regulation 17(2) of the Family Reunification Regulations, op. cit.

53 Article 59 Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention), 11 May 2011.

4. Recommendations

4.1 General Application of the Family Reunification

Directive for all Sponsors

- Expand the definition of what constitutes the “family” to comprise partners, including long-term same-sex couples that are not married or in a civil union, and to include dependant adult family members.
- Lower the minimum required age of the applicant spouse from 21 to 18 to reflect Malta’s legal marriageable age without parental consent.
- Streamline the two existing family reunification procedures to have one set of rules regulating family reunification in line with the Directive.
- Include specific provisions relating to the integration of family members in government’s integration strategy.
- Increase capacity of Identity Malta to process applications for family reunification in order to reduce waiting times.

4.2 Financial Requirements

- Set the stable and regular resources requirement to reflect the European Commission Guidelines by making reference the level of minimum national wages, not average or median wage in Malta.
- In order to take into account female migrants, remove or substantially decrease the amount of the additional 20% income per family member.

4.3 Rights of Family Members

- Adopt a system whereby after 5 years dependant family members are automatically granted autonomous resident permits.
- Amend the Regulation to allow for family members to access employment immediately upon arrival and without the need for a labour market test.
- Grant family members access to healthcare, social assistance and social benefits on the same level as the sponsoring TCN.

4.4. Beneficiaries of International Protection

- Review the existing legislative framework to include the right of beneficiaries of subsidiary protection to be reunited with their family families in Malta.
- Grant access to the right for family reunification to persons with subsidiary protection under the same conditions as refugees, or, as a minimum, under the same conditions as refugees who married post recognition.
- Increase the 3-month time limit within which refugees must apply for family reunification in order to be exempt from the material conditions requirements.
- Allow for the processing of applications for family reunification in those instances where a family unit has different residence statuses in Malta, including those irregular migrants who are family members of refugees.

Grant access to the right for family reunification to persons with subsidiary protection under the same conditions as refugees



Bibliography

Books, Articles, Reports

- aditus foundation, *Malta Integration Network: a way forward for a National Integration Policy in Malta*, 2014
- aditus foundation, *Malta Integration Network II: Policy Indicators for Migrant Integration*, 2015
- aditus et., *NGO Submissions to the Public Consultation on National Migrant Integration Strategy 201 – 2020*, 2015
- Council of Europe Commissioner for Human Rights, *Realising the right to family reunification of refugees in Europe*, 2017
- Council of Europe Commissioner for Human Rights, *Letter to the Minister for Home Affairs, National Security and Law Enforcement of Malta*, CommHR/NM/sf 043-2017, 14 December 2017
- ECRE, aditus foundation, *Asylum Information Database, Country Report: Malta*, 2021
- EMN, *Family Reunification of Third-Country Nationals in the EU plus Norway: National Report*, 2017
- European Commission, *Communication from the Commission to the European Parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification*, 2014
- European Commission, *Report from the Commission to the European Parliament and the Council on the implementation of Directive 2003/86/EC on the right to family reunification*, 2019
- European Migration Network, *Family Reunification of Third-Country Nationals in the EU plus Norway: National Report*, 2017
- International Organisation for Migration, D. Zammit, *Final Report- Consultative assessment of Integration of Third Country Nationals*, 2012
- JRS Malta, aditus foundation and Integra Foundation, *Family Unity: A Fundamental Right, A Project Integrated 2018 Policy Paper On The Right To Family Reunification For Beneficiaries Of Subsidiary Protection*, 2018
- JRS Malta, aditus foundation and Integra Foundation, *On Being Moved – Refugee Perspectives on Being Moved to Malta*, 2018
- MPG, CIDOB, *Migrant Integration Policy Index*, 2020
- OECD, *Making Integration Work: Family Migrants*, OECD Publishing, 2017
- UN Committee on the Rights of the Child (CRC), *General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, 1 September 2005, CRC/GC/2005/6.
- UNHCR, *Summary Conclusions on the Right to Family Life and Family Unity in the Context of Family Reunification of Refugees and Other Persons In Need Of International Protection*, 2017
- UNHCR, *Note on family reunification*, 1981
- UNHCR, *Guidelines on reunification of refugee families*, 1983
- UNCHR, *Background Note on family reunification in the context of resettlement and integration*, 2001

Policy Documents

Identity Malta, *Checklist for Third-Country Nationals applying for family reunification to join their relatives in Malta*

Identity Malta, *Policy on family members of third-country nationals who do not qualify for family reunification by means of the Family Reunification Regulations, S.L. 217.06, May 2021*

Ministry for Home Affairs and National Security, *Strategy for the Reception of Asylum Seekers and Irregular Migrants*, 2016

Ministry for Social Dialogue, *Consumer Affairs and Civil Liberties, Mind D Gap: Towards a National Migrant Integration Strategy*, 2015

Legislation

International Law

Convention on the Rights of the Child

Convention on Preventing and Combating Violence Against Women and Domestic Violence

European Convention of Human Rights

European Social Charter

International Convention on Civil and Political Rights

European Union Law

Charter of Fundamental Rights of the European Union.

Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification

Maltese Law

Constitution of Malta, 1964

International Protection Act, CAP 420 of the Laws of Malta

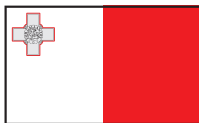
Family Reunification Regulations, S.L. 217.06



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Asylum, Migration and Integration Fund 2014-2020

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