

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.

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Objectives

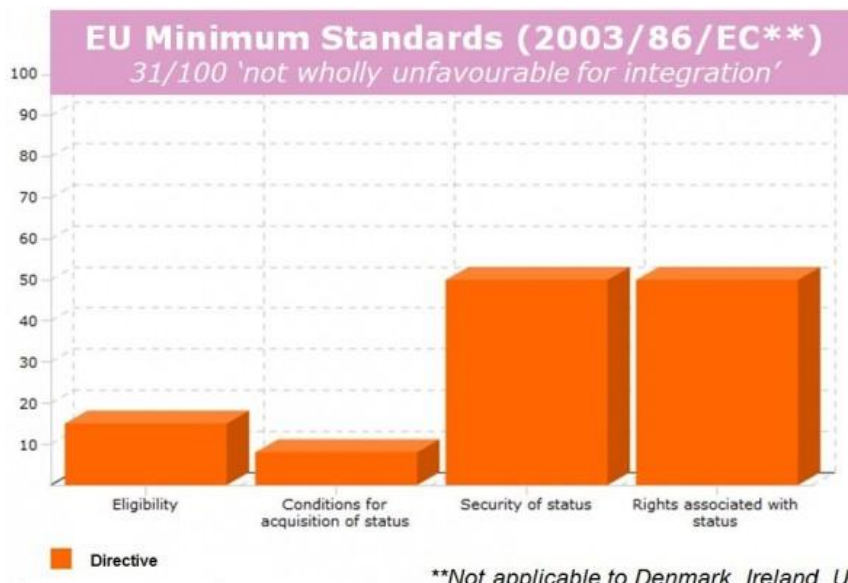
"Family reunification is a necessary way of making family life possible. It helps to create sociocultural stability facilitating the integration of third country nationals in the Member State, which also serves to promote economic and social cohesion, a fundamental Community objective stated in the Treaty."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

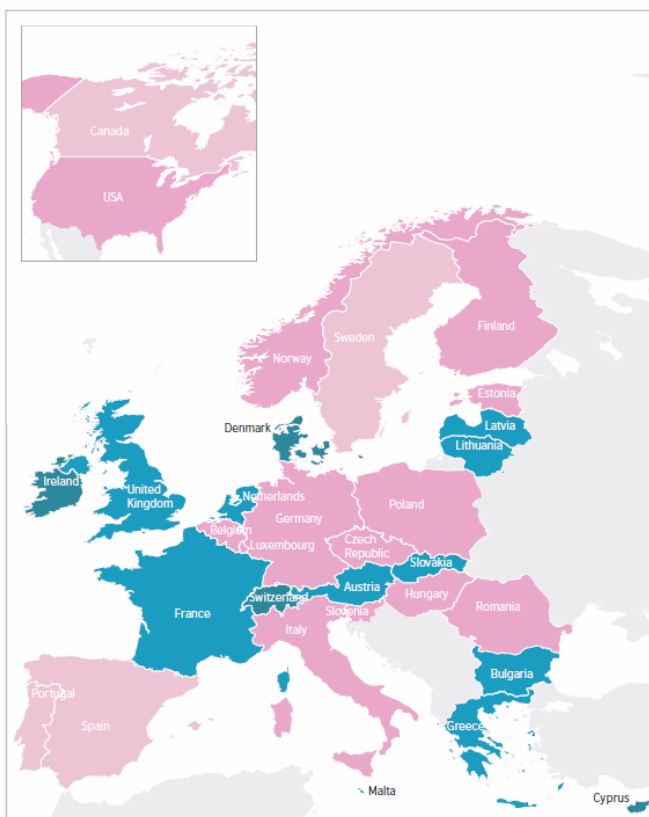
National family reunion policies across the EU are more harmonised and more favourable for integration where the Directive uses 'shall' clauses.^{iv} MIPEX finds that basic residence security and socio-economic rights are now granted to reunited families in most concerned EU countries. These EU strengths 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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^{xxv} The final words of Odysseus Network's synthesis report on the transposition of Directive 2003/86 are as follows: "Denmark's situation regarding the directive provisions is without doubt the most complex among the Member States not bound by the text and goes further than this Member State's traditional hedging regarding Title IV of the Community Treaty...On questions absolutely essential studied along the report, the divergence between the choices made in Danish law and the content of directive 2003 /86 is obvious...[From] the spouse's minimal age to the conditions of duration required from the sponsor (up to ten years), everything in the solutions adopted by the Member State [corrected] diverge[s] from the grounds on which the directive was elaborated, as illustrated by the importance of the discretionary power recognised to Danish authorities."

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>The Member States may, by law or regulation, authorise the entry and residence [of]:</i> <i>Sponsor residence period</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>Member State concerned may require...evidence that the sponsor has:</i> <i>Housing</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></p> <p>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