Summary

Family Reunification: A Barrier or Facilitator of Integration? A Comparative Study

Tineke Strik, Betty de Hart, Ellen Nissen
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Authors of the national reports:
Austria: Albert Kraler, Christina Hollomey, Christoph Huric, Alexandra König, Gerhard Muzak

Germany: Christin Klindworth, Katrin Triebl

Ireland: Hilkkka Becker, Catherine Cosgrave, Melanie Labor

Netherlands: Tineke Strik, Betty de Hart, Henrike Pankratz

Portugal: Catarina Reis Oliveira, João Cancela, Vera Fonseca

United Kingdom: Eleanor Sibley, Emma Fenelon, Nuala Mole

**European Commission**
DG HOME AFFAIRS - Unit B1: Immigration and Integration
Rue du Luxembourg 46 - LX46 02/178 - B-1049 Brussels/Belgium
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1. Introduction

The report ‘Family Reunification: a barrier or facilitator of integration?’, of which this is a summary, is the result of a research project initiated and coordinated by the Immigrant Council of Ireland. The project was funded under the Integration Fund Community Actions Programme (IFCAP). In the context of the project, six national research teams conducted research on the national legislation and policies, with regard to family reunification\(^1\), and studied the effects thereof on the ability of third country nationals\(^2\) to live with their family members in the EU Member States and to integrate into the receiving societies. The Member States involved were Austria, Germany, Ireland, the Netherlands, Portugal and the United Kingdom.

This study considers three separate categories of third country national family migrants, each distinguished by the status of the sponsor\(^3\) residing in the Member State: (i) third country nationals; (ii) Union citizens; and (iii) own nationals. Union citizens enjoy the strongest right to family reunification, derived from the Union Citizens Directive; in the majority of Member States, third country nationals rely on the Family Reunification Directive and, therefore, on all principles of Union law, whereas own nationals (and third country nationals resident in Ireland or the UK) are only able to invoke national legislation. Amongst third country nationals, Turkish nationals (Association Agreement with Turkey) and highly skilled workers (Blue Card Directive) enjoy more privileged rights. Additionally, in the majority of Member States, refugees can invoke the more favourable rules on family reunification through the Family Reunification Directive and the Refugee Convention. Given the wide range of differing requirements for family reunification across the countries participating in this study, the project partners decided to focus on, and thus limit the comparison to, the four main types of requirements: income, integration, age and housing.\(^4\)

1.1 Research Methodology

This study adopted a mixed method approach. Data was drawn from four main sources. Firstly, desk research included a review of existing literature, national and European case law, parliamentary documents and commentaries on national legislation. Secondly, quantitative data was analysed, with particular attention paid to official

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1 The term ‘family reunification’ covers situations in which family life is established at a time when the sponsor has already acquired legal residence in the Member State (family formation), as well as situations whereby family life pre-existed before the sponsor was granted residence rights in the Member State (family reunification).
2 The term, ‘third country nationals’, applies to nationals from a country not belonging to the EU or EEA.
3 The term ‘sponsor’ in this report refers to a resident in one of the Member States who wishes to live with his or her third country national family member(s) in that Member State.
4 Since the housing requirement proved to be no hindrance in practice in any of the countries under study, we have omitted this requirement from the summary.
immigration statistics and integration test pass rates. Thirdly, primary qualitative research was based on interviews with: (i) individuals who were subject to family reunification legislation and policies, (ii) lawyers and representatives of NGOs who worked with these individuals; and (iii) policy makers who were responsible for developing/implementing family reunification policies. In total, throughout the six Member States, 95 interviews were conducted with individuals, 47 with lawyers and NGOs and 17 with policy makers. The information in the national reports is current as of mid-December 2012.
2. Legislation on Family Reunification

2.1 Regular TCNs

Personal scope
In all Member States, the right to family reunification concentrates on the ‘nuclear family’: spouses and minor children. Both Austria and the Netherlands maintain a minimum age requirement for spouses of 21 years. While Germany and the UK require a spouse to be 18 years of age, Ireland and Portugal have no such requirement. Neither civil nor unmarried partners are granted family reunification rights in Austria and Germany. Ireland, the Netherlands, Portugal and the UK do allow for family reunification of registered partners and unmarried couples who are able to prove they are in a subsisting relationship. Ireland requires that a couple should have lived together for four years before allowing family reunification. All states covered by this research, except for Portugal, require that the minor child is not married and has not formed an independent family unit. In addition, the UK and Ireland demand that the child is dependent on the sponsor. Where there is still a parent abroad who also has custody over the child, all Member States except Germany admit these children if the other parent has explicitly given his or her consent. Germany imposes extra (integration) conditions on children from age 16-18 who want to reunite with their parents already residing in Germany.

Adult children and parents are generally only allowed to reunite with their TCN parents or child where there are exceptional circumstances. Portugal is the exception to this rule, as it only requires a dependent relationship.

Eligibility of sponsor for family reunification
In most Member States, the right to family reunification of a TCN hinges on the sponsor’s prospect of settlement in the host country (see table 2.1). Austrian immigration policy is unique in that a quota regulation is in place. There is a limit on the number of third country national family members to whom a residence permit can be issued each year. In 2012, the quota was set at 4,660 residence permits. When the quota is exhausted, the applications are prioritised for the following year’s decisions. The maximum waiting time between the filing of the application and the decision is three years. Germany is the only country that distinguishes between family reunification and family formation (see table 2.1).

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5 Unless the partners are same sex.
6 The provision that grants an unmarried partner a right to family reunification was abolished on 1 October 2012. At the time of writing this report, the new Cabinet Rutte II had announced that it would reinstate this provision.
7 Austria is the only Member State bound by the Family Reunification Directive that is allowed to maintain a three-year time limit, due to the standstill clause included in Article 8 (2).
8 According to the CJEU, such a distinction contradicts the Family Reunification Directive. See: Chakroun [2010] CJEU C-578/08 (04 March 2010)
<table>
<thead>
<tr>
<th>States</th>
<th>Age-limit spouses</th>
<th>Pre-entry test $^9$</th>
<th>Income requirement (monthly)</th>
<th>Median Equivalent net income $^{10}$ per country (2011)</th>
<th>Appropriate accommodation</th>
<th>Period of legal residence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>21</td>
<td>Yes</td>
<td>1473, 12 euros (net) (plus regular expenses $^{11}$)</td>
<td>1777 euros</td>
<td>Yes, must meet local standards</td>
<td>No. However, quota for TCN family members. $^{12}$</td>
</tr>
<tr>
<td>Germany</td>
<td>18</td>
<td>Yes</td>
<td>1213 euros (net) (plus rent) (Level of subsistence income for the unemployed)</td>
<td>1693 euros</td>
<td>Yes</td>
<td>No. Unless family formation: two years of prior legal residence required.</td>
</tr>
<tr>
<td>Ireland</td>
<td>No</td>
<td>No</td>
<td>2608,67 euros (net) (Income level of the ‘Family Income Supplement Scheme’)</td>
<td>1657 euros</td>
<td>No</td>
<td>No, however, one year of prior employment is required for holders of a work permit.</td>
</tr>
<tr>
<td>Netherlands</td>
<td>21</td>
<td>Yes</td>
<td>1572,70 euros (gross) (100% of minimum wage)</td>
<td>1693 euros</td>
<td>No</td>
<td>YES, one year.</td>
</tr>
</tbody>
</table>

$^9$ See Table 2 for more information on all the integration requirements.


$^{11}$ E.g. rent, loan payments or alimonies. A lump sum of maximal EUR 260.35 can be deducted from the rent costs.

$^{12}$ The quota rule implies that every year, the federal state defines a maximum number of TCN family members, to be admitted. If this quota is exhausted, the family reunification application is prioritised for the next year. The maximum waiting period between application and decision is three years.

$^{13}$ The income level required depends on the age of the child: € 219 (0-5 years) € 251 (6-13 years) and € 287 (14-17 years). For the purpose of this calculation the middle category was used.
In principle, the sponsor and the family have to comply with the admission criteria, not only pre-entry but also with each renewal of a temporary permit, as long as the residence right of the family members is linked to the sponsor. In most cases, this means that the regular requirements for family reunification have to be met during at least the first five years after arrival. In some Member States spouses are entitled to an independent residence permit after a fixed period of time: in Portugal after two years, Germany after three years and the Netherlands after five years. In Austria, a spouse is entitled to it as soon as he or she meets the requirements independently. In all countries the permit is usually also granted in cases of death of the sponsor or domestic violence.

**Income**

Having stable and/or regular financial resources which meet a certain standard is imperative in all countries in order to serve as a sponsor for family members. The required income levels always vary according to the composition of the family; both the number of family members and the features (i.e. the age of the children) of the individual family members can influence the exact required amount. Of the six Member States under study, the Netherlands is the only country in which the required level of income does not depend on the number of children; the only distinction made is between single parents and a couple.

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14 In Portugal, employers are obliged to pay the annual salary within 14 months. The annual salary was converted to 12 months in this table. The required income level is lowered where the sponsor is involuntarily unemployed, to 50% of the minimum plus 30% of the minimum wage per each relative.

15 The income level was converted from pounds into euros (exchange rate 23 January 2012).

16 This is the case in Germany. See Table 2.1.
Table 2. Integration Conditions

<table>
<thead>
<tr>
<th>Pre-entry test</th>
<th>Post-entry test as a condition for the renewal of a temporary residence permit</th>
<th>Permanent Residence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes/No</td>
<td>Are minor children exempted?</td>
<td>Level(^{17})/skills (speaking, listening, reading, writing)</td>
</tr>
<tr>
<td>Austria</td>
<td>Yes</td>
<td>Only exempted until the age of fourteen</td>
</tr>
<tr>
<td>Germany</td>
<td>Yes</td>
<td>Minors between the ages 16-18 must show C1 level or positive integration prospects(^{18})</td>
</tr>
</tbody>
</table>

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\(^{17}\) According to the Council of Europe ‘Common European Framework of Reference for Languages: Learning, Teaching, Assessment’ (CEFR). This is a reference tool, which is widely used for the assessment of language proficiency. It has a sliding scale of proficiency at a number of levels arranged in three bands: A1 and A2: basic speaker; B1 and B2: independent speaker; C1 and C2: proficient speaker.

\(^{18}\) Only if they were not admitted together with their parents.

\(^{19}\) After admission, family members are usually also obligated to participate in an integration course if they are not able to communicate in the German language in an at least simple manner. If participation was ordered by the foreigners authority, only temporary residence titles are granted until sufficient language skills have been verified.
<table>
<thead>
<tr>
<th>Country</th>
<th>Entry</th>
<th>Minor Exemption</th>
<th>Minimum Level</th>
<th>Additional Requirements</th>
<th>Language Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ireland</td>
<td>No</td>
<td>n/a</td>
<td>n/a</td>
<td>No</td>
<td>n/a</td>
</tr>
<tr>
<td>Netherlands</td>
<td>Yes</td>
<td>All minors exempted</td>
<td>A1, no writing skills at A1 level required</td>
<td>Yes, ‘Knowledge of Dutch society’</td>
<td>Positive result post-entry test required</td>
</tr>
<tr>
<td>Portugal</td>
<td>No</td>
<td>n/a</td>
<td>n/a</td>
<td>No</td>
<td>n/a</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>Yes</td>
<td>All minors exempted</td>
<td>A1, only speaking and listening skills required at A1 level</td>
<td>No</td>
<td>All minors exempted</td>
</tr>
</tbody>
</table>
**Integration**

Ireland and Portugal, unlike the other countries covered by this study, do not oblige family members to pass a pre-entry test before they enter the country for the purpose of family reunification. After admission (but before applying for a permanent residence permit), admitted family members are subject to integration requirements in Austria, Germany and the Netherlands, unless they can prove a sufficient level of the language or are unable to do so for medical reasons. In Austria and the Netherlands, those who are subject to the integration requirements can be confronted with the withdrawal or non-renewal of their temporary residence permit if they fail to pass the required integration test.

### 2.2 Refugees

As previously mentioned, family reunification requirements often do not need to be met by refugees.\(^{20}\) In all the countries covered by this research, spouses, (same sex) civil partners and (unmarried) minor children derive residence entitlements from the refugee permit granted to the sponsor where the family bond existed prior to the moment the sponsor arrived in the Member State. The Netherlands additionally requires that the family members lived together in the country of origin at the moment the sponsor fled the country. If these criteria are not fulfilled, the regular requirements have to be met.\(^ {21}\)

In Germany and the Netherlands, spouses and minor children of refugees receive a derivative right of residence if the application for family reunification is filed within three months after the refugee status was granted and there is also no possibility of enjoying family life in a third country to which the applicants have close ties. If the application was filed after three months, additional requirements will have to be met.

In Austria, a reversal policy is applied towards subsidiary protected: they have to wait one year before their family member can apply for family reunification.

### 2.3 Privileged Groups

**Turkish workers**

The effects of the CJEU judgments on the standstill clauses of the Association Treaty between the European Community and Turkey, vary among the Member States. Germany does not exempt Turkish nationals from any requirements. In the Netherlands, the pre-entry test is not applicable and the fees are significantly lower for Turkish

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\(^{20}\) Portugal does not impose any housing, income or integration conditions on family members of refugees, regardless of whether the family bond existed before the refugee left his or her home country.

\(^{21}\) As a result of this, refugees who have formed a family outside their country of origin, e.g. during their stay in a refugee camp, do not enjoy the more favourable right to family reunification as established in the Family Reunification Directive. Own children who have lived with another family or who have been missing for a long time can, in principle, only be reunited if the refugee meets the regular requirements, such as income.
nationals than for other third country nationals. In Austria, two different situations can be distinguished: the family reunification of a TCN (including Turkish nationals) sponsor with Turkish national family members, and the family reunification of an Austrian national sponsor with a Turkish national family member. Both groups are exempted from the pre-entry test and the integration requirements after admission (unless the Turkish national is applying for permanent residence). There is also no minimum age requirement for spouses in place.

Highly skilled workers

The position of highly skilled workers and their rights to family reunification are regulated by Directive 2009/50/EC (the so-called Blue Card Directive). The directive does not allow Member States to impose pre-entry tests or waiting periods for family reunification. Most Member States are more generous towards these ‘wanted migrants’ than strictly required by this directive. Germany for instance exempts them from the age limit it imposes on spouses of other TCNs. Austria does not apply the quota rules.

Ireland and the UK, who are not bound by the Blue Card Directive, nevertheless offer preferential treatment to highly skilled workers. Family members (i.e. spouse and dependants) may accompany a Green Card holder or a scientific researcher on admission into Ireland. The UK exempts the spouses from the pre-entry test, and grants them a right to work.

2.4 Family Members of Union Citizens

The Union Citizens Directive (2004/38/EC) allows spouses, registered partners, couples who can attest to their durable relationship and children up to the age of 21 to join a Union citizen who has exercised his or her mobility rights. The directive also grants rights to members of the extended family if they are dependent on the Union citizen. Workers and self-employed persons may be automatically joined by their family members. Union citizens who are unemployed must provide evidence of sufficient resources and health insurance. Under the directive, EU citizens are exempted from having to fulfil any housing or integration conditions.

2.5 Family Members of Own Nationals

While Portuguese nationals have very strong family reunification rights as their position is equal to Union citizens, Dutch nationals are treated in the same manner as TCNs and, therefore, have to fulfil many more conditions before they can enjoy family life with their family members in the Netherlands. Although the situation is a bit less straightforward in the other Member States, the framework of reference is formed by the position of regular TCNs. In Austria, own nationals are privileged compared to TCNs in three ways: they are exempted from the quota for family reunification and they may file an inland application for family reunification and await the
outcome as long as they reside lawfully in Austria. They are furthermore, allowed to reunite with members of the extended family.

In Germany, own nationals are exempted from complying with the housing condition. Furthermore, the income requirement is generally waived for the nuclear family. In theory however, the income requirement might apply if both spouses have more links with the country of origin of the spouse, for example, if the German national has dual nationality, speaks the language and/or has lived in that country as well. Lastly, the special integration conditions for 16- and 17-year-old minors do not apply. Family members of German nationals can obtain a permanent residence permit after three years of residence, in contrast to TCN family members who have to wait at least five years.

In Ireland, the four-year cohabitation requirement that is in place for unmarried TCN partners in order to prove the family bond is reduced to two years. In the UK, the only difference between own nationals and TCNs regarding family reunification is the way Article 8 ECHR is applied in individual cases.
3. Application of the Procedure

3.1 Admission Procedures

In most of the Member States in the study, the emphasis of migration control has shifted from the desks in the host country and at the national borders to diplomatic representations in the countries of origin. Due to this development, applying for family reunification abroad has become more and more the starting point, and the decision has to be awaited in their country of origin or of permanent residence. This obligatory (long-term) visa requirement has led to a growing role for the Ministry of Foreign Affairs. Article 13 (1) of the Family Reunification Directive obliges Member States to authorize the entry of the family members, inter alia, by facilitating obtainment of the visa as soon as the application has been accepted. This implies that the visa is to be issued after the positive decision has been taken by the Ministry of Interior. In practice, however, consulates sometimes take part in the decision making, for instance by verifying documents and the identity of applicants or checking on counter-indications on national security grounds. The involvement of the Ministry of Foreign Affairs in family reunification especially leads to problems in Austria, Germany and Portugal. Applicants experience obstacles because of inconsistencies in the decision making, lack of transparency and in any case delays in the application procedure. Although the Austrian legislation mentions a time limit of six months, the involvement of the two agencies (abroad and inland) can lead to considerable delays as the time limit doesn’t include the period during which the application is processed at the embassies. The waiting period abroad specifically leads to problems for family members of refugees. In Portugal, one of the reasons for installing liaison officers at consulates in certain countries of origin was to speed up the processing of the visa applications. This decision, taken in 2006, has not prevented that, still in 2010, the large majority of complaints lodged by TCNs to the Ombudsman dealt with the delays in family reunification procedures.

Lengthy procedures are not necessarily the result of the additional visa procedure. In Ireland, a delay in decision making is one of the main reasons for litigation. In a judgment on this issue, the court referred to the website of the Irish Naturalisation and Immigration Service (INIS), which informed applicants that the average time for processing family reunification applications is 24 months (visited in January 2008). Both in Ireland and Austria, long procedures can imply that children lose their eligibility for reunification if they have come of age in the meantime. If no diplomatic representation is available, family members have to travel to neighbouring countries in order to lodge the application personally. The smaller the Member State, the more often applicants face this problem. The Austrian report mentioned this as an obstacle in general, but the German and Dutch reports point out the problems

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22 In Austria, family members of refugees also have to apply for a visa before being able to apply for family reunification in the country. They are therefore forced to await the issuance of an entry visa abroad, which in practice takes a long time.

occurring in war regions. Family members have to travel long distances through un-
safe areas, and even several times if passing a pre-entry test is required. This also ap-
plies to family members of refugees, if they have been granted a regular residence
permit (e.g. in case of a regularisation or specific humanitarian circumstances).

In Austria, Germany, the Netherlands and Portugal, a specific procedure has
been defined in order to detect a fraudulent marriage. They have in common that the
measures specifically target bi-national couples. They use similar indicative criteria,
such as the absence of a common language, a large difference in age or an unusual
combination of nationalities. In Germany, half of the respondents were subjected to
special assessments aiming to detect fraud. In all four Member States, the methods
led to a significant delay in the decision making. The Netherlands also subjects many
family members of refugees, including small children, to intensive interviews in order
to establish their identity and the existence of an effective family bond.

3.2 Right to Appeal and Legal Aid

The national studies that have been conducted make clear that appealing against the
denial of a review is for a number of reasons not an attractive strategy. First, follow-
ing an appeal procedure takes a lot of time. Second, a review of the decision by the
court is hard to predict (in Ireland because of the lack of statutory entitlements to
family reunification) or rather unlikely (in Austria or the Netherlands due to the mar-
gin of appreciation it leaves to the immigration authorities). Third, the procedure
could amount to a high financial burden; although legal representation is not always
required, NGOs consider family reunification legislation as too complex to bring for-
ward all legal arguments without professional support.

According to the Austrian rapporteurs, family members not only need a lawyer
for their admission procedure, but increasingly also to have their residence rights
safeguarded after admission because of the growing number of conditions. The UK
report is alarming on the shortage of legal aid in future, due to recent cuts in this spe-
cific area. Furthermore, due to changes to the Immigration Rules in 2012, all immi-
gration matters will be removed from the scope of legal aid, with the exception of
asylum and detention.
4. The Development of National Policies

In our study, we looked at the development of national family reunification policies in the last decade, since 2000. We have found three main arguments that governments use as a justification for their family reunification policies: integration, economy-related arguments and fraud.

According to the Council and the Commission, family reunification helps to create socio-cultural stability facilitating the integration of TCNs into the Member State. While the idea of family reunification as a vehicle to further integration is, thus, broadly supported by the EU institutions, Member States do not always seem to support this view. In Austria, family reunification is seen as uncontrollable and more and more as hindering integration, and the same goes for Germany and the United Kingdom. The Netherlands seems to have been most explicit in this respect. In its reaction to the EC Green Paper on family reunification, the Dutch problematized family reunification in connection to integration, stating that through family reunification, backward positions were transmitted onto the next generations.

Several arguments can be understood to be economy-related: the intent to bring net immigration down (United Kingdom), to prevent migrants from entering the social welfare system (Austria, Germany, Netherlands), or limit the burden on the taxpayer (United Kingdom). However, economy-related arguments may also result in liberal policy measures. This is demonstrated by Portugal, which lowered the income requirement in 2009 as a response to the economic crisis, in order to not deter the right to family reunification.

In all countries under consideration, fraud was an important issue in political debates. Three types of fraud-related concerns can be discerned. Firstly, fraudulent marriages. Secondly, a perception of parent-child relationships as possibly being fraudulent (e.g. ‘anchor’ children). Thirdly, a perception of the so-called ‘Europe route’ as fraud.\(^2\)

4.1 Income Requirement

Both integration and economic arguments have been used when income requirements were introduced. In Austria, the Netherlands and the UK the economic autonomy, e.g., the ‘own responsibility’ of the sponsor, was emphasized. In Austria and the UK, arguments for reducing the burden on the state and the taxpayer were put forward. In the Netherlands, when the level was raised in 2004, integration was used as an argument, referring to the lack of integration of non-western migrants and especially female sponsors, it was argued that the labour market position of female migrants could be improved by requiring a higher income level.

\(^2\) This refers to the notion that nationals with a TCN partner circumvent restrictive national immigration policies by moving to another Member State, even if only formally or temporarily, so that the more liberal European free movement policy of the Union Citizens Directive applies upon return to the national state.
4.2 Pre-entry Test

The introduction of the pre-entry test was defended with the argument of integration, but other, economy-related arguments played a role as well. In all countries that introduced the test (Muslim) migrant women were mentioned as a specific target group. The promotion of the integration and emancipation of women was put forward as an important goal. They were often regarded as dependent and vulnerable to oppression, isolation, forced marriages and domestic violence. Again, the autonomy and own responsibility of the migrant was stressed by countries. Migrants needed to be made economically active, and prevented from becoming a burden on the state. Some additional arguments were made, for example, in Austria it was put forward that family migration needed to be restricted. In Germany a further argument was that the pre-entry test was to prevent forced marriages. The German government expected a deterrent effect of the pre-entry test, as an educated partner, who would be uncontrollable for the sponsor and family-in-law, would be unattractive for these migrants (Strik 2011: 163). In the United Kingdom, ideas to introduce pre-entry tests were developed against the background of the race riots in 2001, linking social cohesion to language and knowledge of society. In the Netherlands, the government formulated the aim of selecting those who were motivated to integrate. Turkish and Moroccan migrants were mentioned as target groups. It had to be prevented, according to the government, that backward positions would be transmitted from generation to generation. Defending the distinction made between those nationalities that had to and others who did not have to pass the pre-entry test, the government used economy-related arguments claiming that the countries that did not need a long-term visa were from an economic, social and political perspective comparable to European countries (Strik 2011: 210).

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Austria</th>
<th>Germany</th>
<th>Ireland</th>
<th>Netherlands</th>
<th>UK</th>
<th>Portugal</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Income</strong></td>
<td>2005</td>
<td>2007</td>
<td>1993</td>
<td>2004 (120%)</td>
<td>2012</td>
<td>2009</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(for German sponsors)</td>
<td></td>
<td>2010 (100%)</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Pre-entry test</strong></td>
<td>2011</td>
<td>2007</td>
<td>-</td>
<td>2006 (2011, higher level)</td>
<td>2010</td>
<td>-</td>
</tr>
<tr>
<td><strong>Age</strong></td>
<td>2009</td>
<td>2007</td>
<td>-</td>
<td>2004</td>
<td>2003, 2008</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>(21)</td>
<td></td>
</tr>
</tbody>
</table>

25 The Dutch pre-entry test has been critically evaluated as being discriminatory on the basis of nationality and/or ethnicity or race. See: European Commission against Racism and Intolerance, Third periodical report on the Netherlands, Strasbourg, February 12, 2008, points 50, 57 and 58; Report by the Commissioner for Human Rights Thomas Hammarberg, on his visit to the Netherlands, 21-25 September 2008, 11 March 2009, paragraph 4.2, no. 83 and recommendation no. 15. The Netherlands: Discrimination in the name of Integration. Migrants’ Rights under the WIB, May 2008, www.hrw.org, p. 4 and pp. 24-29. CERD/C/CLD/17-18 of 16.

26 In Austria, the income requirement was not introduced in 2005, but uniformed on a national level, which, in practice, implied an increase in the required level in several federal states.
Age requirement
The age requirement of 21 years in Austria, the United Kingdom and the Netherlands and 18 years in Germany was introduced with the argument of protecting young people from arranged and forced marriage. In the Netherlands, this was the main argument, but an additional, economy-related argument was put forward, namely that at age 18 it would be uncertain whether the sponsor could comply with the own individual responsibility, both in integration and financial responsibility.
5. Case Law

*Chakroun*, the second judgment of the CJEU on the Family Reunification, concerned the income requirement.28 At the time, the Netherlands required an income level of 120 per cent of the minimum wage in cases of family formation, whereas in cases of family reunification an income level of 100 per cent was required. That difference was questioned by the sponsor. The Judicial Division of the Dutch Council of State wanted to know if this reference allowed Member States to not only take into account the social welfare that meets general subsistence costs, but also the special assistance which can be provided in individual cases by municipalities. In the second question, the Court of Justice was asked whether, while applying an income requirement, Article 7(1) (e) allows a distinction according to whether a family relationship arose before or after the entry of the resident into the Member State.29 The Council of State requested this ruling (four years after the income level had been raised), shortly after the Commission had expressed its concerns about the Dutch required income level being the highest in all Member States.30 According to the Commission, this level could, combined with the sustainability criterion, hamper the right to family reunification, especially for younger people.31 To both questions, the court answered negatively. It made clear that the subjective right to family reunification granted by the directive and its aim to promote family reunification oblige Member States to interpret the permitted conditions very strictly. A more extensive application than necessary would affect the objective and, therefore, the principle of effectiveness. According to the court, the income requirement could only function as a frame of reference, as in any case the individual interests and circumstances must be taken into account. The judgment led to the lowering of the required income level for family formation in the Netherlands, but also to some adjustments in other Member States.

Four years after the introduction of the pre-entry test, a District Court asked the CJEU whether this test was in compliance with Article 7 (2) of the Family Reunification Directive. The European Commission took the position that this was not the case if this requirement meant that family reunification was denied for the sole reason that the applicant had failed the test.32 According to the Commission, Article 7 (2) aimed to promote integration, but could not be used to undermine the objective of the directive of promoting family reunification.33 Although the CJEU has not yet ruled on the admissibility of the pre-entry test, the Commission’s view has already altered the position of some national courts.

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28 *Chakroun* [2010] CJEU C-578/08 (04 March 2010).
30 *Chakroun*, supra fn. 28, JV 2010/177 (case note C.A. Groenendijk).
5.1 The Interaction between National and European Courts

The case law of the ECtHR and the CJEU has a significant impact on the national legislation and policy regarding family reunification of TCNs or EU nationals with TCNs and the rights of third country family members after admission. It can be expected that the case law of both courts will grow in importance in the coming years, as the national reports show that requirements for admission have recently become or are about to become more restrictive and the possibilities for loss of residence rights will be extended.

In general, national courts, exercising restraint, seem to endorse the aims or justifications of restrictive measures stated by the governments without question. The study however also shows that once governments have adopted a legislative instrument at the EU level (which they have influenced by negotiation), judicial authorities gain more influence, on both the European and national level. National courts more easily criticize their governments’ policies and judge in favour of family reunification if the case law of the European courts encourages them to do so: the explicit confirmation by the CJEU of the subjective right to family reunification for TCNs worked that way. 34 With regard to the income requirement and the pre-entry tests, the position of the Commission also made national courts question their governments’ interpretation and refer to the CJEU.

One-way pressure, however, is not always sufficient. After all, the Court of Justice cannot make conclusions in a judgment without a request for a preliminary ruling by a national court, or an infringement procedure by the Commission. The latter is, in most cases, the result of a large number of complaints from national NGOs or other interest groups. Also, judgments of the ECtHR often result from national lawyers or NGOs litigating or writing reports supportive of individual complaints. This means that the extent to which national governments are being compelled to adjust their legislation to European case law largely depends on the position and perseverance of national actors. Until now the Austrian, German and Dutch governments have succeeded in preserving their pre-entry test, while attempting to avoid any development of EU case law on this topic. Their main strategy for influencing European case law is delaying an enforced adjustment of their policies by granting a residence right prior to a forthcoming judgment.

The EU Directives and their interpretation by the CJEU not only force governments to adjust their national legislation, but also limits their possibilities to further restrict the right to family reunification of both TCNs and Union citizens.

6. The Impact of Family Reunification Policies

6.1 An Overall Drop

The available statistics show that, in all the Member States studied, the number of applications, visas and residence permits granted on grounds of family reunification have dropped in the last decade (since 2000). Depending on the Member State, the drop in numbers varies from one-third to more than half. Germany was the Member State where the drop in the number of long-term visa applications started first, in 2003: from over 85,000 in 2002, ending up to 40,000 in 2010. In the Netherlands, the number of long-term visa applications went down from 2005 (from 29,000 in 2004 to almost 12,000 in 2007).

In Austria, the numbers started to decrease a few years later, from 2007. The quota and the registration system make it impossible to gain insight into fluctuations regarding the number of applying TCNs. However, the number of Austrian citizens (not falling within the scope of the quota) applying for family reunification has dropped from nearly 9,000 in 2006 to 5,000 in 2011. The UK report suggests declining numbers of permits granted between 2007-2009, but there is limited data available. The available data, however, show the issuance of more than 70,000 Entry Clearance Visas (for family reasons to TCNs and UK citizens) in 2006, decreasing to just over 45,000 in 2011. These figures potentially include EEA national family members of EEA nationals.

Both Ireland and Portugal also demonstrated a decline, which has occurred since 2008. Since then, the number of arrivals in Ireland (their nationality or purpose is not registered) has dropped by one-third, whereas in Portugal the number of visas issued for family reunification has halved.

6.2 Explaining the Drop: Restrictive Measures and Economic Factors

An exact link between the policies and the actual immigration cannot always be established. After all, restrictions were often introduced as part of a larger reform on this policy. Furthermore, statistics on the effects of migration measures in general show a peak just before and a sudden drop just after its introduction, followed by a gradual recovery (this sudden drop and gradual climb occurred, for instance, in Germany and the Netherlands after the introduction of the pre-entry test). But taking into account the fluctuations over a longer period, we can conclude that the decrease in Austria, Germany and the Netherlands is closely related to the introduction of restrictive measures targeting family members of TCNs and own nationals.

In Ireland and Portugal, the decline seems not to be caused by immigration measures but by their national economic contraction.
6.3 Income Requirement

Although this could not be substantiated in the other national reports, the assumption of a selective effect based on gender has been evidenced by a Dutch study on the effects of the increase in the level of the income requirement from 100 to 120 per cent in 2004 (WODC 2009a). According to this study, this difference can be explained by the fact that female sponsors more often have a part-time job, especially if they take care of children at the same time.

The Dutch 2009 research also revealed the effects of age and ethnic background. The increase in the income level resulted in a drop in applications by male sponsors aged 21-27 of 52 per cent, against a drop of 26 per cent in applications by older sponsors. Some difficulties younger sponsors faced could be identified, like the lower minimum wage under the age of 23, and the required durability of the income, being offered only temporary labour contracts. Due to a relatively weak socioeconomic position, more sponsors with a non-western migrant background failed to meet the income requirement: the drop in the male non-western sponsors concerned on average 54 per cent, western migrants 34 per cent and Dutch natives 22 per cent. These effects are probably also not country specific: both the Austrian and the German reports refer to data showing that the risk of poverty for persons with a migrant background is twice as high as for Austrian or German natives.

Finally, the Dutch study on the income requirement demonstrates the effects due to the intersection of various factors, e.g. of gender and migration background. Comparing female sponsors of Turkish background to Dutch born male sponsors, the difference is striking: the number of applications by female Turkish sponsors dropped by 57 per cent, while that of Dutch born male sponsors dropped by 22 per cent (WODC 2009a). Because of its impact on specific groups, respondents criticized the income requirement. Their main objection was that individual circumstances were not taken into account.

6.4 Pre-entry Tests

Dutch statistics make it obvious that the pre-entry test hinders low educated family members more frequently from reuniting than middle or high educated. Since a reading test was added to the Dutch test in 2011, the gap in pass rates between the low and highly educated has reached a percentage of 23. Especially illiterates and migrants from countries with another alphabet fail the test more frequently. The differences are even greater if the self-selective effect of the changing composition of candidates is taken into account: since the level was raised, more candidates are high educated (from 27 to 37 per cent), and fewer are low educated (from 23 to 19 per cent). Furthermore, older applicants fail more often. Finally, nationals from certain countries (like Morocco and China) have more problems meeting the required

35 This phenomenon refers to the situation where people, who fear they cannot meet the requirements, do not apply for family reunification.
level than others. Also in Germany, large differences emerge between the pass rates broken down by nationality.

Evaluations conducted in Germany and the Netherlands on the pre-entry test also demonstrate these selective effects. Nevertheless both governments used the studies to claim that the tests proved to be effective and were well received by the applicants. Governments also justified an age-limit or income requirement with studies on their (potential) effects, even if the outcome of these studies were contradictory to the stated aim of the government.
7. Conclusions

Our findings show that throughout most of the Member States, family reunification policies have changed rapidly during the last ten years. Although some of the changes have implied liberalization, most of them have narrowed down the right to family reunification for TCNs and own nationals with TCN family members. The main restrictions concern strengthened income requirements, introduced pre-entry tests, raised or introduced age-limits and procedural and financial thresholds, for instance with regard to fees and visas. At the same time, we have seen that during this period the number of applications and granted permits for family reunification have dropped dramatically. Although other factors (like the economic situation or the upward trend of TCN sponsors preferring a TCN – spouse already residing in the Member State), can partly explain the decrease, it is more than likely that the largest part of the drop relates to the restrictive measures introduced in the last decade. As the latest restrictions have only been introduced quite recently, this downward trend is expected to continue.

7.1 Different Groups

These developments, however, are not applicable to all groups. As a result of the case law on the family reunification rules for Union citizens exercising their mobility rights, the rights of Union citizens and their family members have been strengthened. Furthermore, the CJEU has granted more legal protection to Turkish nationals and their family members, based on the Association Treaty with Turkey. Thus, the liberalizing trend towards these groups does not derive from political preferences, but from the obligation to comply with Union law. Highly skilled workers and their family members have gained a more privileged position, due to the Blue Card Directive, as well as to their attractiveness to national labour markets. As the latter form the only category of explicitly wanted migrants, their example shows that governments are aware that the conditions on family reunification can deter or further reunification.

The restrictive trend for TCNs and own nationals on the one hand, and the parallel liberalization towards Union citizens on the other hand, has further widened the gap in the right to family reunification between these two categories. This result contradicts the aim the European leaders formulated at their Tampere Conference in 1999, to approximate the legal position of Union citizens and TCNs by strengthening the legal rights of the latter. At this meeting, the Member States acknowledged that strong legal rights for TCNs, including the right to family reunification, promoted their integration into the societies of the Member States.

Nevertheless, the Family Reunification Directive, adopted with precisely this objective, has mainly been used by Member States to justify new restrictions, by applying optional clauses in order to weaken the right to family reunification. This development reveals a reversal in the attitude towards family reunification, from per-
ceiving it as a chance to integrate migrants to a threat to social cohesion and integration. Member States mainly learn from other national policies by copying them, at least as far as they imply restrictions. The search for possibilities to reduce the number of family migrants within the limits of the Family Reunification Directive has a harmonizing effect, albeit not in the upward sense that the directive was initially meant to create. This attitude however cannot change the fact that the same Directive has strengthened the right to family reunification in many Member States and limited the national possibilities for further restrictions.

7.2 Practice

In all Member States, however, not only legislation determines the extent to which migrants can exercise a right to family reunification. The way requirements are applied or assessed and procedures are organized are also important for their possibilities to bring their families. We learned that the attitude of immigration authorities or the (lack of) cooperation between agencies frequently cause unnecessary delays and limited transparency. National incentives to guarantee speedy, transparent or impartial decision making, could be further investigated and promoted. Our study of the practice can contribute to the interpretative guidelines the Commission is going to formulate for applying the Family Reunification Directive.

Furthermore, Member States have intensified their assessments of the applications, focusing on the verification of family members’ identity or relationship or the genuineness of the marriage or partnership. These methods, applied on the basis of a wide range of indicative criteria, cause delays, and also frustration amongst the applicants. In the interviews, it emerged that many applicants feel treated with suspicion.

7.3 Strategies

We investigated that the most vulnerable groups have the most difficulty reuniting with their family: older, illiterate or low educated family members, nationals from certain countries and female sponsors. The income requirement and the pre-entry test are the main obstacles for them. Thus, although the conditions are formulated neutrally, their impact is not neutral. This is not taken into account in the making of the policy, for instance by impact assessments, but selective effects shown in evaluations are no incentive for governments to adjust their policy. This makes one wonder whether these selective effects are intended. At least, politicians and policy makers seem to respond indifferently to these results.

Previous research demonstrated that migrants have developed five strategies in response to the difficulties mentioned: they give up and remain living separately, they reunite in the country of the family member, they come and live irregularly in the Member State, they keep on trying to meet the requirements at any cost, or – if they are own nationals – they move to another Member State in order to apply their mo-
bility rights. In all situations, the rules create long-term separation, make reunification costly, frustrate people and further tensions between the spouses and families.

We found evidence for the last two strategies, which we have described as behavioural adjustments. With regard to the first three strategies, we were not able to collect reliable information, as the respondents we spoke to had finally met the requirements or had succeeded in exercising mobility rights. We think that more research should be done to find out about these strategies and their effects. The ones who met the requirements had given up things that could have offered them better prospects, like a good education or new job opportunities. Own nationals, who moved to another Member State, gave up their social network and stable living circumstances. In both situations, the conditions for a smooth integration of the family after admission deteriorated.

7.4 On Hold

These obstacles not only occur at the moment of admission. As in most Member States, the residence right of the family member depends on meeting the admission conditions, sponsors and family members keep on adjusting their lives in order to secure their family life. To secure their family life, sponsors are stuck in an employment situation, regardless of whether it’s the best choice to do so, and family members have to meet integration requirements in time. As it has become more difficult to acquire independent or permanent residence rights (in the Netherlands the number of permanent permits granted has substantially decreased since this is dependent on meeting an integration requirement), their insecurity remains for a longer period of time. Respondents often described their lives during the application procedure as being on hold. But as the admission requirements are more frequently also applied after admission, this frozen situation is maintained for years. This effect contrasts with the situation of Union citizens: as the policy on this group is designed not to create any obstacle to free movement, Union citizens are freer to make choices in life. Their rights are adjusted to these choices, whereas TCNs and own nationals have to adjust their choices to their rights.

7.5 Integration

An important question for this project was to what extent the family reunification rules promoted or hindered the integration of sponsors and their families. The evidence is that the response to this question is very difficult to measure, as the integration process takes a long time and is determined by many factors, like the economic situation in the host country, the absence or existence of discrimination, especially within the labour market, more general policies like education, and the personal background of the people concerned. However, we are able to conclude that the restrictive measures on the admission and residence of family members have not furthered integration and in many cases may have actually impeded it. Being excluded means, in any case, that integration is not promoted. Delay in the process means that the family
members live separately, and thus, focus on the process and not on the host society. Children are badly affected by the delay, because they miss at least one parent and their language learning and integration process are delayed. These conclusions contrast with the objective of integration, formally used by governments to introduce restrictive admission rules.

7.6 Future

On the basis of our findings, we would recommend that further research is undertaken on the ‘dark numbers’ and the effects for family members who are excluded by the family reunification rules. As it emerges that the national policies, copied by other Member States, lead to exclusion and obstacles to integration, the policies should be evaluated more precisely. Alternatives for measures safeguarding inclusion and integration should be studied.

Our conclusions more or less confirm previous research conducted in similar contexts, like the INTEC and PROSINT projects. Those research projects also have in common that they are small-scale and were conducted within a relatively short timeframe. Any future and similar studies will not extend the conclusions on the research in this area much further. We would, therefore, recommend that future research should be conducted on a larger scale and over longer periods. Our study clearly shows that certain conditions on family reunification affect some groups more than others. This should be taken into account when conducting further research. All the studies also have in common that they have faced huge difficulties in conducting statistical research. Yet a precise examination of the effects cannot be undertaken without proper and reliable data.

We would, therefore, suggest that statistical registration on family reunification is harmonized at the European level. The IFCAP, INTEC and PROSINT projects form a useful basis for a study on what kind of data would have to be collected and differentiated for which groups, in order to find more accurate answers. This will not only contribute to further research, but will also facilitate a public and political debate on family reunification policies, including their aims and their effects.
Literature


