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Family reunification regulations in Norway and the EU

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Preface

This report compares the regulations for family reunification in Norway to those in member states of the European Union. The report is based on the European Migration Network's (EMN) 2017 focused study, called *Family Reunification of Third-Country Nationals in the EU: National Practices*.

The full report is based on interviews with key informants and document reviews. We wish to thank the civil servants who shared their knowledge and experiences with the researchers of the study.

Both the Norwegian national report to the EMN study and the European comparative synthesis report can be downloaded at <https://emn.ie/>.

Oslo, August 2017

Extended summary in Norwegian

Denne rapporten trekker frem noen hovedpunkter i reguleringen av familiegjenforening med tredjelandsborgere¹ i Norge og 28 EU-land. Rapporten og sammendraget er basert på en omfattende studie gjennomført av det europeiske migrasjonsnettverket (EMN) i 2017.² Norge er medlem av dette nettverket og har levert et selvstendig bidrag til undersøkelsen.³ I den foreliggende rapporten sammenlignes regelverket i Norge og EU-landene på noen viktige punkter. I dette sammendraget omtales noen av disse, inkludert: omfanget av familiegjenforening, hvilke referansepersoner som kan være utgangspunkt for gjenforening, hvilke familiemedlemmer de kan gjenforenes med, hvilke materielle vilkår som må være oppfylt, om det stilles krav til integrering før ankomst, om det kreves ventetid før det kan søkes om gjenforening, om søkere med oppholdstillatelse knyttet til beskyttelse har særskilte vilkår, samt om prosessen frem til gjenforening og tilgangen til rettigheter etter tillatelse er innvilget.

Omfang

Retten til familiegjenforening er en av de viktigste formene for lovlig migrasjon til Europa og Norge. På nåværende tidspunkt utgjør familieinnvandring rundt en tredjedel av alle ankomster av tredjestatsborgere til Norge, og dette tallet samsvarer med situasjonen i Europa samlet sett.

Referansepersoner

Studien viser at på tross av økningene i ankomsttall de siste årene kan også mottakere av subsidiær beskyttelse som hovedregel gis rett til familiegjenforening, og i de fleste statene kan denne gruppen søke etter de samme vilkårene som gjelder for flyktninger (dvs. etter særlig gunstige regler som bl.a. fritak fra materielle vilkår).

I et fåtall av stater har mottakere av subsidiær beskyttelse ikke rett til familiegjenforening (f.eks. Kypros), eller retten til familiegjenforening for denne gruppen er midlertidig stanset pga. høye ankomsttall (Tyskland og Sverige).

1 Det vil si fra utenfor EØS-området.

2 EMN 2017, Family Reunification of TCNs in the EU: National Practices

3 https://ec.europa.eu/home-affairs/sites/homeaffairs/files/29a_norway_family_reunification_final_en.pdf

Enslige mindreårige asylsøkere har en nesten universell rett til familiegjenforening, og flere land har innført særlig gunstige regler for denne gruppen (bl.a. utvidelse av personkretsen av familiemedlemmer). Unntaket er Storbritannia som ikke tillater at EMA er referansepersoner.

Familiemedlemmer

Personkretsen som kan innvilges familiegjenforening, er normalt større enn kun kjernefamilien. I de fleste EU-landene omfatter dette foreldre, samkjønnede partnere (gifte eller registrerte) og adopterte barn eller fosterbarn. Voksne barn, samboere (ikke-gifte partnere) og andre familiemedlemmer som er avhengige av referansepersonen, er generelt sett ikke omfattet.

På dette området skiller Norge seg dermed fra flere av EU-landene ved å inkludere bl.a. samboere og voksne barn i kretsen som kan innvilges familieinnvandring etter bestemte vilkår.

Samtidig viser studien at mange unntak og særtilkåp gjelder ved definisjonen av familiemedlemmene. EMN-rapporten viser også gjennomgående en svak regulering av avhengige familiemedlemmer. Ofte er slik regulering fraværende.

Materielle vilkår

De sentrale vilkårene knyttet til familiegjenforening er tilgang til bolig, helseforsikring og tilstrekkelig inntekt. Studien viser at EU-landene generelt sett krever at alle tre vilkårene er oppfylt, og at det ofte ikke bare er referansepersonen, men familien som helhet som må dokumentere tilgang til egnet bolig, helseforsikring og tilstrekkelig inntekt.

Enkelte av EU-landene stiller ikke krav om **egnet bolig** som forutsetning for å innvilge familiegjenforening, enten generelt eller for spesifikke familiemedlemmer (da særlig kjernefamilien og spesielt mindreårige barn). Dette samsvarer med norsk utlendingsrett hvor det ikke stilles krav om bolig for referansepersonens ektefelle, samboer eller barn under 18 år.

Et større antall land stiller ikke krav om **helseforsikring**. Det vises i syntese-rapporten til Finland, Sverige og Norge hvor helseforsikring anses som en universell rettighet for alle som er lovlig bosatt.

Når det gjelder **kravet om inntekt**, er dette beløpet i hovedregel satt til minimumsbeløpet for lønn eller sosiale ytelser i det aktuelle landet. I fire av EU-landene (Belgia, Malta, Polen og Slovakia) ble det imidlertid opplyst at beløpet var satt høyere enn dette (helt opp til 12 ganger minimumsbeløpet for lønn/ sosial ytelser i Slovakia). Disse reguleringene er i strid med en sentral dom i EU-domstolen (Chakroun, avsnitt 49).⁴ I flere av landene spiller størrelsen til familien inn ved fastsettelsen av hva som regnes som tilstrekkelig inntekt.

Kravet om inntekt utgjør ifølge studien en særlig utfordring for tredjestatsborgere som ønsker familiegjenforening. Dette samsvarer med undersøkelsen av forholdene i Norge. Selv om studien viser at statene gir enkelte fritak eller unntak fra inntektskravet, gjelder dette i hovedsak for flyktninger og mottakere av subsidiær beskyttelse. Studien peker på at det generelt sett er en manglende klarhet når det gjelder i hvilken grad statene systematisk tar hensyn til individuelle forhold i vurderingen av om det vilkåret om tilstrekkelig inntekt er oppfylt.

Integreringsvilkår

I mer enn halvparten av EU-landene stilles det ikke krav om at familiemedlemmene skal ha gjennomført integreringstiltak før gjenforening kan innvilges. Norge er på linje med disse landene. Det kreves ikke språk- eller kjennskapstester for familiemedlemmer som søker om familiegjenforening i Norge.

For de statene som stiller slike vilkår, gjelder det først og fremst krav om grunnleggende språkferdigheter. Kun én stat (Nederland) stiller krav om at familiemedlemmer må gjennomføre samfunnskunnskapsprøve før søknad om familiegjenforening kan innvilges. I de fleste landene må kostnader til undervisning dekkes av familiemedlemmene selv. Et mindretall av statene rapporterer at de stiller krav om at familiemedlemmene må gjennomføre integreringstiltak etter at familiegjenforening er innvilget, inkludert språkkunnskaper og samfunnskunnskapsprøver (eks: Østerrike, Tyskland, Ungarn og Nederland). De fleste av statene tilbyr imidlertid ikke gratis undervisning. I EMN-rapporten konkluderer man derfor med at det er betydelig rom for forbedring i enkeltland når det gjelder språkopplæringen som tilbys til familiemedlemmene til tredjestatsborgere.

4 <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-578/08>

Ventetid før innvilgelse

Få stater krever en ventetid før referansepersonens familiemedlemmer kan søke om familiegjenforening. Der slike vilkår stilles, holder landene seg innenfor tidsfristen på 2 år som er en del av EUs Familiegjenforeningsdirektiv.

I Norge gjelder det heller ikke noe krav om ventetid, men fireårskravet vil i praksis ha betydning i saker som omhandler familieetablering (det vil si hvor familierelasjonen oppstod etter at referansepersonen har kommet til Norge).

Gunstigere vilkår for de med behov for beskyttelse

I alle landene i undersøkelsen gjelder det gunstigere regler for familiegjenforening når referansepersonen har status som flyktning. Dette er i tråd med Familiegjenforeningsdirektivet.

Studien viser at flyktninger ikke må oppfylle de materielle vilkårene generelt, eller at disse kravene ikke gjelder dersom søknaden fremsettes innenfor en periode på minst tre måneder. I Norge ble fristen kortet ned fra 12 til 6 måneder i august 2017. I enkelte EU-land er denne tidsperioden utvidet til mellom 6 og 12 måneder. Rundt halvparten av EU-landene begrenser disse gunstigere reglene til kun å gjelde for familierelasjoner som eksisterte før referansepersonen ankom det aktuelle landet (familiegjenforening).

I de øvrige statene gjelder de gunstigere vilkårene både for familiegjenforeningssaker og familieetableringssaker. Som tidligere nevnt er disse reglene videre utvidet til mottakere av subsidiær beskyttelse i de fleste av landene i studien. Dette pekes på som positivt da det kan motvirke såkalt ”status-shopping.”

Prosess

I de fleste statene er det familiemedlemmet til referansepersonen som er den formelle parten i en familiegjenforeningssøknad. Det vil si at det er den som fortsatt befinner seg i hjemlandet eller i et tredjeland, som er formell søker. Som hovedregel må søknaden leveres ved en ambassade/konsulat i søkerens hjemland.

I mange tilfeller kan kravet om personlig oppmøte være en hindring for å få fremmet en søknad om gjenforening. Det kan ofte være vanskelig å reise

gjennom utrygge områder og i noen tilfeller å måtte krysse landegrenser for å få levert søknaden. Kun noen få stater tillater elektronisk innlevering av søknaden.

Generelt sett krever statene at søkeren fremviser offisielle identifikasjonspapirer som pass, vigselsattest eller fødselsattest for å bekrefte søkerens identitet og familierelasjoner. Manglende dokumentasjon er pekt på som en utfordring av flere av statene i studien. I slike tilfeller viser gjennomgangen at utlendingsmyndighetene er fleksible ved bevisvurderingen, særlig når det gjelder familie-medlemmene til flyktninger og/eller mottakere av subsidiær beskyttelse, og at andre former for bevis tillates, som for eksempel intervjuer, øvrige dokumenter og DNA-testing (som regel som siste utvei). Kun et fåtall stater tillater ikke DNA-testing. Det å identifisere proforma-ekteskap eller tvangsekteskap pekes videre på som en utfordring for statene.

Det kan ha store konsekvenser for søkerne hvis en søknad avslås på grunn av at de materielle vilkårene ikke er oppfylt. Flere av landene vurderer derfor systematisk betydningen av et avslag for privatlivet og familielivet for søkeren og referansepersonen. Særlig gjelder dette i tilfeller der mindreårige barn er involvert. Kun tre av statene, herunder Norge, oppgir å ha utarbeidet retningslinjer om hvordan hensynet til barnets beste skal sikres i familiegjenforeningssaker.

Saker om familiegjenforening skal ifølge EU-direktivet om familiegjenforening avgjøres innen ni måneder. De fleste landene oppfyller dette kravet, både i lovgivning og i praksis. Saksbehandlingstiden for mottakere av subsidiær beskyttelse kan imidlertid være svært lang. Dette er særlig problematisk i saker som omhandler barn, og spesielt i de landene der alderen på vedtakstidspunktet er avgjørende for om søkeren anses for å være mindreårig eller ikke.

Tilgang til rettigheter etter innvilgelse

Mange av EU-landene har målrettede tiltak for å sikre tredjestatsborgere (inkludert personer som er innvilget familiegjenforening) tilgang til utdanning, yrkestrening og arbeid. I mange av statene avhenger tilgangen til arbeidsmarkedet av om familiemedlemmet har permanent oppholdstillatelse. Familie-medlemmene har videre rett til å søke om selvstendig oppholdstillatelse dersom de oppfyller visse vilkår (som regel bl.a. knyttet til oppholdstid eller i saker som gjelder partnervold eller dødsfall). Dette er også tilfelle i Norge.

1 Family reunification regulations in Norway and the EU

Introduction

In this report, we present a selection of findings from the 2016 European Migration Network (EMN) focused study on *Family Reunification of Third-Country Nationals (TCNs) in the EU plus Norway: National Practices*.¹ The aim is to give a brief comparison of national policies on and practices of family reunification in Norway and the EU member states. The report also aims to provide up-to-date information on recent developments in this field (from 2011 onwards).

The wider EMN study focuses on family members of TCNs who reside legally in Norway or EU member states (i.e. the sponsor) and who come to Norway or the member state through the channel of family reunification, either together with the sponsor or at a later stage.² The study does not include family reunification for non-mobile EU nationals or Norwegian citizens or family reunification under the Dublin III Regulation.

Family reunification in Norway – a situation report

Family immigration – that is, persons who are granted residence permits on the basis of family relationships with someone in Norway-constitutes a major portion of the total immigration of TCNs to Norway. In the period between 1990 to 2012, family immigration accounted for 40% of the non-Nordic immigration to Norway (including family immigration with nationals of European Economic Area [EEA] countries). During this period, six out of ten family immigrants came to reunite with family in Norway (family reunification). The remaining four out of ten family immigrants came to establish a new family (family formation).

1 The EMN focused study is referenced throughout this report.

2 The family member must also be a TCN to be included in the scope of the study.

Family immigration to Norway has increased over time. From 2011 to 2015, however, the numbers remained stable at around 10,000 TCNs applying for family reunification each year (first-time permits). During this period, family migration from third countries outnumbered that based on other grounds (employment, education, and protection) for TCN residency.

Over the past 15 years, Norwegian family immigration regulations have become more restrictive. After the turn of the century, stricter requirements were implemented for family immigrants. From around 2008, further restrictions were implemented, many of which came into effect in 2010, at the same time as the new Immigration Act. Among the changes were an increase in the subsistence requirement and a requirement that the sponsor had to have worked or studied full time in Norway for at least four years before an application for family formation may be granted. Politically, these changes were motivated by what was seen as a list of potential benefits. These included reducing the incentives for seeking asylum in Norway, furthering integration and self-sufficiency among immigrants, and the prevention of forced marriages. In addition, previous exemptions were removed, including the subsistence requirement in cases where the sponsor was a Norwegian citizen or where the sponsor and the applicant had children together.

In 2015 the number of asylum seekers who came to Norway almost tripled in comparison to the year before. The influx of more than 31,000 asylum seekers led to a list of restrictive measures being put forward. The stated political goal was to ensure that Norway did not appear disproportionately lenient compared to other destination countries in Europe. Among the suggestions were an increase in the income requirement, setting a necessary future income for sponsors to applications of family immigration to the equivalent of grade 24 in the state salary scale, amounting to NOK 309 700 per year (before tax, as of May 2017). In 2016 the Parliament (Storting) requested that the requirement for future income was reduced to its former level (NOK 256,256). As of July 2017 the lower requirement had not yet been reintroduced by the government. The suggested return to the lower level was a result of criticism, stating that the increase made it too difficult for certain groups of foreign nationals to be able to fulfil the conditions for granted family immigration.

On the list of suggested measures that were approved by the Parliament in June 2016, we find a 24-year age limit on being granted a residence permit in order to contract marriage. The stated purpose of the restriction was to prevent forced marriages, while also being a part of the list of restrictive measures to curb asylum arrivals.

On the same list, we find an “attachment requirement.” This will allow Norwegian authorities to reject applications for family immigration in cases where the family life may be exercised in a safe third country and to which the family as a whole has a stronger attachment to than Norway. This change is due to come into effect during 2017.

Finally, the government reduced the grace period for refugees from 12 to 6 months in August 2017. Presently, those who have been granted protection in Norway must register an application for family immigration without the subsistence requirement having to be fulfilled during the first 6 months (after having been granted asylum). Within 12 months, all documents must be presented by family members at a Norwegian embassy or consulate.

Persons who are applying for family immigration to Norway are experiencing a number of challenges. One major challenge is obtaining sufficient information about material requirements and procedural issues connected to their case. The relevant provisions are spread out among different legal sources. To get a comprehensive understanding of which conditions need to be fulfilled, the sponsor and applicant have to access information both from the Immigration Act, the Immigration Regulations as well as from different guidance notes and other documents. Over the last couple of years, the Directorate of Immigration has introduced several measures to attempt to make the information to the sponsors and/or applicants more accessible. In addition, advocacy groups of family migrants have expressed frustration regarding the processing time.

In the next chapters, we discuss the main points from the EMN focused study on family immigration regulations. These include who can apply for family reunification (scope), the requirements for reunification (accommodation, income, integration, health insurance), waiting periods, differences in rights between residency due to a need for protection and other TCNs, the application process, and the access to rights after residence has been granted. Where relevant, we compare the situation in EU-countries to that in Norway.

2 The scope of family reunification in Norway and the EU

Who can be a sponsor?

The majority of states participating in the EMN focused study define a sponsor of an application for family reunification as a TCN who is in possession of a valid continuous or permanent residence permit as well as persons who have been granted refugee status or subsidiary protection.³ This is in line with the Norwegian definition, which states that a person may act as a sponsor if he or she is a foreign national with a permanent residence permit as well as foreign nationals who either have or will have a temporary residence permit that forms the basis for a permanent residence permit.

Similar to Norway, several of the EU member states allow students⁴ and workers⁵ to act as sponsors, provided they have the necessary continuous residence permit and fulfill the general requirements for family reunification. All of the states, with the exception of the United Kingdom, allow unaccompanied minors (UAMs) to act as sponsors if they have been granted refugee status or subsidiary protection.

Beneficiaries of subsidiary protection (BSPs) are allowed to act as sponsors of applications for family reunification in nearly all of the member states, despite not being covered by the Family Reunification Directive.⁶ In many of the member states, the family members of BSPs may apply for family reunification under the same conditions as those of the family members of refugees.⁷ This corresponds with the Norwegian regulations, since the Immigration Act expands the refugee definition to also cover BSPs. Certain member states set a waiting period before family reunification with BSPs may be granted, varying from two

3 BE, CZ, CY, DE, EE, EL, ES, FR, HR, HU, IE, IT, LT, LU, MT, NL, LV, PL, SK, NO, UK. In Bulgaria, Slovenia, Sweden, and Belgium the TCN is required to hold a residence permit of at least one year to act as a sponsor.

4 For example BE, DE, FI, IE, LV, NL

5 BE, CY, DE, FI, IE, IT, NL

6 With some exceptions, such as Croatia, which does not allow family reunification for BSPs, and the Czech Republic, where BSPs are allowed to apply through a national scheme (parallel to the Family Reunification Directive).

7 AT, BE, BG, DE, EE, EL, ES, FI, FR, HR, HU, IE, IT, LT, LU, LV, NL, SE, SK, UK

to three years.⁸ In some member states, a marriage or partnership with a beneficiary of subsidiary protection or a refugee must have already existed in the country of origin prior to entry into the member state's territory for family reunification to be allowed.⁹

Finally, Germany and Sweden have recently introduced a temporary suspension of family reunification for BSPs. This was introduced as a result of the high influx of asylum seekers during the 2015–2016 crisis. In Germany, family reunification will be suspended until March 16, 2018, for all those who were granted a residence permit under subsidiary protection after March 17, 2016, while in Sweden family reunification of BSPs will be suspended until 2019.

Which family members are eligible?

Most of the states participating in the focused study extend the scope of family reunification beyond the core members of the family.¹⁰ The scope of family reunification may include parents, adult children, same-sex partners (registered or married), non-married partners, foster children, and more.

Parents

In general, the scope of family reunification includes parents, with the exception of Belgium, Croatia, Hungary, and the Netherlands. Family reunification for UAMs is a special case. In the UK, family reunification between UAMs and their parents is not allowed. In some member states the parents of adult children are considered to fall within the scope of family reunification if they are unable to take care of themselves on their own due to age or health reasons¹¹ or if they are dependent on the sponsor and do not enjoy sufficient family support in their country of origin.¹² Similar conditions apply to the parents of adult children when applying for family reunification in Norway.¹³

Adult children

Adult children of the sponsor are considered to fall within the scope of family reunification in some of the member states where the adult child is unable to

8 In Austria, the waiting period is three years, while in Latvia it is set to two years.

9 AT, DE, EE, IE, HR, NL

10 i.e. spouse and children

11 BG, CZ, DE, EL, HU, IT, LV

12 EE, ES, FI, LT, LU

13 See the Norwegian EMN report, page 7. https://ec.europa.eu/home-affairs/sites/homeaffairs/files/29a_norway_family_reunification_final_en.pdf

cope independently due to health or disability issues,¹⁴ not over a certain age,¹⁵ or in exceptional circumstances or for compassionate reasons.¹⁶ Similarly, adult children may be granted family reunification in Norway if they are under a certain age and have previously had a lengthy stay in Norway with a residence permit or if they fulfil certain conditions related to their health or dependency on their parents living in Norway.¹⁷

Same-sex partners (married or registered)

Most of the member states allow same-sex partners who are either married or registered to apply for family reunification.¹⁸ This is not allowed in a small number of member states.¹⁹ Equal rights to family reunification as spouses from opposite genders are granted to same-sex couples in Austria, Belgium, Cyprus, the Czech Republic, Finland, Ireland, Luxembourg, the Netherlands, Slovenia, Sweden, and the UK as well as Norway.

Non-married partners

Non-married partners of TCNs are not eligible for family reunification in many of the member states.²⁰ In other member states, non-married partners are included in the scope of family reunification.²¹ Certain other states allow non-married partners to apply under the Family Reunification Directive provided the couple has a registered partnership equivalent to that of a marriage²² or has lived together in a marriage-like relationship for at least two or three years, or shorter if the couple has a joint child.²³ The latter alternative is similar to the Norwegian regulation, whereby non-married partners of TCNs are included in the scope of family reunification provided that the couple has lived together in a marriage-like relationship for at least two years or have a child together.

14 BE, BG, EE, ES, HU, IT, LU, SE, SK

15 26 years in the Czech Republic and 23 years in Ireland

16 Denmark and the UK

17 See the Norwegian EMN report, page 7. https://ec.europa.eu/home-affairs/sites/homeaffairs/files/29a_norway_family_reunification_final_en.pdf

18 AT, BE, CY, CZ, DE, ES, FI, FR, HU, IE, LU, NL, NO, SE, SI, UK

19 EE, LT, LV, MT, PL, SK

20 AT, BG, CZ, DE, EE, HU, IT, LV, PL, SE

21 IE, NL, SI, UK

22 BE, ES, IT, LT, LU

23 FI, IE, HR

Other family members

Foster children of TCNs have the same rights to family reunification as biological children in some national acts, although they are often required to provide reliable documentation.²⁴ This is also in line with the Norwegian legislation. In other member states, foster children can be issued a residence permit under certain conditions,²⁵ while Belgium and Sweden do not give foster children the same right to family reunification as the biological children of the TCN. In the case of polygamous marriages, family reunification shall not be granted if a sponsor already has a spouse living with him or her in the member state.²⁶ Some member states may recognize proxy marriages provided they are legally registered in the country of origin.²⁷

Family reunification with dependent persons other than those mentioned above is allowed in Estonia, Spain, and Latvia. In the rest of the states, dependent relatives other than core ones are considered to have no legally grounded right to family reunification except in special circumstances. As previously mentioned, documentation of different forms of dependency is required in accordance with the Norwegian legislation where the family member is a single parent, adult child, foster child, or full sibling under the age of 18. However, there are no provisions in Norwegian immigration law extending the right to family reunification to other dependent family members in general.

24 BG, DE, EE, EL, ES, FI, FR, HU, LV, PL, SK

25 CZ, IE, LU, NL

26 AT, BE, DE, EE, ES, FI, FR, HR, HU, IE, LU, LV, NL, PL. The same applies in the Norwegian regulations.

27 FI, HU, IE

3 Requirements for exercising the right to family reunification

Which requirements must be met by sponsors and/or family members when exercising the right to family reunification? In this chapter we look at two main areas of such requirements: material requirements (accommodation, health insurance, and income) and integration requirements (pre- and post-departure).

Material requirements

Accommodation

In most member states, TCNs are required to document that they have access to accommodation suitable for the size of the family as well as meet certain health and safety standards to exercise the right to family reunification.²⁸ In the rest of the member states, evidence of suitable accommodation is either not required overall or applies only to specific family members and/or sponsors.²⁹

The Norwegian regulation falls into the latter category, as accommodation is not a prerequisite for family reunification with the sponsor's spouse, cohabitant, or child under the age of 18 years or where the sponsor is a child under the age of 18.

Health insurance

Health insurance is a requirement for sponsors (or family members) to exercise the right to family reunification in most member states.³⁰ In other member states, health insurance is not a precondition for family reunification. This includes the Nordic countries and Italy, where health insurance is considered a universal right for all residents.

28 AT, BE, BG, CY, CZ, DE, EE, EL, ES, FR, HU, IT, LT, LU, LV, PL, SE, SK, UK. In some of these states, exceptions to the requirement for suitable accommodation may apply, for example, where the sponsor is a beneficiary of international protection, a child applying for family reunification with parents or vice versa, or in some other cases, see the EMN Synthesis Report, point 4.1.1.

29 IE (except for elderly parents), NL, SI, UK

30 AT, BE, BG, CY, CZ, DE, EE, EL, ES, HR, HU, LT, LU, LV, PL, SI

Income

Most of the states, including Norway, set a reference income threshold for assessing whether the sponsor (and/or the family members) has sufficient financial resources for exercising the right to family reunification.³¹ The required sum varies between the states and may be equivalent to, or higher than, the basic minimum monthly income or minimum subsistence amount per month of the state in question.³² In many states, the sum is not differentiated according to the family member being reunited, although some member states lower the income requirement when a minor child is involved.³³

Most of the states apply exemptions to the income threshold, notably for refugees and/or BSPs (beneficiaries of subsidiary protection). This also applies to Norway. Cyprus and Hungary do not set a specific income threshold at all but instead evaluate whether the family has sufficient financial resources on a case-by-case basis.

Pre- and post-departure integration measures

In most of the member states, TCNs are not required to fulfill any specific integration measures to reunite with family, although such measures are under investigation in some states.³⁴ Where pre-departure integration measures exist, family members are usually required to demonstrate basic language proficiency or take a civic integration exam.³⁵ In some cases, exemptions apply to family members of persons who have been granted refugee status or subsidiary protection.

A small number of member states additionally require family members to acquire further language proficiency or take a civic integration exam after admission as a part of their general integration program or as a requirement for permanent settlement in the country.³⁶ Other integration measures may include courses about the state's history and values, social orientation classes, or professional guidance. Lack of respect for the integration measures may in some instances result in the withdrawal or non-renewal of a residence permit.

31 AT, BE, BG, CY, CZ, DE, EE, EL, FI, FR, HR, HU, IE, LT, LU, LV, NL, PL, SE, SI, SK, UK

32 See the EMN Synthesis Report, point 4.1.3 for examples.

33 This includes CZ, LT, LV, SK, and DE, where the income requirement is reduced to between 50–75% of the minimum monthly income in the relevant state.

34 FI, IE, LU

35 Language proficiency tests are required in AT, DE, NL, while NL also requires a civic integration exam.

36 Further language proficiency tests are required in AT and NL. UK and NL require family members to take a civic integration exam after admission. See the EMN Synthesis Report, point 4.2. https://ec.europa.eu/home-affairs/sites/homeaffairs/files/00_family_reunification_synthesis_report_final_en_print_ready_0.pdf

Waiting periods before being allowed to apply

Many of the states do not set a waiting period before a sponsor's family is eligible to apply for family reunification.³⁷ Where such a requirement does apply, the waiting period varies from one to three years, beginning from the time the sponsor became a resident or was granted international protection. In Norway, there is no formal waiting period. However, the four-year requirement in family formation cases, as a main rule, means that the sponsor must document that s/he has worked and/or studied full time for four years. This relates to cases where the family relations were formed after the sponsor's entry into the realm.

Rejections due to policy, security or health

Formally, the possibility to reject an application for family reunification on the grounds of public policy, public security, or public health exist in most member states.³⁸ In practice, however, many of the states report that such provisions are rarely used as the exclusive ground to reject an application for family reunification. The study showed that over the past five years, fewer than 10 family reunification applications were rejected in Finland and Norway on such grounds per year.

More favorable regulations for refugees and unaccompanied minors

Refugees enjoy more favorable family reunification rules than other applicants across the states participating in the study. These rules may include a set grace period of a minimum of three months before material requirements apply to refugees and/or BSPs (beneficiaries of subsidiary protection).³⁹ In some states the grace period extends to six or twelve months. In Norway, refugees have long been the beneficiaries of the longer, twelve-month grace period. Starting August 1, 2017, this period is reduced to six months.

Notably, certain states have not limited the exemption from the material requirements for refugees and/or BSPs to a waiting period but instead grant benefi-

³⁷ BG, EE, IE, FI, HR, HU, IT, SI, SE, SK

³⁸ AT, BE, BG, CY, CZ, DE, EE, EL, ES, FI, FR, HR, HU, IE, IT, LT, LU, LV, MT, NL, NO, SI, SK, UK. Some states do not include public health considerations (NO, PL, SE).

³⁹ Three months: AT, BE, CZ, DE, EE, FI, HU, IT, LT, LU, NL, NO, PL, SE, SK; six months: EE, NL, PL; 12 months: BE, NO (until August 1, 2017).

ciaries of international protection a full exemption from such requirements.⁴⁰ More than half of the states restrict these more favorable family reunification rules to family ties that existed prior to the arrival of the sponsor in the territory of the state, while the rest of the states do not impose such limitations.⁴¹

Most of the states apply similar favorable rules for the family reunification of BSPs as they do for refugees.⁴² Other states may include BSPs in the more favorable eligibility rules who apply for the family members of refugees but may not exempt the BSPs from material requirements for exercising the right to family reunification.⁴³

Across the member states more favorable rules for family reunification also apply to UAMs, in particular a wider definition of family members.⁴⁴ This may include the legal guardian or another adult family member who is responsible for the child or the first-degree relatives in the direct ascending line of the sponsor. Austria, Cyprus, and Denmark do not expand the definition of eligible family members for UAMs, as well as the UK, which does not permit children to act as sponsors.

Challenges experienced by stakeholders

According to the reports from member states, a central challenge facing sponsors and/or family members is meeting the income threshold for accessing the right to family reunification.⁴⁵ This was also one of the main challenges identified in the Norwegian report.⁴⁶ A high percentage of the rejections of applications for family immigration in Norway were caused by sponsors not being able to fulfil this requirement. In cases where the applicant was the sponsor's spouse, the subsistence requirement accounted for 55% of the rejections. Where the applicant is the child of the sponsor, a lack of fulfilment of this condition constituted 42% of the refusals.

40 BG, CY, EL, FR, HR, IE, LV, MT, SI, UK

41 In AT, BE, CY, CZ, DE, EE, EL, FI, FR, HU, IE, IT, NL, NO, SI, SE, SK, UK, more favorable rules for beneficiaries of international protection are limited to existing family relations. This limitation does not apply in BG, ES, HR, LT, LU, LV, MT, PL, and SI.

42 AT, BE, BG, DE, EE, ES, FR, HU, IE, IT, LT, LU, LV, NL, NO, PL, SE

43 CZ, EE, FI, HU, IT, SK. For more information see the EMN Synthesis Report, point 4.5.

44 AT, BG, CZ, EE, ES, FI, HU, IE, IT, LU, MT, NO, PL, SI, SK

45 AT, BE, ES, FI, IE, LT, LU, LV, NL, PL

46 https://ec.europa.eu/home-affairs/sites/homeaffairs/files/29a_norway_family_reunification_final_en.pdf

In certain states, fulfilling the requirement for accommodation was also reported to be an issue.⁴⁷ Additionally, some of the national reports show difficulties with striking a balance between protection of the family on one hand and orderly migration management on the other.

Another challenge identified in the Norwegian report is providing the sponsor and/or family members with sufficient information about the requirements, exceptions, and exemptions that apply to their case. It is often necessary to access information from the Immigration Act and the Immigration Regulations as well as from different guidance notes issued by the Directorate of Immigration to get a comprehensive understanding of what is required. In the EMN Synthesis Report, the measures taken by the Norwegian Directorate of Immigration to provide user-friendly information were pointed to as an example of good practice.⁴⁸ These measures include changes to the structure of the decisions, using “plain language,” and the development of a checklist that filters information based on the applicant’s individual situation.

47 AT, FR, and LU

48 See the EMN Synthesis Report, point 4.8.

4 The application process

This part of the report will look at the process for submitting and examining applications for family reunification. In particular, this section will give an overview of the procedures used to verify that the requirements and integration measures mentioned in Chapter 3 of this report have been fulfilled.

Formal party to the application and place of submission

Who is considered as the formal party in an application for family reunification varies between the states. In the majority of the states, the formal party in an application for family reunification is the family member (rather than the sponsor).⁴⁹ This is also the main rule in the Norwegian regulation. The sponsor is considered to be the formal party only in some of the states.⁵⁰ In a few states, the formal party may be either the sponsor or the family member, depending on the ground for residence of the sponsor, the type of family reunification, or specific circumstances.⁵¹

Where the formal party is the family member, the application should, as a general rule, be submitted at a diplomatic mission or consular office in the applicant's country of origin.⁵² In exceptional cases, the family member may submit the application in the country where s/he has been residing legally or in the closest neighboring country if there is no diplomatic representation in the country of origin.⁵³ Ireland, Finland, and Sweden permit applications to be submitted online. Several member states allow the family members of certain types of TCNs to submit their application in the territory of the member state, provided they are already residing there lawfully⁵⁴ or where exceptional conditions justify it.⁵⁵

49 AT, BE, CZ, DE, FI, HU, IE, IT, LV, SK, UK

50 BG, CY, EL, MT, PL, SI

51 EE, ES, NL, SE, FR

52 DE, FI, HU, IT, NO, SE

53 LU, NL, NO

54 BE, CZ, DE, EE, HR, HU, IE, LV

55 AT, FI, LU, NO

Required documentation and methods of investigation

As a main rule, the applicant must confirm his/her identity with a valid identity document. This should be issued by a public authority in the country of origin, such as a passport or a certified document, travel documents, or other identity documents.⁵⁶ To document the family relationship, a marriage certificate or equivalent document confirming the marriage contract must be presented where the family member is the spouse of the sponsor.⁵⁷ Some states require additional documentation, such as a birth certificate or other documents attesting to the family relationship.⁵⁸ Where the family member is the child of the sponsor, a birth certificate is usually required. For other forms of partnership, verification may be required through a civil union contract, a registered partnership agreement, evidence of previous cohabitation, etc. Documentation of dependency may be proven by long-term transfers via a bank or medical documentation of health conditions.

In the absence of reliable documentation, the EMN focused study shows that most states practice a flexible approach, in particular with regard to beneficiaries of international protection and their family members. A wide range of documentation is often accepted as long as it may serve to verify the identity of the applicants and the existence of the family relationship. These forms of documentation may include asylum interviews, interviews with the sponsor and/or family members, notarized declaration or written statements, evidence from appeal hearings, photos of events, and receipts.⁵⁹ Where applicable, the state may also request or suggest a DNA test, often as a last resort. Only very few member states do not provide DNA testing under any circumstances.⁶⁰

Verification of requirements and integration measures

Where family reunification is dependent on access to suitable accommodation, some member states have specified the standards in national law or in guidelines.⁶¹ Usually, written documentation is required, such as proof of ownership, lease contracts, a title deed, or a document from the land registry.⁶²

56 AT, BE, CY, CZ, DE, EE, EL, ES, FR, HR, HU, IT, LU, LT, LV, NL, NO, PL, SE, SI, SK

57 AT, BE, BG, BE, CY, CZ, DE, EE, EL, ES, FI, FR, HR, HU, IE, IT, LU, LT, LV, NL, NO, SE, SK

58 BG, IE, LU, SI

59 AT, BE, BG, CZ, EE, EL, FI, IT, LU, LV, NL, NO, UK

60 BG, EL, LV, PL

61 BE, FR, IT, LU, SE

62 AT, BE, CZ, DE, EE, ES, HU, IT, LT, LU, LV, NO, SE SK

In many states salaried sponsors automatically receive (public) health insurance.⁶³ In some states this is also extended to beneficiaries of international protection and groups of students. Others must document that they have private health insurance.

As to the minimum income requirement, the reference period covers the entire duration of the requested resident permit.⁶⁴ Not all of the states specify a reference period. In practice, past and previous income is usually evaluated through an employment contract or salary slips.

Where applicants must comply with integration measures, language and/or integration certificates must be submitted together with the application for family reunification.⁶⁵ Exemptions may be made where necessary to maintain the individual's family life in accordance with Art. 8 of the European Convention of Human Rights⁶⁶ (ECHR) or in cases involving UAMs.

Definition of “minor child” and assessment of the best interest of the child

All of the states define a “minor child” as a person younger than 18. In some states, however, a child may no longer be considered as minor if s/he is married, has separate family, or leads an independent life.⁶⁷ In the majority of the states it is the age at the time of the submission of the application that is decisive for whether the child is considered to be a minor; although, in a few states, it is the date of the decision.⁶⁸ If the age of the child is disputed, some states perform age determination tests, such as radiological examinations.

According to the domestic law and general policy in several of the states, the best interest of the child must be a priority consideration for institutions responsible for dealing with applications for family reunification.⁶⁹ However, the EMN focused study points out that there may appear to be a lack of more comprehensive guidelines for how states should implement the best interest of the child in family reunification cases. Such guidelines do, however, exist in Finland, the Netherlands, and Norway. In cases where children are involved, certain exemptions to fulfilling material requirements may be considered in some countries if

63 AT, BE, CY, CZ, DE, EE, HU, IT, LT, LU, SI

64 AT, BG, DE, FI, LT, SI, BE, ES, HR, NL, LU, LV, SK, NO

65 This applies to Austria, Belgium, Denmark, and the Netherlands.

66 http://www.echr.coe.int/Documents/Convention_ENG.pdf

67 See the EMN Synthesis Report, point 5.3.4.

68 In Austria, Finland, and the Czech Republic, the age at the time of the decision is decisive.

69 AT, BE, EE, ES, FI, FR, HR, IT, PL, SE, SK

it is in the best interest of the child. Also, processing time may be sped up when children are involved and are considered to be in a vulnerable position.

Duration of the procedure (processing time)

Some of the states do not prescribe a statutory time-limit for processing applications for family reunifications. Nevertheless, a number of states have regulations similar to the Norwegian one, which determines that cases should be decided without undue delay.⁷⁰ Where a time-limit is prescribed in national law, this varies considerably among states, ranging from one month to 12 months.⁷¹ Most member states that set a specific time-limit are in compliance with the Family Directive's nine month limit for processing applications.

However, the focused study showed that some states start counting the processing time when the applicant submits the application, while others only do so upon reception of a complete submission. Additionally, certain states allow for an extension of the time-limit. This minimizes the comparability of the different national regulations. The time-limit may also vary within one state, for example, based on the type of residence permit.⁷²

Many EU member states have experienced an increase in family reunification applications over the last few years. This has resulted in a considerable backlog in some states. To deal with this, these countries have taken practical measures to shorten the processing time, such as increasing staff and/or providing intensified training or centralized processing activities.

Challenges related to the application process

The main challenges facing sponsors and family members mentioned by the EU countries included difficulties with appearing in person at a diplomatic mission to submit the application, processing time, and difficulties related to necessary documentation.⁷³

70 AT, BE, EE, MT, PL, SI

71 See the EMN Synthesis Report, point 5.3.5.

72 Ibid.

73 AT, EE, FI, HU, IE, IT, LU, LV, NL, NO, SE

The problem of access to diplomatic missions was most prominent among smaller states, which have a limited number of diplomatic missions. The challenge of often exceedingly long processing times was also mentioned by many states.⁷⁴

States also reported a list of challenges pertaining to the applicants, such as difficulties of detecting forced or sham marriages, fake registered partnerships, and false claims of parenthood.⁷⁵ Detection of such cases requires thorough investigation, which may in turn affect processing time.

74 AT, BE, DE, FR, IE, IT, NL, NO, SE

75 BE, EE, IE, IT, NO

5 Access to rights following family reunification

Which rights are granted to family members once they receive family reunification? These rights include access to education, vocational training, guidance, and employment as well as the right to an independent residence permit.

Access to education

The majority of the states give migrant children access to the compulsory school education system.⁷⁶ Some states also have specific measures such as language support or classes for foreign children to speed up their integration. A smaller number of states do not have any measures in place specifically geared toward TCNs after family reunification has been granted.⁷⁷ Where the family members are adults, they either have the same access to education as nationals, as their sponsors, or as other TCNs granted a residence permit. Additionally, most states give adult family members access to language courses and orientation on the state's society. These measures are often part of a wider integration support programs or training provided to TCNs. Access to education for family members of beneficiaries of international protection is linked to the rights of their sponsor in a number of states and is often a part of a broader set of integration measures for these groups.

Access to employment and self-employed activity

In several states family members have unrestricted access to the labor market after being granted family reunification.⁷⁸ In other states, family members may be required to apply for a work permit or pass a labor market test a year after having been admitted as family migrants.⁷⁹ The right to employment may also be dependent on the sponsor's status in some of the states. Where the sponsor's residence permit entitles him/her to work, such access to the labor market is also

76 AT, BE, BG, CZ, DE, EE, EL, ES, FI, FR, HU, IE, IT, LU, LV, NL, NO, SE, SK, UK

77 BE, IE

78 CZ, DE, EL, EE, ES, FI, FR, IT, LT, PL, SE, SI

79 CY, HU, LU, SI

granted to the family member.⁸⁰ What is required to gain access to the labor market may also be dependent on whether the residence permit is temporary or permanent. In some states, family members with a permanent residence permit are not required to obtain a work permit, which is necessary where the permit is temporary.⁸¹

A majority of the states do not impose restrictions on access to self-employment for family members.⁸² Specific authorization is required by a few states before access to self-employed activities is provided. In other states, such access is subjected to a one-year waiting period.

Family members of beneficiaries of international protection have access to employment and self-employment activities without specific restriction in most states, with only a few providing limitations for these groups.⁸³

Access to vocational guidance and training

Family members have access to the same general vocational guidance and training services as other legally residing TCNs in several states.⁸⁴ In a few states, vocational guidance and training services are available only for refugees and BSPs and their family members, or there are more targeted measures available for these groups.⁸⁵

Right to apply for autonomous right of residence

Most of the states recognize the right of TCNs who hold a family reunification permit to apply for a different residence permit if they fulfill the relevant requirements.⁸⁶ In certain states, an independent right to residence is granted to family members in the event that they obtain a permanent residence permit.⁸⁷ In other states, this right is subject to a period of cohabitation of three years between spouses or partners in the territory of the state.⁸⁸

80 BG, IT, LV, NL, UK

81 BG, HU, LV, SK

82 CZ, DE, EE, EL, ES, FI, FR, HR, HU, IT, LT, PL, SE, SK, NO

83 In Hungary, access to the labor market for the family members of BSPs is granted after one year of residence.

84 AT, BE, CY, CZ, DE, EE, EL, HU, IE, IT, LU, LV, NO, SE, SI

85 LT, SK, EE, IE, NL, SE, SI

86 AT, BE, CZ, DE, EE, EL, ES, FI, HR, HU, IE, IT, LT, LU, NL, SE, SI, SK, UK

87 AT, LV

88 DE, EE, NO

As a main rule, a family member's residence permit ends at the same time as the sponsor's or where the family relationship no longer exists. In certain states, an autonomous residence permit may be granted in the event of death, divorce, or separation, while in other states this right is available only after a minimum number of years of residence following family reunification. Furthermore, the right to an independent residence permit may be granted to family members in cases of domestic violence and abuse, regardless of whether the minimum number of years of residence has been reached.⁸⁹ A number of states also grant an autonomous right of residence to children once they turn 18, provided that they fulfill a minimum number of years of residence following family reunification.⁹⁰

Long-term residence and citizenship

Family members may apply for a long-term residence permit after complying with residence requirements varying from three to five years. Additional conditions apply in some states, notably complying with integration measures and/or sufficient income. Similar to other legally residing TCNs, family members can obtain citizenship after a certain number of years of residence in a state, ranging from three to 10 years. Further requirements may need to be met in some states, such as ensuring their subsistence or not having been sentenced for a criminal offence.

89 BE, DE, IE, FI, FR, LU

90 DE, LU, NL

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Family reunification regulations in Norway and the EU

Today, family immigration constitutes more than one-third of the immigrants coming from outside Europe (EEA) to Norway and the EU countries. It is the explicit goal of the Norwegian Government to adapt its immigration policies to European standards. But, EU countries also differ in how they regulate family migration.

This report compares family reunification regulations in Norway to those in the EU member states.

The report is based on the EMN's 2017 focused study, named Family Reunification of Third-Country Nationals in the EU: National Practices.

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