

Family reunification under strain: Restrictive v. flexible policies

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Summary:

Conditions for family reunification of third-country nationals resident in Europe are being tightened throughout the European Union, and the recent publication of a Green Paper by the European Commission has ensured that policy discussions will move to EU level. But do governments see the rules they create as a means of bringing families together or restricting migration flows, pondered participants in an EPC conference.

Full Report:

Panel I: Conditions for family reunification

Harmonisation of national rules on family reunification is necessary to prevent “migration tourism” and ensure coherence with EU objectives in the field of migration, argued **Fabrice de Kerchove**, a project manager at the **King Baudouin Foundation**.

Controversy surrounds issues like assessing migrants’ language skills before granting residence permits, requirements to monitor the language skills of migrant children at school, and the treatment of migrant women, De Kerchove said: legal intricacies from one member state to another can be very different.

Debate on family reunification rules in EU member states is highly dynamic at present, said **Yves Pascouau**, senior policy analyst at the **European Policy Centre**, presenting the results of his publication entitled ‘Conditions for family reunification under strain – A comparative study in nine EU member states’.

The launch of the European Commission’s Green Paper and the signature of a European Pact on Asylum and Immigration have ensured that family reunification issues are rising up the agenda at both EU and national level, Pascouau explained.

“Family reunification is constantly evolving and national rules are being modified. The European Court of Justice’s arrival in the field has changed the landscape by recognising for the first time the right to family reunification. This individualised cases, ensured that children’s rights are respected and limited member states’ margins of manoeuvre,” the analyst said.

“The landscape is changing: the Lisbon Treaty gave powers to the European Parliament in this field and brought with it the Charter of Fundamental Rights, which includes family reunification,” he added.

Pascouau outlined the findings of a study comparing family reunification laws in nine EU member states to the requirements of the EU directive and ECJ jurisprudence. Countries were chosen according to their different attitudes towards family reunification, their size and their geographical position.

Eight of the nine countries studied modified their family reunification rules between 2007 and 2011, showing that the domain is highly dynamic. Some countries were extremely reluctant to tighten the rules in 2007 – like Sweden – but they have since done so, the study found.

The nine member states can be split into two groups: those that use family reunification rules to restrict migration – therefore making the conditions harder to fulfil – and those that want to facilitate family reunification by adopting rules that are more flexible, Pascouau explained.

Implementation of family reunification rules varies widely across the member states covered by the study. In some countries it costs 25 euros to exercise the right to family reunification, while in others it costs 1,500 euros: “this has significant consequences”.

Harmonisation between member states is needed on issues that they have in common, while more cooperation is required in difficult areas, Pascouau argued.

“Very few member states are interpreting EU rules in a manner that benefits family reunification. But the ECJ has only been seized twice – this is a sign that the European Commission isn’t working very hard to enforce the rules,” he said.

“I’m not opposed to conditions being set, but I believe they should foster the integration of families rather than limit family reunification – if that’s the case, then establishing EU rules would be worse than the current situation,” he warned.

Pascouau concluded by calling on the EU to limit the differences between national laws, and to consider the situation from a family reunification perspective rather than from the perspective of limiting migration.

“The study shows that there are very diverse systems in place regarding the reunification of marriages, but the trend is to tighten the rules and the conditions of marriages are under scrutiny,” said **Sylvie Sarolea** of the **Université Catholique de Louvain-la-Neuve**.

In today’s world, marriage isn’t always for life and those who marry don’t necessarily have secure jobs, proper accommodation or social security. “Marriage as an institution isn’t necessarily between stable people,” she said.

For purposes of family reunification, most EU member states will only recognise a marriage concluded under the following circumstances:

1. It must have been freely undertaken.
2. It must not have been concluded for economic reasons, or to gain access to benefits.
3. It must respect public law.
4. It must be a lasting and durable relationship, without early separation.

“If one partner has too much responsibility for the other, the marriage won’t always be recognised,” Sarolea warned.

Most EU countries only allow marriage to be concluded between consenting adults of a certain age. Marriages must also be “true” in the sense that marriages of convenience or simulated marriages are against the law. “This is checked very effectively in some member states, but haphazardly in others,” she said.

Timeframes for visa applications vary widely from one member state to another. In Belgium, enquiries must be made in both countries and both partners will be interviewed. Visa refusals can be appealed against, she explained.

Other countries conduct more stringent checks, without a legal safety net in that decisions cannot be appealed against, she said.

Moreover, sanctions differ from one EU member state to the next, she explained. Entering into a marriage of convenience, practising polygamy and marrying a close relation are criminal offences in most EU countries, and a marriage must be lasting if a residence permit is to be granted.

"The Belgian state has a system for fighting against marriages of convenience, but it's not very well-organised and the legal guarantees are unsatisfactory," Sarolea said, arguing that a proper system with widely understood sanctions is essential if the phenomenon is to be dealt with effectively.

The Commission's Green Paper on family reunification takes as its starting point the 2003 EU directive. "But that's a very flexible piece of legislation and implementing it was optional," said **Philippe de Bruycker** of the **Université Libre de Bruxelles**.

Nevertheless, despite this flexibility "we're seeing convergence in national legislation". But this convergence is more political than legal in nature, De Bruycker said.

Stricter rules regarding finance, employment and accommodation reveal a Europe-wide trend of tightening conditions for family reunification. However, this is relative and not all member states are approaching the issue from the same starting point, he explained.

"Belgium used to be quite generous with its conditions but now it's getting stricter. Sweden too. Dutch policy was originally based on strict conditions, then it abolished the accommodation requirement, now it's reinstating it again: so the Netherlands is erratic," De Bruycker said.

He wondered why so few countries require those seeking family reunification to have health insurance. "Even European citizens have to get health insurance," he said. But he admitted that most candidates for reunification probably had health insurance anyway by virtue of having a job.

In most countries local authorities are the judges of whether a family has enough space to live in: some impose a minimum area in metres squared.

De Bruycker questioned the goal of such rules. "Should family reunification only take place in good, clean, friendly conditions? But what about housing for the poor, where they have a place to sleep but nothing else? Accommodation conditions are enforced very erratically."

Income requirements also vary widely from one country to the next, he said, warning member states against systematically rejecting applications if the financial conditions don't appear to have been fulfilled. The Chakroun case law showed the necessity of assessing cases on an individual basis, he said.

"I'm not disputing Yves' conclusion that more harmonisation is needed, but that will be very difficult to achieve. More coordination to identify best practices might be more effective. We need reasonable conditions that are properly applied – an effective system of family reunification that makes it easier to reunify families quickly when the conditions are fulfilled," De Bruycker argued.

The Commission's Green Paper represents a missed opportunity in that it makes no mention of resources or accommodation. Normally the EU doesn't give stakeholders enough time to respond to consultations, he said, complaining: "Now we've got a lot of time but too few questions to answer."

"I fear that civil society won't have much opportunity to contribute to the debate, but today is a start," De Bruycker concluded.

The Stockholm Programme adopted by the EU in 2009 calls for a more vigorous immigration policy that grants migrants the same rights as citizens of the Union – and the European Commission first identified family reunification as an essential tool for integrating immigrants way back in 1961, said **Kees Groenendijk** of **Radboud Universiteit, Nijmegen**.

Three of the nine member states covered by the study require applicants for family reunification to pass integration tests abroad prior to admission. Five of the nine require integration measures after admission. "But these measures and mechanisms are totally different from one another and are used for different reasons," Groenendijk said.

Germany offers language courses abroad, whereas the Netherlands requires those interested to find courses themselves. Meanwhile, the 2003 directive allows member states to impose "integration measures," not integration conditions: for example, it's doubtful whether some countries' requirements for Turkish nationals are compatible with the EU's Association Agreement with Ankara, he said.

All serious research suggests that the effect on integration of requiring potential immigrants to sit tests abroad is impossible to measure, Groenendijk said. "Integrating can take years and even generations, and depends on many other factors, like the attitudes of employers and the receiving population in general," he explained.

Governments must make clear whether their laws aim to facilitate family reunification or restrict migration, Groenendijk argued.

He concluded by calling for the current EU directive to be implemented more effectively before deciding whether to produce a new one.

Panel II: Family reunification rules – A tool for managing migration flows or for better integrating migrants?

"The goal of the Green Paper is to open the debate on family reunification on the basis of the current directive and implementation report," said **Diane Schmitt**, head of unit for immigration and integration at the **European Commission**.

The Green Paper will address issues like whether or not more harmonisation is needed in the field, or simply more coordination, or just guidelines. The Lisbon Treaty brought with it more co-decision between MEPs and member states, and more qualified majority voting, heralding "a revolution" in the field since the first directive was adopted, Schmitt explained.

Recent years have seen few opportunities to clarify the directive: facts and figures from the member states are sparse and there's a lack of case law to fall back on at the European Court of Justice.

Procedural issues include how to tackle fraud and marriages of convenience, and who should pay legal costs.

The deadline for responding to the Commission's consultation is 1 March 2012. "We want reactions from member states and civil society," Schmitt said.

"We won't necessarily change the directive. But we might need more guidelines, coordination or implementation. That's not to say we won't change it! We're open to anything and won't prejudge the outcome of the consultation," she said.

"It's fair to say that integration hasn't worked the same way in every member state. We can't make it happen, but we can fund initiatives and facilitate best-practice exchange," the Commission official concluded.

"In the Netherlands we have a minority government supported in parliament by a far-right party. The coalition agreement speaks of the need to reduce immigration, and the Dutch immigration minister has published a paper on how to achieve this in Europe," said **Peter Diez**, deputy director of the migration policy department at the **Dutch Ministry of Home Affairs**.

The paper calls on the EU to enforce current rules effectively. Reducing the number of family immigrants isn't a goal as such, Diez explained. "We agree with the Commission that family reunification is a right, but it's not unconditional," he added.

"Policymakers don't integrate migrants. Only they can do that," Diez insisted. But he conceded that "we can facilitate it by combating discrimination," citing the workplace as an example.

"Why should managed migration take place at the expense of integration?" Diez asked.

"We can improve the quality of integration in terms of economic and social participation in society. But having huge numbers of migrants doesn't help this," he said.

"Belgium's policy [on family reunification] used to be one of the EU's most flexible. Now it's one of the strictest," said **Denis Ducarne, a member of the Belgian parliament**.

"We had to react to what we saw as a lax attitude to family reunification. Previously we dealt with migration flows in a very flexible manner without also dealing with integration," Ducarne said, suggesting that a failure to address integration properly had given rise to far-right politics and the rejection of immigrants in Belgium.

"Local authorities were simply unable to look after the families of all these immigrants. It has to be up to the sponsor. The sponsor must have sufficient means to support his family, alleviating the burden on the public purse," Ducarne insisted.

Pursuing a policy of "integration contracts" would lead to "good immigration" that requires migrants to learn at least one of Belgium's national languages and profess an understanding of Belgian values, the MP claimed.

In response, **European Commission official Schmitt** said "family reunification is a right". "Migration flows are a different matter. But family reunification helps integration by producing more stable family units," she argued.

"Not everyone can come to the EU. But family reunification for those who are here is a right," she repeated.

Ducarne hit back by insisting that "we're not confusing the two". "People have the right to bring over their families: but only subject to the conditions imposed by the country," he said, accepting nevertheless that the EU directive set out certain parameters which must be respected in this regard.

"EU law should be more flexible and allow us to react to tensions in society. With no progress at all at EU level on immigration, we need to manage this nationally. We need more flexibility in the directive," Ducarne stressed.

There is a nationwide consensus in Belgium that third-country nationals from outside the EU must have lived in the country for longer than twelve months before applying for family reunification. Financial rules should also be stricter, he said.

Dutchman Diez echoed Ducarne's call for more flexibility. "Differences exist between member states in terms of population and economic development, so EU law needs to be flexible," he said. "Whether or not the EU law will be changed depends on political will. We think the directive is a straitjacket, because it prevents us from doing the things we want to do," he said.

Discussion:

Asked about the value of academic studies in this domain, Radboud University's Groenendijk said "academic reports can have major effects, for example the Chakroun case law. So take Yves' study seriously".

"Harmonisation isn't an aim in itself. The EU should cherish its diversity. Harmonisation without justification isn't good," he added.

"We should ask the immigrant community whether they have abandoned or suffered delays to family reunification plans as a result of the rules and their implementation," said Sarolea of the Université Catholique de Louvain-la-Neuve.

The lack of a proper system in place to tackle marriages of convenience means that "in practice, member states are making things up as they go along and the application of rules is arbitrary". "It isn't very easy to be objective about human relationships," Sarolea cautioned.

"But you can establish deadlines to minimise delays and allow appeals against rejections of visa applications," she added.

Refuting Diez's claims that policymakers don't integrate migrants, one participant said that "such statements are insensitive and don't help things". "Integration isn't just one way. Governments and the host society can help a lot. EU societies aren't always welcoming, so there's a lot more to be done here," the participant said.

Diez responded by claiming he had been misunderstood. "Integration is a two-way process. But we can't pretend that migration policy will provoke a landslide of integration. As governments we can stimulate, but we don't integrate," he said.

Ducarne said Belgium would draw up a compulsory integration contract for migrants. "Migration can't be separated from integration: it's no longer possible to do so. [French President Nicolas] Sarkozy and [German Chancellor Angela] Merkel have recognised this," he said.

The tough economic climate ushered in by the crisis may mean that "integration no longer happens through the workplace as it has done in the past," Ducarne predicted. "So it could happen at the level of citizenship. The responsibility lies with the host countries to put in place integration studies, as well as with the migrants themselves," he said.

Diez responded by saying "it all comes down to integration. If you can combat crime and abuse, then you'll get more acceptance of migration among the host population".

"We're saying that there's a consensus that changes are needed, but some people have been saying that change isn't always necessary and harmonisation isn't a goal in itself. So we're going in different directions," said the Commission's Schmitt, attempting to sum up the two panel discussions.

"Family reunification isn't just about integration and migration. If the EU wants to attract economic migrants, then it won't get very far by restricting family reunification," Schmitt said.

"Language and value requirements are important. Should certain regulations be clarified, and how can we do this?" she asked. "But at the end of the day, family reunification is a right that must be protected," she concluded.