



Not there yet: Family reunification for beneficiaries of international protection



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Greece	Greek Council for Refugees
Croatia	Croatian Law Centre
Hungary	Hungarian Helsinki Committee
Ireland	Irish Refugee Council
Italy	ASGI
Malta	Aditus foundation
Netherlands	Dutch Council for Refugees
Poland	Independent expert
Portugal	Portuguese Refugee Council
Romania	Independent expert
Sweden	Swedish Refugee Law Centre
Slovenia	PIC
UK	British Refugee Council
Switzerland	Swiss Refugee Council
Serbia	Independent expert
Türkiye	Independent expert

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Glossary

Asylum seeker(s) or Applicant(s)	Person(s) seeking international protection, whether through recognition as a refugee, as a subsidiary protection beneficiary or through another protection status on humanitarian grounds.
Beneficiary of international protection (BIP)	Person granted refugee status or subsidiary protection in accordance with Directive 2011/95/EU .
'Core' Family	Under the Family Reunification Directive, the spouse and unmarried minor children.
Dublin III Regulation	Regulation 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person.
Family reunification	Entry and residence in a Member State of family members of a beneficiary of international protection.
Family Reunification Directive	Directive 2003/86/EC on the right to family reunification.
Regulation on Asylum and Migration Management (RAMM)	Proposal for a Regulation of the European Parliament and of the Council on Asylum and Migration Management and amending Council Directive (EC) 2003/109.
(recast) Qualification Directive	Directive 2011/95/EU on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and the content of the protection granted.
Sponsor	A beneficiary of international protection applying or whose family is applying for family reunification in order to join them in their country of asylum.
Unaccompanied Minor	A third country national under the age of 18 who is not in the care of an adult responsible by law or custom or who was left unaccompanied by such an adult.

List of abbreviations

AIDA	Asylum Information Database
BIP	Beneficiary of international protection
BSP	Beneficiary of subsidiary protection
CALL	Council of Alien Law Litigation Conseil du contentieux des étrangers Raad voor Vreemdelingenbetwistingen (Belgium)
CEAS	Common European Asylum System
Charter	Charter of Fundamental Rights of the European Union
CJEU	Court of Justice of the European Union
EASO	European Asylum Support Office (since 01.01.2022, EUAA)
EUAA	European Union Agency for Asylum (formerly known as EASO)
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ECRE	European Council on Refugees and Exiles
EU	European Union
IND	Immigration and Naturalisation Service Immigratie en Naturalisatiedienst (Netherlands)
UM	Unaccompanied Minor
UNCRC	United Nations Convention on the Rights of the Child
UNHCR	United Nations High Commissioner for Refugees

Introduction

September 2023 will mark the twenty-year anniversary of the Family Reunification Directive (“the Directive”). It is thus timely to provide a comprehensive overview of the current situation regarding the implementation of the Directive, as well as of other ways in which family unity for individuals in need of protection can be realised.

Family reunification is a key right for beneficiaries of international protection (BIPs). Having been forced to flee, they cannot return to their country of origin to continue with family life. In situations of forcible displacement, it is often the case that families are separated,¹ whether the separation occurred at the start of or during the journey to Europe. Reunification may also be a key priority for BIPs when they arrive because of the dangers their family faces.² Concern about family members might hamper recovery from trauma and undermine efforts at inclusion in the host country, such as learning the host country’s language or searching for work.³ It may also place BIPs in a financially precarious situation if they have to support close family members who are still abroad.

It should also be underlined that, as well as being a right, family reunification constitutes a safe path to protection for family members of BIPs. Family members remaining in the country of origin may also be at risk; they are rarely shielded from the persecution suffered by the BIP.⁴ Accessible, efficient and widely available procedures to reunite families thus protect more people and reduce the risk that they are forced to use dangerous routes to reach Europe.⁵ Conversely, the absence of realistic and timely family unity procedures may leave family members with no choice but to use irregular means of arrival in European countries.⁶

Within the EU, states decided to harmonise the right to family unity *a minima* for all third country nationals. Thus, 25 EU Member States (EUMS) are bound by the Family Reunification Directive (“the Directive”),⁷ which provides for a substantive right to family reunification with the “core” family members, namely, the spouse and unmarried minor children, with more favourable provisions for refugees compared to other third country nationals. Nonetheless, this right and the Directive’s provisions are applied very differently across Europe, and considerable challenges remain for those seeking to exercise their right to family reunification.

This comparative report provides an overview of the right to family reunification in 23 European countries with information drawn primarily from ECRE’s Asylum Information Database (AIDA) and supplemented by relevant publications from ECRE, the EU Asylum Agency (EUAA), UNHCR and the Council of Europe. It covers both good practices and worrying trends at the national level, as well as the means of safeguarding this right which are available in the legislative framework. The report focuses on family reunification for BIPs and family reunification for asylum applicants under the Dublin III Regulation. It does not therefore cover family reunification for beneficiaries of national forms of protection or temporary protection statuses under EU and national law. It examines the procedures for family reunification when the family is abroad but does not cover family reunification *sur place*.

¹ Council of Europe, *Realising the right to family reunification of refugees in Europe*, June 2017, available at: <http://bit.ly/3WvteY1>, p12.

² Frances Nicholson, *The “Essential Right” to Family Unity of Refugees and Others in Need of International Protection in the Context of Family Reunification*, January 2018, available at: <http://bit.ly/3HjjeNb>, p1.

³ Council of Europe, *Realising the right to family reunification of refugees in Europe*, June 2017, available at: <http://bit.ly/3WvteY1>, p13.

⁴ UNHCR Executive Committee, *Family Protection Issues*, June 1999, available at: <https://bit.ly/3D3bFaz>, para 9-10.

⁵ Frances Nicholson, *The “Essential Right” to Family Unity of Refugees and Others in Need of International Protection in the Context of Family Reunification*, January 2018, available at: <http://bit.ly/3HjjeNb>, p1-2.

⁶ AIDA, *Country Report Cyprus, 2021 Update*, April 2022, available at: <http://bit.ly/3H70iB4>, p16 and 24; UNHCR, *Family Reunification in Europe*, 2015, available at: <http://bit.ly/3GRQ5qz>, p3.

⁷ Ireland and Denmark opted out of the Family Reunification Directive.

First, the report sets out the general legal framework. It then follows the chronological steps of the family reunification procedure. Finally, it discusses some of the other ways in which the right to family reunification can be realised. The content of the chapters is as follows:

- **Chapter I** presents the overarching legal framework and legal principles that apply throughout the family reunification procedure, and which should inform decision-making, as well as setting out the scope of application of family reunification in relation to both the sponsor and the family members.
- **Chapter II** focuses on the family reunification procedure, detailing procedural and substantive requirements.
- **Chapter III** details the status and rights of family members once family reunification has been achieved.
- **Chapter IV** discusses other ways to realise family reunification for persons in need of protection, primarily examining how the right operates under the Dublin III regulation.

A final section draws conclusions and makes targeted recommendations for practice and for legislative reform.

1. Family reunification and applicable rights

The Family Reunification Directive regulates the finer details of implementation in EU countries.⁸ Overarching legal principles impose positive and negative obligations on states in the context of family reunification for BIPs, to ensure that they apply the Directive in a manner that is consistent with fundamental rights.⁹ In carrying out family reunification procedures as foreseen by the Directive, EU Member States apply EU law; this in turn entails that they must respect the rights contained in the Charter of Fundamental Rights of the EU (CFREU), per article 51. In addition, states are bound to respect Council of Europe instruments, including the European Convention on Human Rights (ECHR).

The right to private and family life

The right to respect for private and family life is broadly recognised and protected, including in Article 8 ECHR and Articles 7 and 24 of the Charter. Similarly, Article 23(1) of the EU's recast Qualification Directive mandates that states shall ensure that family unity can be maintained.

These instruments do not contain an explicit and specific right to family reunification, but their provisions on respect for family life offer a minimum level of protection from which family reunification flows. Moreover, the ECtHR has, in certain cases, recognised a positive obligation to reunify families, taking into account the effective rupture of family ties, the extent of the ties in the host state, and whether there are insurmountable obstacles preventing family reunion in the country of origin,¹⁰ a criterion which BIPs automatically fulfil.

Best interests of the child

The best interests of the child should be a primary consideration in all procedures and decision making which concerns them.¹¹ The content of this principle is assessed with regard to the specific situation of each child, taking into account their situation and needs. Their views, care, protection and the preservation of their family environment should all be taken into account in this assessment.¹² According to the ECtHR, this principle includes the right for a child to be cared for by their parents and measures should be taken to rebuild the family where appropriate,¹³ as mutual enjoyment of each other's company for a child and a parent is an essential element of family life.¹⁴ Concerning family reunification specifically, Articles 9 and 10 of the UN Convention on the Rights of the Child foresee that states must examine such applications for children and their parents in a positive, humane and expeditious manner. Under EU law, Article 24(2) of the CFREU contains an express obligation to consider the best interests of the child, as does Article 5(5) of the Family Reunification Directive when states examine an application.

In the context of family reunification, the best interests of the child principle also affects guardianship in the country of asylum: states must ensure that unaccompanied minors have effective legal representation through a competent guardian in the (temporary) absence of their parents, as well as

⁸ Of the 23 AIDA countries analysed in this report, the following are not bound by the Family Reunification Directive: the Republic of Ireland, Serbia, Switzerland, Türkiye, and the United Kingdom.

⁹ CJEU, *European Parliament v Council of the EU*, C-540/03, 27 June 2006, available at: <http://bit.ly/3WaemOo>, para 19.

¹⁰ ECtHR, *Rodrigues Da Silva and Hoogkamer v the Netherlands*, No. 50435/99, 31 January 2006, available at: <http://bit.ly/3XBV1Xo>, para 39.

¹¹ Article 3(1) UNCRC; ECtHR, *Ignaccolo-Znide v Romania*, No. 31679/96, 25 January 2000, available at: <http://bit.ly/3GMOySG>, para 94.

¹² CRC Committee, *Y.B. and N.S. v Belgium*, 12/2017, available at: <https://bit.ly/3XDULr3>, para 8.11.

¹³ ECtHR, *K. and T. v Finland*, No 25702/94, 12 July 2001, available at: <http://bit.ly/3kg1wkl>, para. 151.

¹⁴ ECtHR, *Savigny v Ukraine*, No 39948/06, 18 December 2008, available at: <http://bit.ly/3QI54ba>, para 47.

proper access to information and legal aid. Without such guarantees, they cannot effectively exercise their right to family reunification.

The creation of specific guidelines on the involvement of children in family reunification procedures – in the light of the best interests principle – is one example of good practice.

In **Belgium**, for example, guidelines have been issued that detail the role of guardians in family reunification procedures. Guardians must inform the unaccompanied minor about the possibility of family reunification, facilitate communication between the child and the authorities, get in contact with the family, and assist the child and their family in receiving any support for which they are eligible, such as financial support. Support is also provided to guardians through an annual training session, a helpdesk to seek information and support, and access to legal advice.¹⁵

In the **Netherlands**, specific guidelines are addressed to consular staff interviewing children, to ensure respect for their rights and that their specific needs are met. In principle, consular staff may only interview children who are at least 12 years old. Additionally, the guidelines contain detailed instructions about the information to be given to the child prior to the interview, such as confidentiality, the aim of the interview, etc. The guidelines also discuss the use of age-appropriate interviewing techniques and questions. However, lack of training of embassy staff and the lack of a monitoring framework remain challenges to the implementation of the guidelines.¹⁶

In **Greece**, the Asylum Service, in cooperation notably with UNHCR and the EUAA, developed a best interest assessment form and checklist to facilitate family reunification of children in the context of the Dublin III Regulation. These documents facilitate collection of information and operational co-operation between the relevant actors in Dublin processes. However, child protection actors have reported that transfers of children are often denied without explanations that consider the best interests of the child.¹⁷ Dublin requests are also strongly affected by the delays in appointing guardians to unaccompanied minors. Indeed, under Greek law, the Public Prosecutor is the temporary guardian until a long-term guardian is appointed by the authorities, but the appropriate supervisory board still has yet to be established to overview these more permanent appointments.¹⁸

2. Eligibility criteria for family reunification

Eligible sponsors

Family reunification is not available equally to all beneficiaries of international protection. Some countries apply different rights to refugees and to beneficiaries of subsidiary protection, with a more restrictive approach to the latter. The Family Reunification Directive, which generally applies to persons holding at least a one-year residence permit with reasonable prospects of obtaining permanent residence (Article 3(1)), explicitly excludes from its scope of application persons “authorised to reside in a Member State on the basis of a subsidiary form of protection” (Article 3(2)(c)).¹⁹ EU law thus does not cover the right to family reunification of beneficiaries of subsidiary protection. However, Article 3(5) specifies that states are free to adopt more favourable positions than those contained in the Directive.

¹⁵ Council of Europe, *Family Reunification for Refugee and Migrant Children*, April 2020, available at: <http://bit.ly/3WhirR5>, p73-75.

¹⁶ Council of Europe, *Family Reunification for Refugee and Migrant Children*, April 2020, available at: <http://bit.ly/3WhirR5>, p71-72.

¹⁷ AIDA, *Country Report Greece, 2021 Update*, May 2022, available at: <http://bit.ly/3WohhmU>, p76; Council of Europe, *Family Reunification for Refugee and Migrant Children*, April 2020, available at: <http://bit.ly/3WhirR5>, p70.

¹⁸ AIDA, *Country Report Greece, 2021 Update*, May 2022, available at: <http://bit.ly/3WohhmU>, p76.

¹⁹ Although subsidiary protection as foreseen under EU law did not yet exist at the time of promulgation of the Directive, it was adopted shortly after through Directive 2004/83/EC of 29 April 2004 and is covered by this exclusion.

European Commission guidance encourages Member States to grant similar rights to both groups, given that their humanitarian protection needs are the same.²⁰ The Qualification Directive in Recital 39 also underlines that all BIPs should enjoy the same rights, subject to the same conditions, except where derogations “are necessary and objectively justified”. Lastly, all BIPs benefit from the human right to respect for family life. The Council of Europe²¹ and UNHCR also recommend that states afford subsidiary protection holders rights equivalent to refugees’ as to family reunification, on the basis that the purpose of both statuses is to recognise that a person cannot return to their country of origin because of a real risk of suffering serious harm.²²

Article 14 ECHR forbids states from treating persons that are in comparable situations differently, unless there is an objective and reasonable justification for the difference in treatment, which is proportionate to a legally permitted aim.²³ A common justification offered for differential treatment is the provisional nature of subsidiary protection, with this form of protection of a shorter duration.²⁴ In October 2022, the ECtHR did not find a violation of Article 14 (combined with Article 8) in relation to the two-year suspension of family reunification of subsidiary protection holders introduced by Sweden in 2016. It judged that ensuring implementation of immigration control and protecting the economic wellbeing of the country were legitimate aims for which a two-year suspension was proportionate.²⁵ However, the Court did not offer a general assessment and instead stated that it required case-by-case analysis.

Practices differ across the EU: in some states, refugees and subsidiary protection holders can access family reunification on the same basis; some states allow family reunification but in a more restrictive manner; and some states do not provide family reunification for subsidiary protection holders.

Eligible sponsors for family reunification – Subsidiary Protection holders?		
Same right to family reunification as refugees	Limited right to family reunification	No right to family reunification
BE, BG, HR, FR, IE, IT, NL, PL, PT, RO, SR, ES, SE, UK	AT, HU, SI, CH, TK	CY, DE*, GR, MT

Source: AIDA.

* Germany introduced a separate provision for the admission of families of beneficiaries of subsidiary protection on humanitarian grounds, as detailed below.

Some EUMS restricted the right to family reunification for subsidiary protection holders following the events of 2015, with the likely objective of making their country less attractive to new asylum seekers, in an attempt to reduce arrivals.²⁶

In **Sweden** the suspension was only temporary; family reunification for this group was suspended from 2016 to 2019, for all persons having sought asylum after 24 November 2015. During these three years, family reunification was allowed only in exceptional cases, where a denial would be a breach of Sweden’s international obligations, for instance under Articles 3 (risk of inhuman or degrading

²⁰ European Commission, *Communication from the Commission to the European Parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification*, 3 April 2014, COM(2014) 210 final, available at: <http://bit.ly/3iH6OVA>, p24.

²¹ Council of Europe, *Realising the right to family reunification of refugees in Europe*, June 2017, available at: <http://bit.ly/3WvteY1>, p14.

²² UNHCR, *Families Together: Family Reunification for Refugees in the European Union*, February 2019, available at: <http://bit.ly/3Xg4pjT>, p8.

²³ ECtHR, *Karlheinz Schmidt v Germany*, 13580/88, 18 July 1994, available at: <http://bit.ly/3IYYT0G>, para 24.

²⁴ ECtHR, *M.T. and others v Sweden*, No 22105/18, 20 October 2022, available at: <http://bit.ly/3H9GP2s>, para 89.

²⁵ Ibid; a similar case remains pending concerning Switzerland: ECtHR, *D.F. and D.E. v Switzerland*, No 13258/18, available at: <http://bit.ly/3QJH87k>.

²⁶ Frances Nicholson, *The “Essential Right” to Family Unity of Refugees and Others in Need of International Protection in the Context of Family Reunification*, January 2018, available at: <http://bit.ly/3HjjeNb>, p142.

treatment) and 8 (right to family life) ECHR.²⁷ In 2019, subsidiary protection holders were again afforded the same rights as refugees (although it should be noted that during the suspension a more restrictive approach was introduced in general).²⁸

In **Austria**, amendments to the Asylum Law that came into effect on 1 June 2016 introduced a three-year waiting period for subsidiary protection holders, as well as the requirement that they demonstrate stable accommodation, health insurance and sufficient income – regardless of when they applied for family reunification. Before these amendments, they did not have to wait to apply for family reunification and were exempted from the material requirements if they applied within three months of receiving status.²⁹

In **Germany**, eight months after granting subsidiary protection holders the same rights as refugees, the government backtracked. The Residence Act was amended again in 2016, leading to a two-year suspension of family reunification from March 2016 to July 2018 for persons having been issued a residence permit on the basis of subsidiary protection status after 17 March 2016. This suspension was defended as necessary to ensure proper integration of family members entering Germany in this way. Following the end of the suspension in March 2018, a separate and discretionary route for family unity of subsidiary protection holders was introduced, with visas capped at 1,000 per month.³⁰

Providing lesser rights for subsidiary protection holders creates problems in a context where there is significant divergence among countries when it comes to the use of different protection statuses, with some favouring the use of subsidiary protection from people who are likely to receive refugee status elsewhere.³¹ Policies that afford different rights to refugee and subsidiary protection respectively may also influence asylum decision making, with an incentive created to decide on the lesser status.

Many actors observed that the suspension in **Germany** coincided with a steep rise in the proportion of subsidiary protection decisions granted, as compared to 2015.³² “Upgrade” appeals, whereby a BIP challenges the protection decision on the ground that they should have been recognised as a refugee rather than being granted subsidiary protection, had a success rate of over 75% in 2016, the year following the policy change.³³

Beyond the EU, in **Türkiye**, family reunification is restricted for some BIPs, due to the differential treatment of refugees based on their region of origin. For those falling under the definition of refugee in the 1951 Convention on the Status of Refugees, Türkiye distinguishes between “refugees”, who are the people who meet the definition *and* come from a European country of origin, and those termed “conditional refugees”, who are the people who also meet the 1951 definition but come from a non-European country of origin. Türkiye only affords family reunification rights to the first category and to subsidiary protection beneficiaries. “Conditional refugees”, who meet the 1951 definition but come from a non-European country of origin, are excluded from family reunification.³⁴

Eligible family members

²⁷ Swedish Migration Court of Appeal, No UM5407-18, 13 November 2018, summary available at: <http://bit.ly/3H9mnib>.

²⁸ AIDA, *Country Report Sweden, 2021 Update*, April 2022, available at: <http://bit.ly/3AuYehH>, p108.

²⁹ AIDA, *Country Report Austria, 2021 Update*, April 2022, available at: <http://bit.ly/3H8Qc2l>, p150.

³⁰ AIDA, *Country Report Germany, 2021 Update*, April 2022, available at: <http://bit.ly/3Arvma8>, p170-171.

³¹ ECRE, *ECRE Factsheet: Asylum Statistics and the Need for Protection in Europe*, December 2022, available at: <https://bit.ly/3CRPZ1b>; ECRE, *EU Support to Afghanistan: Scoring High on Humanitarian Assistance and Low on Protection in Europe?*, December 2021, available at: <https://bit.ly/3QPpPBK>.

³² AIDA, *Country Report Germany, 2016 Update*, March 2017, available at: <https://bit.ly/3WjzIce>, p89; Council of Europe, *Realising the right to family reunification of refugees in Europe*, June 2017, available at: <http://bit.ly/3WvteY1>, p14; Frances Nicholson, *The “Essential Right” to Family Unity of Refugees and Others in Need of International Protection in the Context of Family Reunification*, January 2018, available at: <http://bit.ly/3HjjeNb>, p144.

³³ AIDA, *Country Report Germany, 2016 Update*, March 2017, available at: <https://bit.ly/3WjzIce>, p89.

³⁴ AIDA, *Country Report Türkiye, 2021 Update*, July 2022, available at: <http://bit.ly/3GJtgFO>, p148.

The Family Reunification Directive provides for mandatory reunification only of the core family, that is, the spouse and minor unmarried children. In such cases, states have a positive obligation to allow family reunification and no margin of appreciation,³⁵ while any broader application of the family reunification procedure is optional. This is often challenging for BIPs for a range of reasons. First, the notion of family varies greatly depending on the cultural context. Second, legal ties and direct filiation do not necessarily reflect complex realities, particularly in contexts of persecution and/or war, where children may be taken in by their grand-parents, uncles and aunts, or cousins, and older siblings may take on a parental role.³⁶

The ECtHR assesses family life as first and foremost a question of fact, depending on whether close personal ties actually exist in practice.³⁷ This could include relationships with grandparents,³⁸ uncles and aunts, nieces and nephews³⁹ and so on. The approach under the UN Convention on the Rights of the Child (UNCRC) is broad: where relevant, “parents” should include biological, adoptive, and foster parents, and other members of the extended family or even community.⁴⁰ The Council of Europe also calls for a broad definition.⁴¹

Contrary to the general regime for third country nationals, Article 9(2) of the Directive enables states to limit reunification to family links which pre-date the sponsor’s entry into the country of asylum, placing refugees in a less favourable situation than other third country nationals.

This option was taken up by **Austria, Cyprus, France, Germany, Hungary, the Netherlands, Romania, Slovenia and Sweden**, and is also applied in **Ireland, Serbia and Switzerland**, which are not bound by the Directive. UNHCR expressed strong opposition to this approach, as it does not reflect the reality of many refugees’ lives, where bonds may be formed after entering the country of asylum, especially given long processing times for asylum applications.⁴²

In the **United Kingdom**, family reunification is limited not simply to the family as existed before entering the UK, but it further restricted to family as existed prior to departure from the country of origin, thus excluding family links formed in transit.

Eligible family members for reunification with an adult BIP

- Spouses and partners

Under Article 4(1) of the Family Reunification Directive, states are obliged to allow reunification with the spouse of a sponsor. States may impose a minimum age for the spouse and sponsor that are to be reunited, up to 21 years. Contrary to European Commission’s guidance for application of the Directive,⁴³ which stated that this provision did not prevent couples under 21 years of age from applying, simply that the state may then delay reunification, in 2013 the Court of Justice of the EU (CJEU) ruled that the

³⁵ CJEU, *European Parliament v Council of the EU*, C-540/03, 27 June 2006, available at: <http://bit.ly/3WaemOo>, para 60.

³⁶ UNHCR, *Families Together: Family Reunification for Refugees in the European Union*, February 2019, available at: <http://bit.ly/3Xg4pjT>, p4 and 12; UNICEF, *The Refuge of Family: How the UK Government can help children fleeing danger reach the safety of family*, September 2017, available at: <https://bit.ly/3Xwp3wg>, p3.

³⁷ ECtHR, *K. and T. v Finland*, No 25702/94, 12 July 2001, available at: <http://bit.ly/3kg1wkl>, para. 150.

³⁸ ECtHR, *Marckx v Belgium*, No 6833/74, 13 June 1979, available at: <http://bit.ly/3WINMBY>, para. 45.

³⁹ ECtHR, *Nsona v the Netherlands*, No 23366/94, 28 November 1996, available at: <http://bit.ly/3XrRmLU>.

⁴⁰ CRC Committee, *General Comment No 14*, 29 May 2013, available at: <https://bit.ly/3Xz5SBs>, para 59.

⁴¹ Council of Europe, *Realising the right to family reunification of refugees in Europe*, June 2017, available at: <http://bit.ly/3WvteY1>, p5.

⁴² UNHCR, *Families Together: Family Reunification for Refugees in the European Union*, February 2019, available at: <http://bit.ly/3Xg4pjT>, p14.

⁴³ European Commission, *Communication from the Commission to the European Parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification*, 3 April 2014, COM(2014) 210 final, available at: <http://bit.ly/3iH6OVA>, p8.

broad margin of discretion afforded to states under this provision meant they could require that both spouses be at least 21 years old at the time of presenting the application for family reunification.⁴⁴

Austria, Belgium (limited to family links created after entry into Belgium), **Cyprus** and **Malta** delay family reunification by requiring that the spouse and/or the sponsor be at least 21 years of age. Despite the CJEU's clarification that this requirement must be enforced at the time of the decision and not of the application for family reunification, **Austria** still requires both to be at least 21 years old at the time of the family reunification application.⁴⁵

This right can also be limited in the case of polygamous marriages, per Article 4(4): if the sponsor already has a spouse with them in the country of asylum, the state cannot authorise reunification with a further spouse and may forbid reunification with the minor children of the sponsor and further spouse. In Article 4(3), the Directive encourages but does not compel states to allow reunification with unmarried partners (registered or cohabiting).

With the exception of a reference to non-discrimination including on the basis of sexual orientation in Recital 4, the Directive does not mention the rights of same sex couples, regardless of the legal status of their relationship. The European Commission's report on the implementation of the Directive confirms that not all states afford equal rights to same sex couples.⁴⁶ However, in 2016 the ECtHR found that there was no objective and reasonable justification to differentiate based on sexual orientation when it came to family reunification of unmarried couples (the case in question regarded the application of a third-country national, rather than that of a beneficiary of international protection). Thus, if a state allows for reunification of unmarried heterosexual couples, it must do the same for unmarried homosexual couples.⁴⁷ The CJEU recently interpreted the Free Movement Directive, which regulates movement of EU citizens and their families within the EU, in the same way in relation to the concept of "spouse", which was found to apply equally to same sex couples.⁴⁸ With regard to homosexual couples, limiting the scope of family reunification only to spouses can be particularly problematic where the country of origin of the BIP does not allow same sex couples to marry.⁴⁹

Several states only allow spouses to reunite, however, among the states that include partners in reunification processes, a majority extend this option to both registered and cohabiting partners.

Partner allowed to reunite		
Only the spouse	Only the spouse and the registered partner	The spouse, the registered partner and the cohabiting partner
CY, HU, IT, MT, PL, RO, CH, TK	AT, BE, DE, IE, SR	BG, HR, FR, GR, NL, PT, SI, ES, SE, UK

Source: AIDA.

- Children

⁴⁴ CJEU, *Noorzia*, C-338/13, 17 July 2014, available at: <http://bit.ly/3WfzYZU>, para 19.

⁴⁵ AIDA, Country Reports, available at: <http://bit.ly/3k0pg67>.

⁴⁶ European Commission, *Report from the Commission to the European Parliament and the Council on the implementation of Directive 2033/86/EC on the right to family reunification*, 29 March 2019, available at: <https://bit.ly/3CXjUVB>, p5.

⁴⁷ ECtHR, *Pajić v Croatia*, No 68453/13, 23 February 2016, available at: <http://bit.ly/3w6sqxO>.

⁴⁸ CJEU, *Relu Adrian Coman, Robert Clabourn Hamilton and Asociația Accept v Inspectoratul General pentru Imigrări and Ministerul Afacerilor Interne*, C-673/16, 5 June 2018, available at: <http://bit.ly/3j2jczB>.

⁴⁹ Council of Europe, *CDDH Report on the implementation of Recommendation CM/Rec(2010)5 of the Committee of Ministers to member States on measures to combat discrimination on grounds of sexual orientation or gender identity*, November 2019, available at: <https://bit.ly/3Xx1YcH>, para 70.

Per Article 4(1) of the Family Reunification Directive, the minor unmarried children of the sponsor and/or the spouse are also entitled to reunification, including adopted children where there is a decision enforceable in the Member State in question, and children subject to joint custody agreements provided that the party sharing custody has given their consent. In the event that a state allows reunification with an unmarried partner, the Directive suggests allowing reunification with their minor unmarried children as well (Article 4(3)).

The minority of the child(ren) is assessed against the Member State's national law. However, according to the CJEU, a child of a sponsor, for family reunification purposes, still has to be considered as a minor if they were a minor when the sponsor applied for asylum, even if they have since attained majority, provided that the family reunification claim is made within three months of the granting of status to the sponsor.⁵⁰

In **Austria**, in contrast, the authorities still request that the child be under eighteen when the application for family reunification is filed.⁵¹

In **France**, alternatively, children may reunite with their parents up to their 19th birthday, at the time of application for family reunification at the embassy.⁵²

In the **Netherlands**, further information was issued regarding the possibility to reunite with foster children, stressing that the biological parents should always be identified and the link between the foster and biological families assessed; if the biological parents are still present, reunification of the foster child with the foster parents will only be recognised in exceptional circumstances.⁵³

The Directive only foresees mandatory reunification for unmarried minor children however states are free to provide more favourable conditions. Allowing for reunification regardless of the marital status of the child is an important safeguard to be able to extricate child brides and grooms from abusive situations. It is also consistent with the policy of states in relation to the sponsors themselves, as generally the spouse of the sponsor will not be able to reunite if they or the sponsor were underage at the time of the marriage: either reunification will be denied for reasons of public order or the marriage itself will not be recognised for the same reasons.

Marital status of the child allowed to reunite	
The child must be unmarried	The child can be married
AT, BE, CY, FR, DE, GR, IE, MT, RO, SI, UK	BG, HR, HU, IT, NL, PL, PT, SR, ES, SE, CH, TK

Source: AIDA.

- Dependants

There is no obligation regarding persons dependent upon the sponsor. However, the Directive does introduce the possibility to include adult dependants in Articles 4(2) and 10(2): parents, adult children, or other dependants. Dependency is an autonomous concept under EU law. According to the CJEU, a family member can be considered dependent per the Family Reunification Directive where they are not in a position to support themselves in their country of origin or residence and where it is established

⁵⁰ CJEU, *Bundesrepublik Deutschland v. XC*, C-279/20, 1 August 2022, available at: <http://bit.ly/3lVydOw>, para 69.

⁵¹ AIDA, *Country Report Austria, 2021 Update*, April 2022, available at: <http://bit.ly/3H8Qc2l>, p149.

⁵² AIDA, *Country Report France, 2021 Update*, April 2022, available at: <http://bit.ly/3TpjjCJ>, p147.

⁵³ EUAA, *Family reunification for beneficiaries of international protection*, September 2021, available at: <https://bit.ly/3XMD0Wy>, p3.

that material support for them is in fact provided by the refugee, or where the refugee appears to be the family member most able to provide the said material support.⁵⁴ The ECtHR has established a high threshold, whereby care for the family member in the host country must be the only available option.⁵⁵

There are several positive practices to underline in this regard.

Sixteen of 27 EU Member States – namely, Belgium, Bulgaria, Croatia, Czech Republic,⁵⁶ Estonia,⁵⁷ Finland,⁵⁸ Greece, Hungary, Italy, Lithuania,⁵⁹ Luxembourg,⁶⁰ the Netherlands, Portugal, Slovakia,⁶¹ Slovenia, and Spain⁶² – as well as Türkiye and the United Kingdom, allow for family reunification with dependent adult children. National legislations in Belgium, Bulgaria, Croatia, Greece, Hungary, Italy often refer to serious health conditions rendering the person unable to support themselves. It is sometimes a requirement that they are unmarried.⁶³

Thirteen countries (Bulgaria, Croatia, Czech Republic,⁶⁴ Estonia,⁶⁵ Finland,⁶⁶ Greece, Hungary, Italy, Lithuania,⁶⁷ Luxembourg,⁶⁸ Slovakia,⁶⁹ Slovenia, and Spain)⁷⁰ also foresee family reunification with the dependent parents of adult BIPs, under certain various conditions, variously including shared household in the country of origin, a serious health condition, and absence of other family to take care of them.

In the **Netherlands**, it is possible to reunite with the sponsor's young adult children (up to 25 years old) who are not in a relationship, without any specific dependency criterion other than that they must still belong to their parents' family.⁷¹

Hungary's legislation explicitly extends family reunification to dependent siblings, grand-parents and grand-children.⁷²

Croatia, Serbia, Slovenia and **Spain** also have broadly framed humanitarian clauses, which enables reunification with other relatives, where dependence can also be proven or where family community was established also with these persons in a way similar to primary family.⁷³

Family members eligible for reunification with an unaccompanied minor children

For unaccompanied minors, Article 10(3) provides for mandatory reunification with the child's parents, but it is up to Member States to decide if they want to expand this to other legal guardians or members of the family in the event that the parents cannot be traced or are deceased. Unaccompanied minors

⁵⁴ CJEU, *TB v Bevándorlási és Menekültügyi Hivatal*, C-519/18, 12 December 2019, available at: <http://bit.ly/3ZIFYgm>, para 77.

⁵⁵ ECtHR, *Senchishak v. Finland*, 5049/12, 18 November 2014, available at: <http://bit.ly/3QH2gyb>, para 57.

⁵⁶ UNHCR Czech Republic, 'Family Reunification', available at: <https://bit.ly/3XzikSc>.

⁵⁷ UNHCR Estonia, 'Applying for Family Reunification', available at: <https://bit.ly/3XLS4nm>.

⁵⁸ Finnish Immigration Service, 'Residence permit application for other family members', available at: <http://bit.ly/3WAXyQO>.

⁵⁹ UNHCR Lithuania, 'Applying for Family Reunification', available at: <https://bit.ly/3H7Wgr0>.

⁶⁰ The Government of Luxembourg, 'Application for family reunification for third-country nationals', available at: <https://bit.ly/3HICPfr>.

⁶¹ European Commission, 'Slovakia – Family member', available at: <http://bit.ly/3XugrGd>.

⁶² See AIDA, Country Reports, available at: <http://bit.ly/3kopg67>.

⁶³ That is the case for: BE, BG, HR, GR, NL. See AIDA, Country Reports, available at: <http://bit.ly/3kopg67>.

⁶⁴ UNHCR Czech Republic, 'Family Reunification', available at: <https://bit.ly/3XzikSc>.

⁶⁵ UNHCR Estonia, 'Applying for Family Reunification', available at: <https://bit.ly/3XLS4nm>.

⁶⁶ Finnish Immigration Service, 'Residence permit application for other family members', available at: <http://bit.ly/3WAXyQO>.

⁶⁷ UNHCR Lithuania, 'Applying for Family Reunification', available at: <https://bit.ly/3H7Wgr0>.

⁶⁸ The Government of Luxembourg, 'Application for family reunification for third-country nationals', available at: <https://bit.ly/3HICPfr>.

⁶⁹ European Commission, 'Slovakia – Family member', available at: <http://bit.ly/3XugrGd>.

⁷⁰ See AIDA, Country Reports, available at: <http://bit.ly/3kopg67>.

⁷¹ AIDA, *Country Report Netherlands, 2021 Update*, April 2022, available at: <http://bit.ly/3CDunpR>, p124.

⁷² HHC, *Family Reunification in Hungary*, available at: <https://bit.ly/3CRQatp>, p1.

⁷³ See AIDA, Country Reports, available at: <http://bit.ly/3kopg67>.

should be able to exercise this right with the help of the guardian or representative appointed after granting of protection in accordance with Article 31 of the Qualification Directive. This article also foresees that family tracing, if not already initiated, must then start as soon as possible.

Under EU law the unaccompanied minor need not be unmarried for the parents to be eligible for family reunification.⁷⁴ Moreover, a BIP is an unaccompanied minor for the purpose of family reunification so long as they were a minor at the time of their asylum application, regardless of whether they came of age during the asylum procedure or after status recognition; they then still retain their right to be reunited with their parents under EU law so long as the application is submitted within a reasonable time (in principle, three months after the granting of status).⁷⁵

Seven countries (**Bulgaria, Croatia, Malta, Poland, Portugal, Romania, and Spain**)⁷⁶ explicitly foresee the possibility for reunification with a legal guardian or another member of the family responsible for them in case the parents are deceased or cannot be traced.

Only **France** and **Ireland** foresee the possibility for family reunification to take place under more favourable conditions that include reunification with the siblings of the unaccompanied minor.⁷⁷

In **Germany**, although legislation does not allow for family reunification with a unaccompanied minor's siblings, in 2015 the regional court of Berlin twice ordered the state to grant visas to an unaccompanied minor's parent *and* siblings, arguing that the right to family reunification with the parents under Article 10(3)(b) would be deprived of its effectiveness if they were forced to choose between waiving this right and leaving their other children behind in the country of origin or residence.⁷⁸

Switzerland, Türkiye and the **United Kingdom** do not recognise the right to reunite with their family for unaccompanied minors.⁷⁹ In the **United Kingdom**, an unaccompanied minor successfully challenged this policy in their individual case in order to reunite with their parent and sibling,⁸⁰ but this did not lead to a general change of policy.

In **Austria**, the Supreme Administrative Court disregarded the CJEU's clarification that the unaccompanied minor retains the right to be reunited with their family even if they came of age during the asylum procedure or after status recognition and still requires that the sponsor be underage at the time their parents apply for family reunification.⁸¹

Similarly, practice in **Germany** remained contrary to the CJEU ruling, leading to further challenges in court, and another preliminary question from Germany to the CJEU on the matter.⁸² However, the CJEU confirmed its 2018 position in August 2022.⁸³

⁷⁴ CJEU, *Belgische Staat v X*, C-230/21, 17 November 2022, available at: <http://bit.ly/3Zllq80>, para 49.

⁷⁵ CJEU, *A, S v Staatssecretaris van Veiligheid en Justitie*, C-550/16, 12 April 2018, available at: <http://bit.ly/3GSWBh8>, para 64; reaffirmed in CJEU, *SW, BL, BC v Stadt Darmstadt and Stadt Chemnitz*, C-273/20 and C-355/20, 1 August 2022, available at: <http://bit.ly/3CSL4gk>, para 41.

⁷⁶ See AIDA, Country Reports, available at: <http://bit.ly/3kopg67>.

⁷⁷ In Austria, siblings are not defined as family members under the asylum law, however in practice UMs are able to bring their minor siblings along with their parents: information provided by Asylkoordination österreich, January 2023; In the Netherlands, siblings may be reunited but only through the general rules of family reunification, not the more favourable rules afforded to refugees: AIDA, Country Report Netherlands, 2021 Update, April 2022, available at: <http://bit.ly/3CDunpR>, p127.

⁷⁸ Administrative Court of Berlin, 10 L 524.15 V, 8 December 2015, available at: <http://bit.ly/3krigl0>; Administrative Court of Berlin, 26 L 489.15 V, 29 December 2015.

⁷⁹ See AIDA, Country Reports, available at: <http://bit.ly/3kopg67>.

⁸⁰ Upper Tribunal, *AT and AHI v Entry Clearance Officer of Abu Dhabi*, Eritrea [2016] UKUT 227 (IAC), 24 March 2016, available at: <http://bit.ly/2kvjm1S>.

⁸¹ VwGH, Decision Ra 2015/21/0230 to 0231, 28 January 2016; Ra 2016/20/0231, 26 January 2017.

⁸² AIDA, *Country Report Germany, 2021 Update*, April 2022, available at: <http://bit.ly/3Arvma8>, p169.

⁸³ CJEU, *Bundesrepublik Deutschland v SW, BL, BC*, C-273/20 and C-355/20, 1 August 2022, available at: <http://bit.ly/3J1focy>.

Chapter II – The family reunification procedure

1. Procedural requirements

The EU Member States bound by the Family Reunification Directive are afforded quite extensive discretion in terms of determining the procedure under which they assess family reunification applications. Nonetheless, certain rules must be respected.

Waiting time before the initiation of the procedure

Contrary to that which may be imposed for other third country nationals, Article 12(2) of the Family Reunification Directive forbids states bound by it from imposing a waiting time on refugees before they and their family can apply for family reunification. However, the Directive does not regulate the situation of subsidiary protection holders.

In **Austria**, beneficiaries of subsidiary protection have to wait three years from recognition of their status before they can initiate family reunification proceedings.⁸⁴

In **Slovenia**, BSPs who were granted subsidiary protection initially for one year are eligible for family reunification only after their status has been extended at the end of that year.⁸⁵

In **Italy**, although the law does not foresee a waiting time, the procedure for family reunification can only be started by the sponsor once they have received their residence permit, which can in practice take several months.⁸⁶

The remaining states do not impose waiting times as a general rule. However, **Germany** and **Sweden** imposed respectively two- and three-year suspensions on family reunification for subsidiary protection holders from 2016 to 2018/2019 (see above).

In 2020, various countries (namely, **Croatia**, **France**, **Hungary**, **Romania**, **Spain**, and **Switzerland**) suspended family reunification procedures or entry into their territory due to the COVID-19 pandemic.⁸⁷ Most restrictions were lifted by the authorities within a few months.

In **France**, all entries onto the territory on the ground of family reunification were suspended in March 2020 because of the pandemic,⁸⁸ until the Council of State ruled the entry ban illegal in January 2021.⁸⁹

Other countries, despite no formal suspension, experienced significant delays due to a variety of factors (embassy closures, limited staff, etc), including **Austria**, **Belgium**, **Germany**, **Portugal**, and **Ireland**.⁹⁰

It should be highlighted in this context that an imposed waiting time of two or three years, as per the example above, does not mean families will be reunited after three years. They will wait significantly longer before actual reunification, when adding the duration of the flight, of the asylum procedure, the waiting period, the duration of the family reunification procedure, and the family's journey.

Time limit to file the application

⁸⁴ AIDA, *Country Report Austria, 2021 Update*, April 2022, available at: <http://bit.ly/3H8Qc2l>, p148.

⁸⁵ AIDA, *Country Report Slovenia, 2021 Update*, May 2022, available at: <http://bit.ly/3wxlwm1>, p95-96.

⁸⁶ AIDA, *Country Report Italy, 2021 Update*, May 2022, available at: <http://bit.ly/3CDFjUA>, p204.

⁸⁷ See AIDA, *Country Reports*, available at: <http://bit.ly/3kopg67>.

⁸⁸ AIDA, *Country Report France, 2021 Update*, April 2022, available at: <http://bit.ly/3TppjCJ>, p147-148.

⁸⁹ Council of State, Nos 447878, 447893, 22 January 2021, available in French at: <https://bit.ly/37xWWol>.

⁹⁰ See AIDA, *Country Reports*, available at: <http://bit.ly/3kopg67>.

Article 12(1) of the Directive allows states to limit the more favourable rules on family reunification that apply to refugees to the sponsors and families that apply within three months of the sponsor being granted status. States may set a longer deadline, but no time limit impeding BIPs from accessing the procedure can be established. Moreover, given the many factors that may affect sponsors and families within this short time period, there are cases where a late submission after three months may be objectively excusable.⁹¹ In this respect, the principle of good administration entails that an applicant is not penalised because they did not comply with a procedural requirement (for instance applying in person at the embassy) “when this non-compliance arises from the behaviour of the administration itself” (for instance, the lack of available appointments at the embassy or the impossibility of contacting the embassy).⁹²

The Council of Europe highlights that preparing all the necessary documents and securing actual access to the embassy in such a short timeframe is a substantial challenge.⁹³

In **Austria**, for example, waiting times for appointments in embassies currently exceed three months.⁹⁴

Given the particular situation of refugees, the European Commission considers that not using this faculty is the “most appropriate solution”.⁹⁵ In case states still decide to use this option, they should allow partial applications.⁹⁶ UNHCR holds a similar position, and strongly encourages states not to require appearance in person before a diplomatic representation within this timeframe.⁹⁷

Time limit to benefit from more favourable conditions?	
Yes	No
3 months: AT, CY, DE, GR, HU, MT, NL, SI, SE	BG, HR, FR, IT, PT, RO, SR, ES, TK, UK, CH
6 months: PL	
12 months: BE, IE	

Source: AIDA.

In **Germany**, the requirement that the family reunification procedure be initiated within three months of receiving status is satisfied if, within this time frame, the sponsor notifies the authorities of their intention to apply for family reunification. The application itself does not have to have been filed with the embassy in three months.⁹⁸

In the **Netherlands**, the application must be filed within three months, however it does not need to be complete. The sponsor has four weeks from the moment they receive a “rectification of omission” letter from the authorities to complete the application.⁹⁹

⁹¹ CJEU, *K, B v Staatssecretaris van Veiligheid en Justitie*, C-380/17, 7 November 2018, available at: <http://bit.ly/3HcXCC1>, para 62 and 66.

⁹² CJEU, *Firma Laub GmbH & Co. Vieh & Fleisch Import-Export v Hauptzollamt Hamburg-Jonas*, C-428/05, 21 June 2007, available at: <http://bit.ly/3CUFrhQ>, para 25.

⁹³ Council of Europe, *Realising the right to family reunification of refugees in Europe*, June 2017, available at: <http://bit.ly/3WvteY1>, p41.

⁹⁴ AIDA, *Country Report Austria, 2021 Update*, April 2022, available at: <http://bit.ly/3H8Qc2l>, p150.

⁹⁵ European Commission, *Communication from the Commission to the European Parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification*, 3 April 2014, COM(2014) 210 final, available at: <http://bit.ly/3iH6OVA>, p23.

⁹⁶ European Commission, *Communication from the Commission to the European Parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification*, 3 April 2014, COM(2014) 210 final, available at: <http://bit.ly/3iH6OVA>, p24.

⁹⁷ UNHCR, *Families Together: Family Reunification for Refugees in the European Union*, February 2019, available at: <http://bit.ly/3Xg4pjT>, p16.

⁹⁸ AIDA, *Country Report Germany, 2021 Update*, April 2022, available at: <http://bit.ly/3Arvma8>, p169.

⁹⁹ AIDA, *Country Report Netherlands, 2021 Update*, April 2022, available at: <http://bit.ly/3CDunpR>, p124.

In **Switzerland**, which is not bound by the Family Reunification Directive, BIPs may only apply for family reunification within the five years after being recognised as a BIP. The time limit shrinks to one year to reunite with children who are 12 or older. For subsidiary protection holders, who are subject to a waiting period of three years, the five-year time limit starts when the waiting period ends.¹⁰⁰

In **Cyprus**, despite the three-month time limit inscribed in law, during which the more favourable conditions apply, in 2019 the CRMD started requesting evidence of stable and regular resources from all sponsors applying for family reunification, including those having already received a positive decision. Cyprus's Commissioner of Administration and Human Rights and Commissioner for the Rights of the Child both highlighted that this practice was illegal. The European Commission requested information from the CRMD in 2020; as of April 2022, the inquiry had yet to be concluded.¹⁰¹

Submission of the application

Article 5 of the Family Reunification Directive grants states discretion as to the opening of the family reunification procedure and specifically as to who, among the BIP in the country of asylum and the family members abroad, presents the request to initiate it. This can be important, especially where there is a time limit to benefit from favourable conditions: if it is up to the family to start the procedure involving the diplomatic representation, they may *inter alia* face difficulties in accessing certain diplomatic posts (embassies closed in certain countries, travel restrictions, travel costs, impossible to contact or get an appointment at the embassy, etc). Conversely, while it is usually easier for the sponsor to handle most of the procedure, this can be very difficult if they have to provide the authorities with original documents such as the family's travel documents within a limited timeframe. In general, regardless of who initiates it, the procedure is all the more difficult where there is the need for the family to appear in person – sometimes multiple times (initial submission of documents, potential interview, potential DNA test, notification of decision, retrieval of visa...) – at a diplomatic mission.

UNHCR points out the difficulties mentioned above and highlights good practices, including allowing sponsor to apply for family reunification, allowing family members to complete all the embassy steps at a different European diplomatic representation, limiting the number of appearances before diplomatic missions.¹⁰² UNHCR also encourages states to allow family members to be issued the visa upon arrival in the country of asylum, with a valid travel document.¹⁰³

In **Sweden**, if the sponsor has power of attorney to do so, either the sponsor or the family may initiate the procedure.¹⁰⁴

Spain allows family members to apply before other European embassies if there is one closer to where they live, particularly when there is no competent Spanish diplomatic mission in the country.

In **Bulgaria**, the entire procedure is handled internally at the national level; once permission is granted, the State Agency for Refugees (SAR) sends the relevant information to the embassy of the country of residence of the family, who only need to travel to the diplomatic mission once to have their visas stamped.¹⁰⁵

¹⁰⁰ AIDA, *Country Report Switzerland, 2021 Update*, April 2022, available at: <http://bit.ly/3wEJI5E>, p136.

¹⁰¹ AIDA, *Country Report Cyprus, 2021 Update*, April 2022, available at: <http://bit.ly/3H70iB4>, p152.

¹⁰² UNHCR, *Families Together: Family Reunification for Refugees in the European Union*, February 2019, available at: <http://bit.ly/3Xg4pjT>, p19.

¹⁰³ UNHCR, *Family Reunification in Europe*, 2015, available at: <http://bit.ly/3GRQ5qz>, p6.

¹⁰⁴ Information provided by the Swedish Refugee Law Center, January 2023.

¹⁰⁵ Iliana Savova, 'Family Reunification', *Asylum.bg*, available at: <https://bit.ly/3CSerj5>.

Hungary, on the contrary, established the further requirement that the family demonstrate that they lawfully reside in the country, which can render family reunification impossible for some families who are stranded in countries where they are not granted a legal status.¹⁰⁶

2. Substantial requirements

Accommodation, health insurance and resources requirements

Regardless of whether procedural requirements have been met, a country may deny family reunification for reasons of public policy, public security and public health as per Article 6 of the Family Reunification Directive.¹⁰⁷

Under the more favourable provisions for family reunification of refugees, a country may not require that BIPs demonstrate appropriate accommodation, health insurance and resources if they apply for family reunification within three months of the granting of status (Article 12(1)). For claims for family reunification lodged more than three months after status recognition, states may impose the conditions foreseen by Article 7(1) upon refugees, that is:

- Accommodation that is considered normal for a comparable family in the same geographical area, and in accordance with the general health and safety standards of the State of asylum.
- Health insurance for the sponsor and the members of their family.
- Stable and regular resources that are sufficient to maintain the entire family, without the need for recourse to social assistance.

States may not add any further requirements. The European Commission, through its guidance on the implementation of the Directive, invited states to adopt transparent and clear criteria in legislation for the assessment of these requirements, also encouraging the adoption of a flexible approach, particularly in case of long processing times, in which case it could be disproportionate to ask for the requirements to all be met at the time of application, as well as encouraging states to take into account the labour market situation when assessing resources.¹⁰⁸ UNHCR invites countries to exempt BIPs from these substantive conditions, even after three months.¹⁰⁹ Notwithstanding these recommendations, in almost half the 23 AIDA countries analysed, specific requirements for family reunification of refugees exist. Such requirements are in place in more than half the countries when it comes to beneficiaries of subsidiary protection (when they are allowed to access family reunification procedures).

Income, accommodation and/or health insurance requirements for family reunification of refugees	
Yes	No
AT, BE, CY, DE, GR, IE, MT, NL, PL, SI, SE	BG, HR, FR, HU, IT, PT, RO, SR, ES, CH, TK, UK

Source: AIDA.

¹⁰⁶ AIDA, *Country Report Hungary, 2021 Update*, April 2022, available at: <http://bit.ly/3wFoHYE>, p123.

¹⁰⁷ Recital 14 of the Family Reunification Directive gives indications as to the scope of these concepts.

¹⁰⁸ European Commission, *Communication from the Commission to the European Parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification*, 3 April 2014, COM(2014) 210 final, available at: <http://bit.ly/3iH6OVA>, p11-13.

¹⁰⁹ UNHCR, *Families Together: Family Reunification for Refugees in the European Union*, February 2019, available at: <http://bit.ly/3Xg4pjT>, p4.

Income, accommodation and/or health insurance requirements for family reunification of BSPs	
Yes	No
AT, BE, CY, DE, ¹¹⁰ GR, HU, PL, SI, SE, CH	BG, HR, FR, IT, PT, SR, ES, TK

Source: AIDA. CY, GR and MT do not foresee family reunification for BSPs.

In the case of the **Netherlands**, the government only recently introduced a temporary housing requirement that must be fulfilled to obtain the visa, as a response to the ongoing housing crisis.¹¹¹ Thus, until 31 December 2023, families that have received a positive decision on their family reunification application after 2 October 2022 can only pick up the visa that allows them to enter the Netherlands once they demonstrate that the sponsor lives in approved housing, or once 15 months have passed since the beginning of the family reunification procedure.¹¹²

In **Poland**, the family reunification application does not, per se, look at resources and health insurance; however, adequate financial means and health insurance are conditions the families need to fulfil in order to obtain the visa allowing access to the country.¹¹³

Some countries, while requesting applicants to fulfil said requirements, introduced specific exemptions.

Austria and Belgium, for example, exempt parents of unaccompanied minors from these requirements, regardless of whether they file for family reunification within three months of their child receiving BIP status or later.¹¹⁴

On the contrary **Switzerland** – not bound by the Directive – requests applicants to fulfil additional requirements: in addition to appropriate accommodation and sufficient resources, adult family members of temporarily admitted persons must prove either their ability to communicate in the national language of the place of residence (French, German, or Italian) or that they have registered for a language course where they will live.

It should be noted that the introduction of conditions to fulfil in order to access family reunification, when disproportionate can seriously prejudice the right to family life for BIPs.

For instance, in **Hungary** the income requirement imposed on subsidiary protection beneficiaries is so high that it is extremely difficult to be able to apply for family reunification. It is very high in comparison with the labour market. Moreover, in many cases employment may be partly in the grey or black economy, and thus the BIP cannot provide proof of their entire income but only of part of it.¹¹⁵

In **Sweden**, the requirements regarding income and accommodation are broken down in great detail and a high income is required. Moreover, the sponsor must show that they fulfil the requirements at the time of filing the application, at the time of decision on the application, and that they will still fulfil them

¹¹⁰ Under their specific humanitarian admissions' programme for families of BSPs.

¹¹¹ ECRE, 'Reception Crises: Court Rejects Dutch State's Demand to Postpone Implementation of a Ruling Favouring Refugees, Brussels Police Destroys Tents of Asylum Seekers As Belgium Fails to Provide Accommodation', October 2022, available at: <http://bit.ly/3COIhnL>; ECRE, 'Reception Crises: Dutch Authorities Appeal Ruling Ordering Respect For Right to Reception, Belgium Leaves Vulnerable Asylum Seekers in the Streets Without Shelter', October 2022, available at: <http://bit.ly/3MwrJ8k>; Dutch Council for Refugees, 'Research: Refugees increasingly in trouble in (crisis) emergency shelter', October 2022, available at: <http://bit.ly/3XM3ecl>.

¹¹² IND, "Suitable place of residence family of refugees", 15 November 2022, available at: <http://bit.ly/3GQjfGJ>.

¹¹³ AIDA, *Country Report Poland, 2021 Update*, May 2022, available at: <http://bit.ly/3Klv3SP>, p128.

¹¹⁴ AIDA, *Country Report Austria, 2021 Update*, April 2022, available at: <http://bit.ly/3H8Qc2l>, p150.

¹¹⁵ AIDA, *Country Report Hungary, 2021 Update*, April 2022, available at: <http://bit.ly/3wFoHYE>, p124.

one year after the decision. They can be partially or fully lifted in case of special circumstances such as disability or sickness.¹¹⁶

Documentation and evidentiary requirements

According to Article 5 of the Family Reunification Directive, the sponsor and/or their family must provide certified copies of the family members' travel documents, as well as evidence of the family relationship with the sponsor and compliance with the potential substantive conditions applied by the state (accommodation, health insurance, resources). However, Article 11(2) specifies that refugees must be afforded more leniency with regard to proving the family relationship. Thus, an application may not be rejected solely because official documentary evidence is lacking. States must take into account other forms of evidence of the existence of this relationship. As stated in the Commission's guidance, this can include interviews, written statements, documents, audio-visual materials, and, as an absolute last resort, DNA testing.¹¹⁷

The CJEU has ruled that evidence, statements and explanations provided must be assessed in light of objective and reliable information, including country of origin information, but also in light of the difficulties faced by the applicants. Probative requirements, especially proving that it is not possible to provide official documentation, must be adapted to the nature and level of the difficulties faced by the applicants due to their situation.¹¹⁸

As highlighted by UNHCR, documents may be lacking because the person had to flee urgently, or because they were not able to access such documents in their country of origin due to discrimination and persecution, or because civil registration was "weak" at the time.¹¹⁹ In practice, documentation requirements may cause significant difficulties, particularly where asylum states request documents that require that the family address the authorities of their country of origin such as birth and marriage certificates, travel documents, criminal records. It may be dangerous as the family members may be at risk of persecution, and because this could signal their intent to leave through family reunification, which could in itself be a motive for persecution.¹²⁰ Further difficulties can arise when documents need to be translated (often by a sworn translator), and legalised, potentially by both authorities of the country of origin and asylum.

For instance, **Belgium**¹²¹ and **Poland**¹²² require sworn translations of all or some documents; **Belgium**¹²³ and **Hungary**¹²⁴ require that documents be legalised by the authorities of both countries.

Proof of family relationship

In case no other means of proof is available to demonstrate the family link between the sponsor and the applicant, the European Commission guidelines refer to DNA testing as last resort.¹²⁵ The

¹¹⁶ AIDA, *Country Report Sweden, 2021 Update*, April 2022, available at: <http://bit.ly/3AuYehH>, p110-111.

¹¹⁷ European Commission, *Communication from the Commission to the European Parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification*, 3 April 2014, COM(2014) 210 final, available at: <http://bit.ly/3iH6OVA>, p22-23.

¹¹⁸ CJEU, *E v Staatssecretaris van Veiligheid en Justitie*, C-635/17, 13 March 2019, available at: <http://bit.ly/3ZJ87ny>, para. 81.

¹¹⁹ UNHCR, *Families Together: Family Reunification for Refugees in the European Union*, February 2019, available at: <http://bit.ly/3Xg4pjT>, p8.

¹²⁰ UNHCR, *Family Reunification in Europe*, 2015, available at: <http://bit.ly/3GRQ5qz>, p5.

¹²¹ AIDA, *Country Report Belgium, 2021 Update*, April 2022, available at: <https://bit.ly/3VN6imO>, p155.

¹²² AIDA, *Country Report Poland, 2021 Update*, May 2022, available at: <http://bit.ly/3Klv3SP>, p120.

¹²³ AIDA, *Country Report Belgium, 2021 Update*, April 2022, available at: <https://bit.ly/3VN6imO>, p155.

¹²⁴ AIDA, *Country Report Hungary, 2021 Update*, April 2022, available at: <http://bit.ly/3wFoHYE>, p124.

¹²⁵ European Commission, *Communication from the Commission to the European Parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification*, 3 April 2014, COM(2014) 210 final, available at: <http://bit.ly/3iH6OVA>, p22-23.

Commission, on this point, refers Member States to UNHCR's principles on DNA testing.¹²⁶ However, not all states foresee the possibility; even where it is foreseen, the sponsor and family do not always have the right to initiate DNA testing, leaving them waiting for the state to order the measure, such in the case of **Hungary**.¹²⁷

Possibility of DNA testing to prove familial link	
Yes	No
AT, BE, CY, DE, GR, HU, IE, IT, NL, PT, ¹²⁸ ES, SE, CH, UK	BG, HR, FR, IT, PT, RO, SR, ES, TK, UK, CH

Source: AIDA.

Several states also resort to interviews, of the sponsor in the country of asylum and/or of the family abroad: this is the case in **Cyprus, Greece, Malta, the Netherlands, Romania, Spain**.¹²⁹

Given the particular difficulties faced by BIPs and their families with regard to official documentation and proof of familial links, UNHCR recommends that guidelines on evidence related to identity and family links be developed and training be provided to decision-makers.¹³⁰ The ECtHR in a family reunification case recalled its case law on asylum seekers whereby, given their specific circumstances, they should be afforded the benefit of the doubt with regard to their declarations and documents.¹³¹

In **Bulgaria**, where the sponsor cannot provide official documents, family links can be proven by a declaration certified by a notary containing the names, date of birth and addresses of the family.¹³²

In **Hungary**, national authorities are strict about the examination of documentary evidence, and usually base their decision on original official documents, translated into English or Hungarian, bearing official stamps from both authorities; apart from DNA testing, they do not take into account any further evidence of family relationships.¹³³

Identity and travel documents

Difficulties in obtaining a passport can effectively block family reunification where states do not allow or help with obtaining other travel documents in order for the person to travel to the country of asylum with the authorisation obtained. Thus, UNHCR urges states to, at a minimum, welcome alternative travel documents such as ICRC travel documents and encourages them to proactively issue laissez-passer to family members who cannot obtain national travel documents.¹³⁴ In practice, most countries do not accept any alternative to passports as travel documents:

Alternatives to a passport as identity and travel document	
Yes	No
BE, BG, FR, DE, IE, IT, NL, PL, RO, SI, SE	AT, HR, CY, GR, HU, MT, PT, ES, CH, UK

¹²⁶ UNHCR, *UNHCR Note on DNA Testing to Establish Family Relationships in the Refugee Context*, June 2008, available at: <https://bit.ly/3XcgBID>.

¹²⁷ AIDA, *Country Report Hungary, 2021 Update*, April 2022, available at: <http://bit.ly/3wFoHYE>, p124.

¹²⁸ The possibility is foreseen in law but not currently applied in practice by the Portuguese authorities.

¹²⁹ See AIDA, *Country Reports*, available at: <http://bit.ly/3kopg67>.

¹³⁰ UNHCR, *Family Reunification in Europe*, 2015, available at: <http://bit.ly/3GRQ5qz>, p5.

¹³¹ ECtHR, *Mugenzi v France*, No 52701/09, 10 July 2014, available at: <http://bit.ly/3GNldYh>, para 47.

¹³² Iliana Savova, 'Family Reunification', *Asylum.bg*, available at: <https://bit.ly/3CSerj5>.

¹³³ AIDA, *Country Report Hungary, 2021 Update*, April 2022, available at: <http://bit.ly/3wFoHYE>, p124.

¹³⁴ UNHCR, *Family Reunification in Europe*, 2015, available at: <http://bit.ly/3GRQ5qz>, p6.

Source: AIDA.

Although **Bulgaria's** asylum authority SAR has the obligation assist in the issuance of travel documents, in practice consular authorities no longer issue travel documents to minors who were not issued official documents after their birth, under the pretext of avoiding child trafficking. In general, laissez-passer are hard to obtain and when the Ministry of Foreign Affairs gets involved to help the process, they then request proof of financial means and housing, which are not required under family reunification.¹³⁵

Authorities in **Hungary**, in addition to not providing alternatives to travel documents such as laissez-passer, also refuse travel documents from certain countries such as Somalia, rendering family reunification impossible in practice.¹³⁶

In **Poland** and **Romania**, the sponsor in the country of origin must be able to present respectively their family members' original travel documents and all original documents, which means these must be sent from the country of origin or residence of the family in most cases.¹³⁷

Additional documentary requirements

Belgium, Cyprus, and Portugal all require criminal records. In **Portugal**, the family members must produce criminal records for their country of nationality and any country of residence where they have lived for more than a year.¹³⁸ This can be particularly difficult where the family members do not have a legal status or live in a country of prolonged transit, especially where they are in refugee camps.

Courts have in some cases ruled against strict interpretation of Article 5 of the Directive.

In **Belgium**, in June 2022 the Council for Alien Law Litigation overturned the authorities' rejection of a family reunification procedure where the Belgian authorities had refused to proceed with the DNA testing in the absence of the mother's criminal record. The CALL determined that this was an unfair requirement given the unique circumstances, as she was a single mother in Afghanistan under Taliban control and could not reasonably be asked to request this criminal record from the Taliban.¹³⁹

In similar reasoning, the Migration Court of Appeal of **Sweden** has regularly pointed out that it is unreasonable to expect sponsors and family members to approach their national authorities to obtain a passport, as this could endanger the family still abroad.¹⁴⁰ The Migration Agency adopted this reasoning concerning Afghan nationals in October 2021 due to the Taliban takeover.¹⁴¹

3. Fees and costs of family reunification

The Family Reunification Directive does not mention the financial aspects of family reunification. The European Commission guidance,¹⁴² by analogy with CJEU case law,¹⁴³ states that administrative fees may be charged for family reunification in so far as they are reasonable and proportionate. However,

¹³⁵ AIDA, *Country Report Bulgaria, 2021 Update*, February 2022, available at: <http://bit.ly/3AYZzim>, p95-96.

¹³⁶ AIDA, *Country Report Hungary, 2021 Update*, April 2022, available at: <http://bit.ly/3wFoHYE>, p124.

¹³⁷ AIDA, *Country Report Poland, 2021 Update*, May 2022, available at: <http://bit.ly/3Klv3SP>, p128; AIDA, *Country Report Romania, 2021 Update*, May 2022, available at: <http://bit.ly/3CM77q1>, p166.

¹³⁸ AIDA, *Country Report Portugal, 2021 Update*, May 2022, available at: <http://bit.ly/3AXFHMo>, p172.

¹³⁹ CALL, No 274 047, 14 June 2022, available at: <https://bit.ly/3kkkyWR>.

¹⁴⁰ Migration Court of Appeal, Sweden, No UM2630-17, 5 March 2018, available at: <http://bit.ly/3XkEPdE>.

¹⁴¹ AIDA, *Country Report Sweden, 2021 Update*, April 2022, available at: <http://bit.ly/3AuYehH>, p110.

¹⁴² European Commission, *Communication from the Commission to the European Parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification*, 3 April 2014, COM(2014) 210 final, available at: <http://bit.ly/3iH6OVA>, p9.

¹⁴³ CJEU, *European Commission v Kingdom of the Netherlands*, C-508/10, 26 April 2012, available at: <http://bit.ly/3ZFFKGY>, paras 62, 64-65.

the fees cannot end up being an obstacle to exercising the rights offered by the Directive. The Commission also encourages exempting minors from such fees.

However, BIPs and their families incur many costs during family reunification, including:

- Fees that are directly required by the state: application fee, visa fee, residence permit fee. Application fees can add up if a family has to apply a second (or further) time after an initial rejection.
- Costs resulting from the family reunification procedure: DNA testing, obtaining official documents, translation and certification of documents, travel to the embassy (potentially in another country, which may imply visa fees) and subsistence costs when at the embassy, travel costs to the state of asylum, etc.

The total amount is influenced by other elements of the procedure: translation and certification requirements, number of appearances at the diplomatic representation, etc. The fees are all the more difficult to bear when the application has to be made within a short period of time, e.g. a three-month time limit, especially as in most countries asylum seekers may not work during the asylum procedure.

UNHCR encourages states to consider limiting and waiving administrative and visa fees where these may prevent family reunification, and covering costs of DNA testing when the relationship is subsequently confirmed.¹⁴⁴

At least ten AIDA countries¹⁴⁵ do not have application or visa fees for family reunification. In the cases of **Belgium**, **Sweden** and the **United Kingdom** however, this exemption is limited to the core family.

At least seven countries¹⁴⁶ request payment of fees during the procedure. In **Romania**, the application for family reunification is free, but people have to pay visas costs. In **Poland**, BIPs and their families have to bear administrative costs for both the family reunification application and the visa application.

Some countries requiring DNA testing to prove familial links, such as **Ireland**, the **Netherlands**, **Sweden** and the **United Kingdom**, also cover its costs¹⁴⁷ However, that is not the case in most countries. In **Austria** and **Switzerland**,¹⁴⁸ the sponsor and their family first have to pay the test and seek reimbursement from the authority, which will be obtained if the test is positive in Austria, and upon discretionary decision of the asylum authority in Switzerland. However, in **Belgium**, **Germany**, **Greece**, **Hungary**, **Italy** and **Spain**,¹⁴⁹ the costs of the test are entirely borne by the applicants.

In certain countries, financial help is available to cover travel costs. In **Sweden**, the sponsor applies for a subsidy from the government. In **Spain**, the government offers funding to three NGOs that inter alia offer financial support for travel costs. In **Ireland** and the **United Kingdom**, financial travel assistance is offered by UNHCR and the Irish and British Red Crosses. NGOs also offer such help in **Romania**.¹⁵⁰

4. Procedural safeguards

Provision of information and access to legal assistance

In order to effectively exercise their right to family reunification, BIPs and their family need to be informed about the procedure in a comprehensive and timely manner, especially in regard to aspects that are

¹⁴⁴ UNHCR, *Family Reunification in Europe*, 2015, available at: <http://bit.ly/3GRQ5qz>, p5.

¹⁴⁵ AT, BE, HR, CY, IE, PT, SI, SE, CH, UK. AIDA, Country Reports, available at: <http://bit.ly/3kopg67>.

¹⁴⁶ BG, FR, DE, HU, NL, PL, RO, ES, TK. AIDA, Country Reports, available at: <http://bit.ly/3kopg67>.

¹⁴⁷ AIDA, Country Reports, available at: <http://bit.ly/3kopg67>.

¹⁴⁸ AIDA, *Country Report Austria, 2021 Update*, April 2022, available at: <http://bit.ly/3H8Qc2l>, p149; *Country Report Switzerland, 2021 Update*, April 2022, available at: <http://bit.ly/3wEJI5E>, p137.

¹⁴⁹ AIDA, Country Reports, available at: <http://bit.ly/3kopg67>.

¹⁵⁰ AIDA, Country Reports, available at: <http://bit.ly/3kopg67>.

unfavourable to them, such as time limits, age limitations and so on. Although the Directive is silent on this point, the Commission guidance stresses that Member States need to develop “practical guides with detailed, accurate, clear information for applicants [...] available in the language of the MS, in the local language in the place of application, and in English.”¹⁵¹ Similarly, the Council of Europe calls for “timely provision of accurate information” in a language understood by the applicant and highlights that although other actors may help in this mission, this is a state responsibility.¹⁵²

In **Ireland**, the government webpage is available in nine languages.¹⁵³ However, these languages do not necessarily correspond to the languages spoken by asylum seekers arriving in Ireland: the webpage is not available in Arabic, Dari or Pashto, despite Somalis and Afghans being the third and fourth largest groups of asylum seekers in 2021. Similarly, the webpage about the Afghan admission programme is not available in either Dari or Pashto.

The **Swedish** government webpage¹⁵⁴ on family reunification however is available in 24 languages, including languages spoken by many asylum seekers in Sweden but rarely available on government webpages, such as Arabic, Persian, Dari, Pashto, Somali, Tigrinya, and Turkish. The website also offers an audio option in six languages including Persian.

In general, government provided information, particularly online, is of poor quality and languages other than English and the official language of the asylum country are rarely available. This shortcoming is to some extent remedied by NGOs and international organisations who provide more comprehensive information.¹⁵⁵

However, provision of information alone does not necessarily suffice to ensure the effectiveness of the right to family reunification. BIPs must be able to ask questions and be guided through this legal process. Regarding appeals procedures, Article 6(3)(c) ECHR provides for the right to legal aid in the context of the right to a fair trial. Regarding access to legal counselling and legal aid of children, the Council of Europe deplores the fact that legal aid is either non-existent or restricted in family reunification procedures and recommends that they be made available from the initial stage of the procedure for all those involved, both sponsors and beneficiaries.¹⁵⁶

Some countries (**Croatia, Cyprus, Greece, Ireland, Malta, Serbia, and the United Kingdom**)¹⁵⁷ do not allow for any legal aid at any stage of the procedure, regardless of the type of appeal.

In **France** and **Poland**, legal aid is only available at the court level, but not for the prior administrative remedies applicants first have to go through.

In the **Netherlands**,¹⁵⁸ the sponsor may only benefit from legal aid if they still live in central housing provided by the Central Agency for the Reception of Asylum Seekers. If they have found independent housing, they must pay a contribution for legal help.

¹⁵¹ European Commission, *Communication from the Commission to the European Parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification*, 3 April 2014, COM(2014) 210 final, p25, available at: <http://bit.ly/3iH6OVA>.

¹⁵² Council of Europe, *Family Reunification for Refugee and Migrant Children*, April 2020, available at: <http://bit.ly/3WhirR5>, p53.

¹⁵³ Department of Justice, ‘Family Reunification of international protection holders’, available at: <https://bit.ly/3ZJfCLm>.

¹⁵⁴ Swedish Migration Agency, ‘Family Reunification’, available at: <http://bit.ly/3WlBz4X>.

¹⁵⁵ AIDA, Country Reports, available at: <http://bit.ly/3kopp67>; UNHCR, *Families Together: Family Reunification for Refugees in the European Union*, February 2019, available at: <http://bit.ly/3Xg4pjT>, p20.

¹⁵⁶ Council of Europe, *Family Reunification for Refugee and Migrant Children*, April 2020, available at: <http://bit.ly/3WhirR5>, p53.

¹⁵⁷ AIDA, Country Reports, available at: <http://bit.ly/3kopp67>.

¹⁵⁸ Information provided by the Dutch Council for Refugees, January 2023.

A positive example is that of **Spain**, where legal assistance and legal aid is available free of charge throughout the entire procedure.¹⁵⁹

Timeframe for the decision

Article 5(4) of the Directive stresses that a decision must be notified in writing to the applicant as soon as possible and in any case no longer than nine months after lodging of the family reunification application. Only in exceptional circumstances may this be extended further, upon proper justification. The European Commission's guidance highlights that the extension beyond nine months cannot be due to capacity issues, but is only allowed for reasons linked to the particular complexity of the case.¹⁶⁰ The general principle of good administration similarly entails that applications are assessed within a reasonable period of time. The UNCRC provides that applications concerning children and their parents must be dealt with "in a positive, humane and expeditious manner".¹⁶¹ Similarly, when the sponsor is a child refugee, the ECtHR requires that the application is assessed "promptly, carefully and with particular diligence."¹⁶²

France and **Poland**, as well as **Italy** and **Portugal** have set significantly shorter time limits in their national legislation, respectively two and three months, subject to extensions for reasons of complexity or so on.¹⁶³

However, most countries experience significant delays, up to several years in the cases of **Croatia** and **Malta** for instance.¹⁶⁴

The delays can also happen before the procedure has even started such as in **Portugal**, where there is a significant waiting time just to have an appointment with the authorities for the purposes of family reunification.¹⁶⁵

In the **Netherlands**, families experience significant delays when trying to retrieve their visas in Lebanon, without any possibility for them to retrieve them in other Dutch diplomatic representations until early 2022, where the option was given to pick them up in Cairo or Dubai, but without an actual assessment of the feasibility of this solution for the families.¹⁶⁶

As positive exceptions, decisions are systematically taken within reasonable periods of time in **Bulgaria** (three months), the **United Kingdom** (98.5% within three months, the rest within six months) and **Romania** (nine months).¹⁶⁷

Legal remedies

Per Article 18 of the Directive, Member States must ensure that the applicants have the right to mount a legal challenge against a rejection decision. The procedure according to which this right is exercised nationally is at the discretion of states. However, as the family reunification procedure entails implementing EU law, states must respect the rights contained in the Charter, including the right to an effective remedy before a tribunal set out in Article 47. This requires *inter alia* a challenge on law and facts, with a fair and public hearing before an independent, impartial and judicial tribunal. An

¹⁵⁹ Information provided by the Accem, January 2023.

¹⁶⁰ European Commission, *Communication from the Commission to the European Parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification*, 3 April 2014, COM(2014) 210 final, available at: <http://bit.ly/3iH6OVA>, p10.

¹⁶¹ Article 10(1) UNCRC.

¹⁶² ECtHR, *Mugenzi v France*, No 52701/09, 10 July 2014, available at: <http://bit.ly/3GNldYh>, para 52.

¹⁶³ AIDA, Country Reports, available at: <http://bit.ly/3kopg67>.

¹⁶⁴ Confirmed delays in AT, BE, HR, DE, HU, IE, IT, FR, MT, PL, SR, SE, ES. See AIDA, Country Reports, available at: <http://bit.ly/3kopg67>.

¹⁶⁵ AIDA, *Country Report Portugal, 2021 Update*, May 2022, available at: <http://bit.ly/3AXFHMo>, p173.

¹⁶⁶ AIDA, *Country Report Netherlands, 2021 Update*, April 2022, available at: <http://bit.ly/3CDunpR>, p126.

¹⁶⁷ See AIDA, Country Reports, available at: <http://bit.ly/3kopg67>.

administrative review, particularly if by the deciding authority, would thus not meet this standard. This right in the Charter mirrors Article 13 ECHR, under which the ECtHR has ruled that applicants must be able to challenge a negative decision regarding entry and residence in the state in a procedure with sufficient procedural safeguards, before an independent and impartial domestic court.¹⁶⁸

All 23 AIDA countries allow for access to a court during the appeal process. However, seven countries¹⁶⁹ first impose a mandatory administrative process before the applicants can have their family reunification rejection reviewed by a judge. In **Croatia**, **Portugal** and **Türkiye**, having the case reviewed in an administrative process is optional, leaving the families with the opportunity to have the case resolved at the administrative level but not delaying their opportunity to go before a judge.¹⁷⁰

The deadline to introduce the appeal/contestation varies widely, from eight days in **Hungary** and ten days in **Greece** and **Romania** to one month in **Austria**, **Belgium** and **Croatia** and two months in **France**.¹⁷¹

In **Spain**, although administrative and judicial remedies are both available, accessing these remedies remains difficult in practice, as in many cases an initial challenge is to obtain a written decision of denial, which is provided after a long period time and which is necessary to lodge the appeal.¹⁷²

¹⁶⁸ ECtHR, *De Souza Ribeiro v. France*, No. 22689/07, 13 December 2012, available at: <http://bit.ly/3XiGlg6>, para 83.

¹⁶⁹ FR, DE, GR, NL, HU, IE, PL. See AIDA, Country Reports, available at: <http://bit.ly/3kopg67>.

¹⁷⁰ See AIDA, Country Reports, available at: <http://bit.ly/3kopg67>.

¹⁷¹ See AIDA, Country Reports, available at: <http://bit.ly/3kopg67>.

¹⁷² Information provided by Accem, January 2023.

Chapter III – Status and rights of reunited family members

The obligation to ensure the right to family reunification is not effectively fulfilled simply by allowing access to the territory. It also requires a stable legal status and access to social rights such as to allow successful integration into the host community.¹⁷³

1. Status and residency rights

Article 13(2) of the Family Reunification Directive foresees that family members must receive a residence permit of at least one year, which must be renewable. While the permit duration can be longer, Article 12(3) states that its duration should not exceed the expiry date of the sponsor's residence permit. Furthermore, this status is then dependent on that of the sponsor: in case of family separation or if the sponsor's international protection status is withdrawn or revoked, the family may also lose their status and right to residence. Article 15 foresees that, after at most five years of residence, spouses and children of refugees must have access to an autonomous residence permit.¹⁷⁴

Member States are free to provide more favourable solutions, such as extending the protection status of the sponsor to their family: the status of refugee can even be extended to the child of a BIP who is born in the country of asylum and holds the nationality of a country where the child does not risk persecution.¹⁷⁵ Lastly, EU law does not preclude family members from applying for asylum in their own right. They may then receive an autonomous status and rights, which would not be affected by the end of the relationship with their sponsor.

UNHCR advises states to grant family members the same status, rights and integration entitlements as the sponsors.¹⁷⁶ One way to ensure this is through granting derivative refugee status to all those who do not qualify for a protection status in their own right.¹⁷⁷

Fifteen of the 23 AIDA countries analysed give the reunited family members the same status and residency rights as the sponsor, either through a formal asylum procedure or as a direct result of the residence permit.

Status and residency rights of family members	
Equal to the sponsor's	Different from the sponsor's
At minimum the same: AT, FR, RO, ¹⁷⁸ CH	BE, HR, ¹⁷⁹ DE, GR, PL, SR, SI, SE, UK
The same: BG, HR, ¹⁸⁰ CY, HU, IE, IT, MT, NL, PT, ES, TK	

Source: AIDA.

¹⁷³ Council of Europe, *Family Reunification for Refugee and Migrant Children*, April 2020, available at: <http://bit.ly/3WhirR5>, p78.

¹⁷⁴ Article 15 also provides for the possibility to issue autonomous residence permits in cases of widowhood, divorce, separation, death.

¹⁷⁵ CJEU, *LW v Bundesrepublik Deutschland*, C-91/20, 9 November 2021, available at: <http://bit.ly/3XeKSjV>, para 62.

¹⁷⁶ UNHCR, *Family Reunification in Europe*, 2015, available at: <http://bit.ly/3GRQ5qz>, p5-6.

¹⁷⁷ UNHCR, *Processing Claims Based on the Right to Family Unity*, 2016, available at: <https://bit.ly/3XFY7de>.

¹⁷⁸ This is not mandatory in law but has been observed in practice.

¹⁷⁹ For all those but the children.

¹⁸⁰ This only applies to the children.

However, even after the family has joined the sponsor in the country of asylum, challenges remain, especially considering that, if a stable legal status for reunited family members is not secured, families may be forced to separate again, in violation of the right to family unity.

In **Malta**, family members are barred from applying for asylum in their own name once they have entered following the family reunification procedure.¹⁸¹

In **Cyprus**, since 2019 the CRMD has ceased issuing residence permits to family members. Instead, they instruct BIPs to contact the Asylum Service, which has established a procedure to assess the protection needs of family members. In practice, however, decisions to grant international protection have only been issued concerning minor children of BIPs, not to spouses or adult children. These groups are then without status, residence permit, and with no access to rights.¹⁸²

In **Greece**, after turning 18, individuals having arrived as children of refugees can in principle no longer apply for a renewal of their residence permit. By exception, they may receive special one-year permits until they are 21 years old; afterwards, the permits cannot be renewed, so that they no longer have a legal status and a right to residence in Greece.¹⁸³

2. Right to employment and education

Family members reunited with a refugee are entitled to access to education, vocational guidance, initial and further training and retraining per Article 14 of the Directive. They must also be able to access employment and self-employed activity, although states may restrict that right during the first twelve months, by conditioning it on an examination of the situation of the labour market. States may also not recognise this right to first-degree relatives of adult sponsors and their adult children.

The European Commission guidance encourages states to limit such restrictions as much as possible because employment promotes integration, helps limit poverty traps, and avoid deskilling of people who stay in the country long term.¹⁸⁴

Hungary excludes families of BIPs from employment and self-employment although they have access to education and vocational training.

Bar this exception, all other countries foresee the right to education and work of family members of BIPs.¹⁸⁵

In **Hungary**, there are particular issues with regard to schooling of children. Schools have difficulties admitting children BIPs due to the anti-refugee sentiment and fear of backlash from families and donors. The Jesuit Refugee Service tries to mitigate this situation with a specific programme on integration into the education system, with Hungarian language skill development and help with school subjects on a weekly basis.¹⁸⁶

However, even where these rights are formally recognised, there may be challenges in practice. For instance, meaningful access to the labour market is hindered by language barriers, the absence of recognition of foreign diplomas, and the hostility or discrimination towards BIPs.¹⁸⁷

¹⁸¹ AIDA, *Country Report Malta, 2021 Update*, May 2022, available at: <http://bit.ly/3Av05Tz>, p129

¹⁸² AIDA, *Country Report Cyprus, 2021 Update*, April 2022, available at: <http://bit.ly/3H70iB4>, p153.

¹⁸³ AIDA, *Country Report Greece, 2021 Update*, May 2022, available at: <http://bit.ly/3WohhmU>, p241.

¹⁸⁴ European Commission, *Communication from the Commission to the European Parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification*, 3 April 2014, COM(2014) 210 final, available at: <http://bit.ly/3iH6OVA>, p20.

¹⁸⁵ See AIDA, *Country Reports*, available at: <http://bit.ly/3k0pg67>.

¹⁸⁶ AIDA, *Country Report Hungary, 2021 Update*, April 2022, available at: <http://bit.ly/3wFoHYE>, p131-132.

¹⁸⁷ See for example AIDA, *Country Report Serbia, 2021 Update*, May 2022, available at: <http://bit.ly/3H7dTs4>, p158-161; AIDA, *Country Report Spain, 2021 Update*, April 2022, available at: <http://bit.ly/3iCr1Mt>, p167;

Inclusion policies

Per Articles 12 and 7(2) of the Family Reunification Directive, refugees' families can only be subject to integration requirements after they have been granted family reunification. States are however free to offer inclusion programmes.

France and the **Netherlands** have mandatory civic integration programmes including for families of beneficiaries of international protection. In **France**, the *contrat d'intégration républicaine*, which the BIPs also follow after obtaining their status, includes language training, civic training and support for employment opportunities.¹⁸⁸ Similarly in the Netherlands, civic integration courses aim at providing BIPs and their families with knowledge about the Dutch culture, Dutch language lessons, and help to be able to work or study independently.¹⁸⁹

Red Cross, 'Holistic Support to migrants and asylum seekers integration in the labour market', available at: <http://bit.ly/3Hsqiaf>; Parliamentary Assembly of the Council of Europe, Refugees and the right to work, resolution 1994(2014), available at: <http://bit.ly/3H60ILZ>.

¹⁸⁸ République Française, 'What is the Republican Integration Contract', available at: <https://bit.ly/3J9I9VG>.

¹⁸⁹ Government of the Netherlands, 'Civic integration (inburgering) in the Netherlands', available at: <http://bit.ly/3j2j7vO>.

1. The right to family unity under the Dublin III Regulation

Family reunification under the Family Reunification Directive does not cover asylum applicants. Instead, the Dublin III Regulation (“the Regulation”), laying down the rules to determine which Member State is responsible for the assessment of an asylum claim, contains specific provisions on family unity for asylum seekers.¹⁹⁰

Recital 14 stresses that, in accordance with European obligations, “respect for family life should be a primary consideration of Member States when applying this Regulation”, while Articles 8 to 10 establish positive obligations to ensure respect for the principle of family unity in the context of Dublin transfers, and establish that, among the criteria set out by the Regulation, those linked to family unity take precedence over all others. The Regulation concerns reunion of families that are dispersed across the EU as family unity under Dublin does not grant rights related to family outside the EU.

The Dublin III Regulation does not grant asylum seekers the right to family reunification as such. People do not have the right to seek a transfer purely in relation to their personal circumstances and have no available legal remedy in this respect. They can however seek legal remedy against a transfer decision, for instance by arguing that the hierarchical criteria were incorrectly applied, in that their family situation as related to the criteria, was not taken into account.¹⁹¹

Definition of family members

In Article 2(g), the Regulation contains a definition of family members different from that of the Family Reunification Directive. Family is automatically limited to the family links that already existed in the country of origin. It does though include both spouses and unmarried partners in a stable relationship if the law or practice in the Member State treats them in a comparable way to married couples. It also includes unmarried minor children of the couple or the applicant, but not of the spouse or partner, and includes adopted children. Unaccompanied minors can reunite with their father, mother or another adult responsible for them as accepted by the law or the practice of the Member State where the adult is present. The Dublin Regulation also contains a definition of relatives, per Article 2(h), which covers aunts, uncles and grandparents.

The asylum reform packages of 2016 and 2020 both included reform of the rules set out in the Regulation. The proposed Regulation on Asylum and Migration Management (RAMM) replaces Dublin with a new approach to responsibility sharing and solidarity and should be read with the proposed and amended Asylum Procedures Regulation (APR).¹⁹² The proposals – currently under discussion – have been criticised, inter alia, for de-prioritising family unity, given that provisions on inadmissibility, and the use of first country of asylum, safe third country and safe country of origin concepts are applied before consideration of family links.¹⁹³

On the other hand, the RAMM proposal introduces an wider definition of family members, which would include siblings for all applicants, as well as families formed in transit. While welcoming the addition of families formed in transit for the application of the Dublin Regulation provisions, UNHCR expressed

¹⁹⁰ The Dublin III Regulation applies to all 27 Member States as well as Denmark, Iceland, Norway, Switzerland. It no longer applies to the United Kingdom since 31 December 2020. It is only possible to seek family reunification into the UK with a recognised BIP.

¹⁹¹ CJEU, *Mehrdad Ghezelbash v. Staatssecretaris van Veiligheid en Justitie*, C-63/15, 7 June 2016, available at: <http://bit.ly/3ZKdUcD>, para 61.

¹⁹² European Commission, Proposal for a Regulation of The European Parliament And Of The Council on asylum and migration management, available at: <https://bit.ly/3XxU7M2>.

¹⁹³ ECRE, *ECRE Comments on the Commission Proposal for a Regulation on Asylum and Migration Management*, February 2021, available at: <https://bit.ly/3ZX3MgM>, p9.

serious concern about the downgrading of the family unity criteria to second place, to be applied following the mandatory examination of the possibility of returning or sending the applicant to a first country of asylum, safe third country or safe country of origin.¹⁹⁴

The Dublin III Regulation provides specific criteria concerning responsibility for unaccompanied minors under Article 8:

- If the unaccompanied minor is unmarried, the responsible Member State is the state where either a family member or a sibling is legally present.
- If the unaccompanied minor is married, it is only if their spouse is not present that the responsible Member State is that where their parent or responsible adult or sibling is legally present.
- If the unaccompanied minors has a relative who is legally present in another Member State and who is able to take care of them, then the unaccompanied minor is have their claim assessed in that state.

All these criteria are subject to a best interests of the child assessment; a transfer shall not occur if reunion with the family is against the best interests of the child.

Austria notably refuses transfers on the basis that they are not in the best interests of the child where the authorities consider that parents voluntarily separated themselves or accepted such separation from their child. The authorities, for instance, refused a transfer request from Greece in a case where the parents had applied for asylum in Austria whereas the child and their grandmother had applied in Greece.¹⁹⁵

If the criteria of Article 8 are not met, if any applicant (minor or adult) has a family member who is allowed to reside in a specific Member State as a recognised BIP, regardless of whether the family link was formed in the country of origin or afterwards, they will be reunited with that family member if both parties express this desire in writing (Article 9).

If the criteria of Articles 8 and 9 are not met and the applicant has a family member who is an asylum seeker in another Member State but has not yet received a first decision on the substance of their claim, they will be transferred to that state if both parties express this desire in writing (Article 10).

Finally, the Dublin Regulation provides specific rules regarding dependent persons in Article 16: if a person depends on the assistance provided by their child, sibling or parent, who is a legal resident in a particular Member State, or conversely if their child, sibling or parent is dependent on their assistance, and the pertinent party is able to take care of the dependent person, states have a positive obligation to reunite them in the country where the child, sibling or parent has legal status. If the applicant cannot travel to the Member State where their child, sibling or parent legally resides, their asylum claim will be processed by the state where they are currently applying. In such a case however, family reunification is not mandatory: the state is not obliged to allow the child, sibling or parent to come.

Article 20(3) ensures that children are not separated from a family member as a consequence of the Dublin rules: if the Dublin Regulation's provisions mandate that another state is responsible for the asylum claim of the family member, the accompanying minor must be allowed to follow.

However, the **German** Federal Administrative Court clarified that, for this provision to apply with regard to a child born in one Member State to parents having received international protection in a second Member State, the state receiving the asylum application still needs to send a take charge request within the time limits, failing that they would be responsible for the asylum procedure.¹⁹⁶

¹⁹⁴ UNCHR, *No Family Torn Apart: Challenges refugees face securing family reunification in the Netherlands and recommendations for improvement*, September 2019, available at: <https://bit.ly/3XAwFgM>, p32.

¹⁹⁵ AIDA, *Country Report Austria, 2021 Update*, April 2022, available at: <http://bit.ly/3H8Qc2l>, p43-44.

¹⁹⁶ Federal Administrative Court, 1 C 37.19, 23 June 2020, available at: <http://bit.ly/3D9EBOr>.

In order for these provisions to be correctly applied, Article 4(1) provides that the right to information of asylum seekers includes information about the criteria and their hierarchy, the personal interview and the possibility and means to submit information about family members, relatives or any other family relations present in the EU. This information is to be provided as soon as the person has lodged their application. Moreover, for unaccompanied minors, under Article 6(4) family tracing should be initiated by the Member State as soon as they have lodged their application.

Despite the Dublin III Regulation indicating family unity as the first in the hierarchy of responsibility criteria, analysis of implementation suggests that Member States do not prioritise it in practice.¹⁹⁷

In **France**, a fingerprint “hit” under Eurodac remains the decisive factor for a Dublin transfer: family ties are not properly examined.¹⁹⁸

In the **Netherlands**, the Council of State’s position is that asylum seekers generally cannot appeal using the criteria set out in Chapter III in the case of take back requests. Moreover, the IND and the Council of State agree that Article 16 on dependence can only be relied on in cases of exclusive dependence, whereby nobody else could provide the necessary care.¹⁹⁹ However, some regional courts resist this strict interpretation of Article 16, arguing that it is not line with EU law.²⁰⁰

Germany has very strict policies regarding family unity under Dublin. Requests are often rejected for formal reasons (deadlines expired, lack of evidence, etc.), which can lead to contestation and a reversal. In 2020, in 1,036 rejections received by Greece (of the 1,289 requests it sent), the Greek authorities officially protested to the BAMF in 732 cases, resulting in 328 additional positive responses from the BAMF. In 2021, 701 requests were sent and 377 were rejected, of which Greece contested 249 with the BAMF subsequently accepting 174.²⁰¹

Conversely, in **Hungary**, the NDGAP is generally cooperative when an applicant alleges they have family elsewhere in the EU, acting speedily and with good and constructive communication taking place between Dublin caseworkers and NGO lawyers.²⁰²

In **Slovenia**, although family unity criteria are invoked by the authorities, the procedures are rarely completed. It is reported that, due to their length among other reasons, applicants often abscond before they end.²⁰³

Documentary and evidentiary requirements

The Dublin III Regulation provides that take charge requests under Article 21(3) and take back requests under Article 23(3) must be send using a standard form and proof of circumstantial evidence. Lists of proof and circumstantial evidence are to be established and reviewed by the Commission, as foreseen by Article 22(3). According to the Regulation, states should not require proof to a level that is not necessary for the application of the Regulation, as per Article 22(4), and the absence of formal proof does not allow states to automatically reject the transfer request. Per Article 22(5), they must still

¹⁹⁷ EPRS, Dublin Regulation on international protection applications, February 2020, available at: <https://bit.ly/3GMSzqh>; UNHCR, *Left in Limbo: UNHCR Study on the Implementation of the Dublin III Regulation*, August 2017, available at: <https://bit.ly/3kfm0tu>; AIDA, Dublin statistical updates, available at: <http://bit.ly/3QVNmRJ>.

¹⁹⁸ AIDA, *Country Report France, 2021 Update*, April 2022, available at: <http://bit.ly/3TpjjCJ>, p52.

¹⁹⁹ AIDA, *Country Report Netherlands, 2021 Update*, April 2022, available at: <http://bit.ly/3CDunpR>, p41; Council of State, ECLI:NL:RVS:2020:2296, 30 September 2020; Council of State, ECLI:NL: RVS:2019:834, 13 March 2019; Council of State, Decision No 201706799/1/V3, 8 October 2018.

²⁰⁰ District Court of the Hague, EN21.10559, 14 September 2020, available at: <http://bit.ly/3wrfxP4>; EN20.14957, 3 September 2020, available at: <http://bit.ly/3XA7j2Z>.

²⁰¹ AIDA, *Country Report Germany, 2021 Update*, April 2022, available at: <http://bit.ly/3Arvma8>, p41.

²⁰² AIDA, *Country Report Hungary, 2021 Update*, April 2022, available at: <http://bit.ly/3wFoHYE>, p42.

²⁰³ AIDA, *Country Report Slovenia, 2021 Update*, May 2022, available at: <http://bit.ly/3wxlwm1>, p43.

acknowledge responsibility if the “circumstantial evidence is coherent, verifiable and sufficiently detailed to establish responsibility”.

In terms of timeline, Article 7 of the Dublin Regulation obliges states to take into account any evidence produced before a Member State accepts a request and before the applicant’s asylum claim has received a first decision on substance.

The European Commission detailed what can constitute proof and circumstantial evidence in Commission Implementing Regulation No 118/2014²⁰⁴, annex II.

- Constitutes proof of the presence of a family member in another Member State: written confirmation by the other state; extracts from registers; the residence permit or temporary residence authorisation issued to the family member, relative, other family relation; evidence of the familial link where available; if not and if necessary, a DNA or blood test.
- Constitutes circumstantial or indicative evidence: verifiable information by the applicant; statements by the family member, relative or other family relation; confirmation of the information by an international organisation such as UNHCR.

The Regulation and Commission Implementing Regulation give little further detail as to how to prove the familial link specifically, which is often the contentious issue, other than that in the absence of such evidence and if necessary a blood or DNA test can be performed.

UNHCR finds that the evidentiary requirements imposed upon asylum seekers and their families are part of the reason for low Dublin transfers based on family unity, due to requirements such as translation of the documents proving family links, unnecessary DNA tests, etc.²⁰⁵

In **Austria**, applicants may only rely on the Dublin criteria of family unity if they had mentioned the family members in question during the asylum procedure, not only in Austria but also in other Member States where they have applied for asylum.²⁰⁶

Such is not the case in **Cyprus**, where the authorities will still apply the family unity provisions even if the family members had not been mentioned from the outset.²⁰⁷

Greece struggles to receive positive responses to their family unity requests due to restrictive practices by recipients States such as requests for DNA testing, age assessment following their own method, etc. For instance, the Greek Asylum Unit reports that **Germany**, the **Netherlands**, **Spain** and **Italy** request that all documents be translated into English; documents from certain countries of origin such as Somalia and Afghanistan, are refused by **Germany** as evidence of family relationship due to risk of forgery; **Spain** and **Ireland** refuse any take charge request that does not contain a DNA test. Lastly, **Austria** and some **Nordic countries** question age assessment procedures carried out in **Greece**, refusing requests on this ground.²⁰⁸

In **Hungary**, the authorities are described by NGOs as cooperative regarding this process, accepting documents that help establish identity and family link without translation and forwarding them to the other state speedily.²⁰⁹

²⁰⁴ Commission Implementing Regulation (EU) No 118/2014 of 30 January 2014 amending Regulation (EC) No 1560/2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, OJ L 39/1, available at: <http://bit.ly/3iMuXu6>, annex II.

²⁰⁵ UNHCR, *Left in Limbo: UNHCR Study on the Implementation of the Dublin III Regulation*, August 2017, available at: <https://bit.ly/3kfm0tu>.

²⁰⁶ AIDA, *Country Report Austria, 2021 Update*, April 2022, available at: <http://bit.ly/3H8Qc2l>, p44.

²⁰⁷ AIDA, *Country Report Cyprus, 2021 Update*, April 2022, available at: <http://bit.ly/3H70iB4>, p48.

²⁰⁸ AIDA, *Country Report Greece, 2021 Update*, May 2022, available at: <http://bit.ly/3WohhmU>, p74-77.

²⁰⁹ AIDA, *Country Report Hungary, 2021 Update*, April 2022, available at: <http://bit.ly/3wFoHYE>, p42.

In **Switzerland**, family criteria are applied narrowly. The SEM previously requires an established relationship, looking at factors such as common housing, stability and duration of the relationship, etc, including for spouses.²¹⁰ This approach was overturned by the Federal Administrative Court, which underlined that Article 2(g) of the Dublin III Regulation did not require anything further than a formal spouse relationship.²¹¹

The **Belgian** authorities, as well as the Council of Alien Law Litigation, are also particularly stringent regarding dependency:²¹² medical certificates should explicitly mention the indispensable presence of the other family member; if the dependent person still works, payments from the asylum seeker to them are insufficient to prove dependency, etc.

Use of the humanitarian clause to ensure family unity

Article 17(1) of the Dublin regulation enables states to decide to examine an asylum application even if they are not obliged to under the responsibility criteria. Per Article 17(2), they may also send a take charge or take back request to a Member State other than the one designated by the criteria, “in order to bring together family relations, on humanitarian grounds based in particular on family or cultural considerations”. This possibility is also encouraged by Preamble 17, particularly “in order to bring together family members, relatives or any other family relations”. This possibility to bring together families goes beyond the scope of Articles 8-10 to potentially include any family relations.²¹³ However, according to the CJEU this remains an entirely optional clause and states are never obliged to take responsibility if not the responsible state according to the rules.²¹⁴ UNHCR encourages countries to make greater use of these provisions, especially regarding unaccompanied and separated children.²¹⁵

Greece uses the humanitarian clause for dependent or vulnerable persons not covered by Articles 8-10 and when a request comes after the three-month deadline.²¹⁶ This often happens due to the long delays in appointing legal guardians for unaccompanied minors.²¹⁷

Similarly, **Italy** has often used Article 17(2) to allow for family reunification of minors who were not actually transferred within the set time limits.²¹⁸

National courts have frequently found that Member States had a positive obligation as concerns the application of Article 17. In the case of a mother and her children who wished to have their application processed in **Germany** – where the father/husband was in detention and where the grandparents, German nationals, lived and provided support to the mother who was affected by mental illness – the administrative court of Hannover found that the special interest of the children to stay in contact with their father, coupled with the support provided by the grandparents, constituted exceptional circumstances justifying a mandatory application of Article 17 on humanitarian grounds.²¹⁹ The Administrative Court of Muenster also found an obligation to apply Article 17 in order to respect Germany’s obligations under Article 8 ECHR and Articles 7 and 24 CFREU in the case of an unaccompanied minor and their brother due to their close family ties, and despite the absence of any particular dependency.²²⁰

²¹⁰ AIDA, *Country Report Switzerland, 2021 Update*, April 2022, available at: <http://bit.ly/3wEJI5E>, p38.

²¹¹ Federal Administrative Court, D-2427/2016, 10 February 2017, available at: <http://bit.ly/3HsQtNU>.

²¹² AIDA, *Country Report Belgium, 2021 Update*, April 2022, available at: <https://bit.ly/3VN6imO>, p46-47.

²¹³ Adjudicated regarding Dublin II, on the same rules: CJEU, *K. v Bundesylamt*, C-245/11, 6 November 2012, available at: <http://bit.ly/3GJ56uW>, para 40.

²¹⁴ CJEU, *M.A., S.A., A.Z., v International Protection Appeals Tribunal, Minister for Justice and Equality, Attorney General, Ireland*, C-661/17, 23 January 2019, available at: <http://bit.ly/3XhROwp>, para 69.

²¹⁵ UNCHR, *No Family Torn Apart: Challenges refugees face securing family reunification in the Netherlands and recommendations for improvement*, September 2019, available at: <https://bit.ly/3XAwFgM>, p32.

²¹⁶ AIDA, *Country Report Greece, 2021 Update*, May 2022, available at: <http://bit.ly/3WohhmU>, p77.

²¹⁷ AIDA, *Country Report Greece, 2021 Update*, May 2022, available at: <http://bit.ly/3WohhmU>, p75-76.

²¹⁸ AIDA, *Country Report Italy, 2021 Update*, May 2022, available at: <http://bit.ly/3CDFjUA>, p71.

²¹⁹ Administrative Court of Hannover, 1 B 5946/15, 7 March 2016, available at: <https://bit.ly/3IT5N7J>.

²²⁰ Administrative Court of Muenster, 2 L 989/18.A, 20 December 2018, available at: <https://bit.ly/3XTui8Z>.

The same reasoning was used by the **United Kingdom** Upper Tribunal – prior to the country’s exit from the EU – to limit the authorities’ discretion under Article 17 with regard to a stateless woman and her child who sought to reunite with their husband/father, a British citizen. Respect for family life under the ECHR and the CFREU entailed an obligation to apply Article 17(2) of the Dublin III Regulation.²²¹

Similarly, the **Austrian** Constitutional Court held that the authorities may be obliged to use Article 17 to respect their ECHR obligations, including those under Article 8 ECHR on the respect for family life. Such was the case regarding an adult brother and their underage siblings despite the absence of formal guardianship powers by the brother²²² and regarding the spouse and children of an asylum seeker whose asylum claim had already successfully passed the admissibility examination.²²³

On the contrary, however, the Council of State in the **Netherlands** has ruled that the authorities have no obligation to protect family unity beyond the obligations set out in Articles 8-10 of the Dublin Regulation. As such, there is no obligation to apply Article 17 to an asylum seeker whose pregnant wife is a Dutch citizen.²²⁴ In **Switzerland**, the Federal Administrative Court ruled in some cases the applicant may knowingly put themselves in an uncertain situation which would then not entail an obligation under Article 17.²²⁵

The **Polish** Supreme Administrative Court did not go as far as recognising an absolute obligation to use Article 17 in certain circumstances, but stressed that, given the importance of a transfer decision which is akin to a return decision, all circumstances should be comprehensively analysed to determine whether to declare oneself responsible under Article 17, including those circumstances that arose after the decision to transfer. In this case, the asylum seeker was now married to a Polish citizen and the authorities should have considered applying Article 17, given that Dublin must be applied in line with human rights.²²⁶

2. Alternative pathways to family unity for BIPs

When BIPs are unable to access family reunification for various reasons (scope, time limit, requirements, etc) there are in some cases other avenues possible to reunite with their family. A number of general – albeit limited in terms of numbers²²⁷ – regular pathways exist for families to come to Europe, provided they meet set criteria. These include the general family reunification programme for third country nationals, humanitarian visa programmes, resettlement programmes, humanitarian admission programmes, and private sponsorship.

In **Germany**, the right to family reunification of subsidiary protection holders was abolished, replaced by a discretionary humanitarian clause. Only members of the “immediate” family are eligible and there must be particular humanitarian circumstances, including long separation of the family and the separation including at least one minor unmarried children. A quota is set at 1,000 admissions per month. Germany has also had specific ad hoc programmes for Syrians and Afghans, by municipality. The sponsor must agree to take charge of the family financially.²²⁸

²²¹ United Kingdom Upper Tribunal, H.A., A.A. and N.A. v. Secretary of State for the Home Department, JR/10195/2017, 19 April 2018.

²²² BVwG, W165 2140213-1, 26 January 2017, available at: <http://bit.ly/2meMkAF>.

²²³ VwGH, Ra 2015/18/0192 to 0195, 15 December 2017, available at: <http://bit.ly/3XV2sJl>.

²²⁴ Council of State, 201505706/1, 19 February 2016, available at: <http://bit.ly/3DaiYxw>.

²²⁵ Federal Administrative Court, E-7092/2017, 25 January 2021, available at: <http://bit.ly/3HsQtNU>.

²²⁶ Supreme Administrative Court, II OSK 1170/21, 11 January 2022, summary available at: <http://bit.ly/3wlW2rf>.

²²⁷ ECRE; *Protection in Europe: Safe and Legal Access Channels*, February 2017, available at: <https://bit.ly/3GZKyP3>; ECRE, *Mounting global needs call for renewed European leadership on resettlement*, June 2022, available at: <https://bit.ly/3xogBn0>; ECRE, *Joint Statement: One year after the country’s takeover by the Taliban – How did Europe welcome Afghans in need of protection?*, September 2022, available at: <http://bit.ly/3es9svW>.

²²⁸ AIDA, *Country Report Germany, 2021 Update*, April 2022, available at: <http://bit.ly/3Arvma8>, p172.

In **Ireland**, families may be eligible under the Irish Humanitarian Admission Programme (IHAP) if they are nationals from ten designated countries (Syria, Afghanistan, South Sudan, Somalia, Sudan, DRC, CAR, Myanmar, Eritrea, Burundi). Certain relatives not eligible under family reunification are eligible under IHAP, such as grandparents, related unmarried minor child without parents and for which the sponsor holds parental responsibility. Afghan nationals may also have been eligible under the New Afghan Admission Programme, for which applications closed on 11 March 2022. Lastly, applicants may be eligible under Ireland's Community Sponsorship programme.²²⁹

In **Portugal**, the authorities have been making efforts in Türkiye and Egypt to identify family members of resettled refugees, so as to potentially include them in the resettlement quota.²³⁰

²²⁹ AIDA, *Country Report Ireland, 2021 Update*, April 2022, available at: <http://bit.ly/3H8VFGw>, p13 and 127-129.

²³⁰ AIDA, *Country Report Portugal, 2021 Update*, May 2022, available at: <http://bit.ly/3AXFHMo>, p173.

Concluding remarks

The report identifies a number of challenges in the implementation of family reunification, across all stages of the procedure. Key issues include the beneficiaries falling within the scope of family reunification, both on the side of the sponsor and the family. The report sets out the obstacles and difficulties that may be generated by substantive and procedural requirements, as well as by insufficient respect for procedural safeguards. The report also shows the continued difficulties families face after arrival in the state of asylum, difficulties that may lead to renewed separation. Finally, the report includes information on the family reunification of potential future BIPs – asylum applicants under the Dublin Regulation, where difficulties also arise. Such difficulties impede the right to respect for family life of persons in need of protection, who are already vulnerable and for whom reunion with their family is indispensable for their health and positive inclusion into their host society. This report also presents positive practices by states which can serve as a model for others – and for future legislative reform. Many states go beyond the minimum standards imposed by EU law, thereby ensuring better respect for the rights of BIPs and their families. Based on the above findings, the following conclusions can be drawn and recommendations made:

1. Broaden the scope of family reunification

The scope of family reunification is currently limited in various ways. First, family reunification for beneficiaries of subsidiary protection is not always foreseen. Second, countries have widely different approaches as to what constitutes family for the purposes of family reunification and as to when the family has to have been formed. Third, some countries limit the timeframe during which families and beneficiaries of protection can apply, setting both waiting times and time limits. These limits only set back beneficiaries of protection in their inclusion process in the country of asylum. Twenty years of practice in the implementation of the Family Reunification Directive have proven the benefits of reunification from a social, economic and protection perspective. Member States should thus widen the scope of family reunification, so that it can cover all beneficiaries of protection, as well as all relevant family members.

2. Apply more favourable conditions to all beneficiaries of protection without time limits

States still limit the possibility for certain beneficiaries of international protection to benefit from more favourable conditions to be reunited with their families. Gathering the numerous pieces of evidence required and appearing before a diplomatic representation in a short timeframe is not realistic, given the particular situation of refugees and the increasing withdrawal of diplomatic representation. Substantive requirements such as income and accommodation may be difficult to fulfil, given the obstacles faced in obtaining proper accommodation and smoothly integrating into the labour market. When the sponsor has to financially support their family abroad, the situation may then be protracted. In order to provide an effective opportunity for family reunification, and one which does not take years to complete, Member States should facilitate the process as much as possible for beneficiaries of protection and their families.

EU bodies, including the European Commission, the EUAA and the Fundamental Rights Agency, should also (continue to) provide clear guidance on how to remove the practical barriers beneficiaries of protection face during the family reunification procedure, for instance regarding the assessment of evidence of identity and family links.

3. Ensure adequate support to sponsors and their families throughout the procedure

In order to exercise their rights effectively and in a timely manner, beneficiaries of protection and their families need adequate support throughout the family reunification procedure. This includes timely provision of information, legal assistance available from the first stage of the procedure until the arrival of the family and granting of a legal status and rights to the family, legal aid for legal remedies, and comprehensive financial support throughout the procedure, such as for potential DNA testing,

administrative costs, and travel costs. Guidance and concrete support from EU agencies to countries with limited administrative capacity could be an important way to avoid large differences in the level of support offered by countries, and to achieve successful reunification for all.

4. Provide families with rights identical and independent to those of sponsors

Families joining sponsors in the country of asylum must have access to a legal status that affords them the rights that allow for successful integration. Member States should provide for stable and independent legal status, with at minimum the same rights as those afforded to beneficiaries of protection. Sponsors and families should also receive adequate support to ensure they are included into the host society, through voluntary inclusion programmes, social support, etc.

5. Establish effective alternative pathways to family unity

Given the limits of family reunification, many family members are left behind. Alternative pathways are not sufficient to provide a due to scope, eligibility conditions and limited places available. Even where a person is eligible, it is not always an effective solution, given, for example, the numbers of people in need of and eligible for resettlement compared to the low commitments of states. If no places are available and the right to family reunification is not accessible, the only route to reunification may be irregular travel to Europe, with all the risks that it entails. The EU and Member States should continue developing alternative pathways and within such pathways commit to a higher number of places.

THE ASYLUM INFORMATION DATABASE (AIDA)

The [Asylum Information Database \(AIDA\)](#) is a database managed by the European Council on Refugees and Exiles (ECRE), containing information on asylum procedures, reception conditions, detention and content of international protection across 23 countries. This includes 19 European Union (EU) Member States (Austria, Belgium, Bulgaria, Cyprus, Germany, Spain, France, Greece, Croatia, Hungary, Ireland, Italy, Malta, Netherlands, Poland, Portugal, Romania, Sweden, Slovenia) and 4 non-EU countries (Switzerland, Serbia, Türkiye, United Kingdom).

- **Country reports**

AIDA contains national reports documenting asylum procedures, reception conditions, detention and content of international protection in 23 countries.

- **Comparative reports**

AIDA comparative reports provide a thorough comparative analysis of practice relating to the implementation of asylum standards across the countries covered by the database, in addition to an overview of statistical asylum trends and a discussion of key developments in asylum and migration policies in Europe. Annual reports were published in 2013, 2014 and 2015. From 2016 onwards, AIDA comparative reports are published in the form of thematic updates, focusing on the individual themes covered by the database. Thematic reports have been published on reception (March 2016), asylum procedures (September 2016), content of protection (March 2017), vulnerability (September 2017), detention (March 2018), access to the territory and registration (October 2018), reception (May 2019), asylum authorities (October 2019) and digitalisation of asylum procedures (January 2022).

- **Fact-finding visits**

AIDA includes the development of fact-finding visits to further investigate important protection gaps established through the country reports, and a methodological framework for such missions. Fact-finding visits have been conducted in Greece, Hungary, Austria, Croatia, France, Belgium, Germany and Poland.

- **Legal briefings**

Legal briefings aim to bridge AIDA research with evidence-based legal reasoning and advocacy. These short papers identify and analyse key issues in EU asylum law and policy and identify potential protection gaps in the asylum *acquis*. Legal briefings so far cover: (1) Dublin detention; (2) asylum statistics; (3) safe countries of origin; (4) procedural rights in detention; (5) age assessment of unaccompanied children; (6) residence permits for beneficiaries of international protection; (7) the length of asylum procedures; (8) travel documents for beneficiaries of international protection; (9) accelerated procedures; (10) the expansion of detention; (11) relocation; and (12) withdrawal of reception conditions.

- **Statistical updates**

AIDA releases short publications with key figures and analysis on the operation of the Dublin system across selected European countries. Updates have been published for 2016, the first half of 2017, 2017, the first half of 2018, 2018, the first half of 2019, 2019 and the first half of 2020, 2020 and 2021.

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