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RESEARCH SOCIAL
PLATFORM ON MIGRATION
AND ASYLUM

DISCUSSION BRIEF

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ASYLUM

Hardship of family reunion for beneficiaries of international protection

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ReSOMA Discussion Briefs aim to address key topics of the European migration and integration debate in a timely matter. They bring together the expertise of stakeholder organisations and academic research institutes in order to identify policy trends, along with unmet needs that merit higher priority. Representing the first phase of the annual ReSOMA dialogue cycle, nine Discussion Briefs were produced, covering the following topics:

- hardship of family reunion for beneficiaries of international protection
- responsibility sharing in EU asylum policy
- the role and limits of the Safe third country concept in EU Asylum policy
- the crackdown on NGOs assisting refugees and other migrants
- migration-related conditionality in EU external funding
- EU return policy
- the social inclusion of undocumented migrants
- sustaining mainstreaming of immigrant integration
- cities as providers of services to migrant populations

Under these nine topics, ReSOMA Discussion Briefs capture the main issues and controversies in the debate as well as the potential impacts of the policies adopted. They have been written under the supervision of Sergio Carrera (CEPS/EUI) and Thomas Huddleston (MPG). Based on the Discussion Briefs, other ReSOMA briefs will highlight the most effective policy responses (phase 2), challenge perceived policy dilemmas and offer alternatives (phase 3).

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ReSOMA RESEARCH SOCIAL PLATFORM ON MIGRATION AND ASYLUM

Discussion Brief

Hardship of family reunion for beneficiaries of international protection*

1. Introduction

Family reunification represents a safe and legal channel for migrants and beneficiaries of international protection to reunite with their separated family members and live a normal family life (UNHCR, 2018). It is a crucial element to foster integration of migrants and beneficiaries of international protection in host societies and promote economic and social cohesion in the Member States (Beaton, Musgrave & Liebl, 2018). The right to family reunification is widely recognised under EU law to promote the enjoyment of the right to family life by migrant families (Groenendijk, 2006). EU citizens who exercise their right to free movement in the Member States benefit from the favourable rules enshrined in the Directive 2004/38, also known as the Citizens' Rights Directive. By contrast, third-country nationals and refugees mainly rely on the provisions included in the Family Reunification Directive 2003/86 and other EU instruments to access family reunification.

In "UNHCR's experience, the possibility of being reunited with one's family is of vital importance to the integration process. Family members can reinforce the social support system of refugees and promote integration" (UNHCR, 2007). Beneficiaries of international protection lack the possibility to return home and enjoy the right to family. Therefore, in case the family member remains in the country of origin, the reunification procedure in the host country symbolises the only safe and feasible option for achieving family unity. To this end, EU law recognises more favourable conditions for beneficiaries of international protection to apply for family reunification in comparison with third-country nationals, where this right is included or limited as part of first admission or so-called sectorial directives – for seasonal workers, Intra-Corporate Transferees, Blue Card holders, students and researchers (MPG, 2011).

However, desk research and interviews with relevant stakeholders indicate the existence of legal gaps and barriers, which are in practice undermining the right to family reunification, especially for beneficiaries of subsidiary protection, humanitarian status holders and unaccompanied minors. UNHCR emphasises that "throughout Europe, many practical obstacles in the family reunification process lead to prolonged separation, signif-

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icant procedural costs and no realistic possibility of success" (UNHCR, 2012).

Whereas family reunification is a right for EU citizens as well as for refugees and other migrants, this discussion brief will focus on the right to family reunification for beneficiaries of international protection. The scope of the paper is to underline the ongoing reforms and policy developments on family reunification in the EU and its Member States that risk to increase hardship of family reunion for beneficiaries of international protection. In this regard, the present discussion paper seeks to identify those restrictive standards adopted at EU and national level which curtail the facilitated procedures for family reunification and the integration perspectives of beneficiaries of international protection.

2. Scoping the debate

The right to family life and family unity is enshrined in several international legal instruments such as the Universal Declaration of Human Rights (Article 16), the UN Convention on the Rights of the Child (CRC) (Articles 9 and 10) and the European Convention on Human Rights (Article 8). Article 9 of the CRC sets out that "a child shall not be separated from his or her parents against their will, except when… such separation is necessary for the best interests of the child''.

The 1951 **Convention Relating to the Status of Refugees** instead does not expressly include the right to family reunification. However, the final act of the UN Conference of Plenipotentiaries on the Status of Refuges and Stateless Person emphasises that "the unity of the family … is an essential right of the refugee". It recommends "Governments to take the necessary measures for the protection of the refugee's family, especially with a view to ensuring that the unity of the family is maintained … [and for] the protection of refugees who are minors, in particular unaccompanied children and girls, with particular reference to guardianship and adoption" (UN General Assembly, 1951).

Within the **Common European Asylum System** (CEAS) framework, specific provisions regarding family reunification for beneficiaries of international protection are included in the Directive 2003/86/EC (Family Reunification Directive) and in the Directive 2011/95/EU (Qualification Directive). In addition, Regulation 604/2013 (Dublin Regulation), establishing a common mechanism for determining the Member State responsible for examining an application for international protection, points out a specific regime for transfering requests for family reasons which must consider 'respect for family life' and unaccompanied minors' 'best interests' (Recital 13 and 14).

The right to family life is also embodied in EU primary law. Article 7 of **Charter of Fundamental Rights** of the European Union (EUCFR) indeed sets out that everyone has the right to respect for his or her private and family life, home and communications.

The **Family Reunification Directive** 2003/86 establishes common rules for exercising the right to family reunification in 25 EU Member States (excluding the United Kingdom, Ireland and Denmark). It determines the conditions under which family reunification is granted, establishes procedural guarantees and provides

rights for the family members concerned (Groenendijk, Fernhout, Van Dam, Van Oers & Strik, 2007). The Directive specifically sets out the conditions for the exercise of the right to family reunification by third country nationals (referred to as sponsors) who reside legally in a Member State.

It applies to the sponsor who is holding a residence permit issued by a Member State for a period of validity of one year or more or who has reasonable prospects of obtaining the right of permanent residence. Sponsors can be joined by their spouse, minor children and the children of their spouse in the Member State in which they are legally residing. Member States may also extend family reunification to unmarried partners, adult dependent children, or dependent parents and grandparents. The Directive includes a waiting period of no more than two years to apply for family reunification and may require the imposition of some conditions. For instance, the sponsor may be asked to prove adequate accommodation, sufficient resources and health insurance. Moreover, Member States may impose on third-country nationals the duty to comply with integration measures before or after arrival in the country.

It is worth noting that the Family Reunification Directive introduces special provisions for refugees who are not required to meet all the above conditions that apply for third country nationals. For instance, Chapter V of the Directive does not require refugees and family members to comply with income, housing and integration conditions if the application is lodged within three months of obtaining the refugee status (Article 12) (EMN, 2017). Refugees are also exempted from the requirement to reside in the Member State for a certain period of time, before being joined by his/her family member (OECD, 2016). Furthermore, Member States cannot reject an application for family reunification solely on the fact that documentary evidence is lacking (Art. 11).

Against this background, the Family Reunification Directive reveals significant gaps. It excludes from its scope asylum seekers, applicants for or beneficiaries of temporary protection and applicants for or beneficiaries of a subsidiary form of protection (Article 3(2)) (Peers, 2018). In practice, beneficiaries of subsidiary protection and humanitarian status holders are often required to prove that they are facing special hardship or the impossibility of family life in order to be accepted for family reunification.

In addition, the Directive is based on a restrictive concept of "nuclear'' family and does not compel Member States to allow the reunification of different categories of family members such as unmarried partners, including same sex partners, siblings, parents and grandparents. Member States may authorise family reunification of other family members only if they are "dependent'' on the refugee. Dependency is not defined under the Directive and Member States usually adopt a narrow interpretation of this concept which is merely linked to financial or physical dependency (ECRE, 2014). The Directive also includes a ''discretionary'' clause in Article 9(2) according to which Member States may limit the scope of application of the relevant provisions to family ties

predating the entry of the sponsor into their territory.

The Qualification Directive positively points out that ''Member States shall ensure that family unity can be maintained" (Art. 23). Nevertheless, it embodies a narrow definition of family members that refers only to those relationship which already existed in the country of origin and leaves out certain categories of relationship such as non-nuclear and post-flight family members.

The **Dublin III** Regulation enshrines relevant provisions to ensure family unity and underlines that the Member State responsible for processing an asylum application is the one where a family member of an unaccompanied minor is legally present or where a family member has been recognised as a refugee or has an outstanding asylum application. The system delineated by the Dublin Regulation shows critical flaws that are obstructing family applications in practice. In particular, long family tracing procedures, excessive delays in age assessment and discordant evidential requirements between Member States are undermining the right of asylum seekers to have their claims processed in the same country. A restrictive interpretation of the definition of 'family members' embraced by several Member States excludes siblings, adult children, parents with adult children and unmarried couples from the scope of the Dublin Regulation (Danish Refugee Council, 2018). The current legal framework perpetuates family separation and jeopardises the goal to effectively realise family unity for beneficiaries of international protection.

3. EU policy agenda

Family reunification falls under the Union's competence and policy on migration. As noted in the previous section, EU law provides several legal instruments that are relevant to the family reunification rights of beneficiaries of international protection. In particular, it is worth noting that the Family Reunification Directive has been adopted under the old consultation procedure and it took about four years for the Council to find an agreement on the text. Unclear and restrictive provisions are likely to be due to the unanimity-based voting system in the Council.

EU law recognises privileged conditions for beneficiaries of international protection to apply for family reunification in comparison with ordinary third-country nationals, but it leaves broad leeway to Member States in implementing and granting family reunification. At national level, several Member States, such as Germany, Austria, Denmark, Finland and Sweden **narrowed family reunification rights** because of the increasing inflows of refugees in 2015 and 2016, particularly for those under temporary or subsidiary protection (M. D'Odorico, 2018).

Sweden introduced a temporary act in 2016 suspending family reunification for beneficiaries of subsidiary protection until 2019. Germany has suspended the right to family reunion for those under subsidiary protection from March 2016 onwards. As part of the coalition agreement to create a new grand coalition government, the two-year suspension period of family reunification for beneficiaries of international protection has been prolonged until July 31, 2018. Furthermore, a

limit of only 1,000 people per month has been established to allow the entry of refugees in Germany on family reunification grounds. In Austria, a recent government legislative proposal seeks to introduce a new and potentially insurmountable obstacle for family reunification of refugees. Visa applications for family reunion may require the proof of legal residency in the first country of 'refuge'. However, relatives of refugees rarely reside lawfully in the first country of 'refuge', which is generally a state neighbouring the country of origin. Individuals who find temporary protection e.g. in Turkey or Lebanon, often lack the right to legally stay and reside in the country. If adopted, it would be highly difficult for family members of refugees to fulfill this new requirement and join their families in Austria (Diakonie Flüchtlingsdienst, 2018).

Several **procedural and legal obstacles** in the Member States *de facto* limit the access to family reunification (UNHCR 2017, EMN 2017, ECRE 2014, Council of Europe Commissioner for Human Rights 2017, UNHCR 2018). Member States often differentiate between refugees and beneficiaries of subsidiary protection and ensure family reunification for non-refugees only in case of special hardship. The legal requirement according to which a minor must be under 18 when the decision to enjoy family reunification is made also compromises the family reunification of unaccompanied minors in some Member States. In general, a narrow legal approach towards the concept of eligible family members, restricted timeframes for lodging an application, costly and burdensome procedures hinder family reunification for all beneficiaries of international protection. Furthermore, the impossibility to access embassies abroad and the lack of appropriate family tracing procedures in the Member States reduce the chances to effectively reunite the sponsor with his/her family members.

The broad margin of discretion in interpreting and implementing the EU directives allow Member States to narrow the privileged access of beneficiaries of international protection to family reunification. The identified trends and controversies in access to family reunification may have a negative impact on the quality of life and integration opportunities of beneficiaries of international protection in the Member States. Family reunification is not fully recognised as a right to facilitate and foster the right to family life of migrants and beneficiaries of international protection. It may be instead used as a **migration management tool** for controlling and reducing migration flows from third-countries to the Member States.

In response to the ongoing political developments at national level, the Commission has decided to not reopen the legislative debate concerning the Family Reunification Directive. This topic is not a top priority in the current EU policy agenda and there have not been significant legislative developments since 2003 when the Family Directive was formally adopted. The Commission indeed shows the political willingness to address the topic by means of soft law instruments rather than legislative measures. In this regard, the Commission released in 2014 **Interpretative Guidelines** for a better enforcement of the Family Reunification Directive at national level. The Guidelines are not legally binding but aim to promote a uniform application and interpretation of the

Directive's provisions. The Commission stressed that the Directive should not be interpreted as obliging Member States to deny beneficiaries of temporary or subsidiary protection the right to family reunification. The Commission considers that the humanitarian protection needs of persons benefiting from subsidiary protection do not differ from those of refugees and encourages Member States to adopt rules that grant similar rights to refugees and beneficiaries of temporary or subsidiary protection.

As part of the **Common European Asylum System (CEAS) reform**, the Commission presented on 13 July 2016 the Proposal for a Regulation on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection. The new Proposal positively clarifies that the notion of family member should consider the different particular circumstances of dependency and those families formed outside the country of origin, but before their arrival on the territory of the Member States (Council of Europe Commissioner for Human Rights, 2017). It also specifies that special attention should be paid to the best interests of the child. According to the Proposal, the concept of family member "should also reflect the reality of current migratory trends, according to which applicants often arrive to the territory of the Member States after a prolonged period of time in transit. The notion should therefore include families formed outside the country of origin, but before their arrival on the territory of the Member State". Currently, the proposal on the reform of the Qualification Directive is still under negotiations between the Council and the European Parliament.

This proposal needs to be seen in the light of the whole reform of the EU asylum system, in particular the reform of the Dublin system. The so-called "frontline" Member States such as Cyprus, Greece, Italy, Malta, and Spain expressed their concerns with regard to the ongoing negotiations on the CEAS and emphasised that the new rules would place a disproportionate burden on their national asylum systems (ECRE, 2018). In this respect, in order to alleviate those procedural burdens raising in challenging circumstances, the "frontline" Member States proposed a broader definition of family members that expressly includes siblings. Such an extension would indeed "facilitate family reunification and reduce uncontrolled secondary movements" (Position paper of Cyprus, Greece, Italy, Malta and Spain on the Proposal recasting the Dublin Regulation, 2018).

It may be said that the Commission is aware of the importance of addressing the key legal gaps in relation to family reunification. However, in the light of the current political context, the revision of the 2003 Directive would risk opening a Pandora's box and compromise the main guarantees included under EU law for family reunification of beneficiaries of international protection

4. Key issues and controversies

Family reunification is hampered by several factors which are contributing to narrow the rights of beneficiaries of international protection and diminish their chances of integration in the Member

States. Bureaucratic hurdles and legal restrictions reduce the access to family reunification for beneficiaries of international protection. Lack of specific guarantees for unaccompanied minors, beneficiaries of subsidiary protection and humanitarian status holders contribute to separate many individuals from their closest family members for years (UNHCR 2018, EMN 2017).

Differential treatment between refugees and beneficiaries of subsidiary protection

One of the central controversies is the total exclusion of beneficiaries of subsidiary protection and humanitarian status holders from the scope of legislation on family reunification or the application of stricter rules when compared to refugees. Several Member States indeed apply restrictive requirements for the family reunification of beneficiaries of subsidiary protection without taking into account individual circumstances and the conditions of vulnerable categories such as disabled and elderly people.

Long waiting periods, short application deadlines, high fees, income and integration requirements and heavy evidential burdens represent the most common barriers faced by beneficiaries of subsidiary protection seeking family reunification. In some Member States (e.g. Austria, Latvia and Denmark) a waiting period up to two or three years is required for beneficiaries of subsidiary protection to apply for family reunification. This condition raises several issues in terms of integration perspectives of beneficiaries of subsidiary protection who are separated from their family member for such a long time. The CJEU clearly held that the Family Reunification Directive's objective is to enable effective integration of beneficiaries of international protection (CJEU, Case C-540/03). Different national rules that impose longer waiting periods on subsidiary protection holders can be adopted only when their effective integration in the country is possible by other means (ECRE, 2016). By contrast, this practice may encourage beneficiaries of subsidiary protection to return to their countries due to the impossibility to reunite with their family members within a reasonable timeframe. UNHCR does not justify the differential treatment between refugees and beneficiaries of subsidiary protection, as neither category can safely return home to enjoy the right to family unity (UNHCR 2007).

The requirement to prove impossibility and hardship for ''non-refugees''

Beneficiaries of subsidiary protection and humanitarian status holders are frequenlty required to meet further conditions to access family reunification and prove that they are facing special hardship or the impossibility of family life.

Member States can impose an integration requirement on applicants for family reunion before entering the country as referred to in the first subparagraph of Article 7(2) of Directive 2003/86. This requirement may apply to all categories of third-country nationals, except when they are joining a refugee (Peers 2015). In recent years, several Member States have required non-EU citizens to comply with integration measures, such as tests for language or civic knowledge, to join their family members without a refugee status. Integration measures are likely to make family reunification impossible or excessively difficult for individuals with lower incomes and level of education. However,

Member States may adopt a 'hardship clause' to exempt third-country nationals from complying with the additional requirement on health or other specific grounds.

For instance, in Germany, the Residence Act sets out that language skills requirements may be waived, if the family reunification takes place with a third-country national in Germany who is a beneficiary of subsidiary protection holding a residence or settlement permit (EMN, 2017). Moreover, on 17 March 2016, a transitional period entered into force for beneficiaries of subsidiary protection which does not allow family reunification, except in cases of special hardship. Similarly, the Dutch government has implemented the Family Reunification Directive by introducing an integration requirement demanding third country nationals to take a civic integration exam at the embassy in their country of residence and test their knowledge of the Dutch language and society to apply for family reunification. According to Dutch law, "there are grounds for applying the hardship clause if, as a result of a set of very special individual circumstances, a third country national is permanently unable to pass the basic civic integration examination" (Article 3.71a(2)(d) of the Vb 2000).

The implementation of the 'hardship' provision is often very restrictive and impedes beneficiaries of subsidiary protection and humanitarian status holders to enjoy family reunification. In the case of *Minister van Buitenlandse Zaken v K and Abut*, the Court of Justice clarified the conditions that non-EU national must meet to join a family member under the Family Reunification Directive (Case C-153/14, 2015). The CJEU emphasised that the 'integration' condition cannot undermine the main purpose of facilitating family reunion and the 'hardship clause' in Dutch law is too narrow in comparison with the provision of EU law. The Court positively clarified that integration measures must aim "not at filtering those persons who will be able to exercise their right to family reunification, but at facilitating the integration of such persons within the Member States". Specific individual circumstances, "such as the age, illiteracy, level of education, economic situation or health of a sponsor's relevant family members" must be taken into consideration to dispense those family members from the requirement to pass an integration test.

Family members of beneficiaries of subsidiary protection and humanitarian status holders are called to prove those 'special circumstances' pertaining to the individual case that objectively form an obstacle to meet the requirement. For instance, the fact that the fees relating to an examination and the travel costs to an embassy are too high may constitute an evidence of the impossibility to exercise the right to family reunification. Individuals who have lower incomes and lack a high level of education must provide burdensome evidence in order to trigger the hardship clause and overcome the main barriers to family reunification. The hardship clause imposes a very high bar to meet and the requirements established by the law are rarely waived in practice on the basis of this clause (Strik, de Hart & Nissen, 2013).

Unaccompanied minors

The situation of refugee unaccompanied minors is also highly controversial as they face several obstacles to enjoy family reunification. For instance, the legal requirement according to which a minor must be under 18 when the decision on the asylum application is made represents a serious hardship for family reunification. This condition implies that, when a minor reaches the age of 18 in the course of the asylum procedure, the Member State is not obliged to authorise the entry and residence for the purposes of family reunification of his/her first-degree relatives. The practice to postpone the decision of an asylum application is implemented by national authorities to impede the right of family reunification of young refugees.

To overcome this legal conundrum, on 12 April 2018, the Court of Justice of the European Union, in the case C-550/16 *A & S*, was called to clarify which date is determinative to qualify a person as an unaccompanied minor: the one of entry in the Member States concerned or the one of the submission for family reunification. The Court positively found that the applicable date for determining whether a refugee is an unaccompanied minor for the purposes of Article 2(f), and therefore entitled to family reunification with his or her parents, is the date on which he or she entered the state and the date on which he or she made the asylum application (Groenendijk and Guild, 2018). This judgment is crucial to recognise as 'minors' those third-country nationals or stateless persons who are below the age of 18 at the time of their entry into the territory of a Member State, but who attain the age of majority during the asylum procedure (Peers, 2018). To the same extent, it reduces the Member States' margin of discretion to apply the provisions on family reunification for unaccompanied minors and frustrates the Family Reunification Directive's goals.

Concept of family member

EU law leaves wide flexibility to Member States when deciding the categories of family members who are eligible to access family reunification. The nuclear concept of family in practice excludes from family reunification several categories of individuals such as parents of adults, adult children, same sex partners and non-married partners who have not been able to live in a stable relationship with the sponsor (Danish Refugee Council, 2018). The interpretation at national level of the concept of 'dependency' encompassed by the Family Reunification Directive may disregard social and emotional factors and therefore exclude adult children, parents of adult, siblings and non-officially married partners (ECRE and Red Cross, 2014).

The nuclear concept of family may also not reflect the reality of those evolving family structures and ties that result from forced displacement. Reports shows that in situations of armed conflict or internal violence, households are often composed of children whose parents are no longer alive or have been reported missing. Family links are also formed during flight and exile, as beneficiaries of international protection are forced to spend several months or years in transit countries or in camps before being able to reach the Member State.

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Restricted timeframes for lodging an application

Several countries also impose a 'three-month time' limit to apply for family reunification under more favourable conditions, otherwise additional stringent requirements have to be met by the sponsor. In practice, this deadline jeopardises family reunification because of the impossibility for beneficiaries of international protection to collect the necessary documents and timely attend appointments at the relevant embassies. Moreover, most beneficiaries of international protection need to reach a minimum level of financial and employment stability in order to reunite with their families and provide them adequate living conditions (UNHCR, 2012). The 'three-month time' limit is a short period of time which may constitute an obstacle to family reunification, as the sponsor often lacks the financial means to effectively support members upon their arrival to the Member State.

Lack of family tracing procedures and impossibility to access embassies

As mentioned above, the lack of family tracing services hinders the possibility for beneficiary of international protection to reunite with their family members. A request for family reunification can be lodged only when the sponsor is aware of the location of the family member he/she wishes to reunite with. Beneficiaries are therefore forced to rely on NGO support in order to locate family members when their location is unknown. Furthermore, Member States may require family members to lodge applications in their embassies or consulates within the country of origin. However, it is worth noting that some EU countries have closed their diplomatic offices in Syria and other countries of conflicts. This context forces individuals to apply for visa and undertake long and expensive journey in order to reach the country where the closest embassy is available (ECRE and Red Cross, 2014).

Burdensome and costly procedures

The procedure to apply for family reunification is characterised by burdensome and costly requirements. Beneficiaries of international protection often lack adequate access to detailed and precise information in a language that they can understand. Official authorities do not systematically provide sufficient information regarding requirements and deadlines to access family reunification and enjoy more favourable conditions (UNHCR, 2017).

Beneficiaries of international protection are also required to submit official documents to apply for a residence permit and prove family links such as passport, birth and marriage certificates. However, the submission of these documents is in practice highly difficult as beneficiaries of international protection must approach the embassy of their country of origin to obtain the relevant documentation. This practice may increase the risk for them and family members of being persecuted in the country of origin. Furthermore, non-compliance with evidential and bureaucratic requirements may result in critical delays of the entire reunification procedure as cases are reviewed on a case-by-case basis.

Overall, the family reunification procedure can be a major financial burden for all family members. Costs related to visa

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applications and embassy fees, documents translation and verifications, travels to the Member States may constitute an onerous financial obstacle to family reunification (ECRE and Red Cross, 2014). In some countries, the average fees and costs for family reunification are significantly higher in comparison with the minimum income level of social assistance provided by the Member States (NIEM, 2018).

5. Potential impacts of policies adopted

EU and international human rights standards

- EU and national policies restricting family reunification **threaten the right to family life and unity** of beneficiaries of international protection as established under international human rights law in the Universal Declaration of Human Rights, in the Convention on the Rights of the Child and in the European Convention on Human Rights.

- Restrictive legislations that unequally differentiate between refugees and beneficiaries of subsidiary protection raise critical legal issues with regard to their compatibility with the **prohibition of discrimination under Art. 14 ECHR** and the general principle of non-discrimination of EU law. Article 14 of the ECHR (non-discrimination) prohibits discrimination based on 'other status' and requires strong justification for differences in treatment between groups of individuals. In the case of *Hode v Abdi*, the Court held that "the argument in favour of refugee status amounting to other status would be even stronger, as unlike immigration status refugee status did not entail an element of choice". This judicial interpretation may imply that also subsidiary protection falls under the concept of 'other status' of Art. 14 ECHR and therefore require that differential treatments are justified only to pursue a legitimate aim through proportionate means (Council of Europe Commissioner for Human Rights, 2017). The ECtHR's case law may potentially influence EU and national law by requiring Member States to provide objective and reasonable justifications for allowing differences in treatment between refugees and beneficiaries of subsidiary protection (M. D'Odorico, 2018).

Political implications

- The topic of family reunification is high on the political agenda in several Member States (i.e. Germany, Austria and Sweden) which are introducing restrictive provisions to reduce access to family reunification for beneficiaries of international protection. Family reunification is increasingly becoming a **migration management instrument** for the Member States to slow down migration from third-countries.

Inclusiveness of European society

- Family separation has a major impact on integration perspectives of beneficiaries of international protection and social cohesion in the Member States.

According to the Preamble 4 to Directive 2003/86/EC, "family reunification is a necessary way of making family life possible. It helps to create sociocultural stability facilitating the integration of third country nationals in the Member State, which also serves to promote economic and social cohesion, a fundamental Community objective stated in the Treaty." To this end, Member States should ensure rights and obligations for beneficiaries of international protection that are comparable to those of EU citizens. Family unity is essential for fostering **integration and societal cohesion** in economic, social, and cultural life. Forced family separation may instead negatively affect mental health and wellbeing of beneficiaries of international protection families who experience feelings of stress and abandonment.

Migration trends and dynamics

- A comprehensive and uniform implementation of the Family Reunification Directive across the Member States would help to stabilise the situation of beneficiaries of international protection and reduce secondary movements in Europe. The lack of favourable family reunification provisions in some Member States may indeed induce migrants to choose different destination countries and **increase movements through borders**. Evidence shows that family reunification represents a fundamental driving factor for asylum seekers when they choose a destination country.
- The lack of fair family reunification procedures and rights may also be one of the causes of the so-called **holiday refugee phenomena** and the voluntary return of asylum-seekers, beneficiaries of subsidiary protection and humanitarian status holders to their country of origin. There is indeed an increasing trend of refugees who travel to their countries of origin because of sickness or death of an immediate relative. This situation may put at high risk the safety of beneficiaries of international protection and also may lead to reopening their asylum case in the Member States.
- Absence of quick and accessible legal channels for family reunification may induce migrants to resort to **human smugglers**

EU international relations

- The improvement of family reunification procedures and rights in the Member States may **reinforce the role of the EU** in setting the agenda on migration at international level.
- Those countries hosting the highest numbers of refugees around the world would expect to enhance their relations and partnerships with the EU to address the refugee crisis. In this regard, beneficiaries of international protection should have access to a wider set of safe and legal channels to reunite with their family members in Europe. By doing so, the EU may lead

the development of the international agenda on migration and the ongoing negotiations on the **Global Compact**.

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ReSOMA - Research Social Platform on Migration and Asylum is a project funded under the Horizon 2020 Programme that aims at creating a platform for regular collaboration and exchange between Europe's well-developed networks of migration researchers, stakeholders and practitioners to foster evidence-based policymaking. Being a Coordination and Support Action (CSA), ReSOMA is meant to communicate directly with policy makers by providing ready-to-use evidence on policy, policy perceptions and policy options on migration, asylum and integration gathered among researchers, stakeholders and practitioners.

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