

A Family Resemblance? The Regulation of Marriage Migration in Europe*

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Abstract

This article analyses key aspects of the regulation of entry and stay of spousal migrants in EEA member states. It shows that there are differences of regulation, particularly between states in Eastern and Southern Europe and states in Northern and Western Europe but, in most cases, the amount of divergence is limited. The article connects this ‘family resemblance’ to a broad concept of Europeanisation. Even where there is no binding legal obligation, European legal norms and the practice in other European states largely circumscribe what is possible.

Introduction: The Problem of Marriage Migration

In Europe, as elsewhere, many states find migration through marriage or equivalent relationship particularly problematic. Reconciling the desire to limit immigration, at least by certain types of immigrant, with responsibilities to citizens who engage in transnational family life is a major pre-occupation. Unlike labour migration, the admission of family members is a function of the citizenship rights of those already within the state which cannot, in a liberal democracy, be denied recognition. National laws thus provide for the admission of family members even when opportunities for labour migration have closed and family, including spousal, migration is now the dominant form of entry into many European states, representing around one half of legal migration into the EU in the early 2000s and one third in 2011.¹ States cannot easily select this large group of migrants for skills, education, cultural similarity or the other criteria applied to labour migrants but a trend towards greater restrictiveness has been observed in a number of states dating back to 1980.²

* The support of the Nuffield Foundation for the research discussed in this article is gratefully acknowledged.

¹European Commission (2011) *Green Paper on the right to family reunification of third country nationals living in the European Union (Directive 2003/86/EC)* COM (2011) 735 final p. 1.

²Koopmans, R., Michalowski, I. and Waibel, S. (2012) “Citizenship rights for immigrants: National political processes and cross-national convergence in Western Europe, 1980-2008” *American Journal of Sociology* 117(4) 1202-1245, p. 1223; Ruffer, G. (2011) “Pushed Beyond Recognition? The Liberality of Family Reunification Policies in the EU” *Journal of Ethnic and Migration Studies* 37(6) 935-951 p. 937.

Family migration is also the site of tension between supra-national and domestic legal systems although it is not immediately obvious why this should be. Supra-national legal norms generally exist because of the prior consent of sovereign national states. The European Court of Human Rights jurisprudence rarely interferes with the right of states to determine entry and has been more concerned with expulsion. The European Union has prioritised internal freedom of movement but laws regulating immigration have been subject to fierce negotiation and compromise. However, the challenges posed by migration are constantly changing while the legislation and jurisprudence of EU free movement law and, to a more limited extent, EU immigration law mean that states have lost some of their ability to control entry. Migrants and their family members meanwhile strategically use opportunities presented by free movement, human rights and non-discrimination norms. States, have, in their turn, pushed legal boundaries to minimise these opportunities.

Reflecting the emergence of family migration as a problematic issue within Europe is a growing body of research and academic literature. Much of this has focused on countries where there have been controversial developments such as pre-entry integration tests and increases in income and age requirements. Some pan-European studies have surveyed the position only on specific issues such as forced marriage or abuse of rights while other work has focused on a small number of countries, usually those which have been most active in developing controls, and Western and Northern European states have predominated. For example, in four comparative studies, two on integration measures, one on family reunification and one on general immigration policies, seventeen countries were examined. Austria, Germany, Netherlands and UK were included in all four. Belgium, Denmark, France, Sweden and Switzerland featured twice. Hungary, Latvia, Czech Republic, Italy, Spain, Portugal, Ireland and Norway were included in one study.³

This article is concerned with similarity in national regimes of spousal migration. It is a snapshot not a convergence study and does not look at increasing similarity over time. The main explanatory frameworks for convergence in migration policy are of relevance however.⁴ The first of these has its origins in theories of 'postnationalism', the idea that nation states have partially ceded power over their borders to supra-national institutions and norms, and is represented by the work of, amongst others, Soysal and Sassen.⁵ A regional variant is 'Europeanisation', discussed below. The second emphasises the internal normative constraints on states, which tend, over time, to push them

³INTEC (<http://www.ru.nl/law/cmr/projects/intec/>); Prosint (<http://research.icmpd.org/1428.html>); Family Reunification Project (<http://familyreunification.eu/>); Koopmans et al, n. 2 above.

⁴ Koopmans et al n. 2 above pp. 1204-1207.

⁵Sassen, S. (1996) *Losing control: Sovereignty in an age of globalization* (Columbia University Press); Soysal, Y. (1994) *Limits of Citizenship: Migrants and Postnational Membership in Europe* (University of Chicago Press); for a critique of these perspectives see Schain, M. (2009) "The state strikes back: Immigration policy in the European Union" *European Journal of International Law* 20(1) 93-109, pp. 98-100.

towards approximately equal liberality in the treatment of migrants (see, for example, the work of Freeman or Hansen and Weil).⁶ This article is interested primarily in the former, and, in particular, the extent to which member states now operate within a common frame that goes beyond vertical legal norms. This approach is related to that adopted by scholars of Europeanisation.

Given that all EU member states are subject to similar (although not always identical given partial opt-outs) supra-national laws and the growth of informal mechanisms of policy exchange and sharing, one might expect a certain degree of similarity in national regimes. However, resemblance may still not be extensive for several reasons. Supra-national norms still leave a substantial margin of discretion in their national application. More rather than less convergence in marriage migration rights was observed in European states between 1980 and 2008 despite the Family Reunification Directive 2003/86 which became binding in 2005.⁷ Local factors, such as electoral patterns and national path dependence, were found to be more significant than supra-national laws in determining national immigration policies.⁸

Another reason is that not all spousal migration takes the same form and may be experienced differently in each state; a more nuanced taxonomy is required. One distinction is between *family reunification* and *family formation*.⁹ In the former, a pre-existing family is reunited across borders whereas, in the latter, migration is for the purpose of establishing a new family. Family reunification is generally accepted as necessary to secure the integration of long-term migrants although conditions may be attached. However, some family formation is more troublesome. The least problematic is migration involving citizens or residents, usually of majority ethnicity, whose partner is from abroad. The number of such relationships may have grown due to increased opportunities for travel but they are, from a state perspective, usually easy to accommodate being relatively few in number while the parties are often well-educated. Another sub-set comprises citizens or residents of migrant descent who enter marriages, often arranged, with partners (to whom they may be related) in their ancestral country of origin. These marriages are associated with relatively recent immigrant groups from North Africa, Turkey, Middle East and South Asia and are regarded by states as perpetuating unskilled migration, cycles of poverty and social segregation within minority ethnic communities. A third group consists of marriages between citizens and irregular migrants or asylum

⁶ Freeman, G. (1995) "Modes of Immigration Politics in Liberal Democratic States" *International Migration Review* 29 (4) 881–902; Freeman, G. (2006) "National Models, Policy Types, and the Politics of Immigration in Liberal Democracies." *Western European Politics* 29 (2): 227–47; Hansen, R. and Weil, P. eds. (2001) *Towards a European Nationality: Citizenship, Immigration and Nationality Law in the EU* (London: Palgrave-Macmillan).

⁷ Koopmans et al n. 2 above, p. 1224.

⁸ *Ibid* pp. 1234-1238.

⁹ See Kofman, E. (2004) "Family-related migration: A critical review of European studies" *Journal of Ethnic and Migration Studies* 30(2) 243-62.

seekers and which are likely to have increased as asylum claims and irregular migration have increased. They present particular difficulties for states as the relationship may be well-established when brought to their attention and expulsion may be difficult. Certainly, this type of case has featured significantly in the recent case load of the ECHR.¹⁰

Thus there are four main ways in which spousal migration might arise, two of which (family reunification for recently arrived migrants and family formation involving citizens who have travelled abroad) are relatively straightforward and two (family formation within recently established ethnic minorities and marriages involving irregular migrants and asylum seekers) which are less so. In practice, these categorisations are not always clear-cut but most cases fall within one of them and their uneven distribution between states means that marriage migration, as an issue, will resonate differently and invoke different regulatory responses. States with large populations of migrant descent may be concerned with family formation by ethnic minorities and those containing many irregular migrants with legal compliance. States keen to encourage migrants may have more open policies while those with generous welfare will be concerned with economic contribution. A state in which citizenship is not easily acquired may maintain distinctions between citizens and permanent residents. Religious and social norms will determine recognition of unmarried or same sex relationships. These different factors will combine with the local political and other factors mentioned above so that national policies may still differ between states.

The next section considers the pull of the European framework on this diverse canvas. It then goes on to consider the extent to which national spousal migration policies resemble each other across the EU looking particularly for evidence that the Family Reunification Directive (2003/86/EC) and the Citizens Directive (2004/38/EC) have had an influence on national policy that goes beyond their formal legal powers. The concluding discussion considers the extent to which the degree of similarity can be attributed to European factors.

The Control of Marriage Migration in Europe

Europeanisation

First articulated in the 1990s, Europeanisation in its modern incarnation is a way to understand how national and sub-national governance is influenced by European legal norms and institutional frameworks. It is a multidimensional concept that requires careful definition and whose limits must

¹⁰ See, for example, De Hart, B. (2009) "Love Thy Neighbour: Family Reunification and the Rights of Insiders" *European Journal of Migration and Law*, 11, 235-252.

be understood.¹¹ Radaelli distinguishes between 'vertical' and 'horizontal' Europeanisation. Vertical Europeanisation occurs when there is a clear demarcation between the EU level, where policy is defined, and the domestic level where it is 'metabolized'.¹² It is a two-way process however; member states form and are formed by new legal norms, as studies of the Family Reunification Directive show.¹³ Horizontal Europeanisation is triggered by such factors as the diffusion of ideas and discourses. Outcomes are less directed and may be achieved using 'soft' forms of governance, such as the open method of co-ordination.¹⁴

So far, the emphasis has been on the deliberate creation of new norms and policies but Europeanisation has also an ideational character, allowing new policy frames to emerge which "integrate shared factual knowledge ... and normative value-orientations".¹⁵ This aspect is particularly significant in family migration. Shared forms of discourse and the example of other states can be an important means to legitimise national controls. Ideational Europeanisation is still embedded in the European institutional framework, which provides enhanced opportunities for the necessary interaction, but its outcomes are not necessarily the direct consequence of EU policy-making.¹⁶

Europeanisation thus goes beyond the top-down imposition of legal instruments and seeks to capture the indirect, multiple and unpredictable ways in which national states affect and may be affected by the European Union.¹⁷ It is a concept whose precise application is difficult to capture but its eminence in the recent academic literature indicates that it embodies an important empirical observation.

¹¹ Featherstone, K. (2003) 'Introduction: In the Name of Europe' in Featherstone, K. and Radaelli, C. eds. *The Politics of Europeanization* (Oxford: Oxford University Press), 3-26, pp. 3-8; Blavoukos, S. and Oikonomou, G. (2012) *Is 'Europeanization' Still in Academic Fashion? Empirical Trends in the period 2002-2011*, Paper prepared for the Conference 'Comparing and contrasting 'Europeanization': Concepts and Experiences, Institute of International Economic Relations, Athens, 14-16th May 2012, pp.2-4.

¹² Radaelli, C. (2003) 'The Europeanization of Public Policy' in Featherstone, K. and Radaelli, C. eds. *The Politics of Europeanization* (Oxford: Oxford University Press), 27-56 pp. 40-44.

¹³ Blavoukos and Oikonomou n.11 above pp.4-5; Bonjour S. (2010) 'Between Integration Provision and Selection Mechanism: Party Politics, Judicial Constraints, and the Making of French and Dutch Policies of Civic Integration Abroad' *European Journal of Migration and Law* 12(3) 299-318; Block, L. and Bonjour, S. (2013) 'Fortress Europe or Europe of Rights? The Europeanisation of family migration policies in France, Germany and the Netherlands' *European Journal of Migration and Law* 15(2) 203-224.; Bonjour, S. and Vink, M. (2013) 'When Europeanization backfires: The normalization of European migration politics' *Acta Politica* 48, 389-407.

¹⁴ Radaelli n.12 above, p. 40-44.

¹⁵ Lavenex, S. (2001) 'The Europeanization of Refugee Policies: Normative Challenges and Institutional Legacies' *Journal of Common Market Studies* 39(5) 851-74, 854-5.

¹⁶ See the discussion in Bonjour and Vink n.13 above.

¹⁷ Vink, M. and Graziano, P. (2007) 'Challenges of a New Research Agenda' in Graziano, P. and Vink, M. eds. *Europeanization: New Research Agendas*, 3-20, pp.3-7; see also Menz, G. (2011) 'Stopping, Shaping and Moulding Europe: Two-Level Games, Non-state Actors and the Europeanization of Migration Policies' *Journal of Common Market Studies* 49(2) 437-462.

European integration came late to migration, a domain in which states are reluctant to cede authority. Once it was established however, states had an interest in early and active engagement.¹⁸ The application of Europeanisation theory to migration was pioneered by Guiraudon who was principally concerned with the relationship between national governments and EU institutions. Her thesis was that national governments could shift responsibility for restrictive policies to the European level.¹⁹ When Guiraudon was writing, migration had only recently been brought even partially within the European framework and the balance of power remained tilted in favour of states. Since then, the EU institutions have gained new competences while the EU has arguably been more willing to accommodate third country nationals than national governments whose electorates have become more hostile to immigration.²⁰ Recent scholars have painted a more complicated picture; states take different approaches to EU law according to their domestic priorities and existing national legislation and adopt a variety of strategies to promote their policy aims. EU legal measures act sometimes as a constraint on and, at other times, as a facilitator of restrictive national policy.²¹ This perspective is effectively captured by Bonjour and Block in their adoption of an 'actor-centred' approach, which rejects a clear distinction between vertical and horizontal Europeanisation, taking the perspective of national state actors as the starting point and looking at their multiple and pragmatic strategies in pursuing policy aims.²²

This article uses Europeanisation in the broad sense. It aims to observe the extent to which common features are present in the spousal migration policies of states and are understandable within the context of European legal and policy norms. There are two pieces of European legislation that have a direct impact on the ability of member states to control the admission of third country national family members: the Family Reunification Directive and, less often considered in this context, the Citizens' Directive.

Family Reunification Directive (2003/86/EC)

Council Directive 2003/86/EC on the right to family reunification was passed on 22nd September 2003 and was to be transposed into national law by October 2005. The first proposal had been presented by the European Commission in December 1999 and, during the long process of negotiation, the draft Directive was transformed from an instrument of integration into an

¹⁸Menz *ibid* p.441

¹⁹Guiraudon, V. (2000) 'European Integration and Migration Policy: Vertical Policy-making as Venue Shopping' *Journal of Common Market Studies* 38(2) 251-271

²⁰Luedtke, A. (2009) 'Uncovering European Union Immigration Legislation: Policy Dynamics and Outcomes' *International Migration*, 49(2), 1-27.

²¹Bonjour and Vink n.13 above; Bonjour and Block n.13 above; Luedtke *ibid*.

²² Bonjour and Block n.13 above;

immigration control measure.²³ Implementation was slow; by the end of 2006, there was complete transposition in only 13 states.²⁴ However, by 2008, of 24 states bound, only Lithuania had not completed transposition while Spain still lacked harmonizing legislation.²⁵ Denmark, UK and Ireland are not bound by the Directive.

The Directive creates a floor of family reunification rights for third country nationals who have a residence permit of more than one year and 'reasonable prospects' of permanent residence.²⁶ It does not apply to the family members of Union Citizens.²⁷ The Directive's only mandatory obligations concern nuclear family members i.e. spouse and minor children.²⁸ There are permissive clauses for ascendant relatives, adult unmarried children and unmarried and registered partners.²⁹ The pre-flight relationships of refugees are recognised and they are exempt from some of the conditions in the Directive.³⁰ The sole prohibition in the Directive is on the entry of a second spouse and children in a polygamous marriage.³¹ Refusal may only be on grounds of policy, public security or public health and there are obligations as to procedure, examination, access to education and employment, permanent residence and judicial remedy.³²

Many conditions are permitted under the Directive (although some cannot be applied to refugees). States may impose a minimum lawful stay of up to 2 years before an application may be made and up to three years waiting period from application if the restriction relates to reception capacity (subject to a standstill clause).³³ They may also impose integration measures and require sickness insurance, sufficient resources to avoid recourse to social assistance (although an individualised decision must be made) and accommodation that is 'normal' for a comparable family in the same region and which meets health and safety standards.³⁴ States may also impose a bar on the entry of

²³Ruffer, G. (2011) 'Pushed Beyond Recognition: The Liberality of family Reunification Policies in the EU' *Journal of Ethnic and Migration Studies* 37(6) 935-951, p. 944; Groenendijk, C., Fernhout, R., Dam, D. van, Oers, R. van & Strik, M. (2007) *The Family Reunification Directive in EU Member states. The first year of implementation* Nijmegen Migration Law Working Papers Series 2007/01) Nijmegen: Radboud University Nijmegen) pp.2-3.

²⁴ Ibid p.9.

²⁵ Commission of the European Communities (2008) *Report from the Commission to the European Parliament and the Council on the Application of Directive 2003/86 on the Right to Family Reunification* COM(2008) 610 final p.3.

²⁶ Art 3(1).

²⁷ Art 3(3).

²⁸ Art 4(1).

²⁹ Arts 4(2) and 4(3).

³⁰ Art 9.

³¹ Art 4(4).

³² Arts 5, 6, 7, 14, 15, 18.

³³ Art 8

³⁴ Arts 7(2), 7(1)(a), 7(1)(b) and 7(1)(c).

spouses under 21, pre-entry integration conditions for children over 12 (subject to a standstill clause) and applications by children to be made before the age of 15 (subject to a standstill clause).³⁵

The permitted limitations, particularly those with standstill clauses, reflect the difficulties that states had in agreeing common minima and their desire to protect the status quo.³⁶ Even so, the Directive was a catalyst for change even before implementation particularly as this period coincided with the accession of ten, mainly Eastern European, states in 2004, some of whom were considering family reunification for the first time. Poland relied on the draft Directive in drafting its 2003 Aliens Act (and had later to amend it to bring it into conformity with the final text). Hungary also amended its law in 2004 and again in 2006.³⁷ Longer standing member states also changed their laws in advance of as well as after the Directive.³⁸

Governments had entered negotiations aiming to minimise changes to national policies.³⁹ Not all attempts to protect national policy succeeded but several countries did have their preferences reflected in the final version, Germany, Austria and the Netherlands being particularly successful while Spain, Greece and Portugal's reservations about the admission of unmarried partners also affected the final version.⁴⁰ In consequence, the Directive was less liberal than originally proposed and many states needed to make only minimal changes.

The Directive had a varied impact although it led overall to greater harmonisation.⁴¹ Of the 13 countries that had transposed by the end of 2006, the outcome was more liberalisation in 8 states, more restrictions in 3 and a mixed effect in the remainder. The cause of liberalisation is easy to understand; not all states already met the minima in the Directive or the national rules were imprecise and discretionary.⁴² Some member states, for example Austria, Belgium and Finland, took the opportunity to re-configure their regime more widely but the explanation for more restriction is not self-evident as the only prohibition in the Directive is on polygamy.⁴³ In fact, in the absence of a general standstill clause, states used the permissive clauses to justify more restrictive conditions even though these were not mandatory.⁴⁴ Over time, the waiting period in France was extended, housing conditions made more restrictive in Belgium and France, integration conditions introduced

³⁵ Art 4.

³⁶Groenendijk et al n.23 above, p.20.

³⁷ Ibid p.9.

³⁸ Ibid p.4.

³⁹Groenendijk, C. (2006). Family Reunification as a Right under Community Law. *European Journal of Migration and Law*, 215-230 p.220.

⁴⁰Ibid p.218; Bonjour and Block n.13 above p.15; Menz n.40 above pp. 443-8.

⁴¹Groenedijk et al n. 23 above, p.71.

⁴²Ibid p. 69.

⁴³ Ibid p. 9-11.

⁴⁴Menz n. 40 above, pp. 443-449; Block and Bonjour n.13 above.

in Cyprus, France and the Netherlands and the income requirement raised in Austria, Belgium, France and the Netherlands (although not necessarily only as a result of the Directive).⁴⁵

The Directive also increased opportunities for states to exchange and circulate information about family migration policies and there was increased reference in policy discourses to the position in other member states, including in states not bound by the Directive, when proposing restrictive measures. For example, both the Dutch and the British governments have cited Denmark as a model.⁴⁶ On other occasions, to legitimise their reform programme, governments portrayed themselves as leaders setting the trend for other states to follow.⁴⁷ It is difficult to establish a clear line of causation between the Directive and the horizontal policy transfer that ran concurrently with its implementation but that the formal law was seen as a critical point of reference is suggested by Denmark's close involvement in negotiations, even though it was never going to be bound by the Directive.⁴⁸

The Directive also acted as a constraint including on states that had been successful in incorporating their preferences perhaps because governments did not foresee jurisprudential developments or the changed domestic landscape. According to its preamble, the Directive 'respects the fundamental rights and observes the principles' of article 8 ECHR and the EU Charter of Fundamental Rights and general EU principles such as proportionality will also apply.⁴⁹ The Court of Justice, in finding against a challenge to the compatibility of the Directive with article 8, observed that the Directive's provisions, when looked at together, embody article 8 principles and grant only a limited margin of appreciation to states.⁵⁰ When the Netherlands imposed a minimum financial criterion of 120% of the minimum wage, the Court found that the Directive did not permit exclusion of a sponsor with sufficient resources even if there was still some eligibility for state assistance.⁵¹ The Netherlands later reverted to 100% of the minimum wage for all sponsors, and other states which are bound, with the exception of Belgium and, in some instances, France, have not attempted to exceed this threshold.

⁴⁵Ibid pp.69-70.

⁴⁶ Bonjour S.A. (2010), Between Integration Provision and Selection Mechanism: Party Politics, Judicial Constraints, and the Making of French and Dutch Policies of Civic Integration Abroad, *European Journal of Migration and Law* 12(3) 299-318 (check); .Wray, H. (2013) 'Regulating spousal migration in Denmark' *Journal of Immigration, Asylum & Nationality Law*, 27 (2), 139-161, p. 139.

⁴⁷ Bonjour ibid; see also Bonjour and Vink n.13 above.

⁴⁸ Adler-Nissen, R. (2009) 'Behind the scenes of differentiated integration: circumventing national opt-outs in Justice and Home Affairs' *Journal of European Public Policy* 16(1), 62-80, p.74.

⁴⁹Preamble para 2; Groenendijk n.39 above, pp. 220-1.

⁵⁰*Parliament v Council* Case C-540/03.

⁵¹*Chakroun* Case C-578/08.

The Netherlands later only escaped scrutiny by the Court of Justice of its pre-entry integration conditions through issuing a visa to the claimant's wife. Had the case proceeded, an unfavourable judgment was not improbable; the Commission's view was that the pre-entry integration conditions breached article 7(2) of the Directive.⁵² While pre-entry requirements currently remain in place in several countries, critical scrutiny may not be permanently avoided and the possibility of adverse findings is likely to be a constraining influence on new policies.⁵³ Meanwhile, states not bound by the Directive have remained free to implement measures that are in clear contravention such as Denmark's minimum age of 24 and the income requirements in UK and Norway.

The Directive has thus played multiple roles in the development of family migration policy within European states. Its final form was a compromise between member states' interests both in preserving their existing controls and in ensuring uniform application. It has functioned as a template, a force for harmonisation, a means of liberalisation and a pretext for restriction. It has also been associated with wider policy exchange.

The Citizens Directive (2004/38/EC)

The Citizens Directive is not immigration legislation, its primary purpose being to codify Union citizens' Treaty rights of free movement.⁵⁴ The rights of entry and stay that attach to the third country national (TCN) family members of Union citizens are derived rights that depend on the exercise by the Union Citizen of the primary right of movement and residence. With a few differences, they mirror the rights of family members who are Union Citizens. Formally speaking, their third country status is largely incidental.

However, from a national perspective, these aspects of the Directive significantly impede the ability of member states to control the entry of family members who do not qualify under domestic laws. As national regimes have contracted, the contrast has become starker and the extensive case law in this area reflects the struggles between Union citizens seeking the fullest possible implementation of free movement rights and member states resisting expansive interpretations. The Court of Justice has consistently prioritised the uninhibited free movement of Union citizens, and Union citizens who can move elsewhere within the Union may procure the entry of spouses who would be ineligible under national rules and return with them to their national state. These rights, with rare exceptions,⁵⁵ do not apply to Union citizens living in their own member state, giving rise to 'reverse

⁵² Block and Bonjour n.13 above, p.26

⁵³ Ibid p.27

⁵⁴ Preamble para 3.

⁵⁵ *Carpenter (C-60/00)*; *Zambrano v ONEm (C-34/0)*

discrimination'.⁵⁶ The TCN family members of static Union citizens are now the only individuals who are not subject to EU law in respect of their entry and stay. This may have unanticipated consequences on national regimes as governments seek to assert their authority over immigration in the only area that remains open to them. There may also be semi-covert attempts to minimise the impact of free movement rights such as the UK government's 'certificates of approval' scheme, implemented in 2005 and abolished after it was found by both domestic courts and the ECtHR to breach articles 12 and 14 ECHR.⁵⁷ The scheme prevented most migrants from marrying in the UK and was said to aim at preventing sham marriages. However, the government struggled during parliamentary debate to justify the scheme on these terms given domestic controls already in place and eventually acknowledged that a major aim was to inhibit marriages contracted with EEA nationals whose consequences could not be controlled by domestic law.

Variations in Member State Policies

Having established the ways in which the influence of EU law may be directly or indirectly felt, the article now compares the regulation of marriage migration in EEA states, considering the position of citizens and permanent resident sponsors but not migrants with more limited visas although, in some states, the position of the latter two groups may be assimilated. While this section sometimes refers to the Directive 2004/38, this is in order to assess whether the Directive has had a wider impact than its terms require; the article is not concerned with the application of the Directive to mobile EU citizens.⁵⁸

To facilitate comparisons and at the risk of concealing anomalies, countries are placed in one of four geographical groupings: Western Europe (France, Germany, Belgium, the Netherlands, Luxembourg, Austria, Ireland and the UK, Switzerland, Liechtenstein); Southern Europe (Italy, Spain, Portugal, Greece, Malta and Cyprus); Northern Europe (Sweden, Denmark, Finland, Norway and Iceland); and Eastern Europe (Hungary, Poland, Czech Republic, Slovakia, Slovenia, Lithuania, Latvia, Estonia, Romania and Bulgaria). Croatia, which joined the EU in 2013, is not included in the study. Western Europe contains most older EU members while Eastern Europe contains most recent members.

⁵⁶ Walter, A. (2008) *Reverse Discrimination and Family Reunification*. Eindhoven: Wolf Legal Publishers.

⁵⁷ *R (Baiai) v SSHD* [2008] UKHL 53; *O'Donoghue and others v UK* (Application no. 34848/07). At that time, Court of Justice jurisprudence appeared to permit distinctions between TCN spouses based on their prior legal residence in the EU although this was no longer possible after *Metock*; *Akrich* C-109/01; *Metock v Minister of Justice, Equality and Law Reform* C-127/0; on the Certificates of Approval scheme, see Wray, H. (2006) 'An Ideal Husband? Marriages of Convenience, moral gatekeeping and Immigration to the UK' *European Journal of Migration and Law*, 8 (Autumn) 303-320.

⁵⁸ This section of the article uses information drawn from a variety of sources including academic literature, research reports, official websites and NGO reports. Every effort has been made to ensure its accuracy but it is possible that some errors remain for which the authors accept responsibility. It was last checked on 5 September 2013, unless otherwise noted.

Southern and Northern Europe contain a mixture of states although fewer of the oldest or most recent.

Minimum Age of Entry and Sponsorship

On the age of entry and sponsorship, EEA states divide into three groups. Eleven have a minimum age of 18 years, eleven have no minimum age requirement and eight have a high age requirement (20-24 years old).⁵⁹ Most states with no age requirement are in Eastern or Southern Europe (for example Poland, Latvia, Estonia, Hungary, Slovenia, Bulgaria, Portugal, Spain) but states with a high age requirement (Denmark, Austria, Belgium, Netherlands, Czech Republic, Cyprus, Malta, Lithuania) are quite evenly distributed across Europe. No state has a minimum age in its domestic law above 18 so that those states with a higher age for immigration purposes are treating international marriages differently. Where a minimum age applies, most states apply it to both applicant and sponsor.

⁵⁹<<http://www.migration.gv.at/en/types-of-immigration/permanent-immigration-red-white-red-card/family-reunification.html>> (Austria), Aliens Law, as amended by Law 2011, arts 10, 40ter (Belgium), Law on Foreigners 1998, as amended, Add. Provisions (1) (Bulgaria), Aliens and Immigration Law, as amended by Law 8(1)/2007, Art 18L(5) (Cyprus), <<http://www.mvcr.cz/mvcren/article/third-country-nationals-long-term-residence.aspx?q=Y2hudW09Ng%3d%3d>> (Czech Republic), <http://www.nyidanmark.dk/en-us/coming_to_dk/familyreunification/spouses/the_24_year_rule.htm> (Denmark), Family Law Act 1992 as amended RT 1, 30.12.2011, 22, s1(1) (Estonia), *Focussed Study: Misuse of the Right to Family Reunification, Finland's Contribution*, EMN, 2012, <<http://www.immigration.interieur.gouv.fr/Immigration/L-immigration-familiale/Le-regroupement-familial>> (France), Residence Act 2004, as amended 2007, s28(1)(5), 30(1)(1-2) (Germany), *Greek Response to Green Paper on Directive 2003/86/EC*, accessed at <http://ec.europa.eu/dgs/home-affairs/what-is-new/public-consultation/2012/pdf/0023/famreun/memberstatesnationalgovernments/greece_en.pdf>, *Hungarian Response to Green Paper*, accessed at <http://ec.europa.eu/dgs/home-affairs/what-is-new/public-consultation/2012/pdf/0023/famreun/memberstatesnationalgovernments/hungary_en.pdf>, Act On Foreigners No. 96 /2002, as amended (Iceland), <<http://www.inis.gov.ie/en/INIS/Pages/WP11000014>> (Ireland), Consolidated Act on Immigration (286/1998), as amended by Decree 5/2007, Art 29 (Italy), *Latvian Response to Green Paper*, n. 59 above, accessed at <http://ec.europa.eu/dgs/home-affairs/what-is-new/public-consultation/2012/pdf/0023/famreun/memberstatesnationalgovernments/latvia_en.pdf>, Law on the Legal Status of Aliens 2004 (Lithuania), Law of 29 August 2008 on the Free Movement of Persons and Immigration, Art 70 (Luxembourg), Immigration Act 1970, as amended, Subsidiary Legislation 217.06 (Malta), Aliens Act 2000, s16; Aliens Decree 2000, s3(13)-(24) (Netherlands), <<http://www.udi.no/Norwegian-Directorate-of-Immigration/Central-topics/Family-immigration/Who-can-apply-for-family-immigration/#Spouse>> (Norway), *Conditions for Family Reunification Under Strain*, European Policy Centre, 2011 (Poland and Slovenia), *Portuguese Response to Green Paper*, n. 59 above, accessed at <http://ec.europa.eu/dgs/home-affairs/what-is-new/public-consultation/2012/pdf/0023/famreun/memberstatesnationalgovernments/portugal_en.pdf>, *Romanian Response to Green Paper*, n. 59 above, accessed at <http://ec.europa.eu/dgs/home-affairs/what-is-new/public-consultation/2012/pdf/0023/famreun/memberstatesnationalgovernments/romania_en.pdf>, Residence of Aliens Act 404/2011, Art 27 (Slovakia), Immigration Act 4/2000, Art 17 (Spain), Aliens Act 2005:716, Ch 5 s17(a) (Sweden), <http://www.bfm.admin.ch/content/bfm/en/home/themen/einreise/faq.faq_18.html#a_faq_18> (Switzerland), <<http://www.ukba.homeoffice.gov.uk/visas-immigration/partners-families/citizens-settled/spouse-cp/can-you-apply/>>; Immigration Rules 277 HC 395.

However, some states (for example, Cyprus, France, Lithuania, Luxembourg and Malta) have age requirements for applicants only.⁶⁰

Article 4.5 of the Family Reunification Directive permits member states to specify a minimum age for the entry of the spouses of non-nationals which may be up to 21 years of age. The Citizens' Directive does not permit any restrictions based on the age of the parties. Of those states which are bound by the Family Reunification Directive, only six have implemented the maximum age permitted.⁶¹ States do not treat citizen sponsors less favourably than permanent resident sponsors and some (for example, Italy, France and previously Austria) treat citizen sponsors more favourably.⁶²

Of those states which are not party to the Directive, only Denmark, with a minimum age of 24 (and often higher in practice due to the combined attachment requirement), goes beyond the maximum permitted in the Directive. The UK attempted to introduce a minimum age of 21 but was thwarted by its domestic courts.⁶³ Ireland and Norway have a minimum age of 18 and for Iceland, Switzerland and Liechtenstein no age requirement was found.⁶⁴

The general trend seems to be towards increasing the age requirement in Western Europe. Netherlands, Belgium, Austria, UK and Luxembourg have all raised their minimum age in the past ten years.⁶⁵ In 2009, the Dutch government proposed a further rise to 24 years which would have necessitated amendment of the Family Reunification Directive but this has not taken place.⁶⁶

⁶⁰ Aliens and Immigration Law, as amended by Law 8(I)/2007, Art 18L(5) (Cyprus), Code of Entry and Residence of Foreigners and Asylum (CESEDA), as amended by Act 2006-911, Art L411-1 (France), Law on the Legal Status of Aliens 2004 (Lithuania), Law of 29 August 2008 on the Free Movement of Persons and Immigration, Art 70 (Luxembourg), Family Reunification Regulations 2007 (Malta).

⁶¹ Belgium, the Netherlands, Austria, Lithuania, Malta and Cyprus. However, in Belgium an exception remains allowing those already married, or who have cohabited for a year to be only 18 (Aliens Act, Art 10, as amended).

⁶² Consolidated Act on Immigration (286/1998), as amended by Decree 5/2007, Art 29 (Italy), CESEDA, as amended, Art L411-1 (France), Settlement and Residence Act 2005, Art 2(9), *Family Reunification Requirements: A Barrier or Facilitator to Integration? Austria Country Report*, Family Reunification Project, International Centre for Migration Policy Development, 2013.

⁶³ Although the UK did have a requirement of 21 from 2008 to 2011. See *R (Quila and another) v SSHD* [2010] EWCA Civ 1482, [2011] UKSC 45,

<<http://www.ukba.homeoffice.gov.uk/sitecontent/newsarticles/2011/november/10-marriage-visa-age>>.

⁶⁴ Ireland permits parties already married to be younger than 18. See

<<http://www.inis.gov.ie/en/INIS/Pages/WP11000014>>.

⁶⁵ See n. 59; *Migration News Sheet*, Migration Policy Group, Feb 2009; Aliens Act 2000, s16; Aliens Decree 2000, Art 3(13)-(24); Aliens Circular 2000, Chapter B2/2.10; *Recent Changes in Migration Movements and Policies*, International Migration Outlook 2012, OECD, <http://www.oecd.org/els/mig/IMO%202012_Country%20note%20Netherlands.pdf> accessed 05.09.13 (Netherlands); *European Migration Network Synthesis Report, 2007*; Aliens Law, as amended by Law 2011, arts 10, 40ter (Belgium); Settlement and Residence Act 2005, Art 2(9); *Austria Country Report* ICMPD n. 62 above, *Quila* [2010] EWCA Civ 1482; *Comparative Study of the Laws in the 27 EU Member States for Legal Immigration*,

Accommodation

The Family Reunification Directive permits states to require accommodation that is ‘normal’ for a comparable family in that region. The Citizens’ Directive does not permit any accommodation criterion. A few member states do not have any explicit housing conditions (such as the Netherlands, Slovenia and Ireland).⁶⁷

Many states impose the same or broadly similar housing conditions on citizen and permanent resident sponsors (e.g. Austria, UK, Denmark, Slovakia, Estonia, Bulgaria).⁶⁸ Another group of states is more generous towards its own citizens than towards third country national sponsors (e.g. Germany, Luxembourg, Italy, Portugal, Sweden, France).⁶⁹

In setting minimum standards, adjectives such as “adequate”, “suitable”, “normal” or “sufficient” (for this latter, Germany is a good example) are frequently used, with the point of comparison being regional standards or national health and safety laws, reflecting the criterion in the Family Reunification Directive.⁷⁰ They may be further refined either in relation to the size of the dwelling (Belgium, Austria, Cyprus, Luxembourg) or by reference to national or health and safety standards (Germany, Belgium, Italy).⁷¹ Some countries further specify the required minimum size, such as

European Parliament, March 2008; Law of 29 August 2008 on the Free Movement of Persons and Immigration, Art 70 (Luxembourg).

⁶⁶ *OECD Migration n. 65 above; Migration News Sheet*, Feb 2012, n. 65 above.

⁶⁷ Strik, T., de Hart, B. & Nissen, E. (2013) *Family Reunification: A Barrier or Facilitator of Integration.; Comparative Study ICMPD n. 62 above*; <<http://www.inis.gov.ie/en/INIS/Pages/WP07000024>> accessed prior to 20 May 2013 (The Netherlands and Ireland); Pascouau, Y. & Labayle, H. (2011) *Conditions for family reunification under strain. A comparative study in nine EU member states. Brussels: King Baudouin Foundation, European Policy Centre and Odysseus Network*, p. 67. <http://www.epc.eu/documents/uploads/pub_1369_conditionsforfamily.pdf> (Slovenia).

⁶⁸ *Focussed Study: Austria n. 59 above; Family Migration: A Consultation*, UK Border Agency, 2011 <www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/consultations/family-migration/consultation.pdf?view=Binary> (UK); <www.nyidanmark.dk/en-us/coming_to_dk/familyreunification/spouses/housing_requirement.htm> (Denmark); Act No 404/2011 of 21 October 2011 on Residence of Aliens and Amendment and Supplementation of Certain Acts <[www.foreign.gov.sk/App/wcm/media.nsf/vw_ByID/ID_DCA43C337F0B7A4DC12579FE002ECADD_EN/\\$File/Zakon_o_pobyte_cudzincov_ENG.pdf](http://www.foreign.gov.sk/App/wcm/media.nsf/vw_ByID/ID_DCA43C337F0B7A4DC12579FE002ECADD_EN/$File/Zakon_o_pobyte_cudzincov_ENG.pdf)> (Slovakia); *Focussed Study: Estonia n. 59 above*; Aliens Act of 8 July 1993, s 12(2) <www.refworld.org/docid/4728a3ea2.html> (Estonia); Law Amending and Supplementing the Law on Foreigners in the Republic of Bulgaria, 25 January 2011, s 17(2)(2) <www.parliament.bg/bg/laws/ID/10038> (Bulgaria); all accessed prior to 20 May 2013.

⁶⁹ *Family Reunification in Germany*, European Migration Network and Federal Office for Migration and Refugees, 2007 (Germany); *Focussed Study: Luxembourg n. 59 above; Italy Country Report ICMPD n. 62 above*; Act 23/2007 of 4 July 2007, Legal framework of entry, permanence, exit and removal of foreigners into and out of national territory, s 101(1)(a) <www.refworld.org/cgi-bin/texis/vtx/rwmain?page=country&category=LEGAL&publisher=&type=&coi=PRT&rid=4562d8b62&docid=48e4910b2&skip=0> (Portugal); *Focussed Study: Sweden n. 59 above*; <www.migrationsverket.se/info/> (Sweden), all accessed prior to 20 May 2013.

⁷⁰ Pascouau & Labayle n. 67 above, p. 69 (Germany).

⁷¹ *Focussed Study: Cyprus; Italy n. 59 above; Comparative Study ICMPD n. 62 above*; <https://dofi.ibz.be/sites/dvzoe/FR/Guidedesprocedures/Pages/Le_logement_suffisant_d%C3%A9cent_jug%C3%A9_convenable.aspx> (Belgium), accessed prior to 20 May 2013.

France (from 22 to 28 sqm for a couple depending on the region), Sweden (a one-bedroom flat for 2 adults without children or a bigger flat for a family with children, depending on the number and age of the children), or Hungary (6 sqm per person).⁷² In some countries (e.g. France, Italy and Spain), local authorities play a role in determining the suitability of the dwelling.⁷³

Of the three countries not bound by the Family Reunification Directive, Ireland does not have a formal accommodation requirement while, despite recent restrictions, the UK still only requires the accommodation to be 'adequate' i.e. not overcrowded and conforming to minimum national standards.⁷⁴ Denmark however, has the most demanding criteria of all member states; at least 20 sqm or a maximum of 2 persons per room and a minimum 3 year tenancy.⁷⁵

In general, accommodation conditions seem to be least onerous in Eastern European states with the possible exception of Romania. The words "adequate", "suitable" and "normal" are barely used and there is little reference to national standards although some require the accommodation to be lawfully secured or registered (e.g. Estonia, Lithuania, Hungary). However, it may be implied that dwellings should be suitable for accommodation (Poland).⁷⁶

There are no instances of citizen sponsors being treated less favourably than permanent resident sponsor. The existence in Denmark of a more demanding criterion suggests that the Directive may act as a constraint on some states. However, the absence of detailed conditions elsewhere, particularly in Eastern Europe, and the moderate conditions in Ireland and the UK suggest that this is not necessarily the case.

Integration

Family migrants in many member states must now comply with integration measures. Measures involve the acquisition of language and civic knowledge, the level of which varies with the phase of migration and may apply at the pre-entry, renewal, permanent residence and naturalisation stages.

⁷²Circulaire N° DPM/DMI2/2007/75 du 22 Février 2007, *Relative au Regroupement Familial* <www.gisti.org/IMG/pdf/circ_dpmdmi2200775.pdf> (France);

<www.migrationsverket.se/info/4442_en.html> (Sweden);

<www.bmbah.hu/ugyintezes_eljarasrend.php?id=52> (Hungary), all accessed prior to 20 May 2013.

⁷³<www.interieur.gouv.fr/A-votre-service/Mes-demarches/Etranger-Europe/Etrangers-en-France/Regroupement-familial-en-France-des-etrangers/Definition-du-regroupement-familial> accessed prior to 20 May 2013 (France); *Focussed Study: Italy* n. 59 above; *Spanish Country Report* ICMPD n. 62 above.

⁷⁴<www.inis.gov.ie/en/INIS/Pages/WP07000024> accessed prior to 20 May 2013; *Comparative Study* ICMPD n. 62 above (Ireland); *Family Migration: A Consultation* n. 68 above (UK).

⁷⁵<www.nyidanmark.dk/en-us/coming_to_dk/familyreunification/spouses/housing_requirement.htm> accessed prior to 20 May 2013; *Denmark Country Report* ICMPD n. 62 above.

⁷⁶*Focussed Study: Estonia* n. 59); Aliens Act, s 26(1)(4) (Lithuania); *Comparative Study* n. 65 (Hungary); Pascouau&Labaylen. 67 above, p. 69 (Poland).

Integration measures may not be applied to the family members of EEA nationals. The Family Reunification Directive permits only integration measures, not conditions, and the compatibility of some national measures with the Directive is doubtful although they have not yet been successfully challenged (see the discussion of the Directive above). Integration measures usually apply equally to family members of both citizen and permanent resident sponsors in the initial phases of the migration process although, at permanent residence or naturalisation, spouses of citizen sponsors are sometimes treated more favourably (for example, in Luxembourg, Sweden and Spanish Catalonia).⁷⁷

Several European countries require a basic knowledge of the national language before entry (for example, Austria, Germany, Liechtenstein, the United Kingdom), while others, for example the Netherlands, require knowledge of both language and society.⁷⁸ France also requires both but failure to meet the language criterion after following courses abroad is not a bar to entry, while not embracing basic French family life values could be an obstacle to family reunification.⁷⁹ The level of language knowledge required pre-entry starts at level A1 or below and increases as the spouse moves through the migration process. For permanent residence, in countries requiring language knowledge, level A2 is often required (as in Italy, Latvia, the Netherlands, Portugal, Liechtenstein), although in the Czech Republic level A1 is enough.⁸⁰ However, some countries expect higher language knowledge (B1) (e.g. Austria, Cyprus, Germany, Estonia and the United Kingdom).⁸¹

⁷⁷*Focussed Study: Luxembourg*, n. 59 above; *Language Requirements for Adult Migrants in Council of Europe Member States: Report on a Survey*, 2011 (Sweden); *Migration News Sheet*, Apr 2012 n. 65 above (Spain).

⁷⁸*Austria Country Report* ICMPD n. 62 above; <www.migration.gv.at/en/types-of-immigration/permanent-immigration-red-white-red-card/family-reunification.html>; <www.wien.gv.at/amtshelfer/dokumente/personenwesen/einwanderung/niederlassungsbewilligung/familienangehoeriger.html> (Austria); *Comparative Study* n. 65 above; *The INTEC Project: Country Report Germany*, Centre for Migration Law, 2010 (Germany); *Language Requirements Report* n. 76 above (Liechtenstein); *UK Country Report* ICMPD n. 62 above; <www.ind.nl/en/Residence-Wizard/long-term-third-country-nationals/Pages/default.aspx>; <www.ind.nl/en/Residence-Wizard/other-information/civic-integration/Pages/default.aspx> (the Netherlands), all accessed prior to 01 Jul 2013.

⁷⁹*INTEC Synthesis Report* n. 77 above; Pascouau&Labayle n. 67 above, p. 90.

⁸⁰<www1.interno.gov.it/mininterno/export/sites/default/it/temi/immigrazione/accordo_di_integrazione/>; Integration Agreement Leaflet accessed at <www1.interno.gov.it/mininterno/export/sites/default/it/assets/files/22/0184_Accordo_brochureINGLESE.pdf> (Italy); *INTEC Country Report Latvia* n. 77 above; EMN Country Report Latvia n. 65 above; <www.ind.nl/en/Residence-Wizard/long-term-third-country-nationals/Pages/default.aspx>; *Comparative Study* ICMPD n. 62 above (Netherlands and Portugal); *Language Requirements Report*, n. 76 above (Liechtenstein); <www.mvcr.cz/clanek/obcane-tretich-zemi-nektere-nalezitosti-zadosti-doklad-o-zkousce-z-cj.aspx>; <http://check-your-czech.com/index.php?p=uvodni-informace&hl=en_US> (Czech Republic), all accessed prior to 01 Jul 2013.

⁸¹<www.moi.gov.cy/moi/CRMD/CRMD.nsf/All/D0404A7FF551E8A2C22578E3002C8BDF?OpenDocument>, accessed prior to 01 Jul 2013 (Cyprus).

Amongst northern European countries, Finland requires B1 language knowledge for permanent residence, while language knowledge is not mandatory in Sweden. In Denmark, initial learning takes place just after rather than before entry.⁸² Applicants must take an exam at level A1 within six months of entry and pass it within nine months or their entry permit will be withdrawn. This test was introduced in March 2013 and replaced a combined knowledge and language test (at A1 minus) that had to be passed within three months of entry. Members may participate in free language courses.⁸³ For permanent residence, several conditions apply including language at level A2 and full-time work or study for three of the previous five years. Between 2010 and September 2012, a points system was also in place requiring applicants to demonstrate 'active citizenship' or a very high competence in Danish (above Level B2).⁸⁴

Southern European countries have no compulsory integration conditions for either citizen or permanent resident sponsors' family members until the application for permanent residence (except that Spain's Catalonia province requires knowledge of Catalan for renewal of a residence permit). For long-term residence, however, these countries except Spain require language skills at around level A2 (Italy A1-B1, Greece A1-A2, Portugal A2) for permanent resident sponsors' family members.⁸⁵ Citizen sponsors' family members are exempt in certain countries such as Portugal.

Eastern European countries generally don't differentiate on the basis of the sponsor's citizenship. Integration conditions are applied, if at all, only at permanent residence. They involve language acquisition and the level required is generally lower than in Western European countries, being A1 in the Czech Republic, A2 in Latvia, B1 in Estonia or satisfactory knowledge in Romania.⁸⁶ Some Eastern European countries do not have any integration conditions before naturalisation (e.g. Bulgaria, Hungary, Poland, Slovakia), although optional language and civic education courses are available in some of them (e.g. in Slovenia or Romania).⁸⁷

⁸²<www.nyidanmark.dk/en-us/coming_to_dk/familyreunification/spouses/immigration_test/the-immigration-test.htm>; <www.nyidanmark.dk/en-us/coming_to_dk/permanent-residence-permit/prove_dansk_1_danish_language_test.htm>, accessed prior to 01 Jul 2013.

⁸³*Language Requirements Report* n. 76 above (Finland and Sweden); *Comparative Study* n. 65 above.

⁸⁴ See Wray 2013 p. 145.

⁸⁵*Focussed Study: Italy; Language Requirements Report* n. 76 above (Greece); *Comparative Study* ICMPD n. 62 above (Portugal).

⁸⁶<www.siseministerium.ee/25444/>; *Language Requirements Report* n. 76 above (Estonia); <<http://ori.mai.gov.ro/api/media/userfiles/LIST.pdf>> (Romania), all accessed prior to 01 Jul 2013.

⁸⁷*Comparative Study* n. 65 above; Bulgarian Citizenship Act, s 12, accessed at <www.bulgarianembassy.org.uk/citizenship/BGCitizenshipAct1.html> (Bulgaria); <www.bmbah.hu/ugyintezes_eljarasrend.php?id=6>; *INTEC Country Report Hungary* n. 77 above; <www.migrant.info.pl/Residence_permit_for_a_fixed_period.html>; <www.migrant.info.pl/Permit_to_settle.html> (Poland);

Integration is one area where there is considerable variation in state practice. Pre-entry integration criteria have so far only been implemented in Western European countries. Integration tests apply only later in Southern and Eastern European countries and some Eastern European states apply them only at naturalisation. It is unclear that integration conditions, particularly those in the Netherlands, are compliant with the Family Reunification Directive and they may eventually have to be modified. States have not applied more rigorous conditions to their own nationals than to permanent resident sponsors. Pre-entry conditions in the UK, Ireland and Denmark, which are not bound by the Family Reunification Directive, are not more rigorous than those in other Western European states although post-entry conditions in Denmark remain amongst the most demanding in Europe.

Income

Most states impose income requirements on sponsors. These however differ in the amount, the income sources which can be taken into account and the deductions that must be made so that precise comparisons are difficult. Under the Family Reunification Directive, states may require sufficient resources to avoid recourse to social assistance (subject always to an individualised decision). The Citizens' Directive permits consideration of resources only in respect of the self-sufficient and students (art. 7(1)).

In some Western European countries (Germany, Luxembourg, France) rules are more lenient for citizen sponsors than for permanent resident sponsors.⁸⁸ In Belgium, the Netherlands, and the UK they are treated in the same way.⁸⁹ The required income ranges from social allowance (e.g. in Italy, or 'minimum social salary for a non-qualified workers' in Luxembourg), to minimum wage (for example, the Netherlands for all sponsors, France for permanent resident sponsors) to the harsh income requirements introduced recently in the UK for both UK citizen and permanent resident

<www.mnz.gov.si/en/services/slovenia_your_new_country/integration_of_foreigners/> (Slovenia); <<http://ori.mai.gov.ro/detalii/pagina/en/Integration-programme/112>> (Romania), all accessed prior to 01 Jul 2013.

⁸⁸ 'Western European countries' here refer to EU-15 without the Nordic (Finland, Sweden, Denmark) and Southern (Italy, Spain, Greece, Portugal) countries; *Focussed Study: Germany; Luxembourg* n. 59 above; EMN Country Report Germany n. 65 above; *Comparative Study* ICMPD n. 62 above; <www.itm.lu/home/droit-du-travail/salaire-social-minimum.html>, accessed prior to 15 Jun 2013.

⁸⁹ <https://dofi.ibz.be/sites/dvzoe/FR/Guidedesprocedures/Pages/Les_moyens_de_subsistance_dont_une_personne_doit_disposer_pour_accueillir_les_membres_de_sa_famille.aspx>, accessed prior to 15 Jun 2013 (Belgium); *Netherlands Country Report* ICMPD; *UK Country Report* ICMPD n. 62 above.

sponsors.⁹⁰ Germany does not quantify the amount of sufficient resources, but it should be enough to avoid becoming a burden on the social assistance system.⁹¹ Belgium requires 120% of minimum wage for all sponsors and France asks between 100% and 120% depending on the size of the family.⁹²

Citizen sponsors in Southern European countries tend to be treated more favourably than permanent residents. There is either no subsistence requirement for citizen sponsors (Greece) or the rules for them are determined in a flexible manner (e.g. proof of sufficient economic resources for Italian citizens).⁹³ In contrast, permanent resident sponsors must meet certain quantified minimum financial obligations (In Spain for instance for a two-member family it is 150% of the monthly minimum salary, while in Portugal it is 12 times the minimum monthly guaranteed wage which increases with the size of the family), although these are relatively low (Portugal, Greece, Italy, Spain, Malta).⁹⁴

In some Northern Europe countries, citizen sponsors are exempt from the income rules which apply to permanent resident sponsors (Finland, Sweden).⁹⁵ Iceland regulates all sponsors in the same way.⁹⁶ Denmark requires both citizen and permanent resident sponsors to be self-sufficient, not in receipt of public assistance for the previous three years and to provide security against future claims

⁹⁰*Focussed Study: Italy* n. 59 above; <www.interieur.gouv.fr/A-votre-service/Mes-demarches/Etranger-Europe/Etrangers-en-France/Regroupement-familial-en-France-des-etrangers/Definition-du-regroupement-familial>, accessed prior to 15 Jun 2013 (France).

⁹¹Pascouau & Labayle n. 67 above, p. 77.

⁹²<https://dofi.ibz.be/sites/dvzoe/FR/Guidedesprocedures/Pages/Les_moyens_de_subsistance_dont_une_personne_doit_disposer_pour_accueillir_les_membres_de_sa_famille.aspx> *Focussed Study: Belgium* n. 59 above; <www.interieur.gouv.fr/A-votre-service/Mes-demarches/Etranger-Europe/Etrangers-en-France/Regroupement-familial-en-France-des-etrangers/Definition-du-regroupement-familial> (France), all accessed prior to 15 Jun 2013.

⁹³<www.ypes.gr/el/Generalsecretariat_PopulationSC/general_directorate_migration/diefthinsi_metanasteftikis_politikh/s_katigoriesadeiondiamonis/oik_epanemosi/> (Greece); *Focussed Study: Italy* n. 59 above, accessed prior to 15 Jun 2013.

⁹⁴*Comparative Study* ICMPD n. 62 above (Portugal); *Comparative Study* n. 65 above (Greece); *Focussed Study: Italy* n. 59 above; <[www.interior.gob.es/extranjeria-28/regimen-general-189/residencia-temporal-202#Residencia temporal por reagrupación familiar](http://www.interior.gob.es/extranjeria-28/regimen-general-189/residencia-temporal-202#Residencia%20temporal%20por%20reagrupaci%C3%B3n%20familiar)>, and Pascouau & Labayle n. 67 above, p. 79 (Spain); Family Reunification Regulations 2007, s 12 (d); <[http://ec.europa.eu/immigration/tab2.do?searchFromTab2=true&searchByCountryCountryId=17&searchByUserProfileId=4&searchByUserSubProfileId=0&loadProfileByCountry=Find%20information&langDefault=7\\$en&userLang=7&languageLocaleId=7](http://ec.europa.eu/immigration/tab2.do?searchFromTab2=true&searchByCountryCountryId=17&searchByUserProfileId=4&searchByUserSubProfileId=0&loadProfileByCountry=Find%20information&langDefault=7$en&userLang=7&languageLocaleId=7)> (Malta), accessed all prior to 15 Jun 2013; Pascouau & Labayle n. 67 above, p. 79 (Portugal).

⁹⁵<www.migri.fi/moving_to_finland_to_be_with_a_family_member/income_requirement> (Finland); <www.migrationsverket.se/info/4442_en.html> (Sweden), all accessed prior to 15 Jun 2013.

⁹⁶<www.utl.is/index.php?option=com_content&view=article&id=77&Itemid=79&lang=en>; <www.utl.is/index.php?option=com_content&view=article&id=10&Itemid=11&lang=en>, all accessed prior to 15 Jun 2013.

in the form of a bond.⁹⁷ Norway also does not distinguish between citizen and permanent resident sponsors in terms of income requirement and the amount is extremely high (in 2013 a yearly gross salary of NOK 246 136, about €30,500 although the average wage in Norway is also very high).⁹⁸

The rules in Eastern European countries either do not differentiate between citizen and permanent resident sponsors (e.g. Czech Republic, Estonia, Latvia, Slovakia) or they provide better conditions for citizen sponsors (e.g. Poland, Romania, Slovenia).⁹⁹ Some countries apply the same rules for nationals and EEA nationals (e.g. Slovenia, Hungary).¹⁰⁰ The necessary incomes in many countries are linked to the minimum net wage (e.g. Romania); however some countries define these conditions in a more complex way (e.g. subsistence plus normal costs for housing (Czech Republic), or the social assistance limit plus accommodation costs (Poland)). The amount required increases with the size of the family in some Eastern European countries (e.g. Romania, Czech Republic, Slovenia).¹⁰¹

Of the three EU countries not bound by the Family Reunification Directive, Ireland does not have a fixed amount and permanent resident sponsors are subject to more exacting requirements which vary with their employment.¹⁰² The UK treats its citizen and its permanent resident sponsors equally harshly with a financial requirement that is far in excess of that permitted under the Directive although this has recently been found by the domestic courts to breach article 8 at least in respect of citizen and refugee sponsors.¹⁰³ In Denmark, the same rules apply to citizen and permanent resident sponsors and are relatively benign compared to the rigorous conditions applied elsewhere in the Danish system.¹⁰⁴

⁹⁷Wray 2013 p. 141.

⁹⁸<www.udi.no/templates/Tema.aspx?id=7413>, accessed prior to 15 Jul 2013.

⁹⁹<www.mvcr.cz/mvcren/article/proof-of-funds-for-the-purposes-of-a-long-term-residence.aspx>; <www.mvcr.cz/mvcren/article/third-country-nationals-long-term-residence.aspx?q=Y2hudW09Ng%3d%3d> (Czech Republic); *Focussed Study: Estonia* n. 59 above; Aliens Act, ss 139, 140 (1) (Estonia); *Comparative Study* n. 65 above (Latvia); <<http://mic.iom.sk/en/residence/permanent-residence/18-trvaly-pobyt-na-pat-rokov.html>>; Aliens Act, ss 45 (3) (c), 45 (7) and 32(6),(15) (Slovakia); *Focussed Study: Poland* n. 59 above; Act on Aliens of 13 June 2003, (Journal of Laws of 2003, No 128/1175, s 53 (7)(1), 53 (10) accessed at <www.globaldetentionproject.org/fileadmin/docs/Poland_Aliens_Act.pdf> (Poland); <<http://ori.mai.gov.ro/detalii/pagina/en/Family-reunion/75>>; <<http://ori.mai.gov.ro/api/media/userfiles/LIST.pdf>> (Romania); *Comparative Study* n. 65 above; Aliens Act, No 50/2011 of 27 June 2011, ss 33(3), 47(5), 123(1), 128(1) (Slovenia), all accessed prior to 15 Jun 2013.

¹⁰⁰<www.bmbah.hu/ugyintezes_eljarasrend.php?id=68>.

¹⁰¹Pascouau&Labayle n. 67 above, p. 81 (Slovenia).

¹⁰²*Ireland Country Report* ICMPD n. 62 above.

¹⁰³ *UK Country Report* ICMPD n. 62 above.

¹⁰⁴<www.nyidanmark.dk/en-us/coming_to_dk/familyreunification/spouses/self-support-requirement.htm>; <www.nyidanmark.dk/en-us/coming_to_dk/familyreunification/family_reunification_under_eu-law/family_reunification_danish_nationals_under_eu-law.htm>, all accessed prior to 15 Jun 2013.

Income criteria are more often restrictive in Western Europe than in Eastern and Southern Europe although the Family Reunification Directive means there is limited variation. The Directive appears to be an inhibiting factor as the highest criteria in Europe are to be found in countries not bound by the Directive (the UK and the EEA state of Norway). This is the sole area of the Directive where a Court of Justice ruling has forced states to modify their policy.¹⁰⁵ Citizen sponsors are often treated differently to permanent resident sponsors but never less favourably and, in several countries, they are subject to conditions that reflect the Citizens Directive.

Fees

This section analyses fees charged to spouses for admission, residence and citizenship. Other fees, for example, for language and integration tests, document administration, stamp duties and medical examination fees are often charged but are not discussed here. In respect of initial entry, 12 states have very low fees (0-100 EUR),¹⁰⁶ seven states have low fees (101-200 EUR),¹⁰⁷ five states have medium fees (201-500 EUR)¹⁰⁸ and one state, the UK, has high fees (over 500 EUR) of 1227 EUR.¹⁰⁹

¹⁰⁵Chakroun – see discussion above.

¹⁰⁶<<http://www.mvcr.cz/mvcren/article/third-country-nationals-fees.aspx>> (Czech Republic), <http://www.nyidanmark.dk/en-us/coming_to_dk/fee/about_fees/about_fees.htm> (Denmark), <<https://www.politsei.ee/en/teenused/riigiloivud/riigiloivu-maarad/elamisload/>> (Estonia), <http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A0700028.IRM> (Hungary), <http://utl.is/index.php?option=com_content&view=article&id=116&Itemid=143&lang=en> (Iceland), *Staying in Italy Legally*, Italian Ministry of Interior, Undated, <http://www.pmlp.gov.lv/en/pakalpojumi/pricelist/residence_permit_fees_old.html> (Latvia), Law of the Grand Duchy of 5 Sep 2008, Art 20 (Luxembourg), Legal Notice No. 267 of 2006 (Malta), Act of 6 Aug 2010 No. 167/1131 (Poland), <<http://ori.mai.gov.ro/api/media/userfiles/list%202.pdf>> (Romania), <<http://www.interior.gob.es/tasas-20/extranjeros-231/tramitacion-de-autorizaciones-para-residir-en-espana-246>> (Spain).

¹⁰⁷<<http://www.wien.gv.at/english/administration/civilstatus/immigration/fee.html>> (Austria), <<http://www.moi.gov.cy/moi/CRMD/CRMD.nsf/All/02E55B27951A636CC22578E3002C306C?OpenDocument>> (Cyprus), <<http://www.berlin.de/lab0/auslaender/dienstleistungen/selbststaendige.html#Formulare>> (Germany), <http://www.cig-icg.gr/docs/requirements_permit.pdf> (Greece), *Table of Fees and Other Charges Charged by Administrative Procedures Provided for by Law N^o 23/2007 of 4 July*, Service of Foreigners and Frontiers, accessed at <<http://www.imigrante.pt/BancoInformacao/Docs/TabelaTaxas.pdf>> (Portugal), Act No. 404/2011 of 21 Oct 2011 on Residence of Aliens and Amendment and Supplementation of Certain Acts), Part II Administrative Charges, accessed at <[http://www.mzv.sk/App/wcm/media.nsf/vw_ByID/ID_DCA43C337F0B7A4DC12579FE002ECADD_EN/\\$File/Zakon_o_pobyte_cudzincov_ENG.pdf](http://www.mzv.sk/App/wcm/media.nsf/vw_ByID/ID_DCA43C337F0B7A4DC12579FE002ECADD_EN/$File/Zakon_o_pobyte_cudzincov_ENG.pdf)> (Slovakia), <http://www.migrationsverket.se/info/811_en.html> (Sweden).

¹⁰⁸<http://www.migri.fi/services/processing_fees> (Finland), Ministry of Interior Circular No. INTV1243671, 31 Dec 2012, <http://www.ofii.fr/IMG/pdf/Circulaire_INTV1243671C_du_31-12-2012.pdf> (France), <http://www.citizensinformation.ie/en/moving_country/moving_to_ireland/rights_of_residence_in_ireland/residence_rights_of_non_eea_nationals_in_ireland.html#l62fd2>, <<http://english.ind.nl/Leges/leges-huwelijk-relatie-familie-of-gezin.aspx>> accessed prior to 01 Jun 2013 (Netherlands), <<http://www.udi.no/Norwegian-Directorate-of-Immigration/Oversiktsider/Fee-payment-when-submitting-applicationX/>> (Norway).

¹⁰⁹<<http://www.ukba.homeoffice.gov.uk/visas-immigration/partners-families/citizens-settled/spouse-cp/fees/>>.

Data on fees for permanent residence was obtained only in 16 states. Out of these, six have very low fees, five have low fees, four have medium fees and only the UK has high fees.¹¹⁰ Fees for naturalisation, including the cost of the citizenship application, any obligatory citizenship test and any further costs on grant of citizenship, were also considered. Out of 12 states where data was obtained, four had very low fees for citizenship, four medium and four high.¹¹¹

Most states apply fee requirements to both citizen and permanent resident sponsors but these are sometimes higher for permanent resident sponsors (for example, Ireland, Greece, Hungary, Italy and

¹¹⁰<http://www.nyidanmark.dk/en-us/coming_to_dk/fee/about_fees/about_fees.htm> (Denmark), <<http://www.mvcr.cz/mvcren/article/third-country-nationals-fees.aspx>> (Czech Republic), <http://utl.is/index.php?option=com_content&view=article&id=116&Itemid=143&lang=en> (Iceland), <<http://www.migracija.lt/index.php?649677584#1>> (Lithuania), <<https://www.msw.gov.pl/en/news/640,dok.html>> (Poland), <<http://www.interior.gob.es/tasas-20/extranjeros-231/tramitacion-de-autorizaciones-para-residir-en-espana-246>> (Spain), <<http://www.wien.gv.at/amtshelfer/dokumente/personenwesen/einwanderung/niederlassungsbewilligung/familienangehoeriger.html>> (Austria), <http://www.migri.fi/services/processing_fees> (Finland) <<http://www.berlin.de/labo/auslaender/dienstleistungen/selbststaendige.html#Formulare>> (Germany), *Uniform Residence Permits For Third Country Nationals*, at <<http://mhas.gov.mt/en/MHAS-Information/Services/Documents/Residence/CEA8-URP.pdf>> (Malta), Act No. 404/2011 of 21 Oct 2011 on Residence of Aliens and Amendment and Supplementation of Certain Acts), *Part II Administrative Charges*, accessed at <[http://www.mzv.sk/App/wcm/media.nsf/vw_ByID/ID_DCA43C337F0B7A4DC12579FE002ECADD_EN/\\$File/Zakon_o_pobyte_cudzincov_ENG.pdf](http://www.mzv.sk/App/wcm/media.nsf/vw_ByID/ID_DCA43C337F0B7A4DC12579FE002ECADD_EN/$File/Zakon_o_pobyte_cudzincov_ENG.pdf)> (Slovakia), <http://www.citizensinformation.ie/en/moving_country/moving_to_ireland/rights_of_residence_in_ireland/residence_rights_of_non_eea_nationals_in_ireland.html#l62fd2> (Ireland), <<http://english.ind.nl/Leges/leges-verblijfsvergunning-onbepaalde-tijd.aspx>>, accessed prior to 01 Jun 2013 (Netherlands), <<http://www.udi.no/Norwegian-Directorate-of-Immigration/Oversiktsider/Fee-payment-when-submitting-applicationX/>> (Norway), *Table of Fees*, SEF n. 104 above (Portugal), <<http://www.ukba.homeoffice.gov.uk/visas-immigration/partners-families/citizens-settled/spouse-cp/fees/>> (UK).

¹¹¹<<https://www.help.gv.at/Portal.Node/hlpd/public/content/26/Seite.260422.html>>, <<https://www.help.gv.at/Portal.Node/hlpd/public/content/26/Seite.260100.html>> (Austria), <<http://www.moi.gov.cy/moi/CRMD/CRMD.nsf/All/4538CECCD90D3F01C22578E300363A79?OpenDocument>>, <<http://www.moi.gov.cy/moi/CRMD/CRMD.nsf/All/2DC0A53CB22ADF38C22578E300362B51?OpenDocument>> (Cyprus), <<http://www.mvcr.cz/mvcren/article/granting-nationality-of-the-czech-republic.aspx>> (Czech Republic), <http://www.nyidanmark.dk/en-us/coming_to_dk/fee/about_fees/about_fees.htm> (Denmark), <http://www.migri.fi/services/processing_fees> (Finland), <http://www.bmi.bund.de/DE/Themen/Migration-Integration/Einbuengerung/einbuengerung_node.html>, <<http://www.bamf.de/DE/Einbuengerung/WasEinbuengerungstest/waseinbuengerungstest-node.html>> (Germany), Hungarian Citizenship Act 1993, Act LV, <http://www.bmbah.hu/ugyintezes_eljarasrend.php?id=126>, <http://www.bmbah.hu/ugyintezes_eljarasrend.php?id=6> (Hungary), <<http://www.inis.gov.ie/en/INIS/Pages/Citizenship%20fees>> (Ireland), *Staying in Italy Legally* n. 103 above, <<http://www.pmlp.gov.lv/en/Citizenship/Naturalizacija.html>> (Latvia), <<http://www.ind.nl/en/Custom-Information/fees/Dutchcitizenship/Pages/default.aspx>> (Netherlands), <<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/britishcitizenship/nationality-fees.pdf>> (UK).

Romania in respect of residence permits and Cyprus and Ireland in respect of naturalisation).¹¹² The Family Reunification Directive makes no provision as to fees.

The majority of states with very low or low fees are in Eastern or Southern Europe and only Western and Northern states have medium or high fees (with the exceptions of Cyprus, which has medium fees for permanent residence and naturalisation, and the Czech Republic, which has medium fees for naturalisation).¹¹³ Only Denmark and Poland provide applications free of charge. Denmark previously had very high fees but in 2012 abolished all fees for applications and appeals relating to family reunification.¹¹⁴ Poland also abolished residence fees in May 2011.¹¹⁵ The UK now has the highest fees, well above other states.¹¹⁶ Latvia has dramatically reduced its fees in recent years. In 2008, residence permits cost 121 EUR and now cost only 21 EUR in a straightforward case. Citizenship costs just 28 EUR, with many paying the reduced fee of only 4 EUR.¹¹⁷ Therefore, while the general trend has been towards higher fees, a minority of states have reduced or abolished fees in recent years.

Who may apply

The Family Reunification Directive states that family reunification rights must apply to spouses and may apply to further family members at their discretion. States may impose further conditions on applicants who are unmarried.¹¹⁸ The Citizens Directive includes as a 'family member' a registered partner, where the legislation of the Member State treats registered partnerships as equivalent to

¹¹²<http://www.citizensinformation.ie/en/moving_country/moving_to_ireland/rights_of_residence_in_ireland/residence_rights_of_non_eea_nationals_in_ireland.html#l62fd2>, <<http://athens.angloinfo.com/information/moving/residency/residence-permits/>> (Greece), Regulation on the Free Movement of Persons and the Right of Residence and Entry Procedures and Fees for Residence of Third-Country Nationals 28/2007 (V 31) IRM, as amended, Annex at <http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A0700028.IRM> (Hungary), Staying in Italy Legally n. 103 above, <<http://ori.mai.gov.ro/api/media/userfiles/lista%201.pdf>>; <<http://ori.mai.gov.ro/api/media/userfiles/list%202.pdf>> (Romania), <<http://www.moi.gov.cy/moi/CRMD/CRMD.nsf/All/4538CECCD90D3F01C22578E300363A79?OpenDocument>>, <<http://www.moi.gov.cy/moi/CRMD/CRMD.nsf/All/2DC0A53CB22ADF38C22578E300362B51?OpenDocument>> (Cyprus), Irish Nationality and Citizenship Regulations 2011; <<http://www.inis.gov.ie/en/INIS/Pages/Citizenship%20fees>> (Ireland) Although in Ireland there is *only* a reduction in naturalisation fee if applicant is a *widow(er)* of an Irish sponsor.

¹¹³ See ns 103-108.

¹¹⁴ E.g. See *Migration News Sheet*, May 2012 n. 65 above, *INTEC Country Report Denmark* n. 77 above, http://www.nyidanmark.dk/en-us/coming_to_dk/fee/about_fees/about_fees.htm (Denmark).

¹¹⁵ See *Comparative Study* n. 65 above, Act 167/1131, 2010, *Draft European Report on the Free Movement of Workers in Europe in 2010-2011*, 2011(Poland).

¹¹⁶With the exception of Ireland's citizenship fee.

¹¹⁷*Comparative Study* n. 65 above, *INTEC: Country Report Latvian* n. 77 above.

¹¹⁸ FRD, Art 4(3), 5(2).

marriage and also requires member states to facilitate the entry and residence of a partner with whom the Union citizen has a durable relationship, duly attested.¹¹⁹

Within the EEA, thirteen states allow only spouses to apply for family reunification, nine allow spouses and registered partners and only eight allow cohabiting partners to apply as well.¹²⁰ Eleven states allow same sex applicants.¹²¹ All of the states which only allow spouses are, with the exception of France, in Eastern or Southern Europe. Within Eastern and Southern Europe, only two states allow registered partners (Hungary and Czech Republic) and two also allow cohabiting partners (Portugal and Slovenia). In Northern and Western Europe on the other hand, seven states allow registered partners, and six states also allow cohabiting partners.¹²²

Four states have different requirements depending on whether the sponsor is a citizen. In the Czech Republic and Hungary, citizen sponsors have been permitted to bring in registered partners since

¹¹⁹ Citizen's Directive, Arts 2(2), 3(2).

¹²⁰ Law on Foreigners 1998, as amended, Art 2(2), Add. Provisions (1) (Bulgaria), Aliens and Immigration Law, as amended by Law 8(I)/2007, Arts 18L(1)(a), (5)(Cyprus), Aliens Act 1993, as amended 2006, s121 (Estonia), CESEDA, as amended, Art L411-1 -L411-3 (France), *Family Reunification in Greece*, European Migration Network and Centre of Planning and Economic Research, 2007, Consolidated Act on Immigration (286/1998), as amended by Decree 5/2007, Art 29, Supreme Court Judgment 6441/2009, First Civil Division (Italy), Civil Law Part I, <<http://www.likumi.lv/doc.php?id=90223>> (Latvia), Law on the Legal Status of Aliens (Official Gazette, No 73-2539, 2004) (Lithuania), Marriage Act 1975 (Cap. 255); Civil Code (Cap 16, Art 293) (Malta), Act on Foreigners 2003, Art 53(2) (Poland), <<http://ori.mai.gov.ro/detalii/pagina/en/Family-reunion/75>> (Romania), Residence of Aliens Act 404/2011, Art 27(1)(a) (Slovakia), Organic Law 4/2000 Art 17 (Spain), Settlement and Residence Act 2005, Art 47 (Austria), Aliens Act No. 326/1999 Coll., as amended, Art 15a (Czech Republic), <http://www.migri.fi/services/customer_bulletins/bulletins_family/1/0/when_applying_for_a_residence_permit_the_partner_in_a_personal_relationship_must_have_a_secure_income> (Finland), Residence Act 2005, ss 27-31 (Germany), Admission and Right of Residence of Third-Country Nationals Act II 2007, Art 2(d), Admission and Residence of Persons with the Right of Free Movement and Residence Act I 2007, Art 2(b), Act XXIX of 2009, Art 3(1) (Hungary), Act on Foreigners No. 96/2002, Art 13, <http://www.utl.is/index.php?option=com_content&view=article&id=71&Itemid=73&lang=en> (Iceland), <<http://www.inis.gov.ie/en/INIS/Pages/WP07000024>>, <<http://www.inis.gov.ie/en/INIS/Pages/Civil%20Partnership>> (Ireland), Aliens Decree 2000, s3(14) (Netherlands), <http://www.bfm.admin.ch/content/bfm/en/home/themen/einreise/faq.0055.html#a_0055>(Switzerland), Royal Decree May 2007, Aliens Law, as amended by Law 2011, Art 10(1er) (Belgium), <http://www.nyidanmark.dk/en-us/coming_to_dk/familyreunification/spouses/spouses.htm> (Denmark), Law of 9 July 2004, as amended by Law of 12 Aug 2010, Art 2, 4(1), Art 144 Civil Code (Luxembourg), Immigration Act ss 41, 110(3), 114, Immigration Regs s19(6)), UDI's Circular 2010/025 (Norway), Law 23/2007, Art 98-100, Act 7/2001, Art 1(1) (Portugal), Aliens Act 2011, Art 47(3), <<http://www.infotujci.si/v/11/Immediate-family-members>> (Slovenia), Aliens Act 2005:716, Ch 5 s3 (Sweden), Civil Partnership Act 2004, Immigration Rules Part 8, 227-289, 295A (UK).

¹²¹<<http://www.migration.gv.at/en/service-and-links/frequently-asked-questions.html#Who%20may%20apply%3F>> (Austria)

<http://www.migri.fi/services/faq/residence_permits/family> (Finland), Residence Act 2004, as amended 2007, s27-31 (Germany), <<http://www.inis.gov.ie/en/INIS/Pages/WP07000024>> (Ireland), Court of Reggio Emilia 13 Feb 2012 1401/2011); Legislative Decree 30/2007 Art 2(b)(1) (Italy), Law of 9 July 2004, as amended by Law of 12 August 2010, Art 2, 4(1), Art 144 Civil Code (Luxembourg), *Focussed Study: Netherlands; Portugal; UK* n59 above, Immigration Act 2010, s110(3)(a), s114) (Norway), Aliens Act 2005:716, Ch 5 s3 (Sweden).

¹²² See n. 117 above.

2006 while permanent residents may only be reunited with spouses.¹²³ Romania permits entry for the cohabiting partners of citizens where the couple have a child together but does not allow this for permanent residents.¹²⁴ Ireland only permits same-sex partners where the sponsor is an Irish national.¹²⁵

Those states which do not recognise registered partnerships in their domestic law also do not allow registered partners to enter for family reunification. However, while France and Spain allow registered partnerships in their domestic law, registered partners have fewer rights to enter for family reunification.¹²⁶

While 20 states currently allow same-sex marriages or partnerships in their domestic legislation,¹²⁷ only eight states allow same-sex partners identical rights in family reunification to heterosexual partners.¹²⁸ A further two states allow same-sex partners to enter but on a narrower basis. In Italy, same-sex relationships are only permitted if the relationship is recognised as a marriage in an EU country.¹²⁹ In France, same-sex and unmarried partners can apply for a different, less secure, form of leave.¹³⁰ Spain previously permitted same-sex partners only where the partnership was celebrated in certain countries but this is no longer the case.¹³¹

Therefore, while it is mostly Eastern and Southern EU states which have the tightest restrictions on which family members can apply, states in Western and Northern Europe are not as liberal as might be imagined. Even states that recognise certain types of relationship in their domestic laws do not always afford them equal recognition in immigration law.

Marriages of Convenience

The Family Reunification Directive, art. 16(2) permits states to reject applications which involve fraud or where the marriage, partnership or adoption was “contracted for the sole purpose of enabling the person concerned to enter or reside in a Member State”. This echoes the wording of

¹²³Act No. 326/1999 Coll. Residence of Aliens in the Czech Republic, as amended, Art 15(a), 42(a) (Czech Republic), Act I of 2007 on Admission and Residence of Persons with the Right of Free Movement and Residence Art 2(b); Act II of 2007 on Admission and Right of Residence of Third-Country Nationals Art 2(d) (Hungary).

¹²⁴*Comparative Study* n. 65 above.

¹²⁵<<http://www.inis.gov.ie/en/INIS/Pages/WP07000024>>.

¹²⁶ See n. 117 above. For Spain see Quirós Fons, Antonio (2006) *La Reagrupación Familiar de Extranjeros en España: Régimen Aplicable y Propuestas*, Universidad de Murcia, Murcia, 170; see also Organic Law 2/2009 and Royal Decree 577/2011.

¹²⁷*Social Policy and Family Law: Marriage, Divorce and Parenthood*, Council of Europe Family Policy Database, 2009. The Luxembourg Parliament was expected to vote on this in summer 2013.

¹²⁸Although some states may in practice allow same-sex partners in under provisions for cohabiting partners.

¹²⁹Court of Reggio Emilia February 13, 2012 1401/2011, Legislative Decree 30/2007 Art 2(b)(1).

¹³⁰Circular of 27 Sept 2007; Justice Minister Memorandum of 29 May 2013.

¹³¹QuirósFons n. 123 above; now see Organic Law 2/2009 and Royal Decree 577/2011.

the earlier Council Resolution 97/C382/01, which defined a “marriage of convenience” as a marriage concluded “with the sole aim of circumventing the rules on entry and residence of third-country nationals and obtaining for the third-country national a residence permit or authority to reside in a Member State”. The resolution was a guide to the implementation of free movement rights involving third country nationals (now in Directive 2004/38), set out a list of factors that might suggest a marriage of convenience and specified that it was for the member state to make the investigation only when there are well-founded suspicions.

Most states have some provision in national law against marriages of convenience. Only Hungary, Ireland, Slovenia and previously Latvia have no formal regulations although they may still be dealt with through administrative practice.¹³² For example, there is no legal regulation in Hungary but one study found Council Resolution 97/C382/01 is applied in practice.¹³³ In Ireland, a proposal to define marriages of convenience and set out factors to consider was initiated in the Immigration, Residence and Protection Bill 2010, s138 but has not so far become law.

While the Family Reunification Directive applies only to third country national sponsors in EU member states bound by the Directive and the Resolution applies only to EU citizens exercising free movement rights, many EEA states apply similar wording to citizen sponsors, and states which are not bound by the Directive also sometimes use similar phraseology. Fifteen EEA states use provisions very similar to ‘sole purpose’ when defining marriages of convenience.¹³⁴ For example, Norway provides that residence must be the ‘main purpose’ and this has been found by Norwegian courts to mean the same as ‘sole purpose’.¹³⁵ Lithuania states that residence must be the ‘aim’ of the marriage, but not necessarily the ‘sole aim’.¹³⁶ Spain states the purpose may be for residence or profit,¹³⁷ and Malta provides a range of purposes: obtaining Maltese citizenship, freedom of movement, a work or residence permit, the right to enter or the right to obtain medical care.¹³⁸ In

¹³²*Focussed Study: Hungary; Ireland; Latvia* n. 59 above.

¹³³*Focussed Study: Hungary* n. 59 above.

¹³⁴*Focussed Study: Belgium; Finland; Netherlands; Sweden* n. 59 above, Law on Foreigners Art 26 (3)-(4) (Bulgaria), *Comparative Study* n. 65 above (Denmark), Civil Code Act no. 2003-119 of 26 November 2003 (France), Residence Act 2007 s27 (Germany), Admission and Residence of Persons with the Right of Free Movement and Residence Act I 2007 Art 14(2) (Hungary), Consolidated Act on Immigration Art 29(9) (Italy), EMN *Latvia*, Marriage Act (Cap 255, Art 38) (Malta), Immigration Act s120(6) (Norway), Act on Foreigners, Art 57(1)(4) & 58(1)(2) (Poland), Act 23/2007 Art 186 (Portugal).

¹³⁵*Focussed Study: Norway* n. 59 above.

¹³⁶ Order No 1V-329 12 October 2005 (Official Gazette, No 126-4509, 2005; 62-2501, 2009); Order No 1V-445 21 December 2005 (Official Gazette, No 5-157, 2006).

¹³⁷Immigration Act Art 53(2)(b).

¹³⁸Marriage Act (Cap 255, Art 38).

France, a circular of 2nd May 2005 defines a sham marriage as one entered exclusively for the purposes of migration or to obtain professional, social, fiscal or inheritance advantages.¹³⁹

Council Resolution 97/C382/01 sets out a list of factors that may provide evidence of a marriage of convenience and some of these appear in national legislation. Eighteen states cite non-cohabitation as a factor, although Cyprus calls for 'harmonious cohabitation' and Estonia refers to 'non-traditional cohabitation'.¹⁴⁰ Ten states include a common language as a factor, and ten states also have provisions requiring the parties to have met before the marriage, with some, such as Belgium or Estonia, being more prescriptive in that regard.¹⁴¹ Few states have put the other factors listed in the Resolution into their national legislation although they may still be applied as a matter of administrative practice. The Netherlands includes previous sponsorship as a factor and Germany includes residence anomalies in another EU Member State.¹⁴² Several states (Denmark, Finland, the Netherlands, Portugal and Slovakia) include an age difference between the parties.¹⁴³ Some states also include the absence of a pre-nuptial agreement, the absence of shared cultural or religious activities and the economic status or mental ability of the sponsor or whether the sponsor is a prostitute. Estonia includes factors such as different social backgrounds and a wife not taking her husband's last name.¹⁴⁴

¹³⁹ CIMADE (2008) *Peu de Meilleur et Trop de Pire : Soupçonnés, Humiliés, Réprimés – Des Couples Mixtes Témoignent* pp 19-21.

¹⁴⁰ <https://dofi.ibz.be/sites/dvzoe/FR/Guidedesprocedures/Pages/Le_partenariat_enregistre_conformement_a_une_loi.aspx> (Belgium), Law on Foreigners Art 26 (3)-(4) (Bulgaria), <<http://www.moi.gov.cy/moi/CRMD/CRMD.nsf/All/2DC0A53CB22ADF38C22578E300362B51?OpenDocument>> (Cyprus), <http://www.nyidanmark.dk/en-us/coming_to_dk/familyreunification/spouses/pro_forma_marriages.htm> (Denmark), *Focussed Study: Estonia; Netherlands; Portugal; Spain; Sweden; UK; Germany* n. 59 above, (Aliens Act s36(2) (Finland), <<http://www.interieur.gouv.fr/Le-secretariat-general-a-l-immigration-et-a-l-integration-SGII/Immigration/L-immigration-familiale/Les-conjoints-de-Francais>> accessed prior to 04.11.13 (France), EMN *Greece*, <http://www.utl.is/index.php?option=com_content&view=article&id=11&Itemid=12&lang=en>; <http://www.utl.is/index.php?option=com_content&view=article&id=12&Itemid=13&lang=en> (Iceland), Legislative Decree no. 286/1998, Art 30(1-bis) (Italy), <<http://www.udi.no/Norwegian-Directorate-of-Immigration/Central-topics/Family-immigration/Dokumentasjon-som-ma-ligge-ved-en-soknad-om-a-fornye-oppholdstillatelse/>> (Norway), Act on Foreigners Art 55 (1) (Poland). All websites accessed 04 Nov 2013.

¹⁴¹ Common Language: Bulgaria, Denmark, Estonia, Finland, Germany, Lithuania, Netherlands, Poland, Portugal, Sweden. Met Before: Belgium, Germany, Latvia, Lithuania, Poland, Portugal, Sweden: <https://dofi.ibz.be/sites/dvzoe/FR/Guidedesprocedures/Pages/Le_partenariat_enregistre_conformement_a_une_loi.aspx> accessed 04.11.2013, *Focussed Study: Estonia* n. 59 above.

¹⁴² *Focussed Study: Netherlands* n. 59 above, General Administrative Regulations relating to the Foreigners Act, AVwVAufenthG 27(1)(a)(1)(1)(7)) (Germany).

¹⁴³ <http://www.nyidanmark.dk/en-us/coming_to_dk/familyreunification/spouses/pro_forma_marriages.htm> accessed 04 Nov 2013 (Denmark), *Focussed Study: Finland; Netherlands; Portugal; Slovakia* n. 59 above.

¹⁴⁴ *Focussed Study: Estonia* n. 59 above.

Article 5(2) of the Family Reunification Directive includes, as evidence of an unmarried relationship, factors such as a common child, previous cohabitation, registration of the partnership and any other reliable means of proof. Portugal, Italy and Spain refer to a common child as a factor when determining the relationship of a *married* couple, and Estonia uses previous cohabitation as a factor for *married* couples.¹⁴⁵ In fact, Portugal has provisions on every factor listed in Article 5(2).¹⁴⁶

Of states not bound by the Family Reunification Directive, Ireland and Norway are discussed above. The UK requires parties to show an intention to live together permanently in the UK and their relationship must be genuine and subsisting.¹⁴⁷ Icelandic regulations state that, where either party is under the age of 24, the relationship will be investigated as a possible marriage of convenience.¹⁴⁸ Denmark excludes marriages where the 'main' purpose of the marriage is to obtain a residence permit, using a list of factors similar to that in the Council Resolution.¹⁴⁹

There is thus a degree of similarity in many states, with convergence around the terminology used and factors identified either in the Council Resolution or the Family Reunification Directive which are often applied to those who are not governed by EU law. Convergence in this area is perhaps not surprising; there is a broadly similar cultural and social understanding of marriage which means that states are likely also to share their understanding of how a sham marriage looks (although that the failure of a wife to take her husband's name is regarded as suspicious in Estonia but not elsewhere suggests some variation). Given that sham marriages have been a concern in some states for many years, such provisions are likely to have a lengthy history in those national systems, providing the initial impetus for the EU measures. The converse is likely to be the case for newer member states and for those who do not have a long history of substantial immigration; they may have drawn inspiration from the example set at European level. Whatever the chain of causation, however, the result is a degree of resemblance in the regulation of sham marriages across the EEA.

Relationship breakdown

Some states provide that residence rights do not end if the migrant spouse or partner's relationship with their former sponsor terminates through death, divorce or other cause. Termination through death or domestic violence is generally treated more generously than termination for other reasons.

¹⁴⁵*Draft European Report* n. 112 above (Portugal), Legislative Decree no. 286/1998, Art 30(1-bis) (Italy), *Focussed Study: Spain* n. 59 above.

¹⁴⁶ Aliens Act 23/2007.

¹⁴⁷ Immigration Rules UKBA HC 395, para 281.

¹⁴⁸ <<http://eng.innanrikisraduneyti.is/laws-and-regulations/english/foreigners/nr/105>> accessed 04 Nov 2013.

¹⁴⁹ <http://www.nyidanmark.dk/en-us/coming_to_dk/familyreunification/spouses/pro_forma_marriages.htm>, accessed 04 Nov 2013.

The spouses of EU citizen sponsors – especially those who are also EU citizens – are given a strong degree of protection under Directive 2004/38 (arts 12 and 13). Protection under the Family Reunification Directive is much more limited with an obligation only in “particularly difficult circumstances” (art. 15(3)). The result is that both permanent resident and citizen sponsors are usually less well-protected under national laws than mobile EU citizens. Some countries make no provision (Belgium, Ireland, Finland) or only in limited circumstances such as domestic violence or bereavement, for example, the Netherlands, UK and France.¹⁵⁰ Cyprus and Bulgaria have no explicit marriage breakdown rules for citizen sponsors. Protection is more generous in Sweden.¹⁵¹ Greece has adopted rules for spouses of TCN and national sponsors and Spain for national sponsors that are visibly inspired by the EU Citizens’ Directive rules for TCN spouses.¹⁵² Portugal’s rules are almost identical for all three sponsor categories, although with slightly stronger rights for the spouses of both EU national and Portuguese sponsors.¹⁵³

Some Eastern European states (Estonia¹⁵⁴, Lithuania¹⁵⁵, Latvia¹⁵⁶, and Romania¹⁵⁷) treat the spouses of their national and TCN sponsors in the same or nearly the same way with provision only in exceptional cases or for a short time. Hungary¹⁵⁸, Malta¹⁵⁹ and to some extent Slovenia have the same marriage breakdown rules for the spouses of EU citizen and national sponsors which tend to be more favourable than for TCN sponsors. In Poland’s case, the rules for spouses of national and TCN sponsors are very permissive and the provisions related to EU citizen sponsors are less demanding less than those laid down in the EU Citizens’ Directive.¹⁶⁰

¹⁵⁰ *Comparative Study n. 65 above; Netherlands Country Report* ICMPD n. 62 above; Code de L’entrée et du Séjour des étrangers et du Droit d’asile – Consolidated Version 19 Aug 2013, Article L431-2; HC 395 Appendix FM (UK); *Ireland Country Report* ICMPD n. 62 above; Aliens Act (Finland), Art 161d and 161e for EU sponsors but no rules for national or TCN sponsors.

¹⁵¹ Aliens Act (Sweden), Chapter 5, Section 16 and 17a, and Chapter 7, Section 3.

¹⁵² <http://www.ypes.gr/el/Generalsecretariat_PopulationSC/general_directorate_migration/diefthinsi_meta_nasteftikis_politikhs/katigoriesadeiondiamonis/oik_epanenosi/>; *EMN Country Report Greece* n. 65 above; Royal Decree 240/2007, Art 9.1.; Royal Decree 240/2007, Additional 20th provision 1(a).

¹⁵³ Act 23/2007 of 4 July 2007, Article 107.4; Act 37/2006 of 9 August 2006, Art 8.1.

¹⁵⁴ Aliens Act, § 149; Citizen of European Union Act, Art 11(3); *EMN Country Report Estonia* n. 65 above.

¹⁵⁵ Law on the Legal Status of Aliens, Art 35., 43.1. 8) and 50.1. 4); Law on the Legal Status of Aliens, Art 101.1.

¹⁵⁶ Immigration Law, Section 23 (1), 25 (2), 26 (2) and 28; Regulation 586/2006, Section 32.

¹⁵⁷ Aliens’ Act, Art 64 (1) a)-b); Emergency Ordinance no. 102/2005 on the free movement of citizens of the European Union Member States and the European Economic Area, Art 18, 21.

¹⁵⁸ Act 1 of 2007, Art 10-11; Act 2 of 2007, Art 19(7), 37(1)(b).

¹⁵⁹ S.L. 217.06, Art 16(1), 17, 18B; S.L. 460.17, Art 5-6; *Focussed Study: Malta* n. 59 above.

¹⁶⁰ Act on Aliens of 13 June 2003, Art 53. 1. (10)-(11); Act of 14 July 2006 on the entry into, residence in and exit from the Republic of Poland of nationals of the European Union Member States and their family members, Art 19.

This is a complex area in which discretionary provision may not be evident in the formal law. There is not much consistency in provision although, in general, Southern and Eastern Europe are more generous.

Concluding Discussion

The survey discussed in the previous section is a snapshot and does not fully consider the direction of regulation or growing political pressures in some member states, for example, Greece or Finland. It also cannot adequately reflect administrative hurdles and delays reported, for example, in France and elsewhere.¹⁶¹ Nonetheless, and subject to these caveats, several observations may be made. The first is that the most controversial aspects of the control of spousal migration i.e. integration, income, fees and, to a lesser extent, age, are substantial hurdles only in Western and, to a lesser extent, Northern Europe and Northern. Rigorous criteria do not apply in Southern or Eastern Europe or in Northern Europe except in Denmark and, in respect of income, Norway. Care is thus needed in generalising about the position in Europe; often it is the position in just a few states which is under discussion, in effect, Western or Northern European states which have experienced significant non-European immigration (although that is not the only explanatory factor as countries such as Sweden also have substantial numbers of immigrants). Other states outside this group place fewer obstacles in the path of aspiring migrants and citizens while some seem to invite them with very low or no fees and few other hurdles.

Another observation is that, while there are many differences between states, these are mainly in degree rather than in kind. States may require varying levels of income and standards of accommodation and knowledge of language and of society, to the point where the hurdle may hold very different significance, but there very few examples of regulation based on a totally different model. Exceptions include the quota system in Austria, which is accommodated by a standstill clause in the Family Reunification Directive, the bond required by the Danish government and the points system also formerly operated by the Danish government. To be sure there may be significant differences between the implementation of criteria that appear superficially similar; for example, the operation of the pre-entry test is very different in all the countries in which it exists.¹⁶² Nonetheless, they are all based on the same broad solution to a perceived problem. One may therefore speak of a 'family resemblance' in the control of marriage migration within the EU. This

¹⁶¹ CIMADE (2008) *Peu de meilleur et trop de pire : Soupçonnés, humiliés, réprimés – des couples mixtes témoignent* (April 2008) ; CIMADE (2008a) *Devant la loi: Enquête sur les conditions d'accueil des étrangers dans les préfectures, l'information du public et l'instruction des dossiers* (May 2008) ; CIMADE (2010) *Visa Refusé : Enquête sur les pratiques des consulats de France en matière de délivrance des visas* (July 2010);

¹⁶² Groenendijk, C.A. (2011) 'Pre-departure Integration Strategies in the European Union. Integration or Immigration Policies?' *European Journal of Migration and Law*, 13(1), 1-30.

appears to be connected to the Europeanisation of immigration policy. European regulation, in the form of the Family Reunification Directive, did not start from a clean slate but was based on what states already had in place and what they were prepared to agree. A degree of congruence between the Directive and state practice is therefore unsurprising. However, the Directive appears to have further promoted the family resemblance between states in several ways.

States bound by the Family Reunification Directive that wish to implement new controls can now only do so within the framework of what is already permitted so that, for example, elevated income requirements of the sort implemented in the UK or a minimum age of 24 as in Denmark are no longer possible. Of course, states which wish to limit migration will push the permitted exceptions as far as they can, as the Netherlands have done with their pre-entry tests. However, these may now be challenged not only in the Strasbourg court but, even if that has not yet happened, in the Court of Justice where the margin of appreciation is likely to be more limited. And they will still be the same type of control; a state that wished to introduce, for example, quotas could no longer do so even though Austria has been permitted to retain them (with a maximum delay of three years).

While the Family Reunification Directive binds states only in respect of third country national sponsors, it also provides a *de facto* floor of rights for citizen sponsors. No instance was found where citizen sponsors were treated less favourably than permanent resident sponsors, although the position may not be the same if migrants with more limited visas are considered; the UK, for example, applies less onerous conditions to some skilled migrants. Discrimination against citizens may not have been anticipated when the Directive was negotiated as, at the time, it represented such a minimal floor. However, since then, states have wished to restrict their policies further but could not do so in respect of TCNs and have not elected to proceed only in respect of citizens.

The political difficulties of treating citizen sponsors less favourably than permanent residents on such an issue are evident; indeed the converse is more usually the case. Such distinctions might also be difficult to justify legally given the ever closer relationship between ECHR and EU law; if, as the Court of Justice observed in *Parliament v Council*, the Directive embodies article 8 principles then measures that discriminate against citizens are vulnerable to unfavourable findings under articles 8 and 14 ECHR. After all, citizenship is a factor which should strengthen rather than weaken an article 8 claim. In practice, it is difficult to envisage any state, whether or not bound by the Directive, discriminating between citizens and permanent residents in such a crude way and elements of the Family Reunification Directive seem to be present in the laws governing sponsorship by citizens in many cases. This is particularly marked in Eastern European states where accession coincided with negotiations for the Directive and, sometimes, the first rules for family reunification.

The Citizens Directive however has not had the same impact. Reverse discrimination under that Directive is a well-observed phenomenon.¹⁶³ The Citizens Directive is not immigration legislation even if it is sometimes treated as such. The distinctions it creates are directly connected to the privileges it confers and, given its expansive nature, states have more at stake in maintaining a conceptual boundary between the two regimes. Nonetheless, the Citizens Directive has had an effect on the laws in a few member states. As this article has shown, citizen sponsors and, occasionally, all sponsors are sometimes assimilated in national law to the position of EEA nationals under the Directive.

There is finally a more elusive cause of the family resemblance in regulation within Europe which is the shared understanding and practice between states. As this article has already discussed, states not only confer with each other but use the example set by other states as a way to legitimise national policies. In this way, states are increasingly likely to choose policies which resemble those of their neighbours. The shared legal constraints on states bound by the Family Reunification Directive will make this a particularly strong pull. It is also observable although to a more limited extent in states outside the Directive but which are still bound by the general law of the EU and ECHR. When introducing its pre-entry English language test, the UK government referred to the implementation of tests in other EU states in its consultation document. In declining to find the UK test incompatible with article 8, the Court of Appeal noted that “at least some of our European neighbours have introduced pre-entry language test requirements with the aim of improving integration and that no Court has found the relevant provisions to be inherently inimical to Article 8”.¹⁶⁴ But while the ECHR is partially incorporated into the UK law, EU law is not itself a constraint in this context. In finding that the UK’s elevated income requirement was disproportionate under article 8 ECHR, Mr Justice Blake noted that, references in CJEU judgments to article 8 notwithstanding, European Union law, including the Charter of Fundamental Rights, were not relevant to the case.¹⁶⁵ However, while article 8 provided the only substantive legal resource in resisting the income requirement, awareness of the contrast with the position in other states (bound by the Directive) and the privileged position of EEA nationals living in the UK has made a powerful contribution to the political pressure on government.¹⁶⁶ It is arguable here that Europeanisation has seeped from both legal and governmental discourses into the wider political consciousness. In this field and in part at least, what is imaginable and what is acceptable is now connected to what is European.

¹⁶³Walter see n. 56 above.

¹⁶⁴ Kay LJ in *R (Bibi and another v SSHD)* [2013] EWCA Civ 322 [34].

¹⁶⁵*R (MM and others) v SSHD* [2013] EWHC 1900 Admin [36].

¹⁶⁶ All-Party Parliamentary Group on Migration (2013) *Report of the Inquiry into New Family Migration Rules* (June 2013); see also <http://britcits.blogspot.co.uk/2013/08/surinder-singh-for-newbies-httpwww.html>.