



Family Reunification of TCNs in the EU: National Practices

HUNGARY

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EMN FOCUSED STUDY 2016

Family Reunification of TCNs in the EU: National Practices

Top-line "Factsheet" (National Contribution) [maximum 1 page]

Overview of the National Contribution – introducing the Study and drawing out key facts and figures from across all sections of the National Contribution, with a particular emphasis on elements that will be of relevance to (national) policymakers.

Please also provide a concise summary of the main findings of Sections 1-6 below, for example:

- *Evolution of the phenomenon of family reunification in your (Member) State over time and latest figures;*
- *Key changes to policy and/ or practice on family reunification in recent years (i.e. since 2011)¹ or being planned currently – including EU or national-level factors driving changes to policy and/ or practice, for example, the increased number of TCNs seeking asylum in the EU, the European Agenda on Migration,² and/ or relevant EU and/ or national case law, etc.;*
- *Whether policy and/ or practice on family reunification in your (Member) State has become more or less restrictive over time;*
- *Any challenges as well as good practices in the field;*
- *Any suggestions for EU level action(s) in family reunification that might be useful for your (Member) State.*

In Hungary Act II of 2007 on the admission and right of residence of third-country nationals (hereinafter referred to as Act II of 2007) and Implementing Government Decree No. 114/2007. (V. 24.) implement the Family Reunification Directive. In general, it can be stated that Hungarian legislation already contains more favourable provisions when implementing the Directive the inclusion of which under the Directive is supported by Hungary. Furthermore Hungarian legislation on migration provides the right of free movement not only to family members of the Union citizen but also to the third-country national family members of the Hungarian nationals in order to avoid reverse discrimination.

Hungarian implementing legislation provides for the possibility of family reunification with respect to all types of purpose of stay provided that the family member has obtained at least a residence permit or being granted a residence permit together with the sponsor. Basic requirements under national law regarding family reunification are the following: verification of the purpose of stay (in case of family reunification verification of the family

¹ The proposed reference period of the Study is 2011 onwards with some flexibility if (Member) States believe there to be a significant change to law, policy and/ or practice outside this period.

² Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions A European Agenda on Migration, available at http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/index_en.htm

link), proving sufficient resources and accommodation. In case the previously mentioned requirements are met and the family member holds a valid travel document, there is no public policy, public security and public health ground for refusal, the family member can obtain a residence permit or, with a view to maintain family unity, can apply for residence permit for the purpose of family reunification when issuing the first residence permit to the sponsor, thus without having to meet any integration requirement or requiring any previous stay in the territory of Hungary from the sponsor. The case law of the national courts also helped shaping the practical implementation of the rules on family reunification.

It should also be noted that the preferential rules applicable for the family reunification to refugees also apply to beneficiaries of subsidiary protection with only one exception as the grace period of three months does not extend to the family reunification of beneficiaries of subsidiary protection. This grace period, within which preferential rules apply after the recognition of refugee status of the sponsor was reduced from six months to three months in 2016 as a result of the recent migration tendencies.

Challenges have especially been encountered in case of family reunification of refugees and beneficiaries of protection. In this regard especially the following legal and practical requirements have been pointed out as challenges and obstacles: possessing a valid travel document, verification of family relations, getting to the consular office when the application can be submitted by the family member. Nevertheless, there are practical initiatives to overcome the obstacles the family members of refugees and beneficiaries of international protection might face.

[Executive Summary \(Synthesis Report\) \[maximum 3 pages\]](#)

Executive Summary of [Synthesis Report](#): this will form the basis of an EMN Inform, which will have EU and national policymakers as its main target audience.

[Section 1: Overview of the situation on family reunification \[maximum 2 pages\]](#)

This section of the Synthesis Report will provide an up-to-date overview of the national situation with regard to family reunification of TCNs, including figures on the scale of family reunification, e.g. number of residence permits issued on grounds of family reunification, number of unaccompanied minors (UAMs) reunited with family in (Member) States, etc. The section sets out the context for the Study by providing information on the approaches of (Member) States to family reunification, as well as recent (since 2011) changes to law, policy and/ or practice. The section will be drafted on the basis of data available from Eurostat or other relevant sources and complemented by national data provided by EMN NCPs.

Q1. Please briefly describe the basis for developing legislation/ policy on family reunification in your (Member) State (e.g. Directive 2003/86/EC, Art. 8, ECHR on the right to respect private and family life, etc.). **(If your (Member) State distinguishes between family formation and family reunification, please provide further information here and if applicable, make such a distinction in the subsequent questions).**

In Hungary Act II of 2007 on the admission and right of residence of third-country nationals (hereinafter referred to as Act II of 2007) and Implementing Government Decree No. 114/2007. (V. 24.) implement the Family Reunification Directive. In general, it can be stated

that Hungarian legislation already contains more favourable provisions when implementing the Directive the inclusion of which under the Directive is supported by Hungary. Furthermore Hungarian legislation on migration provides the right of free movement not only to family members of the Union citizen but also to the third-country national family members of the Hungarian nationals in order to avoid reverse discrimination.

Hungarian implementing legislation provides for the possibility of family reunification with respect to all types of purpose of stay provided that the family member has obtained at least a residence permit or being granted a residence permit together with the sponsor. Basic requirements under national law regarding family reunification are the following: verification of the purpose of stay (in case of family reunification verification of the family link), proving sufficient resources and accommodation. In case the previously mentioned requirements are met and the family member holds a valid travel document, there is no public policy, public security and public health ground for refusal, the family member can obtain a residence permit or, with a view to maintain family unity, can apply for residence permit for the purpose of family reunification when issuing the first residence permit to the sponsor, thus without having to meet any integration requirement or requiring any previous stay in the territory of Hungary from the sponsor.

It should also be noted that the preferential rules applicable for the family reunification to refugees also apply to beneficiaries of subsidiary protection with only one exception as the grace period of three months does not extend to the family reunification of beneficiaries of subsidiary protection.

Q2. Please provide an overview of **recent (since 2011) changes to law, policy and/ or practice** in the field of family reunification in your (Member) State, covering the following:

- Current public debate on family reunification in your (Member) State (e.g. on requirements for exercising the right to family reunification or other issues);
- Whether family reunification is a national policy *priority* currently;
- Any *planned* changes to law, policy and/ or practice on family reunification;
- Any changes to policy and/ or practice as a result of the Commission Communication COM(2014)2010's guidance for application of Directive 2003/86/EC? If no, please specify why not;
- If your (Member) State has introduced a private sponsorship programme, which requires the beneficiary to be a family member of the sponsor. If yes, briefly elaborate in what ways the requirements, eligibility and access to rights differ.

Please support your answers by providing qualitative evidence, e.g. from (media) reports, political debate, etc. (*Quantitative evidence is requested in the subsequent question so should not be covered here*).

The notion of family is especially important in Hungary and therefore family reunification is supported. As for what constitutes a family there has been a major change in 2009 when the legal notion of registered partnership was created resulting in a status equal to a spouse.

As regards immigration rules on family reunification, no major changes have been made as no major abuses have been detected in this field even though Hungary does not set out difficult obstacles to gain residence permit as a family member. Consequently, applying the general admission criteria regarding sufficient resources, accommodation and health insurance provide to be efficient in managing this legal migration channel, and no measures on waiting period, age limit or integration requirements needed to be introduced.

Nevertheless, one restriction recently introduced needs to be mentioned as the grace period

applicable for the family reunification of refugees was reduced from 6 months to 3 months in 2016 as a result of the recent migration tendencies.

It should also be noted that the case law of the national courts helped shaping the practical implementation of the rules on family reunification. Furthermore, the recent challenges are more attached to the practical obstacle of family members of refugees and beneficiaries of subsidiary protection, which may rather require practical instead of legal solutions.

3. a. Please complete the Excel document in Annex 1 below (including data, as well as metadata) if you have national statistics on:

- The total number of applications for family reunification in 2011-2015 and, where available, the first half of 2016, disaggregated by the ground of residence of the sponsor (beneficiaries of international protection (i.e. refugees, BSPs, UAMs), persons admitted for remunerated activities, persons admitted for study purposes, etc.) and sex;
- The total number of accepted/ rejected applications for family reunification in 2011-2015, and where available, the first half of 2016, if available disaggregated by the grounds for rejection of applications.

Please do not here include the Eurostat data mentioned above in Section 7 above, as this information is available publically and can therefore be analysed centrally for the Synthesis Report.

b. Please supplement the data provided above with a narrative on the profiles of TCNs residing in your (Member) State and asking for family reunification, i.e. are the sponsors mostly beneficiaries of international protection and/ or other TCNs, e.g. workers, students, etc.?

No such disaggregation of data can be provided.

Section 2: Definition of sponsor and family members [maximum 5 pages]

*This section of the Synthesis Report will aim to provide information on the understanding of family members entitled to family reunification across the (Member) States. The definition of family members is prescribed in Art. 4 in Chapter II of Directive 2003/86/EC. The section will also aim to clarify who is eligible to be a sponsor to an application for family reunification (Art. 3 in Chapter I of Directive 2003/86/ EC). **If applicable, please distinguish to what extent any of the provisions apply to certain/ all groups of migrants (see Figure 1 above) applying for family reunification in your (Member) State depending on the grounds of residence of the sponsor (e.g. refugee, BSP, worker, student, etc.). If the provisions vary across different groups of migrants, please describe the variations.***

Q4. a. Who can be a **sponsor**³ to an application for family reunification in your (Member) State (e.g. UAMs, students, workers, etc.)?

A residence permit for the purpose of family reunification may be issued to a third-country national:

- who is a family member⁴ of a third-country national who has a residence permit, immigration permit, permanent residence permit, interim permanent residence permit, a

³ Art. 2 and 3 in Chapter I of 2003/86/EC define who can be a **sponsor** to an application for family reunification in the EU.

⁴ The definition of **family member** set out by Section 2 d) of Act II of 2007:

- the spouse of a third-country national;

national or EC permanent residence permit, or a residence card or permanent residence card provided for in Act I of 2007 on the Admission and Residence of Persons with the Right of Free Movement and Residence (hereinafter referred to as "sponsor");

- who is a family member of a person with refugee status or who has been granted subsidiary protection status;
- who is the parent of an unaccompanied minor with refugee or subsidiary protection status, or the minor's legally appointed guardian;
- who is a the dependent parent of a person with refugee or subsidiary protection status or of his/her spouse;
- who is the sibling or relative in direct line of a person with refugee or subsidiary protection status, if they are unable to provide for themselves due to health reasons.

b. Does the national law of your (Member) State allow **beneficiaries of subsidiary protection (BSPs)**⁵ to apply for family reunification? Y/ N

If yes, please elaborate below. If no application procedure is made available to BSPs, how does your (Member) State ensure that the right to family life (Art. 8, ECHR) of BSPs is respected?

Yes, the right to family reunification is extended implicitly to beneficiaries of subsidiary protection as Section 17(1) of Act LXXX of 2007 on asylum sets out that, with certain exceptions, unless an act or government regulation expressly provides otherwise beneficiaries of subsidiary protection are entitled to the rights and obligations of those of refugees.

Consequently, a residence permit for the purpose of family reunification may be issued to a third-country national:

- who is a family member of beneficiary of subsidiary protection;
- who is the parent of an unaccompanied minor with subsidiary protection status, or the minor's legally appointed guardian;
- who is a the dependent parent of a person with refugee or subsidiary protection status or of his/her spouse;
- who is the sibling or relative in direct line of a person with refugee or subsidiary protection status or of his/her spouse, if the sibling or relative is unable to provide for themselves due to health reasons.

Q5. Does your (Member) State extend the **scope of family reunification** beyond nuclear/ core members of the family,⁶ i.e. parents, adult children, non-married partners, etc.? Y/ N

-
- the minor child (including adopted and foster children) of a third-country national with his/her spouse;
 - the minor child, including adopted and foster children, of a third-country national where this third-country national has parental custody and the children are dependent on him/her;
 - the minor child, including adopted and foster children, of the spouse of a third-country national where the spouse has parental custody and the children are dependent on him/her.

⁵ Currently, BSPs are not covered by Directive 2003/86/EC.

⁶ Art. 4 in Chapter II of Directive 2003/86/EC stipulates that (Member) States shall authorise the entry and residence of certain **family members**, including the sponsor's spouse and minor (including adopted) children of the sponsor and/ or his/ her spouse.

If yes, does your (Member) State extend the scope of family reunification to the following family members:

- Parents? Y/ N

Yes, but only to the parent of an unaccompanied minor with refugee or subsidiary protection status, or the minor's legally appointed guardian, and the dependent parent of a person with refugee or subsidiary protection status.

- Adult children? Y/ N

Yes, but only to the relative in direct line of a person with refugee or subsidiary protection status or of his/her spouse, if the relative is unable to provide for themselves due to health reasons.

- Same-sex partners who are married? Y/ N

Yes, although such marriage may only be concluded outside of Hungary, as Hungarian family law does not make it possible for same-sex partners to enter into a marriage. Nevertheless, based on international law the validity of a marriage needs to be evaluated according to the laws applicable at the time and place of the marriage. Therefore, if same-sex partners were allowed to get married lawfully under the law of another country, the marriage shall be considered valid and such same same-sex married partners shall be regarded as spouses falling under the definition of family member set out in Section 2 d) of Act II of 2007. (See footnote 36.)

- Same-sex partners who are registered? Y/ N

Yes, but only in case this registration is equivalent to a marriage. In Hungary Act XXIX of 2009 on registered partnership, and on the amendment of legal acts relating thereto and needed for the facilitation of the justification of the partnership sets out the rules on registered partnership. Its Section 3(1) a) states that unless this Act provides otherwise, the rules applicable for spouses shall apply mutatis mutandis to partners registered according to this Act.

In other cases, although residence permit cannot be issued for the purpose of family reunification, the Hungarian law allows the issuance of residence permits for "other" reason, which may include the issuance of a residence permit for a non-married partner in case all the admission criteria are fulfilled.

- Non-married partners? Y/ N

No, but although residence permit cannot be issued for the purpose of family reunification, the Hungarian law allows the issuance of residence permits for "other" reason, which may include the issuance of a residence permit for a non-married partner in case all the admission criteria are fulfilled.

- 'Dependent' persons, i.e. persons receiving legal, financial, emotional or material support by the sponsor or by his/ her spouse/ partner (other than those mentioned above⁷)? Y/ N

If yes, please specify how the concept of dependency⁸ is defined in the relevant provisions/ practice.

Yes, but only the sibling of a person with refugee or subsidiary protection status or of his/her spouse, if the sibling is unable to provide for themselves due to health reasons.

- Other (please specify, e.g. foster children, applicants in polygamous and/ or proxy marriages, etc.)? Y/ N

If yes, please elaborate on each of the categories mentioned above.

No, but although residence permit cannot be issued for the purpose of family reunification, the Hungarian law allows the issuance of residence permits for "other" reason, which may include the issuance of a residence permit for a non-married partner in case all the admission criteria are fulfilled.

Please, also note the following:

- minor foster children are considered family members according to Section 2 d) of Act II of 2007 (See footnote 36.);
- proxy marriages are considered valid if such marriages could be concluded validly according to the law applicable at the place and time of the conclusion of the marriage.

The spouse of the sponsor cannot gain a residence permit if the other spouse of the sponsor already has a residence permit for the purpose of family reunification, therefore the Hungarian law does not provide for the family reunification with more than one spouse in case of a polygamous marriage.

Section 3: Requirements for exercising the right to family reunification [maximum 5-10 pages]

*This section of the Synthesis Report will report on the requirements for exercising the right to family reunification (referred to in Art. 6-8 in Chapter IV of Directive 2003/EC/86). **If applicable, please distinguish to what extent any of the provisions apply to certain/ all groups of migrants applying for family reunification in your (Member) State depending on the grounds of residence of the sponsor (e.g. refugee, BSP, worker,***

⁷ I.e. other than those referred to in Art. 4 of Directive 2003/86/EC.

⁸ According to UNHCR, dependent persons should be understood as persons who depend for their existence substantially and directly on any other person, in particular because of economic reasons, but also taking emotional dependency into consideration. Dependency should be assumed when a person is under the age of 18, and when that person relies on others for financial support. Dependency should also be recognised if a person is disabled not capable of supporting him/ herself. The dependency principle considers that, in most circumstances, the family unit is composed of more than the customary notion of a nuclear family (husband, wife and minor children). This principle recognises that familial relationships are sometimes broader than blood lineage, and that in many societies extended family members such as parents, brothers and sisters, adult children, grandparents, uncles, aunts, nieces and nephews, etc., are financially and emotionally tied to the principal breadwinner or head of the family unit. Further information is available at: <http://www.unhcr.org/3b30baa04.pdf>, as well as in the Communication from the Commission to the European Parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification mentioned in Section 1 in the first part of this document.

student, etc.). If the provisions vary across different groups of migrants, please describe the variations.

Q6. Does your (Member) State (plan to) impose the following **requirements**⁹ for exercising the right to family reunification (please also indicate if exemptions can be made in individual cases based on e.g. hardship clauses):

- Accommodation suitable for the size of the family, as well as meeting health and safety standards?
Y/ N

Yes, the general requirement of having appropriate accommodation in Hungary applies in case of family reunification as well, as set out in Section 13(1) e) in Act II of 2007.

The applicant family member must be the owner of or entitled to use a property shown in the real estate register as a residential building or detached house, or any similar property suitable for habitation, furthermore the accommodation shall have minimum 6 square meters of living space per person.¹⁰ Nevertheless, the immigration authority may find the accommodation appropriate under exceptional conditions of equity even if this latter condition is not fulfilled.¹¹

Compliance with the requirement of accommodation in Hungary may be verified:¹²

- by a document in proof of ownership of a home, in the form of abstract of title issued within 30 days to date;
- by a residential lease contract in proof of the rental of a residence;
- by a valid letter of invitation with an official certificate affixed;
- documentary evidence to verify the reservation and payment of accommodation;
- by a notarised statement made by a family member with the right of residence in Hungary as holding a long-term visa or residence permit, with immigrant or permanent resident status, holding a residence card or a permanent residence card in accordance with specific other legislation, or with refugee status, promising a place of abode to the applicant; or
- in other credible ways.

- Healthcare insurance? Y/ N

Yes, the general requirement of having full health insurance or sufficient financial resources for health care in Hungary applies in case of family reunification as well, as set out in Section 13(1) g) in Act II of 2007.

This condition is fulfilled by third-country nationals who have any of the following conditions in the territory of Hungary for the entire duration of stay:

- a) based on the specific law on social security benefits

⁹ Art. 7(1) of Directive 2003/86/EC stipulates that Member States may require the person who has submitted the application to provide evidence that the sponsor has: accommodation suitable for the size of the family, as well as meeting health and safety standards; sickness insurance; and sufficient resources to provide for himself/ herself and his/ her family.

¹⁰ Section 29(3) of Government Decree 114/2007

¹¹ Section 29(3a) of Government Decree 114/2007

¹² Section 29(4) of Government Decree 114/2007

aa) is insured or

ab) is eligible to receive health insurance services based a separate agreement, or the financing of services is provided under the same conditions as for Hungarian insured persons on the basis of an international treaty or agreement, or

ac) is eligible for healthcare services;

b) is, in the same way as persons falling within the scope of the specific Act, entitled to health services, based on business accident or health insurance not belonging to social security;

c) is entitled to services based on an international treaty or agreement under the same conditions as insured Hungarians;

d) based on the documents proving sufficient resources he/she is able to cover the costs of such health care services.¹³

- Sufficient financial resources to provide for the sponsor and his/ her family? Y/ N

Yes, the general requirement of having sufficient resources to cover his/her subsistence and accommodation for the complete period of stay as well as the costs of return travel applies in case of family reunification as well, as set out in Section 13(1) f) in Act II of 2007.

A third-country national is considered to have sufficient resources to cover his/her subsistence for a stay exceeding ninety days within a one hundred and eighty day period if his/her lawful income or assets or his/her family member's lawful income or assets are sufficient to cover their living expenses, costs of accommodation, return travel, and if necessary, healthcare.¹⁴

The requirement of subsistence may, in particular, be verified by:

- Hungarian currency or foreign currency convertible in Hungary bank;
- document entitling the third-country national to receive cash from a Hungarian payment service provider (payment account contract, deposit books, etc.) and document attesting the availability of cash collateral at the bank;
- evidence of non-cash means of payment (check, credit card, etc.) accepted in Hungary and document attesting the availability of cash collateral;
- a valid letter of invitation with official consent;
- document confirming reserved and paid board and lodging;
- a public document or private document with full probative force proving the existence of assets;
- document certifying income from present or future lawful employment in Hungary;
- document certifying regular income from abroad;
- if the third-country national's residence in Hungary is financed by his/her family member possessing residence permit, long-term residence permit or residence card or permanent

¹³ Section 29(7) of Government Decree 114/2007

¹⁴ Section 29(5) of Government Decree 114/2007

residence card in Hungary, the family relationship is to be verified, together with documentary evidence in proof of such family member's ability to provide support;
- in any other credible way.

Q7. a. Does the national law of your (Member) State require TCNs to comply with any **integration measures** before and/ or after admission?¹⁵ Y/ N

If yes, are TCNs required to comply with the following integration measures:

- Civic integration exams? Y/ N

If yes, please specify:

- When the civic integration exam(s) takes place (i.e. before admission, after admission, before and after admission):

No. It is only required in case of applying for Hungarian citizenship when, according to the main rule, the applicant shall pass an examination in basic constitutional studies in Hungarian language.

- What knowledge and skills are required from applicants in order to pass the exam(s):

N.a.

- If any support is provided to them during preparation (e.g. preparatory classes):

N.a.

- If/ What costs are incurred by applicants:

N.a.

- Language tests? Y/ N

If yes, please specify:

- When the language test(s) takes place (i.e. before admission, after admission, before and after admission):

No. Hungarian language knowledge is not even required for gaining long-term residence status in Hungary. It is only required in case of applying for Hungarian citizenship when, according to the main rule, the applicant shall pass an examination in basic constitutional studies in Hungarian language.

- What knowledge and skills are required from applicants in order to pass the test(s):

N.a.

- If any support is provided to them during preparation (e.g. preparatory classes):

¹⁵ Art. 7(2) of Directive 2003/86/EC stipulates that Member States may require TCNs to comply with integration measures, in accordance with national law.

N.a.

- If/ What costs are incurred by applicants:

N.a.

- Other integration measures (please specify)? Y/ N

If yes, please specify what these measures entail and when they takes place:

No.

- If the national law of your (Member) State does not currently require TCNs to comply with any of the above measures – any planned changes? Y/ N

If yes, please provide further information below:

No.

b. Please specify if any negative consequences (e.g. refusal to issue a permit or withdrawal of the existing permit) are foreseen for family members not complying with the above-mentioned integration measures – both according to law, as well as how this is applied in practice.

N.a.

Q8. Does your (Member) State set a **waiting period**¹⁶ before a sponsor's family members can reunite with him/ her? Y/ N

If yes, how long is the waiting period? Can an application be submitted before the period has expired? Are there any exemptions granted in individual cases?

No, the sponsor and the family members can submit their application for their first residence permit at the same time.

Q9. Does the national law of your (Member) State provide for a **rejection of an application** for entry and residence of family members on grounds of public policy, public security or public health?¹⁷ Y/ N

If yes, please provide data (if available) on the number of times your (Member) State has invoked this provision(s) since 2011.

Yes. Unfortunately no data are available disaggregated by the grounds of rejection.

Q10. a. In addition to any information you have already provided above, does your (Member) State apply the following provisions concerning the **more favourable family reunification rules for refugees**:¹⁸

¹⁶ Art. 8 of Directive 2003/86/EC stipulates that Member States may require the sponsor to have stayed lawfully on the territory for a period not exceeding two years (or three years by derogation in specific circumstances) before having his/ her family members join him/ her.

¹⁷ Art. 6 of Directive 2003/86/EC stipulates that Member States may reject an application for entry and residence of family members on grounds of public policy, public security or public health.

¹⁸ Art. 9-12 in Chapter V of Directive 2003/86/EC set out more favourable conditions for family reunification of refugees.

- Application and possible extension of the grace period of (minimum) three months before the requirements for exercising the right to family reunification apply?¹⁹ Y/ N

If yes, is this grace period of (minimum) three months extended and if so, for how long?²⁰ Y/ N For how long?

Yes, Hungary presently applies the minimum grace period of three months after the recognition of refugee status.²¹ Such grace period is not applied in the case of family reunification of beneficiaries of subsidiary protection.²²

- Restriction to relationships established before entry into the (Member) State?²³ Y/ N

If yes, please specify:

Yes, the spouse of a person with refugee or subsidiary protection status may be issued a residence permit for the purpose of family reunification if their marriage was contracted before the entry of the person with refugee or subsidiary protection status into the territory of Hungary.²⁴

- Application of a wider definition of family members (going beyond parents) when it comes to UAMs?²⁵ Y/ N

If yes, please specify:

No, in case of unaccompanied minors it is expressly the parent or the legally appointed guardian considered specifically as family members, nevertheless the wider definition of family member in case of refugees and beneficiaries of subsidiary protection also apply in the case of unaccompanied minors.

- Have any of these family reunification rules for refugees been changed recently?? Y/ N

If yes, please provide further information on these changes below:

Yes, the grace period has been reduced from 6 months to 3 months in 2016 as a result of the latest migration tendencies.

b. If applicable, does your (Member) State apply **similar rules for the family reunification of BSPs** as refugees, i.e. in relation to eligible family members, waiting period and requirements for family reunification? Y/ N

If yes, please cross-refer to the information you have provided previously on the more favourable rules applicable to refugees, stating that similar rules apply to BSPs.

If no, please explain how the rules differ for BSPs referring to the different topics covered previously (e.g. eligible family members, waiting period and requirements for family reunification).

¹⁹ Art. 7(1) of Directive 2003/86/EC.

²⁰ Art. 7(1) of Directive 2003/86/EC.

²¹ Section 57(6) of Government Decree 114/2007

²² Section 57(7) of Government Decree 114/2007

²³ Art. 9(2) of Directive 2003/86/EC.

²⁴ Section 19(5) of Act II of 2007.

²⁵ Art. 10(3)(b) of Directive 2003/86/EC.

Yes, the provisions applicable to refugees shall equally apply to beneficiaries of subsidiary protection, as Section 17(1) of Act LXXX of 2007 on asylum sets out that, with certain exceptions, unless an act or government regulation expressly provides otherwise beneficiaries of subsidiary protection are entitled to the rights and obligations of those of refugees.

Nevertheless, as it is expressly stated in Government Decree 114/2007,²⁶ the grace period does not apply to the family reunification of beneficiaries if subsidiary protection.

Q11. Are there any differences in the requirements to be met for exercising the right to family reunification (under Directive 2003/86/EC or national law in some cases) in comparison to a similar request governed by national law by a **(Member) State national who has not exercised his/ her free movement rights** (non-mobile EU nationals)? Overall, to what extent are these requirements for exercising the right to family reunification under national law more or less favourable than those covered by Directive 2003/86/EC?

Yes, there are major differences as Hungary extends the right of free movement also to third-country national family members of Hungarian nationals in order to avoid situation of reverse discrimination of family reunification of Hungarian nationals compared to the family reunification of EU citizens. It is therefore Act I of 2007 on the entry and stay of persons with the right to free movement and residence applicable in case of the third-country national family members of Hungarian nationals.

Consequently, it is primarily the rules of Directive 2004/38/EC that also applied in case of the family reunification of Hungarian nationals, resulting in a much preferential situation than in case of those covered by Directive 2003/86/EC. In particular, the definition of family member is set out in a much broader sense, and the conditions of stay are also more preferential, furthermore the third-country national family members establish permanent residence in Hungary and full equal treatment (with minimum restrictions) apply to them, including no requirement of employment authorisation for entering the Hungarian labour market.

Q12. a. Please indicate any **challenges** experienced by i) sponsors and/ or family members associated with accessing the right to family reunification, and/ or ii) your (Member) State in the implementation of any of the above requirements for family reunification (e.g. based on existing studies/ evaluations/ other sources or information received from relevant authorities and stakeholders) and how these can be overcome.

The case of Somali citizens have received much attention as after gaining subsidiary protection status in Hungary they were unable to reunite with their family member primarily because of lack of valid travel documents. Even the constitutional review of Annex 1 of Government Decree 328/2007. (XII. 11.), setting out the travel documents not recognised by Hungary, was initiated as it was claimed that this list may discriminate according to nationality and is contrary to the right to family unity. The Constitutional Court of Hungary examined the legislation and ruled in its Decision No. 766/B/2009 that only 'indirect and distant' relationship can be shown between the list of travel documents considered non-recognised and the constitutional protection of family and marriage. Consequently, Annex 1 in itself cannot be considered as a legal norm establishing the content or essential guarantees or direct and significant restriction of a fundamental right.

²⁶ Section 57(7) of Government Decree 114/2007

b. Please provide any examples of proven (e.g. through studies/ evaluations) **good practices** that might help to overcome the above-mentioned challenges or otherwise. Please specify the source (e.g. based on existing studies/ evaluations/ other sources or information received from relevant authorities and stakeholders).

The Curia in its decision Kfv. II.37.374/2011/8 ruled that the rules on the so-called application for excuse can be used in case of counting the grace period applicable in the case of family reunification of refugees. Consequently, missing the presently three-month-long period can be excused in accordance with Hungarian national law (after a maximum of six months of the missed deadline) by the applicant by stating the reasons of delay and as a result the preferential rules of the grace period shall apply for applications submitted even after the grace period.

Q13. Is any research (conducted by relevant authorities, academics, NGOs etc.) on the following available in your (Member) State:

- Effects of the requirements for family reunification as applied in your (Member) State on the right to family reunification and integration of TCNs? Y/ N
- Effects of the integration measures as applied in your (Member) State on the right to family reunification and integration of TCNs? Y/ N
- Effects of the minimum age requirement²⁷ as applied in your (Member) State on the prevention of forced marriages or any misuse of family reunification (e.g. marriages of convenience)? Y/ N

If yes to any of the above, please briefly describe the main findings and conclusions of this research and provide a full reference to the source (e.g. based on existing studies/ evaluations/ other sources or information received from relevant authorities and stakeholders).

Yes, the latest scientific tender announced by the Office of Immigration and Nationality in 2016 was won by the study of Ágnes Töttös written on the issues on the margins of regular migration and international protection, touching upon issues of family reunification of refugees and beneficiaries of international protection in Hungary, as well.

The Hungarian Helsinki Committee also prepared a paper on the "Family reunification of Somali refugees – good practices of several EU member states"²⁸ in order to promote these good practices in Hungary, as well.

Section 4: Submission and examination of the application for family reunification [maximum 5-10 pages]

This section of the Synthesis Report will report on the process for submitting and examining an application for family reunification in the (Member) States or abroad covered by Chapter III of Directive 2003/86/EC, including the procedures for verifying the fulfilment of the requirements/ measures listed in Section 3 above. You may wish to include flow chart(s) visually illustrating the application process for family reunification in your (Member) State.

If applicable, please distinguish to what extent any of the provisions apply to certain/ all groups of migrants applying for family reunification in your (Member) State depending on the grounds of residence of the sponsor (e.g. refugee, BSP, worker, student, etc.). If the provisions vary across different groups of migrants, please describe the variations. Please note that emphasis should be on

²⁷ Art. 4(5) of Directive 2003/86/EC stipulates that Member States may require the sponsor and his/ her spouse to be of a minimum age, and at maximum 21 years, before the spouse is able to join him/ her, in order to ensure better integration and to prevent forced marriages.

²⁸ <http://helsinki.hu/wp-content/uploads/HHC-Famreun-of-Somalis-2009.pdf> (accessed on 22 December 2016)

the application of these provisions and where applicable, relevant national case law should be provided.

Q14. Please describe the **procedure(s) that apply to the sponsor or his/ her family members** when an application for entry and residence for the purpose of family reunification is submitted, as follows:

a. Who is the formal party to an application for family reunification in your (Member) State: the sponsor or his/ her family members?²⁹

The third-country national family member.

b. If the sponsor's family members must submit an application for family reunification, where can this application be submitted (e.g. consulate of the (Member) State abroad, possibility to submit the application in the (Member) State, etc.)?

According to the primary rule,³⁰ an application for residence permit may be submitted to any consulate officer of Hungary, or at any other place authorised to accept applications for residence permit located in the country where the applicant's permanent or usual place of residence is located, or in the country of the applicant's nationality.

Secondarily,³¹ the application can also be submitted to any consulate officer of Hungary, or at any other place authorised to accept applications for residence permit located in the country where the applicant is lawfully resident provided that

- a) there is no consular officer or any other place authorised to accept applications for residence permit in the country of the applicant's permanent or usual place of residence, or in the country of the applicant's nationality, or
- b) the applicant can provide documents attesting his/her reasons for submitting the application in a country other than a document certifying reasons other than the country of the applicant's permanent or usual place of residence, or the country of the applicant's nationality, or
- c) Hungary has significant economic, cultural, scientific or sports interest to provide entry and stay for the applicant.

In case the third-country national family member is already staying in the territory of Hungary, the application for the first residence permit may also be submitted at the competent regional Directorate of the Office of Immigration and Nationality,³² if

- a) exceptionally equitable conditions are verified; or
- b) the purpose of stay is research, or
- c) the applicant is lawfully staying in Hungary as a national of a visa-free country within the Schengen area or as a family member of such a person.

²⁹ Art. 5 of Directive 2003/86/EC specifies that Member States determine whether, in order to exercise the right to family reunification, an application for entry and residence must be submitted to the competent authorities by the sponsor or his/ her (family) members.

³⁰ Section 47(1) of Government Decree of 114/2007

³¹ Section 47(2) of Government Decree of 114/2007

³² Section 17/A(1) of Act II of 2007

Exceptionally equitable conditions referred to in point a) apply especially in case of facts related to medical treatment, family reunification or gainful activities, which occurred because of reasons not attributable to the applicant and which constitute an obstacle to submitting the application in the countries according to the general rule.³³

c. What documentary evidence is required from the applicant to confirm i) his/ her identity and ii) the family relationship?

A valid travel document is required for confirming the applicant's identity and citizenship as it is one of the basic conditions for gaining residence permit.³⁴

Family reunification, as the purpose of stay, may be verified by:³⁵

- birth certificate;
- marriage certificate;
- adoption document;
- any other document attesting the existence of family relationship.

Where the legal provision refers to a certificate, it should also mean an equivalent document issued by a foreign authority.

Moreover, please note that an authentic instrument made out abroad, and any private document certified by a foreign court, administrative body, notary public or any other person vested with authority to issue authentic documents shall – unless any regulation pertaining to the case in question, an international agreement or the principle of reciprocity suggests otherwise – be considered affirmative proof according to Hungarian laws if endorsed by the Hungarian diplomatic or consular mission in the country where it was issued. A document made out in a language other than Hungarian shall be accepted only with the certified Hungarian translation attached, unless otherwise prescribed by any legislation pertaining to the type of case in question.

d. What methods of investigation are employed by the competent authorities in your (Member) State in the absence of (reliable) documentation?

Family relationship for the purpose of reunification with a person with refugee status or a person who has been granted subsidiary protection may be verified by any reliable means, specifically by DNA analysis. A sample for DNA analysis shall be taken in the presence of an officer of the regional directorate, or the competent consulate officer. If the third-country national verifies family relationship by means of a DNA analysis performed abroad, the regional directorate shall contact the Hungarian Institute for Forensic Sciences requesting an expert assessment with a view to verifying the admissibility of such proof. All costs related to such DNA analysis shall be borne by the applicant.³⁶

³³ Section 17/A(2) of Act II of 2007

³⁴ Section 13(1) a) of Act II of 2007

³⁵ Section 56(1) of Government Decree 114/2007

³⁶ Section 57(2)-(5) of Government Decree 114/2007

Q15. Please describe the **procedure(s) that apply to family members** when an application for entry and residence for the purpose of family reunification is submitted, as follows:

a. What is the procedure in place in your (Member) State to verify that any **extended family members** have fulfilled the requirements for family reunification (e.g. dependency)? At what stage(s) of the examination procedure is this verified?

Are there any exemptions from fulfilling these conditions and if yes, on what grounds are they granted?

The condition of dependence or the state of health shall be verified by documentary evidence. In this regard a simple statement from the supporter is not enough in practice, it is also examined during the procedure whether dependency really exists.

As the condition of dependency in case of a parent or being unable to provide for themselves due to health reasons in case of siblings or relative in direct line are essential conditions of allowing family reunification, such conditions are always checked. At the stage of submitting the application the fact that documentary evidence is attached is verified, while at a later stage it is examined whether the provided documentary evidence really proves fulfilling the required conditions.

b. Please describe the procedure in place in your (Member) State to verify that the following **requirements for family reunification** have been fulfilled:

- Please specify how the health and safety standards, as well as the size of the accommodation are determined as suitable in practice:

The following practical checks are made:

1. screening of the documentary evidence, namely the property's abstract of title of the real estate register on whether it is registered as a residential building or detached house, or any similar property suitable for habitation (e.g. a summer house suitable for habitation);
2. the provided documents verify that the applicant third-country national has the right to live in the property, that is all those having a right over the property gave their consent to the applicant's living in the property (e.g. apart from the owners of the property those having the right of usufruct, as well);
3. the condition of minimum 6 square meters of living space per person is checked based on the databases available: it is checked in both the registry of the personal data and address registry of those having a permanent status in Hungary, as well as in the aliens policing registry, including addresses of those with temporary status in Hungary. Nevertheless, the immigration authority may find the accommodation appropriate under exceptional conditions of equity even if this condition is not fulfilled.

If needed, both points 1 and 3 can be verified by on the spot checks.

Point 2 is usually verified by the following documents:

- a document in proof of ownership of a home, in the form of abstract of title issued within 30 days to date or a real estate sales contract and a copy of the decision of the competent Budapest or county government agency granting permission for the acquisition of a real estate property
- a residential lease contract in proof of the rental of a residence or a document on accommodation by courtesy;
- a valid letter of invitation with an official certificate affixed;

- documentary evidence to verify the reservation and payment of accommodation;
- a notarised statement made by a family member with the right of residence in Hungary as holding a long-term visa or residence permit, with immigrant or permanent resident status, holding a residence card or a permanent residence card in accordance with specific other legislation, or with refugee status, promising a place of abode to the applicant.

- Please specify the conditions under which sponsors have access to healthcare insurance (e.g. by having employment/ self-employment or is this access automatic)?

As for health insurance, if being employed/self-employed, there is full coverage. If no full coverage exists, he/she may also enter into an agreement with the health insurance authority. In practice it is also accepted if there is a private accident or health insurance complemented with sufficient resources for covering occasional extra health care services.

- Please specify the following in relation to the minimum income requirement sponsors must meet in your (Member) State:
 - The amount of the minimum income requirement in the relevant currency and year:

Hungarian law does not set out any specific amount for any purposes of residence, including family reunification. The reason for this is that each application is examined and evaluated on a case by case basis, as each case differs according to the provided documentary evidence and the set-up of the family.

The general requirement of having sufficient resources to cover their living expenses, costs of accommodation, return travel, and if necessary, healthcare is therefore verified based on the sources testified by documentary evidence and is evaluated according to the set-up of the family.

Although no specific amount is set out, the minimum financial level of subsistence in Hungary calculated yearly by the Central Statistical Office for different household types is taken into account as a guidance.

- If your (Member) State sets a different income requirement depending on the type of family member being reunited (e.g. minor children):

No, it is always the complete family taken into account when evaluating whether the resources are sufficient.

- The reference period over which this requirement is considered:

If a lawful regular income is to be considered, it is usually a document attesting the monthly gross and net income for a 6-month period directly before the application that is required. In case the basis of the income already existed the previous year, the previous year's complete income certificate issued by the tax authority is also required.

- How any past/ future income of the sponsor is evaluated in practice:

The immigration authority takes into account both presently existing lawful income and assets of the complete family and the income in the near past, and based upon the present and past facts draws conclusions regarding the income and assets available on the future.

In this regard, it has to be noted that the Court of Justice of the EU in its judgement in the Khachab case (C-558/14) also concluded that Article 7(1)(c) of Directive 2003/86 must be interpreted as allowing the competent authorities of a Member State to refuse an application for family reunification on the basis of a prospective assessment of the likelihood of the sponsor retaining, or failing to retain, the necessary stable and regular resources which are sufficient to maintain himself and the members of his family, without recourse to the social assistance system of that Member State, in the year following the date of submission of that application, that assessment being based on the pattern of the sponsor's income in the six months preceding that date. Hungary also provided its written observation during this court proceeding providing a similar interpretation and argument, as the Spanish law evaluated in the Khachab case was very similar to relevant Hungarian law and practice.

- Whether any exemption grounds apply and to what extent non-compliance has consequences for the right to family reunification:

As the general requirement of having sufficient resources is verified on a case by case basis, based on the sources testified by documentary evidence and is evaluated according to the set-up of the family, the immigration authority has a wide discretion to evaluate this condition.

- At what stage(s) of the examination procedure are the above requirements verified?

At the stage of submitting the application the fact that documentary evidence is attached is verified, while at a later stage it is examined whether the provided documentary evidence really proves fulfilling the required conditions.

c. Please describe the procedure in place in your (Member) State to ensure **integration measures** have been complied with, for example, if an application form for civic integration exam(s)/ language test(s) must be submitted to the authorities, etc. Please specify what exemption grounds apply and to what extent non-compliance has consequences for the right to family reunification.

N.a.

d. If the above conditions are not (completely) fulfilled, how does your (Member) State guarantee that individual circumstances are taken into account (e.g. nature and solidity of the person's family relationship)?³⁷

Section 13(2) of Act II of 2007 sets out that in the absence of the general conditions set out in paragraph (1) the entry and residence may only be authorized exceptionally in order to meet international commitments, urgent humanitarian reasons or national interest.

e. What is the procedure in place in your (Member) State to verify whether or not the family member(s) constitute a **threat to public policy, public security or public health**?

The competent regional directorate of the Office of Immigration and Nationality (OIN)

³⁷This is laid down in Article 17 of Directive 2003/86/EC, as well as the principles of effectiveness and proportionality (as interpreted by the CJEU in K. and A., paragraph 60 and O.S and L, paragraph 81) and the EU Charter of Fundamental Rights (O.S. and L, paragraphs 77, 78 and 80).

processing the application may ask for the opinion of the Constitutional Protection Office, the Counter Terrorism Centre and the Police in order to protect public security and national security.³⁸ In case any of these authorities raises an objection to granting a residence permit, the regional directorate of the OIN evaluates the personal circumstances of the applicant and examines whether family reunification or the protection of public and national security should be given priority in the specific case. In case of rejection, the aspects of consideration are explained in the written decision. The necessity of carrying out such a consideration was also emphasized by the Hungarian case law as the Curia in its judgement Kfv.III.37.675/2012/5. set out that the personal circumstances of the applicant shall also be taken into account when making a discretionary decision, especially as regards threat to public policy.

As regards the threat to public health, the third-country national applicant shall make a statement in its application form whether he/she is aware of having any of the illnesses set out in the decree of the Minister responsible for health issues, if he/she is contagious or a carrier of the pathogen, and if the answer is affirmative whether he/she receives the compulsory and regular care.³⁹ The health authority may require third-country nationals to carry out the necessary medical tests or show a medical certificate issued by an official authority of the country of origin with a content determined by the specific legislation. If the health authority determines that the third-country national is suffering from a disease threatening public health and does not submit himself/herself to the obligatory and regular medical treatment or violates the relevant health care laws, the health authority shall promptly notify the regional directorate and the application for residence permit shall be rejected or the permit shall be withdrawn. In case the immigration authority does not make a rejection or withdrawal decision, the regional directorate of the OIN notifies the health authority in order to have the necessary epidemiological measures be taken.

f. How does your (Member) State define the **term 'minor child'** and how are the **best interests of the child** taken into account during the examination of the application for family reunification?⁴⁰

A minor child is under 18 and includes adopted and foster children of a third-country national with his/her spouse, of a third-country national where this third-country national has parental custody and the children are dependent on him/her, of the spouse of a third-country national where the spouse has parental custody and the children are dependent on him/her.

Already when transposing Directive 2003/86/EC Hungary has taken into account the best interests of the child, as Hungary does not apply any waiting period, does not set out a maximum age limit for minor children and does not set out integration requirements either.

Extraordinary fairness is provided by agencies when minor children are involved in immigration proceedings: proceedings are speeded up, while conditions are thoroughly checked in order not to allow kidnapping or child trafficking. Especially short proceeding time (8 days) is applied in case

a) the application of a minor and the minor's legal guardian travelling with the minor, if the

³⁸ Section 50(1) of Government Decree 114/2007

³⁹ Section 48 of Government Decree 114/2007

⁴⁰ Art. 5 of Directive 2003/86/EC

travel's verified purpose is the minor's medical treatment;

b) the application of a person wishing to enter the country for the purpose of escorting unaccompanied minors back home.⁴¹

It should also be noted that in case a child is born in Hungary to a third-country national possessing residence permit in Hungary, a residence permit shall be issued for the new-born child without examining the fulfilment of admission conditions. After the notification of the personal data of the children to the immigration offices the permit is to be issued free of charge and in extraordinarily short time.

Apart from specific immigration provisions, Act CXL of 2004 on the General Rules of Administrative Proceedings and Services, which is to be applied as a background Act, also contains further guarantees for taking into account the best interest of the child:

- Section 1(2a): In the application of this Act, administrative authorities shall proceed ascertaining specifically the interest of minors.
- Section 5(1a): Administrative authorities shall inform incompetent persons and persons of limited legal capacity, as well as any other party to the proceedings who is deemed incompetent or of limited capacity, of their rights and obligations, and on the procedural steps pending by way of the means best suitable for such person's age, health condition and intellect, while ensuring proper atmosphere.
- Section 33(2): If the client is a minor and his interest appears to be in jeopardy, or if it is necessary for the prevention of a life-threatening or potentially devastating situation, if the authority imposed provisional protective measures, or if otherwise required for reasons of public security, the case on hand shall be concluded in priority proceedings.
- Section 51(2a)-(2d):
 - (2a) If the client is incompetent, he may be requested to make a statement unattended if there is no other way to obtain the evidence the statement is presumed to provide, and if this is approved by his legal representative. In justified cases, an incompetent person shall be interviewed at his home address.
 - (2b) Unless otherwise provided for by law, any person of limited legal capacity, and whose ability to perceive the significance of making a statement on account of his mental or other condition, may be requested to make a statement only if he wishes to do so, and if this is approved by his legal representative.
 - (2c) The statement of incompetent persons and persons of limited legal capacity shall be taken only in the presence of the legal representative. If the statement is made in writing it shall be signed by the legal representative.
 - (2d) If there exists any conflict of interest between the client and his legal representative, the legal representative's rights under Subsections (2a)-(2c) shall be exercised by the guardian authority. If the client submits a petition against his legal representative, conflict of interest shall be declared. The guardian authority may interview the incompetent person or person of limited legal capacity without the legal representative being present, if this is deemed to

⁴¹ Section 49(2) a)-b) of Government Decree 114/2007

serve the interest of the incompetent person or person of limited legal capacity.

- Section 62(2): An incompetent person or a person of limited legal capacity may be examined in a hearing only if being interviewed collectively with other parties to the proceedings would not harm the interest of such persons.

g. Please describe what is involved in an assessment for family reunification where **children** are concerned, for example, DNA testing, etc. At what stage(s) of the examination procedure is this assessed?

Family relationship for the purpose of reunification with a person with refugee status or a person who has been granted subsidiary protection may be verified by any reliable means, specifically by DNA analysis. A sample for DNA analysis shall be taken in the presence of an officer of the regional directorate, or the competent consulate officer. If the third-country national verifies family relationship by means of a DNA analysis performed abroad, the regional directorate shall contact the Hungarian Institute for Forensic Sciences requesting an expert assessment with a view to verifying the admissibility of such proof. All costs related to such DNA analysis shall be borne by the applicant. No specific rules apply in case of children.

Q16. Taking the different steps above into account, what is the **duration** of the procedure deciding on an application for family reunification in your (Member) State – both according to law and in practice:

- Legal time limit for deciding upon an application (if any)?

The regional directorate of the Office of Immigration and Nationality shall rule on the application for residence permit for the purpose of family reunification within 21 days. The applicant may request the immigration authority to send his/her residence permit by post, or he/she can collect the document personally.

Please note that the immigration authority processes applications submitted after 1 January 2016 by way of the so called summary proceeding, in cases where the administrative time limit for the proceeding is less than two months, or 66 days. If the authority is in possession of all information and all necessary conditions are available for bringing a decision and for ascertaining the relevant facts of the case, the authority is required to make the decision without delay, at the latest within 8 days. If the conditions for summary proceeding are not satisfied (some information is lacking, hence a request for remedying deficiencies or for national legal assistance is to be dispatched) the proceeding will be carried out within the normal time limit. In that case, the authority brings a conditional decision within 8 days from the date of receipt of the application for the opening of the proceeding, and informs the client that if it fails to bring a decision within 60 days after the application is received, it shall refund the procedural fee to the client and shall grant exemption from the payment of any other fees. The immigration authority shall not bring a conditional decision if a decision on the merits is adopted within 8 days from the date of the opening of the proceeding, or if the proceeding is suspended or dismissed, or if the application is refused without any examination as to merits. The provisions on summary proceedings shall not apply, and no conditional decision is to be made if a specialist authority is involved, or if the immigration authority requests the opinion of an authority provided for by specific other legislation for the protection of public security or national security.

The application for residence permit for the purpose of family reunification shall be assessed by the competent authority by way of the single application procedure, if the third-country national family member wishes to enter into a contract for employment relationship with a specific employer. A single application procedure is carried out within 70 days, or in case of

being employed by a so-called preferred employer, within 60 days.

- Average duration of the procedure in practice?

No data available.

- Have any specific measures been taken by your (Member) State to shorten processing times?

The immigration authority processes applications submitted after 1 January 2016 by way of the so called summary proceeding, in cases where the administrative time limit for the proceeding is less than two months, or 66 days. If the authority is in possession of all information and all necessary conditions are available for bringing a decision and for ascertaining the relevant facts of the case, the authority is required to make the decision without delay, at the latest within 8 days. If the conditions for summary proceeding are not satisfied (some information is lacking, hence a request for remedying deficiencies or for national legal assistance is to be dispatched) the proceeding will be carried out within the normal time limit. In that case, the authority brings a conditional decision within 8 days from the date of receipt of the application for the opening of the proceeding, and informs the client that if it fails to bring a decision within 60 days after the application is received, it shall refund the procedural fee to the client and shall grant exemption from the payment of any other fees. The immigration authority shall not bring a conditional decision if a decision on the merits is adopted within 8 days from the date of the opening of the proceeding, or if the proceeding is suspended or dismissed, or if the application is refused without any examination as to merits. The provisions on summary proceedings shall not apply, and no conditional decision is to be made if a specialist authority is involved, or if the immigration authority requests the opinion of an authority provided for by specific other legislation for the protection of public security or national security.

Q17. a. Please indicate any **challenges** experienced by i) sponsors and/ or family members throughout the above-mentioned procedure(s), and/ or ii) your (Member) State in the implementation of the examination procedure (e.g. based on existing studies/ evaluations or information received from relevant authorities and stakeholders) and how these can be overcome.

Challenges have especially been encountered in case of family reunification of refugees and beneficiaries of protection. In this regard especially the following legal and practical requirements have been pointed out as challenges and obstacles: possessing a valid travel document, verification of family relations, getting to the consular office when the application can be submitted by the family member.

b. Please provide any examples of proven (e.g. through studies/ evaluations) **good practices** that might help to overcome the above-mentioned challenges or otherwise. Please specify the source (e.g. based on existing studies/ evaluations/ other sources or information received from relevant authorities and stakeholders).

The challenges encountered in case of family reunification of refugees and beneficiaries of subsidiary protection have led to several initiatives focusing on providing help of various

nature.

The Pilot Project to Assist in Family Reunification to Hungary of IOM Budapest⁴² aims to assist persons under international protection in Hungary and their third country national family members, who would like to relocate to Hungary. The project offers comprehensive assistance to eligible applicants with their family reunification cases. IOM offers assistance to its clients in three main areas: provision of information, administrative and logistical assistance, and post-arrival orientation and counselling. The project provides up-to-date information in various languages on the rules and requirements of the family reunification procedure. IOM provides web-based information, counselling through e-mail and phone, and continuous pre-departure and post-arrival counselling in person. Administrative and logistical support includes family tracing, addressing urgent needs, acquiring and translating necessary documents for the submission of the application, requesting DNA tests, obtaining the necessary travel documents, setting appointments with the relevant embassy/consulate, and assisting with the submission of various applications. In cases where further support is deemed necessary IOM can provide logistical and financial assistance to family members with their travel to the relevant embassy/consulate and subsequently to Hungary as far as the budget of the project allows. Furthermore, the project provides support for the families after arrival in Hungary in assessing the situation and needs of the families and referring them to the relevant NGOs providing services. After arrival, family members will receive information on their obligations and services that are available to them.

It should be noted that DNA test has already been successfully applied with the financial help of international organisations in order to provide family links.

The Hungarian Helsinki Committee has also prepared a Handbook,⁴³ which aims to provide refugees and beneficiaries of subsidiary protection with necessary information in 5 languages. The handbook summarises the most important information on the family reunification procedure conducted by the Office of Immigration and Nationality in Hungarian, English, Dari, Pashto and Arabic language.

[Section 5: Access to rights following family reunification \[maximum 5 pages\]](#)

*This section of the Synthesis Report will provide a comparative overview of the rights that follow on from family reunification in the (Member) States, notably access to education, employment, vocational guidance and training, and right to apply for autonomous right of residence. The aim of this section is to report on measures available specifically to **persons admitted for the purpose of family reunification** and not duplicate information covered in other EMN studies on general integration measures. **If applicable, please distinguish to what extent any of the provisions apply to family members of persons belonging to all groups of migrants, or only certain groups (e.g. family members of refugees, BSPs, workers, students, etc.). If the provisions vary for family members of persons belonging to different groups of migrants, please describe the variations.***

⁴² <http://www.iom.hu/sites/default/files/Family%20Reunification%20one-pager%20ENG.pdf> (accessed on 22 December 2016) For further information: <http://www.iom.hu/family-reunification>

⁴³ <http://www.helsinki.hu/en/information-on-family-reunification-of-refugees/> (accessed on 22 December 2016)

Q18. Are family members entitled (in the same way as the sponsor) to access the following rights⁴⁴ in your (Member) State (please also comment on any *planned* changes in the national legislation/ policy/ practice):

a. Access to education? Y/ N

If yes, please indicate whether any special measures to support access to education are available specifically to family members, e.g. language assistance, guidance regarding the national education system, etc.

“Every Hungarian citizen shall have the right to education. Hungary shall ensure this right by extending and generalising public education, by providing free and compulsory primary education, free and generally accessible secondary education, and higher education accessible to everyone according to his or her abilities, and by providing financial support as provided for by an Act to those receiving education.” (Article XI(1) and (2) of the Fundamental Law)

Regarding the registration of school-age foreign children it needs to be noted that their registration is no different from that of Hungarian citizens; the rules applicable to compulsory education are provided for in Section 45 of the Act CXC of 2011 on National Public Education. According to it every child is obliged to participate in institutional education in Hungary as prescribed by this Act. Children are said to be of school age in the calendar year when they turn six years of age by 31st August, or in the following year at latest. The completion of compulsory education starts on the first day of the academic year. Compulsory education lasts until a student turns sixteen years of age and is provided free of charge.

As Hungary does not require the knowledge of Hungarian as an admission condition, it does not provide for free language training either. Nevertheless, certain non-state organisations provide language training under preferential circumstances within certain projects.

b. Access to employment and self-employed activity?⁴⁵ Y/ N

If yes, please specify whether the access available to family members is limited in any way, for example, if such access is restricted for up to 1 year and/ or limited to a maximum number of days per year, if this right is automatic or conditional upon obtaining a work permit, etc.

Family members have access to the Hungarian labour market under the same conditions as third-country nationals, which – according to the main rule – means that they require employment authorisation before they can take up work. Such authorisation is primarily provided during the single application procedure, therefore if a third-country national family member applying for a residence permit for the purpose of family reunification, or already having such a permit and wishes to be employed in Hungary, should submit a single application at the competent regional directorate of the Office of Immigration and Nationality, which, during the single application procedure, contact the competent employment authorities to carry out a labour market test and provide a special authority resolution on whether they provide their consent to the employment of the applicant.

⁴⁴ Art. 14 of Directive 2003/86/EC in your (Member) State stipulates that family members are entitled (the same way as the sponsor) to access education, employment and self-employed activity, as well as vocational guidance and training. Art. 15 of Directive 2003/86/EC additionally specifies that family members are entitled to apply for autonomous right of residence after no later than five years, independent of that of the sponsor (also in case of dissolution of family ties).

⁴⁵ In addition to Directive 2003/86/EC, there are further Legal Migration Directives containing specific provisions on access to employment of family members of certain sponsors, for example, family members of Blue Card holders or ICTs. Please elaborate on such specificities in the above answer.

Nevertheless, there are several exceptional cases, when preferential rules apply as regards employment of third-country nationals, which could also include certain family members. Such preferential rules may, on the one hand, set out that the consent of the employment authorities is provided without a labour market check to be carried out, on the other hand legal provisions may also list cases when even the consent shall not be required.

In the following cases there is no need to carry out a labour market test in Hungary for the employment of family members:⁴⁶

- employment in Hungary of a close relative of a diplomatic or consular staff of a foreign government in the absence of reciprocity between the states;
- employment of a family member, not entitled to a residence permit for the purpose of family reunification, of a third-country national not holding an EU Blue Card, in case they have been living together in Hungary for five years and the sponsor has been working in Hungary for eight years;
- employment of a spouse of a person with refugee, subsidiary protection, temporary protection, permanent residence status, if they have been living together in Hungary for a year;
- employment of a widow of a person with refugee, subsidiary protection, temporary protection, permanent residence status or of a person with the right to free movement, if they had been living together in Hungary for at least eight years before the death of the sponsor;
- employment of a family member of an EU Blue Card holder third-country national, if the rules of family reunification apply to the family member.

In the following cases there is no need to for employment authorisation in Hungary for the employment of family members:⁴⁷

- employment of a family member holding a residence permit issued for the purpose of family reunification in accordance with Section 19 of Act II of 2007, if the family member has been legally staying in Hungary for at least one year and the sponsor can be employed without employment authorisation;
- employment of a family member of a refugee or beneficiary of subsidiary protection or the parent or legal guardian of an unaccompanied minor, in case the family member possesses a residence permit issued for the purpose of family reunification.

It needs to be noted that further preferential rules might also apply to family members in case they fall under the scope of such preferential rules not as a family member, but e.g. because of the nature of their employment.

c. Access to vocational guidance and training? Y/ N

If yes, please describe what the access to vocational guidance and training entails, for example, whether special guidance and training programmes are provided to family members or whether they have access to the general measures.

⁴⁶ Section 9(1) of Government Decree 445/2013

⁴⁷ Section 15(1) of Government Decree 445/2013

Act CLXXXVII of 2011 on Vocational Education and Training sets out that Hungary provides the acquisition of the first and second state-recognized vocational qualification free of charge under the conditions laid down in this Act. It is also set out the mandatory requirement of equal treatment shall be kept throughout the process of training.

d. Right to apply for autonomous right of residence independent of that of the sponsor (also in case of dissolution of family ties)? Y/ N

If yes, please specify if the access to this right differs depending on the kind of permit the family member receives.

Yes, a family member - if he/she has not gained residence right based on other grounds – is entitled to additional right to reside if five years have passed since the issuance of the first residence permit, or in case of death of the sponsor or the refugee, provided that the conditions of stay are fulfilled.

e. Any other rights granted to family members in your (Member) State, for example, healthcare, recourse to public funds, possibility for family members to apply for long-term residence status or naturalisation, etc.? Y/ N

If yes, please specify what such access entails in practice in your (Member) State.

While according to the primary rule a national permanent residence permit may be issued to a third-country national, who lawfully resided in the territory of Hungary continuously for at least the preceding three years before the application was submitted, family members of third-country nationals with permanent status in Hungary are under more preferential rules. Consequently, a third-country national, who is a dependent direct relative in the ascending line of a third-country national with immigrant, permanent resident or refugee status, can gain national permanent residence permit if they are living in the same household for at least one year before the application was submitted. Furthermore, a third-country national, who is the spouse of a third-country national with immigrant, permanent resident or refugee status, can gain national permanent residence permit provided that the marriage was contracted at least two years before the application was submitted. The minor child of a third-country national with immigrant, permanent resident or refugee status can apply for a national permanent residence permit already after gaining residence permit, while children born in Hungary of parents with permanent residence permit in Hungary shall be issued a national permanent residence permit.

Q19. Are family members of refugees and/ or BSPs granted refugee/ BSP status in their own right or a 'derived' permit (from that of the sponsor)? Please clarify how the type of permit issued differs in terms of its validity and rights attached to it. If possible, please also provide information on the cost of the permit.

In case the primary purpose of the intended stay is to join the sponsor, the residence permit to be issued for the purpose of family reunification is necessarily linked to the residence right of the sponsor. Nevertheless, the right to apply for autonomous residence as described in Q18d also extends to family members of refugees and beneficiaries of international protection, furthermore if the primary purpose of stay is other than family reunification, e.g. studies or research, the permit can be issued for such purposes if the conditions of admission are fulfilled.

Q20. a. Do any conditions apply to sponsors and/ or family members after admission for the purpose of family reunification in your (Member) State? Y/ N

If yes:

- At which stage(s) after admission is examined whether these conditions have been fulfilled?

Yes, all of these conditions need to be continuously fulfilled during the stay in the territory of Hungary.

- Does not fulfilling one of these conditions constitute a ground for non-renewal or withdrawal of the residence permit?⁴⁸ Y/ N
 - If yes, how are individual circumstances and interests⁴⁹ taken into account?

Yes, if any of the general conditions of stay are no longer fulfilled, the residence permit shall be withdrawn.⁵⁰ Nevertheless, the immigration authorities need to carry out a thorough assessment in order to verify whether any of the conditions is no longer fulfilled.

During such assessment the immigration authority needs to respect all the legal principles applicable in public administration procedures, such as the full clarification of facts as well as the principle of proportionality. Furthermore, the third-country national can appeal against the withdrawal decision, and can turn to court against the decision at secondary instance.

- If no, what are the consequences of not fulfilling the conditions (e.g. obligation to pay a fine, exclusion from more favourable residence permits)?

N.a.

Q21. a. Please indicate any **challenges** experienced by family members in your (Member) State with regard to accessing the above-mentioned rights (e.g. based on existing studies/ evaluations or information received from relevant authorities and stakeholders) and how these can be overcome.

Challenges experienced are similar to those encountered by other third-country nationals living in Hungary, namely the administrative requirements to access certain rights.

b. Please provide any examples of proven (e.g. through studies/ evaluations) **good practices** with regard to the provision of education/ access to the labour market and vocational guidance and training/ right to autonomous residence for family members in your (Member) State/ etc. Please specify the source (e.g. based on existing studies/ evaluations/ other sources or information received from relevant authorities and stakeholders).

In order to provide education to non-Hungarian minors, in Hungary there are schools where their main feature is teaching migrant children. These schools are those that provide education in foreign languages, pursuant to foreign laws and educational systems, and the "international schools", accredited by an international school or education organisation. These institutions are not maintained by the state; typically they were founded by foundations or nonprofit business associations, and their registration and the authorisation of their operation fall within the powers of the minister responsible for education. There are also two state-maintained schools for migrants: the Hungarian-Chinese Bilingual Primary School, in which Chinese and other children from the Far East are taught, and Than Károly Eco-School,

⁴⁸ Article 16 of Directive 2003/86/EC

⁴⁹ Article 17 and Article 24 of the Charter

⁵⁰ Section 18(1) a) of Act II of 2007

Grammar School, Specialised School and Vocational School, which has been integrating and teaching migrant pupils arriving from various countries for several years.⁵¹

Section 6: National and international case law [maximum 1 page]

Q22. Has the following CJEU/ ECtHR case law led to any changes in policy and/ or practice in family reunification in your (Member) State:

- CJEU - C-540/03 *European Parliament v Council of the European Union*;
- CJEU - C-558/14 *Khachab v Subdelegación del Gobierno en Álava*;
- CJEU - C-153/14, *Minister van Buitenlandse Zaken v K and A*;
- CJEU - C 338/13, *Marjan Noorzia v Bundesministerin für Inneres*;
- CJEU - C-578/08, *Rhimou Chakroun v Minister van Buitenlandse Zaken*;
- CJEU - C-356/11 and C-357/11, *O. S. and L*;
- ECtHR - *Mugenzi v. France*, Application No. 51701/09, 10 July 2014;
- ECtHR - *Tuquabo-Tekle And Others v The Netherlands*, Application no. 60665/00, 1 March 2006;
- ECtHR - *Hode and Abdi v. the United Kingdom*, Application No. 22341/09, 6 February 2013;
- ECtHR - *Biao v. Denmark*, Application No. 38590/10, 24 May 2016;
- Any other relevant case law (please specify)? Y/ N

If yes, please briefly describe the changes brought about by this case law.

No. In this regard, it has to be noted that Hungary also provided its written observation during the Khachab case as the Spanish law evaluated was very similar to relevant Hungarian law and practice, and submitted an interpretation and argument similar to the conclusions of the EUCJ.

Q23. Has any national case law led to changes in policy and/ or practice in family reunification in your (Member) State since 2011 onwards? Y/ N

If yes, please briefly describe the changes brought about by this case law. *(For example, in 2013 the Belgian Constitutional Court held that the differentiation of requirements for family reunification between refugees and beneficiaries of subsidiary protection is unlawful, hence the latter were exempted from the condition of sufficient income even after the period of one year when the sponsor is joined by his/ her minor children. As well, in 2015, the Slovenian Constitutional Court held that in specific factual circumstances the scope of family life should include non-nuclear family members who perform a similar or same function as the nuclear family, allowing for an individual examination of specific circumstances and leading to an amendment of the national legislation on family reunification.*⁵²

Yes, it has led to the changes in practice as national court decisions helped applying the right

⁵¹ Report of the Commissioner for Fundamental Rights in case number AJB-1027/2015, December 2015, p. 4

⁵² European Legal Network on Asylum (ELENA) (2016), Information Note on Family Reunification for Beneficiaries of International Protection in Europe, <http://www.ecre.org/information-note-on-family-reunification-for-beneficiaries-of-international-protection-in-europe/>

interpretation of specific legal provisions in residence permit cases.

The following legal provisions and practice have been confirmed and the right interpretation have been developed by the national courts:

- The Supreme Court has clarified in several judgements that the provisions applicable for the family reunification of refugees also apply to the family reunification of beneficiaries of subsidiary protection unless it is stated expressly (see decisions Kfv.III.37.225/2010/6. and Kfv.III.37.925/2009/7.
- The Curia in its decision Kfv. II.37.374/2011/8 ruled that the rules on the so called application for excuse can be used in case of counting the grace period applicable in the case of family reunification of refugees. Consequently, missing the presently three-month-long period can be excused in accordance with Hungarian national law (after a maximum of six months of the missed deadline) by the applicant by stating the reasons of delay and as a result the preferential rules of the grace period shall apply for applications submitted even after the grace period.
- The necessity of carrying out a thorough consideration was also emphasized by the Hungarian case law as the Curia in its judgement Kfv.III.37.675/2012/5. set out that the personal circumstances of the applicant shall also be taken into account when making a discretionary decision, especially as regards threat to public policy.
- In its decision Kfv.II.37:520/2013/4. the Curia confirmed the practice of the Office of Immigration and National of referring to the minimum subsistence level calculated by the Central Statistical Office as an indicative basis for deciding on the fulfilment of having sufficient resources.

[Section 7: Overview of the international and EU legislative framework on family reunification \(Synthesis Report\) \[maximum 3 pages\]](#)

This section of the Synthesis Report will briefly outline the EU legal framework guiding national legislation on family reunification. It will provide a mapping of the substantive and procedural provisions in the EU acquis that regulate family reunification. The section will also highlight how the EU acquis relates to the broader international legal framework in this area.

This section will be developed by the EMN Service Provider, hence no input from the EMN NCPs is required.

[Section 8: Conclusions \(Synthesis Report\) \[maximum 3 pages\]](#)

*The Synthesis Report will outline the main findings of the Study and present conclusions relevant for policymakers at national and EU level. **Member States should include any overall conclusions in the Top-line Factsheet at the beginning of the Common Template rather than duplicate information in this Section.***

[Annex 1 Statistical Annex](#)

Q24. With reference to Question 3.a. above, please complete the following table with national statistics on the (estimated) number of applications for family reunification, if available.

Please provide here a brief explanation of the metadata, describing for example the population covered, the method used to reach the estimates, any caveats as to their likely accuracy etc. It should be noted, given the

differences in methods used to make the estimates, that it will not be possible to synthesise this information to produce a 'total EU estimate' for the Study.

Unfortunately no disaggregation of data according to the status of the sponsor is available.

Please provide your answer by completing the Excel document inserted as an object below and sent separately with this Common Template.

Please do not here include the above-mentioned Eurostat data in Section 7 (first part of this Template), as this information is available publically and can therefore be analysed centrally for the Synthesis Report.



FR Stats
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