
1 Are these criteria (reasonable prospect for the right of permanent residence at the time of application as regulated in Article 3 and a waiting period until reunification can actually take place as regulated in Article 8) the correct approach and the best way to qualify the sponsors?

Malta believes that the criteria of reasonable prospects of obtaining the right of permanent residence and of a waiting period in accordance with Article 8 of Council Directive 2003/86/EC on the right to family reunification are adequate. It is considered that these criteria should be kept as they allow Member States to regulate family reunification bearing in mind their particular circumstances. Furthermore, the sponsor must be well-integrated in the host society before family reunification can take place and it would not be appropriate to grant family reunification where the migrant’s stay is only intended to be one of limited duration. At the same time, it is to be noted that Article 8 of Directive 2003/86/EC provides that Member States may require the sponsor to have stayed lawfully in their territory for a period not exceeding two (2) years before his/her family can join him/her; which means that Member States are free to apply a shorter waiting period should they wish to. Malta considers that these criteria allowing a degree of flexibility should be retained.

2 Is it legitimate to have a minimum age for the spouse which differs from the age of majority in a Member State? Are there other ways of preventing forced marriages within the context of family reunification and if yes, which? Do you have clear evidence of the problem of forced marriages? If yes how big is this problem (statistics) and is it related to the rules on family reunification (to fix a different minimum age than the age of majority)?

Yes, it is considered necessary to retain the possibility of establishing a minimum age requirement which is different from the age of majority in the Member States, for spouses who are to benefit from family reunification. Forced marriages are difficult to prevent, particularly in a context involving marriages contracted abroad, over which Member States have no effective control, and imposing a sufficiently high minimum age requirement provides a safeguard in this respect. The minimum age requirement also contributes to preventing the abuse of family reunification for the purposes of human trafficking and other offences.

Evidence/data regarding cases of forced marriages in Malta is not available. As stated above, forced marriages are difficult to detect and this is one of the reasons for which it is important to retain a minimum age requirement which is higher than the age of majority.

3 Do you see an interest in maintaining those standstill clauses which are not used by Member States, such as the one concerning children older than 15?

The standstill clauses provided for in the last indent of Article 4(1) and in Article 4(6) of Directive 2003/86/EC are not applicable to Malta. Malta considers that if one or more Member
States to which these provisions are applicable consider these provisions are useful, then the said provisions should be retained.

4 Are the rules on eligible family members adequate and broad enough to take into account the different definitions of family existing other than that of the nuclear family?

Malta considers that the rules on eligible family members are adequate and broad enough and should not be extended. Member States should continue to be able to exercise a degree of discretion with regard to the admission of relatives who are not part of the nuclear family, taking into account the specific situation in their territory and their applicable law.

5 Do these measures efficiently serve the purpose of integration? How can this be assessed in practice? Which integration measures are most effective in that respect? Would you consider it useful to further define these measures at EU level? Would you recommend pre-entry measures? If so, how can safeguards be introduced in order to ensure that they do not de facto lead to undue barriers for family reunification (such as disproportionate fees or requirements) and take into account individual abilities such as age, illiteracy, disability, educational level?

Integration requirements such as language knowledge will clearly contribute to the migrant’s ability to integrate into the host society. Malta therefore considers it important to maintain the option for Member States to impose integration requirements both prior to the admission of the third country national and once the third country national is present on the Member State’s territory. The effectiveness of different integration measures will depend on the situation in the Member State. For this reason, the integration measures that may be imposed should not be defined further at EU level. Different Member States will require different measures to address their own situation and an integration measure that is appropriate for one Member State may not be equally effective for another.

With regard to pre-entry measures, it is considered that Member States should be able to require that third country nationals undertake pre-entry integration measures, in order to facilitate their integration upon arrival in the Member State in question. Respect for the principle of proportionality would need to be assessed on a case by case basis and it is not considered that specific safeguards should be established in the Directive itself. The principle of proportionality is a general principle which Member States are bound to respect in any case.

6 In view of its application, is it necessary and justified to keep such a derogation in the Directive to provide for a three year waiting period as from the submission of the application?

The standstill clause in the second indent of Article 8 of Directive 2003/86/EC, which provides for a three (3) year waiting period, is not applicable to Malta. Nevertheless, since the Commission’s Green Paper states that one Member State makes use of this provision, it is considered that it is that Member State which can assess the necessity of retaining this provision. On the other hand, as stated in the reply to question (1) above, Malta considers it essential to retain the two (2) year waiting period provided for in the first indent of Article 8.
7 Should specific rules foresee the situation when the remaining validity of the sponsor's residence permit is less than one year, but to be renewed?

Malta believes that the residence permit of the family member must never be for a longer period than that of the sponsor. Articles 13(2) and (3) of Directive 2003/86/EC should be made more consistent with each other by making it clear that the duration of the family member’s permit should be of a duration of one (1) year, unless the sponsor’s permit will expire within a shorter period, in which case the family member’s permit should only be issued for the remaining duration of the sponsor’s permit. Where the sponsor’s permit is renewed, the family member’s permit could also be renewed at the same time.

8 Should the family reunification of third country nationals who are beneficiaries of subsidiary protection be subject to the rules of the Family reunification Directive? Should beneficiaries of subsidiary protection benefit from the more favourable rules of the Family reunification Directive which exempt refugees from meeting certain requirements (accommodation, sickness insurance, stable and regular resources)?

Malta considers that the scope of the Family Reunification Directive should not be extended to include beneficiaries of subsidiary protection.

In its Green Paper the Commission argues that the Stockholm Programme called for the establishment of a uniform status of protection, based on the fact that the protection needs of refugees and beneficiaries of protection are the same. Malta does not agree. The relevant paragraph of the Stockholm Programme (paragraph 6.2) reads as follows:

The European Council remains committed to the objective of establishing a common area of protection and solidarity based on a common asylum procedure and a uniform status for those granted international protection. While CEAS should be based on high protection standards, due regard should also be given to fair and effective procedures capable of preventing abuse. It is crucial that individuals, regardless of the Member State in which their application for asylum is lodged, are offered an equivalent level of treatment as regards reception conditions, and the same level as regards procedural arrangements and status determination. The objective should be that similar cases should be treated alike and result in the same outcome.

Clearly, the Stockholm Programme, in calling for the establishment of a uniform status for those granted international protection, refers to equivalent reception conditions, procedural arrangements and status determination among the Member States so as to ensure that similar cases are treated in the same way, with the same outcome in the different Member States. It does not state that there should be equivalence between refugee status and subsidiary protection. The two forms of protection are based on different grounds and should therefore not be considered equivalent, nor should they necessarily lead to the same rights.

This is also confirmed by the Treaty on the Functioning of the European Union which itself retains a clear distinction between the two statuses. Article 78(2) of this Treaty provides that:

(...) the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures for a common European asylum system comprising:
(a) a uniform status of asylum for nationals of third countries, valid throughout the Union;
(b) a uniform status of subsidiary protection for nationals of third countries who, without obtaining European asylum, are in need of international protection.

The Treaty itself therefore makes it clear that it is not uniformity between refugee status and subsidiary protection which is to be sought, but uniformity within each status.

In addition, it is important to note that the recast Qualification Directive\(^1\) retains certain distinctions between the two statuses, such as the duration of the residence permit granted to refugees and that granted to beneficiaries of subsidiary protection.

Finally, Malta underlines the fact that including beneficiaries of subsidiary protection within the scope of Directive 2003/86/EC would have serious consequences for Malta. Malta is already hosting a disproportionate number of beneficiaries of subsidiary protection; therefore, applying Directive 2003/86/EC to this category would most likely lead to this number increasing dramatically, with obvious negative consequences for Malta. This will also negatively affect the family members themselves; owing to the fact that Malta has very limited absorption capacity. Moreover, applying the more favourable provisions that are currently applicable to refugees, also to beneficiaries of subsidiary protection, would create even greater difficulties. Not only would this further increase the likelihood of the numbers increasing exponentially, with the consequences that such increase will itself entail, but it would also certainly lead to a heavy burden on Malta’s resources, in terms of the provision of health care, accommodation, and welfare services, since the more favourable conditions would imply that the beneficiary of subsidiary protection (the sponsor) need not demonstrate that he has sickness insurance, accommodation and stable and regular resources.

Given this background, Malta strongly opposes broadening the scope of the Family Reunification Directive to include beneficiaries of subsidiary protection.

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\(^1\) Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted.
Do you have clear evidence of problems of fraud? How big is the problem (statistics)? Do you think rules on interviews and investigations, including DNA testing, can be instrumental to solve them? Would you consider it useful to regulate more specifically these interviews or investigations at EU level? If so, which type of rules would you consider?

Data on fraud in relation to the application of Directive 2003/86/EC is not available. With regard to interviews and investigations, including DNA testing, Malta considers that these are important tools in detecting cases of fraud. Nevertheless, the use of these measures should be regulated at national level, so as to ensure that each Member State can limit such use to cases in which it is necessary and proportionate.

Do you have clear evidence of problems of marriages of convenience? Do you have statistics of such marriages (if detected)? Are they related to the rules of the Directive? Could the provisions in the Directive for checks and inspections be more effectively implemented, and if so, how?

While there have been cases of marriages of convenience, statistics are not available.

Should administrative fees payable in the procedure be regulated? If so, should it be in a form of safeguards or should more precise indications be given?

Malta does not believe that fees should be harmonised. As in the case of other migration Directives (some in force and others proposed) if Directive 2003/86/EC is to refer to fees, it should only provide that the level of such fees shall be proportionate and be based on the services actually provided for the processing of applications and the issuance of permits.

Is the administrative deadline laid down by the Directive for examination of the application justified?

Malta believes that the current timeframes laid down in Directive 2003/86/EC are appropriate and justified, given that applications for family reunification often entail complex assessments.

How could the application of these horizontal clauses be facilitated and ensured in practice?

Each application for family reunification is examined on a case-by-case basis and all the relevant elements of the particular case are taken into account, including those referred to in the two horizontal clauses in the Directive 2003/86/EC, that is, the obligation to pay due regard to the best interests of minor children (Article 5(5)) and the obligation to take due account of the nature and solidity of the person’s family relationships, the duration of his or her residence in the Member State and of the existence of family; cultural and social ties with his or her country of origin (Article 17).

Malta considers these horizontal clauses to be sufficiently clear in Directive 2003/86/EC.