



EMN INFORM

Misuse of the Right to Family Reunification¹

This EMN Inform presents the main outcomes of the above-titled EMN Focussed Study and responds to a growing concern, notably of policymakers as well as in the media, that the right to family reunification may be misused as a route into settlement in the EU. It also serves to inform the Green Paper on the Family Reunification Directive 2003/86/EC.²

1. Aim

The aim of the Study was to identify the scale and scope of two instances of misuse, namely marriages of convenience and false declarations of parenthood and to provide clear evidence, to the extent possible and including available statistics, of these types of misuse and how best to address them. The Study also summarises (Member) States' current practices in the detection and prevention of these types of misuse, which is a concern for all (Member) States.

2. Overall Conclusions

- Whilst the perception amongst policymakers, and the media in particular, indicates that misuse of the right to family reunification through marriages of convenience or false declarations of parenthood may be a widespread phenomenon, the evidence presented in this Study suggests that, while marriages of convenience do occur, it is not yet possible to fully quantify it across all (Member) States in a comparable manner.
- Where misuse has been detected, this seems to be primarily for marriages of convenience rather than false declarations of parenthood.
- A number of (Member) States are developing policy or amending legislation in order to (better) tackle the misuse. Of particular concern for some Member States are marriages of convenience between a third-country and an EU national which, for them, occurs more often than between third-country nationals.
- (Member) States have a range of approaches in place to identify and investigate both marriages of convenience and false declarations of parenthood, although they vary between the (Member) States. There is limited involvement of civil society, with (Member) State authorities primarily responsible for detecting misuse.
- Generally a case-by-case approach is followed with evidence from the combination of techniques that the (Member) States use serving to inform the decision made by the responsible authority(ies).
- (Member) States face many common challenges in identifying a marriage of convenience from

¹ The Synthesis Report of the study, along with the National Contributions from 24 EMN NCPs (Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovak Republic, Spain, Sweden, United Kingdom and Norway), is available from www.emn.europa.eu, under "EMN Studies".

² See http://ec.europa.eu/home-affairs/news/consulting_public/consulting_0023_en.htm.

Disclaimer: This EMN Inform has been produced by the European Migration Network (EMN), which collectively comprises the European Commission, assisted by its service provider (ICF GHK-COWI), and EMN National Contact Points (EMN NCPs). It does not necessarily reflect the opinions and views of the European Commission, ICF GHK-COWI or the EMN NCPs, nor are they bound by its conclusions. Similarly, the European Commission, ICF GHK-COWI and the EMN NCPs are in no way responsible for any use made of the statistics provided.

a genuine marriage. Not only is this a sensitive matter in terms of respecting fundamental rights, and the (Member) States are fully committed to their obligations in this respect, but also an investigation tends to be time and resource intensive with the burden of proof most often placed on the (Member) State Authority(ies). The lack of clear methodological guidelines may also hamper this process.

- In this respect, whilst some exchanges of information (and best practice) between (Member) States does occur, there may be scope to develop this further via a dedicated forum, so that (Member) States may also have a better overview, and be updated on, the situation and practice across the EU.
- The lack of consistent statistics, as a result of the different approaches followed, clearly makes it challenging to share information within or amongst (Member) States in a comparable manner. However, at least a better understanding of how statistics are obtained, can already serve to support information exchange.

3. Other Key Findings

Wide variation in the perception of the extent of the issues exists across (Member) States.

Whilst (national) legislation exists, or is in the process of being amended, to address misuse in all (Member) States, there is wide variation in the perceptions of its extent. This ranges from it being unclear, to a minimal or marginal issue, to increased observations, to being a policy priority. Of particular concern for some (Member) States, are marriages of convenience concluded by their nationals (often women) in other Member States. There is also some evidence to suggest the involvement of organised crime groups.

Main motivations for sponsors and applicants were found to be for economic and financial reasons, plus obtain the right of residence and associated benefits. Other factors also play a part.

Motivations identified in almost all (Member) States for a sponsor to participate in a marriage of convenience were principally economic and financial, with some indication that organised crime groups pay the sponsor; through coercion; so-called "grey marriages," where the sponsor enters into a marriage unaware that the motivations of the applicant are purely to obtain legal residence; helping out a friend or acquaintance; compassionate or humanitarian grounds, or idealism, where the sponsor disagrees with the authorities or the immigration rules; to gain lawful residence or to bypass an entry ban; and for a younger third-country national to act as a carer for an older sponsor. From the perspective of an applicant, the main motivations cited were to obtain the right of residence and associated benefits, or to remain in the (Member) State.

Motivations of both sponsors and applicants for false declarations of parenthood appear to be less well developed and reported. They were predominantly for financial and economic reasons; to prevent a negative international protection ruling; and with the intention of regularising an irregular residence situation.

National measures developed to prevent misuse are implemented through a range of authorities and agencies.

National means of preventing misuse of marriages of convenience range from measures taken by embassies in the countries of origin; collection of facts and interviews; checks on family ties; information about lifestyle, national and religious traditions; and interviews with both sponsors and applicants. Measures taken by the Police include inspections in registered residences, places of employment and schools, consultation with municipal authorities and cross-checks with police

information systems. In some cases, non-governmental organisations may also play a role in prevention of misuses.

In terms of authorities responsible for investigating marriages of convenience, these tend to be the responsibility of law enforcement agencies, such as the police and public prosecutor's office, working with a range of national or regional / local authorities, such as civil registries and institutions with responsibility for migration, borders and residence. In some situations, consular staff may be involved. Misuse has also been identified by authorities detecting benefit fraud. Civil registrars in particular are expected to play a role by reporting any suspicions they may have. For false declarations of parenthood, similar authorities are involved with the addition of case workers.

For false declarations of parenthood, a difficulty is that authorities have little or limited means of addressing misuse once the conditions for establishing recognition (consent of parent, child or legal representative) and formal conditions for recognition (civil status, nationality, identity and birth related documents) are respected. Where a family is unable to provide any documentation to prove a relationship between the parent(s) and the child, some (Member) States may conduct DNA tests.

Comprehensive techniques have been developed, but (Member) States face challenges in detecting, investigating and proving misuse.

Authorities may trigger an investigation where the sponsor has previously been involved in a family reunification; where either spouse has been involved in a marriage of convenience previously; where there is evidence of a record of previous short-term marriages; or where they receive a report about a suspicious marriage (e.g. from civil registries, clergy or the public). Techniques then used include, frequently in combination and depending on individual circumstances, interviews with the sponsor and applicant; background checks; home visits; third party and community based checks, to test the couple is living together, including checks with public services and utility providers, document checks and, in some cases, the couple is asked to independently complete a questionnaire and their individual responses are subsequently compared.

Challenges that exist in detecting and investigating marriages of convenience include both the sponsor and applicant being well-prepared for interviews; being both time consuming and resource intensive; the absence of methodological guidelines; and respecting rights conferred under EU or national law. For false declarations of parenthood, triggers are less developed in part owing to the no or very limited experience in the (Member) States, but include assessing the strength of the relationship; unusual age or nationality difference; parents living at different addresses; concerns expressed by a case worker; and where the child keeps the mother's maiden name not the father's.

To prove a marriage of convenience based on these various triggers, (Member) States generally take a case-by-case approach and review the various elements that might constitute evidence to support or oppose the notion that a marriage of convenience has been contracted. The burden of proof, however, lies with the (Member) States in a majority of cases, unless it is part of criminal proceedings. A similar approach is used with false declarations of parenthood with, in addition, some (Member) States also using DNA testing. Again the burden of proof rests mainly with the (Member) State authorities although there are some exceptions where at least part of the burden rests with the applicants.

Where misuse is proven, penalties vary across (Member) States, but can include imprisonment and fines (for the sponsor) and refusal or revocation of a residence permit (for the applicant).

If a marriage of convenience is detected, likely penalties can include, for the sponsor, imprisonment, fines, or both. The extent and amount of these vary between the (Member) States with imprisonment of up to 5 years and fines of up to €15 000. For the applicant, penalties

(additionally) include the refusal of a residence permit or, if already granted, its revocation or invalidation. Similar penalties exist for false declarations of parenthood, but with imprisonment of up to 10 years and fines of up to €750 000. In all cases, there is the right to appeal.

(Member) States co-operate to address misuse in a number of ways.

European co-operation occurs in a number of ways, informal, ad hoc or via formal agreements. Examples include between Belgium and the Netherlands on the so-called "Europe Route;" between Ireland and Latvia in connection to the high incidence of suspected cases between third-country and Latvian nationals marrying in Ireland; via immigration Liaison Officers (ILOs); and a joint operation between the Netherland and United Kingdom in relation to Dutch Antilleans seeking identity and then marriage in the latter.

Available statistics support the fact that marriages of convenience do occur, but it is not yet possible to fully quantify this across all (Member) States in a comparable manner. Very few statistics are available in relation to false declarations of parenthood.

To provide some context, in 2010, a total of 720 200 permits for family reasons were issued by EU Member States (excepting Estonia, Sweden for which complete statistics are not available), some 496 450 (or 68.9% of this total) of which were issued to a third-country national joining with a third-country national.

With regard to the identified cases of marriages of convenience, and noting that in many cases no distinction between those occurring between third-country nationals and those occurring between a third-country and an EU national was possible, residence permits refused or revoked by a (Member) State ranged, in 2011, from 5 up to 990, and in 2010 again from 5 up to 1 360.

In terms of marriages of convenience detected in other ways by a (Member) State, this varied, in 2011, from 5 to 130 and, in 2010, from again 5 up to 425. Suspected marriages of convenience in a (Member) State ranged in 2011 from 1 740 down to 35.

The very few statistics available on false declarations of parenthood may be indicative that this form of misuse is rare. Alternatively, it may indicate that the problem is simply not monitored to a sufficient degree.

4. Further Information

Should you have specific questions or require further details, please contact the EMN via HOME-EMN@ec.europa.eu.

Produced: June 2012