



# Transnational Report: Mapping the Conditions of Stay and the Rationale for Entitlements and Restrictions for Family Migrants

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## Transnational Report Work Package 3: Mapping the Conditions of Stay and the Rationale for Entitlements and Restrictions for Family Migrants

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Note that this paper is correct as of the date of publications. Laws and cases may change after publication.

Based on contributions and WP3 working paper reports on *Mapping the Conditions of Stay and Rationale for Entitlements and Restrictions in:*

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- **The Netherlands:** Carolina Ivanescu & Semin Suvarierol
- **Spain:** Elisa Brey and Mikolaj Stanek
- **The United Kingdom:** Hiranthi Jayaweera and Caroline Oliver

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# 1. Introduction: Reading the Mapping Reports

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Family-related migration is one of the major sources of migration to Europe and has attracted increased policy attention in the last decade due to concerns about the integration of this group of migrants. Whereas the pre-entry conditions introduced to restrict family migration have attracted some scholarly attention, legal rights and restrictions that family migrants meet after entering the host country have not. The research project *IMPACIM* (*Impact of Restrictions and Entitlements on the Integration of Family Migrants*) aims to map pre-entry and post-entry conditions family migrants face in Germany, the Netherlands, Spain, and the United Kingdom and assesses their impact on their integration. IMPACIM focuses specifically on non-EU, i.e. TCN (third-country national) family migrants, who either join a citizen or permanent resident, an EU citizen, or a TCN migrant in these four countries.

For work package three, each country team has prepared a detailed analysis mapping the conditions of entry and stay and the post-entry restrictions and entitlements currently in force for family migrants by consulting the relevant body of national legislation. This transnational report aims to summarize, interpret, and compare the results. For exact references and detailed analyses of country cases, readers should refer to the country reports of Germany ([Lüken-Klaßen 2013](#)) the Netherlands ([Ivanescu and Suvarierol 2013](#)), Spain ([Brey and Stanek 2013](#)) and the United Kingdom ([Jayweera and Oliver 2013](#)). The country reports adopt the same structure and include the following sections:

- *Identifying TCN family migrants:* Who has the legal status of family migrant? Who is allowed to sponsor TCN nationals? How are family ties defined? Are there differences in restrictions applied to TCN on the basis of nationality? (Part 2)
- *Conditions of entry and residence for TCN family migrants:* What are the conditions of entry and stay for family migrants? What are the implications of dependence on the sponsor for the access to resources or to citizenship? (Part 3)
- *Entitlements or restrictions to access resources:* What are the entitlements and restrictions of TCN family migrants in the areas of **employment, education, health, social housing, welfare benefits and civic participation**? (Part 4)

- *Rationales*: What are the rationales provided by policy-makers to justify these entitlements and restrictions? (Part 5)

In summarizing the key findings of the four country reports, we adopt this same structure and highlight the points of convergence and divergence in the treatment of TCN family migrants across the four countries of the project. Every section ends with a table summarizing the findings in that area. Given that this paper addresses a fast-changing policy field, these findings reflect the state of affairs as of December 2012 – please note that some changes might have taken place after this date.

In the concluding section of this transnational report, we reflect on these results, so as to raise questions as to what these findings might imply in practice (Part 6). Where relevant we base this interpretation on the insights provided by work package one (commissioned reports on welfare by Hemerijck, Entenmann, van Hooren and Palm 2013; and legal aspects by [Mole 2013](#)) and work package two ([Heckmann 2013](#)). The aim is thus to build a bridge to work package four (local case studies), which aims to explore the *impact* of these legal conditions, entitlements, and restrictions on the integration of family migrants.

## 2. Identifying TCN family migrants

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The first task of the mapping exercise was to determine who is allowed to enter each country as a family migrant according to the migration laws of each country. The questions that have been addressed were:

- Who is allowed to join as a TCN family member?
- Who is allowed to sponsor a TCN family member?
- How are the family ties defined?
- What kind of evidence needs to be provided to prove the family relationship?

In all four countries, members of the nuclear family, i.e. spouses, partners, and children, are able to join family members. For civil partnerships, including same-sex relationships, couples have to prove the stability and durability of the relationship. In Germany, heterosexual civil partnership does not exist thus are not included in the definition of nuclear family, but homosexual registered partners are allowed to join as family migrants. The UK accepts fiancé(e)s and proposed civil partners as family migrants and in Spain, non-formalised unions are accepted as long as there is evidence of a stable relationship prior to the application. While all countries exclude polygamy in their definition of marriage, the Netherlands is not explicit about this. In practice, the rejection of polygamy means that only one legal spouse is allowed to join the sponsor in all four countries. All member-states already have measures to combat bogus, consanguineous and forced marriages. However, whereas these are spelt out in legislation in Germany, Spain and the UK, in the Netherlands it is taken into consideration while evaluating the applications.<sup>1</sup>

Parents, on the other hand, are allowed to join legally resident minor children in all countries. The UK allows the migration of parents/grandparents when they are over 65 years if they are financially dependent on the sponsor (and can be maintained by them in the UK) and has no support in the country of origin, which requires long-term personal care that can *only* be provided by the sponsor. Furthermore, members of the extended family, i.e.

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<sup>1</sup> Legislation in this field has been announced in the coalition agreement of the new Dutch government in October 2012.

financially dependent close adult relatives, may be accepted as family migrants only in exceptional circumstances. Exceptional emotional ties and circumstances of exceptional harshness (Netherlands), disability as additional criteria to age (Spain) and special cases of hardship (Germany) also form reasons for extending the right of family migration in the other countries. These national legal definitions of family are in all cases narrower than the definition of what can be considered as legitimate family migration according to European law. Namely, the European law considers all forms of physical and financial dependence as a relevant family bond (2004/38/EG).

All four countries require proof of the family ties, by means of identity checks and legal proof of the family relationship with the sponsor. If the relationship cannot be proven with documents, DNA tests can also be used to prove the family relationship in Germany and the Netherlands. The use of DNA tests is voluntary in Germany while in the Netherlands is mainly used for establishing family links among family members of asylum seekers. In the Netherlands, if DNA tests are not considered satisfactory, interrogation methods are used to establish the existence of family ties. In the UK, DNA tests are offered if the relationship of the child to sponsor is in doubt and only in applications for settlement or for refugee family reunification. The decision to take a DNA test is eventually up to the applicant.

All national, EU, and EEA citizens and TCNs with a permanent resident status can sponsor family migrants in all four countries. Whereas it is possible in the UK for some TCNs with temporary resident status (limited leave to remain) to bring in family members, the other countries pose some restrictions, apart from in the case of students: Germany requires two years of legal residence, and Spain requires one year legal residence plus one more year of valid residence permit. The Netherlands and the UK do not allow seasonal workers to be joined by family. Students are however restricted in their right to sponsor family members. The Netherlands, Germany and the UK allow students to be joined by spouses, partners, and children, but in the UK this is only possible for students studying for 12 months or more and at postgraduate level (or in certain other circumstances, see UK WP3 report by Jayaweera and Oliver 2013). In Spain, students can be joined by spouses, civil partners, children under eighteen or children over eighteen with a disability.

There are also specific entitlements and restrictions with regard to when family members may join main applicants: highly-skilled migrants are entitled to migrate simultaneously with their spouses and children in all four countries. Refugees and asylum seekers should be



joined by their family within the first three months in the Netherlands; otherwise, they are subject to the regular conditions of TCN family migration (See section 3). In Germany, people entitled to asylum or being recognized as refugees have the right to be joined by their family members as well; certain restrictive requirements that need to be met by other family migrants are waived in their case. In the UK both accompanying and joining is allowed for family members of all refugees, subject to certain conditions, but asylum seekers must be accompanied by family members when entering Britain, otherwise they must wait for refugee status to be granted in order to be joined by family members.

**Table 1: Identifying family migrants**

Countries	<b>GERMANY</b>	<b>NETHERLANDS</b>	<b>SPAIN</b>	<b>UK</b>
<b>Definition of family</b>				
<b>Nuclear family</b>	Yes	Yes	Yes	Yes, including those over retirement age if dependent
<b>Formally excluded in policy</b>	Long-term heterosexual non-marital relationship, polygamy, bogus marriages, forced marriages	Only one legal partner allowed to join	Only one legal partner allowed to join	Polygamy, consanguineous relationships, bogus marriages
<b>Proof of family ties</b>				
<b>Passport/ ID</b>	Yes	Yes	Yes	Yes
<b>Certificate of marriage/</b>	Yes	Yes	Yes	Yes

<b>family relationship</b>				
<b>Birth certificate</b>	Yes	Yes	No	Yes
<b>DNA test</b>	Voluntary	If necessary		If necessary
<b>Other</b>		Extract of municipal registration		Proof of age  Proof of freedom to marry if married before, proof of having met (e.g. photographs, letters, emails), death certificate of spouse for elderly dependent relatives
<b><i>Who can join as family?</i></b>				
<b>Spouses</b>	Yes	Yes	Yes	Yes
<b>Registered partners</b>	Registered same-sex partners - Yes  Heterosexual registered partnership does not exist	Yes	Stable couples	Civil partners  Fiancé(e)s/ Proposed civil partners

<b>Same-sex partners</b>	Yes	Yes, if relationship akin to family	Yes, if stable and intimate relationship	Yes, if in a relationship for 2 years or more or 4 years or more if the sponsor with ILR (indefinite leave to remain) coming from outside the UK
<b>Children</b>	Minor unmarried children	Minor children	Minor children <u>or</u> children over 18 needing parental care, i.e. due to disability	Minor children
<b>Parents</b>	Parents of minors, except for students;	Allowed to join minor children, except for	Allowed to join minor children	Allowed to join minor children

	parents of adults in cases of particular hardship	students		
<b>Grandparents</b>	In cases of particular hardship	Exceptional emotional ties and circumstances of exceptional harshness	Remittance dependent parents older than 65 years or younger if disabled	Those over age 65 in need of long-term care and grandparents in exceptional compassionate circumstances
<b>Other</b>	In cases of particular hardship	Exceptional emotional ties and circumstances of exceptional harshness		Other financially dependent relatives (daughter/son, brother/sister) over age 18 in exceptional compassionate circumstances

<b>Who can sponsor their family?</b>				
<b>Citizens</b>	Yes	Yes if living in the Netherlands	Yes	Yes
<b>EU&amp;EEA citizens</b>	Yes if sponsor has right to reside	Yes if sponsor has right to reside	Yes if sponsor has right to reside	Yes if sponsor has right to reside
<b>TCN permanent residence</b>	Yes	Yes	Yes	Yes: TCNs with ILR (indefinite leave to remain), or permanent residence (right of abode)
<b>TCN temporary residence</b>	Residence for at least 2 years	Residence permit for at least one year, seasonal workers exempt from family reunification	Temporary residence for at least 1 year + 1 more year valid (when ascendants are reunified permanently)	Temporary residence (limited leave to remain), except some PBS Tier 5 (temporary) workers.

			nt permit required)	
<b>Students</b>	Yes	Students can only be joined by spouses, civil partners, and children	Students can be joined by spouses, civil partners, children under eighteen or children above eighteen with a disability	Students can only sponsor spouses, civil partners, and children, and only if studying for 12 months or more at postgraduate level
<b>Highly skilled migrants</b>	Yes, simultaneous migration possible	Yes, can be joined by family immediately, fast-track procedure applies in simultaneous migration	Yes, highly-skilled /high income migrants entitled to simultaneous migration	Yes, family members can accompany or join main applicant
<b>Refugees/asylum seekers</b>	Yes, eased	If not filed within	Yes,	Entry together

<b>m seekers</b>	conditions	the first three months of stay, subject to criteria of those joining TCN	application made for family; can apply for subsequent reunification after refugee claim lodged.	or reunification only after refugee status received
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### 3. Conditions of entry and stay for TCN family migrants

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In the previous section, the report established who falls under the category of family migrants and who can sponsor TCN family migrants. In this section, we move from these basic conditions to specific conditions which different categories of sponsors need to fulfill to bring their family members to the host countries. These are important not only because these pre-entry conditions are where the most new legislation in the four countries has been introduced, but also because they also help contextualize and help situate the post-entry conditions in perspective.

Even though TCN family migrants are subject to restrictive pre-entry conditions in all four countries, after entry, restrictions facing family migrants can be explicitly distinguished from other categories of migrants only in the UK. There, different categories of family migrants (i.e. family members of citizens/settled residents, students, labour migrants – both EU and TCN - asylum-seekers, and refugees) face different restrictions. By contrast, in Germany and the Netherlands the importance of these pre-entry distinctions becomes much less relevant after entry, as the length of residence becomes the main criteria for access to certain benefits after entry. In these cases, as in the UK, the sponsor's nationality (citizen, EU, TCN) and position (right of residence and the specific rights and restrictions attached to that) is also significant in determining rights. In Spain, fast access to citizenship for some TCN migrants (see Conditions of residence) is also relevant in determining rights.

#### 3.1 Conditions of entry

For all family migrants, general conditions of stay and entitlements and restrictions in different domains depend not so much on the nature of the kinship relation, but on the citizenship or residence status and rights of different categories of sponsors. Sponsors can be classified into three main categories relevant in determining the conditions they need to fulfill when joined by a family member. The categories of sponsor are: 1) citizens or permanent residents, 2) EU and EEA nationals, 3) TCNs with temporary or permanent residence permit.



As such, sponsors have to show the ability to provide for the basic needs of the migrating family member. By fulfilling such requirements, on the other hand, the migrants are thought to show their willingness and ability to integrate in the host society. Yet, not all types of requirements are in force in all four countries for all family migrants.

With age requirements we refer here to the conditions for bringing a partner or spouse (conditions applying to children and grandparents have been discussed in the section on identifying the family migrants). Whereas Germany and the UK require both partners/spouses to be at least 18 years of age, the Netherlands applies the age requirement of 21. All four countries converge in their requirement on sponsors to demonstrate evidence of self-sufficiency in terms of income. Yet, there are differences as to the minimum income requirements regarding the amount. In Germany, the sponsor must have an income level of at least the standard rate for non-contributory social-benefits. The Netherlands and Spain require the sponsors to earn at least the minimum wage, but Spain also asks that 50% of this income be added for each migrating family member. In the UK, the minimum income requirement is £18,600 (approximately €23,000 which roughly equals 150% of the rate of the national minimum wage) although this is higher where children are involved. Moreover, third party contributions (e.g. from parents or friends) cannot be taken into account in the income requirement, whereas in Germany they can, provided that the contributors make a formal commitment. In the UK the financial requirement generally reflects the level of family income at which families cease to be able to access income-related welfare benefits. No specific financial conditions are placed on EU and EEA sponsors as long as they have gainful (self-)employment or adequate means of subsistence without becoming an unreasonable burden on the social assistance system of the host state.

In Germany, the Netherlands, and Spain, sponsors must guarantee health insurance, whereas this is not the case in the UK, where the NHS (National Health Service) is not based on an insurance system but is financed by general tax payments – see below under Health). TCN sponsors also need to show that they possess adequate housing conditions to cater for their family member in Germany, the UK and Spain.

Spain is the only country without any civic integration requirements. The other three countries demand varying levels of knowledge of the language and society. Whereas TCN family migrants moving to Germany and the UK to join citizens or settled persons need to provide evidence of a basic level of German or English in pre-entry tests, migrants to the

Netherlands joining citizens or settled persons have to both show a basic level of the Dutch language and society by passing a civic integration test in the country of origin. As in the other countries, family members of EU, EEA, and Turkish nationals, highly-skilled migrants, asylum seekers, and refugees, however, are exempt from the pre-entry civic integration requirements.

Only when sponsors and the migrating family member(s) fulfill these conditions can the family migrant obtain a visa to enter the host country.

**Table 2: Pre-entry conditions for sponsors and family migrants**

Countries	<b>GERMANY</b>	<b>NETHERLANDS</b>	<b>SPAIN</b>	<b>UK</b>
<b>General conditions</b>				
<b>Age</b>	Both partners/spouses  18 years or older	Both partners/spouses  21 years old	No specific requirement	Both partners/spouses  18 years or older  Partners have met & intend to live together permanently
<b>Income</b>	Secure family livelihood, except for refugees and persons entitled to asylum	Stable (same income source for at least 1 year) and independent income amounting to the minimum wage, except for those older than 65 years and	Sufficient economic means: minimum wage + 50% minimum wage per migrating family member (except for refugees and	Income requirement of £18,600 (more with children) and 'no recourse to public funds' by family members. This does not apply to family

		unable to work	TCN who are entitled to simultaneous migration of their family members)	members of asylum seekers (funded by separate support system) or of those recognized as refugees or for humanitarian protection
<b>Health insurance</b>	Yes	Yes	Yes	No
<b>Language</b>	Basic German language skills	Pass the civic integration test abroad	No language requirements	Basic English language proficiency
<b><i>Specific conditions</i></b>				
<b><i>Citizens</i></b>	No	No	No	No
<b><i>EU&amp;EEA citizens</i></b>	Gainful (self-)employment <u>or</u> adequate means of subsistence without becoming an unreasonable burden on the social assistance system of the host state			

<b>TCN – exemptions from general and specific conditions</b>	Spouses of highly qualified persons; self-employed persons; researchers and long-term resident of another EU member-state; refugees and asylum seekers	Family members of Turkish citizens and citizens of specified ‘Western countries’; highly-skilled migrants; asylum seekers and refugees	No socio-economic evaluation for reunification of family members of refugees. Criteria also softened when family members of high income workers or students come through simultaneous migration	Refugees; asylum seekers (see above)
<b>TCN – housing</b>	Sufficient living space	Registration at the same address	Appropriate housing conditions	Appropriate housing conditions without reliance on public funds
<b>TCN – children</b>	Children’s subsequent immigration between 15-17 only when they have command of the German language or if easy integration can be assumed			Age under 18 and not leading an independent life and must be unmarried/not in a civil partnership

<b>TCN – other conditions</b>		Clean criminal record	Not to benefit from a return program to the country of origin  Certificate of clean criminal record	Spouses/partners must have no unspent convictions at point of seeking settlement

### 3.2 Conditions of stay

Once the family migrant has entered the host country, s/he needs to apply for a residence permit in Germany, Spain and the Netherlands. In the first years of a family migrants' stay, the residence permit is of a temporary character. Having a residence permit is not a requirement in the UK (including for those joining TCN migrants) except for TCN family members of EEA nationals upon entering the UK (although most family migrants experience a similar 5 year 'probationary period' before being able to apply for permanent residence, see below).

Shortly after arrival, TCN migrants need to go through a medical check in the Netherlands, Spain, which consists of a general check in Spain and a tuberculosis scan in the Netherlands and UK if arriving from countries where the disease is common. In the UK the TB screening at entry is in the course of being phased out and replaced by pre-migration screening for applicants in high-incidence TB countries. In Spain, if the sponsor has obtained a long term resident permit (for 5 years) when s/he reunifies her/his family members, then the reunified migrants will also get a long term resident permit (for 5 years).

Only after fulfilling certain conditions can a family migrant obtain a permanent residence permit. Family migrants are different from other categories of migrants in that they are dependent on the sponsor and her/his residence status during the period that they have a temporary residence permit. In the UK, they are considered to be in a 'probationary period'.

However, the level of dependence on the sponsor varies in the four countries. In Spain, family migrants are able to get an independent residence and work permit if they have a job for at least one year paying minimum wage, whereas in the Netherlands and UK, their immigration status remains dependent on the sponsor for 5 years, but they may be able to work nevertheless. In Germany, the family migrant remains dependent on the sponsor for 5 years if the sponsor is a TCN national, for 3 years if the sponsor is a German citizen.

After a period of residence (ranging between three to five years depending on the nationality of the family migrant and the nationality of the sponsor, as above) family migrants may be entitled to a permanent residence permit (or Indefinite Leave to Remain in the UK). The usual conditions are that their sponsors meet the national conditions of having a secure livelihood with sufficient and lasting means of subsistence, and that the migrant can show a basic knowledge of the language and society. Whereas Spain does not have obligatory integration requirements, Germany, the Netherlands, and the UK demand some level of civic integration. The waiting period for a permanent permit is 3 to 5 years in Germany (depending on the nationality of the sponsor) and 5 years in the Netherlands and in the UK. In Spain the dependent status of a family migrant ends when Spanish citizenship is acquired. After 5 years of continuous and regular stay in Spain, reunified migrants can apply for a permanent resident permit. After a certain period of residence in Germany, the dependent status of a family migrant can end, but such provisions depend on whether the family migrants joined a citizen, an EU/EEA citizen or a TCN. In Germany, three years of a relationship gives conditional right to an individual residence permit for family migrants joining Germans. In the case of family members joining a TCN in Germany the waiting period for a permanent settlement permit is 5 years.

However, there are exceptions to these general rules, in particular, for Turkish citizens who on the basis on the EU-Turkey Association Agreement have the right to a faster permanent residence permit. In the Netherlands, this means that instead of a five year residence period, Turkish citizens only need three years of residence before they can apply for a permanent residence permit. A family member of a Turkish business person or worker legally in the UK can apply for permission to remain or extend their stay in line with the requirements for the main applicant, but there is no direct route to permanent residence. In Germany, Turkish family migrants have also been protected from more stringent laws, so for example an

independent residence status can be granted to Turkish family migrants after 2 years (instead of the usual 3).

Due to their rights emanating from the EU treaties, EU-citizens and their family members (regardless of their nationality) are in a better position than national citizens as sponsors. TCN family members of EU citizens are subject to European and not to national law after entry in terms of their rights and entitlements across the four countries. Furthermore, we find that differences in restrictions and entitlements may arise because of historical relationships. In Spain for example, migrants from Latin America, Andorra, Portugal, Equatorial Guinea and the Philippines or those with a Sephardic family background can apply for Spanish nationality only 2 years after continuous legal stay, whereas others, including EU citizens, have to wait 10 years.

In some cases, states allow exemptions to the residence conditions, particularly in the case of domestic violence. In the Netherlands, victims are exempt from having to pass the integration test in and may receive a permanent residence permit if they can prove that their return to the country of origin is not safe or if they have care/upbringing obligations towards a child born in the Netherlands.. In the UK, if the victim experiences domestic violence within the 5 year probationary period, they have the right to apply for indefinite leave to remain based on compelling humanitarian reasons (although this exemption does not apply for partners of students, workers or durable partnerships with EU Nationals). In Germany, again, the waiting period before applying for permanent residence can be waived in cases of domestic violence. According to Spanish legislation on migration, reunified partners could obtain an independent resident permit after separation or divorce if they can prove to have been living with the primary migrant for at least 2 years in Spain, in cases of domestic violence or following the death of the primary migrant.

The transition from temporary to permanent residence is a crucial step for all migrants in general as this determines in many cases a change in their access to entitlements, as the following sections will demonstrate.

**Table 3: Conditions of stay for family migrants**

Countries	<b>GERMANY</b>	<b>NETHERLANDS</b>	<b>SPAIN</b>	<b>UK</b>
<b>General settlement conditions</b>				
<b>Period of required residence</b>	After 3 years for those joining citizens, 5 years for those joining EU or TCN sponsors	After 5 years of legal residence (if admitted before being 18, after one year)	After 5 years	After 5 years
<b>Proof of genuine relationship</b>	No	No	Yes	Yes
<b>Income</b>	If sponsor is TCN: secure livelihood	Sufficient and lasting means of subsistence	Adequate economic means - capacity to cover basic needs.	Minimum income threshold
<b>Housing</b>				Accommodation and support without recourse to public funds
<b>Language</b>	Basic knowledge of language and law	Basic knowledge of language and		Knowledge of language and citizenship



		society		
<b>Health</b>		Tuberculosis scan shortly after arrival for countries with high incidence of TBC	Medical certificate  Health care coverage	Tuberculosis scan upon arrival (pre-departure in the future) for countries with high incidence of TBC
<b>Criminal record</b>	No grounds for expulsion		Clean criminal record	No unspent convictions
<b>Other</b>			Authorization for family reunification (sent to primary migrant)	Demonstrated need for long-term personal care for dependent relatives  Limitation on switching from another migrant category (e.g. family visitor)
<b><i>Specific settlement conditions</i></b>				
<b>Citizens</b>	No	No	No	No
<b>EU &amp; EEA</b>	No	No	No	Not necessary

<b>citizens</b>				to live together in same household
<b>TCN</b>	<p>Sufficient living space</p> <p>Contribution to statutory pension scheme</p> <p>No threat to public safety</p>	<p>No</p> <p><u>Exception:</u> after 3 years for family members of Turkish citizens and asylum seekers</p>	No	No

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## 4. Entitlements and restrictions

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The most important legal distinctions which determine the entitlement to public provisions in all of the countries are between on one hand, legal and illegal migrants, and second, temporary and permanent residents. In all countries, *illegal* migrants are only entitled to minimal humanitarian rights, for example, emergency healthcare. Family migrants however are *legal* residents who possess first a visa for long-term stay, then a temporary residence permit. In the UK family migrants have limited leave to remain (LLR) for a specified time depending on the legal status of the sponsor or main applicant. Only TCN family members of EEA nationals need a residence card, valid for 5 years, for travelling outside the UK. In all countries, while in possession of a temporary residence permit (or in the UK are in ‘the probationary period’) family migrants depend on their sponsor and her/his legal status. The dependent status is terminated once the family member is entitled to permanent residence. The dependence also means that until the family migrant becomes a permanent resident, s/he can also enjoy some of the entitlements not as a personal right but rather through the rights of the sponsor.

The transition from temporary to permanent residence is significant for the rights and entitlements of family migrants. In all four countries, as soon as family migrants become permanent residents, the legal restrictions to entitlements cease to exist and are equal to those of citizens, except in the domain of political participation.

The remainder of the report charts the specific restrictions and entitlements facing family migrants in accessing services and benefits.

### 4.1 Employment

Access to the labour market is a crucial aspect of the integration of migrants. Family migrants have an *almost* immediate right to work. In the UK, fiancé(e)s are an exception to the general rule, as they not allowed to work in the first six months, which is deemed sufficient time for a marriage or civil partnership to occur. In the Netherlands TCN family members are not allowed to work until the temporary residence permit is issued, which can take a maximum of six months. In Spain any reunified family member of working age (older

than 15) with the exception of ascendants is allowed to seek and obtain work without the requirement of a prior minimum period of stay. In Spain, the extension of employment to family migrants is very recent but unconditional.

There may also be exceptions to the right to work depending on the residence status of the family member. In the UK and Spain, family members of asylum seekers, like asylum seekers themselves, are not able to work. In Germany and the Netherlands the right to work is dependent on the nature of the work permit of the sponsor in the case of third country national sponsors(i.e. if the sponsor is entitled to pursue an economic activity, so can the migrant). In Spain, the Netherlands and Germany asylum seekers are allowed to work only if they apply for a work permit, which may be often after a specific period of time and there may be time-limits on how long one can work for.

Employment does not necessarily imply a change in the residence status but it makes it possible: a job is the main gateway towards a fast possibility for an independent residence permit and a possibility for breaking away from dependency upon the sponsor in Germany and the Netherlands. In Spain once employed, reunified family members may change to an independent status. This is not the case in the UK.

Restrictions are also connected to some sectors of the labour market, in which official recognition is needed: medicine and dentistry (UK and Germany) and law (e.g. regarding judges and notaries in Germany). Furthermore, there are some legal restrictions with regard to access to certain posts within public services (Germany, Netherlands and Spain). Entrepreneurship is possible within all the countries, subject to certain conditions (e.g. personal experience, a business plan etc.) Again, in all countries formal measures against discrimination on the labour market are in place. However, employers have the power to decide whom they will hire on the basis of their evaluations of the migrant's skills, former education, and fit with the job. In all national contexts, language is considered a possible barrier in participation to the labour market, with integration measures that precede permanent residence intended as a remedy in all countries apart from Spain. Certain professions, such as medical and legal ones, need accreditation and recognition, often a long and costly process. Furthermore, certain positions are only open for citizens (see above).

**Table 4: Entitlement to work**

Countries	<b>GERMANY</b>	<b>NETHERLANDS</b>	<b>SPAIN</b>	<b>UK</b>
<b>Right to work</b>	Rights inherited from sponsor/Immediate without work permit	Rights inherited from sponsor/Immediate with work permit  Priority to non-TCN in labour market	Immediate for reunified family migrant (need to change to a temporary work permit)	Immediate, except for fiancé(e)s, proposed civil partners  Partners of students can only work if sponsors are enrolled on a postgraduate course of 12 months or longer
<b>Entrepreneurship</b>				
<b>Residence permit</b>	yes	Yes	Yes	No, but must have met conditions of entry and

				residence
<b>Registration</b>	Registration at the local trade office	Registration at chamber of commerce	Registration in the social security system as entrepreneur/independent worker	Register with Customs & Revenue for tax and national insurance as in case of all self-employed
<b>Business plan</b>	Business plan	Personal experience, business plan, added-value for Dutch economy	Licence, business plan and proof of resources and adequate qualifications	Not in general
<b>Restrictions to work</b>				
<b>Professional restrictions</b>	Restrictions in civil service and some professions (some medical and legal professions, some crafts requiring official acknowledgments of qualifications)	Restrictions in access to confidentiality functions in civil service	Restrictions connected both to industry and locality  Restrictions in access to some positions in civil service	Restrictions on some professions (medical)

<b>Diploma recognition</b>	Possible	Partial recognitions of diplomas	Possible	Possible but often costly
<b>Anti-discrimination</b>	Discrimination forbidden by law			

## 4.2 Welfare benefits

In terms of entitlements to welfare benefits in the four countries, the most significant difference is between contributory and non-contributory benefits. Whereas access to contributory benefits depends on employment (and in most countries, social insurance conditions), legal residence (or in the UK permanent residence) is a pre-condition for access to many non-contributory benefits in all four countries. Whereas the amount of contributory benefits depends on the previous contribution of the individual, the access and amount of non-contributory benefits is subject to income-based testing, for migrants and citizens alike, although in the UK access to non-contributory benefits is very highly regulated for family migrants.

There is some diversity across the researched countries in terms of access to **contributory benefits**. Whereas access to contributory benefits in the UK depends on the family migrants' employment (for example unemployment benefit can be claimed for 6 months after 2 years of some tax contributions). In the Netherlands, Germany and Spain, the amount of contributory benefits depends more directly on the length and quantity of previous contributions and specific obligations relating to each insurance.

Access to **non-contributory benefits** is different. In the UK, these are classed as 'public funds' and are not available for anyone subject to immigration control (except for some exceptional circumstances) in the UK. Thus during the first five years of temporary residence, family migrants may be entitled to some contributory benefits but cannot claim a range of other non-contributory funds designed to help low-income families, which include income support, housing benefit and child benefit, although there are some exceptions dependent on the sponsor's status (e.g. refugees). Access for certain other migrants, in

particular TCN family members joining EU nationals will not be subject to this 'no recourse to public funds' rule, although they are subject to a separate 'habitual residence test' for certain non-contributory benefits (e.g. income support, council tax credit) which is applied to those living in the UK for less than 2 years. Claiming non-contributory welfare benefits in the Netherlands is possible in some cases in the Netherlands, although this might have consequences for the longer-term right to stay. Unlimited access to non-contributory benefits (subject to meeting eligibility criteria) is possible only after the granting of permanent residence in the Netherlands and the UK.

In Spain, non-contributory welfare benefits are more limited in scope and level. Disability benefits (for all migrants) depend on the period of stay (5 years, out of which 2 years must be of continuous stay immediately before applying to the funding). Non-contributory pensions may be accessed only if a migrant has 10 years of stay in addition to 2 years of continuous stay prior to the application for funding. Exceptions exist for child benefit for parents below the minimum income or with physically or mentally ill children. After obtaining a permanent residence, benefits remain dependent on income, age and family structure.

In Germany, the underlying concept of integration policy is the inclusion of migrants into the German welfare system and as such, migrants have the same legal rights as German citizens do in accessing non-contributory benefits (usually 3 months after entry and apart from asylum seekers and for those looking for work). These welfare benefits include social allowance for long-term unemployment (dependent on need) parental allowance after birth and child allowance (usually not applying for students and their families) and retirement benefits. In Germany, claiming some of these benefits (e.g. social allowances) can hinder the extension of a residence permit. Although this is written in law however, it rarely poses a problem in practice.



**Table 5: Entitlement to welfare benefits**

Countries	<b>GERMANY</b>	<b>NETHERLANDS</b>	<b>SPAIN</b>	<b>UK</b>
<b>General conditions</b>	Legal residence or citizenship			
<b>Contributory benefits</b>	Statutory insurance obligations related to the specific benefit	Depends on legal status, insurance, amount and length of contribution	Amount depends on length and quantity of previous contribution	After payment of national insurance contributions in previous 2 tax years
<b>Non-contributory benefits</b>	Amount depends on the receivers' family resources and needs;  TCNs unable to work – immediate access to benefits, although <i>may</i> have repercussions for extension of residence	Recourse to public funds may have consequences for the right to stay/residence permit renewal for migrants with temporary residence permits (for less than 3 years)	Condition of minimum period of regular stay: disability benefits (5 years or at least 2 of continuous stay before applying), pensions 10 years (at least 2 of continuous stay before applying)  Exceptions for	'Public funds' not available to anyone 'subject to immigration control', except for refugees and destitute asylum seekers (subject to separate assistance)  Generally subject to 'habitual residence test'

	permit		child benefits for parents below the minimum income or with physically or mentally ill children	for 2 years, except for family members of refugees  Conditions end with the granting of ILR
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### 4.3 Healthcare

In the field of healthcare, access to services depends on the design of the healthcare system in each country. While the access to medical care is based on individual or collective medical insurances in Germany and the Netherlands, in Spain and the UK healthcare is a publicly funded healthcare system. In all cases emergency or ‘indispensable’ care, determined as such by a medical specialist, is available and free for all, including legal and illegal migrants. Children are covered by their parents’ insurance in Germany and the Netherlands. In Spain all migrants under 18 years old have free access to all health services, if they are registered in the municipal register of the municipality where they live. This includes irregular and regular migrants. EU citizens and their family members can have their emergency health costs covered through a European Health Insurance card.

In Germany and the Netherlands, health insurance is obligatory for citizens and legal residents. In Germany, the cost of insurance is determined by the level of coverage and services. The amount paid for health care insurance depends on income, with low income families being covered for free. There is also a contribution fee for every visit to the GP (General Practitioner) and hospital. A basic health package is covered by all insurances in the Netherlands, whereas extra costs apply for services not included in the basic package. GP visits are in the basic package. In the Netherlands there is an annual own risk fee, determined at the beginning of each calendar year, which the patient has to pay for using medical services: GP visits are not included in this, but specialist visits are.

In Spain, legal migrants have access to all public health services. In the UK there are no restrictions in principle at the point of delivery for primary healthcare, while NHS hospitals can only be accessed by anyone who is legally resident, i.e. 'ordinarily resident'. In the UK unpaid health costs by those who are not entitled to free secondary care (e.g. visitors, visa overstayers) can have an influence on the entry or stay in the country. Further, there are services which are the financial responsibility of the patient: for example, dental care and eye sight tests (with some age-based exemptions).

**Table 6: Entitlement to healthcare**

Countries	<b>GERMANY</b>	<b>NETHERLANDS</b>	<b>SPAIN</b>	<b>UK</b>
<b>Healthcare provisions</b>	Obligatory statutory or private health insurance: coverage determines tariff and included services; family members earning less than 450 € are co-insured.	Legal migrants need to be covered by a Dutch health insurance within 4 months after the permit has been issued, which gives right to all healthcare which falls under the basic insurance package: visits to the general practitioner, hospital stays, dental care for up to age 18,	Legal migrants with regular stay have free access to all services	Free access to primary healthcare and NHS hospital (secondary) care for all citizens and legal residents  Free access to emergency care, communicable diseases treatment, compulsory psychiatric treatment, and family

		prescription medicine and various appliances		<p>planning services for all regardless of immigration status or nationality</p> <p>Free secondary care for TCN family members who are nationals of countries with a bilateral healthcare agreement with the UK, irrespective of being 'ordinarily resident'</p>
<b>Illegal migrants</b>	Illegal migrants are entitled to medical treatment of acute illnesses and pain as well as pre- and	Illegal migrants only entitled to 'medically indispensable care' to be determined by	Illegal migrants only have access to emergency services, except for pregnant women and	Primary care at discretion of GP, but no free access to secondary care, except emergency care

	postnatal care	the doctor	children up to 18 years old	or treatment for infectious diseases. Family planning and compulsory psychiatric treatment also free. Refused asylum seekers with barriers to returning home or with minor children can obtain free hospital care.
<b>Asylum seekers</b>	Asylum seekers are entitled to medical treatment of acute illnesses and pain as well as pre- and postnatal care	Asylum seekers and family collectively insured during their stay at the asylum centre	Same as for general health care provision above	Access for asylum seekers free access while claim considered
<b>Students</b>	Obligatory statutory or private health insurance: coverage determines tariff and included services, family	Need to be covered by a Dutch health insurance	All students including legal foreign residents up to 29 years old universally	Same as for general health care provision above for family members of students in line with conditions

	members earning less than 450 € are co-insured		covered	of entry and stay.
<b>Costs</b>	<p>Amount of contribution depends on salary</p> <p>Family co-insurance costless if family earning less than 400 euro's per month</p> <p>Contribution to medication costs in hospital: 10 euro per day (for a maximum period of 28 days)</p>	<p>Monthly contribution fee and annual own risk fee determined at the beginning of every calendar year</p> <p>Children under 18 covered by parents' insurance</p> <p>Insurance covers the costs starting from the date of issue of the permit</p> <p>Visits to GP do not fall under the annual own risk fee</p>	<p>Monthly contribution depends on salary</p> <p>Patients may have to pay a fee when they use the health care system, depending on the treatment</p> <p>Illegal migrants need to pay for primary and specialized treatment</p>	<p>Charges for dental treatment, sight tests, and prescription for medicines, except for low income exemption, those under 16 or 19 (if in full time education) and over 60</p> <p>Unpaid NHS costs over £ 1000 by migrants not considered to be 'ordinarily resident' may lead to refused entry or extension of stay</p>

	Children exempt from GP fee and extra medication costs			
<b>Partly covered/ uncovered services</b>	Individual services such as dental care costs	Costs that are not covered by the basic insurance package	Dental treatments are not included	Dental treatment, sight tests, prescription medicines, as above

## 4.4 Housing

The right to social housing is constrained in all countries, due to high demand and the limited availability of social housing. While Germany, the Netherlands and the UK have well-developed social housing systems, Spain does not. The premise in all countries is that family migrants will be living with their family, thus they are unlikely to need (new) social housing. Most family migrants live in cities, where social housing is scarce. Local (housing) administrations in the Netherlands and UK have the right to decide in housing issues, both regarding permits for social housing and the urgency of specific cases.

The minimum housing space requirement as a pre-entry condition needs to be understood in this context. Such conditions exist in all four countries (e.g. for TCN joining TCN in Germany, a minimum amount of space is set). Housing needs to be shared and registered as such by joining family members in the Netherlands. When immigration control is removed upon gaining permanent residence, only then may family migrants be entitled to apply for social housing in the UK for most family migrants.

Subsidized social housing is dependent on having a temporary or permanent residence permit in Germany, although in the Netherlands, the person requesting housing must have a

permanent residence permit. It is only available to those below a certain income limit. The right to social housing is given after one to three years of living in the city in Germany, while in the Netherlands a permit based on household income is needed in some municipalities to access public housing.

In Spain, access is possible for migrants with a resident permit, although the number of years during which one has been registered on the municipal register is also taken into consideration. In the UK, local authorities assess eligibility based on the individual circumstances, and as family migrants have ‘no recourse to public funds’, they are not entitled to social housing nor housing benefit (apart from in exceptional circumstances, such as domestic violence). Others (e.g. TCN family members of EEA nationals need to have ‘the right to reside’ according to the ‘habitual residence test’. In fact, only permanent residents (or refugee families) may be entitled to access social housing.

Waiting lists are long in the Netherlands, but can be circumvented in special circumstances through an urgency procedure, e.g. in cases of divorce and domestic violence. A housing allowance is available to those in need in Germany, depending on the household income, number of household members, and the price of the rent. Rental subsidy is based on legal residence status, the price of the rent, the income of the applicant or family and the age of the applicant in the Netherlands.

Although discrimination is prohibited, unequal treatment in housing is permissible if it serves the maintenance of social structures in Germany: this is a contested exception only made for social housing in some quarters of some cities. In the UK, asylum seekers and their families are subject to a separate system of assistance and may not choose the area of residence. They need to remain in their allocated housing until they are given permission to move.

**Table 7: Entitlement to social housing**

Country	<b>GERMANY</b>	<b>NETHERLANDS</b>	<b>SPAIN</b>	<b>UK</b>
<b>Residence status</b>	Residence permit	Residence permit	Residence permit	Only permanent residents



				<p>1. partners of citizens/settled residents: after 5 years, not subjected to relative support/ accommodation</p> <p>2 Family members of EEA nationals rights with their 'right to reside' as part of the 'habitual residence' test</p>
<b>Income</b>	Low income	Low income	Low income	Economic need
<b>Waiting lists</b>	<p>In some cities, waiting lists, as well as the need of one to three years of residence in the city</p> <p>Urgency procedures e.g. in case of divorce, domestic violence</p>	<p>Long waiting lists</p> <p>Urgency procedures e.g. in case of divorce, domestic violence</p>		<p>Long waiting lists</p> <p>Priority lists based on physical and economic need (e.g. families with children, homelessness, overcrowding and poor conditions affecting health)</p>

<b>Other</b>		<p>Public housing permit in some municipalities</p> <p>Anti-discrimination does not apply in cases of gentrification or urban engineering</p>	<p>Years inscribed in municipal register</p> <p>Age and household circumstances (for the access to special programmes )</p>	<p>Depends on individual circumstances assessed by local authorities</p> <p>No discrimination</p>
<b>Housing benefit conditions</b>	<p>Household income</p> <p>Price of rent</p> <p>Number of household members</p>	<p>Household/ applicant income</p> <p>Price of rent</p> <p>Legal residence status</p> <p>Age of the applicant</p>	Household income	Assessment of financial circumstances

## 4.5 Education

All family migrants of compulsory education age have the right to free education, but differences remain in entitlements to post-compulsory education. Even though there are no formal restrictions in terms of access to educational institutions except in the case of Spain, where migrants need a residence or work permit to access non-compulsory education, the greatest barrier is formed by the costs of higher education. Universities in all countries except Spain charge higher fees for TCN students than for domestic, EU and EEA students, who are subject to the home student fee.

Pre-school and compulsory education is free in all four countries, stemming from international laws granting children's rights. In the UK, free meals, help with travel and clothing costs are dependent on claiming public funds, to which family migrants are not eligible (although their sponsors, if eligible, may be). Assistance for higher education fees is also subject to conditions. In the UK, to be eligible for further education funding, students must normally have been resident in the UK or EEA for three years preceding the course, otherwise they must pay 'overseas' rates which are significantly higher than for home students. In Germany, family migrants can apply for funds for Higher Education under the Federal Training Assistance Act as long as the *sponsor* has been resident there for four years.

Some pre-school programs are free to all in the UK while some opportunities for children to use their own native language are provided. In the Netherlands, pre-school playgroups function as educational centres, and subsidized childcare facilities are available. Pre-school education has also been introduced to stimulate the development of children from deprived neighborhoods, mostly from migrant families, who are considered to have a 'language barrier'.

In the Netherlands, the main responsibility for making sure children attend compulsory schooling lies with the parents. The development of children is monitored and measured, including language abilities. In Germany pre-school facilities select children, although applications are open to everybody, irrespective of nationality. These facilities are funded by local and federal authorities, with additional parental contribution if necessary. Early application is encouraged for popular facilities. Special courses are available for migrant children in Germany. A language test in order to assess language capabilities is also needed for all children enrolling for school in Germany, with special support possibilities for those

with inadequate knowledge. Germany and the Netherlands already target migrant children from pre-schools onwards, making sure that their language skills are appropriate.

In the UK, eligibility for funding for further and higher education (and thus the fees amount) depends on residence, which means in practice that family migrants are subject to higher fees. Similarly, in Spain fellowships are available for family migrants for higher education, only if they are regularly staying in the country. In the Netherlands, costs for further training are the responsibility of individuals, though the state has a social loan for students with a low interest rate to which all long term residents are entitled. Vocational training is available upon completion of the secondary school in Germany, while higher education acceptance is at the discretion of the educational institutions and costs for TCN are on average 45% higher. Grants and loans are available in Germany for certain types of secondary schools and higher education institutes, depending on the status of the sponsor. TCN migrants may obtain these grants if the sponsor has a permanent settlement permit and has lived in Germany for at least 4 years.

In the three countries where migrants are required to prove their integration in order to obtain permanent residence and/or citizenship (Germany, the Netherlands and the UK) there are also institutionalized civic integration courses. These are in practice obligatory as the migrants either need the courses to prove their integration or to prepare for the integration test. These courses aim to teach the language and basic information about the country. Whereas the migrants to Germany and the Netherlands need to pass an integration test to prove their integration, the UK has a varied policy whereby all migrants need to prove their integration proportionate to their ability and level in English. In practice this means that people with a low level of English need to successfully finish an ESOL (English for Speakers of Other Languages) course with citizenship content, whereas those who already possess an intermediate or higher level need to pass the Life in the UK test. Whereas it is the responsibility of the migrant to pay for the civic integration courses in the Netherlands and the UK (except for exceptional cases where the municipality subsidizes the course), migrants are entitled to courses in Germany and need to only make a minor financial contribution. In Spain, where there are currently no civic integration demands on migrants, language and integration courses are voluntary and organized for free at the initiative of local and regional governments.

**Table 8: Entitlement to education**

Country	<b>GERMANY</b>	<b>NETHERLANDS</b>	<b>SPAIN</b>	<b>UK</b>
<b>Pre-school education</b>	Free, additional parental contribution	Subsidized, role in integration	Subsidized in case of public centres	Free for 15 hours per week, with home language possibilities
<b>Primary and secondary education</b>	Free, travel expenses covered  Language tests for all children  Special courses for migrant children	Free, subsidy for low-income families	Free transitional classrooms (during first months in the country)	Free  Access to free meals, travel expenses and clothing costs - family migrants are mostly ineligible to apply.
<b>Further education</b>	Grants and loans available, depending on the status of the sponsor  Dependent on	Costs are individual responsibility	After 18 dependent on resident or work permit	Eligibility for funding and amount of fee depends on 3 years residence

	<p>previous qualifications</p> <p>Study fee (contribution to administrative fee)</p>			
<b>Higher education</b>	<p>Admission dependent on previous qualifications</p> <p>Study fee</p> <p>Grants and loans available</p>	<p>Admission dependent on institutional criteria</p> <p>Bifurcation of fee structure EU/TCN</p>		<p>Admission dependent on grades and institutional criteria</p> <p>Bifurcation of fee structure between home/abroad students but home student rate after 3 years residence in EEA</p> <p>Residence influences entitlement to apply for student loans</p>

				etc.
<b>Integration courses</b>	<p>Integration exam obligatory for permanent residence permit</p> <p>Migrants entitled to language and orientation courses which are obligatory</p> <p>Minor financial contribution</p>	<p>Integration exam obligatory for permanent residence permit</p> <p>Optional/obligatory integration courses language and general knowledge</p> <p>Costs individual responsibility (loan possible), in some cases, e.g. asylum seekers/refugees subsidized by municipalities</p>	<p>Voluntary language and integration courses in some regions and municipalities</p>	<p>Depending on language level either a language and citizenship course or integration exam obligatory for obtaining permanent residence or citizenship</p> <p>Costs individual responsibility – may be subsidized by municipalities, dependent on other conditions</p>

## 4.6 Political and civic participation

In terms of active and passive voting rights (right to vote and right to run for office, respectively), the legal status of family migrants is important, as well as their age and the length of stay in the country. As a general rule of thumb, access to vote and stand in national elections is reserved for citizens, whereas EU and local elections are reserved for EU citizens. There is little difference between active and passive voting rights within each

country. Permanent residents in the Netherlands and Spain have access to all social rights and provisions, except political rights, both to vote and stand for office in national elections. Whereas the Netherlands allows all migrants access to vote in local elections after five years of residence, this right is restricted to permanent residents from some countries for Spain. In Germany, third-country nationals are not allowed to stand or vote in elections at any level. In the UK, only British citizens and Commonwealth citizens can vote in both national and local elections. Furthermore, the UK grants legal nationals of Irish and Commonwealth countries the right to vote in local and national elections. In addition, to stand for office in British local elections, one needs to have these nationalities and reside or work for at least one year in the locality in question.

***Table 9: Entitlement to political and civic participation***



Country	GERMANY	NETHERLANDS	SPAIN	UK
<b>General conditions</b>	<p>Citizens older than 18 entitled to vote and stand for all elections</p> <p>EU citizens older than 18 entitled to vote and stand for local and EU elections</p>			
<b>Active voting rights</b>	<p>EU citizens entitled to vote for local elections after having being registered at a local community for 3 months</p>	<p>Legal residents entitled to vote for elections of the water regulatory authority immediately</p> <p>Legal residents living in the Netherlands for at least 5 years entitled to vote in local elections</p>	<p>Permanent residents of Bolivia, Cape Verde, Chile, Colombia, Equator, Iceland, New Zealand, Norway, Paraguay, Peru entitled to vote at local elections if registered in the municipal register</p>	<p>Irish citizens entitled to vote in all elections</p> <p>Legally resident Commonwealth citizens entitled to vote in local and national elections</p>
<b>Passive voting rights</b>	<p>Same rules as active voting rights</p>	<p>Same as active voting rights</p>	<p>Same as active voting rights</p>	<p>National elections: citizens of Ireland and legal residents of Commonwealth countries</p> <p>Local elections: also legal residents of Commonwealth,</p>

				EU citizens
<b>Local democratic participation</b>	Participation in Integration or Foreigners' Advisory Councils -only advisory, no decision-making power	No formal restrictions	No formal restrictions	No formal restrictions
<b>Party membership</b>	No formal restrictions  Parties may introduce conditions in their statutes: CDU/CSU at least 3 years of residence, FDP 2 years of residence, membership ends with loss of residence permit; other parties no restrictions for	No formal restrictions	No formal restrictions	

	persons living in Germany			
<b>NGO membership</b>	No formal restrictions, but NGO-specific restrictions possible  Foreigners' associations obliged to inform the local authorities about their activities	No formal restrictions	No formal restrictions	No formal restrictions

## 5. Rationales

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Having provided an overview of the entitlements and restrictions in the four countries, we now move on to summarizing the rationales that have been provided by national authorities to justify these entitlements and restrictions. We explore below the underlying rationales for granting or restricting rights of family migrants.

### 5.1 Rationales of entitlements

#### 5.1.1 Human rights and family law

The rationales underlying the rights of family migrants to enter and settle in the four countries are shaped by human rights and family law, and their translation into national law. The right to family life is seen as a fundamental human right and is protected under international law. Family reunification is a right under EU treaties, and the current implementation of this fundamental right has been influenced by European legislation, namely by the EU Directive 2003/86/EC on the right to family reunification for third-country nationals.

Within the category of family migrants, some groups are more privileged than others. The rationale for granting and restricting rights for TCN family members of European citizens is based on EU law. The rights of most non-EEA national family members of EEA nationals draw upon free movement rights ‘which fundamentally have an economic rationale – the prosperity of EU Member States as a whole’ (Spencer and Pobjoy 2011: 36). In many cases this means that family members of EU and EEA citizens are more privileged than family members of citizens. In the same way, family members of highly-skilled migrants in all countries encounter different conditions for temporary and permanent residence, and different access to rights and entitlements. This difference between different types of family migrants points out the importance of the sponsor or referee in the process of integration. Readers who are interested in the intricacies of family reunification law in the EU and international framework are advised to read the commissioned work package 1 paper: *Family Migration and Access to Social and Economic Rights under the Legal Regimes of the EU and the Council of Europe* (Mole 2013).

### **5.1.2 Equality and anti-discrimination**

The post-entry rights and entitlements of family migrants rest on the legal rationales of equality and anti-discrimination, stemming from international human rights law and EU law which have been translated into national law in the four countries. Equality and anti-discrimination clauses may, however, be qualified by differentiating between citizens and non-citizens. While citizens enjoy full rights in their country, non-citizens are subject to restrictions and limitations. Citizens of the Union and citizens of certain other States have privileges in Member States of the EU other than their own, and in the EEA and EFTA states, and discrimination on the ground of nationality between citizens of EU Member States is prohibited under the EU treaties. Much of this extends to family members.

Access to rights and entitlements, in particular access to welfare benefits, is subject to residence requirements. Temporary residents have the least rights and are dependent on their sponsors until they find work themselves or obtain permanent residence after fulfilling the settlement conditions explained above (Part 3), inheriting their sponsor's limitations in the case of family migrants joining other TCN migrants and having temporary limitation on their own in the case of family migrants joining citizens. Furthermore, TCN family migrants joining EU nationals inherit the rights of EU nationals, being considered by the state as equal to them as long as the situation of dependency lasts. When in possession of a permanent resident permit, family migrants are independent of their sponsors and become equal to citizens in all domains except for voting in national elections.

Hammar (1990) and Soysal (1994) argue that differences between the rights of citizens and non-citizen legal residents have become minimal in modern democratic states. 'Denizen' and 'universal personhood' are terms that are meant to designate the status of foreigners whose rights approach those of citizens. Indeed, our findings confirm that non-citizen residents often have the same rights as citizens, but this is particularly so when they become permanent residents: while in Spain legal residence is in itself the condition which entitles migrants to most of the rights citizens have, in Germany and the Netherlands only permanent residents have the same rights as citizens do (apart from voting in national elections). In the UK, although the difference made between different legal categories of migrants is more complex, the same distinction applies: once permanent residents, migrants enjoy almost the same rights as citizens after the end of the probationary period of five years.

Whereas the principle of equality underlies the entitlements to basic rights such as health and education, the principle of anti-discrimination protects TCN family migrants from being treated differentially, e.g. in access to the labour market. Readers who are interested in how the concepts of equality and anti-discrimination have been interpreted by EU and international courts are advised to consult Mole (2013): *Family Migration and Access to Social and Economic Rights under the Legal Regimes of the EU and the Council of Europe*.

## **5.2 Rationales of restrictions**

### **5.2.1 Restriction of family migration**

The restriction of migration is a key feature of the state, and granting or withholding permanent residence and citizenship are both key elements of state sovereignty. The power to admit or to refuse entry or residence to anyone who is not a citizen is the point where the state can draw boundaries between insiders and outsiders, although this autonomy is constrained by their obligations under international and European law. Furthermore, migration control is closely related to immigration management, dealing with migrants who have already entered the territory of the state. The central means of controlling migration and its effects takes place at the borders of the states.

The aim of quantitatively reducing the inflow of family migration has influenced the tightening of the immigration rules affecting entry (Joppke 2007). Besides quantitatively restricting migration flows, measures have been introduced to select migrants which 'fit' into the host society. European states have begun thus to differentiate between 'desired' and 'undesired' migrants by means of conditioning migrants' entry and stay. In this process, whereas the immigration of highly-skilled migrants has been encouraged through fast-track visa procedures for these migrants and their families, the immigration within the framework of family reunification has come to be seen as less desirable. The increasing problematization of migrants and their 'lagging' integration and the analysis that this was a result of soft "multiculturalist policies" (Lentin and Titley 2010) have led to restrictive immigration and integration regimes in some European countries.

In this sense, immigration and integration became systematically and institutionally dependent on each other. The rationale that immigration needs to be restricted in order to promote integration has become dominant. More restrictive family migration measures were

introduced with little opposition in the Netherlands (Bruquetas-Callejo et al. 2007: 8), with the dominant belief that “the immigration effect [was] promoted by the very facilities to which minorities [have] access under the integration policy” (ibid: 26). From the beginning of the economic crisis in 2007, some changes can be observed regarding migration policies. The political debate has affected family migration, but this has been more in terms of family members’ authorization to arrive and stay in the country than the rights they are entitled to, with the exception of the UK. In Spain, family migration is not high on the agenda in the political debate and in immigration legislation.

### **5.2.2 Promoting integration**

The basis of informal equality with citizens, also the requirement for a permanent residence permit is integration, especially in Germany and the Netherlands, but also in the UK. The underlying concept and main feature of the German mode of integration has been to open up core institutions (labour market, self-employment, education and training system, housing, health) to immigrants – including their family members – and to include them into the general welfare state and social policy system. This concept derives from respect for human rights as well as from fundamental principles of the social order. Selection before entering the country, with a second wave of selection upon obtaining permanent residence also takes place, with the goal of enhancing (the chances for) integration. On the other hand, Spain introduced non-compulsory integration programs in some municipalities but does not incorporate integration measures as a condition of entry or stay in the country.

Integration is targeted both by pre-entry conditions and conditions of stay. A precursor of this test is already included in the pre-entry conditions, where basic knowledge of Dutch, English, or German respectively is expected from family migrants joining their families. Family migrants joining highly-skilled migrants are exempt from both the pre-entry and stay conditions, as neither their education nor their future level of income and thus social status is considered problematic. Once migrants fulfill the conditions of permanent residence, migrants are considered to be formally integrated and obtain access to rights and entitlements, as they are then assumed to fulfil the demands of inhabiting the country in question.

### **5.2.3 Reducing the financial burden on the welfare state**

The heyday and crisis of social rights are linked directly to the progression of the welfare state (Marshall 1950). 1990s saw the welfare system extend in terms of entitlements and definitions of the entitled, whereby welfare benefits were extended also to denizens (Hammar 1990). The legal system has gone some way in establishing equality between citizens and denizens which as we have seen is the most visible in Germany and the Netherlands, both considered as 'advanced welfare states'.

Migrants have at times been seen as depending on benefits and welfare provisions, distributed by a too lenient state (Bruquetas-Callejo et al. 2007:29). Although it is assumed in the Netherlands for example that migrants who do not become integrated into the labour force are becoming a burden on the welfare state, about half of the immigrant population who are not employed are also not dependent on benefits. This group has not been the focus of integration policy (OECD 2008: 4). Recent Dutch policies rest on the idea that socio-cultural differences do not only endanger social cohesion, but also the solidarity needed for the welfare state to function (Entzinger 2006). Thus in the Netherlands, but also in the other countries to different degrees, the issue which is addressed by integration policies becomes less how to promote socio-economic participation so that the welfare state might continue to work, but how to construct the basis of solidarity which legitimises the welfare state (Bruquetas-Callejo et al. 2007: 29, see also Hemerijck et al. 2013).

Immigration management is closely related to the state, and the recalibration of its welfare dimensions. As the IMPACIM commissioned paper for WPI (see Hemerijck et al. 2013) family migrants have also been affected by the broader changes affecting welfare states. In terms of 'functional recalibration' (Hemerijck et al. 2013), a change of perceptions concerning social risks has drawn attention towards migrants and their families as possible burdens on the welfare state. In terms of 'distributive recalibration' (Hemerijck et al. 2013), the protection of the welfare state has been offered only to citizens and permanent residents of the national territories. In terms of 'normative recalibration' (Hemerijck et al. 2013), integration has brought to the fore the importance of shared language and norms/values about living together, while in terms of 'institutional recalibration' (Hemerijck et al. 2013) the responsibility has been shifting from the state towards the migrant and the sponsor. While enabling compulsory education is still considered as the duty of the state, participation in secondary, higher but also pre-school education are seen as the responsibility of the individual. In the case of Germany and the Netherlands both pre-school



education and integration courses are encouraged and (were until recently in the Netherlands) partly financed by the state, the former with the motivation of encouraging integration at an early age.

The dismantling of the welfare state in Western Europe has gone hand in hand with a neo-liberal public policy regime and discourse which has focused on responsabilizing citizens in general and migrants in particular so that they contribute to (ideally by working and paying taxes) and do not depend on the state. The ideal citizen is now conceptualized as a self-managing subject whose rights and claims to belonging are based on economic performance rather than on solidarity with the (national) community (Erel 2011). As the 'rights and duties' and 'personal responsibility' paradigm became dominant, integration policies have also developed from a position of non-interference to strict requirements (Van Houdt et al. 2011).

Pre-entry conditions in this sense serve to minimize post-entry access to public funds. As such, family migrants must prove themselves to be self-sufficient individuals and 'pay their way' into citizenship. Only when citizenship is 'earned' does the migrant have full access to her/his social rights, i.e. the benefits of the welfare system, such as social housing, etc. (Van Houdt et al. 2011). Moreover, the strengthening of the position of the sponsor has taken the responsibility towards new migrants off the shoulders of the state. The sponsor serves a double intermediary role, first between the new migrants and the state by enabling their entry and providing the terms and conditions for their stay, but also between the new migrants and the society in which they need to integrate, an argument which prevails in the Netherlands. In Germany, Spain and the UK the sponsor is responsible too for sustaining the family migrant until s/he acquires permanent residence.

The area which follows closely the aim of reducing the financial burden on the welfare state is the regulation of welfare benefits. Where non-contributory benefits are concerned Germany is the most generous: TCN migrants unable to work have immediate access to benefits, while their level depends on the resources and needs of the receiver's family. Other countries impose the condition of minimum periods of stay (Spain) and not being subject to immigration control (UK) in order to restrict access to non-contributory benefits, while the Netherlands links access to non-contributory benefits with consequences for the right to stay in the country for those on temporary permits.

Finally, the economic crisis has also put pressure on the welfare state and affected the rights of family migrants. Currently, it is essential that migrants do not constitute a burden to the welfare system. The specific programmes for reunified family migrants may suffer from the limitation of public services for the integration of migrants, as a consequence of the public deficit, which is also affecting non-migrants more widely.

## 6. Reflections

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What does this all mean for integration of family migrants? Individual country reports point out that the formal restrictions specifically aimed at family migrants, as differentiated from TCN migrants in general, are limited in almost all cases. Formal restrictions are mostly connected to the legal residence status and the legal situation of the sponsor or referee of the family migrants themselves. Within the specific constellations of each welfare state there are few formal restrictions addressing family migrants specifically (except perhaps in the UK in certain areas). In some countries, their access to entitlements might also be eased through their family members' entitlement. However, whereas the rights and limitations applying to all migrants also affect family migrants, the dependence on the sponsor is an aspect which is specific to and crucial for the situation of family migrants.

However, the distribution of hurdles family migrants encounter is different for each country: while Spain is the most lenient in giving access to entry for family migrants, its welfare state has little to offer. In Spain family migration is only marginally referred to in the political debate and legislation, the main focus being on economic migration. On the other hand, both Germany and the Netherlands have transformed the access to entry into a selection mechanism which only allows family migrants to migrate once they have demonstrated their ability to become integrated into society. The UK, on the other hand, maintains both before and after entry into the country a complex system of differentiation between different types of family migrants, strictly regulating access to some welfare state provisions until permanent residence. However, it is the case that in all countries, family migrants encounter unrestricted access (subject to the same eligibility conditions as citizens) only once they receive their permanent residence permit onwards.

The actual use of rights and benefits can tell us little about integration as such. For example, the integration of family migrants may be both facilitated and restricted by their special connection with the sponsor. In the case of family migrants as opposed to other migrants, access to resources is not always on an individual basis, but depends on other members of the family and their socio-economic situation. For example, if the sponsor who is a permanent resident or citizen becomes her/himself entitled to public benefits, the family migrant can also profit from it, e.g. social assistance or housing (although this is not the case in the UK, where the family migrant is discounted from assistance in any calculation). From

this point of view we might consider that family migrants might have an advantage over other TCNs indirectly in access to resources and the other rights they inherit from their sponsors and in their integration. Yet by the same token, this situation of dependency on the sponsor brings other problems to consider.

Moreover, while formal barriers may be lacking, there are other informal barriers, especially for access to the labour market, which are applicable for migrants in general, such as insufficient knowledge of the host country language, the non-recognition or partial recognition of foreign qualifications, and discrimination by employers. These barriers are especially important as family migrants in general have fast and almost unconditional access to the labour market. Indeed, it is the combination of the formal barriers with these informal barriers and their impacts on integration, that the IMPACIM work package four country case studies will explore.

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