



# Misuse of the Right to Family Reunification

*Marriages of convenience and false declarations of parenthood*

**EUROPEAN MIGRATION NETWORK**

**NATIONAL CONTACT POINT**

**MALTA**

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**This report is provided solely for the purpose of completing an EMN synthesis report on visa policy as migration channel. The views expressed in this report do not necessarily reflect those of the Maltese National Contact Point or that of the Maltese Government.**

*The EMN has been established by Council Decision 2008/381/EC and is co-financed by the European Commission.*

Section 1  
Top-line 'Factsheet'

National Contribution

*Overview*

*Marriages of Convenience:*

Marriages of convenience may be contracted for various reasons, including possibility to obtain citizenship; freedom of movement; permits to work or reside; the right to enter Malta; or the right to obtain medical care in Malta. Such cases have become more evident with cases of marriage annulment. In 2004, new legislation was introduced making persons party to marriages of convenience liable to criminal proceedings carrying penalties of imprisonment. Conditions derived from legislation concerning granting of citizenship were also made more stringent in year 2000 to deter abuse.

Persons found guilty may be declared as prohibited immigrants, under the Maltese Immigration Act, making them liable for removal besides other penalties considered by the law. Such decisions, as with others concerning immigration matters, may be appealed.

While statistical data on the number of such marriages is not readily available, the number of first residence permits to third country nationals joining an EU citizen for family reasons totalled 1,471 over a period of three years (2008-10), with more than half of these permits (782) being issued in 2008. For this three-year period, most such third country nationals were from Russia, Libya and Ukraine.

*False Declarations of Parenthood:*

Very few cases are known or suspected of false declarations of parenthood. This is also in line with the limited amount of persons requesting residence permits on the basis of parenthood.

False declarations are covered under the Criminal Code. Persons found guilty may be declared as prohibited immigrants, under the Maltese Immigration Act, making them liable for removal besides other penalties considered by the law. Such decisions, as with others concerning immigration matters, may be appealed.

## Section 2

### National legislative framework and definitions

#### National Contribution

##### 2.1 Definitions

###### *Marriages of Convenience:*

The concept of marriage in Maltese legislation is as provided for in the Marriage Act (Cap. 255) which also requires that the marriage is drawn up and completed in accordance with the Civil Code (Cap 16, Article 293). This does not cover civil partnerships, same-sex marriage or cohabiting couples.

The legal basis for family reunification is provided for under the Immigration Act, specifically Subsidiary Legislation 217.06 (Family Reunification Regulations). This subscribes further criteria as to the composition of the family for family reunification purposes, including that

*the sponsor's spouse who shall be twenty-one years of age or over:*

*Provided that in the event of a polygamous marriage, where the sponsor already has a spouse living with him in Malta, the Director shall not authorise the family reunification of a further spouse;*

*(b) the unmarried minor children of the sponsor and of his spouse, including children adopted in a manner recognized by Maltese law;*

*(c) the unmarried minor children, including adopted children, of the sponsor or of the spouse, as the case may be, where the sponsor or the spouse has custody and the children are dependent on him.*

The Immigration Act also provides that family members (including dependents, spouses or widows) of Maltese citizens are exempt from the provisions of the Act related to prohibited immigrants.

As regards family members of EU nationals the definition of the members of the family entitled to join the EU national are covered by subsidiary legislation issued under the Immigration Act, specifically L.N. 205 of 2004 (Immigration Regulations, 2004) and subsidiary legislation issued under the European Union Act (Cap 460) – Free Movement of European Union Nationals and their Family Members Order (S.L. 460.17). This legislation makes it clear that a family member includes the spouse “provided it does not include a party to a marriage of convenience”.

The provisions of the Family Reunification Directive were transposed into Maltese legislation by means of L.N. 150 of 2007 issued under the Immigration Act.

###### *False Declarations of Parenthood:*

False declarations are liable to provisions contemplated under the Criminal Code (Cap. 9, Art 188), including if found guilty, imprisonment.

##### 2.2 What national legislation regulates family reunification between:

*(i) a third-country national residing lawfully in the EU / Norway reunifying with a third-country national applying to enter / reside there in order to preserve the family unit.*

*(ii) A mobile EU national reunifying with a third-country national*

*(iii) A non-mobile EU citizen reunifying with a third-country national on the basis of jurisprudence (and reference to the EU Treaty)*

*(iv) A non-mobile EU citizen reunifying with a third-country national.*

*Marriages of Convenience:*

- (i) With respect to a third-country national residing lawfully in the EU / Norway reunifying with a third-country national applying to enter / reside there in order to preserve the family unit, the regulating national legislation is S.L. 217.06 (Family Reunification Regulations), which transpose the relevant EU Directive. A sponsor shall be entitled to apply for family reunification on the condition that family members are third country nationals; sponsor holds a residence permits valid for a minimum period of one year, and; has reasonable prospects of obtaining the right of permanent residence. A sponsor however may not apply if still considered as an asylum seeker or is resident in Malta on the basis of subsidiary protection or temporary protection. Moreover, the sponsor's spouse should be 21 years of age or over and has no other spouse living in Malta in the case of a polygamous marriage; and family members include unmarried minor children of the sponsor and of his spouse including children adopted as recognised under Maltese law and unmarried minor children where either the sponsor or the spouse has custody and the children are dependent on him. Further considerations are required with respect to children whose custody is shared.
- (ii) With regard to a mobile EU national reunifying with a third-country national, the regulating legislation is S.L. 460.17 (Free Movement of European Union Nationals and their Family Members Order) which also transposes Directive 2004/38/EC. Family members (including non-EU nationals) of an EU national, accompanying or joining the EU citizen, may enter, remain and reside in Malta as well as seek and take up employment or self-employment.
- (iii) With regard to a non-mobile EU citizen reunifying with a third country national on the basis of jurisprudence (and reference to the EU Treaty), no particular legislation is applicable.
- (iv) With regard to a non-mobile EU citizen reunifying with a third-country national, the applicable legislation is the Immigration Act (Cap 217) as well as Subsidiary Legislation under the European Union Act (Cap 460), specifically S.L. 460.17 on the free movement of EU nationals and their family members.

*False Declarations of Parenthood:*

The Criminal Code (Cap 9, Art. 188) specifically states that “Whosoever, in order to gain any advantage or benefit for himself or others, shall, in any document intended for any public authority, knowingly make a false declaration or statement, or give false information, shall on conviction, be liable to the punishment of imprisonment for a term not exceeding two years or to a fine: Provided that nothing in this article shall affect the applicability of any other law providing for a higher punishment.”

*2.3 Is the prevention of misuse of residents' permits for family reunification as defined in the*

*context of this study specifically covered in national legislation?*

*Marriages of Convenience:*

The Marriage Act (Cap 255, Article 38) clearly states that “any person who contracts a marriage with the sole purpose of obtaining (a) Maltese citizenship; or (b) freedom of movement in Malta; or (c) a work or residence permit in Malta; or (d) the right to enter Malta; or (e) the right to obtain medical care in Malta, shall be guilty of an offence and shall on conviction be liable to imprisonment for a term not exceeding two years.” Any right or benefit derived on the basis of the marriage may be rescinded or annulled, while any person contracting a marriage with another person knowing that it is for the purposes mentioned previously shall be guilty of an offence punishable to the same extent as the other person.

The Family Reunification Regulations (S.L. 217.06, Art. 20) additionally allow the Director to conduct specific checks and inspections where there is reason to suspect that there is fraud or a marriage or adoption of convenience. Specific checks may also be made in view of renewal of family members’ residence permits. Moreover, an application for family reunification may be rejected “where it is shown that the... permit was based of false or misleading information,... documents, or otherwise fraudulently obtained; and where it is shown that the marriage or adoption which are the subject of the application... was contracted solely for the purpose of enabling the person concerned to enter or reside in Malta” (Art. 18).

No changes to legislation are currently envisaged.

*False Declarations of Parenthood:*

While no specific provision is made to parenthood matters, false declarations to public authorities intended to gain any advantage are covered by the Criminal Code (Cap 9, Art. 188) which specifically states that “Whosoever, in order to gain any advantage or benefit for himself or others, shall, in any document intended for any public authority, knowingly make a false declaration or statement, or give false information, shall on conviction, be liable to the punishment of imprisonment for a term not exceeding two years or to a fine: Provided that nothing in this article shall affect the applicability of any other law providing for a higher punishment.”

*2.4 Impacts (if any) of European Court of Justice case law which has focused on family reunification (e.g. Zambrano, McCarthy, Dereci) in your Member State*

*Marriages of Convenience:*

As regards the cases concerned, no cases have been encountered following jurisprudence.

*False Declarations of Parenthood:*

As regards the cases concerned, no cases have been encountered following jurisprudence.

### Section 3

#### The situation in Malta

*National Contribution:*

**Scope of the issue**

*3.1 Are a) marriage of convenience and b) false declaration of parenthood recognised as examples of misuse of residents' permits for family reunification in your (Member) State?*

*Marriages of Convenience:*

Cases of marriages of convenience have surfaced in situations regarding Maltese nationals married to foreign nationals for the purpose of residence. These have surfaced mainly following court judgements concerning annulment cases. Indeed in 2004, through Act IX of same year which amended the Marriage Act (Cap 255), any person having contracted a marriage of convenience became liable to criminal proceedings carrying penalty of imprisonment.

Prior to year 2000, the spouses of Maltese citizens were eligible to apply for citizenship immediately after their marriage. Such citizenship was granted provided that the acquisition of such citizenship was not contrary to public interest. In 2000 amendments were made to the Maltese Citizenship Act (Cap 188) whereby citizenship would only be obtained if the person had been married for at "least five years and on that date had been living with that citizen" so as to ward off abuse. Furthermore before the set 5 years, the foreign spouse is entitled to reside and work in Malta provided they are living together.

There have been cases of deprivation of citizenship as a result of marriages of convenience.

*False Declarations of Parenthood:*

It is considered that there may be very few cases, possibly less than 5, where it is or was suspected that foreign nationals made false declarations about children born out of relationships with Maltese citizens.

*3.2 Other forms of misuses detected in your (Member) State (e.g. adoptions of convenience)*

*Marriages of Convenience:*

*False Declarations of Parenthood:*

No other such forms of misuse are known.

**National means of preventing misuse**

*3.3 How are misuses of residence permits by a) marriages of convenience and b) false declarations of parenthood prevented?*

*Marriages of Convenience:*

So as to curb possible misuse of marriage, on application for residence permits interviews are held by officials and follow up action may be carried out by Immigration police who have the authority to conduct *in situ* investigations.

*False Declarations of Parenthood:*

So as to curb possible false declarations related to parenthood, claimants and other parties

involved may be interviewed and investigated.

### **National means of detecting misuse**

*3.4 What factors trigger an investigation of individual cases? How are a) marriages of convenience and b) false declarations of parenthood detected and investigated? Are there any factors that have prevented investigations into suspected misuses from progressing?*

#### *Marriages of Convenience:*

The same as above applies. Separate interviews for each spouse are conducted and if replies do not tally further administrative investigations are carried out. Liaison between front office officials and the Police Department may also take place.

#### *False Declarations of Parenthood:*

Further investigations are triggered in cases where during interviews it emerges that there may be a possibility of abuse, or a risk-based profiling exercise provides indications that arouse suspicion. In cases encountered involving Maltese and foreign nationals, as an initial step, citizens are confronted and faced with undeniable evidence encouraged to admit.

*3.5 What evidence is needed to prove that the marriage/declaration is false (e.g. DNA-testing, etc.)? Who has the 'burden of proof' (the third-country national concerned to prove that the relationship is real or the authorities to prove that it is false)?*

#### *Marriages of Convenience:*

Evidence collected following investigations as well as personal declarations by those involved may be presented as proof. The 'burden of proof' rests on the authorities.

#### *False Declarations of Parenthood:*

Evidence collected following investigations as well as personal declarations by those involved may be presented as proof. Claimants may also be requested to present proof supporting their claim, thus the onus also lies on the person making the declaration.

*3.6 Which national authorities are responsible for detecting such misuses?*

#### *Marriages of Convenience:*

The Department for Citizenship and Expatriate Affairs, within the Ministry of Foreign Affairs; Immigration Police, and the Marriage Registry are responsible for detecting such misuse.

#### *False Declarations of Parenthood:*

The Department for Citizenship and Expatriate Affairs, within the Ministry of Foreign Affairs and the Immigration Police are responsible for detecting such misuse.

### **National action against those misusing**

*3.7 Once detected, how does your Member State treat people found to be misusing family reunification through a) marriages of convenience and b) false declarations of parenthood)?*

*Marriages of Convenience:*

Provisions in the Marriage Act (Cap.255) clearly state that any person contracting a marriage of convenience is liable to criminal proceedings carrying penalty of imprisonment for a term not exceeding two years.

The Immigration Act (Cap 217) declares a person to be a prohibited immigrant, who may also be liable to removal, also on the following counts:

Art. 5

(2)(d): “if he is found guilty by a court of criminal jurisdiction in Malta... of a crime, which... is punishable with imprisonment for a term of not less than one year”

(2) (f): “if he does not comply or ceases to comply with any of the conditions, including an implied condition, under which he was granted leave to land or to land and remain in Malta or was granted a residence permit”.

*False Declarations of Parenthood:*

The Criminal Code (Cap 9, Art. 188) specifically states that “Whosoever, in order to gain any advantage or benefit for himself or others, shall, in any document intended for any public authority, knowingly make a false declaration or statement, or give false information, shall on conviction, be liable to the punishment of imprisonment for a term not exceeding two years or to a fine: Provided that nothing in this article shall affect the applicability of any other law providing for a higher punishment.”

The Immigration Act (Cap 217) declares a person to be a prohibited immigrant, who may also be liable to removal, also on the following count:

Art. 5

(2) (f): “if he does not comply or ceases to comply with any of the conditions, including an implied condition, under which he was granted leave to land or to land and remain in Malta or was granted a residence permit”.

*3.8 Do persons accused of abusing/misusing family reunification have a right to appeal?*

*Marriages of Convenience:*

The Immigration Appeals Board, on the basis of the Immigration Act (Cap 217) has the jurisdiction to hear and determine appeals or applications in virtue of the provisions of that Act or regulations made under that Act or in virtue of any other law. The Board also has the competence to hear appeals in relation to the refusal, annulment or revocation of the visa.

Persons accused may also appeal through the judicial system.

*False Declarations of Parenthood:*

The Immigration Appeals Board, on the basis of the Immigration Act (Cap 217) has the jurisdiction to hear and determine appeals or applications in virtue of the provisions of that Act or regulations made under that Act or in virtue of any other law. The Board also has the competence to hear appeals in relation to the refusal, annulment or revocation of the visa.

Persons accused may also appeal through the judicial system.

*3.9 Are there any examples of trans-national cooperation (e.g. between Member States or between Member States and third countries in combating misuse of family reunification?*

*Marriages of Convenience:*

*False Declarations of Parenthood:*

Not applicable

### **Reasons and motivations**

*3.10 Motivations for the sponsor engaging in a marriage of convenience / false declaration of parenthood. These may be economic, humanitarian or emotional considerations.*

*Motivations for the third-country national engaging in a marriage of convenience / false declaration of parenthood rather than (other) legal routes into the Member State.*

*Marriages of Convenience:*

Marriages of convenience appear to be mainly contracted for financial and economic reasons and to benefit from conditions attached to residence or Maltese citizenship.

Emotional reasons may also be another factor and at times the foreign national may also be the victim of a marriage of convenience.

*False Declarations of Parenthood:*

False declarations of parenthood, though currently appear to be limited in number, appear to be mainly contracted for financial and economic reasons and to benefit from conditions attached to residence or Maltese citizenship.

## **Section 4**

### **Available statistics, data sources and trends<sup>1</sup>**

*National Contribution*

#### **Statistics: General Context**

*4.1 Main / (readily) available national statistics related to and in order to give a general context for the Study.*

*Marriages of Convenience:*

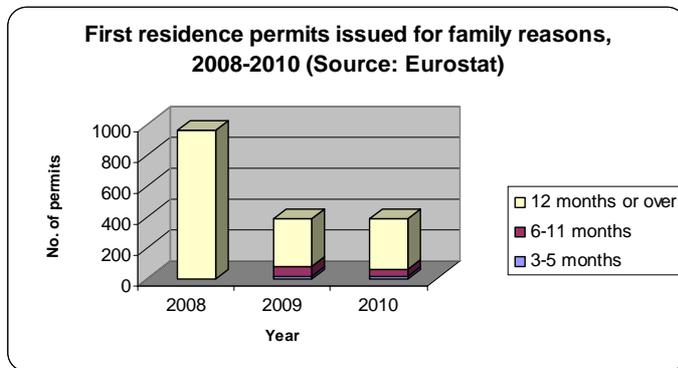
Statistical data indicating the extent of marriages found to have been contracted on matters of convenience are not readily available or published. It may however be safely stated that

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<sup>1</sup> Please note that, as this is a Focussed Study, only data that is readily and easily available should be provided.

following legal and policy changes made throughout the past decade, including legislation against marriages of convenience, the introduction of a minimal five years of marriage and living together prior to an application for Maltese citizenship as well as the enhancement of house visits the numbers have been reduced. Marriage annulment cases are noted to generally refer to marriages having taken place before the measures described have been put in place.

By way of background, the extent of the use of family reunification provisions may be gathered on the basis of statistical data related to residence permits issued for family reasons, publicly available through Eurostat. For the years available, it is evident that the number of permits issued on this basis have drastically decreased from the 954 issued in 2008 to the less than 400 permits issued in 2009 (391) and 2010 (389). Most permits are issued for a period of 12 months or over, with very few issued for a period of 3-5 months (12 each for 2009 and 2010).



The figures are as follows (source: Eurostat):

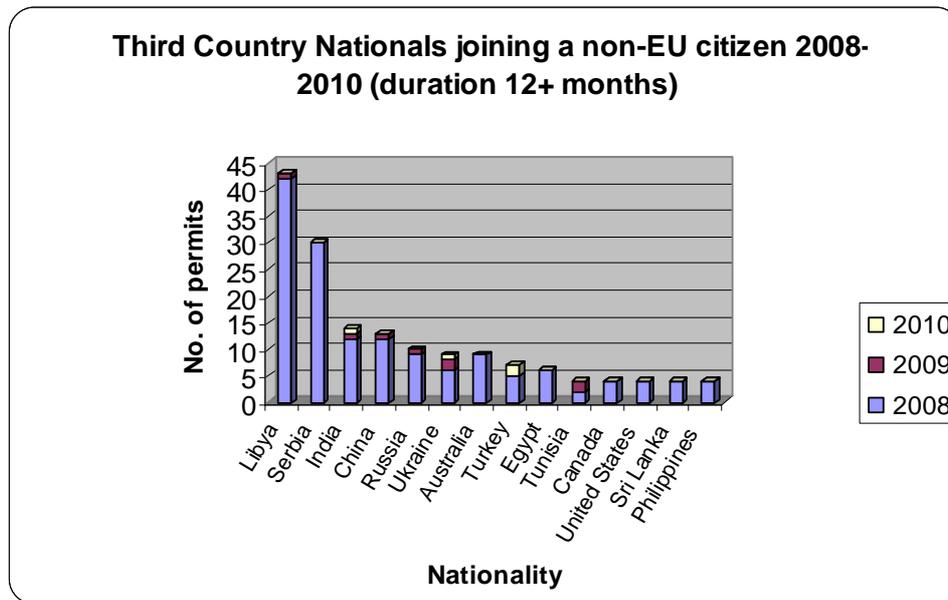
First residence permits issued for family reasons (total)	2008	2009	2010
3-5 months	:	12	12
6-11 months	:	67	48
12 months or over	954	312	329
Total	954	391	389

*Scenario I: a third country national lawfully residing in a Member State reunifying with a third country national*

A substantial difference may be noted with respect to persons joining an EU citizen and persons joining a non-EU citizen. With regard to the latter, while the number of permits reached 172 in 2008, this stood at 30 in 2010.

The majority of persons joining a non-EU citizen in 2010, on the other hand, were children (21), followed by other family members (7) and then spouses/partners (2).

First residence permits issued to third country nationals joining a non-EU citizen with duration 12 months and over, by top nationalities, 2008-2010 (Source: Eurostat)



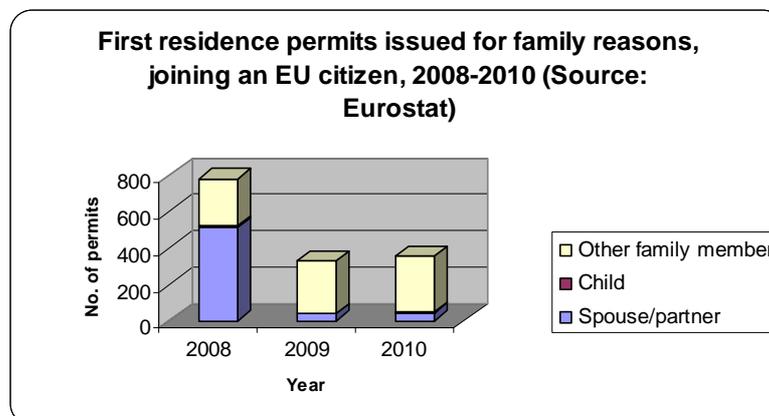
For the period 2008-2010, most nationals joining a non-EU citizen were from Libya (43, of which 42 in 2008), Serbia (30, all of which in 2008), India (14, 12 of which in 2008) and China (13, 12 of which in 2008).

Figures quoted in the European Commission’s Green Paper on the right to family reunification of third country nationals living in the European Union show that the share of permits issued to third country nationals joining non-EU citizens to total first permits issued to third country nationals stood at 3.4 (2008), 1.7 (2009) and 1.1 (2010).

*Scenario II, III, IV: an EU national reunifying with a third country national*

Permits related to persons joining an EU citizen, while still noting a substantial decrease from 2008, stood at 359 in 2010. Most of these involved ‘other family members’ (311), rather than spouses/partners (45) or children (3).

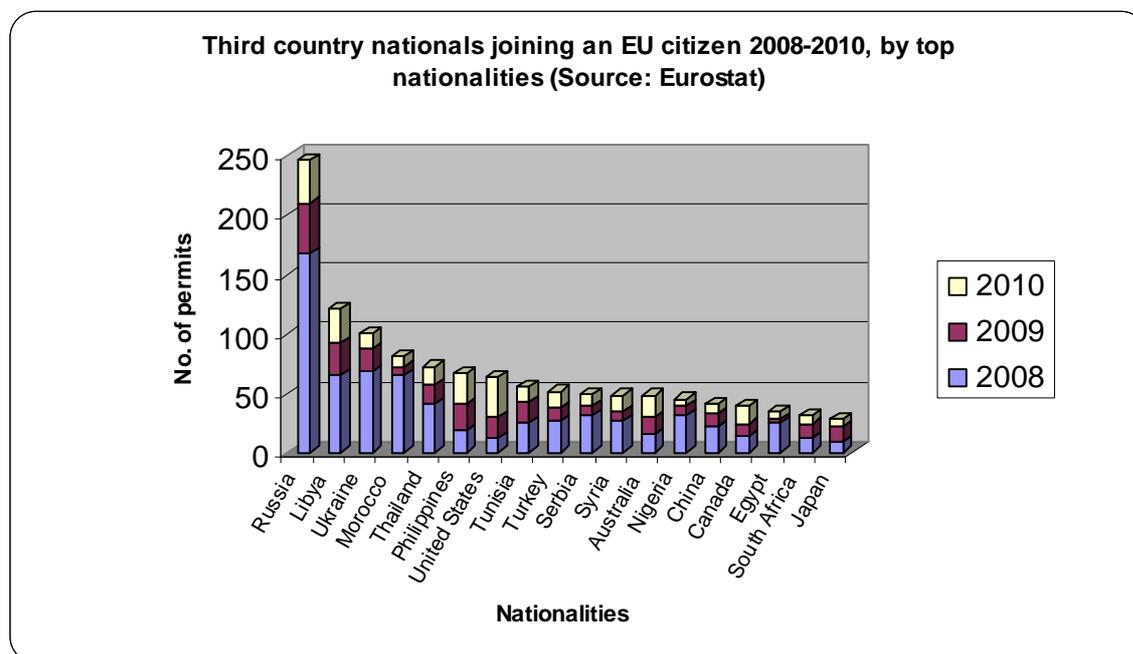
First residence permits issued for family reasons, joining an EU citizen 2008-2010 (Source: Eurostat)



The number of third country nationals, granted a first residence permit on the basis of joining an EU citizen for family reasons, totalled 1,471 over period 2008-2010. Most of the nationals were from Russia (246, of which 167 in 2008), followed by nationals of Libya (121), Ukraine

(100), Morocco (81) and Thailand (72).

*First residence permits issued for family reasons to third country nationals joining an EU citizen 2008-2010*  
(Source: Eurostat)



*False Declarations of Parenthood:*

No statistical data is readily available on this subject.

**Statistics: Specific indicators of the intensity of the issue:**

4.2.a What is the intensity of the issue in your (Member) State?

*Marriages of Convenience:*

No statistical data is readily available on this subject.

*False Declarations of Parenthood:*

No statistical data is readily available on this subject.

**Characteristics of those involved**

4.2.b For: a) Marriages of Convenience and b) False Declarations of Parenthood, please describe where possible, a) the EU status (e.g. EU citizen, legally resident third-country national), the nationality and sex of those involved.

*Marriages of Convenience:*

No statistical data is readily available on this subject.

*False Declarations of Parenthood:*

No statistical data is readily available on this subject.

4.2.c Location of the misuse

*Marriages of Convenience:*

There could be cases involving Maltese citizens marrying foreign nationals abroad and then registering the marriage in Malta. However, no statistical data is readily available on this subject.

*False Declarations of Parenthood:*

No statistical data is readily available on this subject.

Section 5

Summary and conclusions

National Contribution

*Marriages of Convenience:*

Marriages of convenience may be contracted for various reasons, including possibility to obtain citizenship; freedom of movement; permits to work or reside; the right to enter Malta; or the right to obtain medical care in Malta. Such cases have become more evident with cases of annulment. While several legislative measures have been enacted throughout recent years aimed at deterring and curbing abuse while facilitating *bona fide* family reunifications, prevention and detection mainly rests with the authorities who are tasked with monitoring such occurrences. Legislative and policy changes that have taken place in past years appear to have reduced the number of marriages of convenience.

The number of third country nationals joining EU citizens does not appear to have risen in recent years, but appears to have stabilised to circa 400 persons in 2009 and 2010. At face value this may indicate that there is no abnormal pull factor possibly from the misuse of the right to family reunification. However, such cases are known to exist and in the context of a population of 400,000 over a territory of 316km<sup>2</sup>, vigilance to deter marriages of convenience continues with liaison between the different public entities involved.

*False Declarations of Parenthood:*

Very few cases of false declarations of parenthood are known or suspected. This is also in line with the limited number of persons requesting residence permits on the basis of parenthood, and at this stage appears to be a less likely method being used to abuse the right to family reunification for residence purposes.

Nonetheless, false declarations are covered under the Criminal Code. Persons found guilty may be declared as prohibited immigrants, under the Maltese Immigration Act, making them liable for removal besides other penalties considered by the law. In this respect, vigilance on possible developments in this field continues to be maintained.

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