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Ad-Hoc Query on 2024.55 The procedure for family reunification and how implement the 'public order' element to the sponsor

Requested by EMN NCP France on 16 October 2024

Compilation produced on 6 December 2024

Responses from EMN NCP Austria, EMN NCP Belgium, EMN NCP Bulgaria, EMN NCP Croatia, EMN NCP Cyprus, EMN NCP Czech Republic, EMN NCP Estonia, EMN NCP Finland, EMN NCP France, EMN NCP Germany, EMN NCP Greece, EMN NCP Hungary, EMN NCP Latvia, EMN NCP Lithuania, EMN NCP Luxembourg, EMN NCP Netherlands, EMN NCP Norway, EMN NCP Poland, EMN NCP Portugal, EMN NCP Serbia, EMN NCP Slovakia, EMN NCP Slovenia, EMN NCP Sweden, EMN NCP Ukraine, EMN REG Practitioners Croatia (25 in Total)

Exported for: Wider Dissemination

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1. BACKGROUND INFORMATION

The office for family migration of the directorate for immigration within the French ministry of the Interior has been requested to make some proposals to modify the French regulation related to Family reunification.

As of today French law does not authorize to use the « public order » element against the sponsor to reject a family reunification request even if the third country national sponsor legally residing in France holds a criminal record and was convicted.

Consequently the office would like to know how other MS process in such situations.

We would like to ask the following questions:

1. 1. has your country implemented in your national law / regulation « the public order » element against the TCN sponsor holding a criminal record to refuse a family reunification request ? YES/NO

2. 2. if yes to Q1, please detail the applicable procedure

3. 3. if yes to Q1 please confirm if the CJEU has rejected any of your refusal decision. YES/NO

4. 4. if yes to Q3 can you please provide us with the CJEU decisions and explain whether you intend to modify your regulation


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We would very much appreciate your responses by **6 November 2024**.

2. RESPONSES

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		Wider Dissemination ²	
	EMN NCP Austria	Yes	1. No. However, Austrian law stipulates that the Federal Office for Immigration and Asylum issues a prognosis of the probability that international protection will be granted before a visa is issued by an Austrian representation authority. The Federal Office for Immigration and Asylum may only issue the notification that an application for international protection is likely to be granted by granting a protection status (=positive probability prognosis) if, among other things, no proceedings for the

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			<p>revocation of the protection status are pending against the beneficiary of protection (§ 35 (4) subpara 1 Asylum Act 2005). A legally binding conviction for a particularly serious crime by a domestic court constitutes such a ground for revocation (§§ 7 (1) subpara 1 and 9 (2) subpara 3 Asylum Act 2005). If a negative probability prognosis is made, the application for a visa D will be rejected.</p> <p>---</p> <p>Source: Ministry of the Interior</p> <p>2. n/a ---</p> <p>Source: Ministry of the Interior</p> <p>3. n/a ---</p> <p>Source: Ministry of the Interior</p> <p>4. n/a ---</p> <p>Source: Ministry of the Interior</p>
	<p>EMN NCP Belgium</p>	<p>Yes</p>	<p>1. NO.</p> <p>2.</p>



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			<p>N/A.</p> <p>3. N/A.</p> <p>4. N/A.</p>
	EMN NCP Bulgaria	Yes	<p>1. Yes</p> <p>2. Refuse of residence permit or extension of the term of residence shall be issued in the cases when he is sentenced for a committed premeditated crime on the territory of the Republic of Bulgaria which according to the Bulgarian law is sanctioned with a punishment of more than 1 year imprisonment, unless rehabilitated; or The issuing of visa and entering in the country shall be refused to a foreigner when he has been convicted in the state of which he is a national or in the state of his habitual residence of an intentional crime of a general nature, and under the Bulgarian law the same type of crime is punishable by imprisonment of at least one year, unless rehabilitated. or Refuse of residence permit or extension of the term of residence shall be issued in the cases when he has been convicted in the state of which he is a national or in the state of his habitual residence of an intentional crime of a general nature, and under the Bulgarian law the same type of crime is punishable by imprisonment of at least one year, unless rehabilitated.</p>


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			<p>3. No</p> <p>4. N/A</p>
	EMN NCP Croatia	Yes	<p>1. No. In Republic of Croatia, only family member who is applying for family reunification has to fulfil condition that he is not threat to public order. Sponsor has to have legal status in Croatia, and that implies that sponsor does not represent a danger to public order, because it is condition to obtain a legal status.</p> <p>2. N/A</p> <p>3. N/A</p> <p>4. N/A</p>
	EMN NCP Cyprus	Yes	<p>1.</p>

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			<p>Yes. A temporary residence permit is not issued in case a sponsor TCN is considered as a danger to the public order/security in Cyprus according to the Immigration Law. Hence, such a sponsor will not be granted residency in Cyprus with any access to family reunification.</p> <p>2. Please see response in Q1.</p> <p>3. No</p> <p>4. N/A</p>
	<p>EMN NCP Czech Republic</p>	<p>Yes</p>	<p>1. NO. The Czech Act on the Residence of Foreign Nationals applies the concept of public order only to the applicant for a residence permit, not to the sponsor, i.e. the holder of the residence permit. An application for a long-term residence permit for the purpose of family reunification may be refused to a foreigner (applicant) if there is a reasonable risk that the foreigner, during his/her stay in the territory, could endanger the security of the state, seriously disturb public order or endanger the international relations of the Czech Republic.</p> <p>2. N/A</p> <p>3. N/A</p>

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			4. N/A
■	EMN NCP Estonia	Yes	<p>1. No. In the process of applying for a temporary residence permit for the purpose of family reunification, Estonia does not require the criminal record of the sponsor. A residence permit may be issued to settle with the spouse or registered partner in case the spouses or registered partners share close economic ties and psychological dependence, the family is stable, and the marriage is not fictitious. In some cases the previously mentioned conditions does not apply/is not satisfied if the sponsor is serving a prison sentence.</p> <p>2. N/A</p> <p>3. N/A</p> <p>4. N/A</p>
+	EMN NCP Finland	Yes	<p>1. No. The Finnish Aliens Act does not allow for the criminal record of the sponsor to affect the decision on the family member's application. According to the Aliens Act, a residence permit may be refused if the applicant (family member) her/himself is considered a danger to public order or security.</p>



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			<p>Whether the sponsor has committed a crime or is suspected of one does not affect the family member's application. However, if the sponsor is about to be removed from Finland or they are serving a prison sentence after having committed a serious crime, the family member is usually not issued a residence permit on basis of family ties. Serving a prison sentence affects the possibilities of the sponsor to lead a family life. Issuing a residence permit on basis of family ties requires that the sponsor and the family member intend to resume their close family life in Finland. The decision must be based on individual consideration.</p> <p>If the sponsor applies for an extended permit and they are found to pose a threat to public order and security, the application can be rejected. If the sponsor poses a threat to public order and security, their residence permit can also be cancelled. If the sponsor's residence permit is rejected or cancelled, the family member cannot receive a residence permit on basis of family ties. The applicant can only receive a residence permit on basis of family ties provided that the sponsor holds a valid residence permit or receives one at the same time with the approval of the family member's application. In this case, it is the rejection or cancellation of the sponsor's residence permit that prevents the family member from receiving a residence permit on basis of family ties, not the threat to public order and security <i>per se</i>. If the sponsor is determined to pose a threat to public order and security but the grounds for cancelling their residence permit are not sufficient, the public order element does not affect the family member's application.</p> <p>2.</p> <p>3.</p> <p>4.</p>
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	<p>EMN NCP France</p>	<p>Yes</p>	<ol style="list-style-type: none"> 1. NO 2. n/a 3. n/a 4. n/a
	<p>EMN NCP Germany</p>	<p>Yes</p>	<ol style="list-style-type: none"> 1. Yes. 2. In accordance with Section 27 (3a) of the German residence act a temporary residence permit for the subsequent immigration of dependants is denied if the person to be joined by the dependants <ol style="list-style-type: none"> 1.) threatens the free democratic basic order or the security of Germany. This applies if there is reason to believe the person is involved with or supports a terrorist organization, or has committed a serious violent crime that endangers the state (per section 89a (1) and (2) of the Criminal Code) 2.) Is a leader of a banned organisation: If the person was a leader of an organisation prohibited for activities against constitutional order or international understanding. 3.) Engages in violent political activity: if involved in violent acts for political purposes or publicly incites violence


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			<p>4.) Promotes hatred or discrimination: a.) inciting arbitrary actions against population segments b.) degrading segments of the population, violating human dignity c.) Supporting crimes against peace, humanity or terrorism. The denial of family reunification is made by a written decision of the authority, against which legal action can be lodged.</p> <p>3. No.</p> <p>4. n/a</p>
	<p>EMN NCP Greece</p>	<p>Yes</p>	<p>1. YES</p> <p>2. According to national legislation, the sponsor submits, through the electronic services of the Ministry of Migration and Asylum, an application for family reunification, accompanied by the required supporting documents. Then, the competent Service is obliged to immediately ask for the opinion of the relevant police authority on issues related to public order and security. Regarding issues of public order/security, the legislation provides that the person concerned must not be considered a threat to public order, public security or international relations and not be registered as inadmissible in national databases for serious reasons of public order and security for a period exceeding five years. The following criteria are taken into account by the competent Service in order to examine whether public order/security reasons concur:</p>

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			<ul style="list-style-type: none"> -the issuance of a final conviction for a felony or misdemeanor with a prison sentence of at least one (1) year, -registration on the list of inadmissible third country nationals, which automatically ceases to be valid upon the granting or renewal of a residence permit, provided that the said registration was made for reasons of illegal entry or residence, -other public order reasons, including repeated delinquency, which are specifically and justifiedly mentioned in the relevant decision and -particularly exceptional reasons, specifically justified, relating to issues of public security. <p>3. N/A</p> <p>4. N/A</p>
	<p>EMN NCP Hungary</p>	<p>Yes</p>	<p>1. No</p> <p>2. N/A</p> <p>3. N/A</p> <p>4. N/A</p>



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=	EMN NCP Latvia	Yes	<p>1. NO, but the issue or registration of a residence permit shall be refused if the TCN has been, by a court judgment, found guilty of committing such criminal offence in Latvia or outside it for which the punishment - deprivation of liberty for a time period, which exceeds three years - is provided for by the law of the Republic of Latvia. This condition shall not be applied if the status of a stateless person, his or her stay in Latvia is related to the provisions - for a period not exceeding five years if he or she has a valid residence permit of a long-term resident of the European Union issued by another European Union Member State and there are no grounds to request a temporary residence permit in accordance with any other provision. Or the conviction has been extinguished or set aside in accordance with procedures laid down in the Criminal Law, but with regard to criminal offences committed in foreign countries - at least five years have elapsed after serving of the deprivation of liberty sentence.</p> <p>The decision to refuse to issue a residence permit to a TCN who is the spouse of a Latvian citizen or the annulment thereof may be taken only in the interests of national and public safety. The conditions mentioned before shall be applicable if the marriage has been established before TCN has committed a criminal offence regarding which he or she is being held criminally liable in accordance with the procedures laid down in law.</p> <p>2. N/a</p> <p>3. N/a</p>



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			4. N/a
	EMN NCP Lithuania	Yes	1. No 2. N/A 3. N/A 4. N/A
	EMN NCP Luxembou rg	Yes	1. NO. Article 69 of the amended law of 29 August 2008 on free movement of persons and immigration (Immigration Law) does not specifically require that the sponsor is not a threat to “public order” as for other categories of residence permit. This is required for the family member in accordance with article 70 (1) of the Immigration Law. However, the law always allows a third-country national's residence permit to be refused, withdrawn or not renewed on grounds of public order. 2. N/A.



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			<p>3. N/A.</p> <p>4. N/A.</p>
	EMN NCP Netherlands	Yes	<p>1. No the Netherlands has not implemented a national law / regulation that includes an element against the TCN sponsor holding a criminal record to refuse a family reunification request. If the residence permit of the sponsor is withdrawn, then the sponsor cannot apply for family reunification.</p> <p>2. N/A</p> <p>3. N/A</p> <p>4. N/A</p>
	EMN NCP Norway	Yes	<p>1. NO. But for most family migration applications it is a condition that the parties are going to live together. This condition is not satisfied if the sponsor is serving a prison sentence.</p>


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			<ol style="list-style-type: none"> 2. 3. 4.
	EMN NCP Poland	Yes	<ol style="list-style-type: none"> 1. NO 2. N/A 3. N/A 4. N/A
	EMN NCP Portugal	Yes	<ol style="list-style-type: none"> 1. NO. 2. N/A 3. N/A 4. N/A



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	<p>EMN NCP Serbia</p>	<p>Yes</p>	<p>1. NO Article 45 of the Law on Foreigners ("Official Gazette of RS" No. 24/2018, 31/2019, 62/2023) prescribes the conditions for refusing temporary residence. That article, paragraph 1, point 8, stipulates that the request for temporary residence is rejected when there are reasons to believe that the foreigner will not act in accordance with the public order of the Republic of Serbia. Therefore, if it is established for a foreigner that there are reasons to believe that he will not act in accordance with the public order of the Republic of Serbia, the competent authority will reject the request for residence permit.</p> <p>Based on the above, a foreigner cannot legally reside in the Republic of Serbia if there are reasons to believe that he will not act in accordance with the public order of the Republic of Serbia and cannot exercise the right to the family reunification</p> <p>2. N/A</p> <p>3. N/A</p> <p>4. N/A</p>



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	<p>EMN NCP Slovakia</p>	<p>Yes</p>	<p>1. No. In the process of applying for a temporary residence permit for the purpose of family reunification, the Slovak Republic does not require the criminal record of the sponsor.</p> <p>2. NA</p> <p>3. NA</p> <p>4. NA</p>
	<p>EMN NCP Slovenia</p>	<p>Yes</p>	<p>1. No.</p> <p>2. N/A</p> <p>3. N/A</p> <p>4. N/A</p>


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	<p>EMN NCP Sweden</p>	<p>Yes</p>	<ol style="list-style-type: none"> 1. No 2. 3. 4.
	<p>EMN NCP Ukraine</p>	<p>Yes</p>	<ol style="list-style-type: none"> 1. YES 2. A permanent residence permit, including for the purpose of family reunification, is denied to: <ul style="list-style-type: none"> - Persons sentenced to imprisonment for a term exceeding one year for committing an act that is recognized as a crime under the laws of Ukraine, unless the conviction is canceled or removed in accordance with the procedure stipulated by law; - Persons who have committed a crime against peace, a war crime or a crime against humanity, as recognized in international law, or are wanted in connection with an offense that is recognized as a serious crime under the laws of Ukraine, or have been reported suspected of committing a criminal offense, the pre-trial investigation of which has not been completed; - Persons who, during their previous stay in Ukraine, were prosecuted or administratively liable for irregular entry or attempted irregular entry to Ukraine or who violated the procedure for entering or leaving the temporarily occupied territory of Ukraine, or violated the legislation on the legal status of foreigners and stateless persons;

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			<p>-Persons who are banned by law from entering the territory of Ukraine, as well as persons in respect of whom facts of non-fulfillment of a court decision or state bodies authorized to impose administrative penalties have been revealed, or who have other property obligations to the state, phsysical or legal entities, including those related to previous expulsion from Ukraine, as well as after the expiration of the period of prohibition of further entry into Ukraine.</p> <p>3. No</p> <p>4.</p>
	EMN REG Practitioners Croatia	Yes	<p>1. No. In Republic of Croatia, only family member who is applying for family reunification has to fulfil condition that he is not threat to public order. Sponsor has to have legal status in Croatia, and that implies that sponsor does not represent a danger to public order, because it is condition to obtain a legal status</p> <p>2. n/a</p> <p>3. n/a</p> <p>4. n/a</p>

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