



EMN Ad-Hoc Query on LT AHQ on Assessment of a risk of illegal immigration of the alien may emerge

Requested by Vytautas EŽERSKIS on 22nd February 2017

Irregular Migration

Responses from Austria, Belgium, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom (21 in total)

Disclaimer:

The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.

Background information:

According to Article 35(1)(12) of the Law of the Republic of Lithuania on the Legal Status of Aliens, an alien shall be refused the issue or renewal of a residence permit if there are serious grounds for believing that a risk of illegal immigration of the alien may emerge. In order to implement this requirement, there's an ongoing discussion on the need to define in legislation the criteria for assessment of that risk. In light of this, we would kindly ask the Member States to answer the following questions by the 24th of March 2017.

Questions

1. Are objective criteria for assessment whether an alien may present a risk of illegal immigration when deciding on the issuance or renewal of a residence permit defined in your national law?
2. If the answer to Q1 is YES, please specify these criteria.
3. If the answer to Q1 is NO, please describe circumstances taken into account when deciding whether an alien may present a risk of illegal immigration.

Summary of the LT EMN Ad-hoc query

Background: according to Article 35(1)(12) of the Law of the Republic of Lithuania on the Legal Status of Aliens, an alien shall be refused the issue or renewal of a residence permit if there are serious grounds for believing that a risk of illegal immigration of the alien may emerge. In order to implement this requirement, there is an ongoing discussion on the need to define in legislation the criteria for assessment of that risk. Due to this, LT NCP launched an Ad-Hoc Query on 22nd February 2017.

Objective criteria for assessment whether an alien may present a risk of illegal immigration

Responses were received from 20 countries and Lithuania. Only 3 Member States (AT, DE, FI) indicated that when deciding on the issuance or renewal of a residence permit objective criteria for assessment whether an alien may present a risk of illegal immigration is defined in the law:

- In **Austria** a residence title may not be issued or renewed if the applicant in the last 12 months has been finally convicted of bypassing a border control or of illegal entry into the federal territory.
- In **Germany** the objective criteria by which an illegal entry is supposed to be prevented are reflected in general preconditions for the granting of a residence title.
- In **Finland** a resident permit may be refused if there are reasonable grounds to suspect that the alien intends to evade the provisions on entry into or residence in the country. However, the legislation does not state clearly what the objective criteria are for the assessment of the situation.

In **Latvia** a ground for refusal of a residence permit in case if there is ground itself to assume that a foreigner may present a risk of illegal immigration also exists, however criteria according to which such risk shall be assessed is not specified.

In other Member States (BE, CY, CZ, EE, ES, FR, HR, HU, IE¹, LT, LU, NL, PL, SE, SI, SK, UK) the criteria are not defined in legislation, however countries described general




¹ Please note that Ireland does not issue identity cards to its own citizens nor does it issue Residence permits to EU citizens - except in the case of permanent residence cards, which is a very small number each year. In general, it only issues residence cards to non-EEA nationals.




circumstances taken into account when deciding whether an alien shall be refused the issue or renewal of a residence permit.



Some of the general circumstances mentioned by MS:



- misuse of legal means of entry into the country or illegal stay in the country;
- criminal history (including available intelligence);
- breach of immigration law;
- use of fraudulent means (e.g. misleading information, use of false ID, false visa or residence permit applications, marriage of convenience);
- abuses of the asylum procedure;
- report about the interview made by the consular officer when applying for visa or residence permit;
- not complying with the tax obligations;
- if the applicant's expected way of life could be questioned;
- character, associations, or other reasons, make it undesirable to grant their application;
- other aggravating circumstances, such as a failure to cooperate with immigration control or enforcement processes.




Responses


	Country	Wider Dissemination	Response
	Austria	Yes	<p>1. Yes (see below).</p> <p>2. In particular, a residence title may not be issued or renewed if the applicant in the last 12 months has been finally convicted of bypassing a border control or of illegal entry into the federal territory (Art. 11 para 1 subpara 6 Settlement and Residence Act).</p> <p>3. N/A.</p>
	Belgium	No	
	Croatia	Yes	<p>1. 1. No, there are no such provisions within the national legislation that an alien shall be refused the issuance or renewal of a residence permit if there are serious grounds for believing that a risk of illegal immigration of the alien may emerge.</p> <p>2. 2. N/a.</p> <p>3. 3. Each application is made on a case by case basis. One of the conditions to be fulfilled is that foreigner has to justify the purpose of his/her temporary residence by enclosing supporting documents for purpose of stay. Therefore competent body can make an assessment within the meaning of justification of the purpose of stay. Also, appropriate checks can be conducted once temporary residence was granted in order to determine whether foreigner resides in the Republic of Croatia contrary to the purpose of the temporary residence permit, in what case residence permit will be terminated.</p>



	Cyprus	Yes	<p>1. NO</p> <p>2. n/a</p> <p>3. We do not evaluate whether someone may present a risk of illegal migration. Each alien is obliged to submit with his/her application a clean criminal record.</p>
	Czech Republic	Yes	<p>1. In the Czech republic, Act No. 326/1999 Coll., on the Residence of Foreign Nationals in the Czech Republic does not define the objective criteria for assessment whether an alien may present a risk of illegal immigration when deciding on the issuance or renewal of a residence permit.</p> <p>2. N/A</p> <p>3. According to the above mentioned Act, the Ministry of the Interior does not grant or does not prolong long-term visa or long-term residence permit if facts exist which indicate that a foreigner after the stay does not leave the territory of the Czech republic or if a foreigner intends to exploit this visa or a residence permit for any other purpose than he/she stated in the application for a visa/residence permit. In the same way, long-term visa/ residence permit will be not granted if there is a reasonable risk that the alien could threaten national security, seriously disturb public order or endanger the international relations of the Czech Republic during their stay in the territory. Every application for the issuance or renewal such visa or residence permit must be assessed individually in accordance with all circumstances of each case.</p>
	Estonia	Yes	<p>1. No, the Aliens Act of the Republic of Estonia does not define in details not provide objective criteria for assessment of such kind of illegal immigration risk.</p> <p>2. N/A.</p> <p>3. Each case is assessed individually based on the available intelligence data, presented documentation and explanation, when necessary personal interview may be conducted. The main condition of the issue of a temporary residence permit are the following: - the purpose of application for the Estonian temporary residence permit is justified; - the actual place of residence is Estonia; -</p>




			sufficient legal income which would enable an alien and the family members of an alien the subsistence in Estonia and; - a medical expenses insurance contract
	Finland	Yes	<p>1. No. According to the Finnish Aliens Act, “A residence permit may be refused if there are reasonable grounds to suspect that the alien intends to evade the provisions on entry into or residence in the country.” (Aliens Act, Section 36, Subsection 2) However, the legislation does not state clearly what the objective criteria are for the assessment of the situation.</p> <p>2. -</p> <p>3. The Aliens Act of Finland states only what was described above in response to question 1. Some further guidance can be found from the legislative materials. According to the Government Proposal HE 28/2003, illegal immigration often means misusing legal means of entry into the country. This can manifest itself for example in false visa or residence permit applications or abuses of the asylum procedure. The applicant may for example conceal from the immigration authorities the real purpose of entry into the country or give false information including false documentation. The Government Proposal mentions three examples of seemingly legal migration where abuses of the system have been detected: businessman visas, student statuses and marriages of convenience. Still more guidance on the assessment of when there are reasonable grounds to suspect that the alien intends to evade the provisions on entry into the country can be found from case law. For example in 2016 several legal cases in the Supreme Administrative Court analysed whether a marriage was concluded in order to circumvent the rules on entry, that is: whether it was a so-called marriage of convenience.</p>
	France	Yes	<p>1. No, however the Code on Entry and Residence of Foreigners and Right of Asylum (CESEDA) provides for several cases related to refusal of issuance or renewal of residence permit (see Question 3).</p> <p>2. N/A</p> <p>3. The CESEDA provides when third-country nationals may be refused an authorization to stay, or when their residence permit may be refused or withdrawn, or its renewal may be refused, if: - They</p>


			<p>represent a threat to public order; - They do not fulfil or no longer fulfil the conditions for obtaining a residence permit or an authorization to stay, depending on the type of residence permit required (family reunification, student, salaried worker, etc ...); - They made use of fraudulent means (use of false ID document or misleading information, marriages of convenience, ...).</p>
	Germany	Yes	<p>1. Yes.</p> <p>2. The objective criteria by which an illegal entry is supposed to be prevented are reflected in the following general preconditions for the granting of a residence title according to § 5 I, II of the Residence Act (AufenthG), that apply to all residence permits: • Guarantee of foreigner's subsistence • Clarification of the foreigner's identity and in case he/she is not entitled to return to another state, also clearing up the nationality • No public interest in expelling the foreigner • No compromise or jeopardy for the interests of the Federal Republic of Germany • Fulfilment of the passport obligation • Entry into the country with the necessary visa • Furnishing of the key information required for granting the title in the visa application</p> <p>3. n/a</p>
	Hungary	Yes	<p>1. No.</p> <p>2. N/A</p> <p>3. According to subparagraph b) of paragraph (1) of Section 18 of the Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals – unless otherwise prescribed in this Act –, new residence permits or the extension of existing ones shall be refused, or if already issued shall be withdrawn from third-country nationals who have disclosed false information or untrue facts to the competent authority so as to obtain the right of residence, or misled the competent authority in respect of the purpose of residence. Our national law does not contain objective criteria for assessment whether an alien may present risk of illegal immigration. In practice, we take into consideration all relevant circumstances, such as the report about the interview made by the consular officer. For example, if the applicants do not know anything about their employment, Hungary or they intend to</p>

			continue their studies after years, the above-mentioned measure can be used.
	Ireland	No	
	Latvia	Yes	<p>1. Latvian Immigration Law contains a ground for refusal of a residence permit in case if there is ground to assume that a foreigner may present a risk of illegal immigration; however the Law does not specify any criteria according to which such risk shall be assessed.</p> <p>2. N/A</p> <p>3. Decision on refusal of a residence permit according to the above-mentioned ground has been taken very rarely. Mostly this ground of refusal is applied in cases when foreign students submit their applications and interview carried out by consular official proves that the person does not have any knowledge on the country and/or educational establishment (program) he is going to be enrolled in.</p>
	Lithuania	Yes	<p>1. No.</p> <p>2. N/A</p> <p>3. When deciding whether an alien may present a risk of illegal immigration, the following circumstances are taken into account: - an alien has illegally entered Lithuania and expelled from Lithuania; - an alien has abused asylum procedure in Lithuania; - an alien has been issued a Schengen visa, which was annulled where it became evident that the visa was fraudulently obtained or an alien has caused the risk of illegal immigration already staying in the Schengen area; - an alien has maliciously infringed the procedure of entry, stay and residence in Lithuania; - an alien has repeatedly applied for the issue of the Schengen visa to diplomatic missions or consular posts of the Schengen States, but he (she) was refused a visa because the alien presents the risk of illegal immigration or there were reasonable doubts as to the authenticity of the supporting documents submitted by the alien; - an alien has abused legal migration procedures (family reunification, grounds for issuing of residence permit in Republic of Lithuania and other).</p>

	Luxembourg	Yes	<p>1. No. In Luxembourg the Immigration Law does not lay down objective criteria for assessment whether an alien may present a risk of illegal immigration when deciding on the issuance or renewal of a residence permit. In Luxembourg the admission process of a third-country national is divided in 2: a) the granting of an authorization to stay; and b) the issuance of the residence permit. Any third-country national has to fulfil the objective criteria established in the amended law of 29 August 2008 on free movement of persons and immigration (Immigration Law) for the authorization of stay that s/he applies for (i.e. salaried worker, self-employed worker, Blue Card Holder, Student, Researcher, Sportsmen, Trainee, Volunteer, Investor, family reunification, private reasons) as well as for the issuance of the residence permit. Article 101 (1) of the Immigration Law establishes that a third-country national may be refused an authorisation to stay, or his/her residence permit may be refused or withdrawn, or its renewal may be refused, if: (1) he/she does not fulfil, or no longer fulfils, the conditions set out in Article 38 and those laid down for each category in which he/she falls, or if he/she is staying for purposes other than that for which he/she has been authorised to stay; (2) he/she is considered to be a threat to public policy, public security or public health; (3) it is apparent that he/she has fabricated, forged, falsified or tampered with a travel document, an authorisation to stay or a residence permit, has made use of a travel document, authorisation to stay or residence permit other than the one belonging to him/her, or has handed his documents over to another person in order to enable that other person to make use thereof in any way whatever; (4) he/she has made use of false or misleading information or has had recourse to fraud or other illegal means in order either to enter and stay on the territory or to enable a third party to enter and/or stay there; (5) he/she has been convicted and prosecuted abroad for a crime or misdemeanour giving rise to extradition in accordance with the law or the treaties in the matter; (6) he/she falls within the circumstances provided for by Article 118.</p> <p>2. N/A.</p> <p>3. As it was indicated in the answer to question 1, the analysis of each application made by a third country national for any category of authorization of stay is made on a case by case basis and analyzing if the applicant fulfils the objective criteria for the type of authorization to stay that s/he applied for. It is during this analysis that there can be a determination that the alien may present a risk of illegal immigration in case that the objective criteria is not meet.</p>
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	Netherlands	Yes	<p>1. No, there are no objective criteria defined in our national Law according to the possible risk of illegal immigration.</p> <p>2. Not applicable.</p> <p>3. There are no objective criteria in our law about illegal immigration but of course when judging an application for a residence permit we take into account signals that indicate a person doesn't come to the Netherlands for the purpose of a residence permit he or she is applying for. That can be an indication for illegal migration. For instance: if a student asks for a provisional residence permit abroad and there are indications that the student doesn't know what kind of study he is going to do in the Netherlands or doesn't speak the required level of English the application can be rejected. In Dutch law there is the possibility to refuse the issuance or renewal of a residence permit when a person stayed illegally in the Netherlands in the past.</p>
	Poland	Yes	<p>1. There are no objective criteria, since Polish legal system does not predict premise such as risk of illegal immigration while issuing or renewing of a residence card.</p> <p>2. Q1=NO</p> <p>3. Since in Polish legal system the risk of illegal immigration does not stand as an explicit ground of refusal of issuance or renewal of a residence permit, authorities issuing that decisions do not take into account circumstances which may justify possible risk of illegal immigration. In accordance with the provisions of Act of 12 December 2013 on foreigners (Journal of Laws 2016, item 1990, with further amendments) a foreigner shall be refused a temporary residence permit if he/she does not meet the requirements for being granted a temporary residence permit due to the declared purpose of the stay or the grounds for applying for such a permit do not justify his/her stay in the territory of the Republic of Poland for a period longer than 3 months. Naturally, there are other grounds of refusal, related e.g. to posing threat to defence or national safety, or public safety or order, or not complying with the tax obligations, however there is no ground related directly to migration risk (e.g. based on comparison of the declared and the real purpose of the foreigner's stay in the territory of the Republic of Poland).</p>

	Slovak Republic	Yes	<p>1. No, there are no such provisions in our national legislation.</p> <p>2. N/A</p> <p>3. An alien might consider a risk to illegal immigration if he/she does not intend to return to his/her country of origin after his/her residence has expired or if there is a risk that the purpose of his/her residence will not be fulfilled. This is considered already by the Diplomatic Mission Office where the alien lodges his/her application for residence and where the interview is carried out in order to decide about the application. The questionnaire is then sent together with the application and statement of the Diplomatic Mission to the relevant Alien Police Department.</p>
	Slovenia	Yes	<p>1. No</p> <p>2. n.a.</p> <p>3. As such evidence of previous irregular entry, illegal stay or disrespect of return decision is taken into account.</p>
	Spain	Yes	<p>1. No. Implicitly, meeting the conditions corresponding to the aim of the residence permit, including incomes and medical insurance, should be considered a guarantee for a low risk of illegal immigration.</p> <p>2. .</p> <p>3. Further to the answer to question 1, when renewing a residence permit, issues being considered are criminal records, compliance with fiscal duties and integration efforts.</p>
	Sweden	Yes	<p>1. No</p> <p>2. NA</p> <p>3. It is not permitted for aliens to stay in SE after three months without a residence permit (exception</p>

			<p>for asylum seekers). Swedish Migration Agency (SMA) does not normally do considerations regarding the risk of illegal immigration, when issuing or renewing residence permits. However, there are regulations in the Swedish Alien Act that states that SMA shall take special considerations, regarding certain grounds for residence in SE, when issuing a residence permit if the applicant committed a crime or crime in association with other misconduct. Another regulation states that a residence permit could be limited in duration if the applicant's expected way of life could be questioned.</p>
	<p>United Kingdom</p>	<p>Yes</p>	<p>1. Yes, the applicant must not be in breach of immigration laws and must meet the suitability requirements.</p> <p>2. V 3.2 An application will be refused if: (a) the Secretary of State has personally directed that the applicant's exclusion from the UK is conducive to the public good; or (b) the applicant is currently the subject of a deportation order or a decision to make a deportation order. V 3.3 An application will be refused if the decision maker believes that exclusion of the applicant from the UK is conducive to the public good because, for example, the applicant's conduct (including convictions which do not fall within paragraph V 3.4), character, associations, or other reasons, make it undesirable to grant their application. Not conducive to the public good: criminal convictions, etc. V 3.4 An application (except for an application for an extension of stay as a visitor) will be refused if the applicant has been convicted of a criminal offence for which they have been sentenced to a period of imprisonment of: (a) at least 4 years; or (b) between 12 months and 4 years, unless at least 10 years have passed since the end of the sentence; or (c) less than 12 months, unless at least 5 years has passed since the end of the sentence. Where this paragraph applies, it will only be in exceptional circumstances that the public interest in maintaining refusal will be outweighed by compelling factors. V 3.4A An application will be refused if the presence of the applicant in the UK is not conducive to the public good because they are a person to whom the Secretary of State: (a) has at any time decided that paragraph 339AA, 339AC, 339D or 339GB of these rules applies; or (b) has decided that paragraph 339AA, 339AC, 339D or 339GB of these rules would apply, but for the fact that (a) the person has not made a protection claim in the UK, or that (b) the person made a protection claim which was finally determined without reference to any of the relevant matters described in paragraphs 339AA, 339AC, 339D or 339GB. V 3.5 An application will normally be refused if: (a) within the period of 12 months</p>

			<p>before the application is decided, the applicant has been convicted of or admitted an offence for which they received a non-custodial sentence or out of court disposal that is recorded on their criminal record (except for an application for an extension of stay as a visitor); or (b) in the view of the Secretary of State the applicant's offending has caused serious harm; or (c) in the view of the Secretary of State the applicant is a persistent offender who shows a particular disregard for the law.</p> <p>False information in relation to an application V 3.6 An application will be refused where: (a) false representations have been made or false documents or information have been submitted (whether or not material to the application, and whether or not to the applicant's knowledge); or (b) material facts have not been disclosed, in relation to their application or in order to obtain documents from the Secretary of State or a third party provided in support of their application. Breaches of UK immigration laws V 3.7 An application, except an application for an extension of stay as a visitor, will be refused if: (a) the applicant previously breached UK immigration laws as described at V 3.9; and (b) the application is made within the relevant re-entry ban time period in V 3.10 (which time period is relevant will depend on the manner in which the applicant left the UK). V 3.8 If the applicant has previously breached UK immigration laws but is outside the relevant re-entry ban time period the application will normally be refused if there are other aggravating circumstances, such as a failure to cooperate with immigration control or enforcement processes. This applies even where the applicant has overstayed for 90 days or less and left voluntarily and not at public expense. V 3.9 An applicant, when aged 18 years or over, breached the UK's immigration laws: (a) by overstaying (except where this was for 90 days or less and they left the UK voluntarily and not at public expense); or (b) by breaching a condition attached to their leave; or (c) by being an illegal entrant; or (d) if deception was used in relation to an application or documents used in support of an application (whether successful or not).</p> <p>3. N/A</p>
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