



EMN Ad-Hoc Query on Misuse of family reunification legal provisions

Requested by Alexandra LAINÉ on 2nd May 2016

Family Reunification

Responses from Austria, Belgium, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Hungary, Italy, Latvia, Lithuania, Luxembourg, Portugal, Slovak Republic, Slovenia, Sweden, United Kingdom, Norway (20 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:

The Belgian Contact Point of the European Migration Network is requested to provide the House of Representatives with a written contribution on the challenges related to the implementation of family reunification legal provisions and misuses they give rise to, inter alia:

- marriages of convenience
- proxy marriage certificates for applications for residence cards
- false declarations of parenthood
- lack of protection of beneficiaries of family reunification-based residence rights in case of domestic violence




On 19 April 2016, the Committee responsible for home affairs within the House of Representatives, has decided to launch an evaluation of the Immigration Act's legal provisions relating to family reunification. In this regard, a series of hearings are planned and several actors are invited to contribute. Given that the European Migration Network released a study entitled: "Misuse of the Right to Family Reunification: Marriages of convenience and false declarations of parenthood" in June 2012 and circulated further information on this matter (e.g. through the UK AHQ on recognition of proxy marriages under domestic laws on 18 February 2015), the Belgian Contact Point has been invited to provide updated information on misuse of family reunification related provisions in other Member States. This ad hoc query is therefore meant to collect updated information on family reunification legal provisions giving rise to misuse and measures to counter these.

As the Belgian Contact Point's contribution is expected before end May 2016, we would be grateful to receive your responses to the following questions at the latest on 23 May 2016.

Questions

1. What **cases/instances of misuse** of family reunification have recently drawn your attention and concerns? Which **specific provisions** in national legislation on family reunification give rise to such misuses? Please specify both the misuses and provisions concerned.
2. Have you made, since June 2012, **legislative changes** in relation to family reunification and prevention of misuse? How effective are these? Are you planning upcoming changes in this matter?
3. Have you made, since June 2012, **changes in policy and/or in practice** in relation to family reunification and prevention of misuse? How effective are these? Are you planning upcoming changes in this field?
4. Do you have **updated statistics** on marriages of convenience, false declarations of parenthood and other misuses of concern?
5. Have you undertaken specific **research and/or evaluation** in the field of family reunification and prevention of misuse? Please provide publication details and possible links, or outline the main outcomes.


Responses


	Country	Wider Dissemination	Response
	Austria	Yes	<p>1. Marriages of convenience and to a lesser extent partnerships of convenience (between partners of the same sex) are the most common cases of abuse of provisions regarding family reunification. Pursuant to Art. 30 Settlement and Residence Act, spouses and registered partners who do not lead a common family life within the meaning of Art. 8 ECHR, may not rely on the marriage or on the registered partnership for the issuance or the retention of residence titles. The main challenge in this respect is to provide evidence of the existence of a marriage of convenience which may be obtained in practice only after time-consuming investigations (in particular by conducting separate interviews). In this respect, the discussions on this topic in the framework of the FREMO group may also be referred to. Source: Federal Ministry of the Interior.</p> <p>2. Main legal provisions are Art. 30 Settlement and Residence Act mentioned above and penal provisions in the Aliens Police Act. Since June 2012, there have been no changes and for the time being no changes are planned. Source: Federal Ministry of the Interior.</p> <p>3. The authorities entrusted with the administration of the Settlement and Residence Act are regularly made aware of the issue. The cooperation with the police has been intensified. Source: Federal Ministry of the Interior.</p> <p>4. Such statistics are not maintained. Source: Federal Ministry of the Interior.</p> <p>5. Studies or other research have not been conducted. Source: Federal Ministry of the Interior.</p>
	Belgium	No	
	Croatia	Yes	<p>1. By performing a marriage of convenience to a Croatian citizen or a citizen of the EEA, stranger abuse institutes of the Aliens Act (Official Gazette 130/11, 14/2013) related to the ability to work in</p>

the Republic of Croatia without residence and work permit.

2. Since Croatia have accessed EU in July 2013 we are addressing what is currently in our legislation. According to the Aliens Act (Official Gazette 130/11, 14/2013) Article 57 paragraph (1) temporary residence for the purpose of family reunification shall not be granted if the marriage is concluded as a marriage of convenience. Paragraph (2) within the meaning of this Act, the marriage of convenience means the marriage concluded for the reason of avoiding conditions required for entry and residence of a foreigner. Furthermore in the paragraph (3) circumstances which may indicate that the marriage is the marriage of convenience are as follows: the spouses do not maintain their marital union, the spouses do not perform their marital obligations, the spouses have never met before the conclusion of the marriage, the spouses fail to provide consistent personal data, the spouses do not speak a language that they both understand, money was exchanged for the conclusion of marriage, unless the money is given as a dowry, and the spouses come from countries where presentation of a dowry is a custom, there is a proof of previous marriages of convenience on the part of any of the spouses, either in the Republic of Croatia or abroad. The paragraph (4) states that the provisions of this Article shall apply accordingly to common law marriages and in the procedure of granting of permanent residence.

3. In the process of granting temporary residence to foreigners for the purpose of family reunification, police officers have the authority to collect, verify and otherwise process data on foreigners seeking family reunification, in accordance with Article 53 of the Rules on the Treatment of Foreigners (Official Gazette 14/2013). It is common practice that foreigners who are on temporary residence could be regularly checked for any purpose every six months, and in case of doubt in order to stay could be checked more often, depending on the circumstances. A foreign person who enters into a marriage of convenience to her/himself earned benefits of citizenship can be punished with up to one year in prison or a fine. But not only foreigners are subject to criminal prosecution. Expulsion as a penalty In the event of the discovery of the marriage of convenience, in the Republic of Croatia, the decision on the expulsion is adopted by the Ministry, police directorate or police station. No entry or stay imposed by a decision on expulsion is given for three months up to 2 years. If the commission determines that the alien resided in the Republic of Croatia on approved temporary residence for the purpose of family reunification for a marriage of convenience, a foreigner can be punished. For this offense fine could be 500 up to 3 thousand HRK.

			<p>4. In 2015, there were no proven marriage of convenience cases in Croatia.</p> <p>5. No.</p>
	Cyprus	Yes	<p>1. No such misuse has been recorded so far.</p> <p>2. Since June 2012, legislative changes have been made to family reunification, however, none was specifically related to the prevention of misuse. Namely, legislative changes were made to the Aliens and Immigration Law in 2013 (L.32(I)/2013, 30.4.2013 and L.49(I)/2013, 21.6.2013) and the Refugee Law in 2014 (L.58(I)/2014, 15.4.2014).</p> <p>3. Since June 2012, changes in policy and in practice have been made, but, again, not in relation to prevention of misuse. In particular, in late 2015, the revision of practices followed for family reunification of third country nationals commenced. This revision was completed in early February 2016 and the revised practices are now in place. Changes refer to the duration of the family reunification permits and the access of the spouses to employment. In particular: a) Duration of the family reunification permits given that the requirements of the legislation are met: i. First permits (spouse and children): The duration of these permits is one year. This is foreseen by the legislation. ii. Renewals (spouse): The duration of these permit is equal to the validity of the permit of the sponsor unless the spouse's passport expires sooner. In this case the validity of the permit is limited to the expiration date of the passport. More favourable provisions are foreseen for the spouses of long term residents who themselves are holders of unlimited permits. In these cases, spouses have the possibility of obtaining an unlimited family reunification permit, given that they comply with certain integration measures. The same integration measures are foreseen for obtaining the long term status and namely are the adequate knowledge of the Greek language and of basic elements of the political and social realities of Cyprus. iii. Renewals (children): The duration of these permit is equal to the validity of the permit of the sponsor unless the child's passport expires sooner, or unless the child becomes of age. In this case the validity of the permit is limited to the expiration date of the passport or the date of reaching adulthood. Family reunification permits issued to children of long term residents who are holders of unlimited permits, are of a 5 year maximum validity, unless the child's passport expires sooner, or unless the child becomes of age prior to the five years. b) Spouses' access to employment: i. Spouses of sponsors with free access to the labour market (e.g. of long-term residents) are now granted</p>

			<p>the right to free access to the labour market immediately, i.e. without any time constraints to this right.</p> <p>ii. Spouses of sponsors with limited access to the labour market are granted the right to free access to the labour market immediately, given that they previously have obtained the necessary approval of the Labour Department, which is responsible for labour market tests. If such an approval is not necessary for the sponsor him/herself then such an approval is also not necessary for the spouse. The above policy was set in motion quite recently and, therefore, the effects of the changes are not yet visible.</p> <p>4. No marriages of convenience or false declaration of parenthood have been recorded so far in relation to family reunification.</p> <p>5. No such research and/or evaluation has been undertaken.</p>
	Czech Republic	Yes	<p>1. Note: In our response, we refer to issues concerning family reunification of third-country nationals residing lawfully in the EU (Directive 2003/86/EC) as well as to family reunification of third-country nationals with EU citizens (Directive 2004/38/EC). According to the Czech legislation the same rules as applied in case of family members of EU citizens on the grounds of Directive 2004/38/EC shall apply to family members of Czech citizens. We do not apply the rules laid down in Directive 2003/86/EC to the third country nationals who are family members of Czech nationals and intend to accompany or join the Czech nationals in the Czech republic. Answer: As for the cases of misuse, it should be mentioned that typologies of abuse have not changed recently. In general, the Czech authorities deal more often with cases of misuse of residence rights in relation to third-country national (TCN) family members of EU/Czech citizens rather than in relation to family reunification of third-country nationals according to Directive 2003/86/EC. As for the types of misuse, it involves marriages of convenience and much more commonly an equivalent of it which is a “partnership of convenience” (e.g. durable relationship of unmarried couple). The false proclamation of paternity appears frequently as well. An example of a typical situation of a false proclamation of paternity could be a situation where the paternity to a child of a mother who is a third-country national is declared by the consent declaration of parents. The father who declared the paternity to the child is a Czech citizen and thus the child acquires Czech (EU) citizenship. Meanwhile, due to the fact of being a mother of a minor EU child, its mother obtains a residence card as a family member of an EU citizen, (according to the case-law of the Court of Justice of the European Union (CJEU), in some cases the parent who is the minor’s</p>

		<p>primary carer is also allowed to reside with the child in the host Member State. Later it turns out that the alleged father is not the biological father of the child and that the biological father of the child is, in fact, the third country national but it is no longer possible to challenge the declaration of paternity. However, the new Czech citizenship legislation should prevent this type of misuse (see below). As for marriages of convenience, these are usually organised through services of intermediaries. The intermediaries instruct couples about the course of proceedings, interviews and questions asked during interviews. They also look up for EU/Czech citizens willing to participate, arrange their journey to the country of origin of a TCN and their stay there, including the organization of a marriage ceremony. The main motives leading to the contraction of marriage of convenience is either the legalisation of residence of a TCN who has been staying in the Czech Republic/EU and whose residence permit is no longer valid or will soon be withdrawn or securing conditions for entry and stay into the Czech Republic/EU in case of a TCN who has been staying outside the EU. Marriages by deception also occur. A marriage is usually contracted in the country of origin of a TCN, either before local authorities or before consulates or embassies of the Czech Republic; in other cases it follows a relationship originated during holidays of an EU/Czech national in a third country after which an EU/Czech citizen invites a TCN to the Czech Republic and the marriage is contracted here. The relationship with an EU/Czech citizen and related invitation for a TCN to come to the Czech Republic facilitates the process of acquiring a short-term visa for the TCN (which would have been more difficult had the TCN not been related to the Czech/EU citizen). The marriage typically follows a short relationship on the internet (social network), or more often after an EU citizen has met a TCN in a foreign country on holidays. Typically, it concerns middle-aged women coming from the Czech Republic/EU marrying much younger non-EU spouses (in most cases from North African countries). The Czech/EU spouses are usually financially well-off in comparison to their future non-EU spouses. It is difficult (impossible) to prove that this type of marriage is a marriage of convenience since the couple usually lives in a common household, therefore in these cases residence cards are usually issued to TCNs. Often, after that, the TCNs quit their spouses and the Czech Republic, which is usually not their primary destination. It is only when an EU/Czech national realizes he/she had been deceived by a TCN and reports it to the authorities, that a residence card can be withdrawn to the TCN (if the authorities manage to prove the existence of a marriage of convenience). As for the legal provisions, the changes in Czech citizenship legislation should be mentioned. The previous Act No. 40/1993 concerning the acquisition and loss of nationality of the Czech Republic was replaced by a new one</p>
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(Act No. 186/2013 which is in force from 1 January 2014) which tighten up the rules for acquisition of Czech nationality via acknowledgement of paternity. According to the previous Act, the child could have automatically got Czech nationality if the father signed an acknowledgement of paternity together with the child's mother, provided that the father was a Czech national and the mother was a foreign national (third country nationals included). According to new Czech Nationality Act, the conditions for children claiming Czech nationality through the father completely changed and they are stricter. Only if born to a married couple, the child of a TCN mother and Czech father acquires automatically Czech nationality. If born to an unmarried couple where a mother is a third country national and the alleged father is a Czech national, the child can only get Czech nationality via acknowledgement of paternity if the parents present to the registrar a report on the results of a DNA paternity test from a court-appointed expert. Otherwise (for example when the DNA test is not presented), the parents will be able to use the special procedure according to which, they can ask for granting Czech nationality to the child if they acknowledge the paternity to the child and the state authority examines that the declaration of paternity was not false and that the relation of the father and the child is genuine (living in common household, raising the child, paying child support etc.). The purpose of these changes was thus to reduce cases of false declarations of paternity which led to acquisition of Czech nationality by the child and possibility of granting of residential rights to the parent. However, the false declaration of parenthood may still occur, not in relation to acquisition of Czech nationality by a child but in relation to granting of residential rights to the parents (e.g. a third country national acknowledges paternity to a Czech child with the aim of getting a residence card as a family member of an EU/Czech citizen). In these cases, when a TCN is applying for a residence permit, the DNA tests are not required. As for sham marriages and legal provisions which could give rise to such misuse, the problem is usually not the legislation but the difficulty to collect enough evidence and to prove clearly the existence of abuse or fraud.

2. By Residence of Foreigners Amendment Act which came into force by the end of 2015, changes were made concerning the definition of a family member of an EU/CZ citizen. More precisely, the definition of "other family members" who are also direct beneficiaries of Directive 2004/38/EC became narrower. Previous category of a family member who is in a permanent relationship similar to family relationship with an EU citizen and is member of his/her household (e.g. a grandparent and a grandchild) has been replaced by a narrower category of a partner with whom the Union citizen has a durable relationship and who is a member of the household of the EU citizen (i. e. an unmarried



		<p>couple). Other legislative changes become effective if another Residence of Foreigners Amendment Act is approved by the Government and Parliament. This Act is now being assessed by the government legislative working commissions. This Amendment reinforces the possibilities to withdraw a residence permit of a third country national (a residence permit for the purpose of family reunification included) if a TCN does not meet the purpose for which the permit has been granted; in case of a family reunification this is a situation where a family relationship is not genuine. Another change is planned in relation to requirements for a permanent residence permit. In the Czech legislation there has been a possibility for a dependent child (up to 26 years) of a third country national who has been a holder of a permanent residence in the CZ to apply for a permanent residence permit without the necessity for the child to meet the condition of the previous continuous residence for 5 years in the CZ. This national provision was more favourable than the usual long-term residence permit for the purpose of family reunification (based on the Directive 2003/86/EC) because it enabled the dependent child to apply directly for a permanent residence permit which ensured its holder more rights than the long-term residence permit. The reason for the change was mostly the fact that the applicants did not intend to permanently live with their family members in the Czech Republic but to use the permanent residence permit for repeated short-term stays without having to apply for the otherwise necessary short-term visa when visiting their relatives. One of the changes in the latter Amendment Act which relates to marriages of convenience and false declarations of parenthood in case of third-country nationals' family reunification as well as family reunification of third-country nationals with EU citizens is a special provision on interviewing the applicants. These rules should enable to better investigate the abuse. In order to dispel the doubts about the genuineness of a marriage/partnership (or parenthood), the authorities may hold simultaneous interviews separately and if possible in parallel or consecutively. The spouse will not be informed in advance about the interview of his/her spouse. The obligation of the spouses (or other relevant family members) to take part in the interview in person in case of a serious doubt as to genuineness of a particular marriage or declaration of parenthood already exists in Czech legislation; failure to appear may lead to rejection of the application for a residence permit. From 2007, misuse of family reunification such as marriage of convenience or false declaration of parenthood is punishable under the Czech criminal law as a part of a more general criminal offence which is "facilitation of unauthorized residence in the territory of the Czech Republic". According to the Criminal Code a person commits this criminal offence if he/she in exchange for financial or other gain assists others in securing unauthorized residence in the territory of the Czech Republic. The criminal</p>
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offence and the related sanctions apply therefore only to those who facilitate an unauthorised residence in the CZ in order to gain some benefit.

3. In case of a suspicion as to the genuineness of a particular marriage or declaration of parenthood, the Czech authorities apply internal rules and methods concerning the detection and investigation of those abuses (e. g. the investigation and interview techniques) which also reflect the guidelines provided in the EU Commission Handbook on marriages of convenience from 2014. This national methodology is updated on a regular basis.

4. Unfortunately, for the moment we are not able to collect data on proven cases of marriages of convenience or paternity frauds. In general, the data we have are collected via Aliens Information System (CIS). The CIS is a central database that contains information regarding, among others, visas, and residence permits. The relevant figures concerning the proven cases of marriages of convenience and paternity frauds are not collected via CIS now. We can only provide statistics on launched criminal proceedings in relation to facilitation of irregular migration (this cover especially criminal offences: “facilitation of unauthorized residence in the territory of the Czech Republic” and „organizing and facilitating illegal border crossing”, incl. cases which have been put off in a pre-trial stage for want of evidence). The data cover both cases linked to misuse of the right to free movement of EU nationals and their family members (the majority) as well as cases related to misuse of third country nationals’ family reunification (but the exact proportions are not available). Data regarding the facilitation of irregular migration (launched criminal proceedings) are attached in separate document. As for the number of convictions, in 2014 there were in total 78 convictions for “facilitation of unauthorized residence in the territory of the Czech Republic”, 57 thereof were cases of CZ nationals and 21 of third country nationals. In 2015 there were 22 convictions for “facilitation of unauthorized residence in the territory of the Czech Republic”, 11 thereof were cases of CZ nationals and 11 of third country nationals. Unfortunately, it is not possible to determine the respective reasons of conviction (such as entering into or organizing a marriage of convenience or false declaration of parenthood).

5. There has been a research undertaken by the Analytical Centre for State Border Protection and Migration, interagency composed of members of different ministries and government offices, on misuse of family reunification in relation to marriages of convenience and false declaration of parenthood in 2009 and 2010. The research described the typologies of misuse as well as possible

			solutions (such as the above mentioned change in a citizenship legislation which is today already in force). Since then, there has been no new research in this area conducted by state authorities.
	Estonia	Yes	<ol style="list-style-type: none"> 1. At the moment, there is no cases which have drawn our attention and concerns in regards to cases of family reunification. But there might be some cases where Estonian citizens enter into fictitious marriage with TCNs. Usually such marriages are registered outside Estonia. 2. Yes. There were some general changes to the Aliens Act in 2015 (which may also effect to misuse of family reunification), according to which a person may be punished for presenting false information or falsified documents with the purpose of obtaining a legal basis for an TCN's to stay in the territory of Estonia or a member state of the Schengen Convention 3. Please see answer above. 4. In 2015, there were no proven marriage of convenience cases in Estonia. 5. No.
	Finland	Yes	<ol style="list-style-type: none"> 1. In Finland, family members (mainly nuclear family) are eligible for a residence permit provided that they fulfil certain other requirements for residence permit. Neither marriages of convenience nor false declarations of parenthood are defined in the Finnish Aliens Act. However, a residence permit may be refused if there are reasonable grounds to suspect that the applicant intends to evade the provisions on entry into or residence in the country (pursuant to Aliens Act Section 36 subsection 2). Typical indicators of a marriage of convenience are that the spouses have entered into marriage after a very short acquaintance, the spouses are inconsistent about their respective personal details, about the circumstances of their first meeting, or about other important personal information concerning them, or the spouses do not speak a language understood by both. It is noteworthy that the use of social media in finding a spouse has increased. However, the fact that the spouses have met through the internet does not necessarily indicate that the marriage is one of convenience. As an example, a number of Finnish men seek spouses from abroad. The couple meets through social media and they get married very soon after meeting each other for the first time. The spouse often travels to Finland on a visa and applies for

		<p>a residence permit in Finland. In many of these cases, the initial negative decision made by the Finnish Immigration Service based on Section 36 subsection 2 is overturned by the administrative court due to the fact that by then the couple has already led a close family life together. Another type of misuse of family reunification provisions is defined in Section 36 subsection 3 of the Aliens Act: A residence permit on the basis of family ties may be refused if there are reasonable grounds to suspect that the sponsor has obtained his or her residence permit by circumventing the rules on entry or residence by providing false information regarding his or her identity or family relationships. While obtaining their own residence permit, the sponsor has not mentioned his/her relationship to the applicant, and the information might have had an effect on the sponsor's own permit. There have been cases concerning quota refugee women, who have obtained their own permit as women-at-risk, due to their vulnerable status in their country of origin or residence by either claiming to be single/single mothers in a vulnerable situation and with no intention to marry, or claiming to have divorced their husband because of their violent behaviour, therefore being at risk. In the first category, the refugee women have later informed that they have a husband or a co-habitant, which is the kind of information that might have led to a refusal of the sponsor's own claim. In the second category, if the allegedly abusive husband later applies for family reunification, it may be refused on grounds of the husband posing a risk due to his violent behaviour and also on grounds of the spouses already having divorced. In some cases however, the sponsor's own refugee status has been subjected to re-assessment, and the negative decision for the spouse has been based on subsection 3 of section 36. The same provision is used if the sponsor has been granted their own residence permit as a minor applicant under the guardianship of a sponsor or a family member who has received a residence permit to Finland, and it turns out that the minor in question is already married or has a fiancée. There have also emerged suspected cases of bigamy/polygamy. A male sponsor divorces his wife, with whom he has been married for a long time and has children with, and marries a younger wife from his country of origin. There has been reason to suspect that the sponsor has divorced the first wife only formally, continuing family life with both of the spouses. In the suspected cases the sponsor has often already been granted Finnish citizenship. According to the application of subsection 2 of section 36, the guardians of an unaccompanied minor may receive a negative decision, if it cannot be established that there has been a direct and personal threat on the child and the child has been sent to Finland with the intention of facilitating family reunification. In these cases, there are reasonable grounds to suspect that the parents/guardians have acted against the best interest of the child and intend to evade the provisions on entry into the country.</p>
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As a result of marriages between Finnish men women from third countries, there are many minor applicants who arrive in Finland with a visa to visit their mother, and lodge an application for family reunification in Finland with insufficient documents regarding the guardianship of the child and the consent of the other parent/guardian. There have been issues with the reliability of documents presented by applicants from various parts of the world including Western Africa, Vietnam, Afghanistan, Syria and Iraq. Some Finnish embassies have notified immigration officials about falsified birth certificates of children. Due to the unreliability of documents, the use of DNA testing will be increased.


2. There have been no new legislative changes after those described in the study of 2012. The implementation of the legislation concerning the inclusion of biometric identifiers on the residence permit and submitting the residence permit application in person has reduced the number of residence permit applications made, especially of Somali nationals. Also the number of foster children applying to Finland (mainly Somali nationals) has decreased due to changes in legislation introduced in 2010 (Section 37, subsection 3 concerning foster children and Section 38 requiring that the child be a minor when the child's residence permit application is decided). The changes might have had an effect on reducing the misuse of the family reunification process. Currently there is a government proposal to change the legislation regarding the requirement of a secure income. It is proposed that also recipients of subsidiary and humanitarian protection would be required to prove that they have sufficient means of subsistence before they could exercise the right to family reunification. Those granted refugee status would be exempted from the income requirement, providing that their family members apply for family reunification within three months of the date when the sponsor was granted their own permit.


3. There have been no changes in policy after the measures described in the study of 2012.


4. There are no official statistics regarding misuses of family reunification provisions. The Finnish Immigration Service estimates the number of negative decisions on residence permits on the grounds of suspected marriages of convenience to be 200-300 per year.




5. There have been no recent studies focusing on the misuse of family reunification provisions or prevention of misuse. However, there is a study that was published in April 2016 on the Finnish policies regarding family reunification, focusing mainly on the families of beneficiaries of international


			<p>protection, but also mentioning marriages between Finnish nationals and third-country-nationals, as well as elderly parents of TCN's living in Finland. The book was written by many academics researching issues regarding family reunification, with a perspective on the difficulties the sponsors and applicants face trying to reunite their families. The book is in Finnish (Family reunification: Who gets their family to Finland; who doesn't and why): http://vastapaino.fi/kirjat/perheenyhdistaminen/</p>
	France	Yes	<p>1. France has been experiencing the following abuses regarding family reunification for TCNs legally residing in France: - housing fraud when the housing address mentioned in the application is fictitious and as soon as the applicant has obtained the approval, s/he moves. Thus s/he does not respect the size of the accommodation in compliance with the family size ; - false declarations regarding the number of family members when the applicant forgets to mention one or two children. This is not accepted in the French regulation which prevails the family reunification for the whole family (the partial reunification can be accepted in certain cases on behalf of the child). Since the applicant does not declare all family members, s/he can fulfill the criteria regarding the size of the accommodation and the required income which are both linked to the family size ; - marriage fraud when the foreign national divorces his/her TCN spouse and gets married with a French national to obtain a French residence permit and then s/he divorces the French spouse and gets married again with the first spouse and applies for the family reunification on her/his behalf. For third-country nationals married to a French national (application for a "family and private life" residence permit), the following abuses have been reported: - identity and marital/family status fraud: in addition to documentary fraud, France has identified documents which are not counterfeited but which mention false family links (apocryphal family documents) ; - marriage fraud when a TCN and a French national get married in order to obtain a French residence permit ; - fraud relating to parent-child relationships when a TCN recognizes his/her French child before or after the birth and does not live with the French parent ; - fraud when two persons no longer live together but still declare a common residence or simulate break-up (separation) because of violence to obtain a French residence permit.</p> <p>2. NO</p> <p>3. NO</p> <p>4. The Central Directorate of the French Border Police (Direction Centrale de la Police aux Frontières)</p>

			<p>dismantled 4 networks related to marriages of convenience during the first 4 months of 2016, and 6 networks in 2015. In 2014, the French ministry of Justice registered 657 decisions related to an application for a declaration of invalidity of a marriage, including 332 acceptance decisions for a total or partial invalidity, and 697 decisions in 2015 (including 372 acceptance decisions for a total or partial invalidity). However, such applications for a declaration of invalidity can be filed for various reasons such as the lack of full consent of the spouses (These cases include marriages of convenience) but also because of the age of spouses, the presence of the spouse during the celebration, bygamy, etc. The statistics do not give the reasons for such applications. Regarding proceedings to challenge paternity, such actions can apply for false declarations of parenthood to obtain a French residence permit but also for other reasons, however the available statistics do not precise the reasons. In 2014, the French ministry of Justice registered 1652 proceedings out of wedlock (including 981 acceptance decisions) and 1722 in 2015 (including 994 acceptance decisions). In 2014, 316 proceedings during the marriage were registered (including 162 acceptance decisions) and 336 in 2015 (including 157 acceptance decisions).</p> <p>5. Main problems concern proving the fraud. The competent service within the ministry of the Interior ((the office in charge of family immigration) has been working on documents and information to collect when analysing a family reunification application in order to prove a possible fraud. Regarding the evaluation of misuses, France does not have any statistical information.</p>
	Germany	Yes	<p>1. By making a false acknowledgment of paternity by German nationals for foreign children a greater number of members of the child (child mother, possibly her husband, ostensibly minor siblings of the child) will also obtain a right of residence. An official right to challenge paternity with a judicial review is not possible (any more).</p> <p>2. No.</p> <p>3. No.</p> <p>4. No.</p>


			5. No findings
	Hungary	Yes	<p>1. Marriages of convenience, proxy marriages and false declaration of paternity can be observed in Hungary. Third-country national family members of both EEA nationals as well as Hungarian nationals are involved in such abuses as Act I of 2007 on the entry and residence of persons with right to free movement and residence extends the right to free movement to third-country national family members of Hungarian citizens, as well. Nevertheless, it should be stated that Hungarian nationals are also involved in marriages of convenience based on which free movement rights are not claimed in Hungary under Hungarian law, but on the territory of other EU Member States according to EU law. For certain tendencies of abuses detected in Hungary, please see the article linked under answer 5.</p> <p>2. As regards fighting misuse of family reunification, not immigration rules, but criminal rules have been modified since June 2012. As for the effective sanctioning of relationships of convenience, it should be highlighted that the new Hungarian Criminal Code (Act C of 2012) having entered into force on 1 July 2013 regulates a new crime, „Abuse of Family Ties” under Section 355: “Any person over the age of eighteen years who enters into a family relationship for financial gain for the sole purpose of obtaining a document verifying the right of residence, or consents to a statement of paternity of full effect is guilty of a misdemeanor punishable by imprisonment not exceeding two years, insofar as the act did not result in a more serious criminal offense.” This new section was used as a legal basis for the conviction of Serbian and Hungarian nationals having taken part in marriages of convenience organized in 2013 between Hungarian citizen women and Serbian citizen men, who later on claimed free movement residence rights in Germany. As the court proceedings are still on-going, at present we have no experience to share about the practical effect of the new criminal provision. As regards immigration rules it is a provision adopted in 2010 that aims to fight marriages of convenience between Hungarian and third-country nationals by setting out the requirement of national registration of marriages of Hungarian national conducted abroad in order for the third-country national spouse to be able to gain free movement rights in Hungary.</p> <p>3. A policy decision has been made to criminalise the situation when relationship of convenience is formed. (See answer 2 in this regard.) In practice interviews conducted with the applicants and their family members as well as on the spot checks prove to be useful in cases raising suspicion. It should</p>


			<p>also be noted that a change in the tendency of national court rulings since 2014 have helped fighting abuse carried out by false declarations of paternity, as in such cases the court started to realise the importance of examining whether the third country national practices the custody rights when considering the possibility of relationships of convenience.</p> <p>4. No concrete statistical figures are available.</p> <p>5. The issue of abusing legal migration channels as well as relationships of convenience were among the topics at a conference organised by the Hungarian Law Enforcement Association in 2015. Furthermore our colleague has recently written an article on “The Fight against Marriages of Convenience in the EU and in Hungary”: http://ceere.eu/pjiel/wp-content/uploads/2015/12/pjiel_3_4.pdf</p>
	Italy	Yes	<p>1. In Italy, no major cases of misuse of family reunification have been recorded as a legal way to gain entry and residence in the country. The reasons are mainly due to the use of electronic procedures, which prevent document forgery. In Italy, the family reunification procedure consists of two steps. The first step is taken care of by the Immigration Desk. There is an Immigration Desk in each Prefecture (Territorial Government Office). At this level, checks are made to verify that the sponsor meets the relevant requirements (concerning income and accommodation). This verification is made through double checks and/or electronic communications with other governmental offices that have information on the sponsor (i.e. Tax Revenue Office, National Social Security Institute, etc.). If the relevant requirements are met, the second step can be taken. The Immigration Desk produces an authorisation, which is sent electronically (hence in a secure fashion) to the Italian consular authority in the third country in which the family member is living. The Consulate will then ascertain the existence of the family relationship through strict verification procedures (see the Italian study “Misuse of the Right to Family Reunification: Marriages of convenience and false declarations of parenthood” of 2012).</p> <p>2. There have been no legislative changes in the procedure outlined above. Such a procedure has been in place since 2010.</p> <p>3. No.</p>



			<p>4. There is no statistical data available on marriages of convenience or on false declarations of parenthood.</p> <p>5. No.</p>
	Latvia	Yes	<p>1. Recently no significant misuses of family reunification have been detected. Although Immigration Law stipulates that a residence permit can be revoked in the case of marriage of convenience and in the case of false adoption, there are no recent cases where these provisions would be applied.</p> <p>2. No changes</p> <p>3. No changes</p> <p>4. In 2015 only in 2 cases negative decisions have been issued on the ground of the suspicion that the marriage is fictitious. No false declarations of parenthood or adoption have been detected.</p> <p>5. EMN focussed study “Misuse of the Right to Family Reunification” (June, 2012).</p>
	Lithuania	Yes	<p>1. The situation relating to misuse of the family route is described in the EMN study on Marriages of convenience (EMN, 2012). The situation have not changed.</p> <p>2. No legislative changes were introduced.</p> <p>3. No.</p> <p>4. N/A.</p> <p>5. No.</p>
	Luxembourg	Yes	<p>1. 1. At the moment, there have not been cases which have recently drawn the attention and concerns in regards to cases of family reunification. At the moment there are no specific provisions in national</p>

			<p>legislation on family reunification which give rise to misuses.</p> <p>2. 2. Yes. The law of 4 July 2014 on reform of the marriage introduced certain measures to prevent marriages of convenience for obtaining a residence permit (article 146-1 of the Civil Code and articles 387 and 388 of the Criminal Code). There have not been any cases in which these provisions have been used. At the moment there are no changes foreseen.</p> <p>3. 3. No.</p> <p>4. 4. No.</p> <p>5. 5. No.</p>
	Portugal	Yes	<p>1. In Portugal we have noticed some cases of marriage of convenience (that have been written in a EMN’s 2012 study) and some cases of false declarations of parenthood (mainly from Guinea Bissau) that have been detected, investigated and prosecuted.</p> <p>2. The Law 63/2015 of 30th June establishes a change concerning the family members in order to require family reunification. The adult descendent or one of the partners are considered as resident family members.</p> <p>3. No, Portugal didn’t have any policy/practice changes concerning family reunification.</p> <p>4. Available statistics: concluded criminal processes by Immigration and Borders Service – 208 Marriage of convenience crime - 72 persons prosecuted Arrested persons – 1; witnesses 174;</p> <p>5. In 2012 PT EMN NCP launched the study “Misuse of the right to family reunification: Marriages of convenience and false declarations of parenthood. The Portuguese case.”. In 2014, the Immigration Observatory launched the study “The impact of family reunification policies in Portugal”, made by José Carlos Marques, Pedro Góis and Joana Morais e Castro (available on http://www.om.acm.gov.pt/documents/58428/177157/ESTUDO+53.pdf/966d8e07-8fea-4088-ad3f-</p>

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	Slovak Republic	Yes	<p>1. Cases of abuse of family reunification are mainly for a financial profit for the perpetrator who will conclude a marriage of convenience despite fulfilling a harmonic and permanent cohabitation. The newlyweds are expected to live together at the common permanent residence.</p> <p>2. The amendment to the Act on Residence of Aliens in effect from 01 May 2013 removed the possibility to cancel the permanent residence of a person who was granted residence as a child under 18 years entrusted into personal care of a third-country national who is the spouse of a Slovak citizen with permanent residence in the SR, or a child under 18 years of a third-country national with permanent residence for a period of five years, or a child under 18 years of age entrusted into personal care of a third-country national with permanent residence for a period of five years, provided that the person, after reaching 18 years of age, runs business, is employed, or performs a special activity or research and development in the SR. This category also includes the children of aliens living in the SR who thus enjoy more favourable conditions for staying in the country after reaching 18. The act also removed the possibility to cancel permanent residence for an indefinite period of time acquired on the basis of marriage with a Slovak national (acquired after four years from obtaining permanent residence for five years) on the grounds that the spouses do not live together as family. It is assumed that an alien living in Slovakia for more than four years is sufficiently integrated, and there is no reason to assume that s/he contracted marriage with a Slovak citizen solely for the purpose of obtaining residence, since the marriage lasted for a long enough period of time. As from 01 May 2013, in connection with the amendment to the Act on Residence of Aliens also the Act on Asylum was amended which stipulated that asylum seekers applying for asylum for the purpose of family reunification have to reside in the territory of the Slovak Republic and cannot have a permanent residence in this territory. In 2014, the amended Act on Employment Services regulated the entry of the family members of TCNs to the labour market in accordance with Council Directive 2003/86/ES of 22 September 2003 on the right to family reunification. This act also specified that an employer may employ a TCN with temporary residence for the purpose of family reunification: 1. after expiry of 12 months of continued stay in the Slovak territory from being granted temporary residence for the purpose of family reunification; 2. who is a family member of a holder of the EU Blue Card; or 3. who is a family member of a TCN, if s/he was granted temporary residence for the purpose of research and development and conducts research or</p>

			<p>development under a hosting agreement. The amendment to the Act on Residence of Aliens with effect from 20 July 2015 extended the category of persons who can be granted permanent residence by the police department for an indefinite period of time. Another category is formed by third-country nationals who are children under 18 years of age, entrusted into the personal care of a third-country national with permanent residence for an indefinite period of time. This change would have a positive impact on ensuring care of a third-country national entrusted into the personal care of a person with recognised status of a third-country national with permanent residence for an indefinite period of time.</p> <p>3. No legislative changes were undertaken. However, the media inform the general public about the risks of marriages of convenience aimed at making profit without considering the long-term consequences.</p> <p>4. In 2011, the Bureau of Border and Alien Police of the Police Force Presidium recorded and sanctioned 4 cases of smuggling conducted in the form of marriages of convenience. 7 persons were convicted from whom there were 5 Slovaks and 2 foreigners. 5 third-country nationals married a Slovak citizen. In 2012, 3 cases of smuggling conducted in the form of marriages of convenience were recorded and sanctioned. 13 persons were convicted from whom there were 11 Slovaks and 2 foreigners. 8 third-country nationals married a Slovak citizen. In 2013, 9 cases were recorded in which 12 persons were convicted and the total profit amounted to approximately 16 000 euro. In 2014, 6 cases were recorded, 22 persons were convicted. In 2015, 5 cases of smuggling conducted in the form of marriages of convenience were recorded. 10 persons were convicted from whom there were 8 Slovaks and 2 foreigners. 5 third-country nationals married a Slovak citizen.</p> <p>5. No.</p>
	Slovenia	Yes	<p>1. Article 47. of the Alien Act determine rights and conditions for third country nationals and their family members which need to be fulfilled in order to issue residence permit for the purpose of family reunification. Articles 55, 56 and 57 determine conditions and procedures of refusing of issuing residence permit, procedures in case of annulment and expiring of residence permit such as inter alia alien concerned intentionally submitted incorrect data on his identity or other inaccurate data, or if he intentionally concealed circumstances which have a bearing on the issuing of a permit; it is clear that a marriage has been entered into exclusively or chiefly for the purpose of obtaining a residence permit,</p>

			<p>or if it is determined during the procedure for extending a temporary residence permit or issuing a permanent residence permit that an immediate family member does not actually live in a family union with the alien who is recognised as having the right to family reunification on the basis of this Act, etc.</p> <p>2. Yes. Modification of the Alien Act came into force in 2014 with some legislative changes including changes of provision of family reunification. New Alien Act prescribed among other condition at least one year residing in Slovenia and a valid residence permit before sponsor could apply for family reunification. In accordance with an Alien Act, the alien's family members are the following: a spouse, registered partner or partner with whom the alien resides in a long-term partnership; unmarried minor children of the alien; unmarried minor children of the spouse, a registered partner or partner with whom the alien has resided in a long-term partnership; parents of the minor alien with whom he has resided in a family community before his arrival in the Republic of Slovenia; adult unmarried children and parents of the alien, spouse, registered partner or partner with whom the alien resides in a long-term partnership and whom the alien is obliged to maintain in accordance with the regulations of his own state. Alien Act provides also family reunification in case of family members of beneficiaries of international protection if all required conditions are fulfilled.</p> <p>3. Yes, please see Q 1. Yes. We are in the process of discussion on different levels.</p> <p>4. Statistic on this particular subject - cases of marriage of convenience, false declarations of parenthood etc. - is collecting through different statistical data and methodology which contains also other information and data.</p> <p>5. N/A</p>
	Sweden	Yes	<p>1. None. No cases/instances of misuse of family reunification have recently drawn our attention and therefore has no legal regulations that may be relevant.</p> <p>2. No legislative changes concerning prevention of misuse of family reunification.</p> <p>3. No</p>

			<p>4. No</p> <p>5. No</p>
	United Kingdom	Yes	<p>1. In the context of the application of the Dublin Regulation we have seen a very small number of cases where individuals/groups who have previously been refused visas to enter the UK to join family members under national laws have travelled to Europe, have claimed asylum in another State participating in the Dublin Regulation and the UK has been requested to take charge of the applicants. The requests have been legitimate in the context of the definitions and application of the Dublin Regulation and the UK has accepted the requests to take charge. It cannot be said that this is a misuse of the Regulation's provisions, but it is interesting to note that having failed to gain entry to the UK under other rules applying to family members, an alternative method has been utilised.</p> <p>2. Not in the context of the application of the Dublin Regulation.</p> <p>3. This year (2016) we have taken practical steps to enhance our cooperation with key partner States on the handling of requests to take charge of unaccompanied minors and other family members, relatives and relations as defined in the Dublin Regulation. This has related to dealing with requests to take charge on family grounds as quickly as possible bearing in mind the need to be satisfied that the parties are related as claimed and that the best interests of the child are respected.</p> <p>4. In 2016 we have one Dublin Regulation case that involves doubts about the relationship as claimed due to discrepancies between accounts about the number of children within it: this case is the subject of legal proceedings in our civil administrative court regarding the provision of DNA evidence.</p> <p>5. Not applicable in the context of the application of the Dublin Regulation.</p>
	Norway	Yes	<p>1. **Marriage of Convenience, Norwegian Immigration Act section 40 fourth paragraph. The clause states: «A residence permit may be refused if it appears most likely that the main purpose of contracting the marriage has been to establish a basis for residence in the realm for the applicant.» The number of detected marriages of convenience has decreased during the last years. One important</p>

reason for this is probably that we reject more applications based on the income requirement (adequate means of support), and then we do not consider the application in terms of whether it might be a marriage of convenience as long as the income requirement has not been met. ****Forced Marriage, Norwegian Immigration Act section 51 second paragraph.** The clause states: “(the application) may be refused ...if it is likely that the marriage is being contracted against the will of either party.» We reject between 10-20 applications each year because of this clause. We consider whether it is more likely that the marriage has been contracted against the will of either party than not. In most of these rejections both parties claim that the marriage is based on their own free will. The numbers of persons who seek advice or help to avoid a forced marriage are much higher than the numbers we are able to detect during the casework. ****False information/documentation about the income requirement, The Norwegian Immigration Regulations section 10-8 to 10-11.** Many of these cases are linked to applications where we suspect a forced marriage. Typically the person concerned has received income over time and has paid taxes, but has little knowledge about the stated place of work and probably gives the salary back to her/his family. We do not have any statistics about how many cases these concerns.

2. No.

3. No.

4. UDI rejects few cases on grounds of marriage of convenience, even though there can be suspicions that the application involves a marriage of convenience; some cases where there has been suspicion, have been rejected on other grounds, such as inadequate means of support, which is a requirement for family reunification. see attachment.

5. <https://www.udi.no/statistikk-og-analyse/forsknings-og-utviklingsrapporter/tiltak-mot-tvangsekteskap-i-utlendingsregelverket-2015/> The Report is in Norwegian and was funded by the Norwegian Directorate of Immigration with research funds. The purpose of the report is to assess the nature and extent of forced marriages. Further, the report aims to assess how the different measures adopted in legislation to prevent forced marriages works. (pages 16 – 23 English Summary) The report concludes that UDI in recent years has invested significant effort in building competence, and developing routines and common standards. At the same time, the report pinpoints some challenges

			<p>and recommends even further development of legislation, casework guidelines, routines and understanding of the concept of a forced marriage. The report also recommended a reinforcement of the approach to the casework, by improving the police interviews and cooperation between the police and the social welfare network. https://www.udi.no/statistikk-og-analyse/forsknings-og-utviklingsrapporter/marriages-of-convenience-2010/ Marriages of convenience. A comparative study. Rules and practices in Norway, Sweden, Germany, Denmark and the Netherlands (pdf, 929 kB) This report commissioned by the Norwegian Directorate of Immigration, provides a more detailed review of Norwegian rules and practices, and draws comparisons to the situation in Denmark, Sweden, Germany and the Netherlands. The purpose of the analysis is to present similarities and differences in the rules and processes of identifying potential marriages of convenience across countries.</p>
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