



**Ad-Hoc Query (2 of 2) on family reunification of third country nationals receiving international protection**

**Requested by FI EMN NCP on the 9<sup>th</sup> of October 2015**

**Compilation produced on [16.2.2016]**

**Responses from Austria, Belgium, Czech Republic, Estonia, Finland, France, Germany, Hungary, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Slovak Republic, Slovenia, Sweden, United Kingdom plus Croatia, Norway (21 in Total)**

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## **1. Background Information**

The Finnish legislation regulates the right to family reunification of third country nationals who have been granted international protection. Currently in Finland, third country nationals who are granted either refugee status or subsidiary protection (or national humanitarian protection) have the right to family reunification according to similar requirements regardless of their protection status. However, Finland has recently established a legislative project to review the family reunification criteria according to the Family Reunification Directive. Please note that the possible differences in scope or definition of family members between refugees and subsidiary protection, is not of interest in this questionnaire.

With this background Finland would like to ask the following:

1. Please inform if your national legislation introduces exceptions in the application of the requirements in provisions of Article 7 (1) and 7(2) in cases where minor children are concerned either as a sponsor or family member?
2. Please inform whether family members are charged an application fee during the process of applying for family reunification or, alternatively is the decision taken free of charge in the case of a family member of a refugee or a family member of a third country national who is granted subsidiary protection. How much is the application fee?
3. Please inform, if your national legislation acknowledges a national category of international protection in addition to refugee status and subsidiary protection?

We would very much appreciate your responses by the **6<sup>th</sup> of November 2015**.

## **Summary**

*21 member states have responded the query.*

*In ¾ of the member states which responded the family reunification requirements for those who have been granted an asylum or secondary protection correspond to the requirements in the family reunification directive's article 7. In Latvia, Lithuania, Czech Republic and Austria family reunification requirements are different for those with the asylum status and for those with the secondary protection status.*

*In almost all the member states which responded an adequate standard of living was requisite for the family reunification, unless the application was submitted within a time limit according to the directive. The most common time limit is 3 months. In Belgium the family reunification application shall*

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*be submitted within 12 months after the sponsor had been granted the residence permit. In Estonia, Hungary and Poland the corresponding time limit is 6 months. In the UK and Belgium adequate living is required only for the “new family members”. For example Sweden and Croatia do not require adequate living as a requirement for the family reunification.*

*In general the sponsor’s period of residence in the member state is not a requirement for the family reunification. In Latvia, Lithuania, Check Republic and Austria the sponsors with secondary protection are required to live 15-24 months in the member state before the family reunification.*

*In the most member states which responded there are exceptions to the family reunification directive’s article 7 requirements when sponsor or applicant is a minor.*

## 2. Responses<sup>1</sup>

		Wider Dissemination? <sup>2</sup>	
	Austria	Yes	<ol style="list-style-type: none"> <li>1. The requirements mentioned in Art. 7 para 1 and para 2 of the Family Reunification Directive (2003/86/EC) are not transposed into national legislation.</li> <li>2. To realize family reunification, family members who reside abroad have to apply for an entry title at the Austrian representation authority in order to apply for international protection once they are in Austria (Art. 35 para 1 Asylum Act). According to Art. 2 para 1 subpara 4 Austrian Consular Fees Act [<i>Konsulargebührengesetz</i>], official acts based on the Asylum Act (which includes family reunification for TCN who have been granted international protection) are <b>exempt from consular fees</b>.</li> <li>3. Yes: <ul style="list-style-type: none"> <li>• The Status “<b>tolerated stay</b>” (“<i>Duldung</i>”; regulated in Art. 46a Aliens Police Act) applies if the expulsion is not possible due to <b>a refoulement situation</b> or due to factual reasons that the alien is not responsible for. Conditions may be imposed by the Federal Office for Immigration and Asylum so that this person remains easily reachable. However, Art. 31 para 1a subpara 3 Aliens Police Act explicitly states that tolerated persons do not reside lawfully in Austria.</li> <li>• Furthermore, there are three <b>residence titles for exceptional circumstances</b> (humanitarian protection) which are regulated in Art. 54-63 Asylum Act. <ul style="list-style-type: none"> <li>- Art. 55 Asylum Act: Residence title for reasons of <b>Art. 8 ECHR</b></li> </ul> </li> </ul> </li> </ol>

<sup>1</sup> If possible at time of making the request, the Requesting EMN NCP should add their response(s) to the query. Otherwise, this should be done at the time of making the compilation.

<sup>2</sup> A default “**Yes**” is given for your response to be circulated further (e.g. to other EMN NCPs and their national network members). A “**No**” should be added here if you do not wish your response to be disseminated beyond other EMN NCPs. In case of “**No**” and wider dissemination beyond other EMN NCPs, then for the Compilation for Wider Dissemination the response should be removed and the following statement should be added in the relevant response box: “This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.”

**EMN BE Ad-Hoc Query: Prevention campaigns for transport firms**

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			<ul style="list-style-type: none"> <li>- Art. 56 Asylum Act: Residence title for particularly exceptional circumstances; intended for especially well integrated TCN.</li> <li>- Art. 57 Asylum Act: Residence permit for individual protection; intended for:             <ul style="list-style-type: none"> <li>o TCN whose stay has been tolerated (following Art. 46a Aliens Police Act) for at least one year</li> <li>o Victims of human trafficking</li> <li>o Victims of violence, if the residence permit is necessary for the protection from further violence</li> </ul> </li> </ul> <p>NOTE: A legislative draft concerning changes in relevant legislation is currently <b>under consideration</b> in the Austrian Parliament. The <b>proposed changes would change</b> the legislative situation as follows:</p> <ol style="list-style-type: none"> <li>1. According to Art. 35 para 2a Asylum Act, the requirements set out in Art. 60 para 1 subpara 1-3 Asylum Act [see Question 3a of Part 1 of this Ad-hoc Query] <b>do not apply</b> if the applicant is <b>parent of a minor child</b> who has been granted refugee status or subsidiary protection.</li> <li>2. See Question 2 above.</li> <li>3. See Question 3 above.</li> </ol> <p>It should be underlined that these changes are <b>not yet decided and not yet in force</b>. Further information about the ongoing legislative process can be found under: <a href="http://www.parlament.gv.at/PAKT/VHG/XXV/ME/ME_00166/index.shtml">http://www.parlament.gv.at/PAKT/VHG/XXV/ME/ME_00166/index.shtml</a></p>
	<p><b>Belgium</b></p>	<p align="center"><b>Yes</b></p>	<ol style="list-style-type: none"> <li>1. In cases where minor children are concerned as a sponsor: For unaccompanied minors who wish to be joined by their parents, proof of adequate housing , health insurance and sufficient, stable and regular means of subsistence are never required.</li> </ol> <p>In cases where minor children are concerned as a family member: Refugees and beneficiaries of subsidiary protection who wish to be joined by a minor child won't have to demonstrate sufficient, regular and stable means of subsistence if the child aged below 18 comes to live with the sponsor, is alone applying for reunification and is single.</p> <p>[In general (not only for minors) the following applies to refugees and beneficiaries of subsidiary protection: <b>within one year</b> after the recognition of the protection status and if the family relationship (with the family member) existed already before the arrival in Belgium, the person will not need to provide evidence of sufficient, regular and stable means of subsistence, adequate accommodation and sickness insurance. ]</p> <ol style="list-style-type: none"> <li>2. The fee for the visa application is 180 euro / person.</li> <li>3. No.</li> </ol>
	<p><b>Czech Republic</b></p>	<p align="center"><b>Yes</b></p>	<ol style="list-style-type: none"> <li>1. No special exceptions are introduced in case of minors. The Czech national legislation only provides for the exemptions from the requirements as set out in the article 12 of the directive 2003/86EC (see CZ response in part 1 of the questionnaire).</li> <li>2. The application fee is 2500 CZK (approx. 100 EUR). In case of minors (those who are younger than 15 years) the fee is 1000 CZK.</li> </ol>

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			3. Yes, humanitarian protection.
	<b>Estonia</b>	<b>Yes</b>	<p>1. According to Article 46 (13) of Act on Granting International Protection to Aliens, an unaccompanied minor shall have no obligations of a sponsor until he or she reaches the age of 18. In case the family member is a minor child, the Police and Border Guard Board has the discretion to decide whether to apply the requirements or not.</p> <p>2. The decision is taken free of charge in the case of family members of all persons who are granted international protection regardless of protection status.</p> <p>3. No, Estonian national legislation does not acknowledge an additional international protection status.</p>
	<b>Finland</b>	<b>Yes</b>	<p>1. According to article 39 of Aliens Act an exemption may be made from the requirement for means of support in individual cases, if there are exceptionally weighty reasons for such an exemption or if the exemption is in the best interest of the child.</p> <p>2. The decision is taken free of charge in the case of family members of all persons who are granted international protection regardless of protection status.</p> <p>3. Yes, humanitarian protection.</p>
	<b>France</b>	<b>Yes</b>	<p>1. yes : if the sponsor is minor, s/he can ask for the family reunification for his/her direct relatives in the ascending lines if s/he is not married. If the family member is minor, h/she can join the sponsor if s/he is not married AND if s/he is less than 19 years old.</p> <p>2. there is a tax stamp of Euro 19 for the issuance of the first residence permit for refugee and beneficiary of subsidiary protection</p> <p>3.NO</p>
	<b>Germany</b>	<b>Yes</b>	<p>1) Please compare with the reply to part 1) of the request listed under 3)a).</p> <p>2) Generally speaking, a fee amounting to 60 Euro is charged for the issuing of a visa (§ 46 , section 2, German Ordinance on Residence ). For the issuing of a corresponding residence permit, the fee charged amounts to 100 Euro depending on the period of validity (less than one year) and/or 110 Euro (for longer than one year) (§ 45, number 1 German Ordinance on Residence ); persons entitled to asylum and refugees are exempt from the charges. (§ 52, section 3 German Ordinance on Residence).</p> <p>3) Apart from the international protection, the national legislation provides for the principle of non-refoulement/ban of deportation in accordance with § 60, section 5,7 German Residence Act.</p>
	<b>Hungary</b>	<b>Yes</b>	<b>1. A minor child is only exempted from admission requirements when the child was born on the territory of Hungary after the parent's recognition as a refugee or beneficiary of subsidiary protection status.</b> In this case instead of an application, a notification on the birth of the child is required.

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			<p><b>2. Yes</b>, the payment of the processing fee is requested. It is, however, not an application fee for the family reunification, but is an administrative service fee. The administrative service fee of the procedure for issuing residence permits is <b>60 EUR</b>, which shall be paid at the foreign representations of Hungary primarily in EUR or other convertible currency, or in exceptional cases in the legal currency of the state where submitting the application. In case of domestic applications the administrative service fee is HUF 18,000, and the administrative service fee due relating to the proceedings for the renewal of a residence permit is HUF 10,000, which shall be paid with revenue stamp by the applicant.</p> <p><b>3. No</b>, no further national category exists, yet our national law also sets out provisions on the status of ‘Beneficiary of temporary protection’ according to Directive 2001/55/EC.</p>
	<p><b>Italy</b></p>	<p align="center"><b>Yes</b></p>	<p>1. By way of derogation from Article 7(1) of Directive 2003/86/EC on <i>the right to family reunification</i>, Article 29-bis of the <i>Consolidated Act on Immigration</i> establishes that the beneficiaries of international protection status are not subject to the following requirement: «A foreign national requesting family reunification should prove that he/she has: a) suitable accommodation meeting sanitary requirements, as confirmed by the competent municipal offices . [...]; b) a minimum income from legal sources that is not lower than the amount of the social allowance [...]; b bis) health insurance or other title covering all risks in the domestic territory in favour of their over-65 ascendants or their registration with the National Health Service [...]» (Article 29(3)).</p> <p>2. A beneficiary of refugee or subsidiary protection status applies for family reunification at the Single Desk for Immigration of the Prefecture - Territorial Government Office (UTG). He/she is not required to pay any taxes (except for a €16.00 revenue stamp, to be put on the application form).</p> <p>3. Yes, <i>humanitarian protection</i>. Article 32(4) of Legislative Decree No 25/2008 (implementing Directive 2005/85/EC) establishes that if the territorial commissions that have competence over the recognition of international protection find that the conditions for granting refugee or subsidiary protection status are not met, but that there are «serious reasons, in particular humanitarian reasons or reasons arising from constitutional or international obligations of the Italian State » (Article 5(6), <i>Consolidated Act on Immigration</i>), they can forward the relevant documents to the provincial chief of police (Questore), recommending the granting of a (6-month to 2-year) residence permit. Moreover, humanitarian protection may be granted by the Questore without the intervention of the territorial commission. As a matter of fact, before rejecting a residence permit application, the Questore should always check the applicant’s conditions, and verify that there are no elements preventing his/her removal (such as «serious reasons, in particular humanitarian reasons or reasons arising from constitutional or international obligations of the Italian State»).</p>
	<p><b>Latvia</b></p>	<p align="center"><b>Yes</b></p>	<p>1. The general information please see in question No.1 of the Ad-hoc Query (1of 2) on family reunification of third country nationals receiving international protection.</p> <p><b>2. Family members</b> of persons who are granted international protections <b>are obliged to pay</b> State fee for examination of documents necessary for requesting a residence permit taking into account the time period they wish examination of documents submitted for residence permit to be made.</p> <p>State fees for examination of documents submitted for requesting <u>for a temporary residence permit</u>:</p>

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			<ul style="list-style-type: none"> <li>- within 30 days – EUR 21.34;</li> <li>- within 10 working days – EUR 42.69;</li> <li>- within five working days – EUR 64.03, but <u>for permanent residence permit</u>:</li> <li>- within 30 days – EUR 64.03;</li> <li>- within 10 working days – EUR 142.29;</li> <li>- within five working days – EUR 170.74.</li> </ul> <p><b>Persons under age of 16 are exempted</b> from payment of the State fee for examination of documents <b>within 30 days</b> in both situation- when requiring for temporary or permanent residence permit.</p> <p>3. No.</p>
	<b>Lithuania</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>1. No. However, the Law on the Legal status of Aliens indicates that if international treaties to which the Republic of Lithuania is a party provide otherwise than the Law, the provisions of the international treaties shall be applied. Therefore, in case of a minor children, the UN Convention on the Rights of the Child would be applied and family unity would be ensured.</li> <li>2. Only refugees have a right to family reunification. Family members of an alien, who is granted a refugee status, are not charged an application fee for family reunification. Persons under subsidiary or temporary protection need to fulfil general requirements for family reunification. An application fee for family reunification is 86 Euros (or 172 Euros under the accelerated procedure).</li> <li>3. No.</li> </ol>
	<b>Luxembourg</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>1. The Luxembourgish legislation foresees that the minister authorises the entry and stay for family reunification to parents of first degree of a minor child beneficiary of an international protection (article 70(4) of the modified immigration law of 29 August 2008). Furthermore, the minister can allow the legal guardian or any other family member to join the minor child beneficiary of an international protection as far as he or she has no parents or they cannot be found (article 70(5)c) of modified immigration law of 29 August 2008). In all cases, the best interests of the child have to be guaranteed. In case family reunification is requested for a minor child to join his parents in Luxembourg, the conditions of sufficient resources, housing and social security have to be fulfilled. Where the parent of a minor child has the sole custody, the minor child can immediately accompany or join the parent.</li> <li>2. No.</li> <li>3. Yes, national legislation acknowledges temporary protection. This temporary protection is the transposition of directive 2001/55/EC.</li> </ol>
	<b>Netherlands</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>1. No</li> <li>2. The decision is taken free of charge in the case of family members of all persons who are granted international protection regardless of protection status.</li> </ol>

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			3. Yes, humanitarian protection. Eigenlijk is de afgeleide status (artikel 29, tweede lid) voor de familieleden toch een nationale categorie van internationale bescherming?
	<b>Poland</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>1. No.</li> <li>2. The fee charged in case of application for temporary residence permit for family reunification is 340 PLN (which is about 80 EUR). Foreigners granted the refugee status or subsidiary protection are not exempted from this fee, however they can apply for exemption.</li> <li>3. Yes, humanitarian protection.</li> </ol>
	<b>Portugal</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>1. Not applicable.</li> <li>2. In Portugal the legal framework establishes that these situations are free of charges.</li> <li>3. No.</li> </ol>
	<b>Slovak Republic</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>1. No.</li> <li>2. Family members of beneficiaries of international protection are exempted from fees.</li> <li>3. No.</li> </ol>
	<b>Slovenia</b>	<b>Yes</b>	<p>Q.1. Yes national legislation considering also exception cases /special treatment/ and principle of the best interest of child if individual case required such treatment;</p> <p>Q.2. The decision is taken free of charge for persons who granted international protection and in case if family members.</p> <p>Q.3. No.</p>
	<b>Sweden</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>1. Exemptions are made on all criteria listed in Article 7(1).</li> <li>2. Free of charge for family members to persons who are granted international protection regardless of protection status.</li> <li>3. Yes. The categories “exceptionally distressing circumstances” and regarding children “particularly distressing circumstances”.</li> </ol>
	<b>United Kingdom</b>	<b>Yes</b>	<p><b>The UK has not adopted this directive and is not bound by or subject to it’s application. However the answers below reflect the UK’s policies where applicable.</b></p> <ol style="list-style-type: none"> <li>1. N/A</li> <li>2. There is no application fee for family reunification for either family members of refugees or recipients of humanitarian protection(subsidiary protection)</li> <li>3. No. The UK’s legislation and policy provides for the grant of Humanitarian Protection (HP) in the event that a claimant requires protection, but is not a refugee as defined by the Refugee Convention. This reflects the subsidiary protection provisions of Articles 15 - 19 of the Qualification Directive (2004/83/EC) of 29 April 2004. Such protection is intended to be complementary and additional to the protection available in the Refugee Convention.</li> </ol>
	<b>Croatia</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>1. According to article 58 of The Aliens Act the right to family reunification, including cases where minor children are concerned either as a sponsor or a family member, can be granted. With regard to The Aliens Act requirements for family reunification, such as health</li> </ol>

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			<p>insurance and stable and regular resources, any matter concerning, are not requested.</p> <p>2. There is no application fee and the decision is taken free of charge in the case of family members of all persons who are granted international protection regardless of protection status.</p> <p>3. No.</p>
	<p>Norway</p>	<p>Yes</p>	<p>1. For the most part, our national legislation accord refugees the same treatment as those accorded to aliens generally. However, family members of refugees are granted some exemptions that are not made for other applicants.</p> <p>In order to obtain a permit for the purpose of family immigration a requirement of subsistence has to be satisfied, see the Immigration Regulation section 10-8 to 10-11. This provision requires the sponsor to have a minimum expected future income, and a minimum previous income documented by the latest tax assessment. It is also a requirement that the sponsor has not received financial support or a qualification benefit under the Social Services Act during the last 12 months before a permit is granted.</p> <p>However, if a sponsor who are holder of an asylum permit, then exemptions are made for spouses, cohabitants and children of the sponsor. If the applicant is the sponsor's spouse, it is a condition that the marriage was established before the sponsor entered Norway. Furthermore, it is a condition that the application was submitted within one year following the date when sponsor was granted a residence permit, unless the applicant has been prevented from submitting an application at an earlier time because of factors beyond the applicant's control.</p> <p>Exemption from the subsistence requirement is also made when the applicant is a child below the age of 15 without care persons in the country of origin, and when the sponsor is a child below the age of 18.</p> <p>Applicants who are parents of a child under the age of 18 with refugee status, shall be entitled to a residence permit. The same applies to siblings under the age of 18 who have no spouse or cohabitant and who live with their parents or with the parent who was granted a residence permit, cf the Immigration Act section 43. This right is not given to parents and siblings of children under 18 years <u>without</u> a refugee status.</p> <p>2. Yes, adult family members are charged an application fee for the process of applying for family reunification. A fee of NOK 5 900 is charged for processing a first-time application for a residence permit for a family member, see Section 89 of the Immigration Act and section 17-10 of the Immigration Regulation. This is also the case for a family member of a refugee or a family member of a third country national who is granted subsidiary protection.</p> <p>A fee is <u>not</u> charged for children under the age of 18.</p> <p>3. No</p>

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