



EMN Ad-Hoc Query on BE AHQ on the waiting period for family reunification for beneficiaries of subsidiary protection

Requested by Elisa VAN DER VALK on 10th August 2016

Family Reunification

Responses from Austria, Belgium, Croatia, Czech Republic, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Slovak Republic, Slovenia, Sweden, United Kingdom, Norway (22 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:

In the framework of the drafting of the Belgian Migration Code, the Belgian National Contact Point of the European Migration Network is requested to provide an overview of the application in the Member States and Norway of article 8 of Directive 2003/86/EC on the right to family reunification.

Article 8 states: “Member States may require the sponsor to have stayed lawfully in their territory for a period not exceeding two years, before having his/her family members join him/her.

By way of derogation, where the legislation of a Member State relating to family reunification in force on the date of adoption of this Directive takes into account its reception capacity, the Member State may provide for a waiting period of no more than three years between submission of the application for family reunification and the issue of a residence permit to the family members.”€•

In this framework, we would like to ask the following questions.

Summary

The majority of (Member) States who responded to the ad-hoc query do not require sponsors who are beneficiaries of subsidiary protection to have lawfully stayed in the territory during a certain period of time (waiting period) before their family members can enjoy family reunification (**BE, CZ, EE, FI, FR, HR, HU, IE, IT, LT, MT, PT, SE, SI, SK, UK**).



Four (Member) States reported that they can impose a waiting period in certain cases or that there is a temporary suspension of applications (DE, LU, NL, NO): In the **Netherlands** and in **Luxembourg**, there is no waiting period as long as the application for family reunification was submitted within three months after the granting of the subsidiary protection status to the sponsor. After these three months, there is a waiting period of 12 months. In **Norway**, in case of family formation (not reunification), the sponsor must have worked or studied full time for at least 4 years before his/her family members can join him/her. In **Germany**, there is no defined standard waiting period. However, a new regulation stipulates that family reunification for people granted subsidiary protection from 17 March 2016 is suspended until 16 March 2018. After 16 March 2018, a request for family reunification can be made anytime again.






Two Member States reported always imposing a waiting period (AT, LV): Since 3 February 2005, **Latvia** requires sponsors who are beneficiaries of subsidiary protection to have lawfully stayed in the territory for 24 months before their family members can join them. In **Austria**, a provision that entered into force on 1 June 2016 introduced a waiting period of three years from the final award of the status of beneficiary of subsidiary protection.





Questions





1. Do you require that sponsors who are beneficiaries of subsidiary protection have stayed lawfully in the territory during a certain period of time (waiting period) before their family members can enjoy family reunification ?
2. If yes, a) Since when does your country require this? b) What is the waiting period (X months)? c) Are there any other conditions associated with this waiting period?




Responses





	Country	Wider Dissemination	Response
 	Austria	Yes	<p>1. Yes. According to Art. 35 para 2 Asylum Act, the family member of a beneficiary of subsidiary protection who is abroad may only make an application for an entry title after three years (waiting period) from the final award of the status of beneficiary of subsidiary protection. Source: Federal Ministry of the Interior.</p> <p>2. a) This provision has entered into force in Austria on 1 June 2016.</p> <p>b) See question 1.</p> <p>c) Pursuant to Art. 35 para 2 in conjunction with Art. 60 para 2 subpara 1-3 Asylum Act, a family member of a beneficiary of subsidiary protection has to fulfill the following conditions:</p> <ul style="list-style-type: none"> • Sufficient means of subsistence: Third-country nationals need to have a permanent and regular income, that allows them a living without public social benefits. • Health insurance: Third-country nationals need to have health insurance providing benefits in Austria and covering all risks. • Adequate accommodation by local standards: They must show their legal entitlement to accommodation (e.g. by producing a tenancy agreement). The accommodation must be adequate by local standards for a similar family.

			Source: Federal Ministry of the Interior.
	Belgium	Yes	<p>1. NO. The Immigration Act of 1980 foresees that a TCN may be joined by his/her family members if he/she has been admitted or authorized to reside in Belgium for at least 12 months. However, this 12-month waiting period does not apply in certain cases, including in case of family reunification with a beneficiary of subsidiary protection (art. 10, §1, 4° of the Immigration Act).</p> <p>2. N/A</p>
	Croatia	Yes	<p>1. No</p> <p>2. N/A</p>
	Czech Republic	Yes	<p>1. The Czech Republic does not apply the Family Reunification Directive on persons enjoying subsidiary protection. These persons and their family members respectively therefore cannot make use of “long term residence permit for the purpose of family reunification”. The family members who intend to unify can only ask for a long term visa. There is no waiting period required.</p> <p>2. N/A.</p>
	Estonia	Yes	<p>1. No.</p> <p>2. N/A</p>
	Finland	Yes	<p>1. No. Family reunification is possible as soon as the sponsor has a residence permit to Finland. A residence permit application on the basis of family ties can only be submitted by the applicant living abroad.</p> <p>2. N/A</p>

	France	Yes	<p>1. No. Article L. 752-1 (II) provides that family reunification is not subject to any “waiting period”™ requirement.</p> <p>2. N/A</p>
	Germany	Yes	<p>1. There is not a defined standard waiting period. However, a new regulation says that the family reunification for refugees, who they have received subsidiary protection from 17th of March 2016, is suspended until 16th of March 2018.</p> <p>2. a) From the qualifying date of 17th of March 2016. b) According to the § 104 XIII 1,2 of the residence law, the refugees, whom the residence permit was granted by subsidiary protection from 17th of March 2016, must wait until 16th of March 2018 to be able to apply for family reunification. The suspension shall end on 16th of March 2018, and from this point on, a request for family reunification can be made at anytime again. It should be noted, that humanitarian Recordings of family members, according to §§ 22 and 23 of the Residence law, are still possible, if is provided that the relevant conditions are met. c) No.</p>
	Hungary	Yes	<p>1. No, we do not require a waiting period in any case of categories of sponsors, therefore we do not have such a requirement in the case of family reunification of beneficiaries of subsidiary protection, either.</p> <p>2. No, we do not require a waiting period in any case of categories of sponsors, therefore we do not have such a requirement in the case of family reunification of beneficiaries of subsidiary protection, either.</p> <p>3. -</p> <p>4. -</p>
	Ireland	Yes	<p>1. There is no waiting period. Once a person is a beneficiary of subsidiary protection, they may make</p>

			<p>an application for family reunification immediately.</p> <p>2. .</p>
	Italy	Yes	<p>1. No. In Italy, a beneficiary of international protection (refugee status or subsidiary protection) may apply for family reunification as soon as he or she obtains a residence permit. In practice, this period may be shorter. In fact, once the Territorial Commission for the Recognition of International Protection gives a positive opinion on an application, the third-country national (TCN) concerned goes to the Provincial Police Authority to apply for the residence permit and receives a “receipt of filed application” (the actual issuance of the residence permit is not immediate). With such a receipt, the TCN may then go to the Immigration Desk and may already apply for family reunification.</p> <p>2. See previous answer</p>
	Latvia	Yes	<p>1. Yes</p> <p>2. a) Since 3 February 2005 it is required by the Asylum Law that the person having acquired alternative status has such right, if he or she has resided in the Republic of Latvia for at least two years after acquisition of such status. b) 24 months c) No</p>
	Lithuania	Yes	<p>1. The requirements regarding specific periods of residence shall not apply when the family members join the alien who has been granted refugee status or subsidiary protection in Lithuania.</p> <p>2. /</p>
	Luxembourg	Yes	<p>1. In Luxembourg, according to article 69 (2) of the amended Law of 29 August 2008 on free movement of persons and immigration if the beneficiary of international protection (refugee status or subsidiary protection status) applies in the three months’ period after being granted the international protection status does not have to fulfil the conditions of article 69 (1): a) the applicant must have a valid residence permit of at least one year and must have residing for at least 12 months on the territory; b) s/he must produce evidence showing that s/he has stable and regular resources which are</p>

			<p>sufficient to meet her/his own needs and those of her/his family members for whom s/he is financially responsible, without recourse to the social aid system; c) s/he has appropriate accommodation to receive the family member(s); and d) s/he has health insurance coverage for her/himself and her/his family members. After this three months' period the beneficiary of international protection has to fulfil the criteria including the 12 months' waiting period.</p> <p>2. See answer to question 1.</p>
	Malta	Yes	<p>1. No</p> <p>2. N/A</p>
	Netherlands	Yes	<p>1. No, as long as the application for family reunification is submitted within three month after the granting of the subsidiary protection status to the sponsor. If the application is submitted after these three months, the normal family reunification policy applies and this does contain a waiting period of one year. At the moment, the Dutch government is discussing a new law in which this period of three months will possibly be extended to six.</p> <p>2. -</p>
	Portugal	Yes	<p>1. No. According to n° 1 of Article 68° of Portuguese Asylum Act (Law 27/2008 of June 30 as amended by Law 26/2015 of May 5), beneficiaries of subsidiary protection (as well as beneficiaries of refugee status) have the right of family reunification. It's not required a waiting period in order to the family members enjoy the family reunification.</p> <p>2. N/A.</p>
	Slovak Republic	Yes	<p>1. No.</p> <p>2. N/A</p>

	Slovenia	Yes	<p>1. No. An alien with subsidiary protection, recognised for one year have the right to family reunification when the subsidiary protection is extended under the act governing international protection. A person have a right to reunification with family members who are aliens, but under the condition that the family existed prior to the entry of the person to the Republic of Slovenia. Duration of application procedure depends from the following: - More favourable and quicker procedure when sponsor lodge application within 90 days from the day when his subsidiary protection status is acknowledged at the ministry competent for internal affairs. - If sponsor do not submit the application within the time limit he also has to provide additional evidence of fulfilling requirements determined by Alien Act. In both cases sponsor are not required to stay lawfully in the territory if there is not legal reasons for such decision taken by the responsible authority. Duration of application procedure depends from each individual case and base on options described above. Responsible authority need to take decision up to 60 days after sponsor launched complete application.</p> <p>2. /</p>
	Sweden	Yes	<p>1. No</p> <p>2. Na</p>
	United Kingdom	Yes	<p>1. The UK has opted out of the Directive 2003/86/EC on the right to family reunification, and is therefore not bound by its provisions. There is currently no minimum time in which a sponsor of family reunion (refugee or recipient of Humanitarian Protection) would need to be lawfully resident in the UK before their family members can enjoy family reunion. Please see the link below for more information on family reunion for refugees/recipients of Humanitarian Protection: https://www.gov.uk/settlement-refugee-or-humanitarian-protection/family-reunion</p> <p>2. N/A</p>
	Norway	Yes	<p>1. In Norway, the time requirement depends on whether the sponser is reunifying or forming a family. Family members of beneficiaries of subsidiary protection enjoy the same rights for family reunification as beneficiaries of international protection. But, in Norway we have different rules for</p>

			<p>family formation and family reunification. The general rule is that there is an income requirement for family reunification. But, family members of beneficiaries of subsidiary protection are exempted from the income requirement if their application for family reunification is launched within a year from the date the sponsor received protection. In cases of family formation however, the sponsor must not only satisfy the 4 year full time activity requirement (work or studies) but the income requirement as well. This is the same whether the sponsor is a beneficiary of subsidiary protection or a beneficiary of international protection.</p> <p>2. These requirements have been in effect since 2010. The sponsor must work or study full time for 4 years in family formation cases, see above.</p>
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