



**Ad-Hoc Query (1 of 2) related to study on exchange of information regarding
persons excluded from international protection
Requested by NO EMN NCP on 26.06.15
OPEN Summary produced on August 27, 2015 and updated 29.09.15**

Responses from Austria, Belgium, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom plus Croatia, 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.

1. Background Information

The Norwegian Directorate of Immigration has funded a research and development project which is being carried out by the Faculty of Law, VU University of Amsterdam with Dr. Joris van Wijk. This project is entitled “ A Study on the Exchange of Information Between European Countries Regarding Persons Excluded from Refugee Status.” Norway is sending out two related AHQs and will use the information collected from these queries in this research project. When the project is completed, Norway NCP will notify the EMN network and send a link to the project report.

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2. Questions, Conclusions & highlights

Q 1. If an applicant is excluded from international protection on the basis of Article 1F Refugee Convention and applies for a residence permit on other grounds, for instance in order to be reunited with family members who have obtained citizenship; does the exclusion (pose a) bar (to) granting such a permit?

Many of the reporting MS (FI, EE, FR, DE, Greece, IE, SK, SI, ES, SE, NO) indicate that exclusion itself does not bar issuing a residence permit on other grounds, but threat to public security does, and in some cases, it is a requirement that no grounds for expulsion should exist. ES reports that proof of no criminal record must be included with the application. It is UK policy not to allow those who have committed international crimes which exclude them from refugee status, to find a safe haven in the UK, and an application to enter or remain in the UK would be refused, under the Immigration Rules, on grounds that the person's presence is not conducive to the public good. IE reports that each case is dealt with on its own merits. Should any of the exclusion criteria apply, clearly the applicant does not warrant a "Protection" declaration. However, issues of refoulement must also be taken into account and depending on the individual circumstance, the applicant may be granted temporary leave to remain in the State. If there are issues of danger to the State or issues of national security or public order, criminal investigations may be instigated. AT, BE, CZ, IT, and LU explicitly state that exclusion would bar applicants from being granted a residence permit on other grounds.

Several MS report that the general requirement for any residence permit, is having no association with extremist or terrorist groups; similarly that no residence permit may be issued if the residence of an alien violates public interest, notably public order and security or association with extremist or terrorist groups and possible related activities. BE, IT, LU, NL, reported that family reunification is denied for reasons of public order and follows an analysis of the threat that the applicant represents. The elements which led to the exclusion on the basis of article 1F, will also be important and decisive in this consideration. The case must undergo the test of the principle of proportionality vis-a-vis the person's right to, for example, family reunification, according to the European Convention on Human Rights, Article 8 and 3.)

Several MS reported that exclusion would not automatically pose a bar for issuing a residence permit, but would be reviewed.

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Q2. If you have knowledge that an applicant is excluded from international protection on the basis of Article 1F Refugee Convention in another European country and if s/he applies for a residence permit on other grounds in your own country, for instance to be reunited with family members who have obtained citizenship, does the exclusion (pose a) bar (to) granting such a permit?

Generally, the responding MS indicated that whether an applicant has been excluded from international protection in their MS or in another European country, it would not change how they would approach such an application for residence. Six MS (AT, BE, IT, LU, UK, Croatia) indicated that this knowledge would have a direct bearing on such an application. The remaining MS, including NO, SE, FI and NL indicated (again) that exclusion would not automatically bar issuing a residence permit on other grounds, but consideration of public order would. Again, IE reported that they could not *accept* an application for protection when the person has been excluded by another member State, but depending on the individual circumstances, the person could be granted a temporary leave to stay.

Q3. Are applicants who are excluded from international protection on the basis of Article 1F, and who cannot be refouled, granted some form of leave-to-stay, or residence permit in your country?

Most reporting MS indicated that because of the non-refoulement principle they practice some kind of tolerated stay procedures which are grounded in national immigration law. Some MS (UK & NO) reported a variety of conditions, for this status. Most that responded yes, also allowed application to attend school; there were varied practices regarding access to work. Several MS mentioned health care provisions. The duration of the tolerated stay status varied from 160 days to 1 year, usually renewable. In some MS (AT, CZ, FI, HU, IE, SI, SE) permanent residence was (sometimes) allowed, if grounds to stay still existed after some repeated renewals. In Croatia, a tolerated stay was not technically considered legal and therefore couldn't lead to residence/citizenship. ES, BE, EE, FR and IE simply stated that no tolerated stay was granted in such cases. See excel table as well as compilation sheet for further details.