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Ad-Hoc Query on 2023.3 Possibility of concluding marriage between a European citizen and a third-country national who resides illegally in the territory.

Requested by the Czech Republic on 18 January 2023

Compilation produced on 2 March 2023

Responses from Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden (23 in Total)

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1. BACKGROUND INFORMATION

In order for a marriage to take place in the Czech Republic between a citizen of the Czech Republic/European Economic Area and a third country national, § 35, paragraph 2 of the Act on Registers (no. 301/2000 Coll.) must be fulfilled. This provision states: 'If the fiance or the person who wants to enter into a registered partnership is a foreigner, he/she shall submit to the registry office before the marriage/the establishment of the partnership a certificate issued by the Police of the Czech Republic on the legality of residence in the territory of the Czech Republic; this does not apply if he/she is a citizen of the European Union, a citizen of another contracting state of the Agreement on the European Economic Area, or his/hers family members.' A foreigner may therefore marry in the Czech Republic if he or she is lawfully present in the country. We are asking the questions because of the social discussion as a result of the judgment *O'Donoghue v. the United Kingdom*.

In *O'Donoghue v. the United Kingdom*, the ECtHR dealt with a situation where a foreigner (other than a national of a European Economic Area State) was required leave to enter or remain in the United Kingdom if he or she wished to marry. He or she could subsequently obtain a certificate of approval of the marriage.

The ECtHR's judgment was based on the following conditions: the UK Immigration Directorate issued guidance on the eligibility to marry, which stated: 'In order to qualify for a certificate of approval, a person must have valid leave to enter or remain in the UK as follows. He must have been granted leave to enter or remain in the UK totalling more than 6 months on this occasion; and have at least 3 months of this leave remaining at the time of making the application' (paragraph 46 of the judgment).

In its judgment, the ECtHR generally approved the possibility for States to prevent marriages of convenience. However, the ECtHR found the residence permit requirement to be contrary to Article 12 of the Convention. The Court stated that 'the first and second versions of the scheme imposed a blanket prohibition on the exercise of the right to marry on all persons in a specified category, regardless of whether the proposed marriage was one of convenience or not. Under the first version of the scheme, only those foreign nationals with sufficient leave to remain (that is, those who had been granted leave to enter or remain for a period totalling more than six months and who had at least three months of this leave remaining at the time of making the application) could qualify for a Certificate of Approval. Although the second version of the scheme extended eligibility to persons with insufficient leave, it continued to exclude persons who had no valid leave to enter. It was only the third version of the scheme which extended eligibility to persons like the second applicant who had no valid leave to enter. The Court recalls that it has previously, albeit in different circumstances, held that a general, automatic and indiscriminate restriction on a vitally important Convention right fell outside any acceptable margin of appreciation, however wide that margin was (*Hirst v. the United Kingdom* (no. 2) [GC], no. 74025/01, § 82, ECHR 2005-IX). Likewise, in the present case, the Court considers that there is no justification whatsoever for imposing a blanket

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prohibition on the right of persons falling within these categories to exercise their right to marry.' (paragraph 89 of the O'Donoghue v. the United Kingdom judgment).

We would like to ask the following questions:

- 1. Is it possible to conclude a marriage between a European citizen/citizen of your Member State and a third-country national who resides illegally in your territory and has been already detected as such by the national authorities? YES/NO. If you answer YES, can you please indicate under which circumstances it is possible? (e.g. on the basis of a special certificate issued by state authorities).**
- 2. If you answer YES to Q1, can you please indicate if the administrative authorities can perform some verifications (e.g. screening interviews or other preventive tools) to determine if they are confronted or not with a marriage of convenience? YES/NO. If you answer YES, can you please indicate which verifications and measures can be used?**
- 3. If an EU citizen is going to marry an irregular staying TCN, does the return procedure is interrupted or it is postponed until an investigation is conducted?**
- 4. Does the TCN who is going to get married will remain in detention (if s/he was already detained) until the investigation is concluded or does the person will be freed?**



We would very much appreciate your responses by **20 February 2023**.

2. RESPONSES

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		Wider Dissemination ²	
	EMN NCP Austria	No	
	EMN NCP Belgium	Yes	<p>1. Yes. According to the Code of Private International Law (PIL Code) (Article 44), marriages in Belgium can be concluded in the following cases:</p> <ul style="list-style-type: none"> • One of the future spouses is Belgian at the time of the marriage • One of the future spouses has his or her place of residence in Belgium at the time of the marriage • One of the future spouses has had his or her main place of residence in Belgium for more than three months at the time of the marriage <p>A lawful residence in Belgium is therefore not necessarily a condition. Third-country nationals who reside in Belgium illegally can therefore get married to a Belgian or European citizen if one of the conditions listed above is met.</p>

¹ 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.

² 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."

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			<p>This specific scenario was also confirmed in the Circular of 23 September 2004 to the PIL Code, subtitle K, which emphasizes that the right to marry is guaranteed by Article 12 of the ECHR and Article 23 of the ICCPR. Consequently, “this right is not subordinated to the residence situation of the parties concerned. It follows that the civil registrar cannot refuse to draw up the act of declaration and to celebrate the marriage for the sole reason that a foreigner is staying illegally in the Kingdom”.</p> <p>2. Yes. The criteria listed in Article 44 of the Code of Private International Law (PIL Code) were intended to prevent marriages of convenience. The Circular of 23 September 2004 to the PIL Code specifies that it is the responsibility of the administrative authorities (civil registrar of the municipality where the marriage is being registered) to assess the situation and, “in case of doubt, it will be up to the civil registrar to decide”.</p> <p>At the time of the constitution of the marriage file, the Registrar may refuse to draw up the act of declaration if the future spouses do not provide all the necessary documents (art. 164/1). The Registrar can launch an investigation only if there are doubts regarding the validity or authenticity of the documents. In this case, the drawing up of the act of declaration is delayed for a maximum of 3 months, during which an investigation is conducted.</p> <p>When the act of declaration is drawn, the Registrar may still launch investigation before deciding to celebrate or not the marriage if he or she has doubts about the purpose of the marriage (if it could be a marriage of convenience). In this case, the celebration of the marriage is delayed for a maximum of 5 additional months, during which an investigation is conducted.</p> <p>The Ministry of Justice has issued a list of factors that could indicate a fraudulent marriage (the fact that being married can facilitate the obtention of a residence permit is not in itself sufficient). The factors are:</p>
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			<ul style="list-style-type: none">• The candidate partners do not understand each other, can only communicate with each other imperfectly or through an interpreter.• The candidates never met before the declaration of marriage or before the declaration of legal cohabitation.• One of the two candidates cohabits permanently with another person.• The candidates do not know their respective names or nationalities.• One of the two candidates does not know where the other works.• Explanations of the circumstances of their meeting obviously diverge.• A sum of money has been promised for the conclusion of the marriage or legal cohabitation.• One of the two candidate partners is a sex worker.• One of the two candidates has already opened a right to family reunification via marriage or legal cohabitation for one or more other persons.• One of the two candidates has already made one or more attempts to conclude a marriage or a legal cohabitation of convenience in Belgium.• One of the two candidates has already exhausted – without success – all the legal possibilities to settle in Belgium.• Involvement of a third party (at the time of the meeting of the partners, the proposal of marriage or legal cohabitation, etc.).• A large age difference separates the candidate partners. <p>These factors are not in themselves sufficient to refuse a marriage, but they may be grounds to open an investigation. The measures taken during the investigation may include fact-checking information with the Foreigners Office, requesting the opinion of the Public Prosecutor, interviewing the couple, and requesting a residence check by the local police. At the request of the Public Prosecutor, investigative measures can also be carried out by the police (for instance, interviewing relatives or neighbors).</p>
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			<p>At the time of the marriage celebration: the Civil Registrar may refuse to celebrate the marriage when it appears that it does not meet the qualities and conditions prescribed for contracting marriage or if he or she is of the opinion that the celebration is contrary to the principles of public order (art. 167). In this case, the registrar must inform the Foreigners Office (Circular of 17 September 2013 1B).</p> <p>After the celebration of the marriage, the marriage can be annulled by the Public Prosecutor if he or she finds that "the intention of at least one of the spouses is clearly not the creation of a sustainable community of life but is only aimed at obtaining a benefit in terms of residence, linked to the status of spouse" (art. 146bis).</p> <p>3. Yes. If a third-country national has been issued an order to leave the territory and wants to get married, the Circular of 17 September 2013 (section 2) provides temporary protection against forced removal. This protection applies from the date of submission of all the necessary documents to register a marriage. In this scenario, the order to leave the territory is not enforced until:</p> <ul style="list-style-type: none">• The day following the day of the marriage, or• The day of the refusal of the ceremony, or• The expiry of the 6-months period within which the marriage must be consummated. <p>Exceptions: the Circular also lists a number of cases in which the return procedure cannot be postponed, for instance, if the third-country national is considered a threat to public order or national security.</p> <p>4. If the application for marriage is submitted before the person is placed in administrative detention, the procedure described in Q3 applies (suspension of return procedure, including detention). However, if the application for marriage is submitted</p>
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			<p>after the person is already in administrative detention, then the detention and return procedure takes precedence and the application is not considered. In this case, the person remains in detention.</p> <p>The Circular of 17 September 2013 lists a number of cases in which the return procedure (including detention) cannot be postponed or interrupted, which includes the scenario in which a third-country national is placed in administrative detention pending their removal from the territory.</p>
	<p>EMN NCP Bulgaria</p>	<p>Yes</p>	<ol style="list-style-type: none"> 1. <p>Yes, it is possible to conclude a marriage between a European citizen/citizen of the Republic of Bulgaria and a third-country national who resides illegally in the Bulgarian territory and has been already detected as such by the national authorities.</p> 2. <p>According to our national legislation, in the registers of certificates of civil status shall be entered the events for the persons, who are not Bulgarian citizens but at the time of occurrence of the event are present in the territory of the Republic of Bulgaria.</p> <p>The documents for concluding a marriage are:</p> <ol style="list-style-type: none"> 1. declaration that there are no obstacles for concluding the marriage; 2. medical certificate that s/he does not suffer from illnesses; 3. declaration, that s/he has become aware of the illnesses of the other; 4. valid identity document. 3. <p>The existence of a civil marriage does not interrupt or postpone the return procedure.</p>


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			<p>4.</p> <p>Third-country national who is going to get married/already married could remain in detention until the return procedure is concluded.</p>
	<p>EMN NCP Croatia</p>	<p>Yes</p>	<p>1. In the Republic of Croatia, it is not necessary to prove the legality of residence in Croatia in order to get married. In Croatia, a third-country national must meet the same conditions for marriage as Croatian citizens.</p> <p>To get married they have to bring:</p> <ul style="list-style-type: none"> • birth certificate issued in the country of birth in accordance with international agreements and conventions with a translation into Croatian, • certificate of unmarried status of a foreigner issued in accordance with international agreements and conventions with a translation into Croatian • a certificate that there are no obstacles to the marriage of a foreign citizen in the Republic of Croatia and that this marriage will be recognized in the country of which he is a citizen with a translation into Croatian (this certificate can be an integral part of the certificate of unmarried status) • identification document (with picture) • proof of citizenship (passport) <p>Usually TCN illegally residing in Croatia cannot provide all these documents. The registrar does not check the residence status at the time of marriage. However, in case of any doubts, the registrar can contact the competent police station.</p> <p>2. No. Administrative authorities do not perform any kind of verifications in determining if it is a marriage of convenience. The registrar does not check whether a marriage is</p>

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			<p>of convenience or not, because they do not have the authority to do so. However, they can refuse to conclude a marriage if the foreigner has not submitted the necessary documents for the conclusion of the marriage or if they doubt the validity of the submitted documents.</p> <p>3. If a citizen of a third country that illegally resides in the return process marries an EU citizen, the return process will not be automatically suspended or postponed. There is no unified procedure, each case is considered individually and all the circumstances of the specific case are considered. At the request of a citizen of a third country, the deadline for voluntary return can be postponed or a decision can be made to postpone forced removal. During this period, a citizen of a third country can try to regulate his stay based on family reunification. As part of the legal residence approval procedure, an investigation (interviews and collection of other evidence) may be conducted to determine whether it is a marriage of convenience.</p> <p>4. Like in question number 3, each case is considered individually. Generally, in the case of marriage, if there are justified circumstances, the procedure of forced removal can be postponed in order to give the person the opportunity to legally regulate his stay, and in that procedure it will be examined whether it is a marriage of convenience.</p>
	<p>EMN NCP Cyprus</p>	<p>Yes</p>	<p>1. No (regarding civil weddings and civil unions). Even if the illegal third-country national is not detected, he/she needs to present a non-impediment certificate (CNI) issued by the competent authorities of Cyprus to the authorized wedding officer. In order to attain the CNI, the third country national, must have a valid residence permit, according to the national law.</p>

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			<p>2. N/A</p> <p>3. Yes, the return procedure is <u>postponed</u>, and the Social Welfare Services are consulted on the case (according to articles 18OZ (a)(b) of the Aliens and Immigration Law, which have transposed article 5 of the Return Directive 2008/115/EC), in order to take under consideration the best interests of the child (if applicable) and family life.</p> <p>4. Yes, the TCN who is going to get married, will remain in detention (if s/he was already detained) until the investigation is concluded.</p>
	EMN NCP Czech Republic	Yes	<p>1. No.</p> <p>2. A certificate issued by the Police of the Czech Republic on the legality of residence in the territory of the Czech Republic is required.</p> <p>3. N/A</p> <p>4. N/A</p>
	EMN NCP Estonia	Yes	<p>1. No. If a TCN wishes to contract a marriage in Estonia, he/she has to certify that he or she is staying in Estonia on a legal basis stipulated by the Aliens Act. In addition, a citizen of a foreign state must submit</p>

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			<p>a certificate of legal capacity to contract a marriage, which certifies that he or she has no hindrances to the contraction of the marriage according to the law of his or her country of residence.</p> <p>2. N/A</p> <p>3. No.</p> <p>4. Yes. He/she will remain in detention. However, the matter will be analysed (how was the marriage contracted if one of the parties did not have a legal basis to stay in the country, whether it was a marriage of convenience etc.).</p>
+	EMN NCP Finland	Yes	<p>1. YES. Before the marriage ceremony, the couple must request an examination of impediments to marriage from the Digital and Population Data Services Agency. The examination ensures that no impediments referred to in the Finnish Marriage Act exist for the marriage. Such impediments include minor age, a valid marriage or a registered partnership, and a family connection that is too close. If the TCN's marital status information does not exist in the Finnish Population Information System, the TCN has to request a certificate of marital status from the embassy or consulate of her/his state of residence/citizenship. S/he can also request a certificate of marital status from the Population Register Authorities of her/his state of residence/citizenship. In most cases, the document must be translated and legalised. A copy or photo of the TCN's passport is also required.</p> <p>2. YES. If a person is applying for a residence permit for a spouse of a Finnish citizen, or residence card for a family member of an EU citizen, the Finnish Immigration</p>

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			<p>Service can organise an oral hearing to assess the authenticity of family life. Also, cooperation and exchange of information between different authorities is essential in prevention of marriages of conveniences.</p> <p>3. Entering a marriage does not in itself prevent execution of a legal return decision. However, if the TCN applies for a residence permit based on family ties to a Finnish Citizen (or a residence card for a family member of an EU citizen), the police will wait until the application is decided on, before the enforcement of the return decision is carried out.</p> <p>4. All detention decisions are decided on a case-by-case basis and are based on an individual risk assessment, e.g. risk of absconding.</p>
	<p>EMN NCP France</p>	<p>Yes</p>	<p>1. Yes. Since Article 9 of Law No. 81-973 of 29 October 1981, a person in an irregular situation may marry in France: no condition of legal residence may be required to marry. The right to marry is a fundamental right, recognised and protected by Articles 144 et seq. of the Civil Code and by Articles 2 and 4 of the Declaration of the Rights of Man and of the Citizen of 1789. The fact that a foreign national is in an irregular situation is not an obstacle to his or her marriage (Constitutional Council, Decision No. 2003-484 DC of 20 November 2003). Any restriction on the right to marry, particularly on the grounds of the national origin of the future spouses, is prohibited under Articles 12 and 14 of the European Convention on Human Rights. Two foreign nationals in an irregular situation may also marry each other.</p>


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			<p>2.</p> <p>In order to get married, the future foreign spouse must meet certain conditions. These conditions are the same as for marriage between two French nationals:</p> <ul style="list-style-type: none">• Celibacy: French law prohibits polygamy, so the foreign national must not be in a marriage relationship with a previous spouse.• Consent: the civil registrar may interview the spouses to verify the reality of their consent, before the banns are published. The consent of the spouses must be serious and not have been obtained by violence or threats. <p>The civil registrar has no competence to check the legality of the residence of foreign nationals who come before him to get married. The regular situation of a foreign national is not a condition for marriage, which is a fundamental freedom. In addition, the civil registrar may refer the matter to the public prosecutor for investigation if they suspect a marriage of convenience (Article 175-2 of the Civil Code).</p> <p>3.</p> <p>Marriage does not protect the foreign national in an irregular situation from a possible order to leave French territory. In fact, for three years, they may still be subject to an expulsion order or an order to leave French territory: they are not protected by the bonds of marriage, even if they are married to a French national.</p> <p>After three years of marriage, the foreign national enjoys reasonable protection against expulsion and removal order.</p> <p>4.</p> <p>There is no detention of persons pending verification of the above-mentioned elements. If the person is detained for another reason, the conditions for marriage are the same in detention as outside. In practice, the person wishing to marry sends a written request to the prison</p>
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			<p>integration and probation service, and then provides the necessary documents (birth certificate, valid identity document, proof of address, etc.).</p> <p>Place of marriage: 'In the event of a serious impediment' (Art. 75 of the Civil Code) and at the request of the public prosecutor, the marriage may be held in detention, also in the presence of witnesses: in this case, the civil registrar will travel to the prison. It is also possible for the person to request a leave of absence. In the event of a marriage within the prison, the administration must proceed with the formalities for the entry of the witnesses, the bride or groom and the registrar.</p>
	EMN NCP Germany	Yes	<p>1. Proof of legal residence for the Federal Republic of Germany is not a prerequisite for marriage. Prerequisites for marriage are proof of identity and majority, proof of dates of birth and origin, and proof that one is not otherwise married. Here it may be necessary to prove the dissolution of any previous marriages (proof of divorce, dissolution through death) and in many cases a certificate of marriageability from a foreign state must be presented by persons without German citizenship. In the event that such a certificate is not issued by a foreign state, a procedure for exemption from the requirement to produce a certificate of marriageability must be gone through at the competent Higher Regional Court (§ 1309 BGB). Illegal residence is irrelevant if these requirements are met.</p> <p>2. In the case of the involvement of an illegally residing person in a marriage registration, the German registry office can request the corresponding administrative process from the authority responsible for the Residence Act for inspection and, based on its evaluation and/or also hearings of the parties involved, can, if necessary, refuse to cooperate in bringing about a marriage (§§ 1310 para. 1 sentence 3 no. 1; 1314 para. 2 BGB). Here too, however, it is not the circumstance of illegal residence that is a reason for refusal, but the lack of intention to establish a permanent marital partnership according to § 1353, be it from one side (§ 1314</p>

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			<p>para. 2 no. 3 BGB - fraudulent deception) or also from mutual intention (§ 1314 para. 2 no. 5 - marriage of convenience).</p> <p>3. In Germany, the federal states are responsible for the enforcement of the right of residence and thus also for removals. As a rule, the local foreigners authority is responsible for enforcement. According to the legal regulations of the German right of residence, the removal of an alien is to be suspended as long as the removal is impossible for factual or legal reasons; in these cases, the alien receives a so-called tolerated stay, but he or she remains subject to an enforceable obligation to leave the country. Legal reasons that make removal impossible can also be family reasons, such as marriage, according to Art. 6 GG (Grundgesetz; German Basic Law) and Art. 8 ECHR (European Convention on Human Rights). However, according to common practice, the marriage must be imminent. If the competent foreigners authority grants such a tolerated stay for family reasons, it examines on a case-by-case basis whether detention pending deportation is still permissible at all on the basis of the legal requirements.</p> <p>4. See answer to Q3.</p>
	EMN NCP Greece	Yes	<p>1. NO. According to paragraph 1 of article 26 of law 4251/2014, public services and Local Government Organizations cannot provide their services to third country nationals, who lack legalization documents, i.e. they do not have a passport or other travel document recognized by international conventions as well as an entry visa or residence permit and generally do not prove that they have entered and reside legally in Greece. Third country nationals who are objectively deprived of a passport are granted the right to transact with the services referred to in the previous paragraph by only presenting their residence permit. We further point out that the conclusion of a marriage does not fall under the exceptions provided in the above article, (as amended by par. 8 of article 31 of Law</p>

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			<p>4540/2018). Therefore, third country nationals who do not legally reside in Greece, cannot transact with the public services and Local Government Organizations and consequently cannot conclude a marriage.</p> <p>2. N/A</p> <p>3. N/A</p> <p>4. N/A</p>
	EMN NCP Hungary	Yes	<p>1. N/A.</p> <p>2. N/A.</p> <p>3. Expulsion measures ordered against third-country nationals under the relevant act and the alerts issued on the basis of such expulsion orders in the Schengen Information System for the purposes of refusing entry and the right of residence (hereinafter referred to as “alert”) shall be reviewed before carrying out the return decision of a third-country national family member or during the proceedings for the issuance of a document evidencing right of residence. If keeping the return order or the alert in force is likely to bring unreasonable harm, the competent immigration authority shall withdraw the resolution containing the order of expulsion. In general the immigration authority may take into account any marriage concluded after the issuance of a return decision within a very limited scope.</p> <p>4. When deciding in detention, the probability of absconding shall be assessed as the main condition. Marital status is not relevant when the authority examines the conditions of ordering a detention.</p>

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	EMN NCP Italy	Yes	<p>1. NO</p> <p>2. N.A.</p> <p>3. No, the return procedure is duly carried out, as the legislation in force does not allow an irregular third-country national to marry.</p> <p>4. No, he continues to be under detention, unless he is granted special permission by the Judicial Authority.</p>
	EMN NCP Latvia	Yes	<p>1. No.</p> <p>According to the Law on Registration of Civil Status Acts Section 18th a citizen of the European Union, European Economic Area state or the Swiss Confederation or a citizen of another state, a stateless person, a refugee or a person who has been granted alternative status and who at the time of concluding marriage is entitled to stay in the Republic of Latvia, may conclude marriage with a citizen of the Republic of Latvia, a non-citizen of the Republic of Latvia, a citizen of the European Union, European Economic Area state or the Swiss Confederation or a citizen of another state, a stateless person, a refugee or a person who has been granted subsidiary protection and who at the time of concluding marriage is entitled to stay in the Republic of Latvia. One of the required documents to be submitted is a certificate issued by the competent authority of the relevant foreign state regarding marital status of a third country national.</p>

Ad-Hoc Query on 2023.3 Possibility of concluding marriage between a European citizen and a third country national who resides illegally in the territory.

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			<p>2. N/a</p> <p>3. N/a</p> <p>4. N/a</p>
	EMN NCP Lithuania	Yes	<p>1. No. According to the Civil Code of the Republic of Lithuania, marriage is concluded when the persons who want to get married submit an application and register their marriage by law. According to Article 15.3 of the Law on the Registration of Civil Status Acts, when applying for the registration of their marriage, foreigners (except EU and EFTA citizens) must present documents showing the legality of their stay in Lithuania.</p> <p>2. N/A</p> <p>3. No. An intention to get married has no bearing on the implementation of the return procedure.</p> <p>4. No. An intention to get married is not grounds to terminate detention.</p>
	EMN NCP Luxembourg	Yes	<p>1. Yes, however the resident of Luxembourg (a Luxembourg or EU national) must be registered in the main register of the National Registry of Natural Persons. For individuals who don't have their legal domicile in Luxembourg, regardless of their residence status, a recent residence certificate (of less than three months) is required from the country of residence, or other evidence of residence, if such a certificate is not available.</p>

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			<p>The legal framework in Luxembourg does not provide effective means to fight against marriages of convenience. However, article 146-1 of the Civil Code states that there is no marriage when, although formal consents have been given with a view to it, it is clear from a combination of circumstances that the intention of at least one of the spouses is clearly not to create a lasting community of life, but is solely to obtain a residence benefit linked to the status of spouse. In practice, the civil registrar will ask to see the person when the documents for the marriage are submitted. If during this visit there is any doubt as to the intention of the future spouses, the file will be transmitted to the Public Prosecutor's Office which will investigate and may request the suspension of the marriage. It should be noted that the civil registrar may also report his doubts to the Public Prosecutor after the celebration of the marriage in the event of a suspicion of a marriage of convenience.</p> <p>Also, according to article 173 of the Civil Code established that when the publication of the marriage is done, one of the parents or the two parents can make opposition to the marriage of their children event if they are adults.</p> <p>The Public Prosecutor may lodge an objection in cases where he/she may request that the nullity of the marriage (article 175-1). Where there are serious indications that the intended marriage may be annulled, the civil registrar may refer the matter to the State Prosecutor without delay. He shall inform the future spouses (article 175-2 (1)). The Public Prosecutor shall, within one month of the referral, either allow the marriage to proceed, oppose it or decide to postpone its celebration, pending the results of the investigation he or she conducts. He shall inform the civil registrar and the future spouses of his reasoned decision. The duration of the suspension decided by the Public Prosecutor may not exceed one month, renewable once by reasoned decision. At the end of the suspension, the State Prosecutor shall inform the civil registrar by a reasoned decision whether he or she will allow the marriage to proceed or whether he or she will oppose its celebration (article 175-2 (2)). Either of the future spouses may file an appeal to the court for the release of the stay of the marriage celebration and the renewal of the stay (article 175-2 (3) in accordance with articles 1007-1 to 1007-3 of the New Code of Civil Procedure).</p> <p>2. Yes. See answer to Question 1.</p> <p>From an administrative point of view, the amended law of 29 August 2008 on the free movement of persons and immigration (Immigration Law) states that the Minister in charge of Immigration may at any time carry out or cause to be carried out specific checks where there is a presumption of fraud or that the marriage, partnership or adoption was entered into for the sole purpose of the sole purpose of entry and stay in the territory (art. 133(3)). If the authorities discover after a control that the marriage has been concluded exclusively for migratory purposes with the aim of obtaining a residence permit, they can revoke or refuse to renew the residence permit (article 75 (4)), with the inevitable consequences of return and the issuance of an entry ban (article 111 and 112).</p>
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			<p>If you answer YES, can you please indicate which verifications and measures can be used?</p> <p>See answers to question 1 and to question 2 above.</p> <p>3. No. The simple intention of marrying will not interrupt the execution of the return decision as it is not foreseen in article 125bis of the Law of Immigration. It is clear that if all the documents are in order the party residing legally in Luxembourg can request a short-term visa for the other party to enter the territory to get married.</p> <p>4. In principle yes. The fact that someone is going to marry with an EU citizen does not change the fact that s/he is an irregular staying migrant. It is important to notice that the marriage ceremony must be held within 12 months after the end of the publication period. Otherwise, a new publication will be necessary. The date and time of the marriage ceremony will be set when all of the documents required for the publication of the marriage announcement have been submitted. In principle, marriages may take place on any working day of the week. The civil marriage is pronounced by: - the mayor, in their capacity as civil registrar; or - a delegate to their functions: an alderperson or a communal councilor. The wedding must be celebrated in the commune where one of the spouses legally resides and both parties have to be present. It is generally celebrated at the town hall or in another place of celebration designated by the communal council. This decision must be approved by the Minister of the Interior before taking effect. In case of serious impediment, the Public Prosecutor for the place in which the marriage is to take place may authorises the civil registrar to travel to the domicile or residence of one of the parties to perform the marriage. In this last case, the Public Prosecutor must authorize the civil registrar to travel to the detention center.</p>
	EMN NCP Netherlands	Yes	<p>1. Yes, this is possible in the Netherlands. However, before the marriage is conducted the persons who wish to be married need to sign a declaration that it does not concern a marriage of convenience (verklaring geen schijnhuwelijk). By signing this document the third-country national and the Dutch citizen declare that they are not marrying with the purpose to obtain a residency permit.[1] Other conditions include the showing of; - a legalized birth certificate, a</p>


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			<p>legalized declaration of being unmarried, and identity documents. In case the third-country national cannot provide the birth certificate or the declaration of being unmarried they can officially declare this information in front of the municipality official prior to the marriage proceedings.[2]</p> <p>[1] 'Rijksoverheid, Is een schijnhuwelijk strafbaar?', https://www.rijksoverheid.nl/onderwerpen/immigratie-naar-nederland/vraag..., last accessed on 23 January 2023.</p> <p>[2] Article 44, of the Dutch Civil Code, Law of Persons and Family Law.</p> <p>2.</p> <p>If the Dutch authorities suspect that it is a marriage of convenience the municipality can conduct an investigation. This investigation will include an interview with an official from the municipality. Both the third-country national and the Dutch citizen will be interviewed separately about the marriage and the relationship. The municipality works together with the Dutch police and the Dutch Immigration and Naturalization Service (IND) during this investigation.[1] If the Dutch authorities conclude it concerns a marriage of convenience they can prevent the marriage.[2]</p> <p>[1] 'Rijksoverheid, Is een schijnhuwelijk strafbaar?', https://www.rijksoverheid.nl/onderwerpen/immigratie-naar-nederland/vraag..., last accessed on 23 January 2023.</p> <p>[2] Article 53 and 58(2), of the Dutch Civil Code, Law of Persons and Family Law.</p> <p>3.</p> <p>If an investigation is active and ongoing, a TCN will not be deported during that investigation.[1]</p>
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			<p>[1] Information provided by Immigration and Naturalization Service (IND) on 17 February 2023.</p> <p>4. Generally speaking an intended marriage as mentioned above will coincide with an application for legal residence in The Netherlands based on that marriage and based on European law. As a result, most likely a less coercive measure than detention will be applied.[1]</p> <p>[1] Article 59c, of the Aliens Act (Vw) 2000.</p>
	EMN NCP Poland	Yes	<p>1. It is possible to conclude a marriage on the territory of the Republic of Poland between a European citizen/citizen of Poland and a foreigner - a citizen of a third country, as a rule, regardless of the legality of stay in the territory of the Republic of Poland. In this context the issue of the legality of the future spouses' stay in the Republic of Poland is not examined in the pre-marriage procedure. Issues related to getting married in Poland are regulated by law: The Family and Guardianship Code of 25 February 1964 (consolidated text, Journal of Laws 2017, item 682) and Vital Records Law Act of 28 November 2014 (consolidated text: Journal of Laws 2018, item 2224). Pursuant to the applicable provisions of Polish law, a marriage in Poland may be concluded before the Head of the Civil Registry Office (or before a member of the clergy in the case of a religious marriage with civil-legal consequences). The provisions of the Vital Records Law Act indicate a catalog of documents necessary to be presented (shown) and submitted to the Head of the Civil Registry Office in the procedure preceding conclusion of the marriage. A foreigner presents an identity document (e.g. a passport) to the Head of the Civil Registry Office and submits the following documents:</p> <ul style="list-style-type: none"> • assurance that there are no circumstances precluding marriage; • certificate from the country of origin confirming the possibility of getting married, together with a sworn translation of the document into Polish (this document certifies that a person, in

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			<p>accordance with the law of their country of origin, may get married in Poland, unless pursuant to the provisions of the Act on Private International Law of 4th February 2011 the possibility of entering into marriage is assessed on the basis of Polish law).</p> <p>If the receipt of the above document encounters obstacles that are difficult to overcome, the court in non-contentious proceedings may, at the foreigner's request, exempt him/her from submitting the document. In proceedings for the exemption from the obligation to submit the document, the court determines, on the basis of the applicable law, whether the person may enter into marriage.</p> <p>If, on the basis of the above-mentioned documents necessary to draw up a marriage certificate cannot be determined, the foreigner is additionally obliged to submit a copy of the birth certificate, and if he/she was previously married - a copy of the marriage certificate with a note on its cessation, annulment or confirmation of its non-existence, or a copy of the marriage certificate with a document confirming its termination or annulment of the previous marriage, or a document confirming the non-existence of the marriage. On the basis of the above documents, the Head of the Civil Registry Office before which the marriage is planned to be concluded, examines whether there are any obstacles preventing the marriage (premises specified in family law) and makes an autonomous decision in the case. The applicable law does not require the submission to the Head of the Civil Registry Office of documents confirming that foreigners have legal residence in the territory of the Republic of Poland in the procedure of marriage. The Head of the Registry Office does not examine the issue of the legality of the future spouses' stay in the Republic of Poland in any other way.</p> <p>2.</p> <p>Neither the Heads of Civil Registry Offices who accept declarations of entering into marriage, nor the authorities supervising the registration of civil status (i.e. voivodes, Minister of the Interior and Administration) examine if there is a marriage of convenience (a marriage concluded may be challenged before a common court, depending on the fulfillment of the conditions provided for by family law by way of an action for the non-existence of the marriage, an action for annulment of the marriage - these conditions do not apply to the legality of the stay).</p> <p>3.</p>
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Ad-Hoc Query on 2023.3 Possibility of concluding marriage between a European citizen and a third country national who resides illegally in the territory.



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			<p>The return procedure is not interrupted automatically nor postponed automatically in cases when a third-country national illegally staying on the territory of Poland wants to marry an EU citizen.</p> <p>In case when the return procedure is ongoing in regard to a person who has already married the Polish citizen it is verified whether the purpose of conclusion marriage or its existence is to circumvent the rules specifying the rules and conditions of entry of foreigners into the territory of the Republic of Poland. If it is confirmed that such circumstances exist it is possible to issue a decision on return to the spouse of Polish citizen.</p> <p>In case of spouse of an EU citizen the verification whether the purpose of conclusion marriage or its existence is to circumvent the rules specifying the rules and conditions of entry of foreigners into the territory of the Republic of Poland is carried out during the procedure of issuance of residence card for family member of an EU citizen and within the procedure on revocation of family member of an EU citizen which is within competency of voivode.</p> <p>4. The person who is going to get married will remain in detention until the marriage is concluded. If the marriage with Polish citizen is concluded the person will be freed unless the person constitute the threat to defence or security of the state or public order or when the purpose of the marriage or its existence is to circumvent the provisions laying down the rules and conditions for foreigners' entry into, transit through, stay in and departure from the territory of the Republic of Poland.</p>
	EMN NCP Portugal	Yes	<p>1. Yes.</p> <p>2. Yes. If the civil registrar has grounds of marriage of convenience, he can refer to the SEF to carry out diligence to verify the veracity of the marriage.</p> <p>3. Yes, if the intention to marry is credible.</p>


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			4. In principle yes, but it would have to be analysed the grounds of the specific case. If the marriage was with an EU citizen, the reasons for irregular stay would be excluded from the outset, without prejudice to the investigation for the marriage of convenience.
	EMN NCP Slovakia	Yes	<p>1. No. The third-country national has to be in the Slovak Republic legally when concluding marriage.</p> <p>2. NA</p> <p>3. No.</p> <p>4. Yes. He/she remains in detention.</p>
	EMN NCP Slovenia	Yes	<p>1. Legal residence in the Republic of Slovenia is not a condition for marriage and is not verified at the time of registration. However, it could be grounds for verifying the fictitious nature of the marriage in accordance with Article 30 (4) of the Family Code. The provision provides that if at least one of the persons intending to conclude the marriage is a foreigner and there are grounds for suspecting, at the time of registration, that they intend to conclude the marriage solely or primarily with a view to obtaining a residence permit or citizenship of the Republic of Slovenia and have no intention of forming a domestic community in accordance with the Family Code, a special fact-finding procedure shall be carried out in accordance with the General Administrative Procedure Act.</p>


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			<p>2. Yes. As stated in reply to Q1, the administrative authorities can carry out a special fact-finding procedure in accordance with the General Administrative Procedure Act.</p> <p>3. The procedure for issuing a return decision to an illegally staying TCN is carried out uninterrupted. If a request is made or if the state authority handling the marriage procedure requests so, then the enforcement of the return decision may be postponed until such investigation is conducted.</p> <p>4. This depends on the individual circumstances of the case. In such cases, detention may be terminated, however, TCN can also be facilitated to exercise his/her rights and participate in the wedding even without lifting the restriction of movement. In fact, the marriage may be solemnised in the premises of detention centre as well.</p>
	EMN NCP Spain	Yes	<p>1. Yes. They will have to present a certificate from the civil registry attesting the existence and registration of the marriage.</p> <p>2. The Spanish authorities may carry out verifications to verify that there is no instrumental link to avoid expulsion. For example: verification through the police of the couple's cohabitation, interviews, they are asked for proof of life in common (common accounts, etc.), proof of effective residence in Spain.</p> <p>3. If no disciplinary proceedings have been initiated, it will not be initiated. If the procedure is pending and has not been resolved, the expulsion procedure can be closed if there is a marriage file.</p>

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			<p>4.</p> <p>If there is a marriage file in progress, it is unfrequent that the judge authorizes internment. In any case, the situation would be the same as the previous questions, the TCN would be free unless it is understood that the marriage is of convenience.</p>
	EMN NCP Sweden	Yes	<p>1.</p> <p>Yes, it is possible for a third country citizen, who resides illegally in Sweden, to marry a European citizen/Swedish citizen according to the Swedish Marriage Act (Äktenskapsbalken [1987:230], ÄktB). Hence, there is no need of a residence permit to get married in Sweden. Before entering a marriage in Sweden, the couple must apply to the Swedish Tax Agency for a consideration of impediments to marriage. In order for two people to be allowed to enter into marriage according to Swedish law, there must not be any circumstances that are considered impediments to marriage.</p> <p>The following circumstances are considered impediments to marriage according to Swedish law (chapter 2 ÄktB):</p> <ul style="list-style-type: none"> • Age: if either of the persons is under 18 years old, they cannot get married. • Kinship: if the persons are closely related, they cannot marry each other. • If either of the persons is already married or has a registered civil partner, they cannot get married. <p>A person who does not reside in Sweden, for example a third country citizen who does not have a residence permit in Sweden, needs to prove that there are no impediments to enter a marriage under Swedish law. In order to prove this the person will have to submit documentation issued by foreign authorities, if the person can obtain such evidence (chapter 3 paragraph 2 ÄktB). These documents must contain information such as the person's name, date of birth and marital status. The person may also need to prove his or her citizenship, for</p>

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			<p>example by providing the Swedish Tax Agency with identity documents (passport etc.). If the person submits a certificate of his or her current marital status from foreign authorities the certificate must not be older than four months.</p> <p>If the Swedish Tax Agency finds that there are no impediments to the marriage, the agency will issue a certificate of no impediment (chapter 3 paragraph 4 ÄktB). After that the persons have the right to marry.</p> <p>Once the persons are married, the Swedish Tax Agency will receive a notification that a marriage has been performed in accordance with Swedish law. After that, the Tax agency needs to consider whether any registration needs to be done in the Swedish Population Register (paragraph 34 of the People's Registration Act [folkbokföringslagen, FOL]). The Tax Agency registers information about a valid marriage, regardless of whether the spouses reside in Sweden, i.e. are registered in the Population Register as residents in Sweden, or not. A person who is or has been registered in the Population Register will be registered with the marital status "married". The Tax Agency also registers information on the date on which the person entered the marriage and with whom (paragraph 1 FOL).</p> <p>2.</p> <p>When considering if there are any impediments to marriage, the Swedish Tax Agency only carries out the investigation measures described under question 1. The Tax agency does not investigate the couple's intentions in entering into the marriage, for example if the couple has entered into a marriage of convenience. Nor does the agency investigate the intentions of the marriage when considering if information about the marriage is to be registered in the Swedish Population Register.</p> <p>Nevertheless, the intentions of a marriage may be subject to examination if a third-country national wants to be listed in the Swedish Population Register as a resident in Sweden and</p>
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			<p>states to the Tax Agency that he or she has the right of residence as a family member of a European citizen/Swedish citizen. The right of residence for family members of European citizens according to the Swedish Aliens Act (utlänningslagen, UtIL) does not apply to those persons who have entered marriage exclusively for the purpose of obtaining a right of residence in Sweden (chapter 3 a paragraph 4 section 3 UtIL).</p> <p>If the Swedish Tax Agency suspects that a third country national has entered into a marriage of convenience with a European citizen/ Swedish citizen only in order to obtain a right of residence, the agency may ask the Swedish Migration Agency for an opinion regarding whether the person has a right of residence in Sweden (paragraph 7 of the Population Registration Ordinance [folkbokföringsförordningen, FOF]). If the Swedish Migration Agency concludes that the person does not have the right of residence the person will not be registered in the Swedish Population register as a resident in Sweden.</p> <p>The Swedish Migration Agency (SMA) carries out an investigation of the relationship if a person who is married or cohabiting with someone wants to move to that person in Sweden. The investigation consist of a questionnaire for the family member in Sweden. The applicant on the other hand has to book an appointment at the embassy or consulate-general to conduct an interview to answer questions about the applicant's relationship with the person in Sweden.</p> <p>3.</p> <p>There are possibilities to postpone the enforcement of a decision on deportation if the TCN has a right of residence. A right of residence may exist if the TCN cohabits with (or is married to) an EU citizen who has a right of residence in Sweden. Swedish law equates cohabitation with marriage, therefore you may have right of residence according to directive 2004/38/EC if you are permanently living together (under marriage-like conditions). Engagement or the</p>
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			<p>mere the intention to get married is not enough. Depending on the circumstances in the individual case, if the Swedish Migration Agency considers that it is a serious relationship (not a marriage/cohabitation of convenience), the return procedure can be postponed at any time in the process.</p> <p>4. If it is probable that the TCN has a right of residence due to a relationship with (cohabits with, or is married to) an EU citizen, and the enforcement of a decision on deportation is postponed (question 3), the TCN is likely to be released from detention. Depending on the circumstances in the individual case this may be the case before or after an investigation.</p>
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