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Ad-Hoc Query on 2023.50 The period of legal residence required for applicants for family reunification

Requested by EMN NCP France on 21 November 2023

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

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1. BACKGROUND INFORMATION

In the context of the draft law 'to control immigration and improve integration' introduced by the French Minister for the Interior and Overseas Territories currently under discussion with the French Parliament, and with a view to extending the period of legal residence required for applicants for family

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reunification before they can be joined by their family, the Family Immigration Office within the Directorate for immigration has a number of questions regarding the legislation of EU Member States in this area.


The draft law will be examined in public hearings on 11 December. Consequently as discussed with the chair of the AHQ WG and watchdog for AHQs, we request exceptionally a 2-week deadline to receive your answers so that they can be used for these public hearings.

We would like to ask the following questions:

1. What is the waiting period (period of legal residence) that applicants must prove before applying for family reunification?
2. What is the legal time limit for processing an application for family reunification?
3. Does the waiting period take into account the time it takes to process a claim?

We would very much appreciate your responses by **5 December 2023**.

2. RESPONSES

		Wider Dissemination	
	EMN NCP Austria	Yes	<p>1. The Austrian Settlement and Residence Act does not foresee a waiting period.</p> <p>2. In general, the settlement and residence authority must take a decision without undue delay, but no later than 3 months after the application has been submitted (Art. 73 para 1 General Administrative Procedures Act 1991).</p> <p>As an exception to this rule, decisions on the issue of a "Red-White-Red Card Plus" residence permit to family members of an EU citizen are issued immediately.</p>


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			<ul style="list-style-type: none"> • an "EU Blue Card" residence permit • a "Settlement Permit - Researcher" or • a "Red-White-Red Card Plus" or "EU Permanent Residence" residence permit, in each case as former holders of an "EU Blue Card" residence permit, <p>must be taken by the competent settlement and residence authority without delay, but within eight weeks at the latest (Art. 46 para 6 Settlement and Residence Act).</p> <p>3. N/a</p>
	EMN NCP Belgium	Yes	<p>1. The waiting period is twelve months when the third-country national (sponsor) is admitted or authorised to reside in Belgium for an unlimited period, or, since at least twelve months, authorised to reside in Belgium for an unlimited period.</p> <p>This twelve-month period is waived if the marital relationship or registered partnership existed prior to the arrival of the third-country national (sponsor) in Belgium or if there is a common minor child.</p> <p>In addition, Belgium has adapted its practices to be in line with the case law of the European Court of Justice (C-540/03). More specifically, in Belgium, failure to comply with the 12-month waiting period cannot be held against the applicant without taking into account other relevant elements of the file. In other words, the duration of the sponsor's stay in the Member State of residence is only one of the factors to be taken into consideration when examining an application; an application for family reunification cannot therefore be rejected solely on the grounds that the sponsor does not comply with the 12-month waiting period.</p> <p>This period does not apply (no period applies) when the third-country national (sponsor) is authorised to reside in Belgium for a limited period.</p> <p>This period does not apply (no period applies) to third-country nationals admitted to reside in Belgium as family members of a beneficiary of international protection status.</p> <p>[Article 10.§1,4° of the Law of 15 December 1980, Immigration Act.]</p> <p>2. Family reunification with a third-country national: the decision must be taken within nine months of the date of the lodging of the application (date of lodging = date on which the file is considered complete). In</p>


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			<p>exceptional cases, due to the complexity of the (examination of the) application, or given an investigation into a relationship of convenience or regarding the fulfillment of the conditions of a long-term and stable relationship, this nine-month period may be extended twice, by periods of three months. In the latter cases, a reasoned decision is notified to the applicant.</p> <p>[Article 10ter.§2 of the Law of 15 December 1980 (Immigration Act).]</p> <p>Family reunification with a Belgian who is not exercising or has not exercised his right to free movement: the decision must be taken within six months of the date of having lodged the family reunification application. Independently of whether the file is considered complete. No extension is possible.</p> <p>[Article 42§1 of the Law of 15 December 1980 – Immigration Act.]</p> <p>Family reunification with an EU Citizen who exercises or has exercised his right of free movement: idem</p> <p>3. No.</p>
	<p>EMN NCP Bulgaria</p>	<p>Yes</p>	<p>1. The third country national should have a permitted residence not shorter than a year on the territory of the Republic of Bulgaria before applying for family reunification.</p> <p>2. The application for family reunification shall be examined and decided within the term of 1 month after coordination with National Security State Agency (NSSA) and Consulate Relations Directorate (CRD) at the Ministry of Foreign Affairs (MFA), which shall provide their opinions within the term of 15 days.</p> <p>For the decision taken for the family reunification, the competent authorities shall notify in writing the applicant in the order of the Administrative Procedure Code (APC).</p> <p>For the decision taken for the family reunification, the competent authorities shall notify the Migration Directorate at the Ministry of Interior (Moi) and CRD at the MFA, by providing a grounded written opinion, containing compulsory administrative measures, information about the representation abroad, where the application for issuing a long term residence visa will be submitted or the reason or lack of such for the family reunification.</p> <p>CRD at the MFA shall notify the Representation abroad of the Republic of Bulgaria in the state of permanent residence of the family member or in the representation abroad, accredited for the state of permanent</p>



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			<p>residence of the family member within the term of up to 5 days after receiving the notification about the decision taken for the family reunification.</p> <p>A positive decision on the application for reunification of the family shall be a reason for the foreigner – family member to have been issued a visa under Art. 15, Para. 1 (long-term visa “D”) of the Law on foreigners in the Republic of Bulgaria (LFRB) under the relieved procedure. The foreigner shall submit an application for a visa before the representation abroad of the Republic of Bulgaria in the state of his permanent residence or in the representation abroad, accredited for the state of his permanent residence or in the representation abroad, accredited for the state of his permanent residence within the term of up to 6 months from the notification.</p> <p>Family reunification of foreigners under art. 33q, par. 1 (intra-corporate transferees) is not bound by the need for the holder to have stayed for a certain minimum period.</p> <p>In the cases, where the competent service for administrative control of foreigners refuses to recognize a document on civil status, which has been produced before it, the interested person may claim the established claim before the Sofia city court.</p> <p>In general, the overall period takes less than 9 months.</p> <p>3. Please, elaborate further on Q3. It is not clear which claim do you mean.</p>
	EMN NCP Croatia	Yes	<p>1. In the Republic of Croatia, a "waiting period" is prescribed for family members of third-country nationals who have an approved residence and work permit in accordance with national legislation, i.e. when a labor market test is required to issue such a residence and work permit, and it is one year. In the Republic of Croatia, a "waiting period" is prescribed for family members of third-country nationals who have an approved residence and work permit in accordance with national legislation, i.e. when a labor market test is required to issue such a residence and work permit, and it is one year.</p> <p>2. The official person is obliged to decide on the request within 30 days from the date of submission of the formal request if it is a direct resolution, or within 60 days from the date of submission of the formal request if it is an examination procedure.</p>




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			3. No.
	EMN NCP Cyprus	Yes	<p>1. In Cyprus, to exercise the right to family reunification, the sponsor must have resided legally in the Republic for a period of at least two years. It should be noted, however, that more favourable provisions apply in case the sponsor is employed at a company that falls under the Strategy for attracting investments and talent, in which case, the requirement of prior residence of at least two years is lifted. Hence, the staggering majority of applicants do not face a waiting period of legal residence before being able to apply for family reunification. The waiting period does also not apply to recognized refugees.</p> <p>2. Family reunification applications must be examined within nine (9) months from the date of submission. The 9 month period can be extended in exceptional circumstances linked to the complexity of the examination of the application. Favourable provisions apply for sponsors who are employed at companies that fall under the Strategy for attracting investments and talent, in which cases family reunification applications must be examined within five (5) months from the date of submission.</p> <p>3. No</p>
	EMN NCP Czech Republic	Yes	<p>1. The general period is 15 months, but there is a number of exceptions. For example, family reunification with an employment card holder is after 6 months, the same with a leave to remain long term visas. Family members of a blue card holder, an intra-corporate transferee permit holder or a scientific researcher can be reunited without a prior period of stay. Czech Republic also issues long-term visas for family purposes and there is no such period of prior residence of the holder of the authorisation. But that is a matter of national legislation.</p> <p>2. The time limit for the decision is 270 days.</p> <p>3. Yes.</p>



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	<p>EMN NCP Estonia</p>	<p>Yes</p>	<ol style="list-style-type: none"> 1. In Estonia the application for the residence permit for the purpose of family reunification can be submitted together with the application for the residence permit of the sponsor. Exception is for settling with a spouse who holds a temporary residence permit for study – in this case the spouse must have lived in Estonia on the basis of a temporary residence permit for study for at least two years. This will not apply when the spouse in question has been granted a temporary residence permit for doctoral studies. 2. Processing the application may take up to 2 months. If there are deficiencies in the application, the processing of the application will be extended. 3. No.
	<p>EMN NCP Finland</p>	<p>Yes</p>	<ol style="list-style-type: none"> 1. Finland does not require a period of legal residence from the sponsor. Family members may apply for a residence permit on the basis of family ties when the sponsor has a residence permit in Finland. 2. The applicant (for a residence permit based on family ties) must be notified of the decision no later than 9 months after the date on which the application was submitted. In exceptional circumstances, the time limit can be extended. 3. N/A
	<p>EMN NCP France</p>	<p>Yes</p>	<ol style="list-style-type: none"> 1. In France, the period for legal residence is set at 18 months in accordance with Article L. 434-2 of the French code for the entry and stay of foreign nationals and right to asylum (CESEDA). It shall be calculated from the validity of the first residence permit until the application for family reunification is submitted. 2. France provides for, pursuant to Article R. 434-6 of the CESEDA, a period of 6 months for taking its decision. Beyond that period, if no decision has been taken, the application for family reunification shall be rejected. This period is calculated from the submission of the complete file by the applicant until the decision to agree or refuse family reunification.



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			<p>3. In France, both deadlines are not correlated. Thus, the total duration of the procedure amounts to 24 months, including 18 months of legal residence of the applicant and 6 months for examining the application for family reunification.</p>
	EMN NCP Germany	Yes	<p>1. The regulations for family reunifications are set in Sections 27 – 38a of the German Residence Act (in English available under https://www.gesetze-im-internet.de/englisch_aufenthg/). There is a general waiting period only for the reunification of spouses: the sponsor spouse must have held a German residence permit since two years (Section 30 (1) 3d). However, there is no waiting period if the sponsor already holds a permanent residence permit or a permit for specific purposes (Section 30 (1) 3a-c, g). There is also no waiting period if the sponsor holds a residence title for certain purposes and the marriage already existed before he or she entered Germany (Section 30 (1) 1e, f).</p> <p>2. A principle of German administrative law is that the competent authority has to process an application within a reasonable period. If this does not happen within a period of three months without sufficient reasons, a suit can be filed at the Administrative court.</p> <p>3. Both time periods are not correlated.</p>
	EMN NCP Greece	Yes	<p>1. The waiting period derives from Article 8 of Directive 2003/86/EC of 22 September 2003 on family reunification. This article leaves it up to each Member State to decide whether or not to require the sponsor to have resided legally in their territory for a period not exceeding two years before being joined by family members. By way of derogation, the period may be extended to three years if the existing legislation of the Member States prior to the adoption of the directive provided for reception capacity. According to migration legislation, third-country national who has resided lawfully in Greece for two years is entitled to apply for his/her family members to enter into and reside in the country. The application is submitted and examined while these family members reside outside Greek territory.</p> <p>2. This period is governed by article 4-4 of the above-mentioned directive, which stipulates that the competent authority of the Member State concerned must notify the applicant for family reunification of its</p>



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			<p>decision in writing no later than 9 months after the date on which the application was submitted. According to migration legislation, the family reunification process is completed no later than nine (9) months after the submission/filing, along with the required documents, of the application for the authorisation of family reunification. In exceptional cases, this nine (9)-month period may be extended by up to three (3) months.</p> <p>3. No. Please see answer in question 1.</p>
	EMN NCP Hungary	Yes	<p>1. Hungary does not apply the waiting period provision.</p> <p>2. Maximum 9 months</p> <p>3. Not relevant</p>
	EMN NCP Italy	Yes	<p>1. In the Italian legal system, the waiting period (period of regular residence) that applicants must prove before requesting family reunification is one year. In particular, Article 28, paragraph 1, of the Consolidated Text on Immigration (Testo Unico sull'Immigrazione - Legislative Decree 286/1998 and subsequent amendments) provide: "The right to maintain or re-establish family reunification with respect to their family members is recognised, under the conditions laid down in the present Consolidated Text, to foreigners who hold a residency permit or have a residency permit for a period at least of one year issued for employment or self-employment, or for asylum, study, religious or family reasons".</p> <p>2. In the Italian legal system, the legal deadline for examining a family reunification application is 90 days from the date the request is received. Specifically, in accordance with current legislation, pursuant to Article 29, paragraph 8, of the Consolidated text on immigration (Testo Unico sull'Immigrazione - Legislative Decree 286/1998 and subsequent amendments): "The authorization for family reunification is issued within ninety days of the application."</p> <p>3. N.A.</p>

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	EMN NCP Latvia	Yes	<p>1. The legislation of the Republic of Latvia does not provide for a specific waiting period for the inviter to stay in the country before family members join him.</p> <p>2. Applications for family reunification must be processed within one month from the date of submission of the documents. This term can be extended up to 4 months if the case requires additional examination.</p> <p>3. No, because there is no waiting period in the Republic of Latvia.</p>
	EMN NCP Lithuania	Yes	<p>1. The issue of temporary residence permits on the grounds of family reunification is regulated by Article 43 of the Law on the Legal Status of Foreigners. The terms and conditions differ depending on the circumstances of family reunification. In some cases, there may be no waiting time at all. According to Article 43.6, there is a waiting period of two years for family reunification in the following cases:</p> <ul style="list-style-type: none"> • The foreigner's parents or one of them, or the spouse of one of them, who is a citizen of the Republic of Lithuania or has a residence permit, lives in the Republic of Lithuania; • The spouse of a foreigner or a person with whom a registered partnership agreement has been concluded and who is a citizen of the Republic of Lithuania or a foreigner with a residence permit; • he or she is a first-degree direct ascending line relative of the foreigner with a residence permit. <p>In these cases, foreigners who wish to reunify with their family members, in addition to having lived in Lithuania for the past two years, must have a temporary residence permit that is valid for at least a year, and have reasonable prospects for acquiring permanent residence in Lithuania.</p> <p>However, there is a long list of exceptions when these requirements do not apply to foreigners in the above-mentioned categories, including the following:</p> <ol style="list-style-type: none"> 1. when the foreigner has been granted asylum in Lithuania 2. when the foreigner's temporary residence permit is issued on the following grounds:



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		<p>a. he/she is entitled to restore the citizenship of Lithuania</p> <p>b. he/she is of Lithuanian origin</p> <p>c. he/she intends to work in Lithuania in a highly skilled occupation</p> <p>d. he/she is transferred within the company</p> <p>e. he/she plans to set up a start-up in Lithuania</p> <p>f. they intend to work as a lecturer or researcher under an employment contract with a research and study institution</p> <p>g. he/she is a citizen of Australia, Japan, the United Kingdom, the United States of America, Canada, New Zealand, South Korea, who intends to work or engage in other legal activities in the Republic of Lithuania</p> <p>h. he/she has been admitted to a degree program(s) or doctoral program at a research and study institution</p> <p>i. he/she has completed studies or formal vocational training program(s) or research and experimental development work in Lithuania less than a year ago</p> <p>3. when the foreigner has acquired long-term resident status in another EU country and holds a residence permit issued by that country and has a temporary residence permit in Lithuania on that basis</p> <p>4. when the foreigner has undertaken a traineeship in research and study institutions under international agreements of Lithuania or under the European Union's academic exchange programs with third countries;</p> <p>5. when the foreigner has invested in Lithuania assets owned, borrowed or held in trust and used in Lithuania through direct participation in projects of national importance</p> <p>6. when the foreigner works at or is the head of a company that meets certain criteria (as defined in Article 45.1.1-2²).</p> <p>2. The decision on the temporary residence permit is taken and the temporary residence permit is issued under the general procedure - within 3 months; and in the case of an urgent procedure - within 45 calendar days.</p>
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			3. No
	EMN NCP Luxembourg	Yes	<p>1. In Luxembourg there is no waiting period for applying for family reunification. Article 69 (1) of the amended law of 29 August 2008 on free movement of persons and immigration (Immigration Law) states that a third-country national who holds a residence permit valid for at least one year and who has reasonable prospects of obtaining a long-term right of residence may apply for family reunification for members of his family foreseen in article 70.</p> <p>2. The legal time limit for processing an application for family reunification is of 9 months that counts since the moment that the application is completed (if the application is incomplete the deadline does not run) in accordance with article 73 (6) of the Immigration Law, with the exception of the family members of a Blue Card Holder in which the deadline is six months (article 73 (7)) and ICTs and researchers (90 days after the application is submitted articles 73 (8) and (9)).</p> <p>3. NO</p>
	EMN NCP Netherlands	Yes	<p>1. In the Netherlands, there is a waiting period of 1 year (period of legal residence) for sponsors with a temporary regular residence permit before applying for family reunification. This is stipulated in Article 3.15 of the Aliens Decree 2000 (Vreemdelingenbesluit, Vb). There are, however, many exceptions to this period of 1 year. These exceptions, which are linked to the purpose of the temporary stay of the sponsor, are listed in the Besluit Inburgering 2021, Article 2.2. In practice, most sponsors with a temporary residence permit are exempted from the waiting period. For sponsors with a non-temporary regular residence permit, the waiting period may be suspended in the best interests of the child, or based on the Association Agreement between the European Union and Turkey.[1]</p> <p>There is no waiting period in cases of family reunification with beneficiaries of international protection.</p> <p>[1] This information was provided by the Directorate for Strategy and Implementation Advice (SUA) of the</p>



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		<p>IND on 28 November 2023.</p> <p>2. In the Netherlands, the period for issuing a decision on an application for family reunification with beneficiaries of international protection is 90 days, which can be prolonged with a maximum of three months (Art. 2u (1) of the Aliens Act (Vreemdelingenwet, Vw 2000)). Currently, the IND prolongs the period as a standard procedure, meaning that the de facto period for issuing a decision is six months.^[1] The starting point for this time frame is the day on which the IND receives the application (digitally or through mail). If documents and/or information are missing from the initial application, the IND sends a letter to the sponsor indicating what documents and/or information is missing (a so-called 'herstel-verzuim brief'). The sponsor then has 28 days to submit the relevant missing information/documents, during this time the timeframe for deciding on the application (six months in total) is paused. ^[2] Additionally, on 26 August 2022 the Minister for Migration informed Parliament that the time limit for processing applications for family reunification for beneficiaries of international protection is temporarily extended to 9 months, ^[3] in line with the Family Reunification Directive.</p> <p>The legal time limit for processing an application for family reunification in regular/non-asylum cases is also 90 days. This might be extended by a maximum of three months. Two exceptions do apply: in cases of intra-corporate transferees and European Blue Card holders the processing period of 90 days cannot be extended. In cases related to scientific research, study, learning-on-the-job (lerend werken) or exchange within the framework of European voluntary work, a decision should be issued within 60 days. (Art. 2u (2 and 3) of the Aliens Act (Vreemdelingenwet, Vw 2000)).</p> <p>^[1] This information was provided by the Directorate for Strategy and Implementation Advice (SUA) of the IND on 24 July 2023.</p> <p>^[2] Work instruction IND/SUA, 2023/2 'Instructies behandeling nareisaanvragen (asiel)', https://ind.pucoverheid.nl/doc/PUC_1298193_1/, last accessed 10 July 2023.</p> <p>^[3] Brief besluitvorming opvangcrisis, 26 August 2022, https://open.overheid.nl/documenten/ronl-dbd85806d6050d6cc54edb722bf926d54e922ec9/pdf, last accessed 5 December 2023.</p>
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			3. No.
	EMN NCP Poland	Yes	<p>1. The Act on Foreigners does not provide for a waiting period for the applicant. A family member may apply for an extension of his or her stay in Poland at any time during his or her legal stay, as long as the family member he or she has joined stays in Poland on a specific basis (indefinite permits, in connection with the granting of international protection, or on the basis of certain types of temporary residence permits. In one of the cases, the law stipulates that the sponsor must have remained in Poland for at least 2 years on the basis of consecutive temporary residence permits, including immediately before applying for a temporary residence permit for a family member - on the basis of a permit granted for a period of stay of not less than 1 year. This case can be somehow treated as falling under the principle of waiting period to acquire the right to family reunification).</p> <p>In the case where a family member resides abroad, the application is filed in the country by the sponsor, after obtaining the appropriate power of attorney.</p> <p>2. The provisions of the Act on Foreigners dictate that the first-instance proceedings must be concluded before the expiration of 60 days from the date of completion of the formal requirements for the application (which requires the submission of a complete application in person, along with documentation proving that the requirements for the granting of a permit have been met). Appeal proceedings should be conducted no longer than 90 days from the date of receipt of an appeal free of formal deficiencies or 90 days from the date of their completion. There are cases where administrative deadlines due to the volume of the influx of applications or the complexity of the case are exceeded. In recent years, a number of remedial measures have been taken to prevent the exceeding of deadlines, including financial liability for cases of inaction.</p> <p>3. N/A</p>
	EMN NCP Portugal	Yes	<p>1. The current Law does not establish any minimum period for this purpose, the person simply needs to hold a valid residence permit to be able to file a request for family reunification.</p> <p>2. 90 days</p>


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			3. NO.
	EMN NCP Slovakia	Yes	<p>1. In the Slovak Republic the application for the residence permit for the purpose of family reunification can be submitted together with the application for the residence permit of the sponsor.</p> <p>2. The legal time limit is 90 days from the date of the submission of the full application for family reunification by the applicant.</p> <p>3. NA since there is no waiting period in the Slovak Republic. See also question 1.</p>
	EMN NCP Slovenia	Yes	<p>1. The sponsor residing in the Republic of Slovenia on the basis of a permanent residence permit and the sponsor who in the last year has resided in the Republic of Slovenia on the basis of a temporary residence permit and has a valid residence permit issued for at least one year (the so-called 1+1 rule) shall be granted the right to family reunification.</p> <p>2. The competent authority must decide on applications for a residence permit or a residence registration certificate as soon as possible and not later than within 30 days of receiving a complete application. Where in order to establish the existence of reasons for refusing a permit or certificate a special fact-finding procedure is necessary, the competent authority must decide on an application not later than within 60 days.</p> <p>3. The one-year validity of the sponsor's temporary residence permit shall also include the period of the sponsor's residence on the basis of a certificate of application for the issuance or extension of a temporary residence permit or the issuance of a subsequent temporary residence permit that serves as a temporary residence permit.</p>
	EMN NCP Spain	Yes	<p>1. Generally, one year (art. 18.1.1.º Organic Law 4/2000) in accordance with Article art. 18.1.1.º of Organic Law 4/2000</p> <p>2. One and a half months. (Additional provision 12ª .1 Royal Decree 557/2011)</p>

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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.

			3. No
	 EMN NCP Sweden	Yes	<p>1. Sweden do not have a waiting period for family reunification.</p> <p>2. There is no legal time limit but national legislation allow the applicant to demand, in writing, that the case should be settled if that has not been done within six months from the application. The authority must then within four weeks from that demand either decide in the case or make a decision to deny the demand. This decision to deny the demand can then be appealed (12§ förvaltningslagen, 2017:900)</p> <p>3. Not applicable.</p>
