

EUROJUST

European Union Agency for
Criminal Justice Cooperation

Report on national legislation and Eurojust casework analysis on sham marriages

Updated version, January 2024

Criminal justice across borders



Executive summary

Sometimes people gain unlawful access to the European Union (EU) through a marriage of convenience. Increasingly, such sham marriages are part of sophisticated fraud schemes arranged by Organised Crime Groups (OCGs). The OCGs engage in migrant smuggling and trafficking of human beings on an international scale. They make big profits by luring (mainly) women in vulnerable positions into what seems to be “easy money” but instead traps them in a web of exploitation and abuse.

Sham marriages are also a direct abuse of the fundamental right to freedom of movement within the EU and creates, for instance, unjustified access to the European labour market and social security benefits in the Member States. Since 2012, the European Union has therefore firmly stressed the importance of effective cooperation to tackle marriages of convenience.

This case analysis report, written by Eurojust, the EU Agency for Criminal Justice Cooperation, draws on the practical experiences of sham marriage investigations supported by the Agency between 2012 and 2020.

The report is intended to raise awareness of judicial practitioners on this low risk/high value criminal activity. Sham marriages often appear as isolated acts, connected only to relatively minor offences, such as document fraud or administrative violations associated with low penalties. However, a closer look most often would show a sophisticated scheme of smuggling devised by an international OCG where people in vulnerable position are exploited. The report identifies the main features of sham marriage cases (Section 3), highlights the legal challenges (Section 4) and specific obstacles (Section 5), analyses how the judicial tools and instruments are applied (Section 6) and provides an overview of best practice and main lessons learned (Section 7).

The analysis indicates that OCGs exploit the differences in national legislation in this area. In more than half of the EU Member States, sham marriages are either not criminalised or are sanctioned with a mild penalty. The OCGs exploit such legal differences by operating within the jurisdictions that provide the least punitive treatment of sham marriages (“forum shopping”).

The differences in national legislation also makes it more difficult to use EU judicial cooperation tools since most of them are based on the principle of double criminality. Other type of charges can however be pressed, such as facilitation of illegal immigration, trafficking of human beings and document fraud. The Annexes to the report contain detailed tools to help judicial practitioners more easily compare the national legal provisions on criminalisation of marriages of convenience, conditions to marry and divorce a foreigner and recognition of civil law foreign judgments.

Based on these practical insights, the report presents four recommendations how to step up the fight against sham marriages by international OCGs:

- ▶ The **lack of harmonised national legislation** governing sham marriages may hamper mutual legal assistance due to the double criminality requirements.
- ▶ **Joint Investigation Teams** (JITs) are effective to investigate sham marriage cases. JITs allow a smoother exchange of information and evidence sharing among the authorities involved. Often detection of linked serious forms of criminality can be found, which are not evident when looking at the case only from the national perspective.
- ▶ **Eurojust** can play a central role in **identifying the links among the different criminal activities** carried out by the OCGs in several jurisdictions, within or outside the EU, facilitate the investigations, **promote coordination** of the authorities involved to avoid the risk of *ne bis in idem* and to work out a **joint prosecutorial strategy**. This may imply a (partial) transfer of proceedings for the best protection of the victims, especially in the case of exploitative sham marriages.
- ▶ A **comprehensive approach**, involving all the administrative instances concerned such as civil registries, consulates, etc., fosters effective communication between the various administrative national bodies.



Supporting judicial authorities in fighting sham marriages as a form of migrant smuggling and human trafficking

Case analysis report by Eurojust, the EU Agency for Criminal Justice Cooperation



People sometimes gain unlawful access to the EU through a marriage of convenience. Increasingly, such **sham marriages are part of sophisticated fraud schemes** arranged by organised crime groups that engage in **migrant smuggling** and at times **trafficking of human beings** at an international scale. They make big profits by luring mainly women in vulnerable positions into what seems to be “easy money” but instead traps them in a web of exploitation and abuse.



In a new **case analysis report**, Eurojust, the EU Agency for Criminal Justice Cooperation, draws on the **practical experience of sham marriage investigations** supported by the Agency between 2012 and 2020. The analysis shows the impact of the big differences in national legislation in the European Union concerning sham marriages: **In more than half of the EU Member States, sham marriages are not criminalized or are sanctioned with a mild penalty.**

A “LOW RISK/HIGH VALUE” CRIMINAL ACTIVITY:

Organised crime groups make big profits through arranging sham marriages. But sham marriages often appear as isolated acts, connected only to relatively minor offences, such as document fraud or administrative violations, associated with low penalties.

4 recommendations how to step up the fight against sham marriages by international Organised Criminal Groups:

- **Lack of harmonised** national legislation may hamper full judicial cooperation
- Form **joint investigation teams**
- **Coordinate** the investigations through Eurojust
- Involve **all relevant administrations** such as civil registries, consulates, etc.



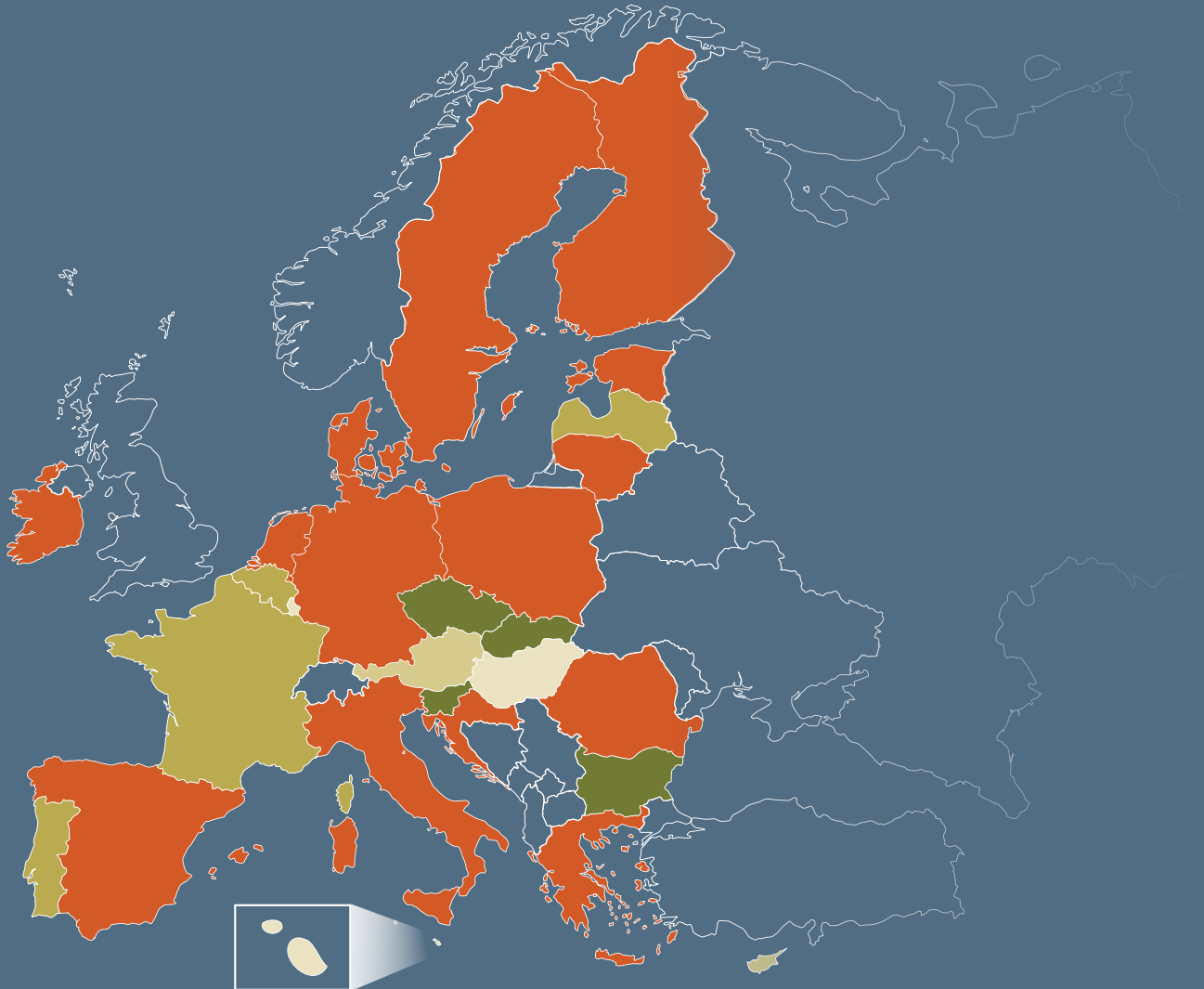
*The differences in national legislation make it **more difficult** to use EU judicial cooperation tools since these are based on the principle of double criminality.*



*The criminals exploit such legal differences by **operating within the jurisdictions that provide the least punitive treatment of sham marriages** (“forum shopping”).*

ENTRY INTO AND ARRANGEMENT OF SHAM MARRIAGES CONSIDERED A CRIMINAL ACT

September 2020



PENALTIES

Fines and imprisonment up to:

- 2 years - Hungary, Luxembourg, Malta
- 3 years - Austria, Cyprus
- 5 years - Belgium, France, Portugal, Latvia
- 8 years or more - Bulgaria, Slovak Republic, Czech Republic
- **Acts related to arranging or entering into sham marriages not criminalized as such.**
Other type of charges can however be pressed, such as facilitation of illegal immigration, trafficking of human beings and document forgery.
Croatia, Denmark, Estonia, Finland, Germany, Greece, Ireland, Italy, Lithuania, Netherlands, Poland, Romania, Slovenia, Spain, Sweden

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1. Introduction

As indicated by the European Commission: “[...] *effective detection, investigation and prosecution of marriages of convenience can be facilitated through cross-border co-operation. [...] in particular the assistance [that] can be provided to national authorities [...] by Eurojust, notably as regards the investigation or prosecution of specific acts, and coordination between national authorities.*”¹

Building up on this Communication and on the Commission Handbook on marriages of convenience², in 2019, the College of Eurojust decided to conduct an analysis of *sham marriages cases referred to Eurojust to support criminal justice practitioners in the fight of migrant smuggling*. The project was adopted by the College to assist the Commission to identify gaps and possible obstacles in relation to the legislative framework in the EU Member States related to the facilitation of unauthorised entry, transit and stay of migrants and more generally related to the fight against migrant smuggling. Recently, arranging marriages of convenience has been identified by the European Commission as one of the three main forms for facilitating irregular migration into the EU³. By researching, identifying and reporting on judicial cooperation issues stemming from differences in legislation (*sham marriages, hawala*) Eurojust aims to feed the Commission with relevant information in this field.

In essence, the report is intended to raise awareness of practitioners and to provide recommendations to EU policy makers on how to tackle this “low profile” and yet very effective and lucrative *modus operandi* that is used by the organised criminal groups (OCGs) to facilitate the entry, transit and stay of third country nationals into the European Union (EU).

The report identifies the main features of sham marriage cases (Section 3), highlights the legal challenges (Section 4) and specific obstacles (Section 5), analyses how the judicial tools and instruments are applied (Section 6) and provides an overview of best practice and main lessons learned (Section 7).

The analysis indicates that OCGs exploit the differences in national legislation in this area. Accordingly, the Annexes of this report offer tools to compare the relevant legal provisions with other jurisdictions⁴:

- ▶ Annex I - EU Member States legislation on criminalisation of marriages of convenience;
- ▶ Annex II - EU Member States legislation on conditions to marry and divorce a foreigner;
- ▶ Annex III - EU Member States Recognition of civil law foreign judgments.

Case examples are provided throughout the report to illustrate the dynamics governing the matter in an international judicial cooperation context and applicable good practices. Given the level of complexity of this form of criminality –which implies the participation of cross-border OCGs- Eurojust is called to play a central role in the fight of this form of migrant smuggling.

1 Communication from the Commission to the European Parliament and the Council on Helping national authorities fight abuses of the right to free movement, COM(2014) 604 final, of 26.9.2014.

2 Handbook on addressing the issue of alleged marriages of convenience between EU citizens and non-EU nationals in the context of EU law on free movement of EU citizens, COM(2014) 604 final, of 26.9.2014.

3 Communication from the Commission: Commission Guidance on the implementation of EU rules on definition and prevention of the facilitation of unauthorised entry, transit and residence, COM(2020) C323/01, of 1.10.2020.

4 For the elaboration of the tables on national legislation, preliminary information was sought in open sources. This information was verified and supplemented by the national desks of Eurojust and their national authorities. In the case of Luxembourg and Malta, the information has been extracted only from official online sources.

2. Methodology and sources

The analysis is primarily **based on Eurojust casework registered at Eurojust between 2012 and June 2020**. In order to find the *sham marriage* cases at Eurojust, free text searches on the following key words were conducted: *marriage, marry, married, sham, bride, groom*.

Within the reference period, a total number of 29 *sham marriage* cases were identified, after a subsequent content check of the Brief Case Summaries. The **statistical information** on Eurojust casework was

generated by the Eurojust Case Management System and reflect the main features of the *sham marriage* cases at Eurojust during the reporting period.

The data mining was complemented by **dedicated Eurojust meetings** with the national desks and national authorities on the most emblematic cases⁵. Documents and reports from EU partner organisations also supplement or complement the findings⁶.

3. Special features of *sham marriages*

3.1. Definition

A marriage of convenience, or sham marriage, is a “marriage concluded between an EU citizen or a non-EU national legally resident in an EU country and a non-EU national (irregular migrant), with the sole aim of circumventing the rules on entry and residence of non-EU nationals and obtaining for the non-EU national a residence permit or authority to reside in an EU country”⁷.

Through these marriages, irregular migrants seek undue benefits such as residence permit, citizenship and possibly family reunification.

The main parties involved in marriages on convenience are: an irregular migrant non-EU national, an EU national or a third-state national legally resident in the EU, and an organizer of marriages, which often belongs or acts on behalf of an OCG.

This conceptual definition gathers the elements of “**intention**” and of “**financial gain**”, that are provided in the legal definition of offences related to assisting a third person to illegally enter the territory of the EU,

as provided for by the “**facilitators’ package**”, which regulates the EU legal basis for sanctioning migrant smuggling. This “package” is composed of Council Directive 2002/90/EC defining the facilitation of unauthorised entry, transit and residence and Council Framework Decision 2002/946/JHA on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence.

Council Directive 2002/90/EC is aimed at approximating the national laws. According to Article 1, the offence of facilitation includes two types of behaviours:

- a) any person who intentionally assists a person who is not a national of a Member State to enter, or transit across, the territory of a Member State in breach of the laws of the State concerned on the entry or transit of aliens.
- b) any person who, for financial gain, intentionally assists a person who is not a national of a Member State to reside within the territory of a Member

⁵ The national authorities interviewed represented both the judiciary and law-enforcement bodies.

⁶ See annex on bibliography.

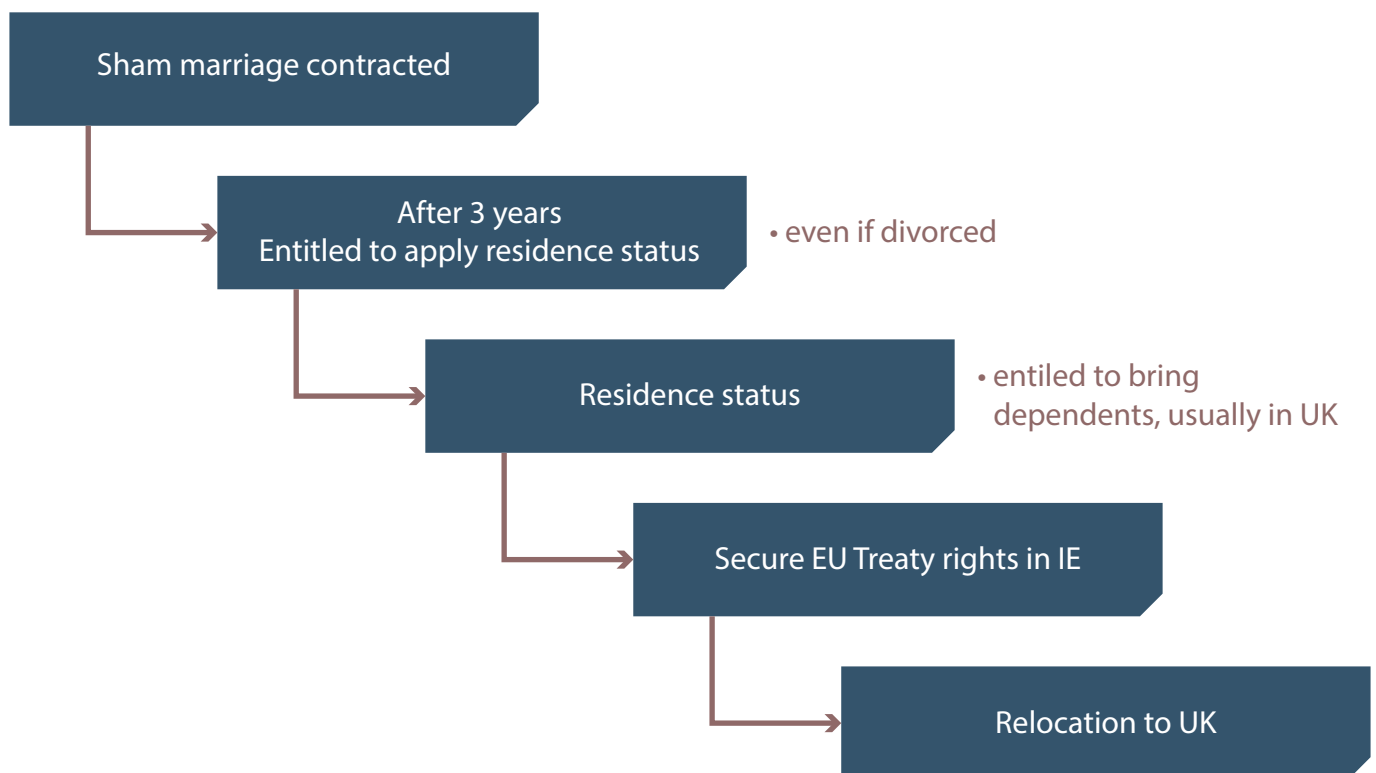
⁷ Council of the EU Resolution on measures to be adopted on the combating of marriages of convenience, of 4 December 1997: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31997Y1216\(01\)&from=RO](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31997Y1216(01)&from=RO)

State in breach of the laws of the State concerned on the residence of aliens⁸.

While the Member States may decide not to criminalise the first behaviour when the assistance responds to humanitarian reasons, the conduct described in (b) - qualified by the intention of getting a *financial gain* - must be the object of criminal sanctions in all the Member States, regardless the specific form used in the assistance.

Eurojust casework has identified **various case scenario being used** by the same OCGs. For example some OCGs would produce fake marriage certificates (case *Amouda*), others would organise the setting up of the actual marriage (case *Agentur*), others would produce fake documents or organise the appearance of an intermediary before the competent authorities, finally some OCGs would use such methods alternatively (case *Just married*).

How does it work in actual terms? The Irish example (*operation Vantage*)



8 As pointed out by the European Commission in its Guidance on the implementation of EU rules on definition and prevention of the facilitation of unauthorised entry, transit and residence (2020/C323/01 of 01.10.2020): “The facilitation offence as set out in Article 1(1) of the Facilitation Directive is indeed broader than in the Protocol [UN Protocol against the smuggling of migrants by land, sea and air supplementing the United Nations Convention against Transnational Organised Crime] insofar as financial gain is not a constituent component of the offence of facilitation of irregular entry or transit. Financial gain — together with participation in a criminal organisation or endangering the lives of the people who are the subjects of the offence — is listed under the aggravating circumstances set out in Article 1(3) of Framework Decision 2002/946/JHA.” (p. 4).

Operation 'Vantage': upstream coordination to link criminal networks involved in sham marriages with Latvian brides in Ireland



2016: a Pakistani national residing in Ireland travelled regularly to Latvia and was believed to be the organiser and recruiter of numerous marriages of convenience involving Latvian women. Ireland opened a case at Eurojust, seeking judicial cooperation from Latvia to bring possible organisers and recruiters of Latvian brides to justice.

In Ireland, marriages of convenience are not criminalised under Irish law. Criminal charges can only be pressed for related offences such as conspiracy to defraud, deception, and forgery of documents, which carry minimal penalties.



In Latvia, marriage of convenience became a criminal offence in 2013. Due to the limited case law and the significant variations in penalties imposed, prosecutions were still difficult.



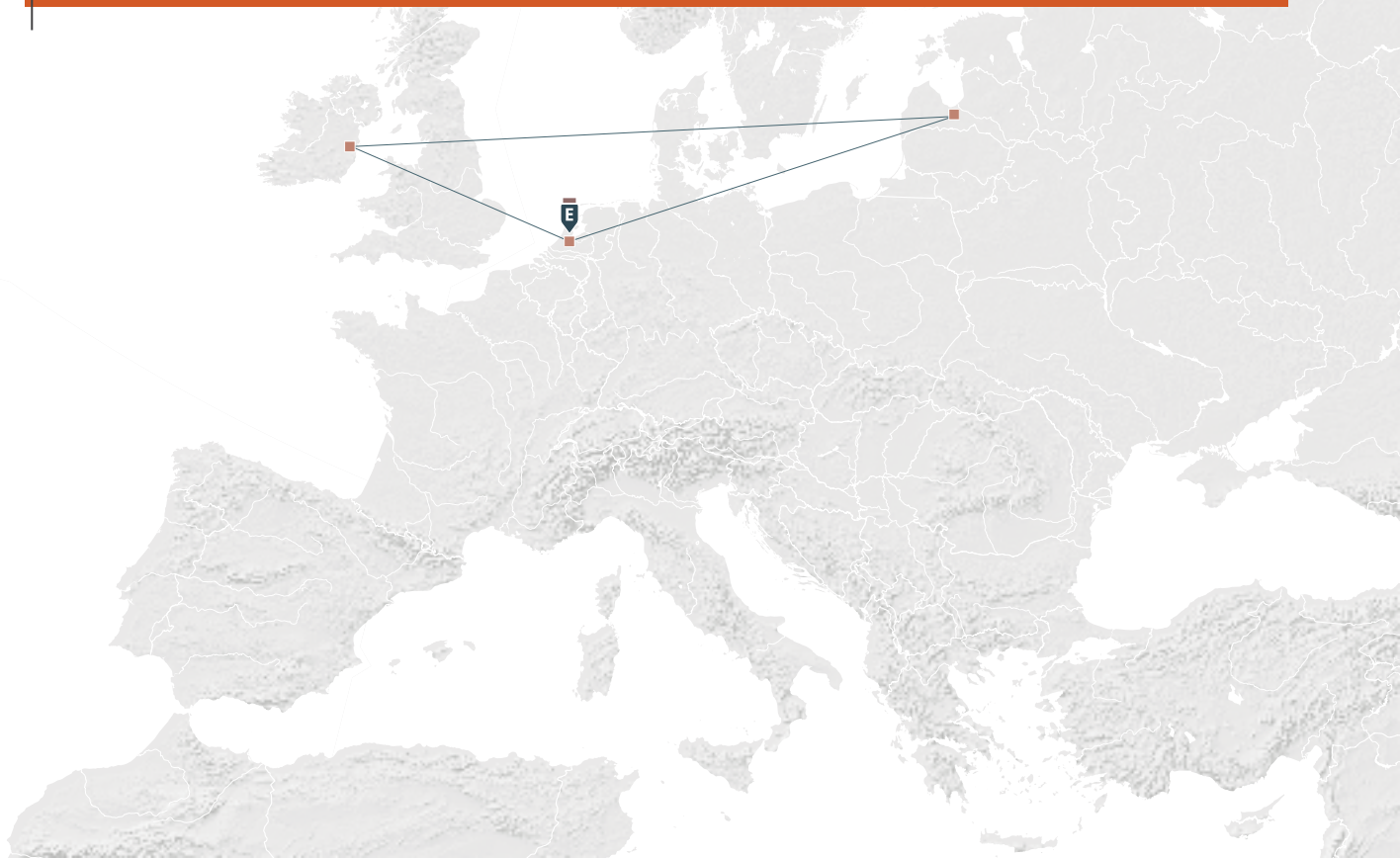
In a coordination meeting, Latvia linked the case to the investigation of another Pakistani national, heading a network responsible for at least 60 marriages of convenience. Both suspects were linked and the modus operandi was confirmed by both the Latvian and Irish authorities. At the meeting, extensive discussions were held on the respective legal frameworks to assess the most effective investigation and prosecution strategies. The case is still ongoing.



The case shows the importance of coordination and exchange of information to combat sham marriages. When Irish Registrars of Marriages in 2015 were granted powers to determine whether marriages are marriages of convenience, marriage applications with third State nationals dropped significantly.

The case is also an example of how flexible criminal groups act in relocating to Member States in which legislation is more favourable.

A multidisciplinary approach, involving e.g., civil registry personnel, is particularly effective in cases in which the suspected activities go beyond the strict remit of the judiciary, such as sham marriages.



3.2. Legal definition

Recital 28 of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States defines marriages of convenience as:

"marriages contracted for the sole purpose of enjoying the right of free movement and residence under the Directive that someone would not have otherwise"

Article 35 of the Directive (Abuse of rights) allows Member States to adopt the necessary measures to refuse, terminate or withdraw any right conferred by the Directive in the case of abuse of rights or fraud, such as marriages of convenience. Commission Guidelines in 2009 provided clarifications on the notions of abuse and marriages of convenience for the purposes of the EU rules on free movement.

Sham marriages are legally differentiated from "**forced marriages**". The latter are qualified under the offence of trafficking of human beings, as gathered in Recital 11 of Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA. According to this Directive, when this *modus operandi* contain elements of force, that would qualify it as trafficking of human beings. This is so reflected in most EU national legislations⁹. In this regard, in May 2015 the Dutch Minister of Migration sent a letter to the government, stating that the investigation and prosecution of *sham marriages* is prioritised, as a part of fighting migration fraud, human smuggling and human trafficking¹⁰.

The links between THB and *sham marriages* as a *modus operandi* for facilitating illegal immigration was explored in the Latvian research project HESTIA, which was conducted in five countries - Latvia, Lithuania, Estonia, Ireland and Slovak Republic- between 2015 and 2016. As main findings, the project developed a new term: "**exploitative sham marriages**" with respect to the phenomenon of *sham marriages* in relation to human trafficking¹¹.

Similarly, the Czech Criminal Code allows the prosecution of a person who forces (or acts in a different way foreseen by Section 168 of the Criminal Code) other person to get married, since it is considered as a form of prohibited exploitation. The case of abduction for the purpose to [forcibly] get married is also contemplated, even in the event of marriage in another State (Section 172 of the Criminal Code).

Further to the guidance to Member States on how to tackle abuse in the form of marriages of convenience provided in the Commission's Communication of 2 July 2009 on *Guidance for better transposition an application of Directive 2004/38/EC3* ("2009 Commission Guidelines")¹², the Commission Handbook on marriages of convenience ("the Handbook") expounds this legal framework. It spells out what the application of these rules means in practice, offering national authorities operational guidance to assist them in effectively detecting and investigating suspected cases of marriages of convenience.

9 E.g.: Belgium, Bulgaria (if coercion is proved), Czech Republic, Italy, The Netherlands, Romania and Sweden. Sweden's judicial response is based on a definition of 'marriages of convenience' as 'sham marriages', as opposed to 'forced marriages'.

10 https://ind.nl/en/Documents/AR_2015.pdf;
<https://www.government.nl/latest/news/2015/05/19/national-campaign-against-sham-marriages-results-in-five-immediate-arrests>

11 For further information about this project, please refer to: <http://www.cilvektirdznieciba.lv/en/a-new-market-niche-in-europe-exploitative-sham-marriages> and *Exploitative Sham Marriages: Exploring the Links between Human Trafficking And Sham Marriages In Estonia, Ireland, Latvia, Lithuania And Slovak Republic*. <https://www.heuni.fi/material/attachments/heuni/reports/ci5Y5cgbB/Nettiin.pdf>

12 COM(2009) 313 final: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0313:FIN:EN:PDF>

The Handbook provides a guidance to help national authorities with hints that may trigger a criminal investigation while protecting genuine marriages through tackling individual cases of abuse in the form of marriages of convenience, while not compromising the fundamental goal of safeguarding and facilitating free movement of EU citizens and their family members using EU law in a *bona fide* way. The Handbook provides for the following criteria¹³:

- i) genuine marriages: sometimes incorrectly considered as marriages of convenience (e.g. arranged, proxy or consular marriages)
- ii) non-genuine marriages: (e.g. marriages of convenience, by deception, forced or bogus marriages) may also include THB elements.

3.3. Sham marriages in Eurojust casework

One of the findings from the analysis of cases referred to Eurojust is that *sham marriages* are difficult to detect. This is because they are usually connected to relatively minor offences, such as document fraud or administrative violations, which are associated with low penalties. At the same time, OCGs set up sophisticated fraud schemes (e.g. the use of bogus companies in the EU to recruit would-be grooms, see *Amouda* case below), which generate significant profits. As a result, this particular modus operandi appears to be a low risk/high value criminal activity¹⁴.

The legal framework at EU and international level that national authorities should comply with when fighting abuse comprises EU rules on free movement of EU citizens and their family members as well as rights and safeguards of fundamental rights. The right to respect for private and family life, to marry, to non-discrimination and, when applicable, the overarching interest of the child, shall be observed when investigating and prosecuting marriages of convenience.

The low profile of these activities may also explain why there are not so many cases referred to Eurojust. Since 2012 Eurojust has been dealing with 39 cases. However, when the case does reach Eurojust, it becomes clear that there are several other, more serious, criminal activities associated to *sham marriages*, including migrant smuggling, trafficking of human beings and organised crime. The success of cases referred to Eurojust creates a calling effect among practitioners. In this regard, in 2017 13 new cases were open at Eurojust, following a successful large-scale operation.

¹³ See *infra*, Section 4.2.

¹⁴ Based on Eurojust casework, an average price range would vary from 15,000 EUR to 20,000 EUR per arranged smuggle involving a *sham marriage*.

The Amouda case: Dismantling a criminal gang recruiting Portuguese women into sham marriages with Pakistani illegal immigrants in Belgium



2015: a **suspicious increase in the number of mixed marriage certificates** was detected in a small municipality. A criminal group was suspected of organising sham marriages with **Portuguese women recruited to marry Pakistani men** they had never met. In return, the women received a **cash payment**. The couples **travelled to Belgium to marry**, where the **wives were soon employed by (allegedly bogus) Belgian companies**. By purchasing shares in the companies, the husbands were permitted to stay in the EU, obtain resident permits and then illegally profit from social and other benefits. The wives **occasionally returned to Belgium for police and immigration checks**. Once the residence was secured, the illegal immigrants would divorce and bring their Pakistani (previous) wives and children to the EU.

Portugal opened a parallel investigation on a similar offence committed by some of the suspects targeted by the Belgian investigation.



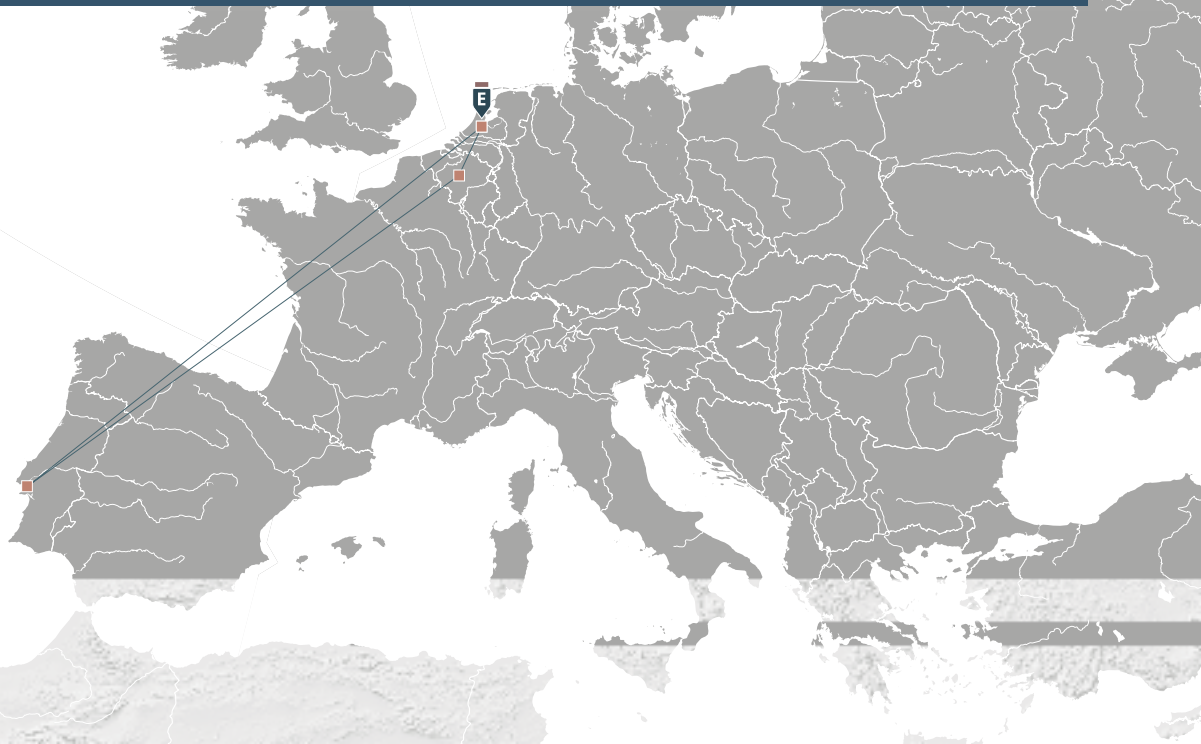
Four coordination meetings were held at Eurojust between Portuguese and Belgian authorities. A **joint investigation team** was set up in December 2017 with the participation of Europol, and with funding from Eurojust. The JIT made it possible to **exchange information efficiently and quickly** and brought both parties' investigations to a **similar level of maturity**, ensuring a **coordinated approach** on future actions. A **potential positive conflict of jurisdiction was prevented**.



January 2019: Joint action conducted simultaneously in Belgium and in Portugal. Belgian police officers were present in Portugal and Portuguese counterparts were present in Belgium for real-time information crosschecks and mobile telephone forensics. **17 suspects were arrested and 18 house searches executed in Belgium; 3 suspects were arrested and 8 house searches conducted in Portugal**. Dozens of **forged documents** and numerous items of **IT equipment** were seized along with large quantities of cash. **43 irregular migrants of Pakistani origin were found in Belgium**.

The Belgian authorities tended to **consider the women as suspects**, with a right to **remain silent**. The judicial proceedings are still ongoing in Belgium.

The Portuguese prosecution found substantial reasons on the special situation of these women that allowed to consider at least some of them, **as victims, obliged to give evidence**. The Portuguese investigation is now closed with **8 persons accused to have committed illegal immigration, organized crime, forgery of documents and sham marriage as a crime**.



4. Legal challenges

4.1. Double¹⁵ criminality requirement

The double criminality principle was a standard clause commonly included in extradition conventions. It implies that the alleged crime for which extradition is sought must be classified as a criminal offence in both the requesting and the requested countries. The requisite relates to the facts in issue, which must be criminal in both jurisdictions, not to the legal name or classification of the offences.

Nevertheless, the double criminality principle has been subject to progressive nuances in a view to reduce its scope as a ground of refusal of assistance. In this sense, it has been often combined with thresholds of penalty so as to ensure the seriousness of the offence. Relevant examples can be found in the European Convention on Extradition of 13 December 1957¹⁶, whose Article 3 (1) limits the extraditable offences to those “*punishable under the laws of the requesting Party and of the requested Party by deprivation of liberty or under a detention order for a maximum period of at least one year or by a more severe penalty.*” A very similar clause was included in the Convention on Extradition between the Member States of the EU of 1996 (Article 2)¹⁷.

Likewise, the European Convention on Mutual Assistance in Criminal Matters of 1959¹⁸, authorises -in its Article 5 (1) (a)- the signatory countries to declare the execution of measures like search and seizures dependant on the double criminality principle.¹⁹

The perspective changes in EU Law since the new paradigm of mutual recognition was proclaimed in Tampere in 1999. The first step had been already taken by the Convention of 19 June 1990 implementing the Schengen Agreement, whose Article 51 (1) watered down the possible grounds of refusal allowed by the abovementioned Article 5 of the European Convention of 1959. But the decisive step took place in 2002. In accordance with the new paradigm of mutual recognition, the Council Framework Decision 2002/584/JHA of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States²⁰ no longer requires the verification of double criminality for 32 categories of offences listed in Article 2 (2)²¹. From then onwards this same list has been reproduced in every legal instrument of mutual recognition²² until the more recent Directive 2014/41/EU of 3 April 2014 regarding the European Investigation Order in criminal matters²³ or Regulation

15 Although *double* and *dual* criminality do have a very similar meaning, the authors prefer the use of the expression *double criminality*, following the most common wording in International Conventions on Extradition and Mutual legal assistance in criminal matters, such as Article 2 (2) of Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA). Since this FWD this wording of double criminality has been reproduced in every legal instrument on the application of the mutual recognition principle, such as: Recital (20) and Article 3 (1) of Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders. The term is also generally used in judgments of the CJEU, such as: Judgement of 11 January 2017, in case C-289/15, *Josef Grundza*, related to Framework Decision 2008/909/JHA: — Article 7 — Condition of double criminality — Article 9 — Ground for non-recognition and non-enforcement based on the lack of double criminality; Judgement of 3 March 2020 (Grand Chamber) in case C-717/18, *Procureur-generaal v. X*, related to Framework Decision 2002/584/JHA —Removal of verification of the double criminality of the act or Judgment of the Court (Grand Chamber) of 3 May 2007. Case C-305/05. *Advocaten voor de Wereld VZW v Leden van de Ministerraad*. Removal of verification of double criminality.

16 European Convention on Extradition, Paris, 13.XII.1957; ref: Council of Europe European Treaty Series No 24. <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680064587>

17 Convention drawn up on the basis of Article K.3 of the Treaty on EU, relating to extradition between the Member States of the EU, O.J. C313/12 of 23.10.1996 [https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:41996A1023\(02\);EN:HTML](https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:41996A1023(02);EN:HTML)

18 European Convention on Mutual Assistance in Criminal Matters, Strasbourg, 20.IV.1959; ref: Council of Europe European Treaty Series No 30. <https://rm.coe.int/16800656ce>

19 Most of the EU Member States deposited a Declaration in this sense. Signatory counties like Belgium, The Netherlands or Romania referred the acceptance of requests related to these measures to extraditable offences and even signatory states such as Austria or Hungary went further declaring in general terms that their authorities do only grant assistance for offenses also punishable under their own law. Only a few signatory states (France, Italy, Latvia) did not deposited a similar Declaration.

20 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32002F0584>

21 The list of these 32 types of offences excluded of mutual criminality check was first established in the Annex of the Europol Convention of 26 July 1995. The list of 32 offences excluded of double criminality check include: “participation in a criminal organisation” and “facilitation of unauthorised entry and residence”, “forgery of administrative documents and trafficking therein”, among others.

22 Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties (Article 5); Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the EU (Article 7); Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions (Article 10); Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the EU, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention (Article 14).

23 O.J. L130, of 1.5.2014: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0041>

(EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing and confiscation orders²⁴.

The European Investigation Order (hereinafter "EIO"), which has become the common legal tool for mutual legal assistance in the EU -but for Denmark and Ireland-, provides for a possible ("*may be*") ground for non-recognition or non-execution related to this double criminality principle in Article 11 (1) (g) with this wording:

g) the conduct for which the EIO has been issued does not constitute an offence under the law of the executing State, *unless it concerns an offence listed within the categories of offences set out in Annex D, as indicated by the issuing authority in the EIO, if it is punishable in the issuing State by a custodial sentence or a detention order for a maximum period of at least three years;* [emphasis added].

Facilitation of unauthorised entry or residence or otherwise forgery of administrative documents and trafficking therein are two of these 32 listed categories of crimes set out in the cited Annex D as exempt of any double criminality check as soon as this minimum threshold of penalty is reached. In accordance with Article 11 (2), paragraphs 1(g) and 1(h) do not apply

4.2. Differences in national laws and nexus with other forms of criminality

The specific conduct of contracting a marriage of convenience is not classified in these terms as a criminal offence in all the Member States. In Estonia, for instance, *sham marriages* are regulated under Civil Law; it is a ground to annul the marriage and rights for temporary residency may be refused, but it is not considered a criminal offence.

The difficulties encountered in some Member States stem from the differences in legal qualifications that leads to seeking an alternative legal basis, according

to the (so-called "privileged") investigative measures referred to in Article 10(2) of the EIO Directive. Currently, there are eleven EU Member States²⁵ where marriages of convenience are classified as criminal offences, either as a way of facilitating migrant smuggling or the illicit dwelling in the country.

Article 11(1) (e) of the EIO Directive provides for another ground for non-recognition or non-execution of relevance for this report:

e) the EIO relates to a criminal offence which is alleged to have been committed outside the territory of the issuing State and wholly or partially on the territory of the executing State, *and the conduct in connection with which the EIO is issued is not an offence in the executing State.*

Often, the whole conduct includes acts carried out in different Member States. Therefore, this *modus operandi* usually implies, at least, the issuing of EIOs or other mutual recognition legal instruments. One typical example would be the marriage of convenience celebrated in a State -usually where the organisation finds it easier to be carried out- and tried to be recognised in another different State in order to sidestep its legal requisites of entrance or residence.

to which suspects may be prosecuted (see table #1), thus overcoming the obstacles for international judicial cooperation that would arise from the double criminality principle. The criminalisation can be found in other criminal categories such as:

- ▶ facilitation of illegal immigration²⁶,
- ▶ trafficking in human beings²⁷, illegal trafficking and forgery of documents, fraud²⁸.

24 O.J. L303, of 28.11.2018: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018R1805>

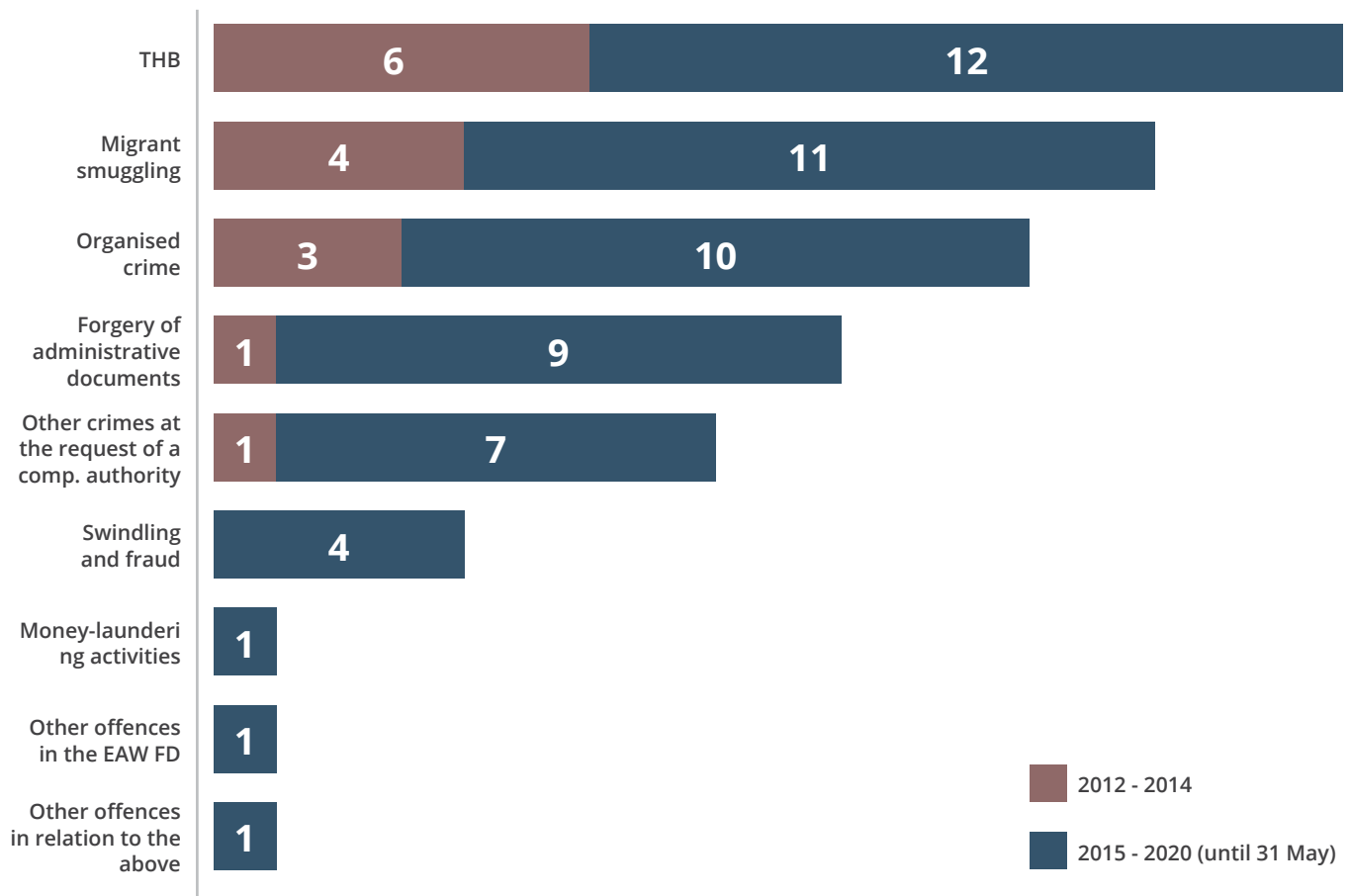
25 Belgium, Bulgaria (partially), Czech Republic, France, Cyprus, Latvia, Hungary, Malta, Austria, Portugal, Slovak Republic.

26 This is the case of Estonia, Greece, Spain, Croatia, Italy, Lithuania, Poland, Finland, Slovak Republic, Sweden, Denmark and the UK.

27 See footnote 8 *supra*.

28 Since document fraud and forgery is an offence commonly used for conducting *sham marriages*, in the countries that do not criminalise the latter as a stand-alone offence, the former may constitute the grounds for the judicial proceedings, especially when the elements of coercion or force cannot be proved. This is the case of Ireland, Spain, Lithuania, The Netherlands, Poland, Sweden and Denmark. Italian legislation qualifies as an aggravating element the use of false or falsified documents (Art 12.3-a and 12.3-b Legislative Decree (DECRETO LEGISLATIVO) 25 July 1998, n. 286. *Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero. (GU n.191 del 18-8-1998 - Suppl. Ordinario n. 139)*. Further, it might seem interesting to notice that the Italian Supreme Court of Cassation itself acknowledged, in Decision no. 2285/2009, that *sham* (or "simulated") marriages can indeed lead to cases of aiding and abetting illegal immigration through the submission of false certificates while applying for residence permits. Furthermore, in order to satisfy the conditions under the latter crime, no actual entrance needs to take place. In fact, the same Court specified that the *Testo Unico* punishes "*individual committing acts aimed at aiding and abetting illegal immigration*", with no specific need for the illegal entrance to be effectively performed (*Penale Sezione I*, 7 March 2008, no. 10716).

Crime types in sham marriage cases at Eurojust



In addition to what has been explained above, the instrumental involvement of international OCGs in these illegal activities allows several national legal systems to prosecute *sham marriages* on the ground of participation in a criminal organisation.²⁹

All of the above have been also included in the list of types of crimes exempt of verification of the double criminality principle insofar the minimum threshold of penalty has been reached.

Several legal regimes that criminalise *sham marriages* as a migrant smuggling *modus operandi*, do qualify as an aggravating element the use of force, which might lead to blurring the definition with THB (e.g.: Belgium³⁰, or Czech Republic³¹). The Dutch Criminal Code provides for the offence of human smuggling with sham marriage as an instrument³².

In most of the cases, since the marriage takes place with the connivance of both spouses, documents may be genuine, yet based on false information. When this is detected, there are penalties (either criminal or administrative) based on “statement of untrue data”³³, “submission of false information”³⁴, “use of invalid

29 By analogy with document fraud and forgery, in the case of participation in a criminal organisation, it may be an aggravating element to the *sham marriage* offence or constitute the grounds for the judicial proceedings in countries where *sham marriages* are not criminalised. This is the case e.g. of Finland (Section 8(a), Chapter 17 Criminal Code).

30 Belgium law 02/06/2013 – Art.21.

31 Section 168 of the Czech Criminal Code.

32 Article 197a Dutch Penal Code (3 March 1881, as updated on 01-01-2020: <https://wetten.overheid.nl/BWBR0001854/2020-01-01>)

33 Article 32 of the Law for Entering, Residing and Leaving the Republic of Bulgaria of EU citizens and Members of their Families (*Prom. SG. 97/6 Dec 2016*: https://www.mvr.bg/docs/librariesprovider57/default-document-library/act-on-entering-residing-and-leaving-the-republic_11.pdf?sfvrsn=1de10327_0). Similarly, Article 253 of the Slovenian Criminal Code provide as an offence the “Certification of Untrue Contents”; i.e.: deceiving a competent body or a notary to certify untrue matter in a public record, with penalties of prison up to three years (<https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina?urlurid=20082296>).

34 Article 217 of the Spanish Criminal Code (*Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal*; latest updated version of 02/03/2019: <https://www.boe.es/buscar/act.php?id=BOE-A-1995-25444>) or Article 280 of the Estonian Criminal Code provides for detention or fine up to 300 fine units, or pecuniary punishment or imprisonment up to 2 years if committed with intention of getting official documents.

documents"³⁵, "provision of false information for the purpose of acquisition of a document"³⁶, "fraud"³⁷ or even on grounds of "bigamy"³⁸.

Following *Operation Vantage*, Ireland modified its criminal law by introducing ancillary offences such as conspiracy to defraud, deception, or providing false documents with penalties up to 2 years imprisonment³⁹.

The difference in legal qualifications has repercussions in the **different investigative tools** that are available to the investigators when facing *sham marriages*. The setting up of Joint Investigation Teams (JITs) with the countries concerned has been unanimously praised as the most efficient mechanism to fight this *modus operandi*.

As Eurojust casework shows, this *modus operandi* would not necessarily decrease because a country criminalises the phenomenon as a stand-alone offence. As an example, in the last few years *sham marriages* have proliferated in Cyprus, despite being a crime in that Member State.

Eurojust casework repeatedly remarks how OCGs take advantage of national legislations within the EU with milder conditions to either marry a non-EU national (table # 3) or to recognise marriages that had been conducted outside the EU (table #4).

This **forum shopping** from the side of the OCGs is exemplified for instance in cases where repudiation certificates, said to be relatively easy to obtain, were issued by a non-EU country authorities. Once the non-EU nationals got married, they made use of these repudiation certificates, which subsequently were recognised by some national EU authorities as valid.

The above indicates the level of awareness by some OCGs of the differences in the national legislations of the Member States.

In the *Just Married* case, the Czech authorities faced difficulties in establishing their jurisdiction. According to the Czech law, a physical trespassing of the national borders is a condition required for an offence to be classified as facilitation of illegal immigration.

A similar situation is to be found in Romanian legislation, when the trespassing of the national borders is a prerequisite to qualify the offence of facilitation of illegal immigration.

35 Article 222(8) of the Croatian Aliens Act.

36 Article 304 Lithuanian Law on the Approval and Entry into Force of the Criminal Code. The Swedish Penal Code qualifies as different offences: "false certification" (*Brottsbalken - BrB*, 15:11), "false declaration" (*BrB*, 15:10) and "use of false record" (*BrB*, 15:11 p3); besides the criminalisation of "forgery of documents" (*BrB*, 14:1), (https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/brottsbalk-1962700_sfs-1962-700).


37 *Escroquerie*, under Article 313-1 of the French Criminal Code (*Code Pénal version consolidé au 1 juin 2020*: <https://www.legifrance.gouv.fr/affichCode.do?cidT exte=LEGITEXT000006070719>) or Article 326 Dutch Criminal Code (*op. cit. supra*).

38 E.g.: Articles 217 and 219 of the Spanish Criminal Code, that even contemplates the case of bigamy when the previous marriage was to a foreign person outside Spain.

39 Article 15(16) Criminal Justice Act 2011 – Provisions relating to Documents and Information; <http://www.irishstatutebook.ie/eli/2011/act/22/schedule/1/enacted/en/html>

The Agentur case: German and Danish national authorities detected and dismantled an organised crime group arranging sham marriages with Eastern European women




 **2015:** The Public Prosecution Office in Hamburg detected activity by an **organised crime group (OCG)** that ran “**marriage bureaux**”. They used “agents” to attract and **recruit EU citizens, mainly Eastern European women** in vulnerable situations willing to marry illegal immigrants, without having the obligation to live with their alleged



Over **1,200 non-EU nationals**, each paying over **EUR 13,000** were first provided with stolen and/or falsified identification documents and subsequently with tourist visas.



 The sham marriages were arranged in on a small, isolated island in Denmark, exploiting the fact that Danish legislation was quite lenient in the requirements to contract a marriage.






German and Danish judicial and law enforcement authorities formed a **joint investigation team with the support and funding of Eurojust**, which also supported the organisation of coordination meetings, provided the **necessary mutual legal assistance** and helped to simplify the **judicial cooperation** between the national authorities. The JIT worked closely together for a period of 18 months. **Europol** facilitated the exchange of intelligence and provided tailored analyses to the investigators



A **joint action day** was organised to execute of numerous houses searches in Germany and Denmark and identify the main structure and modus operandi of the OCG.



 As a consequence of this case, the **Danish Marriage Act** was changed and more stringent requirements were introduced to marry non-EU nationals. A specialised unit has been set up to control and scrutinise marriage applications where the persons wanting to get married are not both Danish or Nordic nationals or both have permanent residence permit in Denmark. The number of suspicious marriage applications in Denmark has since dropped considerably.



4.3. Parallel investigations and the risk of *bis in idem*⁴⁰

The right not to be tried or convicted twice for the same offence is also one of the obstacles that can arise in the investigation and prosecution of marriages of conveniences aimed at dodging immigration and residence rules. As stated by the Eurojust Guidelines on jurisdiction: “*the increase in cross-border crime has led over the years to more cases in which multiple Member States have, under their domestic legislation, jurisdiction to prosecute and to take such cases to trial.*”⁴¹ The celebration of marriages of convenience and the search of effects in order to bypass entrance, immigration or residence rules offer clear examples of this affirmation.

At the outset, it may be useful to recall the difference between parallel investigation and double prosecution or conviction.

Parallel investigation, meaning that a single fact, person or organisation is under investigation in more than one country, is not undesirable *per se*. On the contrary, a multiple investigation can be very beneficial provided that interferences, duplicities or undue disclosures risking to frustrate the whole probe could be avoided.

*Coordination between different investigations, especially in the framework of a JIT, has proven to be of great efficiency in the investigation of sham marriages, where the differences between national legal regimes may provide different investigative tools to the investigators, depending on the qualification of the acts in each country. Eurojust is called precisely to play a central role in coordinating parallel investigations carried out in different countries.*⁴²

On the other hand, **parallel prosecutions, trials or convictions** for the same facts, can trigger a conflict of jurisdictions and fall within the ban of the *ne bis in idem*, or *double jeopardy principle*. The right not to be tried or punished in criminal proceedings for a criminal offence for which a person has been already finally acquitted or convicted is now enshrined in Article 50 of the Charter of Fundamental Rights in the EU⁴³.

The *ne bis in idem* principle has been reflected repeatedly in legal text of international cooperation in criminal matters. It appears in Article 4 of Protocol 7 of the European Convention of Human Rights, Article 54 of the Convention implementing the Schengen Agreement⁴⁴, Article 4 (6) of the Framework Decision 2002/584/JAI of 13 June 2002 on the European Arrest Warrant and the Surrender Procedures between Member States. Article 11 (1) (d) of the EIO Directive⁴⁵ provides it as one possible ground for non-recognition or non-execution of the EIO.

In 2009 the Council of the EU approved the Council Framework Decision (FWD) 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings⁴⁶. This FWD has been transposed by all the MS save Greece and Luxembourg⁴⁷. The United Kingdom declared that transposition of this FWD was not necessary in the UK, as the principles and mechanisms provided by this legal instrument were already followed and respected by the Crown Prosecution Service. This FWD provides for an obligation of contact and exchange of information aimed at seeking a consensus between the jurisdictions in possible conflict.

40 N.B.: this section refers to conflict of jurisdictions and the avoidance of *ne bis in idem* as complementary to the in-depth analysis conducted in the Report on Eurojust's casework in the field of prevention and resolution of conflicts of jurisdiction, updated 2018 ([http://www.eurojust.europa.eu/doclibrary/Eurojust-framework/Casework/Report%20on%20Eurojust%20casework%20in%20the%20field%20of%20prevention%20and%20resolution%20of%20conflicts%20of%20jurisdiction%20\(2018\)/2018_Eurojust-casework-on-conflicts-of-Jurisdiction_EN.pdf](http://www.eurojust.europa.eu/doclibrary/Eurojust-framework/Casework/Report%20on%20Eurojust%20casework%20in%20the%20field%20of%20prevention%20and%20resolution%20of%20conflicts%20of%20jurisdiction%20(2018)/2018_Eurojust-casework-on-conflicts-of-Jurisdiction_EN.pdf)) and insofar as it relates to the specificities of the *sham marriages phenomenon*.

41 Eurojust Guidelines for deciding “Which jurisdiction should prosecute?” <http://www.eurojust.europa.eu/Practitioners/operational/Pages/Guidelines-on-jurisdiction.aspx>, available in all EU languages.

42 Article 4 (1) (b) of Eurojust Regulation (EU) 2018/1727, of 14 November 2018.

43 Art. 50 of the Charter: “No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.”

44 The inclusion of this principle in Article 54 of the Convention implementing the Schengen Agreement has given rise to a rich case-law of the Court of Justice of the EU set up after the Judgment of 11 February 2003 in the case the Gözütk and Brügge case (Judgement of the Court of 11 February 2003, *European Court Reports 2003 I-01345*; <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62001CJ0187>). For additional information, please refer to the Eurojust analysis on *Case Law by the Court of Justice of the EU on the principle of ne bis in idem in criminal matters*, of April 2020 ([http://www.eurojust.europa.eu/doclibrary/Eurojust-framework/caselawanalysis/Case%20law%20by%20the%20Court%20of%20Justice%20of%20the%20European%20Union%20on%20the%20principle%20of%20ne%20bis%20in%20idem%20in%20criminal%20matters%20\(April%202020\)/2020-04_Case-law-by-CJEU-on-NeBisInIdem_EN.pdf](http://www.eurojust.europa.eu/doclibrary/Eurojust-framework/caselawanalysis/Case%20law%20by%20the%20Court%20of%20Justice%20of%20the%20European%20Union%20on%20the%20principle%20of%20ne%20bis%20in%20idem%20in%20criminal%20matters%20(April%202020)/2020-04_Case-law-by-CJEU-on-NeBisInIdem_EN.pdf))

45 Art. 11 (1) ... recognition or execution of an EIO may be refused in the executing State where: (...) (d) the execution of the EIO would be contrary to the principle of *ne bis in idem*

46 O.J. L 328/42, of 15.12.2009; <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:328:0042:0047:EN:PDF>

47 Regarding Luxembourg, the adoption process is currently ongoing. Information provided for by the European Judicial Network (EJN) Judicial Library as of 22 April 2020: https://www.ejn-crimjust.europa.eu/ejn/EJN_Library_StatusOfImpByCat.aspx?l=EN&CategoryId=66

Article 4(4) of Eurojust's Regulation (EU) 2018/1727, of 14 November 2018, provides among the operational functions of the agency the issue of written opinions on which Member State must carry out an investigation or prosecution. In this regard, already in 2003, the College of Eurojust elaborated guidelines for preventing conflicts of jurisdiction and for deciding which jurisdiction is best placed to prosecute when a conflict of jurisdiction can arise. These Guidelines, published under the title ***Which jurisdiction should prosecute?***, were revised in 2016, offering a set of criteria to be taken into consideration by national authorities⁴⁸.

The cited Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal

proceedings, the Eurojust's functions and Guidelines as well as the possible application of the Council of Europe's 1972 Convention on Transfer of Proceedings in Criminal Matters⁴⁹ can offer comprehensive tools to prevent or settle conflicts of jurisdiction by deciding which jurisdiction must be considered preferable for the prosecution and trial of a given offence. Yet, it is necessary to take into account that none of these tools entails a compulsory engagement of any Member State to assume the prosecution or trial of a given offence and that the last say does not involve just the prosecution but relies always on the final decision of national courts after a contradictory hearing of all the parties.

4.4. Interference into the most private sphere of the individuals

Any mutual legal assistance ought to be conducted in full respect to fundamental rights. This essential principle is proclaimed in Article 1 (4) of the EIO Directive when provides that "*[t]his Directive shall not have the effect of modifying the obligation to respect the fundamental rights and legal principles as enshrined in Article 6 of the TEU, including the rights of defence of persons subject to criminal proceedings, and any obligations incumbent on judicial authorities in this respect shall remain unaffected.*"

This obligation to respect fundamental rights is ensured by including any possible breach as a ground for non-recognition or non-execution of the measure required in the EIO, as provided for by Article 11 (1) (f) of the EIO Directive. Further, it is reinforced by the verification of the proportionality of the investigative measure that must be carried out by both the issuing judicial authority and the executing one (Articles 6 (1) and (2) of the EIO Directive).

As proven by the Eurojust casework, when dealing with marriages of convenience, one of the main investigative challenges is that the investigation targets the core of the private life of the individuals, which renders this offence rather difficult to prove. For the same reason, this smuggling *modus operandi*

is very difficult to detect by both the judicial and the administrative authorities in the Member States.

The close relation between marriage and private life leads to the observation of the right to respect for private and family life as enshrined as a fundamental right both in Article 7 of the Charter and in Article 8 of the ECHR. The latter includes in its paragraph 2 the requirements for the limited admissible interferences by the State.

The European Court of Human Rights (ECtHR) has developed a consistent case-law on the necessary balance between private and public interests when handling these cases. The ECtHR case-law on the interpretation and shaping of Article 8 (2) of the ECHR may be summarised as follows⁵⁰:

- ▶ First, the interference must be provided for by the law and carried out in accordance with the legal prescriptions and with the general legal principles of the rule of law;
- ▶ The interference must seek a legitimate interest. Paragraph 2 of Article 8 ECHR lists the possible legitimate interest, including national security, public safety or economic well-being of the country or prevention of disorder or crime;

48 *Op. cit supra*.

49 Please note that this Council of Europe Convention has not been ratified by all EU MS. European Convention on Transfer of Proceedings in Criminal Matters. Strasbourg, 15.05.1972; ref: ETS No 073. <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/073>

50 For further information, please refer to the *Guide on Article 8 of the European Convention on Human Rights. Right to respect for private and family life, home and correspondence*, as updated on 31 August 2019: https://www.echr.coe.int/Documents/Guide_Art_8_ENG.pdf

- ▶ The interference has to be necessary in a democratic system to achieve this legitimate interest, which suggests the abovementioned necessity of establishing an adequate balance.

On the other hand, the ECtHR has insisted that States are entitled to control the entry of aliens into their territory and their residence therein⁵¹. The Eurojust case *Agentur* shows how family reunion cannot be claimed based on Article 8 ECHR since there is no actual “family life”⁵² and Constitutional Courts of the EU MS balance the universal nature of the right to marriage with the necessity of controlling *sham marriages* as means of illegal migration flows⁵³.

Related fundamental rights that are enshrined in both the Charter and the ECHR need also to be considered when conducting investigations on *sham marriages* such as the right to marry (Article 12 ECHR and Article 9 of the Charter) or the right to non-discrimination

(Article 3 ECHR and Article 4 of the Charter) as well as all procedural rights, compliance with relevant evidentiary standards and procedural safeguards (Article 35 Directive free movement), such as the right to an effective remedy and to a fair trial (Article 47 Charter) and the right of defence (Article 48 Charter)

The abuse of the overarching interest of the child with regard to family reunion (enshrined in Article 8 ECHR, Article 24 of the Charter and Article 3(1) of the UN Convention on the Rights of the Child of 20 November 1989) is frequently found in this sort of bogus marriages⁵⁴. Often, the offspring(s) from a previous marriage of the third-country national, who entered into a *sham marriage*, become instrumental to providing legal residency to the actual family of the “husband”, first by claiming family reunion father-child and then, once the father legally residing the EU territory, claiming family reunion with regard to the mother⁵⁵.

5. Practical challenges

This part focuses on the main impediments faced by practitioners when investigating and prosecuting marriages of convenience.

5.1. Difficulty to prove forgery of documents provided

During the investigations that followed operation *Vantage*, the Irish investigators found out how easy it is to obtain in certain non-EU countries genuine certificates of celibacy, or birth certificates based on false information provided by the potential “groom”. Furthermore, even if documents provided to the authorities are genuine, they might be based on false information provided with the connivance of both spouses⁵⁶.

There are other occasions when the sham marriage is conducted also in connivance with additional parties. In the Eurojust case *Agentur*, for example, the “brides” were witnesses to each other’s weddings. This scenario renders the detection of the authenticity of the documents and of the sham marriage in itself further complicated. It requires a legislative and judicial response, such as the one considered by the Cypriot Aliens and Immigration Law⁵⁷ or the Italian Criminal Code (Articles 476 and 482), which regulate

51 In this regard, see ECtHR cases: *Abdulaziz, Cabales and Balkandali v. the United Kingdom* (9214/80, 9473/81 and 9474/81), *Jeunessev v. the Netherlands* (12738/10), or *B.A.C. v. Greece* (11981/15).

52 See ECtHR case-law: *Lauder v. UK* (27279/95), *Aronica v. Germany* (72032/01), *Boughanemi v. France* (22070/93), *Tekin v. Turkey* (19302/09 and 49089/12), *King v. UK* (9742/07), *Shakurov v. Russia* (55822/10).

53 In this regard, see e.g. the Judgement 245/11 of the Italian Constitutional Court. Such balance was specifically targeted in the so-called pacchetto sicurezza (Law no. 94/2009). On that occasion, the Court declared as unconstitutional a certain part of the Italian requirements for the recognition of marriages between Italian and non-Italian citizens; in particular, the need for the foreign citizen to produce a valid Italian residence permit in order to get married in Italy was deemed as an excessive burden, thus illegitimate under the Italian Constitution.

54 In this regard, under Romanian Law, the effects of nullity of sham marriage do not affect children resulting from marriage in the sense that they do not lose the status of children born in marriage, with all the consequences arising from this legal regime. Instead, in order to establish the obligations between the parents and the children born from an annulled fictitious marriage, the rules regarding divorce apply.

55 See section 3.1. *supra*.

56 See section 4.2 *supra*.

57 According to this provision an alien or citizen of the Republic of Cyprus who has performed a marriage of convenience or in any way has contributed to the performance of such marriage, is guilty of an offence and upon conviction is liable to imprisonment for a term not exceeding 3 years or to a fine or both.

material falsehood committed by respectively public officers and private individuals, aggravated by the crime of aiding and abetting illegal immigration. Under the Dutch Civil Code, the Prosecution Service

is authorised to stop an intended marriage as a sham marriage when the intention of the marriage is admission to the Netherlands⁵⁸.

5.2. Difficulties in preventing the effects of the marriage for the purpose of obtaining residence rights and further benefits

Interviews with the practitioners, when analysing Eurojust casework, revealed that the **effects of the marriages continue** although the members of the OCGs were brought to justice. Admittedly, this situation is at the cross roads of the civil and criminal law realms but has direct implications for EU fight against the facilitation of illegal immigration and -on many occasions- THB.

Although most Family laws of the EU Member States provide for the possibility to annul a marriage of convenience from the moment the bogus marriage has been confirmed -*ex nunc*⁵⁹-, they do not necessarily provide for the possibility to declare void and annul the sham marriage *ex tunc* (i.e., *ab initio* and hence no residency or other rights would have ever been generated). Most EU Member States provide in their Alien or Residency laws for the possibility to deport the third country national (e.g.: Denmark or Cyprus, see below) or to withdraw residence permits⁶⁰.

Here are some more examples on how the EU Member States address this issue: the Bulgarian legislation on residency denies issuance of documents for long-term stay or permit to reside in Bulgaria or continuation of the term of such permit, if a *sham marriage* is detected⁶¹. Section 27 of the German Residence Act prohibits immigration on the basis of a marriage of convenience and Estonian Citizen of the EU Act allows the refusal of rights for temporary residency⁶². The Croatian Alien Act provides for the definition and circumstances indicating a marriage of convenience and for the consequences for entry and residency when detected⁶³. The Cypriot Advisory Committee is consulted by the Director of the Civil Registry and Migration Department. Should it be concluded that there was a sham marriage, the non-EU national would be forbidden to remain in the Republic of Cyprus, cancelled or denied the renewal of their residence permit and ordered their deportation⁶⁴.

5.3. Lack of a coordinated approach among national administrations

The lack of **centralisation of civil registries** is also seen as an impediment to effective detection of sham marriages, as exemplified in a Czech case brought to Eurojust. The fact that in some EU Member States civil registries are decentralised by region, can be exploited by the OCGs (e.g.: see case illustration on *Just Married*, below). In several Eurojust cases, examples of bigamy within the same country were detected.

The lack of **communication between various**

administrative national bodies makes the work of law enforcement more complicated. Civil registers, company registers (in cases involving bogus companies), tax administrations, immigration services or consular services are only a few of the administrative actors often involved in sham marriage cases at Eurojust. The lack of a consistent and holistic approach, including the exchange of information, was felt as an impediment to a proper judicial response, as shown by Eurojust casework. The gathering of

58 Article 1:53 Civil Code.

59 E.g.: Article 9(6) Estonian Family Law Act, Article 1:71a Dutch Civil Code.

60 E.g.: Lithuanian Legal Status of Aliens (Article 50 (3)) or Slovenian ALIENS ACT (ZTuj-2).

61 Article 12a and Article 26 & 3 and 4 of the Law for Entering, residing and Leaving the Republic of Bulgaria of EU citizens and Members of their Families (*op. cit. supra*)

62 Ref.: ELKS, (RT I, 23.03.2015, 13) § 26: <https://www.riigiteataja.ee/akt/ELKS>

63 Articles 57, 39 and 43 of Croatian Alien Act.

64 Article 7 of the Cyprus Aliens and Immigration Law.

information is made more difficult to the segmented sources. The lack of awareness and/or capacity of front

line civil registry authorities is an impediment to law enforcement response, let alone a judicial follow up.

5.4. Difficulties in tracing the preparations and payment of these activities

The difficulty of launching investigations and prosecutions is **exacerbated by the use of social media** offering online services to potential “grooms”. In the *Just Married* case at Eurojust, investigators highlighted that the use of social media and the difficulties associated to tracking the originator of the posts rendered the investigation and prosecution more difficult.

The financial investigations of this *modus operandi* are also extremely difficult since the criminals tend to use the hawala **and Other Similar Service Providers**⁶⁵

for receiving the payments from the potential “grooms” ([REDACTED]). Through these parallel banking systems, there is no physically or electronically move of money, which renders the traceability of the financial flux rather difficult. An additional difficulty is that some EU Member States do regulate *hawala* as a regularised sort of banking (e.g.: Germany), others do criminalise it (e.g.: Italy⁶⁶) and the majority of the EU Member States do not contemplate it as either a legal or illegal activity.

6. Remedial actions

6.1. Harmonisation of national legislations

In Member States in which the **offence is not criminalised** or is sanctioned with a mild penalty, other type of charges can be pressed, as indicated in table #1. Such charges vary from country to country. As analysed in section 4.2. *supra*, they can relate to document fraud, conspiracy to defraud or deception (e.g.: Ireland), false declaration (e.g.: Estonia), facilitation of unauthorised crossing of state borders (Czech Republic, Greece, Croatia, Spain, Italy, Lithuania or Poland), provision of false information for the purpose of acquisition of a document (e.g.: Latvia).

Probably, should all the EU Member States had accomplished the obligation of criminalisation of facilitation of unlawful entry under the abovementioned Council Directive 2002/90/EC of 28 November 2002, little obstacles for mutual legal assistance would arise from the double criminality principle (see section 4.1. *supra*).

On the legislative front, some country have **adjusted their legislation**. In France for example, the legislation has changed to create new forms of crimes. Such is highlighted by the judgement of the Court of Appeal of Rennes (Decision dated 27 October 2014) where the court based its decision on the law dated 26 November 2003 (Ref. n 2003-119) which criminalises the fact to marry or to facilitate the marriage with the sole aim to obtain or facilitate the issuance of French nationality. This legislative change is reflected in Art. L-623-1 of the Code of Code of Entry and Stay of Aliens and Right of Asylum⁶⁷.

The Eurojust analysis of the French jurisprudence for example highlighted that fraudulent recognition of paternity for the purpose of obtaining residence permits was relatively commonly used. In Belgium, sham legal recognition of a child was introduced by Law 02/06/2013 (Article 21, introducing Article

65 The term ‘*Hawala* and Other Similar Service Providers’ or HOSSPs “generally are cash-in and cash out businesses that primarily send personal remittances of low value.” Source: Financial Action Task Force (FATF) Report: The role of Hawala and other similar service providers in money laundering and terrorism, 2013, page 9. <https://www.imolin.org/pdf/imolin/Role-of-hawala-and-similar-in-ml-tf-1.pdf> (last visit on 25.05.2020)

66 Within the Italian Criminal Code, such system can be punished under the provision of illegal brokerage activities (“illegal collection of deposits and illegal foreign exchange brokerage”), ex Articles 648bis and 648ter, aggravated by the trans-nationality of the crime as envisaged in Article 4 of Law no. 146/2006. Additional regulation regarding the *hawala* and its money-transfer system is also found in article 5, paragraph 3 of the legislative decree 153/1997 and in article 132 of the legislative decree 385/1993, which specifically concern unlawful brokering activities.

67 Eurojust analysis of the French jurisprudence. January 2017: [http://www.eurojust.europa.eu/doclibrary/Eurojust-framework/caselawanalysis/French%20Jurisprudence%20on%20illegal%20immigrant%20smuggling%20\(January%202017\)/2017-01_FR-IIS-report_EN.pdf](http://www.eurojust.europa.eu/doclibrary/Eurojust-framework/caselawanalysis/French%20Jurisprudence%20on%20illegal%20immigrant%20smuggling%20(January%202017)/2017-01_FR-IIS-report_EN.pdf)

79ter-bis in the Penal Code). Similarly, the Hungarian Criminal code punishes the **abuse of family ties**⁶⁸ and the Austrian Settlement and Residence Act regulates adoption for the purpose of enabling the alien to reside in a Member State, albeit as a civil claim⁶⁹. In the case of Romania, according to Government Emergency Ordinance (GEO) no. 194/2002, similar verifications can be performed in the case of **partnership**, in order to determine if it has been concluded or is declared in order to benefit from the right of residence on the

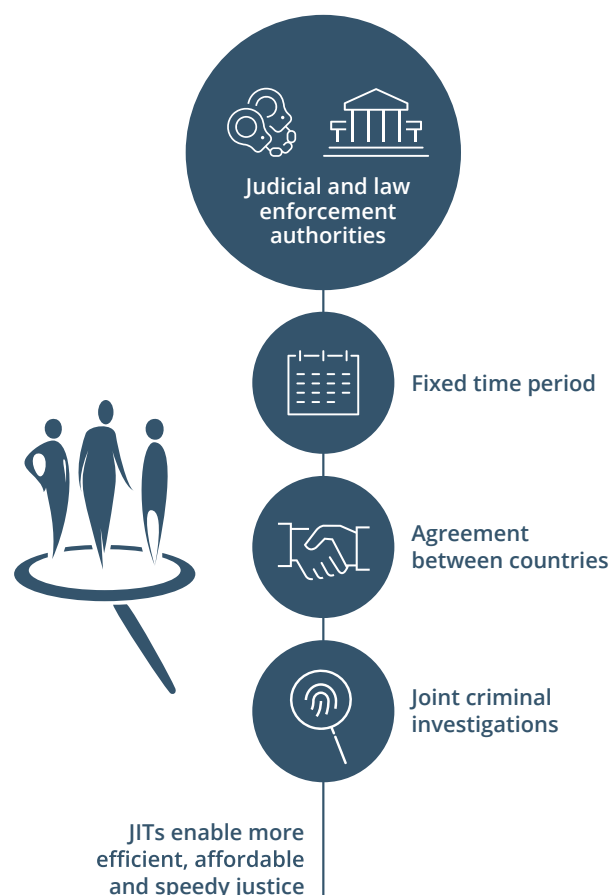
Romanian territory⁷⁰. Similarly, in Belgium, as new forms of legally recognised cohabitation evolve, so did the legal system. In 2013 (Law 02/06/2013, Article 21) sham legal cohabitation was introduced (Article 79ter Penal code), since this new method of obtaining residence in Belgium was detected. In Belgium, the possibility exists to sign a contract between persons who live together containing mutual rights and duties. As control on *sham marriages* grew this **sham legal cohabitation** became a new *modus operandi*.

6.2. Joint Investigation Teams as the most effective cooperation tool

As main outcome of the analysis of Eurojust casework, all practitioners interviewed for the elaboration of this report shared the opinion that the setting up of a JIT is the most efficient and expeditious way to exchange information, thus bringing the parallel investigations at a similar level of maturity, allowing cross checking of information and reinforcing the respective investigations by making connections between the ongoing cases and ensuring a coordinated approach to avoid the risk of *ne bis in idem* in the parallel prosecutions (see section 4.3. *supra*).

The Commission Handbook acknowledges the prominent role played by Eurojust in the establishment of JITs and in extracting and disseminating best practices therein: ***“Eurojust can assist the national authorities to investigate or prosecute specific acts, to coordinate with one another, to set up a Joint Investigation Team (JIT) or may supply logistical support, e.g. assistance in translation, interpretation and the organisation of coordination meetings.[...] Europol and Eurojust can help EU Member States set up Joint Investigation Teams. JITs are suitable and useful tools for effective investigations and prosecutions of cases related to trafficking in human beings and can offer solutions for addressing the lack of national financial resources needed to proceed with the investigations. The EU agencies also participate in a supportive role and can provide necessary funding to the national authorities involved to cover the costs of joint investigations.***

*Cross-border co-operation may help to overcome significant differences between the national legal systems, for example to seek the best venue for prosecution to resolve a conflict of jurisdiction where two or more EU Member States can have grounds for prosecution. JITs can also include temporary exchange of liaison officers to assist in debriefing of own nationals involved in the abuse.*⁷¹



68 Act C of 2012 on the Criminal Code Art. 355: Any person over the age of eighteen years who enters into a family relationship for financial gain for the sole purpose of obtaining a document verifying the right of residence, or consents to a statement of paternity of full effect is guilty of a misdemeanour. In Hungarian law criminal offences may be classified as felonies and misdemeanours. Felony is a crime committed intentionally which is punishable under Criminal Code by imprisonment of more than two years. Every other criminal offense is a misdemeanour.

69 Article 30, Austrian Settlement and Residence Act.

70 Article 16 (5) *op. cit. supra*.

71 See *op. cit. supra*, page 45.

The Just Married case: stopping exploitation of Czech women in sham marriages with Kosovar men



The Czech authorities investigated an organized crime group (OCG) that arranged sham marriages to enable Kosovar men to enter and live in the territory of Schengen countries, mainly Germany

The OCG contacted and recruited Czech women from vulnerable groups living in extreme poverty, mostly of Roma origin, as instrumental to their plot. The OCG charged about 20,000 EUR per marriage. The women would obtain a gain of about 300 EUR.



A parallel investigation was being conducted in Germany where it was detected that the marriages were contracted on several federal states (the epicentre being in Hamburg) and under forged documents. The German investigation had links with Bulgaria, Romania and Kosovo. More than 70 cases had been detected.



EUROJUST

Eurojust assisted with the execution of mutual legal assistance instruments and coordinated further actions leading to the setting up of a **joint investigation team**, funded by Eurojust. One of the main challenges encountered in the investigation of this case was that in Germany, legislation on marriage is not harmonised at national level. Civil registries are held at municipal level, which renders checks difficult and provides easier grounds to the OCGs to conduct this way of smuggling in several locations with the same brides". To overcome this question, the investigation team suggested the setting up of a 'task force at federal level involving all institutional actors.

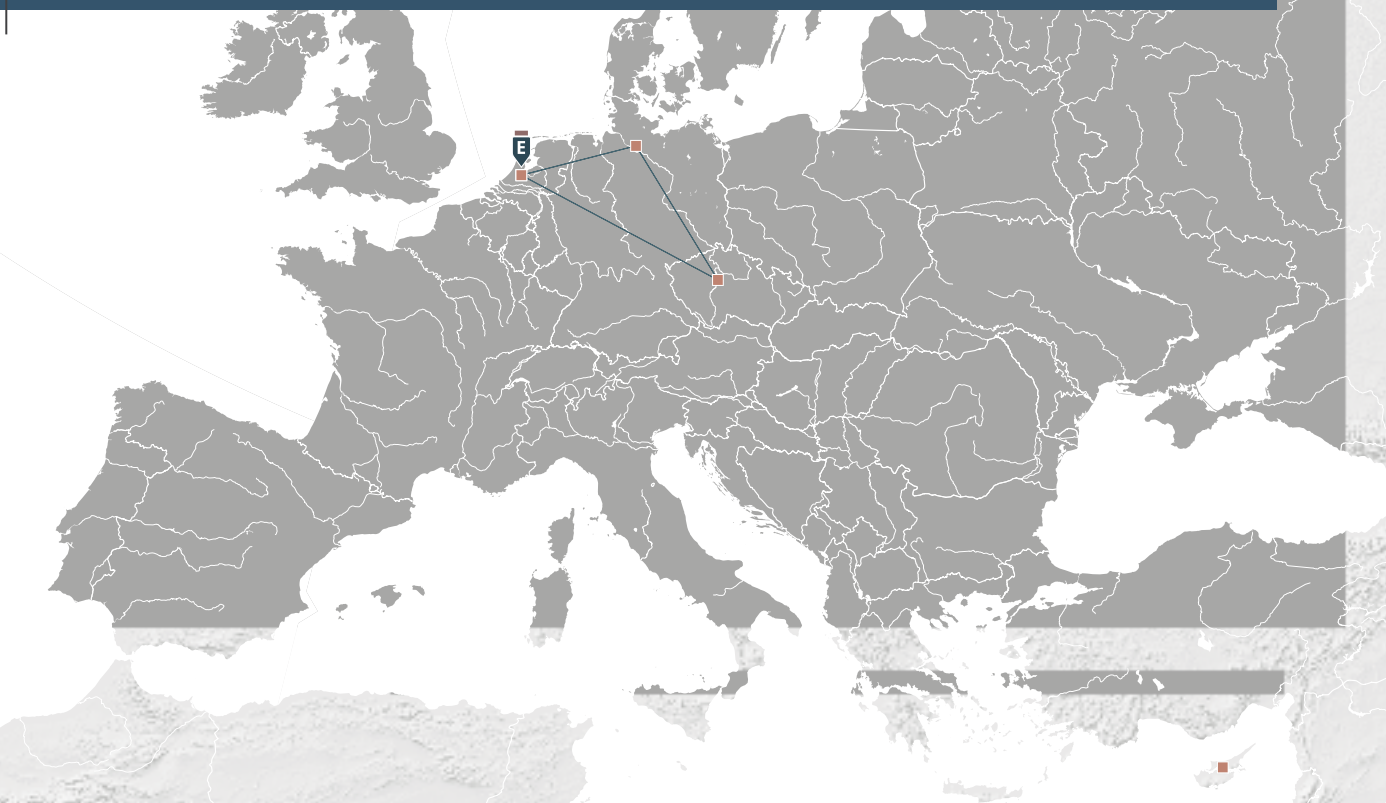
For the full dismantling of the OCG, the German investigators **traced the source of the migration flow by including in the Task Force the Ministry of Foreign Affairs and the German Embassy in Kosovo**, to raise awareness and seek the cooperation of the Kosovar government.

Eurojust organised a **coordination meeting in Prague, which enabled participation of more than 20 officials** both from Germany and the Czech Republic. Several other operational meetings addressed difficulties related to a potential lack of jurisdiction and the possibilities to **concentrate the investigations/prosecutions**.



As a result of a joint action day, 38 indictments were issued in Germany.

This case contributed to the creation of multi-disciplinary law enforcement teams in Germany at federal state level to tackle the sham marriage phenomenon. Since 2017, these teams are composed of forensic officers, THB specialists, specialists in organised crime and experts in fraud, which shows the poly-criminality feature of this form of smuggling.



6.3. Coordinated prosecutorial strategies: transfer of proceedings and victim's protection

Given the level of complexity of this form of criminality - which entails the involvement of cross-border OCGs as pivotal- Eurojust is called to play a central role in identifying the links among the different criminal activities that might be disperse in several jurisdictions (within or outside the EU).

Further, Eurojust facilitates the investigations and avoids the risk of *ne bis in idem* by promoting **coordination of parallel prosecutions** among the authorities involved.

Transfer of proceedings resulting from the design of a sound prosecutorial strategy allowed circumventing jurisdiction issues that would prevent from prosecuting this migrant smuggling *modus operandi*. In the analysis of Eurojust casework, on occasions, the country having difficulties ascertaining its jurisdiction over the charge of facilitation of illegal immigration of entry of third nationals on its territory, because of its legislation requiring a physical trespassing of the borders⁷² was remedied through a transfer of

the file to the ongoing parallel investigation in other countries where that condition is not required for the qualification of the offence.

When the sham marriage adopts the form of "exploitative sham marriage", the protection of the **victims** shall be reinforced. This action would also require a holistic approach. In this regard, as way of example, several agencies in Estonia are involved in the identification of victims of human trafficking and exploitative *sham marriages* and in the provision of support services for victims⁷³. The Dutch Immigration National Department (IND) also concludes that: "*Facilitating and taking part in sham marriages may be linked to criminal activities, such as human smuggling and human trafficking. Sham marriages therefore result in victims*"⁷⁴. The vulnerability of the victims, especially in cases of *sham marriages* bearing elements of THB, is also acknowledged by the Czech criminal law (although here, the offence would be solely qualified as THB, where the marriage of convenience would have been the means of exploitation of the victim).



72 Section 340 Czech Criminal Code.

73 See references to the current Estonian Development Plan and Strategy for Reducing Violence covers the period from 2015 to 2020 (*Justiitsministeerium* 2015) at: <https://www.heuni.fi/material/attachments/heuni/reports/ci5Y5cgbB/Nettiin.pdf> (see *supra*) According to this source: *Guidelines for identifying victims of trafficking were first developed in 2009 and are currently being updated to include the latest changes in Estonian law* (page 81 of the Report).

74 See *op.cit. supra*, page 7. See also: <https://ind.nl/en/about-ind/background-themes/pages/marriage-of-convenience.aspx>

6.4. A coordinated holistic approach in the response

Building up on one of the conclusions of the Commission Handbook advocating for robust and holistic policies addressing marriages of convenience⁷⁵, Eurojust casework was analysed to extract the best practices developed by practitioners and the solutions found to overcome legal and practical obstacles in this regard.

The lack of centralisation of civil registries and the lack of communication between various administrative national bodies were evoked as the main pitfalls in the prevention of this *modus operandi*. Hence the necessary coordination with the relevant civil and administrative authorities dealing with celebration, registry and validity of marriages as well as with the Consulates in third countries and with the administrative instances in these countries. In this regard, cooperation with the countries of origin of the potential “grooms”, raising awareness of the faulty administrative practices and its further illicit consequences, is becoming a trend among Member States.

Further, as the analysis of Eurojust casework draws, the isolated fact that a Member State would criminalise this *modus operandi* as an offence, does not seem to be a sufficient deterrent for the OCGs to move their activities from that country.

Indeed, the **holistic approach** proved relevant in an Irish case whereby the change of legislation gave more power to civil registries – operation *Vantage*. Up to 2015 *sham marriages* were a major issue in Ireland. Once a more stringent legislation on civil registry, on the definition of “*impediment*” and increasing the powers of the Civil Registrar to determine whether marriages are marriages of convenience or not, and the subsequent criminal prosecution for facilitating migrant smuggling, should the false statement would be discovered, made that the number of sham marriages drastically decreased in the country.

In Denmark, as a result of the Agentur case, a specialised unit has been set up to control and scrutinise all marriage applications where the persons wanting to get married are not both Danish or Nordic nationals or both have permanent residence permit in Denmark. Similarly, according to the Romanian legislation, the Romanian Immigration Office is entitled to take a number of actions in order to find out if within the respective case it is about a real or convenient marriage⁷⁶. Additional checks that may be performed in order to attest to the reality or fictitious nature of the marriage between a Romanian and a non-EU citizen include checks at the marital home and interviews with spouses or even with third parties.

In a Joint Investigation Team signed under the auspices of Eurojust in the case *Just Married*, the German authorities involved diplomatic channels to tackle the root of the problem in a third State. In the same case, the creation of a dedicated **ad hoc multidisciplinary task force** comprised of representatives of the Ministry of Foreign Affairs (MFA) and the police proved instrumental in pursuing the case.

⁷⁵ See *op. cit. supra*, page 46.

⁷⁶ When the officers from the Immigration Inspectorate, based on the evidence gathered, conclude that they are in the presence of a marriage of convenience case, the extension of the right of residence will be refused and a decision to return to the state of origin will be issued with the obligation for him or her to leave the territory of Romania within a certain period. Further, the granting of a long-stay visa for family reunification may be refused when the application is based on a previously established marriage of convenience and the right of long-term or temporary stay will be cancelled. Government Emergency Ordinance (GEO) no. 194/2002 regarding the regime of foreigners in Romania: <https://ec.europa.eu/migrant-integration/librarydoc/government-emergency-ordinance-no-194/2002-on-the-legal-status-of-aliens-in-romania>

A similar approach is to be found in Estonia. The Estonian consulates collect information about the marriages of Estonian citizens registered abroad and forward it to the Estonian Vital Statistics Office. Department officials then enter the data into the Estonian Population Register. Estonian diplomatic missions often perform identification of potential victims of trafficking or people entering into sham marriages.⁷⁷

Likewise, Greece conducts interviews at its consulates abroad, prior to issuing a visa, with family members applying for reunification. Under the Romanian law, it is mandatory in accordance with art. 2588-2587 of the Romanian Civil Code, for the marriage to have been concluded either on the territory of Romania or before a Romanian diplomatic agent or consulate. Otherwise, the legislation of the State in which the conclusion of the marriage took place will apply.

The Dutch Government aims at tackling *sham marriages* in an integral and coordinated way. As a result two national action days against *sham marriages* that took place in May 2015 -in which several different institutions participated- 48 cases were being handled, with 42 administrative law cases, resulting in 5 arrests⁷⁸. During the Dutch national campaign against *sham marriages*, the police, the Public Prosecution Service, the Immigration and Naturalisation Service (IND), municipalities, the Inspectorate SZW (Social Affairs and Employment Inspectorate), the Royal Netherlands Marechaussee (KMar), the Repatriation and Departure Service (DT&V) worked together closely in effectively fighting *sham marriages*⁷⁹. As a preventive measure, the Dutch government applies stricter checks of potential marriages of convenience –e.g.: separate interviews- with the

support of the civil registry personnel. As outcome of these checks, residence permits may be denied.

In Spain, the investigation can be initiated by the Public Prosecutor or the investigating Judge after the notice given by the Police or the Foreign Central Register (Aliens' Register).

The Cypriot Advisory Committee consists of representatives of the following Offices: the Ministry of Justice and Public Order, the Department of Social Welfare Services, the district where the spouses reside and the Director of Civil Registry and Migration Department⁸⁰.

To reinforce this holistic approach, facilitation of the interconnection of data in the Civil Registries seems to be an appropriate measure. The 1958 Convention of the International Commission on Civil Status (ICCS)⁸¹ may be a first step in this direction. This Convention on the international exchange of information relating to civil status provides for: "*all civil registrars performing their duties in the territory of one of the Contracting States must, when making or transcribing a record of marriage or of death, give notice thereof to the civil registrar for the place of birth of each spouse or of the deceased, if that place is situated in the territory of one of the other Contracting States. However, any State may make the giving of such notice conditional upon its concerning a national of the receiving State.*"⁸²

77 *Exploitative Sham Marriages: Exploring the Links between Human Trafficking And Sham Marriages In Estonia, Ireland, Latvia, Lithuania And Slovak Republic*, op. cit. supra; p.81. The HESTIA project "Preventing human trafficking and sham marriages: A multidisciplinary solution" covers the years of 2015-2016 and is co-funded by the Prevention of and Fight against Crime Programme of the EU. More information from here: <http://www.trafficking.lv/en/preventing-human-trafficking-and-sham-marriages-a-multidisciplinary-solution-hestia>. The project research was conducted in five countries - Latvia, Lithuania, Estonia, Ireland and Slovak Republic.

78 Immigration National Department (IND) Annual Report 2015, page 6: https://ind.nl/en/Documents/AR_2015.pdf

79 See op. cit. supra, page 7.

80 Other countries with holistic approach are: Belgium, Bulgaria, Germany, France (where civil and criminal proceedings are both dealt together), Italy, Latvia, Austria and Slovenia.

81 *The ICCS is an intergovernmental organisation whose aim is to facilitate international co-operation in civil-status matters and to improve the operation of national civil-status departments. To this end, it keeps up-to-date a documentation on legislation and case-law setting out the law of the member States, provides those States with information and expertise, carries out legal and technical studies, prepares publications and drafts Conventions and Recommendations. [It] was founded in Amsterdam in September 1948 and recognised in December 1949 by an exchange of letters between Belgium, France, Luxembourg, the Netherlands and Switzerland* (source: http://ciec1.org/SITECIEC/PAGE_Accueil/cA8AAOSzNJRZb2FTWmRVSWNJEWa?WD_ACTION_=MENU&ID=A37). Currently, the following EU Member States are Parties to the ICCS: Belgium, Spain, Greece, France, Luxembourg and the Netherlands. As Observers: Cyprus, Slovenia, Lithuania, Romania and Sweden. The ICCS collaborates with the The Hague Conference on Civil Law. In 2010 the ICCS conducted an analysis on Bogus Marriages: a study on marriages of convenience within ICCS Member States: http://ciec1.org/SITECIEC/PAGE_Etudes/5BUAAMlgnJRrV0VIWXdScORCiwA

82 Article 1 of the ICCS Convention (No. 3) on the international exchange of information relating to civil status, signed at Istanbul on 4 September 1958, at the time of its ratification was applicable to the following EU Member States: Germany, Austria, Belgium, Spain, France, Italy, Luxembourg, The Netherlands and Portugal. Poland adhered it in 2003: http://ciec1.org/SITECIEC/PAGE_Conventions/OCIAIOFjRLUGVITUp1RNd5MAA (only the French original is authentic).

7. Conclusions and Recommendations

- ▶ Building up on the European Commission Handbook on marriages of convenience, Eurojust decided to conduct an analysis of *sham marriages* cases referred to Eurojust to raise awareness among practitioners on this “low profile” and yet very effective form of migrant smuggling.
- ▶ The analysis of Eurojust casework since 2012 draws the main features of sham marriages and how international judicial cooperation is paramount for its detection and eradication.
- ▶ This report analyses the legislation in this field of the 27 EU Member States and of the United Kingdom. Currently, there are eleven EU Member States⁸³ where marriages of convenience is criminalised, either as a way of facilitating migrant smuggling or an illicit stay in the country.
- ▶ The difficulties stemming from the **differences in the national legislations** of the Member States present one of the main legal challenges identified in this report, as regard to the requirement of double criminality regarding the European Investigation Order in criminal matters.
- ▶ The **nexus with other forms of criminality** (migrant smuggling, trafficking in human beings, document fraud) and the involvement of OCGs as backbone of this complex cross-border criminal phenomenon provide for the possibility of prosecuting the *sham marriages* overcoming the obstacles for mutual legal assistance that would arise from the double criminality principle. Eurojust casework has also shown how the differences in the national legislation of the EU Member States is exploited by the OCGs to conduct **forum shopping**.
- ▶ The disparity of national legal regimes may provide **different investigative tools**, depending on the qualification of the acts in each country. Further, **parallel investigations** carried out in different countries may lead to the risk of double incrimination or *bis in idem*.
- ▶ The **lack of a coordinated approach among national administrations** appears as the most recurring obstacle evoked by the practitioners interviewed by Eurojust.
- ▶ **Best practice and main lessons learned** extracted from the Eurojust casework, conclude that given the level of complexity of this form of criminality – which implies the participation of cross-border OCGs – Eurojust is called to play a central role in identifying the links among the different criminal activities that might be dispersed in several jurisdictions (within or outside the EU). Similarly, Eurojust facilitates the investigations and avoids the risk of *ne bis in idem* by promoting **coordination of parallel prosecutions** among the authorities involved. Coordinated prosecutorial strategies may imply the **transfer of proceedings** as part of a sound prosecutorial strategy. When the *sham marriage* adopts the form of “exploitative sham marriage”, the protection of the **victims** shall be reinforced and hence may the transfer of proceedings be favoured. Coordination between different investigations through a **Joint Investigation Team**, proved to be the most effective tool. In addition, the **harmonisation of national legislations** in this field would reduce obstacles for mutual legal assistance. Further remedial actions are proposed such as the **holistic approach** to palliate the lack of communication between various administrative national bodies.

83 Belgium, Bulgaria (partially), Czech Republic, France, Cyprus, Latvia, Hungary, Malta, Austria, Portugal, Slovak Republic.

ANNEX I: EU Member States legislation on criminalisation of marriages of convenience

This document gathers whether the EU Member States have criminalised entering into *sham marriages* in their respective jurisdiction. Where entering marriages of convenience is not criminalised, an alternative legal basis is provided according to which suspects may be prosecuted.

The research relies on the replies of the members of the Focus Group on migrant smuggling or the National Desks of Eurojust in 2023.

Countries with an * did not provide updated information.

EU Member State	Incrimination Yes/No	If Yes, legal basis	If No, alternative legal basis	Penalties	Comments
Austria	Yes	Article 117 Aliens Police Act – Entry into and arrangement of marriages for purposes of residence	Article 193 Criminal Code – <i>Ehetäuschung</i> (marriage deceit)	<p>Art 117 Aliens Police Act: person entering the marriage – fine up to 360 daily units.</p> <p>Art 117: person entering the marriage with purpose of enriching him/herself - Imprisonment up to 1 year or a fine up to 360 daily units.</p> <p>Art 117: person arranging the marriage: imprisonment up to 3 years.</p> <p>Art 193 Criminal Code – Imprisonment up to 1 year or fine up to 720 daily units.</p>	<p>Civil claim: Article 30 Settlement and Residence Act – marriage and adoption for the purpose of enabling the alien to reside in a MS.</p> <p>A person who just helps to arrange such a marriage without getting paid would only be punishable as an accessory to the bride/groom with a fine of up to 360 daily units.</p>
Belgium	Yes	Article 79bis of the Law on access to the territory, residence, establishment and removal of foreigners (15 December 1980, modified on 2 nd June 2013) inserted by Law 2006-01-12/49, Art 2. 039. Effective as of 21 February 2006.	<p>2013 (law 02/06/2013 – Art.21)</p> <ul style="list-style-type: none"> - the penalties for sham marriages more severe - sham legal cohabitation has been introduced (article 79ter Penal code) - sham legal recognition of a child has been introduced (article 79ter-bis Penal Code) <p>2018 (law 19/09/2017)</p> <ul style="list-style-type: none"> - additional possibility to prosecute a person receiving valuable goods to get into a sham marriage 	<p>2013 (law 02/06/2013 – Art.21)</p> <ul style="list-style-type: none"> - the penalties for sham marriages more severe (from 1 month up to 5 years, if forced) - sham legal cohabitation has been introduced (article 79ter Law of 15.12.1980) - sham legal recognition of a child has been introduced (article 79ter-bis Law of 15.12.1980) 	<p>The legislation concerning sham marriages was not rigid enough, the penalties were so insignificant that they did not have any effect.</p> <p>New methods of obtaining residence in Belgium were detected, such as sham legal cohabitation. In Belgium the possibility exists to sign a contract between persons who live together containing mutual rights and duties. As control on sham marriages grew this was a new <i>modus operandi</i>.</p> <p>Another new method to obtain residence in Belgium was the use of the legal recognition of a child, by persons who did not have any relationship at all.</p>
Bulgaria	Partial (criminalised if coercion)		<p>Article 177 Criminal Code /CC/ - amended with new provisions introduced in 2019 - coerce a person to marry by using force, threats or abuse of power ; solicit a person that does not understand the nature and meaning of the act of marrying, to enter into a marriage; abduct a person with the aim of coercion into marrying; solicit a person to cross into another country's territory by misleading him/her, with the aim of forcing that person to marry</p> <p>Article 12a of the Law for Entering, residing and Leaving the Republic of Bulgaria of EU citizens and Members of their Families – members of families of EU citizens may be denied issuance</p>	<p>Art 177 CC – Imprisonment between one to six years; or between three to eight years if the crime was committed by a parent, a relative or a custodian, or towards an underage person, or with aim of acquiring financial gain.</p> <p>Art 12a of the Law for Entering residing and Leaving the Republic of Bulgaria of EU citizens and Members of their Families – denied issuance of documents for long-term stay</p> <p>Art 32 of the same Law – fine between 20-150 BGN.</p> <p>Art 48 of the Law regarding Foreigners in Republic of Bulgaria – 500-5000 BNG fine if a foreigner</p>	<p>The new /introduced in 2019/ Article 12a of the Law for Entering, residing and Leaving the Republic of Bulgaria of EU citizens and Members of their Families, provides that the data on whether the marriage is of convenience, can be established by officials, after review of presented documents, or through checks and investigations conducted by State officials, or through interviews conducted by competent organs of the Ministry of Interior, and also through statements made by the concerned or by third persons.</p>

EU Member State	Incrimination Yes/No	If Yes, legal basis	If No, alternative legal basis	Penalties	Comments
			<p>of documents for long-term stay, if there is a sham marriage.</p> <p>Article 32 of the same Law – statement of untrue data upon application for document issuance under this Law</p> <p>Article 26, par. 3 and 4 of the Law regarding Foreigners in Republic of Bulgaria – a foreigner may be denied issuance of permit to reside in Bulgaria or may be denied continuation of the term of such permit, if there is a sham marriage.</p>	exceeds the term of a permit for residing in Bulgaria.	
Croatia*	No		<p>Article 39 Aliens Act – illegal entry of an alien into the Republic of Croatia</p> <p>Article 43 Aliens Act – Prohibition to assist an alien</p> <p>Alien Act provision on ability to work in Croatia without residence and work permit.</p> <p>Article 222(8) Aliens Act – use of invalid documents</p> <p>Article 225(1) Aliens Act – carrier transporting an illegal alien</p>	<p>Art 222(8) – Imprisonment up to 60 days or fine between 3000-7000 HRK.</p> <p>Art 225(1) fine up to 23.000 HRK</p>	Article 57 Alien Act on marriage of convenience (definition, circumstances indicating a marriage of convenience)
Cyprus	Yes	Article 7D Aliens and Immigration Act, Chapter 105 of the Laws	<p>Article 180 Criminal Code</p> <p>Marriage ceremony fraudulently gone through without lawful marriage</p>	Article 7D Aliens and Immigration Act – Imprisonment up to 3 years and/or a fine not exceeding 3000 pounds.	<p><u>Article 7 of the Aliens and Immigration Law</u></p> <p>A) If the Director of Civil Registry & Migration Department, based on evidence mentioned following of the present article or by any other way and after the Director consults with the Advisory Committee, concludes that an alien has entered into a marriage of convenience, then:</p> <ul style="list-style-type: none"> -Forbids the said alien to remain in the Republic of Cyprus, -Cancels or denies the renewal of the alien's residence permit & orders his/hers deportation, -The Director of the Civil Registry & Migration Department or his/hers representative may interview the couple, together or apart, or any other person in a position to provide information, in order to reach a conclusion on whether or not marriage is one of convenience <p><u>Evidence that tend to show that a marriage of convenience has taken place are mainly the following:</u></p> <ul style="list-style-type: none"> -The spouses do not cohabit under same roof -The spouses have never met before their marriage -Lack of appropriate contribution to the responsibilities arising from the marriage -The spouses are inconsistent about their respective personal details (name, address, nationality & occupation), about the circumstances of their first meeting, or about other important personal information concerning them -The spouses do not speak a language understood by both -A sum of money has been paid in order for the marriage to be contracted (with exception of money given in form of a dowry in the case of nationals of countries where the provision of dowry is a common practice)

EU Member State	Incrimination Yes/No	If Yes, legal basis	If No, alternative legal basis	Penalties	Comments
					<p>-Previous marriages of convenience contracted by one or both of the spouses in the past or problems regarding their residence permit in the Republic</p> <p><u>The above information could be provided by:</u></p> <p>-Statements by any of the spouses or by third parties</p> <p>-Information obtained from investigations & inquiries carried out by the Director of Civil Registry & Migration Department</p> <p>-Information from written documentation brought before the Director of Civil Registry & Migration Department</p> <p>B) An Advisory Committee is established which advises the Director of Civil Registry & Migration Department during the examination of cases of marriages of convenience</p> <p>The Advisory Committee consists of:</p> <p>-A representative of the Ministry of Justice & Public Order</p> <p>-A representative of the Department of Social Welfare Services</p> <p>-A representative of the District Officer of the district where the spouses reside</p> <p>-A representative of the Director of Civil Registry & Migration & Department</p> <p>C) A decision taken by the Director by virtue of article 7A (i.e. declaring marriage as a marriage of convenience & prohibiting the remaining of the spouses in the Republic of Cyprus), is subject to a hierarchal appeal before the Minister of Interior & is exercised within 20 days from day of rendering the decision</p> <p>-The above mentioned decision taken by the Director cannot be executed unless the deadline to exercise the hierarchal appeal has passed & in case of exercising such appeal, before the issuing of a decision on it</p> <p>-The Minister of Interior issues his decision within 90 days from the day of exercising the hierarchal appeal</p> <p>-In case of filing a hierarchal appeal, the appellant is entitled to remain in the Republic of Cyprus until the issuing of Minister's decision</p> <p>-In case that a hierarchal appeal is rejected by the Minister of Interior the appellant may, if s/he wishes to appeal the decision before the Supreme Court, according to Article 146 of the Constitution within 75 days</p> <p>D) An alien or citizen of the Republic of Cyprus who has performed a marriage of convenience or in any way has contributed to the performance of such marriage, is guilty of an offence & upon conviction is liable to imprisonment for a term not exceeding 3 years or to a fine or both such imprisonment & fine</p>
Czech Republic	Yes	<p>There is no specific provision in the Czech Criminal Code, but marriages of convenience may be prosecuted according to several sections of the Criminal Code.</p> <p>Section 341 Criminal Code – Assisting in unauthorized stay in the territory of the Czech Republic.</p>	<p>Section 340 Criminal Code – Organising and facilitation of unauthorized crossing of state border.</p> <p>It allows the prosecution of a person who organizes for another unauthorized crossing of a state border or who facilitates or enables another to cross a state border without authorization or facilitates or assists another after crossing a state border in transportation through the territory of the Czech Republic or</p>	<p>Section 341 – Imprisonment up to 1 year or prohibition of activity (extended if organizes the act; commits like a member of organized group; commits repeatedly; commits with the intention to conceal or facilitate commission of another criminal act; gains substantial profit; commits in a state of national peril or a state of war; gains extensive profit; commits as a soldier in a state of national peril or a state of war).</p>	<p>Comments on the Section 341 of the Criminal Code :</p> <p>Marriage of convenience can be characterized as a marriage of two persons who have married <u>freely</u> in order to allow one of the spouses to legally reside in the EU. Thus, a typical situation is when a third-country man seeking ways how to obtain residence permit in the EU. In such situations, both spouses can be considered to be according to Section 341 of the Criminal Code (facilitating unauthorized residence in the territory of the Republic).</p>

EU Member State	Incrimination Yes/No	If Yes, legal basis	If No, alternative legal basis	Penalties	Comments
		<p>Sec. 341 allows the prosecution of a person who assists other person in unauthorized stay in the territory of the Czech Republic through marriage of convenience with the intention to gain material or other profit.</p> <p>Section 172 Criminal Code – Abduction</p> <p>It allows the prosecution of a person who abducts other person to the Czech Republic or to another state, or makes such person to depart to the Czech Republic or to another state or averts him from returning from the Czech Republic or from another state, for a purpose to get married.</p> <p>Sec. 168 (Trafficking in Human Beings) allows the prosecution of a person who forces (or acts in a different way foreseen by this section) other person (if a person is an adult, the offender must use certain means foreseen by this section) to get married (a form of prohibited exploitation).</p>	<p>whoever organizes such transportation. This section may be theoretically used in the cases of marriages of convenience too.</p> <p>Section 168 Criminal Code – Trafficking in Human Beings</p> <p>Section 172 Criminal Code – Abduction</p>	<p>Section 168 – imprisonment for two to ten years (extended if: commits like a member of organized group; exposes another person to a risk of grievous bodily harm or death; the intention to gain a substantial profit; the intention to use another person for prostitution; causes grievous bodily harm; the intention to gain extensive profit; commits an act in connection to an organized group operating in several states; causes death).</p> <p>Section 172 – imprisonment for two to eight years (extended if: commits like a member of organized group; commits such an act on another for his true or presupposed race, belonging to an ethnical group, nationality, political beliefs, religion or because of his true or presupposed lack of religious faith; causes physical or mental suffering; causes grievous bodily harm; the intention to gain substantial profit; causes death; the intention to gain to gain extensive profit).</p> <p>Section 340 – imprisonment up to 2 year or prohibition of activity (extended if commits like a member of organized group; exposes another person to risk of death; causes grievous bodily harm; gains substantial profit; commits with a weapon; commits in a state of national peril or a state of war; causes death; causes grievous bodily harm; gains extensive profit; commits as a soldier in a state of national peril or a state of war)</p>	<p>Section 168 para. 2 letter e) of the Criminal Code - THB - a sign of “other forms of exploitation”. The forms of exploitation are not set exhaustively, so it would be possible to prosecute a person for THB (for other forms of exploitation) if arranging a person to marriage with benefits or forced marriage.</p> <p>Marriages of convenience are understood marriages (CZ citizen) to a third-country national with a sole purpose to obtain a right of permanent residence (and other benefits) under European Union law that a third-country national would not otherwise be entitled to gain.</p> <p>Forced marriages are understood marriages where one of the engaged couple (EU citizen) is forced to marry without his consent or against his will. Forced marriages can also be concluded in order to obtain the right of permanent residence in the EU. Suspicious elements indicating THB are typically vulnerability of a victim (e.g. ignorance of the environment and language in a foreign country, restrictions on personal freedom, economic situation, etc.)</p>
Denmark	No		<p>Article 59 Aliens Act - on the penalties for entering and staying illegally in Denmark.</p> <p>Art 59(1)(iv) Aliens Act - if the alien illegally obtains a residence permit.</p> <p>Art 59(7)(ii) Alien Act - for a person assisting an alien to unlawfully stay in Denmark.</p> <p>163 of the Criminal Code</p> <p>(1) Any person who otherwise in writing or on another readable medium makes a false statement or representation or confirms the correctness of facts not known to him for use in legal matters involving public</p> <p>Authorities is sentenced to a fine or imprisonment for a term not exceeding four months.</p>	<p>Art 59(1): fine or imprisonment for up to 6 months.</p> <p>Art 59(7) fine or imprisonment for up to 2 years.</p>	Potential further offences regarding forged documents.
Estonia	No		<p>Article 280 Criminal Code – Submission of false information</p> <p>Article 299 Aliens Act – Delivery of alien to transit zone, state border or temporary borderline</p>	<p>Art 280 Criminal Code – detention or fine up to 300 fine units, or pecuniary punishment or imprisonment up to 2 years if committed with intention of getting official documents.</p> <p>Article 299 Aliens Act – fine up to 300 fine units.</p>	<p>Article 9(6) Family Law Act gives the right to annul a <i>marriage of convenience</i>.</p> <p>Rights for temporary residency may be refused (Citizen of the European Union</p> <p>Act, ELKS, (RT I, 23.03.2015, 13) § 26)</p>
Finland	No		<p>Section 1, Chapter 18 Criminal Code – misleads into marriage</p> <p>Section 1(a), Chapter 17 – participation in the activity of an organized criminal group</p>	<p>Section1, Chapter 18 – imprisonment up to 1 year or a fine.</p> <p>Section 1(a), Chapter 17 – fine or imprisonment up to 2 years.</p>	Section 189 of the Aliens Act on the facilitation of illegal entry refers to Sections 8 and 8(a), Chapter 17 of the Criminal Code.

EU Member State	Incrimination Yes/No	If Yes, legal basis	If No, alternative legal basis	Penalties	Comments
			Section 8, Chapter 17 Criminal Code – Arrangement of illegal immigration Section 8(a), Chapter 17 Criminal Code – Aggravated arrangement of illegal immigration (OCG)	Section 8, Chapter 17 – fine or imprisonment up to 2 years. Section 8(a), Chapter 17 – imprisonment between 4 months and 6 years.	
France*	Yes	Article L623-1 Code de l'entrée et du séjour des étrangers et du droit d'asile.		5 years imprisonment and 15.000€ fine. In case of organised group 10 years imprisonment and up to 750.000€ fine	Where Art L623-1 is triggered, it is usually in conjunction with Art 313-1 Penal Code on fraud (<i>escroquerie</i>).
Germany	No		Section 95(2)2; 96 (1) Residence Act Section 9 (1) Freedom of Movement Act/EU Section 267 German criminal code	Section 95(2)2 Residence Act: Fine or imprisonment up to 3 years. 96 (1) Residence Act: three months to five years, in less serious cases with a prison sentence of up to five years or a fine Section 267 German criminal code: imprisonment not exceeding five years or a fine. In especially serious cases the penalty shall be imprisonment from six months to ten years.	Section 27 Residence Act prohibits immigration on the basis of a marriage of convenience.
Greece	No		Article 187 Penal Code – criminal organisation Article 83 Law 3386/2005 (entry, residence and social integration of TCNs on Greek Territory – Illegal entry in and exit from the country Art 25 Law 5038/2023 – obligations of carriers – penalties	Art 187 Penal Code – imprisonment up to 10 years and a financial penalty. Art 83 Law 3386/2005 – Imprisonment of at least 3 months and 1500€ fine. Art 25 Law 5038/2023 – Imprisonment up to 10 years and fine between 30.000€ and 60.000€ for each transferred person. Heavier penalties provided for aggravating circumstances.	Greece conducts interviews at its consulates abroad, prior to issuing a visa, with family members applying for reunification.
Hungary	Yes	Act C of 2012 on the Criminal Code Art. 355 Abuse of family ties Any person over the age of eighteen years who enters into a family relationship for financial gain for the sole purpose of obtaining a document verifying the right of residence, or consents to a statement of paternity of full effect is guilty of a misdemeanour.		Imprisonment up to 2 years, or/and fine, community service work, or custodial arrest.	1: Supplementary law to be applied insofar, as the act did not result in a more serious criminal offense. 2: In Hungarian law criminal offences may be classified as felonies and misdemeanours. Felony is a crime committed intentionally which is punishable under Criminal Code by imprisonment of more than two years. Every other criminal offense is a misdemeanour.
Ireland	No		Ancillary offences such as conspiracy to defraud, deception, or providing false documents. Article 15(16) Criminal Justice Act 2011 – Provisions relating to Documents and Information Section 13 Immigration Act 2004 – Offences and power of arrest without warrant	Article 15(16) – Class A fine and/or imprisonment up to 12 months (on summary conviction), or fine and/or imprisonment up to 2 years (on conviction on indictment) Section 13 – Imprisonment up to 12 months and/or fine up to 3000€.	
Italy	No		Art. 12 par 1 d.lgs 286/98 committing any act aimed at aiding the illegal entry of an alien. Art. 12 par 5 d.lgs 286/98 Committing any act aimed at aiding the illegal permanence of an alien, if done with the intent of gaining an unlawful profit from the illegal condition of the alien.	Fort art. 12 par 1 d.lgs 286/98 the penalty is imprisonment from 2 to 6 years and a 15.000 eur fine for every person whose illegal entry was aided. According to par. 3ter, the punishment can be increased by half if the person concerned is to be inducted into prostitution, or if the author committed the act to gain a profit.	Sham marriages can fall within one of the two abovementioned crimes, provided the marriage was celebrated in order to allow someone who is not already present on State territory to enter illegally, or to allow someone who is in fact already present to remain there. In this case, the conduct is punishable only if the perpetrator aims at gaining an "unlawful" profit from the condition of the alien, thus somehow restricting the scope of the crime.

EU Member State	Incrimination Yes/No	If Yes, legal basis	If No, alternative legal basis	Penalties	Comments
			Art 10bis d.lgs. 286/98 any alien that enters or stays on the Italian territory illegally	For art. 12 par. 5 d.lgs 286/98 the punishment is imprisonment up to 4 years. For art. 10bis d.lgs 286/98 the punishment is a 5.000 to 10.000 euro fine.	Art. 10bis is the relevant crime for the beneficiary of the "sham marriage", be it the spouse or his/her relative.
Latvia*	Yes	Section 285 Criminal law - ensuring, in Bad Faith, a Possibility to Acquire the Right to Stay in the Republic of Latvia Legally, other Member State of the European Union, Member State of the European Economic Area or Swiss Confederation (1) For ensuring, in bad faith, a possibility to acquire the right to stay in the Republic of Latvia legally, other Member State of the European Union, Member State of the European Economic Area or Swiss Confederation, (2) For ensuring, in bad faith, a possibility to acquire the right to stay in the Republic of Latvia legally, other Member State of the European Union, Member State of the European Economic Area or Swiss Confederation, if it has been committed for the purpose of acquiring property or if such a possibility is ensured for two or several persons, or if it has been committed by a group of persons.		Temporary imprisonment, imprisonment not exceeding 3 years, community service or a fine. For committing offense according to the part 1 of the 285, the applicable punishment is the deprivation of liberty for a period of up to three years or temporary deprivation of liberty, or community service, or a fine. For committing offense according to the part 2 of the 285, the applicable punishment is the deprivation of liberty for a period of up to five years or temporary deprivation of liberty, or community service, or a fine, with or without the confiscation of property.	
Lithuania	No		Article 300 of the Criminal Code – Forgery of a document or possession of a forged document. Article 304 of the Criminal Code – Provision of false information for the purpose of acquisition of a document. Article 147 of the Criminal Code- Trafficking in human beings. Article 147 ¹ of the Criminal Code- Use for forced labour Article 157 of the Criminal Code- Purchase or sale of a Child	Art 300 – fine, arrest or custodial sentence up to 3 years. Art 304 – community service, a fine, or arrest. Art 147 – custodial sentence between 4 and 12 years. Art147 ¹ – arrest or custodial sentence up to 8 years. Art 157-custodial sentence between 5 and 15 years.	Art 50(3) on the Legal Status of Aliens - withdrawal of residence permit
Luxembourg*	Yes	Article 387 Penal Code	Arts 193-209-1 Penal Code on false documents	Art 387 - Imprisonment of 6 months to 2 years and/or a fine of 10.000-20.000€. Attempt is punished with imprisonment of 6 months to 1 year and/or a fine of 5000-10.000€.	
Malta	Yes	Article 38 Marriage Act – Marriages of convenience		Imprisonment up to 2 years	
Netherlands	No		Article 225 Penal Code - Creation and use of a false document. Article 226 Penal Code – falsification of authentic records.	Article 225 – Imprisonment up to 6 years and fifth-category fine (up to 74.000€). Article 226 – Imprisonment up to 6 years. Article 227 – imprisonment up to 6 years or a fifth-category fine.	

EU Member State	Incrimination Yes/No	If Yes, legal basis	If No, alternative legal basis	Penalties	Comments
			<p>Article 227 Penal Code – False declaration made in an authentic record.</p> <p>Article 227(a) Penal Code – provision of false data to obtain an advantage.</p> <p>Article 227(b) Penal Code – Withholding of mandatory information required by law.</p> <p>Article 197a Penal Code – Human smuggling (with sham marriage as an instrument).</p> <p>Article 326 Penal Code – Fraud (towards the State, in order to get a residence permit, with sham marriage as an instrument).</p> <p>(Article 1:71a Civil Code – The Prosecution Service can request a marriage to be declared as void when the intention of the marriage was to receive a residence permit)</p> <p>(Article 1:53 Civil Code</p> <p>- The Prosecution Service is authorized to stop an intended marriage as a sham marriage when the intention of the marriage is admission to the Netherlands.)</p>	<p>Article 227-a and 227-b – imprisonment of 4 years or a fifth-category fine.</p> <p>Article 197a Penal Code – Imprisonment up to 6 years and fifth-category fine.</p> <p>Article 326 Penal Code – Imprisonment up to 6 years and fifth-category fine.</p>	
Poland	No	Act of Foreigners	<p>Article 169</p> <p>In a procedure for granting a temporary residence permit to the foreigner referred to in Article 158.1 (1) or Article 159.3 (1), the authority that conducts this procedure shall determine whether the marriage was entered into for the purpose of circumventing provisions setting out the rules and conditions for the entry of foreigners into the territory of the Republic of Poland, their transit through this territory, their stay in this territory, and their exit from this territory.</p> <p>2. In the procedure referred to in paragraph 1, it shall be determined, in particular, whether the circumstances of the case indicate that:</p> <ol style="list-style-type: none"> 1) one of the spouses consented to the marriage in exchange for a financial gain, unless this resulted from a custom prevailing in a given state or a given social group; 2) the spouses fail to fulfil legal obligations arising from entering into marriage; 3) the spouses do not live together or do not run a joint household; 4) the spouses did not meet before entering into marriage; 5) the spouses do not speak a language that they both understand; 6) the spouses are not unanimous about their personal data and other important circumstances concerning them; 		

EU Member State	Incrimination Yes/No	If Yes, legal basis	If No, alternative legal basis	Penalties	Comments
			<p>7) one of the spouses or both spouses have entered into marriages of convenience in the past.</p> <p>3. In the procedure for granting the temporary residence permit to a foreigner referred to in Article 160 (3), (5) or (6), the authority that conducts that procedure shall determine in particular whether the relationship of that foreigner with the Polish citizen or the citizen of another Member State of the European Union, a member state of the European Free Trade Association (EFTA) - a party to the Agreement on the European Economic Area, of the Swiss Confederation, or of the United Kingdom of Great Britain and Northern Ireland is real and continuous.</p> <p>4. In order to determine the findings referred to in paragraphs 1 to 3, the authority conducting the procedure may request the commandant of a Border Guard division or the commandant of a Border Guard post having jurisdiction over the foreigner's place of stay to carry out the activities referred to in Article 11.1.</p> <p>5. When determining the findings referred to in paragraphs 1 to 3 and when carrying out the activities referred to in Article 11.1, the provision of Article 79 of the Code of Administrative Procedure shall not be applied.</p>		
Portugal	Yes	Article 186 National Immigration Law (Act 23/2007, amended by Act 29/2012)		Imprisonment of 1-5 years	
Romania	No	<p>Although the marriage of convenience is not incriminated as such within the Romanian criminal law, such legal situation in certain contexts are generating criminal sanctions when the constitutive elements of specific criminal offences (including human trafficking, smuggling of migrants or swindling) are met.</p> <p>When the constitutive elements of criminal offences are met penalties are as those provided by the Criminal Code for the respective offences.</p>	<p>Government Emergency Ordinance no. 194/2002 regarding the regime of foreigners in Romania constitutes the framework by which the entry, stay and exit of foreigners on the territory of Romania, their rights and obligations, as well as specific immigration control measures are regulated, in accordance with the obligations assumed by Romania through international acts to which Romania is party.</p> <p>Marriage of convenience is generally defined within Article 2 (l) of GEO no. 194/2002 as the marriage concluded with the sole purpose of evading the conditions of entry and residence of foreigners and to obtain the right of residence on the territory of Romania, and also at Article 63 as below.</p> <p>"Article 63 Marriage of convenience</p> <p>(1) The Romanian Immigration Office refuses the extension of the right of residence obtained on the basis of the marriage if, following the verifications performed, it results that that marriage is convenient. (2) The elements on the basis of which it can be established that a</p>	<p>Article 133</p> <p>Legal liability for violation of the provisions of Government Emergency Ordinance no. 194/2002</p> <p>Violation of the provisions of this emergency ordinance attracts, as the case may be, the criminal, civil, contravention or administrative liability of the guilty person.</p>	<p>Article 265 of the Romanian Criminal Code</p> <p>Evasion from measures of removal from the Romanian territory</p> <p>The evasion from the execution of the obligations established by the competent authorities, by the foreigner against whom the measure of removal from the Romanian territory was ordered or the prohibition of the right of residence was ordered, is punished with imprisonment from 3 months to 2 years or with a fine.</p>

EU Member State	Incrimination Yes/No	If Yes, legal basis	If No, alternative legal basis	Penalties	Comments
			marriage is convenient may be the following: a) marital cohabitation does not exist; b) the spouses did not know each other before the marriage; c) the lack of an effective contribution to the fulfilment of the obligations born of the marriage; d) the spouses do not speak a language understood by both; e) there is data that previously one of the spouses concluded a marriage of convenience; f) the spouses are inconsistent or there are inconsistencies in the declaration of personal data, of the circumstances in which they met or of other relevant information about them; g) the conclusion of the marriage was conditioned by the payment of a sum of money between the spouses, except for the amounts received as dowry. (3) The finding of the elements provided in par. (2) shall be performed by the interview officer. These elements can result from: a) the data obtained after the interview; b) documents; c) the statements of the persons concerned or of third parties; d) checks at the marital home or other additional checks."		
Slovak Republic	Yes	Sham marriages are criminalized relating to the offence of smuggling, and are considered as offences against public order. Legal definition : Any person who, with the intention of obtaining financial or other material benefit for himself or another either directly or indirectly, enables or helps a person, who is neither a citizen of the Slovak Republic nor a person with permanent residence in the territory of the Slovak Republic, to stay in the territory of the Slovak Republic or another member state of the European Union (e.g. sham marriages), or get an illegal job in the Slovak Republic or another member state of the European Union,	Article 356 Criminal Code	Article 356 – imprisonment of 2-8 years.	
Slovenia	No		ALIENS ACT (ZTuj-2) Article 26 - Refusal of long-stay visa if it is clear that the marriage was concluded for the purpose of obtaining a residence permit. ALIENS ACT (ZTuj-2) Article 55 - refusal to issue a residence permit if it is clear that a marriage has been entered into exclusively or chiefly for the purpose of obtaining a residence permit. ALIENS ACT (ZTuj-2) Article 146 - A fine is imposed on an individual who enables or assists an alien to enter, travel,	ALIENS ACT (ZTuj-2) Article 28a – consequence is termination of a long-stay visa. ALIENS ACT (ZTuj-2) Article 56 - temporary residence permit is annulled if it is determined the alien no longer fulfils the conditions. ALIENS ACT (ZTuj-2) Article 146 - A fine from 2,000 EUR to 4,500 EUR. Criminal Code	

EU Member State	Incrimination Yes/No	If Yes, legal basis	If No, alternative legal basis	Penalties	Comments
			<p>engage in transit or resides in the territory of Slovenia.</p> <p>Criminal Code</p> <p>Article 253</p> <p>Certification of Untrue Contents – deceiving a competent body or a notary to certify untrue matter in a public record.</p> <p>Family Code</p> <p>Article 32</p> <p>(Decision refusing a marriage)</p> <p>If it is assessed that the conditions for a valid marriage under this Code are not met, the administrative unit where the persons gave notice of marriage can issue a decision refusing to conclude the marriage.</p>	<p>Article 253 - imprisonment of up to three years.</p> <p>Family Code</p> <p>Article 47</p> <p>(2) A marriage shall be invalid if it was not concluded with the intent to create a domestic community of the spouses.</p>	
Spain	No		<p>Art 217 Criminal Code person who on purpose marries someone else knowing the previous marriage is still legally existing</p> <p>Art 219 Criminal Code – person authorizing a marriage</p> <p>Article 318bis Criminal Code – aiding clandestine immigration or illegal trafficking</p> <p>Article 392 Criminal Code – forgery of public documents</p> <p>Article 399 Criminal Code – forgery of certificate.</p>	<p>Art 217 - 6 months to 1 year imprisonment</p> <p>Art 219 – imprisonment between 6 months and 2 years and barring from public employment and office from 2-6 years.</p> <p>Art 318 – imprisonment between 4-8 years.</p> <p>Art 392 – Imprisonment between 6 months and 3 years and fine from 6-12 months.</p> <p>Art 399 – fine from 3-6 months</p>	<p>Criminalisation of bigamy even if the previous marriage was to a foreign person outside Spain (Art 217 and 219 Penal Code).</p> <p>Initiation of investigation can be done by the Public Prosecutor or the investigating Judge after the notice given by the Police or the Foreign Central Register (aliens register).</p>
Sweden	No		<p>Penal Code (<i>Brottsbalken – BrB</i>), 15:11 false certification</p> <p>BrB 14: 1 forgery of documents (<i>urkundsförfalskning</i>)</p> <p>Penal Code 15:10 false declaration (<i>osann försäkran</i>)</p> <p>Penal Code 15:11 p 3 use of false record (<i>brukande av osann urkund</i>)</p> <p>Section 6, Chapter 20 Aliens Act – person submitting incorrect information.</p> <p>Section 7, Chapter 20 Aliens Act – person assisting an alien to unlawfully remain in Sweden for financial gain.</p> <p>Section 8, Chapter 20 Aliens Act – human smuggling.</p> <p>Section 9, Chapter 20 Aliens Act – organisation of human smuggling</p>	<p>Section 10 and 11 Chapter 15, Penal Code – fine or imprisonment up to 6 months.</p> <p>Section 1, Chapter 14 Penal Code- imprisonment for a maximum of two years.</p> <p>Section 6, Chapter 20 Aliens Act – fine or imprisonment up to 6 months.</p> <p>Section 7, Chapter 20 Aliens Act – fine of imprisonment up to 2 years.</p> <p>Section 8 and 9, Chapter 20 Aliens Act – imprisonment up to 2 years. In case of gross offence (element of “systematic”, that would hint toward an OCG, or life danger or careless and ruthless actions) imprisonment of 6 months up to 6 years.</p>	<p>Sweden's response is based on a definition of 'marriages of convenience' as 'sham marriages', as opposed to 'forced marriages'.</p>

ANNEX II: EU Member States legislation on conditions to marry and divorce a foreigner

This document lays down the conditions to enter a marriage/divorce between a national and a non-EU national in the EU Member States. This document is based on open sources and current legislations and will provide an overview of laws as of June 2019, where available⁸⁵.

At the EU level, several regulations have been adopted in order to facilitate the recognition of marriage/divorce among the Member States. These documents include:

- ▶ Council Regulation 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility;

- ▶ Council Regulation 1259/2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation;
- ▶ Council Regulation 2016/1103 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes.

EU Member State	Legislation on marriage	Legislation on divorce	Additional information
Austria	<p>The following documents for both the bride and the groom need to be presented when applying for a marriage licence in Austria:</p> <ul style="list-style-type: none"> • 	<p>The act governing the jurisdiction of Austrian courts sets out the international jurisdiction of the Austrian courts. Austrian courts have jurisdiction in cases of divorce, annulment or nullity of marriage and declaratory judgments relating to the validity of a marriage if one of the following conditions is met</p> <ul style="list-style-type: none"> • One of the parties is an Austrian national • The respondent (or at least one respondent, where a petition for nullity is brought by both spouses and both registered partners) has his or her habitual residence in Austria <p>In addition, the petitioner must meet the following requirements</p> <ul style="list-style-type: none"> • He or she has his or her habitual residence in Austria and the last common address and habitual residence of either the spouse or the registered partner is located in Austria • He or she is stateless or was an Austrian national at the time the marriage or registered partnership was entered into 	<p>The Austrian system recognises divorce by mutual consent (paragraph 55a, EheG), divorce by fault (paragraph 49, EheG) and divorce for other reasons such as mental illness (paragraphs 50–52, EheG), as well as divorce when the spouses have lived separately for 3 years (paragraph 55 EheG).</p>
Belgium	<p>Documents needed:</p> <ul style="list-style-type: none"> • identification (e.g. passport); • birth certificate; • prenuptial agreement (if required); • proof of address (e.g. rental agreement, recent bills); • proof of nationality; • proof of civil status (e.g. a divorce or death certificate, if the person has been married previously); • proof of residence – Belgian authorities will expect this to be a certificate, as described below; however, if the person's place of residence is not Belgium, and their place of residence does not issue these certificates, other proof will be required. <p>At least one partner must produce proof of residence in Belgium. The local authority should be able to issue a bewijs van woonst voor huwelijksdoeleinden / certificat de domicile pour mariage, literally a 'certificate of residence for marriage'. The person will need to prove their residential status to this authority (e.g. by bringing their rental agreement)</p> <p>Foreign documents may have to be authorised with an apostille stamp, also known as 'apostillisation' or 'legalisation', or an equivalent. The issuing government stamps a document with a unique identification, indicating that it is a true and accurate copy for recognition abroad. Any documents not issued in Dutch or French must be translated by a 'sworn translator'. If the translation is not done in Belgium, it too must be authenticated by an apostille stamp, or equivalent</p>	<p>In Belgium, couples may divorce by mutual consent or by citing irreconcilable differences</p> <p>For divorce by mutual consent, no reasons need to be given and no evidence is required. Both spouses must, of course, consent and present themselves to the courts at the appropriate times</p> <p>To divorce citing irreconcilable differences, evidence must be brought to demonstrate that it is impossible for the couple to continue to remain married. Sufficient evidence includes:</p> <ul style="list-style-type: none"> • written, photographic or other evidence of irreconcilable differences, such as evidence of physical abuse, child abuse or an affair (this is the most challenging and complicated line to pursue, and evidence may be rejected); • a physical separation of households for at least 6 months, if both spouses agree to divorce; • a separation of more than 1 year, if just one spouse petitions for divorce 	

⁸⁵ For the elaboration of the tables on national legislation, preliminary information was sought in open sources. This information was verified and supplemented by the national desks of Eurojust and their national authorities. In the case of Luxembourg and Malta, the information has been extracted only from official online sources.

EU Member State	Legislation on marriage	Legislation on divorce	Additional information
Bulgaria	<p>Article 9 of the Family Code lists the documents needed to marry</p> <p>An application to marry is filed at the local town hall where one of the marrying parties is resident. This must be done at least 30 days prior to the chosen date for the civil ceremony. Both members of the couple applying need not be present to make the application; however, the identity cards of both are required</p> <p>The documents for civil marriage, required by both parties, are:</p> <ul style="list-style-type: none"> • proof of identity; • certificates of no impediment to marriage to prove that the person is free to marry; • medical certificates, valid for 30 days from the date of their issue – these are issued after a standard premarital medical check-up, which includes a blood test, and may be done at any clinic in Bulgaria <p>The following additional documents may be required:</p> <ul style="list-style-type: none"> • if the person is under 18 years of age, a permit from the regional court; • if either party has previously been married, the final divorce decree or the death certificate of the former spouse if the person is widowed <p>Article 6 of the International Private Law Code</p> <p>Paragraph (1) – marriage in the Republic of Bulgaria shall be celebrated by a civil-status registrar if one of the future spouses is a Bulgarian national or is habitually resident in the Republic of Bulgaria</p> <p>Paragraph (2) – marriage between foreign nationals may be celebrated in the Republic of Bulgaria by a consular official or a diplomatic agent of the state of origin of the said foreign nationals, if this is permissible under the law of the said state</p> <p>Article 77 of the International Private Law Code – a foreign national or a stateless person must certify to the Bulgarian civil-status registrar that:</p> <p>(1) the national law of the said person recognises the validity of a marriage celebrated by a foreign competent authority;</p> <p>(2) there are no impediments to entry into the said marriage under the national law of the said person</p>	<p>Article 49 of the Family Code (divorce due to the breakdown of marriage) – either spouse may request divorce in the case of a deep and irremediable breakdown of marriage</p> <p>Article 50 of the Family Code (no fault divorce) – in the case of serious and unswerving consent of the spouses to divorce, the court shall grant divorce without seeking their grounds for the dissolution of marriage</p> <p>Article 82 of the International Private Law Code</p> <p>Paragraph (2) – a divorce between spouses possessing different nationalities shall be governed by the law of the state in which the said spouses have a common habitual residence at the time of submission of the application for divorce. Where the spouses have no common habitual residence, Bulgarian law shall apply</p> <p>Paragraph (3) – if the applicable foreign law does not admit the divorce and at the time of submission of the application for divorce one of the spouses was a Bulgarian national or was habitually resident in the Republic of Bulgaria, Bulgarian law shall apply</p>	
Croatia	<p>Articles 12–29 of the Family Act (NN 103/15) – conditions for contracting of marriage</p> <p>Documents proving identity and citizenship are still required. A non-Croatian citizen also has to provide a certificate from the competent body showing that he or she has approved asylum status, as well as a sworn written statement that he or she is not already married</p>	<p>Family Act (NN 103/15) – conditions for divorce are regulated in Articles 50–57</p> <p>Although allowed in the country, couples cannot simply go to court and apply for Croatian divorce. First, either spouse can apply for a divorce or both of them can apply together for a consensual divorce</p> <p>The court will then study the application and will grant a divorce only if it finds that:</p> <ul style="list-style-type: none"> • the marriage is deeply and irreversibly damaged and it cannot be saved; • both spouses have been living separately for more than 1 year or what is known as de facto separation; • both spouses have mutually agreed to end the marriage; • there are no children involved; therefore, there are no legal complications from this point of view 	

EU Member State	Legislation on marriage	Legislation on divorce	Additional information
Cyprus	<p>Marriage Law 104(I)/2003</p> <ul style="list-style-type: none"> Article 4: notice of intended marriage Article 8: declaration of parties that there are no impediments <p>Civil marriage can take place between foreigners, between Cypriots and between foreigners and Cypriots in municipalities in Cyprus. To file an application for marriage, the couple has to obtain certificates of marital status as follows</p> <p>Foreigners:</p> <ul style="list-style-type: none"> recent certificate of marital status from a government authority (i.e. town hall, Ministry of the Interior, registry office, embassy, etc.) divorce certificate, if applicable death certificate of spouse, if applicable passport <p>Article 4 of Marriage Law 104(I)/2003</p> <p>Persons desiring to contract a marriage shall appear before the marriage officer of their choice and shall give the relevant notice signed by them pursuant to form A of the first schedule of this law</p> <p>Article 8 of Marriage Law 104(I)/2003</p> <p>(1) Before the marriage officer issues the date and place for the celebration of the marriage in the certificate issued under clause (1) of Section 6, he requests from the persons intending to contract a marriage to appear before him personally or before any person authorised by the marriage officer and make an official declaration or affirmation in writing:</p> <p>(a) that they know of no impediment or lawful hindrance to the marriage;</p> <p>(b) that any necessary consent required for the marriage has been obtained, or that no such consent is required;</p> <p>(c) that they have not entered into any marriage or civil union with another person and that they are free to enter into a marriage</p> <p>(2) The officer before whom the declarations referred to in clause (1) may, if deemed fit, request additional certificates or affirmations confirming the context of the declarations and the personal particulars of the persons intending to contract a marriage</p> <p>Provided that the declaration provided for in paragraph (c) of clause (1) requires the presentation of an official certificate or confirmation, issued by the competent authorities of the Republic or the competent authorities of the country of origin of the persons concerned, within a period of time not exceeding 3 months before the filing of the declaration, it is further understood that, if the marriage officer has any doubt as to the accuracy or authenticity of the certificate or confirmation, he or she may refuse to perform the marriage</p> <p>(2A) Where the persons concerned are unable to present the certificates or confirmations as mentioned in clause (2), the marriage officer, taking into account the objective and convincing evidence submitted before him/her, demands that the involved individuals proceed with an affidavit (sworn statement) before the registrar officer of the district court, declaring that each has not entered into a marriage with another person, or they can apply to the official authorities of the Republic to issue such certificates or confirmations</p> <p>This means that, in the event of having performed a previous marriage or civil union, each person must present his/her dissolution of his/her previous marriage for the purposes of certifying the divorce or the documents certifying the dissolution of the civil union under the provisions of the Civil Union Law, depending on the situation</p> <p>It is further provided that, if the former spouse of the person concerned has died, the person must present a certificate of death of his former spouse for the purposes of certifying his/her widowhood</p> <p>(3) The marriage officer shall not issue a certificate of notice if the conditions for contracting a marriage prescribed in this law are not complied with</p>	<p>Article 27 of Marriage Law 104(I)/2003 on the grounds for divorce</p> <p>Marriages may be dissolved upon a divorce action filed by one of the spouses when the relations between the spouses are so severely broken down on grounds regarding the defendant or both spouses that it becomes unbearable for the applicant to continue the marital relation</p> <p>Reasons for divorce:</p> <ul style="list-style-type: none"> change of the sex of the respondent, or abandonment of the applicant or threat to his/her life by the respondent; when it is conclusively evident that the relations between the spouses have broken down and that the continuation of the marital relation is unbearable for the applicant for reasons regarding both parties as provided in clause (2), if and so long as the parties have been separated for at least 4 years. The 4-year separation period shall not be affected by short breaks for the purpose of reinstatement of the relations between the parties that do not exceed a total of 6 months <p>Article 27 of Marriage Law 104(I)/2003</p> <p>(1) A marriage may be dissolved by a court decision:</p> <p>(a) with respect to a marriage solemnised pursuant to the provisions of this law, and a civil marriage within the context of paragraph (b) of clause (1) of Section 17, by the family court in a divorce action filed in the said court;</p> <p>(b) with respect to a civil marriage, which is dissolved under the jurisdiction of a family court established pursuant to the Family Court (Religious Groups) Laws of 1994 to 1998, from the said family court in a divorce action filed in the said court</p> <p>(2) The marriages referred to in clause (1) may be dissolved upon a divorce action filed by one of the spouses when the relations between the spouses are so severely broken down on grounds regarding the defendant or both spouses that it becomes unbearable for the applicant to continue the marital relation or, with respect to persons belonging to the Greek Orthodox Church, for any other reason permitted pursuant to paragraph 2B of Section 111 of the Constitution, provided that, with respect to a marriage as provided in paragraph (b) of clause (1), it may be dissolved for any other reason subject to the provisions of the Family Courts (Religious Groups) Laws of 1994 to 1998</p> <p>(3) For the purposes of clause (2):</p> <p>(a) unless the respondent proves otherwise, it is presumed that the relations between the spouses have suffered a breakdown and that the continuation of the marital relation is unbearable for the applicant for reasons regarding the respondent as provided in the clause, in the case of bigamy or adultery or abandonment of the applicant, or threat to his/her life by the respondent;</p> <p>(b) the breakdown of the relations between the spouses as provided in this clause is conclusively evident if and so long as the spouses have been separated for at least 4 years, and the divorce may be issued even if the reason for the breakdown regards the applicant. Completing the time of separation is not impeded by short breaks that took place in an effort to re-establish their relations that did not exceed 6 months</p> <p>(4) Unless other grounds are provided for certain marriages in other laws for the dissolution thereof, a marriage may be dissolved by divorce for the following reasons:</p> <p>(a) change of the sex of the respondent, or abandonment of the applicant or threat to his/her life by the respondent;</p> <p>(b) when it is conclusively evident that the relations between the spouses have broken down and that the continuation of the marital relation is unbearable for the applicant for reasons regarding both parties as provided in clause (2), if and so long as the parties have been separated for at least 4 years. The 4-year separation period shall not be affected by short breaks for the purpose of reinstatement of the relations between the parties that do not exceed a total of 6 months</p> <p>(5) The death of one of the parties results in the dissolution of the marriage</p>	

EU Member State	Legislation on marriage	Legislation on divorce	Additional information
<p>Czech Republic</p>	<p>According to paragraph 35 of the Act on Offices of Vital Records, a fiancé who is a foreign national must support the prescribed form with the following documents:</p> <ul style="list-style-type: none"> • his/her birth certificate; • a document proving his/her nationality; • a certificate proving his/her legal competence to enter into marriage, which may not be, as of the date of the marriage, older than 6 months; • a certificate proving his/her personal status and residence if such certificates can be issued by the country concerned; • the death certificate of any deceased spouse, if the foreign national is a widow(er); such a certificate is not required if this fact is included in the certificate on legal competence to enter into marriage; • a final and conclusive judgment on divorce with regard to any previous marriage if the foreign national concerned is divorced; • a certificate proving that the marriage will be accepted as valid, if it is concluded by a proxy; • a final and conclusive judgment terminating a registered partnership or a death certificate of any deceased partner, if the foreign national lived in a partnership; • proof of identity <p>A fiancé who is a foreign national according to paragraph 35/2 must further submit to the relevant Office of Vital Records a certificate issued by the Czech Foreign Police that he/she may legally stay in Czechia. This rule does not apply to citizens of the EU, Iceland, Liechtenstein, Norway or Switzerland or their family members. Such a certificate may not be, on the date of the marriage, older than 7 working days</p>	<p>In Czechia, the termination of marriage by means of a divorce is governed by the legislation of the country of which the spouses were nationals at the time of the commencement of the divorce proceedings</p> <p>If the spouses are nationals of different countries, the termination of the marriage by divorce is governed by the legislation of the country in which both spouses have their habitual residence</p> <p>If the spouses have neither the same nationality nor the same habitual residence at the time of the commencement of the divorce proceedings, the termination of the marriage by divorce is governed by the Czech legal system</p> <p>Should the divorce be covered by a foreign legal system that does not allow the termination of marriage by divorce, or only under exceptionally difficult circumstances, and provided at least one of the spouses is a citizen of Czechia or at least one of the spouses has their habitual residence in Czechia, Czech law will apply</p> <p>Requirement of a divorce application: the petition must be made in writing, it must show clearly which court it is intended for and who is filing it, and it must clearly state who the parties are (their whole name, surname, birth number or date of birth, and address of permanent residence or postal address) and the marriage to which it refers (i.e. when the marriage was entered into and the circumstances, development and causes of its breakdown)</p> <p>The petition must be signed and dated. In the case of a petition in which both spouses have agreed on the divorce, it must contain the signatures of both spouses. The facts alleged in the petition should be supported by documentary evidence</p>	
<p>Denmark</p>	<p>Required documents for getting married in Denmark:</p> <ul style="list-style-type: none"> • valid passport, and visa and Schengen entry stamp (if required); • if the applicant is living abroad, the residence permit; • a certificate of marital status from the applicant's current place of residence, which must be no older than 4 months; • if the applicant has previously been married, a divorce decree or death certificate; • for persons of the military, permission from their commander; • original birth certificate (in most cases, the birth certificate is not necessary) 		<p>As a general rule, matrimonial matters can be settled in Denmark only if at least one of the spouses can be considered a permanent resident of Denmark or both spouses are Danish nationals.</p> <p>The formation and dissolution of the Marriage Act was updated in 2019.</p> <p>As part of a new divorce law that entered into force on 1 April 2020, parents with children under the age of 18 years who want to end their marriage must take a 30-minute online course designed to help them and their children adapt as smoothly as possible to their new situation</p> <p>There is also a new 3-month reflection period before a divorce is finalised</p> <p>A change in Danish law took effect on 1 January 2019. This means that some applications for marriage (involving a non-EU citizen) will be processed by a central national unit run by the Danish State Administration.</p>

EU Member State	Legislation on marriage	Legislation on divorce	Additional information
Estonia	<p>To enter into a contract of marriage, prospective spouses must submit the following documents to the notary or to the local government of the county (e.g. in Tallinn, the vital statistics department):</p> <ul style="list-style-type: none"> • a written joint application; • identity documents; • birth documents if the birth data of a prospective spouse are not in the population register; • for persons who have been married before, a certificate or documentation of the divorce, the court judgment of the divorce, the death certificate (or documentation) of the spouse or the court judgment of the marriage annulment; • if necessary, the court ruling regarding the extension of active legal capacity of a prospective spouse who is a minor; • if necessary, a document verifying the removal of another obstacle to enter into a contract of marriage; • if necessary, a certificate of legal capacity to contract a marriage if the place of residence of a prospective spouse is abroad or they have lived in Estonia for less than 6 months; • a document verifying the legality of the prospective spouse's stay in Estonia, if they are a foreigner; • a document verifying the payment of the state fee <p>If a person who has lived in Estonia for less than 6 months or whose place of residence is abroad wants to contract a marriage in Estonia, the person must submit a certificate of legal capacity to contract a marriage, issued by a competent authority of that person's country of nationality or of residence to an Estonian vital statistics office. The certificate must be valid at the moment of contracting a marriage</p> <p>If a foreign national is unable to submit a certificate of legal capacity to contract a marriage with good reason (e.g. the particular foreign state does not issue such documents), the foreign national may turn to a court in Estonia and apply for a permission to contract a marriage without the certificate of legal capacity to contract a marriage. The permit is valid for 6 months</p>	<p>Divorce can be granted based on the mutual agreement of the spouses at a vital statistics office, by the notary or by a court in the case of a dispute</p> <p>A vital statistics office may grant a divorce if the place of residence of both spouses is in Estonia. To get a divorce, the spouses must personally submit a joint written application in Estonian and a document certifying the contraction of marriage</p> <p>Divorce is granted by a notary upon agreement of the spouses based on a joint application that is filled out at the notary's office. A notary may grant a divorce even when one of the spouse's place of residence is in a foreign state. The divorcing spouses need to bring their identification documents and, if the marriage being dissolved is not registered in the population register, a document certifying the contraction of marriage</p> <p>Divorce is granted by a court if the spouses have disputes over the divorce or circumstances pertaining to the divorce or if the vital statistics office is not competent to grant the divorce</p>	<p>All documents from a foreign state must be legalised or apostilled (unless otherwise specified by an international treaty), be translated into Estonian, English or Russian and come with a certification of correctness of the translation from a notary, a sworn translator or a consular official</p>
Finland	<p>Part 1, Chapter 3 of Marriage Act 234/1929</p> <p>Section 10 (618/1998) on marriage states that, before one can get married, an examination of impediments to marriage must be carried out. The examination is done by either the local registry office or the local parish performing the marriage ceremony</p> <p>A civil marriage ceremony can always be performed when the impediments to marriage have been examined and a certificate thereof has been issued to those intending to marry</p> <p>If the marital status of the foreign partner is not registered in the Finnish Population Information System, a certificate of marital status issued by the foreign partner's home authority must be delivered to the local parish or the local register office in order to start the examination of impediments to marriage. The certificate must be original, legalised and officially translated into Finnish, Swedish or English. The certificate must have been issued less than 4 months earlier. Both partners must bring the certificate to the authority in person and prove their identities with a valid passport, Finnish identity card, EU citizen identity card or driving licence granted in Finland after 1 October 1990</p>	<p>Sections 25–27 of Marriage Act 234/1929 on divorce</p> <p>Section 25: the spouses shall have the right to a divorce after a reconsideration period. However, the spouses shall have the right to a divorce without a reconsideration period if they have lived separately for the past 2 years without interruption</p> <p>Part 1, Chapter 6 of Marriage Act 234/1929</p> <p>Sections 25–27 (411/1987) on divorce</p> <p>The spouses shall have the right to a divorce after a reconsideration period (from 6 months to 1 year). However, the spouses shall have the right to a divorce without a reconsideration period if they have lived separately for the past 2 years without interruption</p> <p>A written divorce application is filed at a district court by one spouse or both spouses together. The court will not investigate why spouses have filed for a divorce. The relationship between the spouses will not be examined either</p> <p>Part 5, Chapter 3 of Marriage Act 234/1929</p> <p>Section 119 (1226/2001) on admissibility in Finland</p> <p>A matter pertaining to divorce may be ruled admissible in Finland if:</p> <ol style="list-style-type: none"> (1) either spouse is domiciled in Finland; or (2) the petitioner has been domiciled in Finland or otherwise has a close link to Finland and he or she cannot institute divorce proceedings in the foreign state where either spouse is domiciled, or this would cause unreasonable inconvenience to the petitioner, and the admissibility of the matter in Finland is justified in view of the circumstances <p>A public prosecutor in Finland may bring an action, as referred to in Section 27(2) (i.e. a prior marriage was still in force at the time of the conclusion of the new marriage), for the divorce of the spouses if:</p> <ol style="list-style-type: none"> (1) the marriage ceremony has been performed by a Finnish authority; and (2) either spouse is domiciled in Finland <p>Moreover, a public prosecutor in Finland may bring an action for the divorce of the spouses if they were married while a prior marriage or registered partnership of either spouse was in force and the prior marriage or registered partnership has not yet been dissolved, provided that both spouses are domiciled in Finland</p> <p>A request for the end of cohabitation may be ruled admissible in Finland if the spouses make their common home in Finland</p> <p>The provisions in paragraphs (1)–(3) apply only insofar as not otherwise provided in Council Regulation (EC) No 1347/2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses or in an international agreement binding on Finland</p>	

EU Member State	Legislation on marriage	Legislation on divorce	Additional information
<p>France</p>	<p>Title II of the Civil Code on civil status certificates – Articles 63–76 of Chapter III on marriage certificates</p> <p>Title V of the Civil Code on marriage – Articles 143–164 on conditions for marriage</p> <p>The following documents will probably be required</p> <ul style="list-style-type: none"> • A valid passport or carte de séjour (residency permit) • An unabridged birth certificate issued within the last 3 months supplied by a bureau of records, not a hospital (it can have been issued within the last 6 months if the service supplying the records is based abroad; however, the certificate's age is not taken into account when it is supplied by a foreign service that does not update its civil status certificates). Future spouses unable to get a birth certificate can produce an affidavit based on testimonies and a piece of evidence, and delivered by a notary or by a French diplomatic or consular authority • Justificatifs de domicile, namely proof of address supplied by the resident of the commune. Ideally, the person would provide two documents proving residency in the commune, for example an electricity bill, telephone account, rent receipt or residential insurance documents • Information about the witnesses (i.e. personal and professional details), except when the marriage is to be celebrated by a foreign authority • Information about the guardian when the spouse is under guardianship • The certificat du notaire, if a prenuptial agreement (contrat de mariage) has been concluded • If the spouse has children, birth certificates (which must have been issued within the last 3 months) and the family booklet (livret de famille) • If either spouse has been divorced or widowed, proof in the form of a marriage certificate or birth certificate (bearing the mention of the divorce) or an acte de décès (in the case of widowhood) <p>Future spouses may also be heard by the civil official or by the diplomatic or consular authority when they live abroad (together or one at a time), unless it is impossible or seems unnecessary.</p> <p>Foreigners getting married in France may be expected to present the following documents.</p> <ul style="list-style-type: none"> • Certificat de coutume, namely an affidavit of law, which should be prepared by a legal professional licensed to practise in France and the national's country. However, an attestation in lieu of a certificat de coutume issued by the home country embassy in France may be acceptable. The certificat de coutume and affidavit of marital status statements concern marriage laws in the spouse's home country and are required to certify that they may, under the law of their country, be married. Both documents may be available from the home country embassy in France. The documents must be in French • Certificat de célibat, namely a certificate of single status (or attestation tenant lieu de déclaration en vue de mariage ou de non-remariage), which must have been issued within the last 3 months. Legal documents not in French usually must be translated by a sworn translator and have an official seal, namely the certificate of apostille of The Hague 	<p>Title VI of the Civil Code on divorce – Articles 229–247-2 on forms of divorce</p> <p>If both spouses consent to the divorce and reach an agreement on all relevant issues (including the division of assets and childcare) this is called divorce par consentement mutuel (divorce by mutual consent) and no further reasons need to be given. An agreement should be drawn up by their lawyers and signed by both parties before the documentation is registered by a notary. However, if one of their minor children asks to be heard by the judge, the documentation has to be approved by the judge</p> <p>When a couple agrees that a divorce should occur, but cannot arrange a settlement, a divorce accepté (divorce accepted) is possible. In this case, a judge will rule on any contentious issues. French judges will almost always try to get the couple to come to an agreement, and this can slow the whole process down</p> <p>Finally, either spouse may file for divorce without the consent of the other. If the other spouse continues to refuse to accept the divorce, a judge will rule on the case and set the terms. Only in this rare instance is it necessary to show grounds for a divorce</p> <p>These cases fall into two categories: a separation of two or more years (altération définitive du lien conjugal) or an 'at fault' divorce (divorce pour faute). In the latter case, the spouse filing for divorce must prove that the other party caused the break-up of the marriage, typically through desertion, adultery and/or cruelty. In this case, the court will usually find one party or the other at fault (or both) and may award damages</p>	
<p>Germany</p>	<p>Section 1309 of the German Civil Code – certificate of no impediment for foreigners</p> <ul style="list-style-type: none"> • Both partners must be present at the Standesamt • Each has to provide a birth certificate • Both parties need a passport and proof of residence that has been valid for over 3 weeks • A requirement that seems rather peculiar to foreigners is the so-called Ehefähigkeitszeugnis. This certificate states that there are no legal hindrances to the marriage in Germany (e.g. ongoing divorce proceedings). The embassy can help obtain this document, but diplomatic staff often cannot issue it • For civil unions, a Ledigkeitszeugnis replaces the Ehefähigkeitszeugnis. This document declares that a person's marital status is single • The minimum age for marriage is 18 years. With parental consent, one party may be younger than 18, but not younger than 16 years of age. A family court might need to be consulted • If one of the partners was married before, proof that all previous marriages were dissolved is required, for example the late spouse's death certificate. A divorce decree, however, might not be sufficient. Further proof is needed that the decree cannot be contested. This depends on the country where the divorce was issued • Two witnesses are also needed and – if necessary – an interpreter. The Standesamt can provide the latter • The civil ceremony usually costs about EUR 100–200. However, there may be additional fees during the application process (for having special documents approved, choosing to get married in a different state or a special venue, or getting a Stammbuch) <p>If either one of the partners is a foreigner, documents may be sent to a higher regional court in order to verify the legal status of that person</p>	<p>Title 7, Subtitle 1 of the German Civil Code on the grounds for divorce (Sections 1564–1568)</p> <ul style="list-style-type: none"> • Section 1564 (divorce by judicial decision) – a marriage may be dissolved by divorce only by a judicial decision on the petition of one or both spouses. The marriage is dissolved when the decision becomes final and absolute. The conditions under which a petition for divorce may be made follow from the following provisions • Section 1565 (breakdown of marriage) – a marriage may be dissolved by divorce if it has broken down. If the spouses have not yet lived apart for 1 year, the marriage may be dissolved by divorce only if the continuation of the marriage would be an unreasonable hardship for the petitioner for reasons lying with the other spouse 	

EU Member State	Legislation on marriage	Legislation on divorce	Additional information
Greece	<p>If you are marrying a Greek citizen or resident, he or she must hold a valid residence permit. Some legal requirements may vary depending on the city or island where you plan to get married</p> <p>Necessary documents:</p> <ul style="list-style-type: none"> • a valid passport; • a birth certificate with an apostille stamp certifying the copy; • an official apostille translated into Greek, which can be certified by a lawyer, a foreign ministry's translation department, a certified translator or the Greek consulate from the person's home country; • proof of freedom to marry, or an affidavit of marriage, notarised, in both English and Greek; • a decree of absolution of a previous marriage, if applicable • a copy of the local newspaper where the intent to marry was published 	<p>Greek Civil Code, Chapter VII (divorce)</p> <p>There are two kinds of divorce in Greece: mutual consent divorce and contested divorce</p> <p>For mutual consent divorce, the prerequisites are the following:</p> <p>(a) a written agreement between the spouses, certifying that they wish to proceed to the dissolution of their marriage;</p> <p>(b) a written agreement between the spouses that stipulates:</p> <ul style="list-style-type: none"> • which parent will have custody of the child; • the frequency and the terms under which the other parent will communicate with the child; • the alimony, which refers to the personal and/or monetary contribution of each parent to the expenses of the child (for food, clothing, education, etc.); <p>(c) notarial deed</p> <p>For a contested divorce, each spouse can file for a divorce lawsuit before the competent court if:</p> <ul style="list-style-type: none"> • the breakdown of the marriage occurred for reasons that refer to either the respondent or both spouses; • the continuation of the marital relationship has become unbearable for the plaintiff; • there was adultery, abandonment of the plaintiff, plotting against the plaintiff's life by the respondent or domestic violence against the plaintiff <p>In the case of bigamy, the marriage is considered void and can be annulled.</p>	<p>In a divorce by consent, the spouses agree to dissolve the marriage between themselves, and make a joint petition to the single-judge court of first instance of the place of their residence. There is no litigation; hence, the procedure is the same as in non-contentious cases. The couple must have been married for at least 1 year</p> <p>In a contested divorce, one of the spouses brings an action seeking dissolution of the marriage, on stated grounds, before the multi-member court of first instance of the place, of their residence or both spouses bring such actions separately.</p>
Hungary	<p>One of the couple must be resident in Hungary for at least 30 days before the wedding can take place</p> <p>First, the couple must visit or call the local registry office where they wish to get married, in order to obtain a permit</p> <p>The following documents are needed:</p> <ul style="list-style-type: none"> • a valid passport or identity card and an address card (for Hungarian residents); • a document certifying the place of residence; • a certificate of no impediment to marry (for foreigners, which can be obtained from the embassy/consulate of the foreigner's home country) or a certificate of marital status (for Hungarians); • a full birth certificate with the parents' names on it; • a copy of the decree absolute if divorced; • a death certificate if widowed; • additional documents may be required depending on the nationality of each of the future spouses 	<p>The only ground for divorce is the irreversible and final deterioration of the marriage. The main typical procedure to apply to a court for a divorce is as follows</p> <ul style="list-style-type: none"> • One party files for divorce (claimant). Along with the actual application for divorce, the parties must, at the least, enclose the original marriage certificate. If they have minor children whose legal status must be decided, the birth certificates of the children must also be enclosed • The court summons the parties and hears them. If there is no minor child of the parties involved, and the parties agree on the final and irreversible deterioration of the marriage, the court dissolves the marriage at the first and last court hearing • If there is/are minor child(ren) involved, but the parties agree on all of the divorce terms, the court must attempt reconciliation between them at the first court date and the second date can be the final hearing • Depending on the workload of the court, the proceedings may last 4 to 6 months <p>If the parties agree on the final and irreversible deterioration of the marriage, their statement of agreement is the only requirement (uncontested divorces)</p>	<p>The highest level source of law is the Fundamental Law of Hungary (25 April 2011), from which all branches of law, including marital and children's laws, derive</p> <p>Act V of 2013 of the new Civil Code contains the Book of Family Law governing marital legal matters, covering all major cohabitation, custody, maintenance and child access provisions</p>

EU Member State	Legislation on marriage	Legislation on divorce	Additional information
Ireland	<p>Part 6 of the Civil Registration Act 2004 on the amendment of law relating to marriages (Articles 45–58)</p> <p>Both parties must meet the following criteria</p> <ul style="list-style-type: none"> • They must be over 18 years of age. From 1 January 2019 under the Domestic Violence Act 2018, a person under the age of 18 can no longer apply to the courts for permission to marry • They must have given the registrar 3 months' notice of the marriage (or have a court exemption order if this is not the case) and they must have been issued by the registrar with a marriage registration form. A couple whose civil partnership was registered in Ireland do not have to give the 3 months' notice • They must be single, widowed, divorced or a former civil partner of a civil partnership that ended through death or dissolution, or have had a civil annulment of a marriage or civil partnership or a valid foreign divorce or dissolution • They must have the mental capacity to understand the nature of marriage • They must not be related by blood or marriage to a degree that prohibits them in law from marrying each other <p>If either party does not fulfil even one of the above requirements, any subsequent marriage ceremony is legally void</p> <p>If either party is a foreign national, their immigration status documentation must be in date. A 'foreign national' means a person who is neither an Irish citizen nor a citizen of a Member State</p> <p>If the marriage involves an EU national marrying a non-EU national, or if one of the couple is a foreign national, they will need to attend an interview with the registrar</p>	<p>Part 7 (Article 59) of the Civil Registration Act 2003 on the registration of decrees of divorce and decrees of nullity</p> <p>Family Law (Divorce) Act 1996</p> <p>Before a court can grant a divorce, the following conditions must be met</p> <ul style="list-style-type: none"> • The parties must have been living apart from one another for a period amounting to 4 out of the previous 5 years before the application is made • There must be no reasonable prospect of reconciliation • Proper arrangements must have been made or will be made for the spouse and any dependent members of the family such as children of either party or other relatives <p>Living apart is given a unique definition by the courts, whereby parties can be 'living apart' and still reside in the same dwelling. In those circumstances, evidence is required to show that the parties lead separate lives, for example sleeping apart, organising their finances separately and caring for the children separately</p> <p>The provision that the couple must live apart for 4 out of the previous 5 years is to allow parties to attempt reconciliation, during which time they may live together for a short period</p> <p>If the above conditions are met, either party to a marriage may apply to court for a decree of divorce. When applying for a divorce, the following four documents must be submitted to the Circuit Court</p> <ul style="list-style-type: none"> • An application form (known as a family law civil bill). This document describes both spouses, their occupations and where they live. It also sets out when they married, how long they have been living apart for and the names and birth dates of their children • A sworn statement of means (Form 37A). This document sets out assets, income, debts, liabilities and outgoings • A sworn statement relating to the welfare of the spouses' children (Form 37B). This document sets out the personal details of the children of the marriage. It describes where they live and whom they live with. It also describes their education and training, their health, childcare arrangements, and maintenance and access arrangements • A document certifying that the spouses have been advised of the alternatives to divorce (Form 37D). This document is sworn by a solicitor and it certifies that the parties have been advised about alternative dispute resolution, including the options of mediation and separation 	<p>The Marriage Act 2015 provides the latest amendment to the Civil Registration Act 2004, which contains the provisions on marriage</p>
Italy	<p>To contract marriage in Italy, foreign citizens need to satisfy the requirements envisaged in their national legislation, as enshrined in Article 28 of Law 218/1995, together with certain conditions as regulated by Article 116 of the Italian Civil Code. The latter affirms that the foreign citizen has to submit a certificate, produced by his/her competent home authorities, in which an authorisation (<i>nulla osta</i>) for the marriage is given. Furthermore, the same provision provides for some conditions, which are regarded as fundamental by Italian legislation, such as those regarding legal capacity, the existence of another ongoing marriage bond or kinship issues. Additional prerequisites, amending the abovementioned Article 116, were added by the pacchetto sicurezza Law 94/2009, such as the need of the foreigner (or stateless) spouse to have legally resided in Italy for 2 years after the marriage in order to obtain Italian citizenship</p> <p>In sentence 245/11, the Italian Constitutional Court highlighted the universal nature of the right to marriage, which should not be undermined by the necessity of controlling sham marriages as means of illegal migration flows; such necessity was specifically targeted in the pacchetto sicurezza. For this reason, the court declared unconstitutional a certain part of the Italian requirements for the recognition of marriages between Italian and non-Italian citizens; in particular, the need for the foreign citizen to produce a valid Italian residence permit in order to get married in Italy was deemed an excessive burden and thus illegitimate under the Italian Constitution</p>	<p>The grounds for divorce are set out in Article 3 of Divorce Law 898/1978, which specifies that divorce can be requested if, after celebration of the marriage, the circumstances detailed in that article apply</p> <p>Divorce in Italy may be obtained on one of the following grounds: after the court has approved consensual separation, after judicial separation, when one spouse has been sentenced for certain criminal offences, when one spouse is a foreign citizen and has obtained a divorce or has married again abroad, or when the marriage has not been consummated</p> <p>If the divorce is based on mutually requested separation, it can be obtained only after 6 months of continuous separation, beginning on the date the spouses appeared before the court in the proceedings for legal separation. If the divorce is based on a separation that was obtained by one spouse alone, the waiting period is 12 months</p> <p>With the exception of divorce by consent, divorce is a complicated matter in Italy and is best avoided if it can be accomplished abroad, which is possible when one spouse is not Italian or when the couple married abroad. For two non-Italians or when only one partner is Italian, foreign law may take precedence over Italian law</p>	<p>Matrimonial law in Italy is governed predominantly by Articles 1–455 of the First Book of the Civil Code. These articles cover a wide range of matters relating to the family, including marriage, rights and duties arising out of marriage, dissolution and separation, and marital property. In particular:</p> <ul style="list-style-type: none"> • separation is governed by Articles 150–158 of the Civil Code; • divorce is regulated by Law 898/1970 (as amended)

EU Member State	Legislation on marriage	Legislation on divorce	Additional information
<p>Latvia</p>	<p>Part 1, Subchapter 2 on entering into marriage and termination of marriage of the Latvian Civil Law (1). Articles 53–58 on entering into marriage</p> <p>Marriage in Latvia is regulated by the Civil Law. According to Article 69 of the Civil Law, only a court or a notary may dissolve a marriage. The Civil Procedure Law (2) regulates the annulment of marriage and divorce in court. Divorce conducted by a notary is regulated in Notariate Law. Before getting married in Latvia, an application for announcing the marriage must be submitted with the Latvian registry office. The announcement will be published in the registry office for a month and the application must express the wish to get married</p> <p>The persons wanting to marry in Latvia must submit an application form signed by both parties with the general registry office. Together with this application, both parties are required to submit their identification cards or passports in case of foreign citizens. Divorced people or widowers must also submit an extract or statement of the divorce paper, a court judgment stating the divorce and, for widowers, the death certificate of the deceased spouse. If one of the spouses is a minor, the parents' consent will be required</p> <p>Section 18 of the Law on Registration of Civil Status Documents (3) states that a citizen of the EU, a 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 EU, a 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</p> <p>In addition to the documents referred to in Section 17 of this law, a foreigner must submit a document issued by the competent authority of the relevant foreign state regarding marital status</p> <p>If a person who has been granted the status of a stateless person in the Republic of Latvia, refugee status or an alternative status does not have the necessary documents and it is not possible to obtain such documents, the relevant documents must be substituted with a written declaration by the person referred to regarding his or her marital status</p> <p>An official of the general registry office is entitled to determine another time for registering the marriage, which is no less than a month but no longer than 6 months from the day when the submission was accepted, in order to check the documents presented and submitted</p>	<p>Articles 69–78 of the Civil Code on the dissolution of marriage</p> <p>Marriage can be dissolved in court or by a notary. A notary may dissolve a marriage in accordance with the procedures laid down in the Notariate Law if both spouses agree on the divorce. A court may dissolve a marriage based on the application of one of the spouses in accordance with Civil Procedure Law. A marriage may be dissolved if the marriage is broken. Marriage is considered broken if:</p> <ul style="list-style-type: none"> the spouses no longer cohabit and there is no longer any prospect that the spouses will renew cohabitation; the spouses have lived apart for at least 3 years <p>If the spouses have lived separately for less than 3 years, the court may dissolve the marriage only if:</p> <ul style="list-style-type: none"> the reason for the breakdown of the marriage is a physical, sexual, psychological or economic violation of the spouse against the other spouse who has requested the divorce, or against his or her child or joint child of the spouses; one spouse consents to the request of the other spouse for the divorce; one of the spouses has commenced cohabitation with another person and in such cohabitation a child has been born or the birth of a child is expected <p>If the spouses have lived separately for less than 3 years, a notary may dissolve the marriage only if both spouses agree on the divorce and have submitted an application regarding the divorce to the notary in accordance with the procedures laid down in the Notariate Law</p>	<p>The first part of the Civil Code of Latvia is represented by the Family Law. The Latvian Family Law consists of four chapters, each of which has subchapters. The first chapter defines the notions of: betrothal, marriage and the annulment and dissolution of marriage</p>
<p>Lithuania</p>	<p>Lithuanian Civil Code, Book III, Part II, on marriage (Articles 3.12–3.17 on the conditions for contracting a marriage and Articles 3.18–3.25 on the formation of marriage)</p> <ul style="list-style-type: none"> Persons intending to marry must file an application to register the marriage in the procedure specified in Article 3.299 The intended spouses must confirm in writing that they have met all the requirements set out for the formation of marriage The couple must submit documents certifying the identity of the person The couple must submit certificates of birth (in some cases these are not required; however, taking these documents is recommended) If a person who intends to contract marriage is a citizen of a foreign country, they must also submit a document issued by the competent authorities of his/her state certifying that there are no obstacles to his/her marriage (i.e. a certificate that a person had not contracted another, at the time still valid, marriage). If a citizen of a foreign state is divorced or a widower, a document issued by the competent authorities of his/her country certifying his/her divorce or the death of his/her ex-spouse must be submitted <p>Documents of a citizen of a foreign country (except for their passport) must be legalised or certified with an apostille (except for documents issued in Estonia, Russia, Latvia, Moldova and Ukraine) and translated into Lithuanian. At least one of the individuals to be married must be a Lithuanian citizen, be a resident of Lithuania or have Lithuanian ancestry. Two foreigners with no prior ties to Lithuania are not likely to be able to meet the requirements to be married in Lithuania</p>	<p>Lithuanian Civil Code, Chapter IV on the dissolution of marriage</p> <p>Article 3.55 – conditions for obtaining divorce</p> <p>(1) A marriage may be dissolved on the application of one of the spouses filed with the court of the district where the applicant resides, if at least one of the following conditions is satisfied:</p> <ul style="list-style-type: none"> the spouses have been separated for over a year; after the formation of the marriage, one of the spouses has been declared legally incapacitated by the court; one of the spouses has been declared missing by the court; one of the spouses has been serving a term of imprisonment for over a year for the commission of a non-premeditated crime <p>(2) On behalf of the spouse lacking legal capacity, the application for divorce may be filed by his or her guardian, a public prosecutor or a guardianship and care institution</p> <p>Article 3.56 – the content of the application</p> <p>(1) The application must contain the indication of one of the grounds for divorce under paragraph 1 of Article 3.55 hereof</p> <p>(2) The application must also indicate how the applicant is going to perform his or her obligations towards the other spouse and their minor children</p> <p>(3) The application must also contain the data provided for in the Code of Civil Procedure</p>	

1 <https://likumi.lv/ta/en/en/id/225418-the-civil-law>

2 <https://likumi.lv/ta/en/en/id/50500-civil-procedure-law>

3 <https://likumi.lv/ta/en/en/id/253442-law-on-registration-of-civil-status-documents>

EU Member State	Legislation on marriage	Legislation on divorce	Additional information
<p>Luxembourg</p>	<p>Civil Code, Title V, on marriage, Articles 143–228. Chapter I on the conditions to enter a marriage, Articles 143–164</p> <p>The formalities to be accomplished in preparing for a civil marriage apply to all persons who wish to get married in Luxembourg, regardless of their nationality.</p> <ul style="list-style-type: none"> • To be permitted to marry in Luxembourg, the future spouses must be at least 18 years old and one of them must be an official resident of Luxembourg • If the civil marriage is to be celebrated under Luxembourg law, the official documents to be provided vary depending on the customs of the country of origin of the future spouses • Proof of identity (photocopy of a valid passport or identity card) • A full copy of the birth certificates of the future spouses (mentioning the names of their parents), issued by the commune in which they were born. If the birth certificate was prepared abroad, the parties must produce one of the following: <ul style="list-style-type: none"> • an international document (in accordance with the annex to ICSS Convention No 16); • a national document bearing a signature that has been certified or a Hague Convention apostille • A residency certificate, only for persons who are not legally domiciled in Luxembourg, or any document attesting to residency if such a certificate is not available in their country of residence • Where applicable, proof of single status (mentioning civil status) establishing the single status of the future spouses. For foreign nationals, proof of single status is attested to by a certificate of legal capacity to marry. If this certificate cannot be issued by the authorities of the interested party's country of origin, it may be replaced by a certificate of national custom and a certificate of single status <p>Where applicable, the following will also be required</p> <ul style="list-style-type: none"> • The death certificate of the previous spouse • The birth certificates of children to be legitimised. If one or more children were born before the marriage and were not recognised by the father (and/or the mother), these children must be recognised before the marriage takes place. The child or children cannot obtain the status of legitimate children if they are not recognised before the marriage. Therefore, a duly recognised child is automatically legitimised by the marriage • The death certificate of the father or mother, for minors • A marriage certificate with mention of a divorce or transcription of a divorce judgment 	<p>Civil Code, Title VI, on divorce, Articles 229–311</p> <p>Mutual consent: divorce in Luxembourg by mutual consent can be considered after 2 years of marriage, and both spouses must be a minimum age of 23 years. Agreements need to be made that decide where each spouse will live during the divorce proceedings, and the two usual issues to clear are property assets and children arrangements</p> <p>Grounds of irretrievable breakdown of marriage: divorce in Luxembourg by separation can be done in two ways. One way is by showing that there has been a constant separation between the two spouses for at least 3 years, and that the break-up is permanent. The second way is to prove that a separation for at least 5 years has taken place because an incurable mental disorder of one or both spouses has disrupted the marriage to the point of collapse</p>	
<p>Malta</p>	<p>Marriage Act Chapter 255</p> <p>There are no minimum residency requirements for getting married in Malta</p> <p>The following documentation is required to get married in Malta:</p> <ul style="list-style-type: none"> • Request for the publications of the banns • Declarations on oath. Two separate declaration on oath forms need to be signed for each party in the presence of a Commissioner of Oaths attached to a Maltese Diplomatic Mission or in the presence of a Commissioner of Oaths who must affix their personal stamp or seal • Original long birth certificate, which includes the names of both parents for both parties • Passport. A photocopy is sufficient for the marriage application; however, the original must be brought to the wedding ceremony • If the person has not previously been married, a free status certificate from their local registrar • If the person is divorced, a decree absolute and previous marriage certificates, as well as an affidavit by a third person, drawn up in the presence of a solicitor, stating that, since the date of the divorce, the person has not remarried • If the person is widowed, a certificate of the first marriage, a death certificate of the former spouse and an affidavit by a third person drawn up in the presence of a solicitor stating that, since the death of the former spouse, the person has not remarried. • If the person has changed their name, a notarised copy of the deed poll 	<p>Civil Code Amendment Act 2011</p> <p>To obtain a divorce in Malta, a married couple must file a joint petition or one spouse must file a petition for divorce from the other. At the time that divorce proceedings commence, the spouses must have lived apart for a period or periods totalling at least 4 years during the 5 years immediately preceding the petition, or at least 4 years must have elapsed from the date of legal separation. The court must also be satisfied that there is no reasonable prospect of reconciliation of the spouses. Another condition is that the spouses and all their children must receive adequate maintenance where it is due, but this right to maintenance can be renounced by the parties at any time</p>	

EU Member State	Legislation on marriage	Legislation on divorce	Additional information
<p>Netherlands</p>	<p>Dutch Civil Code, Book 1 on natural persons and family law, Title 1.5, marriage</p> <p>Anyone who has Dutch nationality can get married in the Netherlands, regardless of whether or not they live in the Netherlands and regardless of their partner's nationality</p> <p>Two foreign nationals may marry in the Netherlands if one of them legally resides in the Netherlands. To prevent marriages of convenience, non-Dutch nationals who wish to marry or enter into a registered partnership must either have a permanent residence permit or obtain a statement from the Dutch police service for foreigners regarding their status under the Aliens Act</p> <p>The documents needed may vary depending on nationality, previous marriages and residence status in the Netherlands. It is advisable to find out well in advance what documents you need and if they meet the requirements. These include:</p> <ul style="list-style-type: none"> • a birth certificate; • proof of identity (e.g. passport); • a marriage certificate in the case of a previous marriage, a divorce decree in the case of a previous divorce or a death certificate in the case of being widowed; • completed witness forms for two to four witnesses; • a certificate of no impediment to marriage or a certificate of civil status proving the person is not married elsewhere; • a statement that the marriage is not intended to obtain a right of residence, as well as a statement concerning the right of residence of the future spouse, if one of the spouses is not Dutch 	<p>Dutch Civil Code, Book 1 on natural persons and family law, Title 1.9, dissolution of a marriage</p> <p>Divorce proceedings may be instituted by both spouses jointly (a joint petition) or by just one of them (a unilateral petition). A petition for divorce may be filed at any time after marriage: there is no requirement for the parties to have been married for a certain length of time</p> <p>The divorce takes effect upon the recording of the court ruling in the register of births, deaths and marriages. This can be done only once the ruling has become irreversible (become final and conclusive). The divorce must be registered within 6 months of the ruling becoming irreversible, otherwise the ruling ceases to have any effect and the divorce can no longer be registered. If the marriage was solemnised abroad and the foreign marriage certificate has not been filed in the Dutch register of births, deaths and marriages, the (Dutch) divorce ruling is recorded in the special register of births, deaths and marriages in The Hague</p> <p>In Dutch law, there is just one ground for divorce: irreparable breakdown of the marriage. The marriage can be said to have irreparably broken down if continuing to live together has become unbearable and there is no prospect of a restoration of proper marital relations. In the case of a unilateral petition, the petitioning spouse must assert the irreparable breakdown and, if it is denied by the other spouse, prove it. The court determines whether or not the marriage has irretrievably broken down</p>	
<p>Poland</p>	<p>The following documents must be presented to the Director of the Civil Registry Office:</p> <ul style="list-style-type: none"> • documents confirming the identity of the persons intending to get married, with photographs; • copies of the birth certificates of the above persons; • for persons who have previously been married, documents certifying their current civil status and full capacity to get married; • for foreigners wishing to get married in Poland, a document certifying they are free to marry, issued in their country of origin, along with a sworn translation into Polish (this document certifies that, under the law of his or her country of citizenship, the foreign national is permitted to contract a marriage in Poland); • proof of payment of stamp duty 	<p>A marriage can be terminated only by death of one of the spouses, a judgment of nullity of marriage or a judgment of dissolution of marriage by a divorce. A judgment of legal separation is available, but it will not terminate a marriage.</p> <p>The primary source of law in relation to the breakdown of marriage and welfare of the children is the Family and Guardianship Code (FGC) of 1964 (Act of 23 April 1964, Journal of Statutes 1964, No 16, item 93 with subsequent amendments). The ground for divorce is complete and irretrievable breakdown of marriage (Article 56 of the FGC). The breakdown is complete when all fundamental bonds (emotional, physical and economic) between the spouses cease to exist. The term 'irretrievable' means that the breakdown of the relationship is going to be permanent</p> <p>However, despite complete and irretrievable breakdown of marriage, a divorce is not permitted if the divorce would be detrimental to the welfare of the common minor children of the spouses or if there are other reasons indicating that to grant a divorce would be against the principles of community life (Article 56(2) of the FGC)</p> <p>The court may also refuse to grant a divorce if the spouse seeking a divorce is exclusively guilty of the breakdown of the marriage and the innocent spouse does not consent to a divorce, unless the refusal to consent to the divorce, in the given circumstances, is against the principles of community life (Article 56(3) of the FGC)</p>	<p>Matrimonial law is addressed in Title I of the FGC. This title is further divided into five parts, covering almost every aspect of matters related to the marriage, including, the creation of marital union, relations between spouses, marital property, the termination of marriage and judicial separation</p>
<p>Portugal</p>	<p>The key documents required are:</p> <ul style="list-style-type: none"> • a passport/identity card; • proof of residence (a passport if they are a temporary resident); • a certified copy of the birth certificate issued within the last 6 months; • a certificate of no impediment issued from a consulate in Portugal, or officially translated into Portuguese if issued elsewhere – this is not required if they are a British national; • if applicable, divorce certificates and/or death certificates of former partners or previous marriage certificates 	<p>In Portugal, a divorce can be obtained by mutual consent or by a contested action</p> <p>The first method involves the agreement of both spouses to the dissolution of the marriage and, in principle, to the payment of maintenance to the spouse in need, the exercise of parental authority with regard to minor children and the disposal of the marital home</p> <p>A contested divorce is applied for in court by one of the spouses against the other, based on legally established facts that, regardless of the blame attached to the spouses, prove the irretrievable breakdown of the marriage</p> <p>Grounds for a contested divorce</p> <ul style="list-style-type: none"> • De facto separation for 1 full year: there is no communal life between the spouses and one or both of them intends not to re-establish it • A change in the mental faculties of the other spouse that has lasted for more than 1 year and that, because of its seriousness, compromises the possibility of communal life • Absence, without any news from the absentee, for a period of not less than 1 year • Any other facts that, regardless of the fault attached to the spouses, prove the irretrievable breakdown of the marriage 	<p>The Portuguese Civil Code governs civil matters such as marriage and divorce</p>

EU Member State	Legislation on marriage	Legislation on divorce	Additional information
Romania	<p>A Romanian citizen</p> <p>A future spouse who is a Romanian citizen will need to provide the following: national Romanian identity card (Bulletin) or passport (if domiciled abroad)</p> <p>A foreign citizen</p> <ul style="list-style-type: none"> • If they are an EU Member State national, they will need to provide their national identity card or passport • If they are from Iceland, Liechtenstein or Norway, they will need to provide their national identity card or passport • From any other country, they will need to provide their passport with a valid visa; the visa will also need to be valid (unexpired) on the projected date of the marriage • They will also need a certificate of no impediment (certificat de cutuma) – this is a declaration needed from the home country's embassy in Romania that states that the person is legally not barred from being married and can freely do so <p>Both individuals will need the following:</p> <ul style="list-style-type: none"> • a Timbru Fiscal receipt for RON 2, paid at a local DGITL tax/post office; • a marriage declaration, which is obtained from the city hall and is to be completed by the couple; • birth certificates – the originals and copies; • medical certificates issued by a Romanian general practitioner that states the person is physically healthy for the marriage – this document is valid for only 14 days and so must be submitted within 14 days of receiving it <p>If either, or both, have been previously married, they must provide:</p> <ul style="list-style-type: none"> • a definitive divorce sentence stamped by the court that issued the divorce • the previous marriage certificate; • the death certificate of the previous partner, if widowed <p>Article 2.586 of the Civil Code on the law applicable to the substantive conditions of the marriage</p> <p>(1) The substantive conditions required for the conclusion of the marriage are determined by the national law of each of the future spouses at the time of the marriage</p> <p>(2) If one of the foreign laws thus determined provides for an impediment to marriage that, according to Romanian law, is incompatible with the freedom to enter into a marriage, that impediment shall be removed as inapplicable if one of the future spouses is a Romanian citizen and the marriage ends in the territory of Romania</p> <p>Article 2.587 of the Civil Code on the law applicable to marriage formalities</p> <p>(1) The form of concluding the marriage is subject to the law of the state in whose territory it is celebrated</p> <p>(2) A marriage that is concluded in front of the diplomatic agent or of the consular officer of Romania in the state in which he is accredited is subject to the formalities provided by the Romanian law.</p>	<p>According to Article 37 of the Family Code, marriage can be dissolved by divorce. Divorce can take place:</p> <p>(a) by the consent of the spouses, at the request of both spouses;</p> <p>(b) when, for good reasons, the relations between the spouses are seriously damaged and the continuation of the marriage is no longer possible;</p> <p>(c) at the request of the spouse whose state of health makes it impossible to continue the marriage</p> <p>Article 38 of the Family Code</p> <p>Divorce with the consent of the spouses can be pronounced by the court regardless of the duration of the marriage and regardless of whether or not there are minor children resulting from the marriage</p> <p>Divorce with the consent of the spouses cannot be allowed if one of the spouses is placed under interdiction</p> <p>The court is obliged to verify the existence of the free and untainted consent of each spouse</p> <p>When resolving the ancillary requests for divorce, regarding the custody of minor children, the obligation to maintain and use the home, the court will also take into account the interests of minors</p> <p>Article 38 of the Family Code</p> <p>If the spouses agree to the divorce and do not have minor children, born of marriage or adopted, the registrar or notary public at the place of marriage or the last common residence of the spouses may find the dissolution of the marriage by consent of the spouses, issuing a certificate of divorce, according to the law</p> <p>The provisions of Article 38, paragraph 2 remain applicable</p> <p>Article 39 of the Family Code</p> <p>The marriage is dissolved from the day on which the decision granting the divorce remained irrevocable</p> <p>In the case provided in Article 38, the marriage is dissolved on the date of issuance of the divorce certificate</p> <p>In relation to third parties, the patrimonial effects of the marriage cease from the date when the divorce decision was made or, as the case may be, the date on the divorce certificate or as added to the marriage certificate, or from the date when the divorce was made known to them in another way.</p> <p>Article 295 of the Civil Code on fictitious marriage</p> <p>(1) A marriage concluded for purposes other than that of starting a family is struck by absolute nullity</p> <p>(2) However, the nullity of the marriage shall be covered if, before the final decision of the court, the cohabitation of the spouses intervened, the wife gave birth or became pregnant or 2 years passed since the conclusion of the marriage</p> <p>Article 296 of the Civil Code on persons who can invoke absolute nullity</p> <p>Any interested person may bring an action for a declaration of absolute nullity of the marriage. However, the prosecutor may not bring an action after the termination or dissolution of the marriage, unless he or she would act in defence of the rights of minors or persons under interdiction</p> <p>Article 2.588 of the Civil Code on the law applicable to the nullity of the marriage</p> <p>(1) The law that regulates the legal requirements for concluding the marriage shall apply to the nullity of the marriage and the effects of this nullity</p> <p>(2) The nullity of a marriage concluded abroad with the violation of the formal conditions may be admitted in Romania only if the sanction of nullity is also provided in the Romanian law</p>	

EU Member State	Legislation on marriage	Legislation on divorce	Additional information
<p>Slovak Republic</p>	<p>A marriage between a Slovak citizen and a foreigner is regulated by pertinent provisions of the Act on Family and the Act on Registry Offices. Granting permanent residence to a foreigner who has entered into marriage with a Slovak citizen is regulated by the Act on Residence of Foreigners</p> <p>A foreigner is obliged to submit the following documents to the locally competent registry office no later than 14 days prior to the wedding ceremony:</p> <ul style="list-style-type: none"> • birth certificate – this document shall include personal data of a foreigner, namely the date and place of birth, as well as the personal data of his/her parents; if the birth certificate does not include personal data of both parents, the marriage certificate of the parents will be required; • proof of marital status; • proof of citizenship – valid passport; • proof of residence; • death certificate of a deceased spouse – if the foreigner is widowed; • divorce decree – if the foreigner is divorced; • identification/passport <p>A Slovak citizen must submit:</p> <ul style="list-style-type: none"> • birth certificate; • proof of citizenship; • proof of address (permanent residence in Slovakia); • death certificate of a deceased spouse if he/she is widowed, or a divorce decree if he/she is divorced, or a court decision on an annulment of a previous marriage; • proof of a personal identification number (given to Slovak citizens at birth); • proof of identity 	<p>A divorce in Slovakia can be obtained only through a court. A marriage can be dissolved if one of the spouses files a petition if the relationship has been completely compromised and there are no foreseeable reconciliation grounds. The court then establishes the causes of the relationship's end, taking them into account when making the divorce decision</p> <p>The following basic materials must be attached to a petition for divorce:</p> <ul style="list-style-type: none"> • marriage certificate; • birth certificate(s) for a child (children); • documentary evidence of the income of both spouses; • documentary evidence or other evidence (e.g. proposing witness testimony) of the cause of the broken marriage; • documentary evidence on expenses for minor children and the household; • other documents 	<p>The family legislation in Slovakia is governed by the Act No 36/2005 on Family, which sets out the legal frames of marriage and divorce, the rights and obligations of the parents and many other aspects</p>
<p>Slovenia</p>	<p>In Slovenia, marriage is governed by the Family Code – Article 30 provides that persons who intend to conclude marriage need to personally give notice of marriage at the administrative unit. In their notice, the persons declare that they are concluding marriage freely and that they fulfil the conditions for a valid marriage. If at least one of the persons intending to marry is an alien and there is reason to suspect that they intend to marry for the purpose of obtaining a residence permit or for the purpose of acquiring citizenship of the Republic of Slovenia and do not intend to form a living community, a specific ascertainment procedure is carried out</p> <p>According to Article 34 of the Private International Law and Procedure Act, conditions for marriage are assessed for each person by the law of the country of which he or she is a national. Foreign public documents can be used in Slovenia if they are first certified in the country of origin and then in the Republic of Slovenia at the Ministry of Foreign Affairs or by diplomatic or consular representation</p> <p>If it is determined that the conditions for a valid marriage under the Family Code are not met, the administrative unit where the persons gave notice of marriage can issue a decision refusing to conclude the marriage</p> <p>Marriage is concluded before the registrar and the head of the administrative unit or a person authorised by the latter, which means that, in the Republic of Slovenia, only civil marriages are valid – a church-only wedding has no effect</p>	<p>Article 200 of the Family Code provides that professional counselling is required before spouses can lodge an application or motion for consensual divorce. The spouses must attend marriage counselling at the social work centre, except in cases when:</p> <ul style="list-style-type: none"> • they do not have joint children over whom they exercise parental responsibility; • one of the spouses is incapable of judgment; • one of the spouses is missing or their residence is unknown; • one or both spouses live abroad <p>Slovenian law recognises (a) divorce on the basis of an agreement between the spouses and (b) divorce on the basis of an action</p> <p>Article 96 of the Family Code regulates consensual divorce in which the court grants a divorce on the basis of the agreement of the spouses provided they have reached an agreement on the care, upbringing and maintenance of joint children and their contact with the parents according to the provisions of this code, and if they have submitted, in the form of an enforceable notarial act, an agreement on the division of co-owned property and on which of them remains or becomes a tenant, and on the maintenance of the spouse who does not have the means of subsistence and is unemployed without fault</p> <p>Article 97 of the Family Code regulates consensual divorce before a notary for spouses without joint children who have concluded an agreement on the division of co-owned property and on which of them remains or becomes a tenant of the home in which they live, and on the maintenance of the spouse who does not have the means of subsistence and is unemployed without fault. Spouses must request that a notary draw up a notarial act on the agreement of the spouses to divorce</p> <p>If the marriage is unsustainable for whatever reason, either of the spouses may sue for divorce on the basis of Article 98 of the Family Code. When a court grants a divorce, it also decides on the care, upbringing and maintenance of joint children and their contact with the parents in accordance with this code</p> <p>In addition, Article 111 of the Family Code regulates the continuation of divorce proceedings by legal successors – the right to lodge an action for divorce is not vested in heirs, but the applicant's heirs may continue already commenced proceedings in order to prove the merits of the claim</p>	

EU Member State	Legislation on marriage	Legislation on divorce	Additional information
Spain	<p>Spanish Civil Code, Title IV on marriage, Articles 44–48 on the requirements of marriage</p> <p>When neither of the parties is a Spanish citizen, one of them must usually have been legally resident in Spain for the previous 2 years. If one of the couple is a Spanish citizen, no residence period requirement applies</p> <p>You will usually need the following documentation to get married in Spain:</p> <ul style="list-style-type: none"> • long-form birth certificate, notarised and translated into Spanish; • valid passport and at least four copies; • certificate of marital status; • certificate of no impediment, which can be obtained from the registrar office of the home country; • divorce decrees – if applicable; • Spanish town hall registration certificate; • aliens (extranjería) application form – three copies; this form needs to be completed and filed at the national police station 	<p>Spanish Civil Code, Title IV, Chapter VIII on the dissolution of marriage (Articles 85–89)</p> <p>Since the reform introduced by Law 15/2005, in order to obtain a divorce in Spain, there have been no requirements relating to prior separation or statutory grounds, as divorce may be ordered directly by the judicial authority (the divorce must be decreed by a final court judgment)</p> <p>Divorce proceedings may be initiated at the request of one of the spouses only, both of them or one of them with the consent of the other. To obtain a decree of divorce, it is enough for the following requirements and circumstances to be met:</p> <ul style="list-style-type: none"> • 3 months have elapsed since the marriage if the divorce is requested by both spouses or by one with the consent of the other; • 3 months have elapsed since the marriage if the divorce is requested by only one of the spouses; • divorce may be applied for without any waiting time after the marriage when there is evidence of a risk to the life, physical integrity, freedom, moral integrity or sexual freedom and integrity of the petitioning spouse or children of both or either of the parties to the marriage <p>From the above, it follows that it is sufficient for one spouse not to wish to continue the marriage to enable him or her to petition for and obtain a divorce without the respondent being entitled to oppose it for material reasons, once the abovementioned period has elapsed and, in the final case, even without waiting for this period to elapse</p>	
Sweden	<p>As a foreign citizen without residency in Sweden you can, in some cases, also get married in Sweden</p> <p>Before a marriage may be entered into, the question of whether or not there are any impediments to marriage must be considered. The inquiry will be carried out by the local office of the Swedish Tax Agency. The persons who are to be married jointly request the Swedish Tax Agency to carry out the inquiry into impediments to marriage. In conjunction with this inquiry, the couple must provide a written assurance that there are no impediments to the marriage</p> <p>If two people want to enter into marriage before a Swedish authority, an inquiry will be made into whether or not there are impediments to marriage under Swedish law. If neither of them is a Swedish citizen or is resident in Sweden, it must be ascertained that each of the individuals has the right to marry under the law of the state where he or she is either a citizen or a resident. However, the inquiry in such cases may also be made applying only Swedish law, if both parties so request and there are special reasons for doing so (Section 1, Chapter 1 of the act (1904: 26 s 1) on certain international legal matters concerning marriage and custody)</p> <p>Documents required:</p> <ul style="list-style-type: none"> • passports; • full birth certificates; • sworn affidavit stating that they are free to marry (single status affidavit); • certificate of no impediment; • if they have been divorced, the final divorce papers and the former marriage certificate, along with a certified and notarised copy; • if they are widowed, the death certificate of the previous spouse, along with a certified and notarised copy; • possibly also a copy of the home country's marriage laws, certified and stamped by an official 	<p>Swedish Marriage Code, Chapter 5 – divorce</p> <p>There is only one kind of divorce in Sweden. It arises irrespective of whether or not the couple is in agreement. Under certain circumstances, the divorce must be preceded by a 6-month period for reconsideration. That is the case if:</p> <ul style="list-style-type: none"> • both spouses request a period for reconsideration; • one of the spouses lives permanently with their own child who is under the age of 16 years and is in the spouse's custody; • only one of the spouses wishes for the marriage to be dissolved <p>A spouse always has the right to obtain a decree of divorce and does not need to rely on any special grounds for such a decree</p> <p>Spouses are not under any obligation to assign motives or reasons for making a petition for divorce. Consequently, the court, when making decisions on an annulment of marriage, does not pay any attention to why the parties in a certain case want to divorce or not</p>	<p>As of 1 May 2009, new rules concerning marriage and marriage ceremonies apply. A person's sex no longer has any bearing on the possibility of entering into marriage. The Marriage Code and other statutes involving spouses have been made gender-neutral and the Registered Partnership Act (1994:1117) has been repealed</p>

EU Member State	Legislation on marriage	Legislation on divorce	Additional information
<p>United Kingdom</p>	<p>England and Wales Part 4 of the Immigration Act 2014 sets out the relevant law in relation to what is required when registering a marriage</p> <p>A couple must notify the registrar of their intention to marry at least 28 days prior to the wedding. However, the Home Office can extend this period to 70 days for further investigation (a Section 48 notice). Section 49 of the Immigration Act 2014 outlines individuals who are exempt from a Section 48 notice. This scheme also applies to Scotland and Northern Ireland by virtue of Section 53 of the Immigration Act 2014</p> <p>Northern Ireland Under Section 76 of the Immigration Act 2014, this act extends to Northern Ireland</p> <p>Scotland Under Section 76 of the Immigration Act 2014, this act extends to Scotland</p>	<p>England and Wales A couple can get a divorce in England or Wales if they have been married for at least a year and their relationship has permanently broken down – Sections 1(1) and 3(1) of the Matrimonial Causes Act 1973</p> <p>When the couple applies for a divorce, they will need to prove that their marriage has broken down. They will need to give one or more of the following five reasons:</p> <ol style="list-style-type: none"> 1. adultery; 2. unreasonable behaviour; 3. desertion; 4. the couple has been separated for more than 2 years (both have to agree to the divorce); 5. the couple has been separated for at least 5 years <p>Northern Ireland Section 3 of the Matrimonial Causes (Northern Ireland) Order 1978 states that a petition for divorce can be made by either party on the ground that the marriage has broken down irretrievably. The reasons for the breakdown are the same as those provided above for England and Wales</p> <p>Scotland Section 1 of the Divorce (Scotland) Act 1976 sets out that a decree of divorce may be granted only if either the marriage has broken down irretrievably or an interim gender recognition certificate has been issued to either party after the date of the marriage</p> <p>Irretrievable breakdown can be claimed for four reasons:</p> <ul style="list-style-type: none"> • adultery; • unreasonable behaviour; • no cohabitation for 1 year and both parties agree to the divorce; • no cohabitation for 2 years 	<p>There will be no change to the rights and status of EU citizens currently living in the UK until 30 June 2021, or 31 December 2020 if the UK leaves the EU without a deal</p> <p>The case of R (on the application of Baiai) v SSHD [2008] UKHL 53 tried to introduce a scheme to protect against sham marriages but the blanket scheme was ruled to be a disproportionate interference with the right to marry</p>

ANNEX III: EU Member States Recognition of civil law foreign judgments on termination of marriage

The Brussels II Regulation applies to all EU Member States – with the exception of Denmark – and states the rules on the recognition of divorces and legal separations effectuated in other Member States. As a consequence of this regulation, an explicit decision recognising a divorce decree granted in another Member State is no longer required.

This document examines how judgments or legally binding decision on termination of marriage from third parties that are non-EU Member States are recognised in each country in the absence of relevant bilateral or multilateral agreements. The document is based on open source research and databases as of 20 June 2019.⁸⁶

EU Member State	Recognition of foreign judgments	
	Provisions	Additional information
Austria	For marriage and divorce, recognition is found in the <i>International Privatrecht-Gesetz</i> (Austrian Act on Private International Law), Article 3 – if foreign law is authoritative, it is to be applied <i>ex officio</i> and as in its original scope	<p>A marriage entered into abroad is valid in Austria if either the requirements of each spouse's personal status were met or the formal requirements applicable in the place where the marriage was solemnised were fulfilled</p> <p>With regard to termination of marriage, the following will be recognised in Austria, provided they are final and cannot be appealed and there is no other reason to refuse recognition:</p> <ul style="list-style-type: none"> • a foreign decree for judicial separation without divorce • a divorce decree • the annulment of a marriage • a declaratory judgment as to whether a marriage does or does not validly exist <p>Recognition may be adjudicated separately as a preliminary question without requiring special proceedings</p>
Belgium	<p>Article 22 of the Code of Private International Law 16 July 2004 – recognition and enforcement of foreign judgments</p> <p>Paragraph 1 – a foreign judgment that is enforceable in the state in which it was rendered will be declared enforceable in whole or in part in Belgium, in accordance with the procedure set out in Article 23</p> <p>A foreign judgment will be recognised in Belgium, in whole or in part, without there being a need for the application of the procedure set out in Article 23</p> <p>If the recognition issue is brought incidentally before a Belgian court, the latter has jurisdiction to hear it</p>	<p>Article 27 of the Code of Private International Law states that a marriage entered into abroad shall be recognised by the Belgian authorities if this marriage is valid according to Articles 18 and 21 of the same code</p> <ul style="list-style-type: none"> • Article 18 concerns fraudulent evasion of the law – if there is proof that one of the spouses is using this marriage to obtain fraudulent residence • Article 21 concerns incompatibility with the public order, such as bigamy or marriage to a minor
Bulgaria	<p>Bulgarian Private International Law Code</p> <p>Conditions of recognition and enforcement (Article 117) – the judgments and authentic acts of the foreign courts and other authorities shall be entitled to recognition and enforcement where:</p> <ol style="list-style-type: none"> 1. the foreign court or authority had jurisdiction according to the provisions of Bulgarian law, but not if the nationality of the plaintiff or the registration thereof in the state of the court seized was the only ground for the foreign jurisdiction over disputes <i>in rem</i>; 2. the defendant was served a copy of the statement of action, the parties were duly summonsed and fundamental principles of Bulgarian law, related to the defence of the said parties, have not been prejudiced; 3. no effective judgment has been given by a Bulgarian court based on the same facts, involving the same cause of action and between the same parties; 4. no proceedings based on the same facts, involving the same cause of action and between the same parties, are brought before a Bulgarian court earlier than a case instituted before the foreign court in the matter of which the judgment whereof the recognition is sought and the enforcement is applied for has been rendered; 5. the recognition or enforcement is not contrary to Bulgarian public policy <p>Recognition and enforcement of court settlements (Article 122) – the provisions of Articles 117 to 121 herein shall furthermore apply to court settlements, if the said settlements enjoy equal status as judgments of court in the state in which the said settlements are reached</p>	

⁸⁶ For the elaboration of the tables on national legislation, preliminary information was sought in open sources. This information was verified and supplemented by the national desks of Eurojust and their national authorities. In the case of Luxembourg and Malta, the information has been extracted only from official online sources.

EU Member State	Recognition of foreign judgments	
	Provisions	Additional information
Croatia	The IPL Act (NN 101/17) is currently in force, and recognition and enforcement of decisions regarding marriage and divorce are regulated in Articles 31–37 of the Croatian Act on International Private Law.	
Cyprus	<p>Cyprus has entered into bilateral treaties with a number of countries on legal assistance on various matters that provide for the recognition and enforcement of judgments given in the courts of the contracting states. Under these, a judgment creditor may apply in Cyprus for the recognition and enforcement of the foreign judgment using the Foreign Courts (Recognition, Registration and Enforcement by Convention) Law of 2000 (Law 121(I)/2000). Cyprus has concluded such bilateral treaties with Belarus, Bulgaria, China, Czech Republic, Egypt, Georgia, Hungary, Poland, Russia, Serbia, Slovakia, Slovenia, Syria and Ukraine.</p> <p>The Certain Judgments of Courts of Commonwealth Countries (Reciprocal Enforcement) Law Chapter 10, which is based on the English Foreign Judgments (Reciprocal Enforcement) Act 1993, applies only to judgments of superior courts of the United Kingdom.</p> <p>If none of the special regimes above applies, it may be possible to bring an action at common law or raise a counterclaim on the foreign judgment.</p>	
Czech Republic	<p>Sections 51 and 52 on the recognition of foreign judgments</p> <p>(1) Final and conclusive foreign judgments concerning matters of the dissolution of marriage, legal separation, the declaration of a marriage as invalid and the designation of whether or not a marriage exists where at least one of the participants in the proceedings is a citizen of Czech Republic are recognised in Czech Republic on the basis of a special judgment, provided this is not prevented by the provisions of Section 15, subsection 1, (a) to (e).</p> <p>(2) A statement as to the fact that a judgment pertaining to the matters set out in subsection 1 has been recognised is to be issued by the Supreme Court. A motion may be submitted by the participants in the proceedings, as well as any party that substantiates its legal interest in doing so. The Supreme Public Prosecutor's Office may enter the commenced proceedings. The Supreme Court will reach its decision in a judgment and it need not call a hearing</p> <p>(3) The judgments set out in subsection 1 can be recognised only if the facts on which the judgment has been based have been ascertained in a manner that essentially conforms to the appropriate provisions of Czech law</p> <p>Section 52</p> <p>If all of the participants in the proceedings were citizens of the state that issued the judgment, foreign judgments pertaining to the matters set out in Section 51 would have the same legal effects in Czech Republic as final and conclusive judgments of the Czech courts without the need for any further proceedings. This also applies in the case of final and conclusive judgments pertaining to these matters issued by the bodies of other foreign states, if such judgments are recognised in the home states of all the participants in the proceedings who are foreigners</p>	
Denmark	<p>A foreign judgment will be recognised and enforced in Denmark if there is either an applicable convention or national Danish rules that grant recognition. The Minister of Justice is authorised to implement regulations granting recognition and enforceability (Sections 223a and 479 of the Administration of Justice Act). However, this authorisation has never been exercised</p> <p>Therefore, the recognition of foreign civil judgments is currently regulated only by international treaties and conventions. If a judgment falls outside a treaty or convention, it may not be recognised in Denmark</p>	<p>Danish law recognises a marriage entered into abroad if it complies with the formalities of the country in which it was entered into. This includes marriages between partners of the opposite sex and same-sex partners. Therefore, if a marriage is properly conducted, it will usually be recognised in Denmark. This includes religious marriages, even if the equivalent Danish religious authority does not have the right to conduct marriages.</p> <p>Denmark is a party to the Hague Convention of 1 June 1970 on the recognition of divorces and legal separations and also recognises divorces ordered abroad in many other circumstances.</p> <p>[REDACTED]</p>
Estonia	<p>Article 621 of the Code of Civil Procedure (2006) – procedure for the enforcement of court decisions of foreign states</p> <p>Unless otherwise provided by law or an international agreement, a court decision of a foreign state is subject to enforcement in Estonia only after the decision has been declared to be subject to enforcement by the Estonian court</p>	


EU Member State	Recognition of foreign judgments	
	Provisions	Additional information
Finland	<p>Recognition of a foreign marriage</p> <p>Part 5, Chapter 2 of the Marriage Act 234/1929</p> <p>Section 115 (1226/2001) on the recognition of a foreign marriage</p> <p>(1) A marriage concluded by a woman and a man in a foreign state before an authority of that state shall be valid in Finland if it is valid in the state where it was concluded or in a state of which either spouse was a citizen or where either spouse was habitually resident at the conclusion of the marriage</p> <p>(2) A marriage performed in another foreign state or, under a licence referred to in Section 113, in Finland by the diplomatic or consular representative of a foreign state, a member of the clergy of a religious community of a foreign state or another person entitled by a foreign state to perform marriage ceremonies in another state shall be valid in Finland if it is valid in the state that the performing authority represents or in state of which either spouse was a citizen or where either spouse was habitually resident at the conclusion of the marriage</p> <p>Recognition of a foreign divorce</p> <p>Part 5, Chapter 2 of the Marriage Act 234/1929</p> <p>Section 121 (661/2015) on the recognition of a foreign judgment</p> <p>Where a marriage has been cancelled or the spouses ordered to be separated or divorced by way of a judgment from a foreign state, the judgment shall be deemed valid in Finland without any specific validation</p> <p>However, a judgment from a foreign state shall not be deemed valid if:</p> <p>(1) the competence of the foreign authority that issued the decision was not based on the domicile or citizenship of either of the spouses;</p> <p>(2) recognition is clearly against the fundamentals of the Finnish judicial system;</p> <p>(3) the decision has been issued against the defendant without his or her presence and the application for a summons or similar document has not been delivered to the defendant sufficiently early and in such a way that the defendant would have been able to prepare to state his or her position, unless the defendant is unambiguously deemed to have accepted the decision;</p> <p>(4) the decision is inconsistent with a decision issued in court proceedings between the same parties in Finland;</p> <p>(5) the decision is inconsistent with an earlier decision between the same parties issued in another country, and the earlier decision fulfils the preconditions for recognition in Finland</p>	
France	<p>Article 509 (14 May 2005) of the Code of Civil Procedure</p> <p>Judgments rendered by foreign courts and deeds received by foreign officers shall be enforceable on the territory of the French Republic in the manner and under the circumstances specified by law</p>	
Germany	<p>Section 328 of the Code of Civil Procedure (2005) – recognition of foreign judgments</p> <p>(1) Recognition of a judgment handed down by a foreign court shall be ruled out if:</p> <ol style="list-style-type: none"> 1. the courts of the state to which the foreign court belongs do not have jurisdiction according to German law; 2. the defendant, who has not entered an appearance in the proceedings and who takes recourse to this fact, has not duly been served the document by which the proceedings were initiated, or not in time to allow him to defend himself; 3. the judgment is incompatible with a judgment delivered in Germany, or with an earlier judgment handed down abroad that is to be recognised, or if the proceedings on which such a judgment is based are incompatible with proceedings that have become pending earlier in Germany; 4. the recognition of the judgment would lead to a result that is obviously incompatible with essential principles of German law, and in particular if the recognition is not compatible with fundamental rights; 5. reciprocity has not been granted <p>(2) The rule set out in point 5 does not contravene the judgment being recognised if the judgment concerns a non-pecuniary claim and if, according to the laws of Germany, no place of jurisdiction was established in Germany</p>	

EU Member State	Recognition of foreign judgments	
	Provisions	Additional information
Greece	<p>Article 905 of the Code of Civil Procedure (1995)</p> <p>(1) Subject to the provisions of international conventions, enforcement of a foreign instrument may be carried out in Greece from the time such instrument was declared to be enforceable by a decision given by the Single-Member Court of First Instance in the district of which the debtor is domiciled or resides and, failing this, by a decision of the Single-Member Court of First Instance of the capital of the state. The Single-Member Court of First Instance shall follow the procedure of Articles 740–781</p> <p>(2) The Single-Member Court of First Instance shall declare the foreign instrument to be enforceable, if such instrument is enforceable according to the law of the land where it was issued and if it is not contrary to good morals and public policy</p> <p>(3) If the foreign instrument is a court decision, the conditions laid down in items 2 to 5 of Article 323 must also be met</p> <p>(4) The provisions of paragraphs 1 to 3 shall also apply for the recognition of <i>res judicata</i> of a decision from a foreign court issued in relation to a matter of personal status</p>	
Hungary	<p>Act XXVIII of 2017 on Private International Law, Articles 109 and 116</p> <p>A judgment adopted by a foreign court shall be recognised if:</p> <p>(a) the jurisdiction of the foreign court was legitimated;</p> <p>(b) the judgment has the force of <i>res judicata</i> or an equivalent effect;</p> <p>(c) there is no reason for denial</p> <p>Reasons for refusal:</p> <ul style="list-style-type: none"> • The judgment is contrary to public policy • The statement of claim was not served • There is a legally binding Hungarian decision on the matter <p>A court settlement or other conciliation shall be recognised and enforced under the same conditions as the judgment</p>	<p>The main source of law for the enforcement of foreign judgments is Regulation (EC) No 2201/2003 – jurisdiction, recognition and enforcement of matrimonial and parental judgments (Brussels II a).</p> <p>To avoid negative consequences for Hungarian citizens with multiple nationalities, the law requires that the nationality of the other party be taken into account when examining the validity of the jurisdiction of the foreign court.</p>
Ireland	<p>The general Common Law regime of the legal framework under which a foreign judgment (being civil or commercial) from all countries to which EU Regulation 1215/2012, EC Regulation 44/2001, the Lugano Convention and the Hague Convention do not apply would be recognised and enforced in Ireland</p> <p>Recognition and enforcement of a foreign judgment is pursued by way of commencing fresh proceedings by way of an originating High Court summons. Any fresh proceedings commenced are required to be issued by the Central Office of the High Court and served on the defendant / judgment debtor. Leave of the High Court must first be obtained to issue and serve the proceedings out of the jurisdiction. Order 11, Rule 1(q) of the Rules of the Superior Courts identifies that such leave may be granted in cases brought to enforce any foreign judgment</p>	<p>The recognition of foreign judgments in Ireland is done in accordance with the country of origin where the judgments have been established. Given this, the main rule of law for the enforcement of foreign judgments, regardless of whether they are civil or commercial matters, is Council Regulation No 44/2001. The law is available for foreign judgments established within the EU's Member States.</p>
Italy	<p>Article 64 of Law 218 of 31 May 1995 – reform of the Italian system of private international law: recognition of foreign judgments</p> <p>(1) A judgment rendered by a foreign authority shall be recognised in Italy without requiring any further proceedings if:</p> <p>(a) the authority rendering the judgment had jurisdiction pursuant to the criteria of jurisdiction in force under Italian law;</p> <p>(b) the defendant was properly served with the document instituting the proceedings pursuant to the law in force in the place where the proceedings were carried out, and the fundamental rights of the defence were complied with;</p> <p>(c) the parties proceeded to the merits pursuant to the law in force in the place where the proceedings were carried out, or default of appearance was pronounced in pursuance of that law;</p> <p>(d) the judgment became final according to the law in force in the place where it was pronounced;</p> <p>(e) the judgment does not conflict with any other final judgment pronounced by an Italian court/authority;</p> <p>(f) no proceedings are pending before an Italian court between the same parties and on the same object, which were initiated before the foreign proceedings;</p> <p>(g) the provisions of the judgment do not conflict with the requirements of public policy (<i>ordre public</i>).</p> <p>Article 65 of Law 218 of 31 May 1995 – reform of the Italian system of private international law: recognition of foreign rulings</p> <p>(1) Any judicial rulings by foreign authorities relating to the capacity of persons as well as to the existence of family relations or personality rights shall take effect in Italy if they were issued by the authorities of the state to whose law reference is made under this law, or if they produce effects under the law of that state, irrespective of their having been issued by the authorities of another state, provided that they do not conflict with the requirements of public policy (<i>ordre public</i>) and the fundamental rights of the defence were complied with.</p>	

EU Member State	Recognition of foreign judgments	
	Provisions	Additional information
Latvia	<p>Section 637 of the Civil Procedure Law – recognition of a decision of foreign courts (2006)</p> <p>(1) Recognition of a decision of foreign courts shall take place in accordance with the general provisions of this chapter.</p> <p>(2) A decision of a foreign court shall not be recognised only if one of the following bases for non-recognition exists:</p> <p>(2.1) the foreign court, which made the decision, was not competent in accordance with Latvian law to examine the dispute or such dispute is an exclusive jurisdiction of the Latvian courts;</p> <p>(2.2) the decision of the foreign court has not entered into lawful effect;</p> <p>(2.3) the defendant was denied a possibility of defending his or her rights, especially if the defendant who has not participated in examination of the case was not notified regarding appearing in court in a timely and proper manner, except if the defendant has not appealed such examination even though he or she had the opportunity to do so;</p> <p>(2.4) the decision of the foreign court is not compatible with a court decision already given earlier and having entered into lawful effect in Latvia in the same dispute between the same parties or with already earlier commenced court proceedings between the same parties in a Latvian court;</p> <p>(2.5) the decision of the foreign court is not compatible with such decision of another foreign court, which has already been earlier given and has entered into lawful effect, in the same dispute between the same parties, which may be recognised or is already recognised in Latvia;</p> <p>(2.6) the recognition of the decision of the foreign court is in conflict with the public structure of Latvia;</p> <p>(2.7) in making the decision of the foreign court, the law of such state was not applied as should have been applied in conformity with Latvian international private law conflict of law norms</p> <p>(3) A decision of the foreign court in cases that arise from custody, guardianship and access rights shall not be recognised only if there exists at least one of the non-recognition bases referred to in paragraph 2, clauses 1, 2, 3, 6 and 7 of this section or one of the following non-recognition bases ...</p> <p>(3.1) A ruling of a foreign court in the cases regarding the recovery of maintenance, by which the ruling on the recovery of maintenance given previously is amended on the basis of the fact that circumstances have changed, shall not be deemed a non-compatible judgment within the meaning of paragraph 2, clauses 4 and 5 of this section</p> <p>(4) In deciding an issue regarding whether, in conformity with the provisions of paragraph 2 of this section, a court decision is to be recognised, the judge or court shall be guided by the circumstances that are established by the decision of the foreign court</p> <p>(5) If with a decision of the foreign court several merged claims in one claim are satisfied and such decision is not to be recognised in full, the decision of the foreign court may be recognised in relation to one or more of the satisfied claims</p> <p>Section 644 of the Civil Procedure Law – enforcement of a decision of a foreign court (2012)</p> <p>(1) A decision of a foreign court, which is to be enforced in the state wherein it was made, after its recognition shall be enforced in accordance with the procedures laid down in this law</p> <p>(2) In relation to the procedures for the declaration of the enforcement of a judgment, which are provided for in the Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters of 30 October 2007, Council Regulation No 44/2001, Council Regulation No 2201/2003 and Council Regulation No 4/2009, and Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession (hereinafter – Regulation No 650/2012 of the European Parliament and of the Council), the provisions of Chapter 77 of this law regarding the recognition of decisions of foreign courts shall be applied insofar as such is allowed by the provisions of the relevant convention and regulations</p> <p>(3) In the cases that are provided for in Council Regulation No 2201/2003 and Regulation No 805/2004 of the European Parliament and of the Council, European Parliament and Council Regulation No 861/2007, Regulation No 1896/2006 of the European Parliament and of the Council, Council Regulation No 4/2009 2009 and Regulation No 1215/2012 of the European Parliament and of the Council and Regulation No 655/2014 of the European Parliament and of the Council, a decision of the foreign court shall be enforced in accordance with the procedures laid down in this law, without requesting recognition of the decision of the foreign court, as well as the declaration of the enforcement of the decision of the foreign court</p> <p>(4) Expenses related to the enforcement of a decision of the foreign court shall be covered according to general procedure</p>	

EU Member State	Recognition of foreign judgments	
	Provisions	Additional information
Lithuania	<p>Article 584 of the Code of Civil Procedure 2002 – documents subject to enforcement</p> <p>1. In accordance with the rules laid down in Part VI of this code, the following documents shall be subject to enforcement:</p> <p>(1) arbitration awards, court judgments, rulings, decisions and orders in civil proceedings, as well as in proceedings relating to administrative legal relations;</p> <p>(2) court sentences, rulings and decisions in criminal proceedings to the extent they relate to the exaction of possessions;</p> <p>(3) court decisions in administrative proceedings to the extent they relate to the exaction of possessions;</p> <p>(4) peaceful settlements approved by the court;</p> <p>(5) foreign court decisions and arbitral awards – in the cases specified by international agreements and laws</p>	<p>When a domestic judgment comes into effect, the beneficiary is entitled to apply in writing to the court to provide an execution writ. Based on this document, the state officials are entitled to compulsory execution. The foreign judgment shall be recognised by the Court of Appeal at first. The Civil Procedure Code provides several reasons why such judgment shall not be recognised – for example, lack of jurisdiction of a foreign court. If the foreign judgment is recognised, the court issues a decision about recognition and execution of the foreign judgment, which might be appealed at the Supreme Court. Nevertheless, the decision to recognise a foreign judgment adopted by the Court of Appeal comes into force immediately; therefore, cassation does not stop its execution.</p>
Luxembourg	<p><i>Article 678 New Code of Civil Procedure 2018 – Décisions étrangères non soumises a un traité ou un acte communautaire (2009)</i></p> <p><i>Les décisions et transactions judiciaires rendues par les juridictions étrangères et les actes authentiques reçus par les officiers publics étrangers ne seront susceptibles d'exécution dans le Grand-Duché que de la manière et dans les cas prévus par les articles 2123 et 2128 du Code civil.</i></p> <p><i>Article 2123 Civil Code – Des hypothèques judiciaires</i></p> <p><i>L'hypothèque judiciaire résulte des jugements, soit contradictoires, soit par défaut, définitifs ou provisoires, en faveur de celui qui les a obtenus. Elle résulte aussi des reconnaissances ou vérifications, faites en jugement, des signatures apposées à un acte obligatoire sous seing privé.</i></p> <p><i>Elle peut s'exercer sur les immeubles actuels du débiteur et sur ceux qu'il pourra acquérir, sauf aussi les modifications qui seront ci-après exprimées.</i></p> <p><i>Les décisions arbitrales n'emportent hypothèque qu'autant qu'elles sont revêtues de l'ordonnance judiciaire d'exécution.</i></p> <p><i>L'hypothèque ne peut pareillement résulter des jugements rendus en pays étranger, qu'autant qu'ils ont été déclarés exécutoires par un tribunal luxembourgeois; sans préjudice des dispositions contraires qui peuvent être dans les lois politiques ou dans les traités.</i></p> <p><i>Article 2128 Civil Code – Des hypothèques conventionnelles</i></p> <p><i>Les contrats passés en pays étranger ne peuvent donner d'hypothèque sur les biens du Grand-Duché, s'il n'y a des dispositions contraires à ce principe dans les lois politiques ou dans les traités.</i></p>	
Malta	<p>Article 836 of the Code of Organisation and Civil Procedure – enforcement of judgments of tribunals outside Malta (2006)</p> <p>Saving the provisions of the British Judgments (Reciprocal Enforcement) Act, any judgment delivered by a competent court outside Malta and constituting a <i>res judicata</i> may be enforced by the competent court in Malta, in the same manner as judgments delivered in Malta, upon an application containing a demand that the enforcement of such judgment be ordered</p>	
Netherlands	<p>Regulation 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. However, according to Article 1(2)a, this regulation does not apply to property rights arising out of a matrimonial relationship</p> <p>Articles 431 and 985–994 of the Code of Civil Procedure govern the recognition and enforcement of foreign judgments (Article 431 prevents the execution of foreign civil judgments in the Netherlands in those cases where no international treaty or regulation is applicable)</p> <p>Articles 93 and 94 of the Dutch Constitution</p> <p>Article 93</p> <p>Provisions of treaties and of resolutions by international institutions that may be binding on all persons by virtue of their contents shall become binding after they have been published</p> <p>Article 94</p> <p>Statutory regulations in force within the Kingdom shall not be applicable if such an application is in conflict with provisions of treaties that are binding on all persons or of resolutions by international institutions</p>	
Poland	<p>Article 1145 of the Code of Civil Procedure (1964) – recognition of judgments</p> <p>Decisions of the courts of foreign countries issued in civil matters shall be subject to recognition by law, unless there are obstacles referred to in Article 1</p>	
Portugal	<p>Article 978 of the Code of Civil Enforcement Proceedings and corresponding case law</p>	<p>In the Portuguese jurisdiction, the recognition and enforcement of foreign judgments is stated in the Code of Civil Procedure, Book V, special forms of procedures, Title XIV, The Foreign Judgment Review, Article 978 et seq., and supplemented by relevant case law on the numerous matters on which the codes remain silent</p>

EU Member State	Recognition of foreign judgments	
	Provisions	Additional information
Romania	<p>Article 1.095 – full recognition</p> <p>Foreign judgments are fully recognised in Romania if they refer to the personal status of the citizens of the state where they were pronounced or if, being pronounced in a third state, they were first recognised in the state of citizenship of each party or, in the absence of recognition, were pronounced on the basis of the law determined to be applicable according to the Romanian private international law, are not contrary to the public order of Romanian private international law and the right to defence was respected.</p>	<p>Foreign decisions, in accordance with the provisions of Article 1094 of the Civil Procedural Code, represent a category of decisions in which the acts of contentious or non-contentious jurisdiction of the courts and notarial courts, as well as the acts of any other competent authorities, are issued in a non-Member State of the EU.</p> <p>The domestic legislation through the provisions of Articles 1095–1102 of the Civil Procedural Code regulates, in principle, the procedure for the recognition of foreign judgments in a non-Member State of the EU.</p> <p>The legislation confers a special legal regime, from the point of view of recognising the effects of foreign judgments on the Romanian territory, on the judgments concerning personal status, in the sense that, by the previously enunciated text of law, it confers full recognition on them. The legislation regulates three cases in which this recognition works: judgments concerning the personal status of nationals of the state where they were pronounced; judgments that, being pronounced in a third country, were first recognised in the home country of each party; and decisions that, in the absence of recognition, were pronounced on the basis of the law determined to be applicable according to the Romanian private international law. At the end of the text, the legislation imposes two general requirements that must be met: not to be contrary to the public order of Romanian private international law and to have respected the right to defence.</p> <p>The legislation makes the benefit of full recognition of the compatibility of the foreign jurisdictional act conditional on the public order of Romanian private international law and with the observance of the right to defence.</p>
Slovak Republic	<p>Article 63 of the Act of 4 December 1993 No 97 on private international law and rules of international procedure</p> <p>Decisions of authorities of another state, including settlements approved by them, in matters specified in Article 1, provided that in the Slovak Republic they fall within the courts' jurisdiction, as well as foreign authentic instruments in such matters (further referred to as 'foreign decisions') shall have legal effect in the Slovak Republic if they have been recognised by the Slovak authorities.</p> <p>Article 65 of the Act of 4 December 1993 No 97 on private international law and rules of international procedure.</p> <p>Foreign decisions in matrimonial matters and in matters involving establishment (determination or contestation) of parentage where at least one of the parties is a Slovak national and foreign decisions on adoption of a child who is a Slovak national shall be recognised in the Slovak Republic, unless precluded by the provisions of Article 64(b) to (f).</p> <p>Article 68 of the Act of 4 December 1993 No 97 on private international law and rules of international procedure – effects of foreign decisions.</p> <p>(1) A foreign decision recognised by a Slovak court shall have equal legal effects with a decision rendered by a Slovak court.</p> <p>(2) Even without recognition, a foreign decision in matrimonial matters, in matters involving establishment (determination or contestation) of parentage or adoption of a child, shall have equal legal effects with a decision of a Slovak court if the parties are not Slovak nationals and if it is not contrary to the Slovak ordre public</p>	
Slovenia	<p>Article 94 of the Private International Law and Procedure Act</p> <p>(1) A foreign judicial decision shall have the same status as a decision of a court of the Republic of Slovenia, and shall have the same legal effect in the Republic of Slovenia as a domestic judicial decision, only if it is recognised by a court of the Republic of Slovenia</p> <p>(2) A foreign judicial decision referred to in the first paragraph of this article shall also denote a settlement made before a court (in-court settlement)</p> <p>(3) A foreign judicial decision shall also denote a decision of another body, which has the same status as a judicial decision or an in-court settlement in the state where it was issued if it governs the relationships set out in Article 1 of this act</p> <p>On the enforceability of foreign notarial deeds, the Notary Act (in the second paragraph of Article 7) provides that a foreign notary record in the Republic of Slovenia is directly enforceable if there is reciprocity, if it relates to rights that are not contrary to public policy in the Republic of Slovenia and if it contains all of the elements that are a condition for enforceability, which stipulates Article 4 of the Notary Act</p>	<p>In accordance with the Private International Law and Procedure Act, in order to recognise a divorce in Slovenia, the original copy of the foreign divorce judgment (together with its translation) must be presented in person at a competent district court in Slovenia</p> <p>If children were born in marriage, the entire foreign judgment of divorce and its translation must be submitted. In other cases, a part of the foreign judgment and its translation is sufficient</p> <p>The Slovenian court will issue a decision recognising a foreign divorce judgment. Based on this decision, the divorce is registered at the administrative unit in Slovenia</p>

EU Member State	Recognition of foreign judgments	
	Provisions	Additional information
Spain	<p>Enforcement of foreign decisions (exequatur) is governed by Articles 52–54 of the CLegal Cooperation Act</p> <p>Article 52 – jurisdiction</p> <p>(1) The jurisdiction to hear exequatur applications corresponds to the Courts of First Instance of the domicile of the party before which the recognition or enforcement is requested, or the domicile of the person that the effects of the foreign judicial resolution refers to. Under subsidiary terms, the territorial jurisdiction shall be determined by the place of enforcement, or by the place where the resolution is due to take its effects, the competent judge, in the latter case, being the Court of First Instance before which the exequatur suit is filed</p> <p>(2) The jurisdiction of the Mercantile Courts to hear exequatur applications regarding foreign court judgments on matters of their jurisdiction shall be determined pursuant to the criteria established in paragraph 1</p> <p>(3) Should the party against which the exequatur is brought be subject to bankruptcy proceedings in Spain and the foreign judgment concern any of the matters that are under the jurisdiction of the insolvency judge, the jurisdiction to hear the exequatur application shall lie with the insolvency judge and it shall be substantiated through the proceedings of an insolvency incident</p> <p>(4) The Spanish Court of Law shall resolve on the objective jurisdiction to hear such proceedings</p> <p>Article 54 – proceedings</p> <p>(1) The exequatur proceedings, in which the parties shall be represented by a barrister and counselled by a solicitor, shall commence by means of a writ at the instance of any person who proves a legitimate interest. The exequatur suit and the application for enforcement thereof may be accumulated in the same writ. Notwithstanding this, enforcement shall not proceed until a resolution has been handed down decreeing the exequatur</p> <p>(2) Adoption of protective measures may be requested pursuant to the provisions of the Civil Procedure Act, to assure the effectiveness of the judicial protection requested</p> <p>(3) The suit shall be filed against that party or parties against which the foreign judicial judgment is to be enforced</p> <p>(4) The suit shall comply with the requisites of Article 399 of the Civil Procedure Act and shall be accompanied by: (a) the original or certified copy of the foreign judgment, duly legalised or apostilled; (b) the document that proves, if the judgment was handed down in contempt of court, the delivery or notification of the summons or equivalent document; (c) any document that proves the final nature and enforceability thereof, in the case of a foreign judgment in the state of origin, a particular that may be recorded in the actual resolution or arise from the law applied by the court of origin; (d) the relevant translations pursuant to Article 144 of the Civil Procedure Act</p> <p>(5) The suit and documents produced shall be examined by the Court Clerk, who shall issue an order to admit such and notify the defendant, so opposition may be filed within the term of 30 days. The defendant may attach the documents, among others, that challenge the authenticity of the foreign judgment, the validity of the summons to the defendant or the final nature and enforceability of the foreign judgment, to his writ of opposition</p> <p>(6) Notwithstanding this, should the Court Clerk consider there is a failure to correct a procedural defect, or a possible cause of no-admission, pursuant to Spanish procedural law, this may be reported to the Court of Law for a ruling on admission within the term of 10 days, in cases where a lack of jurisdiction or competence is considered, or if the suit suffers from formal defects or the documentation is incomplete, or has not been corrected by the claimant within the term of 5 days granted for that purpose by the Court Clerk</p> <p>(7) Once the opposition has been formalised, or the term for that purpose has elapsed without it being formalised, the Court of Law shall issue its ruling by the appropriate Court order within the term of 10 days</p> <p>(8) The Public Prosecutor shall always intervene in these proceedings, to which end he shall be notified of all the actions</p>	
Sweden	<p>Marriages abroad are regulated in Sections 7, 8 and 8a. Chapter 1 of the Act (1904: 26 s 1) on certain international legal matters concerning marriage and custody</p>	
United Kingdom	<p>It is a common law system in the United Kingdom and therefore case law sets out how each individual case will be dealt with. As a general rule, if the marriage procedure is followed abroad correctly and the marriage would be allowed under UK law, the marriage or civil partnership will generally be recognised</p>	<p>The recognition and enforcement of foreign judgments in England and Wales that fall outside the scope of the special EU and statutory regimes are dealt with under English common law. The procedure for enforcement of such foreign judgments is set out in Part 74 of the English Civil Procedure Rules.</p>

ANNEX IV: Relevant legal sources and bibliography

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- ▶ Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing and confiscation orders: O.J. L303, of 28.11.2018: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018R1805>
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Catalogue number: QP-05-24-068-EN-N • ISBN: 978-92-9404-217-0 • DOI: 10.2812/751230



Eurojust is an agency of the European Union