



## **EMN Ad-Hoc Query on Illegal stay of TCN after the expiration of the visa or beyond the validity of the visa exemption ('overstayers')**

Requested by Christelle CAPORALI-PETIT on 4th December 2017

### **Irregular Migration**

Responses from Austria, Belgium, Croatia, Czech Republic, Estonia, Finland, France, Germany, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Netherlands, Portugal, Slovak Republic, Slovenia, Sweden, United Kingdom, Norway (20 in total)

#### Disclaimer:

*The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.*

### **Background information:**

France has been considering how to record the number of third-country nationals who stay illegally on its territory after the expiration of the visa or beyond the validity of the visa exemption (the so called ‘overstayers’). Illegal stay is one form of irregular migration but it is difficult to estimate how much it represents in the global irregular migration. Such information would be useful for steering the action of consular posts.

As of today, France has not implemented any tool to record these overstayers and would like to know whether the other Member States hold any specific process / tool dedicated to these persons.

### **Questions**

1. 1. Does your Member State hold such process /tool?
2. 2. If yes, please describe how and when it was implemented, how it works, its objectives, how it is monitored, evaluated, etc ?
3. 3. Please add, if necessary, any additional information you think it useful.

### **Responses**

	<b>Country</b>	<b>Wider Dissemination</b>	<b>Response</b>
	Austria	Yes	<ol style="list-style-type: none"><li>1. No. The dates of entry and departure are compared on the basis of the entry and exit stamps in the submitted travel document to determine whether the person concerned has already exceeded the maximum period of residence in the territory of the member state (or overstay, if applicable).</li><li>2. /</li><li>3. / -- Source: Federal Ministry of the Interior</li></ol>
	Belgium	Yes	<ol style="list-style-type: none"><li>1. No.</li><li>2. N/A.</li></ol>

			3. N/A.
	Croatia	Yes	<p>1. 1. There is an information system PI and IS MUP which can detect third country national overstaying the permitted period.</p> <p>2. 2. At daily basis IS MUP signalizes TCN for whom a residence permit (eVisitor) has been filled and for whom there is a suspicion of being illegal resident. Such applications are automatically processed. The system compares the date of application with dates of previous registration and short residence, and indicates TCN who may be illegal resident and are overstayers. In this matter additional checks are required.</p> <p>3. 3. N/A</p>
	Czech Republic	Yes	<p>1. The Czech Republic does not have any tool to estimate the number of overstayers.</p> <p>2. N/A</p> <p>3. N/A</p>
	Estonia	Yes	<p>1. No, there is no automated recording system of overstayers, the data is retrieved only by making a direct inquiry concerning a third-country national.</p> <p>2. N/A</p> <p>3. N/A</p>
	Finland	Yes	<p>1. The Ministry for Foreign Affairs, as a central authority for Schengen visas in Finland, does not have this kind of tool. At the national level the Border Guard of Finland has a national Entry-Exit System.</p> <p>2. The national entry-exit system has no mechanism that would notify authorities of the expiration of the visa or end the validity of the visa exemption. Possible overstayers are spotted by the Border</p>

			<p>Guard in regular border controls. The national EES is useful when controlling for example traffic through the Finland-Russia border to prevent misuse of Schengen visas. Consular offices and MFA Visa Unit may receive information when requested. At the moment visa officers have no direct access to the EES.</p> <p><b>3.</b> As part of the Smart Borders-package, Finland will take part in the shared entry/exit system (EES) of the Schengen countries. Finland will also put to use the European Travel Information and Authorization System ETIAS (in 2020).</p>
	France	Yes	<p><b>1.</b> NO France only records the TCNs, who leave the French territory once their right of residence has expired.</p> <p><b>2.</b> N/a</p> <p><b>3.</b> n/a</p>
	Germany	Yes	<p><b>1.</b> No. Germany does not have a tool to systematically record third-country nationals entering via a visa process and overstaying the permitted period. The visa file stored in the Central Register of Foreigners (AZR) only records the visa applications that are lodged and the decision on them, but not whether an individual actually entered the country. They are only recorded in the Register's general data collection if the residence is longer than temporary. This means that persons entering with a visa are not recorded. It is not permitted to link these two data records. Such data are partially recorded in the asylum procedure if a person enters the country using a visa, and then lodges an asylum application. However, these data are only selective, and they cannot be systematically evaluated.</p> <p><b>2.</b> n./a.</p> <p><b>3.</b> The Act of 22 December 2012 provided that a Visa Warning File was to be created in order to prevent the abuse of visas to facilitate entry into Germany. The register is used to support all public authorities which are responsible for issuing visas in order to avoid mistakes in their decision-making. To this end, amongst other things warning data are stored regarding individuals and organisations</p>

			<p>which for instance have made false statements when applying for visas or have failed to comply with their responsibilities (exit). The Visa Warning File Implementing Regulation does not cover the absences of the overstayers, so the excess of the visa restriction is currently not recorded in the Visa Warning File.</p>
	Hungary	Yes	<ol style="list-style-type: none"> <li>1. No.</li> <li>2. -</li> <li>3. In Hungary we only use a "border checking and registrarion system" at the Schengen extrenal borders, hence this system doesn't provide a full information.</li> </ol>
	Ireland	No	
	Latvia	Yes	<ol style="list-style-type: none"> <li>1. State Border Guard Immigration control structural units perform control measures for the observance of the conditions of residence by the third-country nationals throughout the territory of Latvia in order to detect foreigners who have exceeded the time allowed for residence.</li> <li>2. Inspections are carried out on the basis of information received from the other state institutions (for example, the Office of Citizenship and Migration Affairs, the State Labor Inspectorate, the State Police, etc.), as well as information obtained from information systems including data on issued visas and residence permits (e.g. Border Guard information system, National Visa Information System and Citizens' Register). The above-mentioned structural units carry out active search, random checks, checks carried out upon risk analysis. Control measures are carried out within the territory of the country and at the border.</li> <li>3. In addition to above mentioned the Office of Citizenship and Migration Affairs which is the state authority responsible for granting legal status to foreigners on the territory of Latvia regularly at the beginning of each month submit (electronically by the use of e-mail) information gathered on foreigners with cancelled residence permits or work permits. The information received is further distributed to the State Border Guard Immigration control structural units (according to the territorial</li> </ol>

			jurisdiction), which after analysing this information, if necessary, conducts immigration control measures.
	Lithuania	Yes	<p><b>1.</b> No, Lithuania does not carry out special measures to monitor and evaluate the number of TCNs who irregularly stay on its territory after the expiration of the visa or beyond the validity of the visa exemption (the so called ‘overstayers’). However, the decisions regarding the irregular stay in the Republic of Lithuania (including the decisions on return) are registered in the Foreigners' Register - module on Illegal Migration.</p> <p><b>2.</b> See answer to Q1.</p> <p><b>3.</b> See answer to Q1.</p>
	Luxembourg	Yes	<p><b>1.</b> No.</p> <p><b>2.</b> N/A.</p> <p><b>3.</b> N/A.</p>
	Netherlands	Yes	<p><b>1.</b> The Dutch authorities do not register overstayers as such, mainly because it is not really possible to decide whether someone is an ‘overstayer’; not every individual exits the Schengen area via the Dutch border. If someone exits as an overstayer, this is possibly registered, but this only provides information about individuals who leave the Schengen Area.</p> <p><b>2.</b> N/A</p> <p><b>3.</b> N/A</p>
	Portugal	Yes	<p><b>1.</b> No</p>

			<p>2. NA</p> <p>3. NA</p>
	Slovak Republic	Yes	<p><b>1.</b> Yes. If a foreigner stays illegally on the territory after the expiration of the visa or beyond the validity of the visa exemption, it is considered a misdemeanour which has been, according to the national legislation, an unauthorised stay in the territory of the Slovak Republic (it is one of the reasons when a foreigner stays in the territory of the Slovak Republic irregularly). Since these acts are qualified as an irregular stay, they are recorded by the Border and Alien Police for statistical and analytical purpose. Since the Slovak Republic entered Schengen (December 2007), the collection of data on irregular migration has gradually improved in order to comply with the European requirements (Eurostat, Frontex) and those of national institutions as well as the needs of analytical departments for statistical and analytical purposes of all management levels of the Bureau of Border and Alien Police of the Police Force Presidium (BBAPPPF). This was one of the reasons for the establishment of the new Information System Migration and International Protection (MIGRA) which was created by the BBAPPPF (responsible for the field of irregular and regular migration) together with the Migration Office of the Ministry of Interior of the Slovak Republic (responsible for the field of international protection) in 2009-2010. The project was co-funded by the EU.</p> <p><b>2.</b> IS MIGRA was launched in 2010 and it is the main information source on irregular migration in the territory of the Slovak Republic which is used in formation of statistical outputs as well as analytical products with the aim of combatting irregular migration and cross-border crime. From the point of view of IS MIGRA functionality, it is possible to define it as a system enabling evidence of cases of foreigners gradually being solved by the BBAPPPF units and the Migration Office. The integration of IS MIGRA into Interpol AFIS (since April 2016) also ensures identification of persons based on the fingerprinting. The information is entered into IS MIGRA directly by the BBAPPPF units on a daily basis. The entered information is verified in three steps and carried out on local, regional and subsequently central level on a daily basis (regional and central level check is carried out by the units which ensure risk analysis). By this measure, a high quality, correctness and timeliness of data and statistical outputs was ensured and at the same time, a natural pressure was created for analysts to learn regularly about the current situation. IS MIGRA is user friendly (search, classification, and</p>

			<p>summarising of information according to various criteria is clear and transparent) and accessible for Police force of the BBAPFP at all three levels. The information system records the following categories: • foreigners who irregularly crossed the state border of the Slovak Republic or irregularly stay in the territory of the Slovak Republic (one of the categories are also overstayers after visa expiration or beyond the validity of the visa exemption); • foreigners refused entry to the territory of the Slovak Republic according to the special provision (Schengen Borders Code and national legislation within EU); • foreigners who applied for asylum in the Slovak Republic; • foreigners granted asylum / subsidiary protection / temporary shelter in the territory of the Slovak Republic; IS MIGRA enables evidence of a number of detected cases of irregular stay. Besides, it also records specification and reasons of irregular stay among which overstayers after visa expiration or beyond the validity of the visa exemption belong. Moreover, other visa related data is recorded such as visa type, visa number, country of issue. IS MIGRA provides BBAPFP at all levels with various statistical outputs from which overstayers after visa expiration or beyond the validity of the visa exemption can be selected according to different categories (according to their nationality, visa type, country of issue, even lists of these persons with personal information and all relevant data).</p> <p><b>3. IS MIGRA is very important evidence-statistical-analytical system and can be considered as a specific tool which contributes to the formation of the migration policy of the Slovak Republic. It provides complex information not just for the BBAPFP forces but also for the Migration Office. Moreover, also other Police forces can access the system. It contributes to a better mutual cooperation in the area of information exchange towards other countries and it also facilitates cooperation of the Police force and other state authorities.</b></p>
	Slovenia	Yes	<p><b>1.</b> According to our national legislation there is a particular misdemeanor for overstaying. As such each case is separately processed and entered into the Police database. So all the data can be extracted from the database. Each of the persons fined for overstaying has a notion in the database in this regard.</p> <p><b>2.</b> It has been implemented from the very beginning of existence of the legal act, namely the Aliens Act. Procedure is the same as for any misdemeanor of similar nature, namely financial fine and entry into the system.</p>

			3. n.a.
	Sweden	Yes	<p>1. No</p> <p>2. NA</p> <p>3. NA</p>
	United Kingdom	Yes	<p>1. A recent Parliamentary Question was asked on the subject of recording migrants who are in the UK illegally.(Undocumented Migrants: Written question - HL3148) Asked by Baroness Smith of Basildon13 November 2017 To ask Her Majesty's Government, further to the answer by Baroness Williams of Trafford on 23 October (HL Deb, cols 769–70), how many individuals are recorded by the Home Office as being in the United Kingdom illegally. Answered by: Baroness Williams of Trafford on: 27 November 2017 Any estimate of the exact size of the illegal population is extremely difficult and there would be considerable uncertainty around it. Exit checks were introduced in April 2015 and are, over time, providing more detailed insights into the behaviour of migrants and how they comply with the restrictions placed upon their length of stay in the UK, but the data obtained does not provide the total number of illegal migrants in the UK. Instead of producing inaccurate numbers, the Government is focused on making it harder for people to live in the UK illegally. Source: <a href="https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2017-11-13/HL3148/">https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2017-11-13/HL3148/</a> Information on the use of exit checks data including its use for operational purposes was published in the ‘Second report on statistics being collected under the exit checks programme’ at <a href="https://www.gov.uk/government/statistics/second-report-on-statistics-being-collected-under-the-exit-checks-programme">https://www.gov.uk/government/statistics/second-report-on-statistics-being-collected-under-the-exit-checks-programme</a></p> <p>2. N/A</p> <p>3. See question 1</p>
	Norway	Yes	1. N/A

			<p><b>2.</b> N/A</p> <p><b>3.</b> Norway is unfortunately unable to actually address these questions at this time, but offer you a link to a research study Norway conducted some years ago, that addresses methods for determining numbers of persons with unauthorized stay. <a href="https://www.udi.no/statistikk-og-analyse/forsknings-og-utviklingsrapporter/learning-about-illegals-issues-and-methods-2008/">https://www.udi.no/statistikk-og-analyse/forsknings-og-utviklingsrapporter/learning-about-illegals-issues-and-methods-2008/</a></p>
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