



AD HOC QUERY ON 2020.31 Visa-free access after expired residence permit

Requested by Gabor Veto on 13 May 2020

Compilation produced on 28 July 2020

Responses from Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, France, Germany, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Slovakia, Slovenia, Sweden plus Norway (21 in Total)

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1. Background information

In Hungary's view, if the residence permit of a third-country national expires who is entitled to visa-free entry and stay for a period of up to 90 days within any period of 180 days due to the third-country national's nationality pursuant to the Visa Code, the third-country national is entitled to visa-free stay for another 90-day period without having to exit the territory of Hungary.

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Nevertheless, the question arises whether the third-country national is entitled to stay for an additional period of up to 90 days after the withdrawal of the third-country national's residence permit. If the answer to the question is yes it means that during a regular patrol operation it cannot be clearly determined when was the start date of the third-country national's visa-free stay (considering the third-country national lacks the entry stamp in the third-country national's passport and the third-country national's residence permit is withdrawn; however, the finality date of the decision on withdrawal is unknown to the officer who stops the third-country national and conducts the ID check), and as a result of lacking information the patrol officer is obliged to decide for the arrest of the third-country national in order to clarify the answer to the question and bring the third-country national to the competent aliens policing authority.

Bilateral agreements which in addition to provision of the EU provide stay in Hungary for another 90 days are also raising more difficulties. In such a case third-country nationals are entitled to stay for up to a 90+90-day period after the expiration or withdrawal of their residence permit (withdrawal can take place even if the notification of the third-country national is only presumed and in such cases the aliens policing authority cannot affix a stamp indicating expulsion in the travel document. When an application for a residence permit is rejected, the third-country national does not receive an expulsion decision and a stamp indicating expulsion affixed in the third-country national's passport, only the obligation to leave the country is included in the decision on rejection).

If a third-country national does not exit the Schengen Area directly from Hungary when exiting at the external border, by checking the third-country national's passport the border guard of another Member State will not be able to determine that based on what residence title was the third-country national staying in Hungary after his/her 90-day-period visa-free residency that pursuant to provisions of the European Union the third-country national is entitled to. As a result, potential necessity of sanctioning the falsely assumed illegal stay from the border guard's side may arise.

The resolution of these issues is currently imposing additional administrative burden on the aliens policing authority; therefore we would like to get to know the practice of Member States, so that we can simplify the Hungarian procedure and practice if needed.

2. Questions

- 1. If a third country national having a residence permit legally resides in the territory of a Member State, will the national's visa-free stay revive following the expiration date of the national's permit in case of a third country national who entered the territory with visa-free access?**
- 2. Is it required for a third-country national to exit the territory of Schengen States for the revival of the national's visa-free stay?**
- 3. If your answer to Question 1 is yes: Is there a different practice for cases when the national's residence permit was withdrawn and does not expire?**

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4. If your answer to Question 1 is yes: During police checks of patrol operations, how can the foreigner prove the start date of the revival of the national's visa-free stay following the expiry date (or date of withdrawal) of the national's residence permit?

We would very much appreciate your responses by **25 June 2020**.

3. Responses

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| | | Wider Dissemination ² | |
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|  | EMN NCP Austria | No | |
|  | EMN NCP Belgium | Yes | <p>1. Yes. A third-country national entitled to visa-free entry and stay can enjoy a short stay of 90 days following the expiration of his or her residence permit.</p> <p>2. No. In case of expiration of the residence permit, it is not required for the third-country national</p> |

¹ If possible at time of making the request, the Requesting EMN NCP should add their response(s) to the query. Otherwise, this should be done at the time of making the compilation.

² A default "Yes" is given for your response to be circulated further (e.g. to other EMN NCPs and their national network members). A "No" should be added here if you do not wish your response to be disseminated beyond other EMN NCPs. In case of "No" and wider dissemination beyond other EMN NCPs, then for the Compilation for Wider Dissemination the response should be removed and the following statement should be added in the relevant response box: "This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further."

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| | | | <p>to leave the territory in order to be entitled to this short stay.</p> <p>3. Yes. In case of withdrawal of the residence permit, an order to leave the territory will be issued. The third-country national first needs to comply with this order by leaving the territory. Only after re-entry, he will be entitled to a short stay of 90 days.</p> <p>4. The third-country national does not need to prove the exact start date of the visa-free period following the expiration of his or her residence permit. During operations, the police will perform a check in the national register to verify the date until which the residence permit was valid.</p> |
|  | EMN NCP Bulgaria | Yes | <p>1. Yes</p> <p>2. Bulgaria is not a Schengen country.</p> <p>3. No</p> <p>4. It can be checked in the automated information system of the Ministry of Interior.</p> |
|  | EMN NCP Croatia | Yes | <p>1. No.</p> <p>2. Yes. TCN must exit Croatia. (we are not part of Schengen).</p> <p>3. n/a</p> <p>4. n/a</p> |

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|  | <p>EMN NCP Cyprus</p> | <p>Yes</p> | <ol style="list-style-type: none"> 1. No. 2. Not applicable for Cyprus 3. N/A 4. N/A |
|  | <p>EMN NCP Czech Republic</p> | <p>Yes</p> | <ol style="list-style-type: none"> 1. Yes, periods of stay authorized under a residence permit or a long-stay visa are not taken into account in the calculation of the duration of stay in Schengen, as the TCN may stay in Schengen visa free, the TCN may resume/begin his/hers visa-free stay, provided there are still “free” days in accordance with the 90/180 rule. Yes, periods of stay authorized under a residence permit or a long-stay visa are not taken into account in the calculation of the duration of stay in Schengen, as the TCN may stay in Schengen visa free, the TCN may resume/begin his/hers visa-free stay, provided there are still “free” days in accordance with the 90/180 rule. 2. No, we deem this to be inappropriate as the TCN has already been allowed to enter and stay in the territory. As long as the TCN complies with the entry conditions of the Schengen Borders Code, he/she may stay in Schengen. This is also in line with the opinion given in this regard by COM. 3. Should the residence permit be revoked or an administrative expulsion decision would be issued, it would be necessary for the TCN to leave the Member State that issued the revoked residence permit. |

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| | | | <p>4. The TCN can prove the “revival” of his/hers visa free stay based on the entry stamp in the passport and the date of expiry of the residence permit.</p> |
|  | <p>EMN NCP Estonia</p> | <p>Yes</p> | <p>1. Yes, a third country national who has a right to visa-free stay may continue to stay after the expiry of the temporary residence permit without leaving the country for up to a total of 90 days within any period of 180 days.</p> <p>2. No, there is no need for that.</p> <p>3. Yes, the period of stay may be terminated prematurely in cases when:</p> <ul style="list-style-type: none"> • the travel document of a persons or the entries in it are falsified; • there is doubt to believe that the alleged purpose of the entry into the territory of the member states of the Schengen Convention of a person does not correspond to the actual purpose; • a person has already stayed in the territory of the member states of the Schengen Convention for 90 days within a period of 180 days; • a prohibition on entry applied by Estonia or by another MS and entered into the SIS, applies with regard to a person and; • a person may constitute a threat to public order, national security, international relationships or public health of any member state of the EU. |

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| | | | <p>4. If there is a need to check the data (expiring date of the residence permit/ number of visa-free days remained), the Police and Border Guard Board may do checks or inquiries through their own contact points.</p> |
|  | EMN NCP France | Yes | <p>1. The short-term visa or the free-visa regime depending on the nationality of the foreign nationals (duration of 90 days within a 180-day period) does not entail the granting of a residence permit. Before their arrival, foreign nationals must request a long-term visa on the ground for the considered stay in France and produce the required supporting documents establishing the purpose of the intended stay (e.g. registration in a university to study, employed or self-employed activity, etc.). Two months before the expiration date of their residence permit, they must require its renewal to the prefecture of their place of residence. If the permit expires before the issuance of the renewed permit, the prefecture will deliver a proof of the renewal request that will extend the rights associated with the residence permit for the waiting period for the issuance of the renewed permit. If the prefecture considers that the residence permit has expired for too long compared to the date of renewal request, it has the possibility not to deliver a proof of renewal request and examine the request as if it was a first one.</p> <p>2. NO because the short-term visa or the free-visa regime (duration of 90 days within a 180-day period) does not entail the granting of a residence permit.</p> <p>3. If the residence permit is withdrawn, foreign nationals must prove the ground on which they can continue to reside in France and file a new residence permit request. If they are abroad, they have to request a new long-term visa and provide the required supporting documents in order to justify their application.</p> <p>4. See Question 1: one cannot justify its residence in France by a short-term visa as it only allows</p> |

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| | | | <p>short-term stays. Only a long-term visa enables to enter legally and to reside for a longer period in France.</p> <p>For the proof of a regular stay in France under a short-term visa (or under the free-visa regime), the arrival in France has to be proved (plane tickets, hotel reservations, etc.).</p> |
|  | EMN NCP Germany | Yes | <p>1. No. Visa-free entry for a stay of 90 days for a period of 180 days in accordance with Art. 1 Para. 1 of Regulation (EC) No. 539/2001 applies to "planned stays" in accordance with Art. 1 para. 1 and 2 of Regulation (EC) No. 810/2009. If a national residence permit is issued (exceptionally) during such a visa-free short stay due to a change in the purpose of the stay, the planned short-term stay will be obsolete. If the (longer-term) residence permit ceases later, the original short-stay plan cannot be revived immediately.</p> <p>2. Yes. After leaving the country, the reference period of 180 days can be used for a planned stay of up to 90 days.</p> <p>3. n/a</p> <p>4. n/a</p> |
|  | EMN NCP Ireland | Yes | <p>1. Ireland is not part of the Schengen area.</p> <p>2. .</p> <p>3. .</p> <p>4. .</p> |

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|  | EMN NCP Italy | Yes | <p>1. No.</p> <p>In Italy, nationals of the following third countries and territories do not require a visa for visits up to a maximum of 90 days, for tourism, on missions, business, invitations, ought to take part in sports events, study:</p> <p>Albania, Andorra, Antigua and Barbuda, Argentina, Australia, Bahamas, Barbados, Bosnia-Herzegovina, Brazil, Brunei, Canada, Chile, Colombia, Costa Rica, Croatia, Dominica, El Salvador, Emirati Arabi Uniti, Former Yugoslav Republic of Macedonia (FYROM), Georgia, Guatemala, Grenada, Honduras, Hong Kong, Israel, Japan, Malaysia, Macao, Mauritius, Mexico, Monaco, Montenegro, New Zealand, Nicaragua, Northern Marianas, Panama, Paraguay, Saint Kitts and Nevis, Samoa, Santa Lucia, Serbia, Seychelles, Singapore, South Korea, St, Vincent e Granadine, Taiwan, Timor Est, Trinidad e Tobago, Ukraine, United States, Uruguay, Vanatu, Venezuela.</p> <p>As far as Taiwan is concerned, the exemption from visa obligation is applied exclusively to holders of passports with identity card number included.</p> <p>Citizens of Albania, Bosnia-Herzegovina, Former Yugoslav Republic of Macedonia, Moldova, Montenegro, Serbia are exempt from visa obligation only if the passport contains biometric data (except citizens of Serbia holding passports issued by the Serbian Coordination Directorate).</p> <p>So, a TCNs entered in Italy in exemption of visa can reside in Italy for a maximum of 90 days and only for reasons of tourism, missions, business, invitations, sport, study.</p> <p>Once expired this period, the foreigner has to leave the Italian territory.</p> <p>The only case in which foreigner can remain in Italy concern the family unit grounds. In these cases, if the foreigner fulfil the requirements provided by law, he can ask and obtain a residence permit for family reason or for minor's assistance.</p> |

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| | | | <p>2. Yes. As said before, after 90 days the foreigner has to leave the Italian territory. The TCNs can enter again in exemption of visa but only for tourism, missions, business, invitations, sports events, study. For the issuing of other type of residence permit, the foreigner has to follow the ordinary procedure, which includes, in any case, the issuing of visa by the Consulate in the third countries.</p> <p>3. N/A</p> <p>4. N/A</p> |
|  | EMN NCP Latvia | Yes | <p>1. No</p> <p>2. Yes. TCN has to leave the Schengen area at least for one day.</p> <p>3. N/A</p> <p>4. N/A</p> |
|  | EMN NCP Lithuania | Yes | <p>1. Yes, a third country national can benefit from the visa-free stay after the expiry of the temporary residence permit without leaving the territory (but his/her stay in Lithuania and other Schengen States may not exceed 90 days in any 180-day period).</p> <p>2. No.</p> |

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| | | | <p>3. Different practice exists in cases where a residence permit is withdrawn because of a threat to national security, public policy or public health posed by a foreigner (in such cases a decision on return and/or a entry ban is also taken at the same time).</p> <p>4. If a third country national has not left the Schengen area, the first day of visa-free stay shall be the day following the last day of validity of the residence permit. Data on residence permits are processed in the Register of Aliens and in the Population Register, which are state registers, and the police have access to some of the data.</p> |
|  | EMN NCP Luxembourg | Yes | <p>1. Yes, a long term stay is considered interrupting a short stay.</p> <p>2. No.</p> <p>3. No.</p> <p>4. Normally the TCN cannot prove it, a check would have to be done by the Directorate of immigration.</p> |
|  | EMN NCP Netherlands | Yes | <p>1. No. When a resident permit expires and is not extended, the TCN has to leave the Schengen area before the expiration date. However, if the TCN resides in an other member state and their residence permit expires and they wish to stay shortly in the Netherlands for a maximum period of 90 days, this is possible in one of the following situations:</p> <ul style="list-style-type: none"> • They are subject to a visa requirement |

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| | | | <p>If they are subject to a visa requirement, the TCN must first apply for a short stay visa at the embassy or consulate of the Netherlands in that member state. In that case, the TCN does not have to leave the Schengen area.</p> <ul style="list-style-type: none"> • They are not subject to a visa requirement <p>If they are not subject to a visa requirement, they can make use of their visa-free access period. If they wish to stay in the Netherlands for a short period, the TCN can travel to the Netherlands without first leaving the Schengen area.</p> <p>2. See question 1</p> <p>3. No</p> <p>4. Not relevant</p> |
|  | <p>EMN NCP Poland</p> | <p>Yes</p> | <p>1. Yes. After the expiry of the validity of the Polish temporary residence permit (including temporary residence and work permit) or the Polish national visa (or a permissible stay on the basis of this visa), a foreigner who – at the time of the expiry of the aforementioned residence grounds – was staying legally on the territory of Poland, may continue his stay on the territory of our country or other Schengen States as a short-term stay for a period not exceeding 90 days in each 180-day period, provided that:</p> <ul style="list-style-type: none"> • he/she is entitled to a short-term stay, due to: <ul style="list-style-type: none"> - his/her citizenship and biometric travel document, if required, or - having an unconsumed valid Schengen visa or, - being in possession of a valid and issued by another Schengen State: a national visa (within the period of lawful stay on its basis) or a residence permit, • and he/she hasn't make used of the 90-day period of stay allowed on the territory of the |

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| | | | <p>Schengen States for each 180-day period.</p> <p>The period of stay on the basis of a Polish residence permit or a Polish national visa is not being taken into account when calculating the length of the short-term stay to which a foreigner is entitled.</p> <p>For practical reasons when calculating the permitted short-term stay after the expiry of the validity of the Polish temporary residence permit or the Polish national visa, in case where a foreigner was present on the territory of Poland at the moment of their expiry, we assume that he/she stayed in Poland as well in the run-up period and we do not count his/her stays under the Polish temporary residence permit or the Polish national visa in other Schengen States, unless we've got a clear proof against that presumption (e.g. a foreigner applies for a new temporary residence permit and during submitting the application testifies that he/she has just arrived to Poland, while he/she spent the last few months on the territory of another Schengen State).</p> <p>2. No, it is not necessary.</p> <p>3. After the day on which:</p> <ul style="list-style-type: none">• the decision on withdrawal of a temporary residence permit, permanent residence permit or long-term resident's EU residence permit to a foreigner has become final• and in the case of a decision issued by a higher authority, on the day on which the final decision on the matter has been delivered to the foreigner, <p>the foreigner automatically 'enters' into short-term residence, if he/she is entitled to it. During that period a foreigner may stay in the Republic of Poland or travel through the territories of other Member States.</p> <p>The difference referred to in the question is that if the temporary residence permit expires, then the foreigner may continue his/her stay for 90 days within 180 days, as the period of stay on a basis of residence permit is not being taken into account when calculating the legitimate short-term stay, whereas if the permit is withdrawn, the stay in visa-free regime preceding the</p> |
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| | | | <p>application is taken into account, and thus period of lawful stay in any case would be shorter.</p> <p>4. After the expiry of the validity of the Polish temporary residence permit or the Polish national visa a foreigner may continue his stay on the territory of our country or other Schengen States as a short-term stay for a period not exceeding 90 days in each 180-day period. Foreigner can prove it if she/he provide a temporary residence card or Polish national visa - police officer can check the last day of their validity.</p> |
|  | EMN NCP Portugal | Yes | <p>1. Only if duly requested by the third country resident (at least thirty days before the document expires) and duly authorised by the Immigration and Borders Service (SEF). Renewals can be requested online.</p> <p>2. No.</p> <p>3. In Portugal, residence permits are not withdrawn, but cancelled.</p> <p>4. The Immigration and Borders Service (SEF)'s visa sticker is mandatory, even for short stay renewals. The whole process can be presented online, but to be official, the third country national must schedule an on-site appointment to receive the visa sticker.</p> |
|  | EMN NCP Slovakia | Yes | <p>1. Yes.</p> <p>2. It is required that this person travels outside the Slovak Republic on the last day of their authorised stay the latest.</p> |

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| | | | <p>3. Their return to the Slovak Republic depends on the reason of the expiration of their residence permit.</p> <p>4. The first day of the beginning of the 90-day period (after the expiration of the residence permit) is the day of the re-entrance of the third-country national on the territory of the Slovak Republic.</p> |
|  | EMN NCP Slovenia | Yes | <p>1. Yes.</p> <p>2. No.</p> <p>3. Yes. If permit is withdrawn a foreigner must leave the country in designated time (prescribed in administrative decision).</p> <p>4. The day after expiry of residence permit is first day of 90 days visa-free stay.</p> |
|  | EMN NCP Sweden | Yes | <p>1. No</p> <p>2. Yes</p> <p>3. NA</p> <p>4. NA</p> |

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|  | EMN NCP Norway | No | |
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