



Ad – Hoc Query on refusal of exit at border crossing points and on duration of stay

Requested by SI EMN NCP on 5th August 2011

Compilation produced on 11th November 2011

Responses from Austria, Bulgaria, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Slovak Republic, Slovenia, Sweden, (19 in Total)

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1. Background Information

In Slovenia we are considering some modifications of national legislation due to certain practical issues regarding this subject. That is the reason why we would like to get answer to the following questions:

1. Is a citizen of a visa exempt country, who was in possession of residence permit, allowed to maintain his/her stay in Schengen area for another three months after expiration of his/her residence permit? (Example: a Serbian citizen had a residence permit valid until end of July 2011. Is he allowed to stay within the area of free movement until the end of October?)
2. Does legislation in your country provide refusal of exit at the borders?
3. If yes, is it provided for refusal of exit for all the passengers or just for your own nationals? What are the grounds for refusal of exit?

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2. Responses

		Wider Dissemination?	
	Austria	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	Bulgaria	Yes	<p>1. Not applicable.</p> <p>2. Does legislation in your country provide refusal of exit at the borders? – No, refusal of exit <u>at the borders</u> is not provided in the Republic of Bulgaria.</p> <p>3. If yes, - Not applicable.</p>
	Czech Republic	Yes	<p>1. Yes, a citizen of third country that is exempted from visa requirement is allowed to stay in the Czech Republic for 3 months (minus the time spent in other Schengen country) after expiration of his/her residence permit.</p> <p>2. Yes.</p> <p>3. According to the Code of Criminal procedure, both Czech citizens and foreign nationals may be subject of refusal of exit ordered by the court if they are accused of crime and not taken in custody. In such case they are required to hand in their passports to the respective body active in the criminal procedure. The refusal of exit is recorded and available through database to border control officials.</p>
	Estonia	Yes	<p>1. Yes. An alien who is a citizen of a foreign state with whom Estonia has entered into an agreement for visa-free travel or whose citizens are unilaterally relieved of the visa requirement in Estonia may stay in Estonia for up to a total of ninety calendar days during six months after expiration of his/her residence permit unless otherwise provided by an international agreement.</p> <p>2. According to the State Boarder Act refusal of exit at the borders is provided.</p> <p>3. If, upon raising of the military readiness or conduct of mobilisation or during a state of emergency or state of war, a prohibition on departure from Estonia is established on the basis of the Defence Forces Service Act the police shall have the authority to check if a person leaving Estonia is subject to the restrictions or prohibition on departure from Estonia. The police shall apply the prohibition or restrictions on the basis of the state register of Estonian citizens liable to service in the Defence Forces.</p>
	Finland	Yes	1. Citizen of visa exempt country with residence permit is allowed to stay within the area of free movement for another three months after expiration of his/her residence permit.

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			<p>2. and</p> <p>3. Yes, refusal of exit is mentioned in several laws. The grounds for refusal of exit are: a) person's passport has been seized; or b) a person is under a warrant.</p>
	France	Yes	<p>1. A foreigner can not stay in France after the expiry of the validity of his residence permit. If he/she is citizen of a country to which France does not require a visa to enter France, he/she must return to his country to re-enter France. He/she will be allowed to remain in France three months after his/her entry into France.</p> <p>2 and 3- An illegal alien commits a crime. He/she can therefore be prosecuted by the courts and being sentenced by the courts to a term of imprisonment and / or a fine. An order of deportation may be, also, issued against him. In theory he/she could be stopped at the border for trial. In fact, if he/she leaves the country of his own will, he can return home.</p>
	Germany	Yes	<p>1. As a general principle, exemption from the visa requirement applies only for the purpose of entry into the Federal territory and a subsequent stay of three months, during which the necessary residence title is to be applied for. Upon expiry of the residence title the foreigner is obliged to leave the Federal territory, unless he has applied for an extension to his residence title in good time.</p> <p>2. Yes.</p> <p>3. In accordance with Section 46 (2) of the Residence Act, a foreigner may be prohibited from leaving the Federal territory in corresponding application of Section 10 (1) and (2) of the Passport Act, which regulates the prohibition of exit in the case of German nationals. The grounds for this legal consequence derive from Section 7 (1) of the Passport Act and relate to a threat to internal and external security or to other substantial interests of Germany by the individual concerned, to measures pertaining to criminal prosecution and the execution of sentences, to violations of narcotics law, to breaches of tax and customs regulations, to the safeguarding of statutory maintenance payments and to the rendering of military service. Beyond this, a foreigner may only be prohibited from leaving the Federal territory pursuant to Section 46 (2) of the Residence Act if he intends to travel to another state without being in possession of the documents and permits required for this purpose. The obligation to surrender the travel document to the competent authority in order to safeguard measures is also regulated (Section 48 (1) of the Residence Act).</p>
	Greece	Yes	<p>1. Citizen of visa exempt country with residence permit which has expired has no right to stay in the Schengen area for another three months after the end of the stay. In this case the citizen should leave our country and if he/she wishes to re-enter should fulfil the conditions of Article 5 of REGULATION (EC) No 562/2006.</p> <p>2. Our legislation includes certain provisions on refusal of exit from our country.</p> <p>3. The refusal of exit is applied not only to Greek nationals but also to foreigners, as an administrative measure imposed by prosecutorial and/or judicial authorities.</p>

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	Hungary	Yes	<p>1. According to the Article 30 of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals a certificate of temporary residence shall be issued to any third-country national) who has filed an application for a residence permit and the previous residence permit has already expired before the permit is issued. The validity period of a certificate of temporary residence shall be three months and it may be extended by three additional months at a time.</p> <p>2.</p> <p>3. Leaving the country may be prevented, if the border control detects that a warrant has ordered against the ongoing person –either Hungarian citizen or foreign citizen- or that an international arrest is valid against him/her. The relevant laws the following: Act XIX of 1998 on Criminal Procedure as well as the Act CV of 2007 on Cooperation and exchange information under the framework of Schengen Convection.</p> <ul style="list-style-type: none"> • Prohibition of leaving the country: According to the Article 66 of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals the immigration authority may prohibit the exit of a third-country national whose travel document is to be confiscated by the immigration authority as requested by the court, the public prosecutor, or the investigation authority. Upon receipt of a request the immigration authority shall adopt a resolution of prohibition of leaving the country and shall confiscate the third-country national’s travel document. • According to the Act XII. of 1998 on the Trip Abroad can not travel to abroad: <ul style="list-style-type: none"> - Who is in custody, detention for extradition, provisional arrest for extradition, transfer custody, temporary custody transfer as well as who is under the temporary involuntary treatment; - Who is under house arrest, who has convicted implemented custodial till completion of the punishment or enforceability of the termination; - Respectively whose forced medical treatment has ordered by the court; during the period of the forced medical treatment. <p>The foreign travel restriction is recorded in the register by the passport authority. The passport authority has purely administrative tasks in respect of travel restriction. The travel documents are provided by those authorities, which implement restricting personal liberty and abstract coercive measures or monitoring the implementation. The travel document can be released immediately for the relevant person upon the termination of foreign travel restrictions.</p>
	Ireland	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	Latvia	Yes	<p>1. According to the national legislation if the term of validity of a residence permit of a third-country national has expired or the residence permit issued to him/her is cancelled, but the third-country national can not immediately depart from the Republic of Latvia due to humanitarian considerations, the head of the Office of Citizenship and Migration Affairs or his authorised representative may take a decision indicating a time period during which the third-country national must leave the Republic of Latvia. The maximum time period for departure shall be 45 days, if a third-country national has a temporary-residence permit, or 90 days, if a third-country national has a</p>

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			<p>permanent residence permit. Usually time period is determined in decision of residence permit cancelling or in separate decision if a residence permit has expired but a person needs a time for departure. Mentioned decisions <u>are not</u> return decision according to Return directive.</p> <p>2. Latvian legislation provides refusal of exit.</p> <p>3. Refusal of exit at the borders is provided for the Latvian citizens, Latvian non-citizens, stateless persons and aliens. The State Border Guard refuses an exit from the Republic of Latvia, if:</p> <p>1) a person presents fraud/other persons travel documents or can't present a valid travel document, which is issued by Latvian competent institutions;</p> <p>2) a person travelling with a child, can't present documents certifying rights to cross the state border together with a child or if a child leaves the State independently and can't present a notarially certified consent of at least one parent;</p> <p>3) a person, who shall exit from the state with a personal belongings and goods, hasn't fulfilled duty conditions or is carrying belongings which are not allowed for transportation over the border or which are dangerous;</p> <p>4) a person, who is crossing the external border in the places which are foreseen for local border traffic, can't present the Local Border Traffic permit;</p> <p>5) a person, who shall exit from the state by a vehicle, can't present a driver's licence and other relevant documents, which are necessary in accordance with the road traffic regulations;</p> <p>6) announcement about the person is placed in the State Boarder Guard system REIS or Schengen Information System that the person is in search/person is missing/needs protection or person has been refused an exit from the State.</p>
	<p>Lithuania</p>	<p>Yes</p>	<p>1. No. If he remains in Lithuania after the expiry of a residence permit, his residence in Lithuania is illegal. Citizens of visa exempt countries can stay in Lithuania for 3 months in a 6 months period. However previous residence with a residence permit means that such citizen has stayed more than 3 months in a 6 months period, so he can no longer remain in Lithuania after the expiry of the residence permit.</p> <p>2. The Lithuanian Criminal Code foresees that the court, when suspending a sentence, can impose a mandatory injunction - not to leave the place of residence for a period exceeding seven days without the consent of the institution supervising suspension of the sentence. Such person will be refused to exit at the border. A minor can also be refused to leave Lithuania, if the minor is travelling to a non-Schengen country, is not accompanied by a parent or a guardian and doesn't have a written consent of his parents or guardians to leave Lithuania.</p> <p>3. Any nationality.</p>
	<p>Luxembourg</p>	<p>Yes</p>	<p>1. The Law of 29 August 2008 (Law on free movement of persons and immigration) modified by the law of 1 July 2011 establishes in its article 100 (1) (b) that will be considered as an irregular migrant the citizen of a visa exempted country that overstays the three months from the day of entry in Luxembourg. Art. 100 (1) (c) considers as irregular migrant a person that is not in possession of a valuable</p>

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			<p>residence permit or a valuable working permit, if required. This means that if the residence permit of a visa exempted country citizen expires and it is not renewed must leave the country immediately (analogical application of the art. 100 (2)), because the delay of three months begin to run from the moment he came into the country (it is important to remember that the D Visa absorbed the Visa D + C). In general, the concerned person demands a renewal of the residence permit. The renewal of the residence permit blocks the execution of the return decision. In case that the renewal is rejected the law permits that the irregular migrant leaves the country voluntarily. In an analogical application of art. 111 (1) and (2) that say that when the government issues a decision of illegal stay it will issue an order to leave the territory voluntarily in a delay of 30 except if there is a risk for national or public security, or risk of absconding.</p> <p>2. Refusal of exit is not foreseen by the Law of 29 August 2008. However, a criminal judge can issue an ordinance against an individual that he cannot leave the country (art. 107.4 of the Criminal Procedure Code), independent if it is a national or a foreigner. However, the fact that Luxembourg has not external borders these types of measures are difficult to implement. The same can be ordered by a family judge in certain cases.</p> <p>As we said the refusal to exit can be issued by a judge, generally when he submits an individual to judicial supervision.</p>
	<p>Netherlands</p>	<p>Yes</p>	<p>1. No. According to art 62, paragraph 1 of the Dutch alien act a holder of a residence permit should leave the Netherlands within four weeks after his permit expires. Nonetheless, a national or a visa exempt country could reenter -so to speak- the Netherlands (Schengen territory) the next day from which a new three month period will start.</p> <p>2 No. Note: except in cases of 'wanted persons' who try to leave the country to avoid prosecution or to avoid an imposed sentence to be executed.</p>
	<p>Poland</p>	<p>Yes</p>	<p>1. According to the Polish legislation (Act of 13 June 2003 on aliens, as amended) the third country national is obliged to leave the territory of the Republic of Poland prior to expiry of the validity of the residence permit for a fixed period, unless he/she was granted the successive residence permit for a fixed period, the permit to settle or the permit for long-term EC (EU) resident. However the above mentioned obligation applies only to the territory of the Republic of Poland – regardless of what country the third country national comes from (annex I or II of regulation 539/2001). Nevertheless there are no sanctions for not performing that obligation by the third country nationals listed in annex II of regulation 539/2001 starting they “visa-free” stay after the expiration of they residence permit. So in theory – on the one hand – the third country national should leave Poland on the date of expiry of his residence permit at the latest, but – on the other hand – in practice there are no means to make him do so. Thus citizen of visa exempt country (listed in annex II of regulation 539/2001) with residence permit is – in practice – allowed to stay within the territory of the Republic of Poland / Schengen for another three months after expiration of his/her residence permit.</p> <p>2. Refusal of exit is not directly provided in Polish legislation. But there are some cases when you can refuse exit at the border (see point</p>

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			<p>3. It is possible to refuse Polish national exit from the territory of Poland in case of not being in possession of valid passport or ID (only valid documents entitle their holders to cross the border and stay abroad – Act on passport documents and Act on identity cards).</p> <p>The other case is refusal of entry in case of application of one of the preventive measures in form of the ban of leaving the country (territory of Poland) which is defined in Polish Penal Proceedings Code and applies to Polish citizens as well as to the third country nationals (the decision of court or prosecutor is required).</p>
	Portugal	Yes	<p>1. Citizen of visa exempt country could stay in the national territory for three months.</p> <p>2 - 3. Any person could be refused of exit if he/she does not meet exit requirements, mainly in what concerns to travel document, minors status or judicial decisions with that aim.</p>
	Slovak Republic	Yes	<p>1. Citizen of a visa exempt country with residence permit is allowed to stay within the Schengen area for another three months after expiration of his/her residence permit.</p> <p>Currently there is a new bill on Border Control and Stay of Aliens as amended which determines that a third country national (TCN) must leave the country on or before the last day of his/her lawful stay</p> <ul style="list-style-type: none"> • in case of dismissal of his/her application for a temporary residence permit submitted for a change of a purpose or • in case of dismissal of his/her application for renewal of a temporary residence permit or • in case of termination of his/her temporary residence or • in case of dismissal of his/her application for an unlimited permanent residence permit or • in case of termination of his/her permanent residence or • in case of dismissal of his/her application for a tolerated residence permit or • in case of dismissal of his/her application for extension of a tolerated residence permit or • in case of termination of his/her tolerated residence <p>The TCN is obliged to departure from Slovakia within 30 days after decision becomes final unless the TCN is entitled to reside in the territory of the Slovak Republic for a different reason.</p> <p>2. No.</p> <p>3. Not applicable.</p>
	Slovenia	Yes	<p>1. Citizen of visa exempt country with residence permit is allowed to stay within the area of free movement for another three months after expiration of his/her residence permit.</p> <p>2. Refusal of exit is not provided in Slovenian legislation.</p>

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			3. Not applicable.
	Sweden	Yes	<p>1. Citizen of visa exempt country with residence permit is allowed to stay within the area of free movement for another three months after expiration of the residence permit except in the issuing state.</p> <p>2. Refusal of exit is not provided in the Swedish legislation.</p> <p>3. Not applicable.</p>
