



## **UK EMN Ad Hoc Query on settlement under the European Convention on Establishment 1955**

**Requested by UK EMN NCP on 14<sup>th</sup> July 2014**

**Reply requested by 14<sup>th</sup> August 2014**

**Responses from [Austria](#), [Belgium](#), [Estonia](#), [Finland](#), [France](#), [Germany](#), [Greece](#), [Hungary](#), [Italy](#), [Latvia](#), [Lithuania](#), [Luxembourg](#), [Netherlands](#), [Poland](#), [Romania](#), [Spain](#), [Slovak Republic](#), and [United Kingdom](#) (18 in Total)**

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### **1. Background Information**

The UK has a provision within its Immigration Rules to grant permanent residence to any person who has resided legally in the territory for a period of 10 years or more, this is regardless of the nationality of the migrant. The UK wishes to know what, if any, provisions other Member States have in place.

### **1. Questions**

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1. Has your Member State ratified<sup>1</sup> the European Convention on Establishment 1955? Yes/ No

If Yes;



2. what provision do you have to cover Article 3(3) of that convention for nationals of;
- states that have ratified the European Convention on Establishment?
  - states that have **not** ratified the European Convention on Establishment?

If No;

3. What provision, if any, do you have for foreign nationals who have been residing lawfully in your state for a period of 10 years or more?

We would very much appreciate your responses by the **1<sup>st</sup> of August 2014** to inform an urgent meeting, but will of course accept responses until the 14<sup>th</sup> of August 2014.







## **2. Responses<sup>2</sup>**

	<b>Austria</b>	<b>NO</b>	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	<b>Belgium</b>	<b>Yes</b>	<p><b>Answer to question 1</b></p> <p>On 12 January 1962, Belgium ratified the European Convention on Establishment 1955. Please note the Declaration below relating to Article 12 of the said Convention which entered into force on 23 February 1965:</p> <p><i>“On deposit, on behalf of His Majesty the King of the Belgians, of the instrument of ratification of the European Convention on Establishment, signed in Paris on 13 December 1955, I have the honour to declare, in accordance with Article 12, that my Government does not agree to the terms of paragraph 1.b and c and that it extends the period laid down in a to ten years; furthermore, it will not automatically grant the right to change from a wage-earning occupation to an independent occupation.”</i></p> <p><b>Answer to question 2</b></p> <p>Different provisions cover Article 3(3) of that Convention, depending on whether this applies to:</p>


<sup>1</sup> Formally approved with legal authority the European Convention on Establishment 1955

<sup>2</sup> 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.

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			<p><u>1° Third country nationals</u> Article 21 §3 1° of the Immigration Act stipulates that: “Except in the case of serious disruption of public order or national security, may not be removed from the Kingdom: 1° the foreigner who has been residing there, on a regular and uninterrupted basis, for at least ten years; »</p> <p><u>2° Union citizens</u> Article 45 §3 of the Immigration Act stipulates that: “Except in the case of serious disruption of national security, may not be, depending on the case, neither expelled nor removed from the Kingdom: 1° the Union citizen or the members of his family who have resided in the Kingdom in the last ten years 2° the Union citizen or the members of his family who have not reached the age of 18 years old, unless the removal is necessary in the interest of the minor child as provided for in applicable international conventions.”</p> <p>In other words, primary questions that Belgian authorities address when applying the concerned provisions related to (i) whether or not the concerned national is a third country national or a Union citizen and (ii) what is the type and duration of his/her stay in Belgium, rather than whether the national originates from a State that has or has not ratified the European Convention on Establishment.</p> <p>Sources:</p> <ul style="list-style-type: none"> <li>- Immigration Office – Study Unit</li> <li>- <a href="#">Law of 15 December 1980</a> relating to access to the territory, residence, establishment and removal of foreigners.</li> <li>- Website of the Council of Europe – <a href="#">Page dedicated to the European Convention on Establishment 1955</a></li> </ul>
	<b>Bulgaria</b>	<b>Yes</b>	
	<b>Croatia</b>	<b>Yes</b>	
	<b>Cyprus</b>	<b>Yes</b>	
	<b>Czech Republic</b>	<b>Yes</b>	
	<b>Denmark</b>	<b>Yes</b>	
	<b>Estonia</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>1. No, Estonia has not ratified the European Convention on Establishment 1955.</li> <li>2. N/A.</li> <li>3. There is no additional legal rights, if person has being legally in Estonia more than 10 years. <ul style="list-style-type: none"> <li>• An alien (regardless a nationality of migrant) may apply a long-term residence permit after being residing permanently in Estonia for at least last five years.</li> </ul> </li> </ol>



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			<p>Although Estonia is not ratified the European Convention on Establishment Article 3(3) – a long-term residence permit shall be revoked on the grounds that an alien constitutes a threat to public order and national security or an alien has been punished in Estonia for an intentional criminal offence against the state and his/her criminal record has not expired. But, the gravity or type of the offence committed by an alien or the threats related to the person concerned will be considered, taking into account the length of the stay in Estonia of an alien, the age of an alien, the consequences of the revocation of the residence permit of a long-term resident for an alien and his/her family and connections with Estonia and the county of origin.</p> <p>For applying Estonian citizenship, an adult foreigner should live in Estonia for at least eight years on the ground of a residence permit or by right of residence, of which at least the last five years on a permanent basis.</p>
	<b>Finland</b>	<b>Yes</b>	<p>1. No. 2. N/A 3.</p> <p>General provisions (Aliens Act); <b>Section 149 (358/2007)</b> <b>Grounds for deportation</b> (1) An alien who has resided in Finland under a residence permit may be deported if: 1) he or she resides in Finland without the required residence permit; 2) he or she is found guilty of an offence carrying a maximum sentence of imprisonment for a year or more, or if he or she is found guilty of repeated offences; 3) he or she has, through his or her activities, shown that he or she is liable to endanger other people's safety; or 4) he or she has been engaged, or on the basis of his or her previous activities and for other reasons there are grounds to suspect that he or she may engage in activities that endanger Finland's national security or relations with a foreign State. (2) An alien who has been issued with a long-term resident's EC residence permit in Finland may be deported only if he or she poses an immediate and sufficiently serious threat to public order or security. (3) In addition, an alien may be deported on grounds provided in subsection 1(2) if his or her punishment has been waived on the basis of criminal irresponsibility under Chapter 3, section 4 of the Penal Code. (4) A refugee may be deported in the cases referred to in subsection 1(2)-(4). A refugee may not be deported to his or her home country or country of permanent residence against which he or she still needs international protection. A refugee may only be deported to a State which agrees to admit him or her.</p> <p><b>Section 145:</b> An alien and his or her spouse or comparable partner residing in Finland shall be given an opportunity to be heard in a matter relating to refusal of entry, deportation or prohibition of entry concerning him or her. <b>Section 146 Overall consideration:</b> (1) When considering refusal of entry, deportation or prohibition of entry and the duration of the prohibition of entry, account must be taken of the facts on which the decision is based and the facts and circumstances otherwise affecting the matter as a whole. When considering the matter, particular attention must be paid to the best interest of the children and the protection of family life. Other facts to be considered must include the duration and purpose of the alien's residence in Finland, the nature of the residence permit issued to him or</p>





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<p>her, the alien's ties to Finland and the cultural and social ties to the home country of his or her family. Should the refusal of entry, deportation or related prohibition of entry be on the basis of the criminal activity of the alien, account must be taken of the seriousness of the act and the detriment, damage or danger caused to public or private security. (380/2006)</p> <p>(2) When considering prohibition of entry and its duration, account shall also be taken of whether the alien has any such family or work ties to Finland or to another Schengen State that would suffer unreasonably from prohibition of entry. When considering prohibition of entry and the duration of the prohibition of entry for an alien whose application for international protection has been dismissed or rejected, the facts on which the dismissal or rejection was based and whether the alien has, by his or her own actions, hampered the processing of his or her application for asylum may also be taken into account.</p> <p><b>Section 168 (360/2007)</b>  <b>Grounds for deporting EU citizens and their family members</b></p> <p>(1) EU citizens whose right of residence has been registered, or their family members who have been issued with a residence card, may be deported if they fail to meet the requirements for the right of residence laid down in section 158a, 161d or 161e, or if they are considered a danger to public order or security under section 156 or to public health under section 156a.</p> <p>(2) EU citizens who have been granted a right of permanent residence, or their family members who have been granted a permanent residence card, may only be deported on serious grounds of public order or security.</p> <p>(3) EU citizens who have resided in the country legally for the previous ten years may only be deported on imperative grounds of public security.</p> <p>(4) An EU citizen who is a minor can only be deported on imperative grounds of public security, unless the deportation is in the best interests of the child.</p> <p>(5) Imperative grounds as laid down in subsections 3 and 4 are considered to exist where an EU citizen is guilty of an act which is punishable by no less than one year of imprisonment, and where he or she, on grounds of the seriousness of the crime or of continued criminal activity, is considered a danger to public security, or where there are grounds for suspecting that he or she is seriously endangering the national security of Finland or another State.</p> <p><b>Section 168a (360/2007)</b>  <b>Deportation of an employee or a jobseeker As an exception to section 167 paragraph</b></p> <p>(2) or 168(1), an EU citizen or his or her family member may be refused entry into or deported from the country only on grounds of public order or security as laid down in section 156, or on grounds of public health as laid down in section 156a, where the EU citizen is an employed or self-employed person, or has entered the country in order to seek employment and can provide evidence that he or she has a genuine chance of being employed.</p> <p><b>Section 168b (360/2007) Overall consideration of deportation</b></p> <p>Before a decision concerning deportation on grounds of public order or security, account must be taken of the duration of residence of the EU citizen or his or her family member, his or her age, state of health, and family and economic situation, and how well the person has become integrated into Finnish society and culture. In addition, consideration must be given to the EU citizen's and his or her family</p>
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			<p>member's links with their country of origin.</p> <p><b>Section 169 (360/2007) Grounds for refusing Nordic citizens entry into or deporting Nordic citizens from the country</b></p> <p>(1) Citizens of Iceland, Norway, Sweden or Denmark whose residence in Finland has not been registered in the manner laid down in section 157(3) may be refused entry if they are considered a danger to public order or security under section 156 or to public health under section 156a.</p> <p>(2) Citizens of Iceland, Norway, Sweden or Denmark whose residence in Finland has been registered in the manner laid down in section 157(3) may be deported if they are considered a danger to public order or security or to public health.</p> <p>(3) If a citizen of Iceland, Norway, Sweden or Denmark has resided in Finland for over five years, he or she may only be deported on serious grounds of public order or security, and if the residence has lasted for more than ten years, he or she can only be deported on imperative grounds of public security.</p>
	<b>France</b>	<b>Yes</b>	<p>1. Yes, France has ratified the European Convention on Establishment 1955.</p> <p>2. The same provision applies to nationals of all countries, not just those that have also ratified the European Convention on Establishment.</p> <p>According to Article L.521-2 of the Code on Entry and Residence of Foreigners and Right of Asylum (CESEDA), third-country nationals who have been legally residing in France for more than ten years cannot be subject to a removal order except on grounds of national security.</p> <p>3. NA</p>
	<b>Germany</b>	<b>Yes</b>	<p>1. Yes.</p> <p>2.</p> <p>a. The loss of the right to free movement is governed by the Freedom of Movement Law/EU (§§ 6 and 7, Freedom of Movement Law/EU) and applies to all nationals of the EU and EEA Member States, also to those who are nationals of the signatory states of the European Convention of Establishment to comply with the Directive 2004/38/EC of the European Parliament 2004/38/EG (Chapter VI). When a ten years residence prevails, the protective deliberations of article 3, section 3, European Convention of Establishment, correspond to article 28, section 3, lit a) of the Guideline 2004/38/EG and in its national application § 6, section 5, Freedom of Movement LAW/EU.</p> <p>For nationals of Turkey, Turkey being the only third country having signed the European Convention of Establishment, the deportation law is (in general) governed by the German Residence Act (§§ 53 – 56 German Residence Act). Administrative regulations ensure through the application of such regulations in the case of Turkish nationals that the special protection from expulsion in accordance with article 14 of the Decision number 1/80 of the Association Council EEC/Turkey (ARB 1/80) is being taken into consideration as well as the special protection from expulsion in accordance with article 3, section 3, European Convention of Establishment, these being identical regarding the requirements (number 9.4.3 of the General Operating Instructions of the German Federal Ministry of the Interior for the Decision number 1/80 of the Association Council EEC/Turkey and for the article 41, section 1 of the Additional Protocol regarding the Association Treaty dated 26 November</p>

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			<p>2013; before 53.5.3 of the General Administrative Regulation regarding the German Residence Act dated 26 October 2009).</p> <p>b. The right to expulsion for nationals from third countries that are not signatory states of the European Convention of Establishment, the right of expulsion is being (in general) regulated by the German Residence Act (§§ 53 – 56 German Residence Act). When deciding individual cases, the duration of the stay is to be taken into consideration in the light of the principle of proportionality (§ 55, section 3, German Residence Act), taking as a basis the respective highest national and European judicial jurisprudence.</p> <p>3. Not applicable.</p> <p><u>Links for the sites:</u></p> <p>German Residence Act: <a href="http://www.gesetze-im-internet.de/englisch_aufenthg/index.html">http://www.gesetze-im-internet.de/englisch_aufenthg/index.html</a></p> <p>Freedom of Movement Law/EU: <a href="http://www.gesetze-im-internet.de/freiz_gg_eu_2004/index.html">http://www.gesetze-im-internet.de/freiz_gg_eu_2004/index.html</a></p> <p>Operating Instructions ARB 1/80:  <a href="http://www.bmi.bund.de/SharedDocs/Downloads/DE/Themen/MigrationIntegration/Auslaender/Anwendungshinweise_zum_Assoziationsrecht_EWG_Tuerkei.pdf?__blob=publicationFile">http://www.bmi.bund.de/SharedDocs/Downloads/DE/Themen/MigrationIntegration/Auslaender/Anwendungshinweise_zum_Assoziationsrecht_EWG_Tuerkei.pdf?__blob=publicationFile</a></p> <p>General Administrative Regulations German Residence Act:  <a href="http://www.verwaltungsvorschriften-im-internet.de/bsvwvbund_26102009_MI31284060.htm">http://www.verwaltungsvorschriften-im-internet.de/bsvwvbund_26102009_MI31284060.htm</a></p>
	<b>Greece</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>1. Yes, Greece has ratified the European Convention on Establishment 1955</li> <li>2. According to the current migration law (art 2 par of Law 4251/2014), any favourable provisions provided by multilateral agreements between Republic of Greece and third countries are applied as a general rule. Regarding the issued in question, the same rules of return apply to all third country nationals legally residing in Greece, regardless of the duration of their residence or the country of origin. In general, return measures may be applied to a third country national legally residing in Greece in cases that he/she poses a serious threat for republic order and public security.</li> </ol>
	<b>Hungary</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>1. No.</li> <li>2. N/A</li> <li>3. No such provision in Hungarian legislation.</li> </ol>
	<b>Ireland</b>	<b>Yes</b>	
	<b>Italy</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>1. Yes, Italy ratified the European Convention on Establishment 1955 by Law No. 277/1961.</li> </ol>

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			<p>2. Existing Italian legislation does not distinguish between nationals of countries that have ratified the European Convention on Establishment and nationals from countries that have not.</p> <p>Under Article 13 of the Consolidated Act on Immigration, the Ministry of the Interior may provide for the deportation of a foreign national - even if they do not live in Italy - for reasons of public order and State security, subject to prior notice to the President of the Council of Ministers and the Minister of Foreign Affairs.</p> <p>Foreign nationals who hold EC long-term residence permits, recognised refugees, stateless persons, children and persons with diplomatic immunity may also be subject to a deportation measure for reasons of public order and State security. This specific measure is left to the discretion of the Minister of the Interior and provides that the foreign national is accompanied coercively to the border by law-enforcement officers. An appeal against this deportation measure may be lodged before the Rome-based Regional Administrative Court of Lazio.</p> <p>In all the other cases that have not to do with reasons of public order and State security, a deportation measure is adopted taking into account the family ties of the foreign national and the length of their stay on national soil. Moreover, a deportation decree is notified to the person concerned together with the instructions for lodging an appeal and a translation in a language they know, or, if that is not possible, in one the following languages: French, English or Spanish. An appeal against the deportation decree may be lodged before ordinary courts.</p> <p>Under Article 19.2 of the Consolidated Act on Immigration, the deportation of a foreign national who holds a residence permit is not allowed unless there are serious reasons of public order or their presence on national soil facilitates terrorist activities or organisations.</p>
	<b>Latvia</b>	<b>Yes</b>	<p>1.No</p> <p>2. N/A</p> <p>3. Foreigner who has continuously resided in Latvia with a temporary residence permit for at least five years prior to the end of the term of the last temporary residence permit has a right to request a permanent residence permit. Foreigner who has continuously resided in Latvia with a permanent residence permit for at least five years from the day of receipt of the permit may be admitted to Latvian citizenship through naturalisation procedure.</p>
	<b>Lithuania</b>	<b>Yes</b>	<p>1. No</p> <p>2. N/A</p> <p>3. An alien may be issued a permanent residence permit, if the alien has been residing in the Republic of Lithuania uninterruptedly for the last five years holding a temporary residence permit. Permanent residence permit may be issued based on this ground, if an alien has passed an examination in the state language and in the basic principles of the Constitution of the Republic of Lithuania.</p> <p>If a person has been legally and permanently residing in Lithuania for the last ten years s(he) is could be granted a citizenship if s(he) meets all other conditions set in the law: permanent residence, passing of the tests for the state language and the fundamentals of the Constitutions tests (if not exempted), has legal means of subsistence.</p>
	<b>Luxembourg</b>	<b>Yes</b>	<p>1. Yes. Luxembourg has ratified the European Convention on Establishment of 1955 on 6 March 1969 entering into force the same date.</p>



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			<p>2. Since the signature of the convention and the entry into force, Luxembourg passed two immigration laws, the latest being the Law of 29 August 2008 on free movement of persons and immigration. Currently the same policy applies to nationals of ALL countries, not just those of countries that have also ratified the European Convention on Establishment. The law distinguishes between Union citizens (and their family members) and third country nationals.</p> <p>3. For Union citizens and their family members: permanent right to stay after 5 years. For third country nationals: According to article 80 (1) of the amended Lay of 29 August 2008 a TCN who proves that s/he had continuously lived in the Grand-Duchy of Luxembourg for at least 5 years before filing the application, can obtain the long-term resident status (according to article 4 of the Council Directive 2003/109/EC of 25 November 2003). There is no national long term status.</p>
	<b>Malta</b>	<b>Yes</b>	
	<b>Netherlands</b>	<b>Yes</b>	<p>1. Yes, the Netherlands has ratified the European Convention on Establishment 1955.</p> <p>2 • <b>states that have ratified the European Convention on Establishment:</b>          Except Turkey all other contracting countries are a member of the EU or the EEA as well, which means that they have at least a protection of rights which is nearly the same as follows article 3 (3) of the European Convention. Therefore the European Convention is only important for citizens of Turkey, as far as they cannot prolong their Legal stay on the base of Decision Nr 1/80 of the Association. In the situation of at least ten years of legal stay on the base of article 9 and 10 of the Dutch Aliens Act, articles 3.86 and 3.87 of the Dutch Aliens Decree offer protection against expulsion which is at least as strong as the protection of the Convention. In practise the assessment will be made on a case by case level.          No specific arrangements are made for the prolonging of the legal stay after 10 years concerning for example fees or integration.</p> <p>• <b>states that have not ratified the European Convention on Establishment:</b>          After 10 years of legal stay, Article 3.86 of the Dutch Aliens Decree offers a very strong protection against withdrawal of a residence permit on the ground of public order to nationals of ALL countries.</p> <p>3 N/A</p>
	<b>Poland</b>	<b>Yes</b>	<p>Ad.1. No.</p> <p>Ad.2. As a rule third-country nationals can apply for the long-term resident's EU residence permit which is the residence permit granted for indefinite time (granted under the rules specified in <i>Council Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents</i>).</p> <p>Polish law also provides for issuing to some third-country nationals the permanent residence permit, which is granted under the rules specified in Act of 12 December 2013 on Foreigners. One of the circumstances, justifying granting third-country nationals the permanent residence permit is at least 10-year continuous stay in Poland on the basis of permit for the tolerated stay, which has been granted pursuant to national legislation (pursuant to Article 351(1) or (2) Act of 12 December 2013 on Foreigners).</p>

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	<b>Portugal</b>	<b>Yes</b>	
	<b>Romania</b>	<b>Yes</b>	<p>Romania hasn't ratified the European Convention on Establishment 1955 Not applicable</p> <p>If No; What provision, if any, do you have for foreign nationals who have been residing lawfully in your state for a period of 10 years or more? Romania has transposed and applies the provisions of Directive 109/2003 concerning the status of third country nationals who are long term residents. Thus, according to national legislation, long term residence is granted, upon request, to aliens who have had their lawful and continuous residence in Romania for minimum 5 consecutive years before the application.</p>
	<b>Slovak Republic</b>	<b>Yes</b>	<p>1. No. 2. N.A.</p> <p>According to the Act no. 404/2011 on Residence of Aliens and Amendment and Supplementation of Certain Acts, the Police Force shall not administratively expulse a Union citizen who has had an authorised residence in the Slovak Republic territory for at least ten years; this shall not apply, if s/he represents a serious threat for the state safety (Article 87 (4a)).</p>
	<b>Slovenia</b>	<b>Yes</b>	
	<b>Spain</b>	<b>Yes</b>	<p>1. No 2. No 3. There is no specific provision for the residence authorisations in regard with a lawfully residence for 10 years or more. Organic Law 4/2000 sets out that, to be entitled to long-term residence, an alien must have had temporary residence in Spain for five years, on a continuous basis, and meet the conditions established by the enacting regulations. For the purposes of obtaining long-term residence, the prior periods of continuous residence in other European Union Member States, as the holder of a EU Blue Card, shall be counted.</p>
	<b>Sweden</b>	<b>Yes</b>	
	<b>United Kingdom</b>	<b>Yes</b>	<p>1. Yes, The UK has ratified the European Convention on Establishment 1955.</p> <p>2. Currently the same policy applies to nationals of ALL countries, not just those of countries that have also ratified the European Convention on Establishment.</p> <p>Paragraph 276 of our immigration rules allows any national who has resided legally in the UK for a period of 10 years or more, to gain settled status.</p> <p>3. N/A</p>

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	Norway	Yes	
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