



Ad-Hoc Query on TCN obligation to register their absence from Member States (+ Norway)

Requested by EE EMN NCP on 07/09/2015

Reply requested by 02/10/2015

Responses from [Austria](#), [Belgium](#), [Bulgaria](#), [Croatia](#), [Cyprus](#), [Czech Republic](#), [Estonia](#), [Finland](#), [France](#), [Germany](#), [Greece](#), [Hungary](#), [Italy](#), [Latvia](#), [Lithuania](#), [Luxembourg](#), [Netherlands](#), [Poland](#), [Portugal](#), [Slovak Republic](#), [Slovenia](#), [Sweden](#) plus [Norway](#) (23 in Total)

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1. Background Information

Estonia is currently revising its policy on legal migration from the aspect of minimum residency period for third-country nationals. According to our national legislation a third-country national who holds a temporary residence permit, has to reside in Estonia at least 183 days during a year, otherwise the residence permit will be revoked. If the person wishes to stay outside of Estonia for more than a total of 183 days during a year, he/she is required to register his/her absence from Estonia in the Police and Border Guard Board (PBGB). Temporary absence for up to 2 years, but not for longer than the period of validity of the residence permit, is allowed for the following reasons: study, employment, being in the active service of the armed forces of a foreign state, or other temporary reason which presumes the stay of a person outside Estonia.

We would like know how the temporary absence of third-country nationals is regulated in other Member States.

Questions:

1. Does your national legislation regulate the temporary absence of a third-country national holding a temporary residence permit from your MS + Norway?

YES/NO

2. If yes, what are the requirements:

2.1. Does your national legislation set up any time-period for how long TCNs are allowed to stay outside of the MS + Norway?


2.2. Are there different rules based on the type of residence permit or reason the permit was issued to a TCN (labour migrants, students, researches, family migrants etc)?

We would appreciate your responses by Friday 2th October.

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2. Responses¹


		Wider Dissemination? ²	
	Austria	Yes	<p>1. Yes, there is legislation concerning the temporary absence of third-country nationals holding temporary residence permits.</p> <p>2. Besides a provision, which generally applies to all temporary residence permits (see 2.1.), different rules exclusively exist for TCN holding a residence permit “Permanent Residence – EU” (see 2.2.).</p> <p>2.1. According to Art. 10 para 2 Settlement and Residence Act (NAG), a residence permit becomes invalid, if the competent authority by written decision states that a TCN is no longer resident or settled in Austria. Short-term stays abroad do not terminate the residence (Art. 2 para 7 Settlement and Residence Act).</p> <p>2.2 Excepted from this general regulation are TCN holding a residence permit “Permanent Residence – EU”, which is regulated in Art. 45 Settlement and Residence Act. According to Art. 20 para 4 Settlement and Residence Act, this residence permit expires, if a TCN resides for more than 12 consecutive months outside EEA territory. If the TCN informs the authority in advance, for the following reasons absence of up to 24 months is permitted:</p> <ul style="list-style-type: none"> - serious illness - fulfilment of a social obligation - completion of a duty comparable to compulsory military service or compulsory civilian service. <p>Dependants of Austrian citizens employed by public corporations (acting in the interest of the Republic of Austria) or domestic authorities, whose duty stations are abroad, are exempted from the regulation of Art. 20 para 4 Settlement and Residence Act, if the authority has been informed in advance (Art. 20 para 5 Settlement and Residence Act).</p> <p>If a residence permit “Permanent Residence – EU” has been issued to a TCN holding an EU Blue Card, absence of up to 24 months is permitted (Art. 20 para 4a Settlement and Residence Act).</p> <p>If a TCN holding a residence permit „Permanent Residence – EU” resides outside Austria but within EEA territory, the residence permit becomes invalid after an uninterrupted period of six years (Art. 10 para 3 subpara 4 Settlement and Residence Act).</p> <p>Referring to the title of your query it can be stated that there is no obligation for TCN to register their absence, except for the cases described where authorities have to be informed in advance. However, the duty to provide evidence for his/her residence within EEA territory rests with the TCN.</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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	Belgium	Yes	<p>1. Yes</p> <p>2.1. Belgian legislation contains provisions allowing foreign nationals holding a residence permit to leave the territory during a period of time and to return without losing their residence status. The conditions for absences and return to Belgium of foreign nationals are determined in: Article 19 of the Law of 15 December 1980 regarding the entry, residence, settlement and removal of foreign nationals; articles 39 to 42 of the Royal Decree of 8 October 1981 on the entry, residence, settlement and removal of foreign nationals; the Royal Decree of 7 August 1995 determining the conditions and the cases in which a foreign national, whose absence from the Kingdom exceeds a year, can return to Belgium; and the Circular of 5 February 1996 regarding the conditions and the cases in which a foreign national – whose absence from the Kingdom exceeds a year, can return to Belgium.</p> <p><u>Belgian legislation stipulates that a foreign national holding a residence permit has a “right to return” in different cases:</u></p> <ul style="list-style-type: none"> - Absence of less than 3 months: the foreign national has a right to return provided he/she has a valid residence permit when returning to Belgium. - Absence between 3 months and a year: the foreign national has a right to return to Belgium provided the following conditions are met: (1) prior to departure, informs his/her municipality of his intentions to leave the country; (2) applies - when necessary - for a prolongation of his/her residence permit if this document is to expire during the stay abroad; (3) has a valid residence permit when returning to Belgium; (4) reports to the municipality within 15 days after his/her return. - Absence of longer than a year: the foreign national has a right to return provided that - in addition to conditions (1), (2), (3) and (4) mentioned above - he/she has proven prior to departure that his/her principal interests remain in Belgium. A prolonged stay abroad of more than one year is also possible for persons who have to fulfil their military service in their country of origin (after notification to the municipality). He/she must return to Belgium within 60 days after completion of the military service. <p>If the foreign national has followed the necessary procedures before his/her departure but is unable to return to Belgium within the aforementioned periods due to circumstances independent of his/her own will (force majeure), the Minister or Immigration Office may still grant the previous residence status.</p> <p>Even in the event of loss of residence after a stay of more than one year abroad that does not meet the above mentioned conditions, some foreign nationals can reacquire their residence status in Belgium and “<u>be authorized to return</u>” by the Minister or the Immigration Office. The foreign national must meet the following conditions: (1) have a valid passport or travel document; (2) have been authorized to an unlimited stay or have been settled at the moment of his/her departure from Belgium; (3) prove that, when making the request, his/her absence from Belgium does not exceed 5 years. Additional requirements apply, depending on the category of persons. If the person is younger than 21, he should have stayed - at the moment of his/her departure – for 5 years in Belgium and must have remained absent for reasons independent of his/her own will. Above the age of 21, the person must have stayed 15 years in Belgium and give proof of having sufficient means of subsistence. Persons born in Belgium and family members of foreign residents younger than 30, can return when they have had 10 years of legal stay in Belgium.</p> <p>2.2. Foreign nationals who have acquired</p>
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			(Directive 2003/119/EC) have broader rights to return to Belgium: they only lose their right to return to Belgium when they leave the EU territory for 12 consecutive months or when they have left Belgium for a period exceeding 6 years. Former EU Blue Card holders who obtained long term resident status , lose their right to return to Belgium only if they leave the EU territory during 24 consecutive months. This same disposition applies to the members of their families who have obtained the long term resident status.
	Bulgaria	Yes	No
	Cyprus	Yes	1. Yes 2.1. In Cyprus, TCN who hold a valid temporary residence permit are allowed to stay outside Cyprus for a period of maximum 90 days during a year. 2.2. No, we have no distinctions between different types of residence permits.
	Czech Republic	Yes	1. NO. 2. N/A.
	Estonia	Yes	1. Yes. 2.1 In Estonia a TCN, who holds a residence permit and wishes to stay outside Estonia for more than a total of 183 days during a year, is required to register his/her absence from Estonia in the Police and Border Guard Board. PBGB will register the absence of a person from Estonia for up to 2 years if he/she intends to stay temporarily in a foreign country only in following reasons: study; employment; being in the active service of the armed forces of a foreign state; or other temporary reason which presumes the stay of a person outside Estonia. 2.2 No, we have no distinctions between different types of residence permits.
	Finland	Yes	1. YES 2.1. <i>Aliens Act Section 58 (358/2007)</i> <i>Cancelling residence permits</i> <i>(1) A fixed-term or permanent residence permit is cancelled if the alien has moved out of the country permanently or has continuously resided outside Finland for two years for permanent purposes.</i> <i>(2) A long-term resident's EC residence permit is cancelled if the alien has resided outside the territory of the European Union for two consecutive years or outside Finland for six consecutive years.</i> <i>(3) In the case referred to in subsection 1 or 2, an alien may, before the expiry of the periods mentioned above, file an application to prevent the cancellation of his or her residence permit. If the application is granted, the decision must state the period during which the residence permit is not cancelled. The application may be granted if the alien has resided outside Finland or the Community for special or exceptional reasons.</i> <i>Residence is considered continuous if an alien has resided in Finland for at least half the validity period of the residence permit. Absence resulting from ordinary holiday or other travel or work at a work site abroad on secondment by a Finnish employer is not considered an interruption of continuous residence.</i>




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			2.2. NO
	France	Yes	<p>1. French regulations do not provide specific measures regarding the temporary absence from the French territory of a TCN holding a temporary residence permit (whose validity varies from 1 to 3 years). However for a renewal application of the residence permit, the TCN needs to provide proofs of residence in France such as rent contract, electricity bill, social security coverage, payslips (if s/he works), payment of taxes, etc. If s/he has not been residing in France for several months, his/her residence permit renewal application may be refused because of this lack of documents.</p> <p>2. There is no distinction between different types of temporary residence permits. However, the Code for Entry and Residence of Foreigners and the Right of Asylum (CESEDA) prevails a specific measure for holders of ten year residence permits. They can reside out of France for a period exceeding 3 years if they ask for it and explain the reasons before leaving or during their stay in a foreign country. If they do not ask for this authorization, their residence permit is considered as expired.</p>
	Germany	Yes	<p>1. Yes.</p> <p>2.</p> <p>2.1. According to German law, the validity of a residence document expires in principle owing to a stay abroad if the foreigner has left the country for a reason which is by nature not a temporary reason or if he or she left the country and has not yet re-entered within a period of six months or within a longer period of time which the [<i>German</i>] Alien's Office had determined.</p> <p>2.2. The validity of a residence permit will not expire owing to reasons mentioned under item 2.1 in the following cases:</p> <ul style="list-style-type: none"> - If the person was granted an unlimited residence permit and the holder has legally stayed in Germany for at least fifteen years and his or her means of subsistence are guaranteed or who is married to a German (and if in both cases there is no reason for expulsion owing to any relation to terrorist or other extremist activities) or - If the person has travelled to his or her home country for military service and if the person will return to Germany within three months after the service ended. <p>The residence document of a foreigner whose refugee status was determined, will not expire as long as his or her German refugee travel document (Reiseausweis für Flüchtlinge) has not yet expired.</p> <p>The admission to permanent residence in the EU only expires in the following cases:</p> <ul style="list-style-type: none"> - If the holder of a permanent resident permit stays outside the territory of the scope of application of Directive no. 2003/109/EC for a period of twelve successive months (24 months, if the person previously held an EU Blue Card); - If the holder stays outside of Germany for a period of six years; - If the foreigner acquires the legal status of a long-term resident in another EU member state. <p>In the case of the EU Blue Card, the period of time mentioned under 2.1 is twelve (instead of six) months.</p> <p>The same applies to the residence permit of a foreigner who has legally stayed in Germany for at least fifteen years as well as to the residence permit of a spouse who lives with him or her as a married couple if they are older than 60 years.</p>
	Greece	Yes	Yes, our national legislation (Law 4251/1.4.2014 " <i>Immigration and Social Integration Code and other provisions</i> ") regulates the temporary absence of a third-country national holding a valid residence permit (not a temporary residence permit). <u>Article 21</u> " <i>Common rights of third-</i>





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			country nationals", paragraph 6 of the above mentioned Law (4251/2014) refers: "Without prejudice to more specific arrangements of this Code, the validity of a residence permit shall not be affected by temporary absences which do not exceed six months in total per year, by longer absences for military service purposes or by one continuous absence of twelve months maximum, for serious reasons, especially related to motherhood or pregnancy, serious illness, studies or vocational training in another Member State or third country". This provision, covers all types of residence permits.
	Hungary	Yes	<p>1. No, Hungary does not set out an obligation for holders of temporary residence permits to have the temporary absence registered. Nevertheless, on the one hand, lengthy stays can lead to not being able to gain permanent residence in Hungary, on the other hand, although, no specific provisions are set out to describe how long a stay outside the territory of Hungary is allowed for those holding a temporary residence permit, the competent immigration office might at any time check the ongoing fulfilment of residence conditions. In this case if the lengthy stay outside Hungary leads to the suspicion that the third-country national is not pursuing the purpose of his/her residence in Hungary, it can lead to the withdrawal of the residence permit. Yet, such withdrawal decisions are made on a case by case basis, always taking into account the individual circumstances of the specific case. Maximum length of stays outside Hungary is only set out for permanent residence permit holders.</p> <p>2. Not relevant. (Such provisions in Hungarian law are only valid for permanent residence permit holders.)</p>
	Italy	Yes	<p>1. Yes.</p> <p>2.1. Under Article 8(1) of Decree of the President of the Republic No 349/1999, a TCN who holds a residence permit (valid or under renewal) may travel outside the European Union. However, he/she must undergo border police checks, in order to have his/her document stamped, with the indication of the border crossing point, and must be back in Italy within 6 months. Failure to comply with this time limit determines the non-renewal of his/her residence permit under Article 14 (4) of said Decree. In fact, a "Residence permit cannot be renewed or extended if the foreign national has been outside Italy for a continued period of more than 6 months or, for residence permits with validity of at least 2 years, for a continued period longer than half the period of validity of the residence permit, unless such absence depended on the need to fulfil military duties or on other serious and proved reasons".</p> <p>2.2. When a residence permit is issued for particular reasons, such as medical treatment or reasons of justice, the specific conditions of the holder of the permit may lead the competent police authorities (Questure) not to issue the travel document and therefore prevent the person from leaving national territory (for instance, for reasons of international prophylaxis and health protection if the foreign national is affected by a serious condition).</p>
	Latvia	Yes	<p>1. Yes and no.</p> <p>2.1 The legislation of the Republic of Latvia does not limit the absence of third-country nationals from the country however their absence may result in denying the permanent residence permit after 5 years of staying in Latvia with a temporary residence permit. If a third-country citizen with temporary residence permit has stayed outside of Latvia more than 6 uninterrupted months or more than 1 year (with interruptions) in period of 5 years, s/he cannot be issued a permanent residence permit. The Latvian legislation does not provide the obligation of reporting of absence.</p> <p>2.2 No, Latvian legislation does not distinguish between different type of permits.</p>





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	Lithuania	Yes	<p>1. YES</p> <p>2.1 Third-country nationals (TCN), who have a temporary residence permit in Lithuania and are leaving Lithuania for a period longer than 6 months, must declare their place of residence. A temporary residence permit shall be withdrawn if the TCN leaves to reside or has resided in a foreign state for a period longer than six months.</p> <p>2.2 There are no distinctions between reasons the permit was issued to TCN.</p>
	Luxembourg	Yes	<p>1. Yes.</p> <p>2.1 In Luxembourg, article 40 (4) of the amended law of 29 August 2008 on free movement of persons and immigration establishes that a third-country national intending to leave the Grand Duchy of Luxembourg for a period exceeding six months must hand back his/her residence permit to the Minister and must file a declaration of departure to the municipal authority of his/her place of residence. There are no exceptions for this norm.</p> <p>2.2 This principle applies to all the temporary residence permits.</p>
	Netherlands	Yes	<p>1. Yes</p> <p>2. The TCN holding a residence permit when moving house must deregister from the Municipal Personal Records Database (BRP) at the municipality where he/she is residing. The Immigration and Naturalisation Service is automatically notified of this change.</p> <p>2.1. De IND assesses whether the TCN has moved his main residence abroad based on facts and factual circumstances. The IND definitely assumes a change of main residence abroad in any of the following cases:</p> <ul style="list-style-type: none"> • The TCN has used a remigration arrangement when leaving the Netherlands; • The TCN has resided outside of the Netherlands for more than six subsequent months, unless he/she has a plausible explanation that staying abroad beyond the six month period is due to circumstances out of his/her control; or • The TCN has resided outside the Netherlands for more than four months for the third consecutive year. <p>2.2. Yes</p>
	Poland	Yes	<p>1. Yes.</p> <p>2.1. Polish legislation sets up periods for how long TCNs are allowed to stay outside of the MS + Norway only in the context of issuing permanent residence permits and not in the context of temporary residence permits themselves. A foreigner's stay in the territory of the Republic of Poland which is the ground for granting him/her a permanent residence permit shall be considered uninterrupted if none of intervals in such a stay was longer than 6 months and all the intervals did not exceed a total of 10 months in the periods which are the basis for granting him/her a permanent residence permit, unless an interval was due to:</p> <p>(1) performing by the foreigner professional duties or work outside the territory of the Republic of Poland, under an agreement entered into with an employer established in the territory of the Republic of Poland, or</p> <p>(2) accompanying a foreigner granted a permanent residence permit or a long term resident's EU residence permit by his/her spouse or a minor child, or</p> <p>(3) exceptional personal situation requiring the foreigner's stay outside the territory of the Republic of Poland, and lasted no longer than 6 months, or</p>



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			(4) departure outside the territory of the Republic of Poland in order to attend internships or participate in classes provided for in the course of studies at a Polish university. 2.2. No.
	Portugal	Yes	1. Yes. 2.1. Yes. The legal framework, Act n.º 29/2012, 9 th august, establishes in al. a) of n.º 2 of the article 85º Article 85º “Cancellation of residence permit”, that: “Without prejudice to the application of special provisions, the residence permit may also be cancelled when the interested party, without reasonable motives, is absent from the Country: a) Being the holder of a temporary residence permit, six consecutive months or eight interpolated months, within the overall validity of the authorization”. 2.2 No, PT does not have distinctions between different types of residence permits.
	Slovak Republic	Yes	1. Yes 2.1. According to the legislation of the Slovak Republic, a third country national who holds a resident permit must inform the Foreign Police Department in written, if he/she intends to continuously reside outside the territory of Slovakia for more than 180 days. If he/she fails to comply with this, he/she commits an offence against the legislation governing residence on the territory of the Slovak Republic and he might be charged with a fine up to 165 EUR. The reason of the stay of the third country national outside of the Slovak territory is not relevant however the length of such stay is. 2.2 Yes there are exceptions depending on the type of residence. In case the third country national who has a temporary residence or the permanent residence in the Slovak Republic does not inform the Foreign Police Department in written that he/she will continuously reside outside the territory of Slovakia for more than 180 days, his/her residence might be cancelled unless he/she has the temporary residence of a third country national with an acknowledged status of a Slovak Living Abroad or has a status of a person with a long-term residence in another Member State. A special category is the third country national who has a long-term residence in the Slovak Republic. Such person has the obligation to inform in written that he/she will continuously reside outside the territory of Slovakia for more than 180 days otherwise he/she commits an offence. The reason for the cancellation of the long-term residence is the fact (if detected) that depending on the purpose of stay given by the application for this type of residence he/she continuously resided outside the territory of Slovakia for more than 12 months or more than 24 months. The reason for the cancellation of the long term residence is also the fact (if detected) that the person resided outside the territory of Slovakia for more than 6 years (but not continuously).
	Slovenia	Yes	In general TCNs are allowed to depart/enter territory until validity of their temporary residence permits not expired and usually are issued for period of one year. Responsible authority could refuse of issuing/annual residence permits if there are <i>inter alia</i> also reasons to believe that the TCNs (will) not reside in the territory of the Republic of Slovenia.
	Sweden	Yes	1. Sweden regulates temporary absence regarding permanent residence permits.

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			<p>2.1 A permanent residence permit shall be withdrawn from an alien who is no longer resident in Sweden. If the person has a permanent residence permit, he/she can be away from Sweden for up to one year without losing the residence permit. If he/she is away for a longer period, or if the person plans to settle in another country, the Swedish Migration Agency may withdraw the residence permit. However, if the person submits a notification to be allowed to keep the permanent residence permit, he/she can be away from Sweden for up to two years. The notification must have reached the Migration Agency no later than one week before the move to another country. If the person do not resettle in Sweden within two years, the residence permit may be withdrawn.</p> <p>2.2 No</p>
	Croatia	Yes	<p>1. Yes.</p> <p>2.1 In Croatia a TCN, who holds a temporary residence permit <u>can stay out of the Republic of Croatia for an uninterrupted period of time for up to 30 days</u>. If a TCN resides abroad without interruptions for a period over 30 days, temporary residence permit shall cease.</p> <p>Exceptionally, TCN who holds a temporary residence permit is allowed to <u>stay out of the Republic of Croatia for a period of up to 90 days for justified reasons</u>, and his/her temporary residence permit will not cease if he/she, prior to departure from the Republic of Croatia notifies the relevant Police Administration or Police Station thereof. If the emergency circumstances arise after departure from the Republic of Croatia, a TCN shall be obliged to, within 30 days of arising of such circumstances, notify the Diplomatic Mission or Consular Office of the Republic of Croatia thereof.</p> <p>2.2 No, we have no distinctions between different types of temporary residence permits.</p>
	Norway	Yes	<p>1. YES http://www.udi.no/en/received-an-answer/work-immigration/your-application-for-labour-immigration-has-been-granted/#link-1007</p> <p>2. If yes, what are the requirements:</p> <p>2.1. Does your national legislation set up any time-period for how long TCNs are allowed to stay outside of the MS + Norway? YES.</p> <p>A person with a temporary permit can travel into and out of Norway for as long as the permit is valid, but s/he must live in Norway for at least a total of six months each year.</p> <p>The temporary residence permit can be revoked if the <i>labour immigrant</i>:</p> <ul style="list-style-type: none"> ▪ does not receive the pay stated in the job offer ▪ lives outside of Norway for more than a total of six months in one year ▪ works more <i>or works less</i> than is stated in the employment contract. <p>The temporary residence permit can be revoked if the <i>student immigrant</i>:</p> <ul style="list-style-type: none"> ▪ does not study (normal study progression) ▪ lives outside of Norway for more than a total of six months in one year ▪ works more than their student permit entitles them to (20 hrs. /wk.) <p>The temporary residence permit can be revoked if the <i>family reunification immigrant</i>:</p> <ul style="list-style-type: none"> ▪ visits other <u>Schengen countries</u> for more than 90 days at a time ▪ lives outside of Norway for more than a total of six months each year

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			<p>2.2 Are there different rules based on the type of residence permit or reason the permit was issued to a TCN (labour migrants, students, researches, family migrants etc)?</p> <p>The general framework is the same, there are details that are applicable for different categories: see above.</p>
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