



Ad-Hoc Query on prerequisites for granting the residence permit for a fixed period

Requested by PL EMN NCP on 2nd November 2009

Compilation produced on 27th January 2010

Responses from: Austria, Czech Republic, Estonia, Finland, France, Latvia, Lithuania, the Netherlands, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, the United Kingdom (15 in Total)

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

1. Background Information

In Poland one of the prerequisites of granting to an alien the residence permit for a fixed period is carrying out by an alien an economic activity which is beneficial for national economy. In practice this prerequisite is very difficult to interpret and the judicature in this matter is not uniform.

It would be appreciated if you could provide your response to the following questions:

1. In your Member State is there a legal basis to legalise residence of an alien due to the reason of carrying out an economic activity? Is there a requirement that this activity must be beneficial for national economy?

2. If yes, when conducting legalisation proceeding, what rules and criteria are applied to examine that an economic activity carried out by the alien concerned is beneficial for national economy? What are the prerequisites of this “benefit”? Are these prerequisites set up directly in the law?

It would be very much appreciated if you could provide your responses by **16th November 2009**.

2. Responses¹

| | | Wider Dissemination? ² | 1. In your Member State is there a legal basis to legalise residence of an alien carrying out an economic activity which is beneficial for national economy? |
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|  | Austria | No | This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further. |
|  | Czech Republic | Yes | No, there is no such requirement in our law. |
|  | Estonia | Yes | Yes. The Estonian Citizenship and Migration Board may according to Aliens Act issue of residence permits for enterprise to an alien who has a holding in a company or who operates as a sole proprietor, provided that the company or the sole proprietorship is entered in the commercial register of Estonia, and that based on the interests of the state, the intended enterprise is necessary for the development of Estonian economy, and the alien's settling in Estonia is of essential importance to the enterprise. |
|  | Finland | Yes | There is no legal basis in Finland for this kind of legalisation. An alien may be issued residence permit for carrying out an economic activity, but there is no check for beneficiality of those activities. More important is to make sure, that the economic activity is profitable. The profitability of the business activity is estimated on the basis of various reports that are obtained in advance, such as the business plan or binding preliminary contracts and funding agreements. The deliberation is conducted by the Employment and Economic Development Centre. |
|  | France | Yes | The new French immigration policy carried out since 2006 and 2007 focuses on labour migration that is of benefit to national economy. According to articles L 313-8, L 313-9, L 313-10 of the Entry and Residence in France and Right of Asylum Code (CESEDA), several residence permits entitle an alien to carry out an economic activity: <ul style="list-style-type: none"> • One-year residence permits: <ul style="list-style-type: none"> “employees” or “temporary workers” card - “tradesmen”, “craftsmen” or “industrialists” card |

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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| | | | <ul style="list-style-type: none"> - “scientists” card - “artistic and cultural profession” card <ul style="list-style-type: none"> • Three-year renewable residence permits: <ul style="list-style-type: none"> - “employee on mission” card - “seasonal workers” card - “competences and talents” card. This specific residence permit gives priority to qualified or highly- qualified workers. <p>It is implicitly admitted that the economic activity carried out must be beneficial for national economy. The “competences and talents” card is the only one that explicitly specifies that “the alien must significantly and durably take part in the economic development or influence of France and of the country he comes from.” (CESEDA Article L 315-1).</p> <p>According to 2008-775 Law of Modernization of the Economy, a ten-year residence permit will be delivered in 2010 for aliens who can provide an ‘exceptional economic contribution’. They will have to create at last 50 jobs on the territory or invest at least 10 million euro.</p> |
|  | Latvia | Yes | Yes, the Immigration Law provides a possibility to receive a temporary residence permit in case a foreigner is carrying out some economic activities in the country. At the moment a condition on benefit to national economy has not been included into legislative acts however Latvian Parliament is discussing amendments to the Immigration Law, where such requirements will be included. |
|  | Lithuania | Yes | There are possibilities to obtain residence permits on the ground of carrying an economic activity or starting a business. However, there are no special conditions for this activity to be beneficial to national economy. If, in order to carry out the economic activity, the alien must obtain a work permit, he must pass the labour market test. This means, that the work permit can be issued only if it is in the interest of the Lithuanian labour market (that is, if there are no nationals or other EU nationals who could take up that employment). In the case of starting a business the alien must invest at least 50.000 (approx. 15000 Euros) and in order to receive a residence permit must prove that his/her stay in the Republic of Lithuania is indispensable for attaining the aims of the enterprise, agency or organisation. |
|  | Netherlands | Yes | In the Netherlands an alien can obtain a residence permit for the reason of carrying out economic activities. Roughly speaking there are two kinds of economic activities: for labour and for entrepreneurship. In the former case this labour should be beneficial in the sense that the job can only be fulfilled by the alien. In the latter case there is a requirement that the activities of the entrepreneur must serve a material Dutch economic purpose. A few categories of aliens are exempt from this requirement, most important of which are nationals of the European Union. Related, but in the strictest term not an economic activity, is the possibility to search for a job as a highly skilled migrant (search year highly educated or ‘Regeling hoogopgeleiden’). The appropriate residence permit creates the opportunity for aliens who have obtained a master or doctor title at either a Dutch university or a foreign leading university to find a job as a highly educated migrant. A list has been drawn up, consisting of over 180 universities worldwide to decide whether or not the foreign university is leading. The residence permit is valid for one year, and cannot be prolonged. |
|  | Poland | Yes | Yes. According to art 53 sec.1 p.2 of Act on Aliens of 13 June 2003 the residence permit for a fixed period shall be granted to an alien who carries out an economic activity, which is beneficial to national economy. |
|  | Portugal | Yes | According to the Immigration Law (Act n.º 23/2007, of 4 th July), Article n.º 60º, n.º 2, a residency visa is granted to immigrant entrepreneurs who intend to invest in Portugal, provided: <ol style="list-style-type: none"> a) They have made investments; or b) They prove to possess available financial means in Portugal; including those deriving from loans obtained from a banking institution in |

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| | | | Portugal, and they demonstrate by any means their intention to carry out an investment action in Portuguese territory. The residency visa is valid for two entries in Portuguese territory and enables its holder to remain there for a period of four months. During this period the third-country national must apply for a residence permit for this matter. |
|  | Slovak Republic | Yes | The rules and criteria of the examination of this prerequisite are not regulated by law. In practice authorities apply the criterion of profitability. |
|  | Slovenia | Yes | Yes. In addition to other economic grounds for residence (employment, work, seasonal work, etc.), temporary residence permit can also be granted in case of 'interest of Republic of Slovenia'. Interest can be of economic, sport, cultural and similar significance for our country. National interest can also be taken into account when granting permanent residence or granting immediate family reunification. |
|  | Spain | Yes | In accordance with Spanish legislation and as a general rule, an application for the renewal of a permit filed within the time period set forth by law (for said renewal) for each type of permit extends the validity of the previous one until the resolution concerning the procedure is decided . For example, the application for renewal of the residence permit, residence and work permit whether employed by others or self-employed, and residence permits for family reunification purposes must be filed within 60 calendar days prior to the expiry of the permit in effect. As long as the application is filed within the specified time period, the validity of the previous permit shall be extended until a resolution concerning the procedure is decided. |
|  | Sweden | Yes | The answer is no. There is a legal basis to legalise residence of an alien carrying out an economic activity but it is not required that the activity is beneficial to national economy. The requirement is that the alien shall be able to support himself upon the activity and that the activity should be profitable. Indirectly that means that the activity will be beneficial to national economy but as mentioned it is not an expressed requirement. |
|  | United Kingdom | Yes | Yes. Non-EEA nationals wishing to work in the UK must apply through our Points-Based System. The system is designed to attract applicants with skills that will be beneficial to the UK. There are four tiers in operation, three of which relate to workers: <ul style="list-style-type: none"> • Tier 1 – highly skilled workers who will contribute to growth and productivity • Tier 2 – skilled workers with a job offer to fill gaps in the UK workforce • Tier 4 – students • Tier 5 – temporary workers and youth mobility Tier 3, which was intended to cover low-skilled workers to fill temporary labour shortages, has not been implemented. The UK government expects employers to fill all low-skilled vacancies without needing to recruit non-EEA nationals. |

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| | | Wider Dissemination? ³ | 2. If yes, when conducting legalisation proceeding, based on what rules and criteria is the prerequisite of carrying out an economic activity beneficial for national economy examined? |
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|  | Austria | No | This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further. |
|  | Czech Republic | Yes | Not applicable. |
|  | Estonia | Yes | <p>A residence permit for enterprise may be issued to an alien who has sufficient monetary resources for engaging in enterprise in Estonia, including capital in the amount of at least 1 000 000 kroons controlled by the alien invested in business activities in Estonia, and a business plan which describes the nature and extent of the intended business activities, and sets out the number, requisite qualifications and skills of the staff needed for such activities. The amount of capital which an alien must invest in Estonia in order to be granted permission to operate as a sole proprietor is at least 250 000 kroons. An alien who has been issued a residence permit for enterprise shall not be employed by another person in Estonia. An alien who has been issued a residence permit for enterprise for the purpose of participation in a company may be employed by the company indicated in the residence permit for performance of directing functions. A residence permit for enterprise shall set out the areas of activity permitted to the alien and where necessary, also the licensed territory.</p> <p>Residence permit may be issued for five years period and it may be extended if the alien continues to meet the conditions on which he or she was issued the residence permit, the alien has actual residence in Estonia and the alien's previous activities have been in compliance with the requisite conditions set for issue of the residence permit.</p> |
|  | Finland | Yes | See above. |
|  | France | Yes | <p>When applying for a 'competences and talents' card, the alien must respect some criteria that are determined by the National Commission for competences and talents.</p> <p>These criteria are registered in Articles R315-1 and R 315-4 of the CESEDA as follows:</p> <ul style="list-style-type: none"> - The first criterion refers to the alien's professional project: he must mention the localization, the line of business and the jobs he is planning to create. The project must be fulfilled in the interest of France and the country he comes from. - The second one is the ability to carry out this project depending on his previous studies, skills, and professional experience. He must provide any document that would establish his ability to carry out such a project. |
|  | Latvia | Yes | According to the Immigration Law a person, who is going to carry out economical activities, should prove that s/he will receive a salary that corresponds to double level of average salary in the country. Of course, a person should comply with other immigration criteria, proving that s/he does not have a criminal record, has a place of residence in Latvia and health insurance policy. The draft of the Immigration Law that is submitted in the Parliament provides that there should be at least 3 persons employed in the company (there is discussion on number of employees going on) and minimum tax amount indicated that should be paid in the calendar year. |
|  | Lithuania | Yes | N/a |
|  | Netherlands | Yes | In case of labour, in order to check whether or not the job can only be fulfilled by the alien, a working permit is required. In the procedure for the working permit there are not so much prerequisites concerning the attributing effect of the job for the national economy as there are prerequisites ensuring that no Dutch national or EU/EEA citizen can fulfil the job. If an alien files for a residence permit, the decision |

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| | | | <p>to permit a residence permit is made by the Immigration- and Naturalisation Service (IND), while in general the employer has to file for the working permit. The working permit is permitted by the Netherlands Employees Insurance Agency, work placement division (UWV WERKbedrijf), which is an agency of the Ministry of Social Affairs and Employment (Ministerie van Sociale Zaken en Werkgelegenheid; SZW).</p> <p>The requirement that a Dutch interest is served before a residence permit can be given is set up directly in law, as is the obligation of a working permit.</p> <p>In case of entrepreneurship the decision to permit a residence permit is again made by the IND, an agency under the Ministry of Justice, a recommendation is asked from SenterNovem, an agency under the Ministry of Economic Affairs.</p> <p>The material Dutch economic purpose is assessed on the basis of a scoring system. The scoring system consists of three parts:</p> <ul style="list-style-type: none"> • a) Personal experience (education, experience as a self-employed person, working experience); • b) Business plan (market analysis, product/service, price, organisation, financing); • c) Material economic purpose for the Netherlands (innovative, job creation, investments). <p>It is possible to score a maximum of 300 points for all parts combined. The minimum score to obtain a positive recommendation is 90 points with a minimum of 30 points per part.</p> <p>The prerequisites are not set up directly in law but are laid down in policy rules. The Alien Act 2000 (Vreemdelingenwet) itself simply leaves open the possibility that a residence permit can be issued for economic reasons. The Aliens Decree 2000 (Vreemdelingenbesluit 2000) requires the material benefit for the Dutch economy for entrepreneurs, and, finally, it is in policy (the Aliens Act Implementation Guidelines, or Vreemdelingencirculaire) that the prerequisites which comprise the benefits for the Dutch economy are required and explained.</p> <p>As already pointed out the scoring or point based system is laid down in policy rules. The policy rationale behind these rules is the ruling economic view. During the last quarter of the last century this view was driven by the fear for market distortion. At this moment the requirements of the knowledge economy, high skilled and educated migrants, are leading. This view is recognizable in the point based system.</p> <p>In case of the search year for highly educated aliens, again a scoring system is used. Points can be acquired on basis of education (30 points for a doctor-title, 25 for a master-title), age (5 points for those below 40 years), and indicators for success. These indicators for success are for instance the ability to speak Dutch and/or English, former employers and studies in the Netherlands or a study in a Bologna-country.</p> <p>A maximum of 40 points can be obtained; 35 points are required.</p> <p>This search year for highly educated aliens is a recent measurement and has the status of a pilot. Therefore, no alterations to the Aliens Act 2000 and the Aliens Decree have yet been made. The Aliens Decree does however enable the issue of residence permits in situations not foreseen by the legislator. The prerequisites themselves have been written down in the Aliens Act Implementation Guidelines.</p> |
|  | Poland | Yes | The rules and criteria of the examination of this prerequisite are not regulated by law. In practice authorities apply the criterion of profitability. |
|  | Portugal | Yes | <p>According to the Regulatory Decree n.º 84/2007 of 5th November, Article n.º 31º, n.º 2, the application for a residence visa for immigrant entrepreneurs who wish to invest in Portugal or who have already done so, should be delivered together with the following documents:</p> <p>a) A written statement as he / she has realised or intends to realise an investment operation in Portugal, indicating the nature, value and duration of that operation; and</p> |

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| | | | <p>b) Proof that the interested party has carried out investment operation; or</p> <p>c) Proof that the interested party has financial means available in Portuguese territory, including those from loans obtained from banking institutions in Portugal, and intends to carry out an investment operation duly described and identified.</p> <p>The application for a residence visa under the previous paragraph shall be decided upon on grounds of the economic, social, scientific, technological, or cultural relevance of the intended investment.</p> |
|  | Slovak Republic | Yes | <p>Following the Act on Aliens § 24 par. 6 a temporary residence permit can be granted for the purposes of employment to the foreigners who work for the foreign investor and at the same time they are citizens of one of the OECD countries.</p> <p>In case the question concerns an economic activity in terms of business activity (entrepreneurship) to check if this economic activity will be beneficial for the national economy is not required. In this case the foreigner requests the registration into the Companies Register and in this procedure it is also not checked if the economic activity will be beneficial to national economy. Following this procedure the foreigner is granted a residence permit for the purposes of business.</p> |
|  | Slovenia | Yes | <p>The national interest is attested by declaration of a competent ministry (in this case the Ministry of the Economy) attesting the fact that residence of the foreigner is in Slovenia's interest.</p> |
|  | Spain | Yes | <p>Spanish legislation sets forth that the foreigner whose residence or stay permit is no longer in effect is to be issued the so-called “permit of return”. This permit enables the foreigner to exit Spain and later return (to Spain) within a period of 90 days, as long as the applicant certifies having initiated the process, within the period stipulated by law to this end, for renewing the legal authorization which allows the applicant to remain in Spain.</p> |
|  | Sweden | Yes | <p>See the answer concerning the first question.</p> |
|  | United Kingdom | Yes | <p>Tier 1 migrants are granted free access to the UK labour market. Points are awarded for qualifications, previous earnings, age and UK experience. An earnings test at extension stage ensures Tier 1 migrants have been engaged in highly skilled work whilst they have been in the UK.</p> <p>Tier 2 migrants must have an offer of a skilled job that could not be filled by a suitable resident worker. These jobs fall into three main categories:</p> <ul style="list-style-type: none"> • shortage occupations where there is a recognised national shortage of resident workers with the necessary skills; • intra-company transfers for jobs that require an established employee from an overseas branch of the company; • jobs where the employer has carried out a resident labour market test (which includes advertising the job nationally) and demonstrated that no suitable resident workers were available. <p>Tier 5 migrants are allowed to work in the UK for a limited period of time to satisfy primarily non-economic objectives. This tier includes youth mobility schemes, government-authorised exchange schemes, creative workers, sportspeople, charity workers, religious workers, and workers covered by international agreements.</p> <p>The criteria and points awarded under the Points-Based System are set out in the Immigration Rules, which are secondary legislation, laid before Parliament as a statement of the practice to be followed in the administration of the Immigration Act 1971.</p> |

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