



**Ad-Hoc Query on forms of legalization of alien's stay for the period of carrying out legalization proceeding**

**Requested by PL EMN NCP on 2<sup>nd</sup> November 2009**

**Compilation produced on 29<sup>th</sup> December 2009**

**Responses from: Austria, Finland, France, Latvia, Lithuania, the Netherlands, Poland, Portugal, Slovak Republic, Slovenia (10 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**

An alien residing on the territory of the Republic of Poland is obliged to submit an application for granting the residence permit for a fixed period at least 45 days prior to the expiry of the period of stay specified in the visa possessed or the period of the validity of the previous residence permit for a fixed period.

Act on Aliens of June 13 2003 provides for possibility to grant an alien residing on the territory of the Republic of Poland a national visa for the period of carrying out legalisation proceeding, in case when the proceeding has been prolonged for reasons independent of an alien.

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

**1. In your Member State what are the forms of legalisation of alien's residence in case when the period of stay specified in visa possessed or the period of validity of the previous residence permit expires and legalisation proceeding has not been finished. (a visa, a permit, a stamp in the passport, others)?**

**2. What document entitles the alien to cross the border in that period?**

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

## 2. Responses<sup>1</sup>

		Wider Dissemination? <sup>2</sup>	1. In your Member State what are the forms of legalisation of alien's residence in case when the period of stay specified in visa possessed or the period of validity of the previous residence permit expires and legalisation proceeding has not been finished. (a visa, a permit, a stamp in the passport, others)?
	Austria	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	Finland	Yes	An alien who comes to Finland must usually apply for a residence permit in his or her country of residence (home country or country that has granted the person in question a residence permit) prior to arriving in Finland. In exceptional cases, an alien can apply for a residence permit when already in Finland, for example if the contract of employment has already been signed and relates to a field of business or assignment in which the recruitment involves an evaluation of aptitude or other dealings that can best be conducted in Finland.  According to Section 40 of the Aliens Act An alien may reside legally in the country while his or her application is being processed until there is a final decision on the matter or an enforceable decision on his or her removal from the country.
	France	Yes	In France, when a visa expires, it is mandatory to apply for a first residence permit for a fixed period within two months after entering the territory. If the alien is already in possession of a residence permit for a fixed period, he has to renew it two months prior to the expiry of the period of validity

<sup>1</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.

<sup>2</sup> 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."

			(CESEDA, Article R. 311-2).  In both cases, according to Article R. 311-4, the alien is given a temporary residence document (receipt) that entitles him to remain regularly in France during the legalisation proceeding. It is delivered for a period of three months (minimum for one month) and can be renewed one or several times.
	<b>Latvia</b>	<b>Yes</b>	After the necessary documents are submitted, the cognition, stating the date of the decision on the residence permit is or not to grant, is issued to a foreigner. Cognition is guaranteed a foreigner stay in the country until the set date, but has now been granted any legitimacy. There is a bill in the Parliament, which provides to legalize aliens stay in the country by not issuing a visa or residence permit.
	<b>Lithuania</b>	<b>Yes</b>	The general rule is that the lodging of an application for a residence permit does not entitle the alien to stay in the territory of the Republic of Lithuania before the alien's application has been examined and a decision on the issue has been made. Therefore if the visa has expired, and there are no possibilities to prolong the Schengen visa or to receive a national visa, the alien must leave the territory of Lithuania and wait for the decision abroad.
	<b>Poland</b>	<b>Yes</b>	Act on Aliens of June 13 2003 provides for possibility to grant an alien residing on the territory of the Republic of Poland a national visa for the period of carrying out legalisation proceeding, in case when the proceeding has been prolonged for reasons independent of an alien.
	<b>Portugal</b>	<b>Yes</b>	According to the Immigration Law (Act n.º 23/2007, 4 <sup>th</sup> July) article n.º 58, "Residency visa" the purpose of the residency visa is to allow its holder to enter Portuguese territory in order to apply for a residence permit. This residency visa is valid for two entries in Portuguese territory and enables its holder to remain there for a period of four months. Without prejudice to shorter time limits established in this Act, the period to issue a decision on the application for a residency visa is 60 days. In general all the requests for residence permit are conclude in legal time, however, when it not happens the Aliens Border Service may give to the third-country national a statement which declares that the requests is being analysed by the immigration service.
	<b>Slovak Republic</b>	<b>Yes</b>	1. When the visa is due to expire the Ministry of Interior (Alien Police Unit) may in justified cases extend the short term visa to maximum 90 days in 6 months without delays (as stipulated by the Act on Stay of Aliens). 2. In case the period of validity of the previous granted residence permit has expired and no decision has been taken regarding the new (prolonged) residence permit, the old residence permit is until the moment when the decision on the new residence permit is taken considered as valid. The Alien Police Unit issues to the alien a confirmation on the acceptance of the application for the new residence permit which entitles him to stay in SR until the decision on the new residence permit is taken.
	<b>Slovenia</b>	<b>Yes</b>	In Slovenia we don't grant national visas for residence. Residence and entry is possible on a valid residence permit which has to be obtained prior to TCN's entry. In case of renewal a special certificate attesting application for renewal is issued, which allows the alien to stay legally in our territory during the process of renewal. However this document does not entitle the holder to cross the border.

		Wider Dissemination? <sup>3</sup>	2. What document entitles the alien to cross the border in that period?
	<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>Finland</b>	<b>Yes</b>	<p>There is no document that would enable an alien cross the border during the application process. If an alien is a third country national and his or her visa has expired, there is no possibility of returning Finland after he or she has crossed the border.</p> <p>Under Section 27 of the Aliens Act for special reasons, the number of days of residence under a Schengen visa may be extended if the requirements for issuing the visa are still met and the number of days of residence does not exceed the validity period for the visa. The total combined duration of residence may not exceed three months in a half-year from the first entry into the Schengen area. This procedure is exceptional and seldom used.</p>
	<b>France</b>	<b>Yes</b>	The alien is entitled to cross the border in possession of two documents: the expired residence permit <b>and</b> the temporary residence permit. However, a foreigner who would apply for the first time for a residence permit is not allowed to cross the border.
	<b>Latvia</b>	<b>Yes</b>	In that period the alien can leave the country, but the entry is possible only with a valid visa.
	<b>Lithuania</b>	<b>Yes</b>	The alien must leave Lithuania before the expiry of the document which allowed him to stay in the territory in Lithuania.
	<b>Netherlands</b>	<b>Yes</b>	To stay in The Netherlands for short stay (maximum 3 months), foreigners may require a visa, depending on their nationality. After the period of stay one is in principle not allowed to apply for a residence permit. In that case the foreigner had to apply in the country of origine/stay at the consulate for a provisional residence permit (D-visa). In case the validity of previous residence permit has been expired and the proceeding of the new residence permit has not been finished, one can apply for a sticker in the passport. A return visa entitles the alien to cross the border in that period.
	<b>Poland</b>	<b>Yes</b>	The national visa entitles a foreigner to cross the border.
	<b>Portugal</b>	<b>Yes</b>	The document referred above doesn't allowed the third-country national to travel abroad.
	<b>Slovak Republic</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>Slovenia</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.

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