



EMN Ad-Hoc Query on AHQ on calculating 5-year legal residency for long term residents

Requested by Vytautas EŽERSKIS on 20th March 2018

Residence

Responses from Austria, Belgium, Bulgaria, Croatia, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Slovak Republic, Sweden, United Kingdom, Norway (22 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.

Background information:


In accordance with the Council Directive 2003/109/EC of 25 November 2003, concerning the status of third-country nationals, who are long-term residents (along with the amendment Directive 2011/51/EU of the European Parliament and of the Council of 11 May, 2011, amending Council Directive 2003/109/EC), article 4 (parts 1, 2, 3), issuing long-term resident's status for third-country nationals, is calculated 5-year legal and continuous residency term in a Member-State.

The Republic of Lithuania would like to obtain information about other Member-States' practices on the mentioned issue to be taken into account on particular pending decisions. Early replies would be greatly appreciated.

Questions




1. How do Member-States calculate the 5-year residency term, i.e. what are the methods used in practice, which methods are prioritised?
2. By what means it is determined, whether the foreigner left the territory of a Member-State for the period longer that is set in the Council Directive article 4, part 3?




Responses


| | Country | Wider Dissemination | Response |
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|  | Austria | Yes | 1. Times recognized to the 5-year period As a matter of principle, only those times are taken into account, in which the third-country national was entitled to residence, meaning that the immediately preceding stay on basis of one of the following residence permits are fully considered: • Red-White-Red Card • Red-White-Red Card plus • EU Blue Card • Settlement Permit • Settlement Permit – Artists • Settlement Permit – Special Cases of Paid Employment • Settlement Permit – Researcher • Settlement Permit – Gainful Employment Excepted • Settlement Permit – Dependent • Family member and the stay as • Person granted asylum (Art. 3 Asylum Act) • Beneficiary of subsidiary protection (Art. 8 Asylum Act) According to Art. 81 para 44 Settlement and Residence Act, also the times during possession of one the following temporary residence permits are fully considered when switching to "permanent residence - EU": • temporary residence permit – Artist (Art. 61 Settlement and Residence Act, old version) • temporary residence permit – Researcher (Art. 67 Settlement and Residence Act, old version) • |




temporary residence permit – special cases of paid employment (Art. 62 Settlement and Residence Act, old version), if the temporary residence permit was issued on the basis of an activity that is exempt from the material scope of the Act Governing the Employment of Foreigners according to Art. 1 para 2 litera b, c, d, f, g or i Act Governing the Employment of Foreigners or Art. 1 subpara 1, 2, 4, 7, 8, 9 or 12 Regulation on the Employment of Foreigners • and their family members in the context of the temporary residence permit "family unity" (Art. 69 Settlement and Residence Act, old version). Provided the third-country national is entitled to settlement at the time of application (that is, the TCN has one of the above mentioned residence permits), the times immediately preceding the legal stay on basis of one of the following permits are taken into account in half: • temporary residence permit (e.g. temporary residence permit for Students) • Residence permit „Residence Permit for Individual Protection“ (Art. 57 Asylum Act) In the case of mobility of a residence permit "Blue EU Card" holder, the times of a previous lawful and uninterrupted stay with an "EU Blue Card" in another Member State are also taken into account after two years of uninterrupted residence in Austria according to Art. 50a para 1 Settlement and Residence Act. In other words: in this case, "Permanent Residence – EU" can already be acquired after a mere two-year settlement in Austria if the third-country national can prove three years of stay with an "EU Blue Card" residence permit in one or more other Member State (s). --- Source: Ministry of the Interior



2. Interruption and maintenance of the 5-year period For the issue of a "permanent residence – EU" a five-year continuous settlement is required. However, this does not mean that the third-country national may not leave Austria or the EEA territory (for the “EU Blue Card”) at all. Short-term stays abroad do not affect the five-year period. Only a cumulative absence of more than ten months or a one-time absence of more than six months interrupts the five-year period (Art. 45 para 4 Settlement and Residence Act). Whether and how long an alien was outside Austria can, in particular, be determined by questioning or by the entries in the travel document (passports of third-country nationals must be stamped when the Schengen external border is crossed). In Austria, the time of a longer absence is to be communicated to the authority – even before departure. For holders of the residence permit "Blue EU Card" special regulations apply in terms of time and space (Art. 45 para 5 Settlement and Residence Act). Here, the 5-year period is only interrupted by a total of more than 18 months or a continuous 12-month stay outside the EEA territory. In exceptional cases, an absence of up to 24 months without interrupting the 5-year period is possible if there are reasons worthy of special consideration, such as a serious illness, the fulfillment of a social obligation or the performance of military or civilian service. The third-country national must notify the authority in advance (Art. 45 para 6 Settlement and Residence Act). If an interruption occurs in the above-mentioned cases, the 5-year period starts over when entering Austria. For family members of Austrians who are in the diplomatic service or work abroad for a corporation under public law in the interest of Austria, times before the



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| | | | <p>interruption by the stay outside of Austria can also be counted. Only times of stay in Austria on the basis of a residence permit of family members are taken into account (Art. 45 para 4a Settlement and Residence Act). Finally, there is no interruption of the 5-year period if the third-country national resides outside Austria due to his professional activity (Art. 45 para 7 Settlement and Residence Act). --- Source: Ministry of the Interior</p> |
|  | Belgium | Yes | <p>1. For the calculation of the five-year residency term, the third-country national must have a residence permit for an uninterrupted period of at least five years at the time of application.</p> <p>2. Information that a person has been outside the Member State may become known through: 1. Their own information 2. Information from the population register, whether the person has been registered by the municipality as emigrated (f.e. after the neighbours reported this or after a denunciation) or 3. Information about border crossing from the border police. It's possible that a third-country national has left the territory for a long period and that the authorities don't know about it. Sources: - Belgian Immigration Act, inter alia articles 15bis and 19 (only available in French and Dutch): http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1980121530&table_name=loi - Belgian Immigration Office, long-term residents unit</p> |
|  | Bulgaria | Yes | <p>1. Statute of long-term stay shall be granted to foreigner, who has stayed legally and without interruption on the territory of the republic of Bulgaria within in five years before submission of application for permission of a long-term stay. The services for administrative control of foreigner shall apply an official information from the MI information fund about the legal residence of the foreigner during the last five years on the territory of the Republic of Bulgaria.</p> <p>2. Periods of absence from the territory of the Republic of Bulgaria shall not interrupt the time of the period indicated in the reply of question 1 and shall be counted in its calculations, if they are less than six consequents months and do not exceed totally ten months for the five-years period as set up in the Council Directive 2003/109/EU. In the Republic of Bulgaria, there is an automation information system for border Control where all entries and exits to and from the territory of the country are registered.</p> |
|  | Croatia | Yes | <p>1. 1. The person has to have a continuous regular residence permit which records are kept in the Ministry of the</p> |


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| | | | <p>Interior.</p> <p>2. 2. In such cases it is determined by the existing IT system which is recording all relevant information from the foreigner's travel document.</p> |
|  | Czech Republic | Yes | <p>1. Five years period of continuous stay is counted strictly to date of lodging the application for long-term resident status. The condition of legal and continuous residency is verified by special stamps in applicant's passports which show you when the applicant left the Czech Republic and when she/he came back.</p> <p>2. Periods of absence on the territory of the Czech Republic are determined in vast majority of cases on the basis of border stamps in the passport(s) of the applicant concerned. Since the passport of the applicant is an obligatory annex to almost every application for residence permit or for its prolongation, copies of the applicant passport(s) through the period of at least five years back are disposition of the authorities taking the decision on the application. Also the interview conducted with the applicant is sometimes used as the evidence of the absence of the applicant from the territory of the Czech Republic. However interview is used only in cases where there is some indicative evidence that applicant was absent from the territory of the Czech Republic.</p> |
|  | Estonia | Yes | <p>1. The applicant needs to have a continuous residence in Estonia based on a temporary residence permit for the past 5 years. Therefore the first test is to determine whether the applicant had a residence permit for the entire period. Secondly, the Police and Border Guard Board (PBGB) looks at the external border crossing records to see whether there have been longer periods of staying away from the country. During the application procedure, the PBGB also checks the information in the population registry and information from other state databases (such as tax declarations, national health insurance) which also indicate persons stay in the country. In case of doubt, additional proof of residing in the country is required from the applicant.</p> <p>2. See above.</p> |
|  | Finland | Yes | <p>1. Section 56 a § of the Alien's Act describes the method used in Finland: Issuing long-term residents' EU residence permit A long-term resident's EC residence permit is issued to a third-country national who, after being issued with a continuous residence permit, has resided legally in the country for a continuous period of five years immediately before submitting a residence permit application, if the requirements for issuing a continuous</p> |



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| | | | <p>residence permit are still met and there are no obstacles to issuing a long-term resident's EC residence permit under this Act. Periods of residence outside Finland not exceeding six consecutive months do not interrupt continuous residence in Finland if the periods of absence do not, however, exceed ten months in total. For special reasons residence may be considered continuous despite periods of absence that exceed the periods of time mentioned above, which, however, are not included in the total period of residence. If the applicant of a long-term resident's EC residence permit is an EU Blue Card holder, periods of residence outside Finland not exceeding twelve consecutive months do not interrupt continuous residence in Finland if the periods of absence do not, however, exceed eighteen months in total. The period of five years is calculated from the first day of the fixed-term residence permit issued for the first continuous residence in the country or the date of entry, if the third-country national had a continuous residence permit when he or she entered the country. For refugees and persons who have been issued subsidiary protection the period is calculated from the day they submitted their application for international protection. When calculating the continuous residence of five years, legally residing in another member state of the European Union is considered if the third-country national is an EU Blue Card holder who has immediately before submitting his or her residence permit application legally resided in the country for a continuous period of two years. Beneficiaries of humanitarian protection are not issued with a long-term resident's EC residence permit.</p> <p>2. Section 58 para. 2 below determines the conditions. Withdrawal of residence permits (668/2013) 2) A long-term resident's EU residence permit is withdrawn if the alien has resided outside the territory of the European Union for two consecutive years or outside Finland for six consecutive years. In practice, cases of staying outside Finland for over 2 years are detected when the foreigner applies for a renewal of the residence card from an embassy abroad. At that point it can often be ascertained that the foreigner has not in fact lived or resided in Finland for over 2 years.</p> |
|  | France | Yes | <p>1. Third-country nationals who wish to obtain an EU long-term residence permit must provide evidence of uninterrupted and regular residence in France for a period of 5 years, in particular school certificates and tax notices. The relevance of the supporting documents is left to the prefecture agents responsible for processing applications. The French central database for foreigners' residence permits (AGDREF) gathers all the information concerning the foreigners in France (civil status, nationality, family situation, entry conditions, administrative situation ...). The services processing the application for an EU long-term residence permit have full access to this</p> |



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| | | | <p>application in order to ensure that candidates meet the necessary conditions to obtain an resident permit.</p> <p>2. Evidence requested by prefecture agents in Q.1 allow to assess the continuity of residence in France over the period. Also, renewal of residence permits during the 5 years before the application for EU long-term residence permit allows to assess the effective presence in France of the applicant, on the basis of specific documents provided for each reason for stay (employee,...). The entry / exit stamps on the passport are also taken into account in order to determine for how long the candidate left France.</p> |
|  | Germany | Yes | <p>1. Decisive for the calculation of the five-year legal residence is that the foreigner has been re-siding in Germany for a continuous period of five years with residence permit. This condition must exist at the time of application. In doing so, the rules for crediting residence times must also be observed.</p> <p>2. Whether the periods during which the alien did not reside in the territory of the Federal Re-public of Germany exceeds six months in a row or a total of ten months within the five-year period can be determined by information from the register of residents.</p> |
|  | Greece | Yes | <p>1. In order to calculate the 5-year period of residence in the country prior to the submission of the relevant application, the applicant shall present a copy of all pages of his/her passport. Authorities check the entry and exit stamps that have been put on the passport by border authorities, in case the holder had travelled to a third country.</p> <p>2. If the third country national has moved outside the Schengen area, their periods of absence are indicated by the exit and entry stamps on their passport. If the applicant is not in possession of a travel document, immigration authorities request border authorities to provide the entry and exit dates in Greece of the person concerned. If the person has left the Greek territory and is moving within the Schengen area, it is quite difficult to determine their periods of absence. Relevant information can be acquired though not systematicaly, for example when another member state requests information on the person in question and confirms their stay in its territory for a certain period.</p> |
|  | Hungary | Yes | <p>1. According to Paragraph (1) of Article 38 of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals (hereinafter: RRTN) EC permanent residence permit may be issued for long-term residence in the territory of Hungary to a third-country national, who a) has lawfully resided in the territory of Hungary</p> |


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| | | | <p>continuously and uninterruptedly for at least a period of five years prior to the submission of application; or b) holds an EU Blue Card, and ba) has lawfully resided in the territory of Hungary continuously and without interruptions for at least a period of two years before submitting the application; bb) has lawfully resided in the territory of any Member State of the European Union continuously and uninterruptedly for at least five years. As it is laid down in the above law at Paragraph (6) of Article 38, some scenarios shall not be deemed as discontinuity of residence: a) in the circumstances defined in Paragraph (1) a) temporary absence from the territory of Hungary of less than six consecutive months at any given time, if the combined duration of absence does not exceed three hundred days over a period of five years; b) in the case defined in Paragraph (1) b) temporary absence from the territory of Member States of the European Union of less than twelve consecutive months at any given time, if the combined duration of absence does not exceed eighteen months over a period of five years. Pursuant to Paragraph (3) of Article 107 of Government Decree No. 113/2007. (V.24.) implementing RRTN, "lawful residence" shall mean any stay in Hungary in possession of: a) a visa for a validity period of longer than three months; b) a residence permit; c) an interim residence permit; d) an immigration permit, permanent residence permit or national permanent residence permit; e) a certificate of temporary residence issued under Paragraph (1) a) of Article 30 of the RRTN; f) a residence card granted under specific other legislation; g) a certificate of refugee status or subsidiary protection; h) a document issued for the period when the asylum claim is being examined; i) a document certifying the right of residence of a family member during the asylum procedure.</p> <p>2. The five-year legal stay is checked in the available aliens policing records, whilst the five-year uninterrupted residence comes under scrutiny based on entry / exit stamps of the travel document.</p> |
|  | Ireland | Yes | <p>1. Ireland does not participate in Directive 2003/109/EC or Directive 2011/51/EU.</p> <p>2. N/A.</p> |
|  | Latvia | Yes | <p>1. In case of Latvia the first step is to check if a person has continuous residence permits for 5 years. Sometimes there is a gap between residence permits, and then it could be that the person does not qualify for the permanent status. The next procedure is related to checking entry/exit stamps in the passport and in national Entry/exit IT system. The proof of regular financial resources very often shows whether the person is working and living in Latvia. Other available information is evaluated also.</p> |

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| | | | <p>2. In the most cases it is determined according to the entry/exit stamps/IT system. In these cases persons are asked to prove their continuous residence in Latvia. Unfortunately this method can be very rarely applied in the case of residing in other Schengen countries.</p> |
|  | Lithuania | Yes | <p>1. When calculating 5-year residency term, the Republic of Lithuania assesses information related to a foreigner: working period in the territory of a Member State; visas and residence permits obtained in other member-states; border crossing tags in travel documents; data gathered through Member-State's information systems concerning border crossings; benefits acquired by the foreigner and their terms of payment.</p> <p>2. In determination procedure, whether a foreigner has left a territory of a Member-State, for a period longer than states in Directive, article 4, part 3, the Republic of Lithuania considers the following: visas and residence permits, issued by other states; border crossing tags in travel documents, registrations on places of living in a foreign state and other tags; border crossing data gathered by the State Border Guard Service of the Republic of Lithuania and other information.</p> |
|  | Luxembourg | Yes | <p>1. Art. 80 (1) of the amended law of 29 August 2008 on free movement of persons and immigration (Immigration Law) expressly indicates that "A third-country national who shows that he/she has been residing legally and continuously on the territory of the Grand Duchy of Luxembourg for at least five years immediately prior to lodging his/her application may apply to be granted the status of long-term resident." In order to calculate this legally and continuously residency the Directorate of Immigration does not take into consideration the absences of the territory for consecutive periods of less than 6 months and that do not amount more than 10 months in the 5 year period. For the calculation of the 5 years residence period only half of the periods of regular residence for study purposes or vocational training are taken into account if the third-country national as acquired a residence permit which will enable him/her to be granted long-term residence status.</p> <p>2. Article 80 (4) and (5) expressly transposed article 4 part 3 of the Council Directive as follows: "Periods of absence from the territory shall not interrupt the period of 5 years and shall be taken into account for the purposes of calculating that period if they are shorter than six consecutive months and do not exceed, in total, ten months out of the five-year period. Also, periods of absence may, upon application, in cases justified by specific or exceptional reasons of a temporary nature, such as pregnancy and childbirth, serious illness, studies or vocational training, or posting for work reasons, including in the context of a cross-border supply of services, be extended to a maximum</p> |

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| | | | <p>of 12 consecutive months.” Article 40(4) of the Immigration Law obliges the third-country national to render its residence permit if s/he has the intention to leave Luxembourg for a period longer than six months and to make a departure statement at the municipality of residence. After more than six months of absence the residence permit can be revoked. Also article 133 (1) allows the Ministry in charge of Immigration to conduct any checks in order to verify if the conditions of entry and stay of foreigners are fulfilled. These controls are carried out by the Grand Ducal Police. In addition, article 138 grants access to the Ministry in charge of Immigration to Minister, via a direct information technology system, the following personal data: (a) the general register of natural and legal persons; (b) the visa applicants registrar, operated on behalf of the Passports, Visas and Legalisations Office of the Minister responsible for Foreign and European Affairs; (c) the registrar of business permits, operated on behalf of the Minister responsible for small and medium-sized enterprises; (d) the registrar of affiliations of salaried workers, self-employed persons and employers, managed by the Centre commun de la sécurité sociale [Joint Centre of Social Security] pursuant to Article 321 of the Social Security Code; (e) the registrar of registered jobseekers and the file in respect of notices of vacant posts, managed by the Agence pour le développement de l'emploi [National Employment Agency]1; (f) the registrar of recipients of the guaranteed minimum wage, managed respectively by the Fonds national de solidarité [National Solidarity Fund] and the Service national d'action sociale [National Social Action Service]. The information technology system by which direct access is operated is organised in such a way as to make it possible to trace the information relating to the person who consulted the file, the information consulted, the date, time and file reference in the context of which the consultation took place and the precise reason for the consultation. The personal data consulted must be directly connected with the facts and matters that prompted the consultation.</p> |
| + |  Malta | Yes | <p>1. The 5 year residence requirement is calculated as provided for in regulation 4 of the relative legislation, that is, Subsidiary Legislation 217.05 Status of long-term residents (third country nationals) Regulations - pages 3 and 4 refer http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=9560&l=1 http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=9560&l=1 Primarily, movements shown by means of date stamps on passports and documentation regarding employment history are the main source of proof of residence in Malta vis-a-vis the said requirements. Where such documentation is not available or it is not sufficient to determine such residence other means of proof is considered on a case-by-case basis.</p> <p>2. In practice the documentation referred in the previous question is requested in order to determine the absences</p> |

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| | | | from Malta. |
|  | Netherlands | Yes | <p>1. The Dutch authorities do not use a specific method to calculate the 5-year residency term. Article 3.124 of the Aliens Decree provides some exemptions from the rules that are set out in article 4 of the Council Directive 2003/109/EC (article 4 of the Directive is transposed in article 45 of the Dutch Aliens Act). Article 3.214(1) provides that in some cases applications can not be rejected based on not meeting the requirement of 5 continuous years of legal residency: - Individuals who legally resided in the Netherlands as a minor for at least ten years (this only applies if the application is received by the authorities before the individual has turned 28). - Individuals who legally resided in the Netherlands as a minor for at least five years and for whom the Netherlands is designated as the most appropriate country by the Minister. - An individual who hasn't moved his/her main residence outside the Netherlands. Additionally, article 3.124(2) of the Aliens Decree provides some different rules for the calculation of the five year residency requirement for blue card holders. A longer period of stay outside the Netherlands is allowed for this group; a maximum of 12 continuous months or 18 months in total (if not continuous).</p> <p>2. For this determination, the Municipal Personal Records Database (BRP) is of importance. This database contains personal data of people who live in the Netherlands. Municipalities are responsible to record personal data of all residents in the BRP and this data includes the change of address. If TCNs reside outside the Netherlands for more than 8 months, this should be recorded in the BRP and the TCN should consequently be removed from the database. If this happens, the Immigration and Naturalisation Service (IND) receives an alert. Consequently, the IND has the possibility to withdraw the residence permit based on the change of the place of main residence. The change of the place of main residence is assumed when a TCN resides 6 months or longer outside the Dutch territory. It is important to note here that there are exemptions to this procedure and it should also be taken into mind that every case is assessed individually. However, if the residence permit is in this case withdrawn, the five year residency term is not even tested, because the individual is not eligible for the long term resident's status. There are no other methods to determine whether the foreigner left the territory for a longer period than is set in the Directive.</p> |
|  | Poland | Yes | <p>1. In the application form for granting the long-term resident's EU residence permit in Poland an applicant has to provide with i.a. the following information on : - current stay of the foreigner on the territory of the Republic of Poland - the basis of legal stay and the date of last entry into the territory of the Republic of Poland, - previous stays on the territory of the Republic of Poland including periods and bases of legal stay during 5-year period</p> |

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| | | | <p>preceding the date of application, - the foreigner's travels and stays outside the territory of the Republic of Poland in the last 5 years (country, period of stay). During examination of the case the following steps are taken: - establishing the migration history of the foreigner in the available IT databases, - examination of the information provided by the applicant in the application (as above), - examination of types of legal basis of the foreigner's stay during the 5-year period and establishing whether some of them should not be (partly) excluded from calculation in accordance with the Act on Foreigners, - obtaining records of crossing the external border by the foreigner from the Border Guard, - examination of travel document of the foreigner, - examination of available documentation including copies of previous travel documents gathered in previous cases concerning legalization of the foreigner's stay if needed, - requesting additional information or documentation from the foreigner as well as clarification on particulars including reasons of absence from the Polish territory – if needed, - interviewing the foreigner – if needed, - interviewing witnesses – if needed (however rarely).</p> <p>2. See answer to question 1</p> |
| | Slovak Republic | Yes | <p>1. In practice, the total of length of granted residences in the territory of the SR is summed. Foreigner has to have the residence granted consecutively at least for 5 years immediately before filing the application.</p> <p>2. In such cases the SR follows the entry/exit stamps, IS records, or evidence gathered (residence checks, statement of the foreigner, etc.). However, each case is assessed individually.</p> |
|  | Sweden | Yes | <p>1. To be granted long-term resident status you need to live continuously in Sweden for five years with a residence permit. The person also needs to be registered in the Swedish Population Register as living in Sweden for the same period.</p> <p>2. Information that a person has been outside the Member State may become known through: 1. Their own information 2. Information from the Swedish Population Register, whether the person has been registered as emigrated or 3. Information about border crossing from the border police.</p> |
|  | United Kingdom | Yes | <p>1. The UK does not take part in this Directive.</p> |

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|  | Norway | Yes | <ol style="list-style-type: none">1. Norway is not bound by this directive.2. Norway is not bound by this directive.3. N/A4. N/A |