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Ad-Hoc Query on 2024.13 Including time of absence from the territory and no valid residence permit into LTR

Requested by EMN NCP Slovenia on 6 March 2024

Compilation produced on 27 April 2024

Responses from EMN NCP Belgium, EMN NCP Bulgaria, EMN NCP Croatia, EMN NCP Cyprus, EMN NCP Czech Republic, EMN NCP Estonia, EMN NCP Finland, EMN NCP France, EMN NCP Germany, EMN NCP Greece, EMN NCP Hungary, EMN NCP Italy, EMN NCP Latvia, EMN NCP Lithuania, EMN NCP Luxembourg, EMN NCP Netherlands, EMN NCP Poland, EMN NCP Serbia, EMN NCP Slovakia, EMN NCP Slovenia, EMN NCP Spain, EMN NCP Sweden (22 in Total)

Exported for: Wider Dissemination

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1. BACKGROUND INFORMATION

Article 4(3) of Council Directive 2003/109/EC (LTR Directive) writes.

«Periods of absence from the territory of the Member State concerned shall not interrupt the period referred to in paragraph 1 (legal and continuous residence for five years immediately prior to the submission of the relevant application) and shall be taken into account for its calculation where they are shorter than six consecutive months and do not exceed in total 10 months within the period referred to in paragraph 1.

In cases of specific or exceptional reasons of a temporary nature and in accordance with their national law, Member States may accept that a longer period of absence than that which is referred to in the first subparagraph shall not interrupt the period referred to in paragraph 1. In such cases Member States shall not take into account the relevant period of absence in the calculation of the period referred to in paragraph 1.

By way of derogation from the second subparagraph, Member States may take into account in the calculation of the total period referred to in paragraph 1 periods of absence relating to secondment for employment. «

Slovenia studies the adequacy of the transposition and current implementation of the provision and is interested in the implementation and practice of the EU member states. Questions 4 and 5 were already addressed in AHQ 2019.98 and Slovenia would like follow-up on the subject.

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Seeing that the EMN AHQWG is running a pilot project for reducing the deadline from four to three weeks, the co-chair has approved the launching of this ad-hoc query with a three week deadline.

We would like to ask the following questions:

- 1. Q1. Does the Article also apply in the situation when the third-country national during the time of his absence, does not have a legal residence in the country (e.g. because his existing residence permit has expired and he has not renewed it, but then s/he obtains or files an application for residence permit in the country again before the expiration of six consecutive months)? YES/NO.**
- 2. Q2. If the answer to Q1 is YES, please explain any additional condition(s) that your legal framework might require from the third-country national to include also a time of his absence and no legal residence in the country shorter than six consecutive months and do not exceed in total 10 months.**
- 3. Q3. Does the legal framework cover only absences during the time when the foreigner has legal residence in the country? YES/NO.**
- 4. Q4. Did you also implement longer (than six consecutive months and do not exceed in total 10 months) period of absence? YES/NO.**
- 5. Q5. If the answer to Q4 is YES, please write examples of specific or exceptional reasons of a temporary nature that you take into consideration.**


We would very much appreciate your responses by **27 March 2024**.

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2. RESPONSES


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|  | EMN NCP Belgium | Yes | 1. No, it is the position of the Immigration Office that the referred derogation relates to the condition that the stay must be continuous, in addition to being legal. Unless the renewal does not affect the legality of the stay, the consequence of not renewing the stay is that it is no longer legal. 2. / 3. Yes. |

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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| | | | 4. No. |
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|  | EMN NCP Bulgaria | Yes | <p>1. Yes</p> <p>2. Statute of long-term stay shall be granted to a foreigner, who has stayed legally and without interruption on the territory of the Republic of Bulgaria within 5 years before submission of application for permission of a long-term stay. Periods of absence from the territory of the Republic of Bulgaria shall not interrupt the time period envisaged in paragraph 1 and shall be counted in its calculations, if they are less than 6 consequent months and do not exceed totally 10 months for the 5-years period.</p> <p>3. N/A</p> <p>4. No</p> <p>5. N/A</p> |



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|  | <p>EMN NCP Croatia</p> | <p>Yes</p> | <ol style="list-style-type: none"> 1. No, only stay with legal residence can be counted. 2. N/A 3. Yes. 4. No 5. N/A |
|  | <p>EMN NCP Cyprus</p> | <p>Yes</p> | <ol style="list-style-type: none"> 1. No. In order a third country national to be able to apply for the acquisition of LTR STATUS, s/he needs to make sure that the period of 5 years prior to the submission of her/his application s/he has legal residency in the country. The 10 month period that you are allowed to be away from the Republic does not necessarily mean that you have legal residency to the Republic. 2. N/A 3. No, see Q1 4. No |

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| | | | 5. N/A |
|  | EMN NCP Czech Republic | Yes | <p>1. No.</p> <p>2. -</p> <p>3. Yes.</p> <p>4. Yes.</p> <p>5. The Act on the Residence of Foreigners regulates this issue in Section 68(2)(e). The period of stay shall include periods of absence of the foreigner from the territory, provided that these individual periods of absence did not exceed 6 consecutive months and did not exceed 310 days in total; if one period of absence of the foreigner from the territory was not longer than 12 consecutive months for serious reasons, in particular pregnancy and childbirth, serious illness or study, the continuity of stay shall be maintained, and this period shall not be counted towards the period of stay referred to in paragraph 1.</p> |
|  | EMN NCP Estonia | Yes | <p>1. No. In Estonia, calculation of the period of residence in Estonia required for the issue of a residence permit for a long-term resident shall include the period of his or her temporary stay outside Estonia, which does not exceed six consecutive months and in total ten months within five last years immediately before the lodging of the application for a residence permit for long-term residents. One of the conditions of issue of residence permit for long-term resident is that the person has a valid temporary residence permit.</p> |

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| | | | <p>2. N/A</p> <p>3. Yes.</p> <p>4. Yes.</p> <p>5. If a person's stay outside Estonia within five last years before the lodging of an application for a residence permit for a long-term resident has lasted longer than six consecutive months and in total ten months within five last years and the Police and Border Guard Board has considered his or her stay outside Estonia justified, the period of permanent residence in Estonia required for the issue of a residence permit for a long-term resident shall be extend by the length of the period of the stay away. The reasons of absence from Estonia are not limited. The main criterion is that the absence should be of a temporary nature.</p> |
| + | EMN NCP Finland | Yes | <p>1. NO.</p> <p>2. N/A.</p> <p>3. YES.</p> |


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| | | | <p>4. YES.</p> <p>5. According to the Aliens Act (Section 56a, subsection 2, regarding issue of long-term residents' EU residence permits) for special reasons residence may be considered continuous notwithstanding periods of absence that exceed those specified above, which, however, are not included in the total period of residence. According to the government proposal 94/2006 such special reasons might be, for instance, studying or working abroad, or serious illness of a close relative.</p> |
| ■ | EMN NCP France | Yes | <p>1. Yes, in the absence of any clarification in the text of Article 4(3) of Directive 2003/109/EC, there does not appear to be any reason to restrict the tolerance provided for in this text to absences exclusively related to a valid residence permit. Hence, this article also applies in the situation when the third-country national does not have a legal residence in the country during the time of his absence because their residence permit has expired and has not been renewed, but then they obtain or file a new application for residence permit in the country again before the expiration of six consecutive months. Moreover, article L436-5 of the CESEDA which provides that an application for renewal of a residence permit submitted after the deadline for filing the application has expired (generally during the two months preceeding the expiry date) gives rise, except in cases of force majeure or presentation of a valid visa, to the payment of a regularisation visa fee of 180 euros, applies to third-country nationals applying for a long-term EU residence permit. In this respect, a case of force majeure may constitute an exception to the requirement of legal and uninterrupted residence in France for a period of at least 5</p> |


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| | | | <p>years within the limit set by the directive (6 consecutive months/10 months maximum over 5 years). This is appreciated on a case by case by the prefecture.</p> <p>2. The French legal framework does not lay down any additional conditions.</p> <p>3. NO</p> <p>4. NO</p> <p>5. n/a</p> |
|  | <p>EMN NCP Germany</p> | <p>Yes</p> | <p>1. No (Section 9b (1) no. 1 lit. b. The transposition of the LTR Directive is regulated in the German Residence Act, available online under https://www.gesetze-im-internet.de/englisch_aufenthg/englisch_aufenthg.html#p0162. The counting of residence periods is regulated in Section 9b of the Residence Act.).</p> <p>2. N/A</p> <p>3. No, in transposition of Art. 6 of the EU Blue Card Directive, there are specific regulations for holders of an EU Blue Card (§ 9b (2)). Periods during which the foreigner holds an EU Blue Card issued by another member state of the European Union are counted, provided the foreigner resided in the other member state of the European Union holding an EU Blue Card for at least 18 months and has resided</p> |



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| | | | <p>in the federal territory for at least two years holding an EU Blue Card when filing the application for the EU long-term residence permit.</p> <p>4. Yes.</p> <p>5. If the foreigner possessed a residence title and was resident abroad on account of having been sent to a foreign country in connection with his or her work, a longer period stipulated by the foreigners authority may be counted towards the necessary periods (Section 9b (1) no. 1 lit a, 2nd alt., in transposition of Art. 4 (3) 3rd subparagraph LTR Directive).</p> |
|  | <p>EMN NCP Greece</p> | <p>Yes</p> | <p>1. Article 4 (3) has been transposed in national legislation, in article 144, par.3 of Law 5038/23, according to which: "<i>Periods of absence, if they are less than six (6) consecutive months and do not exceed a total of ten (10) months within the five-year period, are counted in the calculation of the five-year period.</i>" The above provision refers to holders of a legal residence permit.</p> <p>2. N/A</p> <p>3. YES</p> <p>4. NO</p> <p>5.</p> |

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| | | | N/A |
|  | EMN NCP Hungary | Yes | <p>1. No, only stay with legal residence can be counted.</p> <p>2. N/A</p> <p>3. Yes</p> <p>4. No</p> <p>5. N/A</p> |
|  | EMN NCP Italy | Yes | <p>1. <i>From the legal framework in force in Italy, the answer is no, unless this interruption was due to the need to fulfil military obligations or to other serious and proven reasons (on this point, see Article 9(6) of Legislative Decree 286/1998 and Article 13(4) of Presidential Decree 394/1999 below). In detail, we provide the current legal framework regulating the subject matter of the contribution. Pursuant to the current Article 9 "EU long-term resident permit" of the Consolidated Act on Immigration (Legislative Decree 286/1998):</i></p> <p><i>1.A foreigner who has been in possession of a valid residency permit for at least five years, who demonstrates the availability of an income not less than the annual amount of the social allowance and, in the event of an application relating to family members, of a sufficient income according to the parameters indicated in Article 29, par, letter b) and of a suitable lodging which falls within the minimum parameters provided for by the Regional Law for public residential housing, or which is provided with the requirements of hygienic-sanitary suitability ascertained by the local health unit competent for the</i></p> |

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territory, can ask the Questore for the issue of the EU residence permit for long-term residents, for himself and for the family members referred to in Article 29, paragraph 1. (24) (29)"

From the normative dictate, therefore, it is necessary to be in possession of a valid residence permit. Here, mention is also made of Article 9, section 6 of the Consolidated Act, which lists specific reasons for the foreigner's "absence" from the national territory but does not specify the possibility of an expired and non-renewed residency permit.

"6. A foreigner's absences from the national territory do not interrupt the duration of the period referred to in paragraph 1 and are included in the calculation of the same period when they are less than six consecutive months and do not exceed a total of ten months in the five-year period, unless this interruption is due to the need to fulfil military obligations, serious and documented health reasons or other serious and proven reasons."

On this subject, Article 5(4) of the Consolidated Act can also be cited:


"4. Renewal of the residency permit is requested by the foreigner from the Police Headquarters of the province in which s/he resides, at least sixty days before its expiry, and is subject to verification of the conditions provided for its issue and the different conditions provided for by the present Consolidated Text. Without prejudice to the different deadlines stipulated by the present Consolidated Act and the implementing regulations, the residency permit is renewed for a duration not exceeding that stipulated with its initial issue. (76)"

On this subject, finally, Art. 13, § 4 of Presidential Decree 394/1999 is mentioned:

4. The residency permit may not be renewed or extended when it appears that the foreigner has interrupted his residency in Italy for a continuous period of more than six months or, in the case of residency permits of at least two years' duration, for a continuous period of more than half of the period of validity of the residency permit, unless this interruption was due to the need to fulfil military obligations or for other serious and proven reasons."


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| | | | <p>2. NA</p> <p>3. <i>Yes. According to the current legal framework mentioned in answer 1, unless the interruption was due to the need to fulfil military obligations or other serious and proven reasons.</i></p> <p>4. NA</p> <p>5. NA</p> |
| <p> EMN NCP Latvia</p> | <p>Yes</p> | | <p>1. Yes.</p> <p>2. In cases where the time between permits does not exceed 3 month, we would issue the residence permit as a repeat residence permit and count it into the 5-year period.</p> <p>3. Yes.</p> <p>4. Yes.</p> |



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| | | | <p>5. For the holder of the European Union Blue Card, the absence shall be considered justifiable if it has not been longer than 12 consecutive month and does not exceed 18 month in total. According to the national legislation, absence shall be considered justifiable, if the reason thereof has been circumstances beyond the person's control (illness of a person, force majeure, etc.).</p> |
|  | EMN NCP Lithuania | Yes | <p>1. No</p> <p>2. N/A</p> <p>3. Yes</p> <p>4. Yes</p> <p>5. As per Article 53.10 of the Law on the Legal Status of Foreigners, the duration of the foreigner's postings abroad shall not be included in the maximum period of stay outside the territory of the Lithuania or of another Member State of the European Union, respectively, if the foreigner's permanent place of residence remains in Lithuania.</p> |


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|  <p>EMN NCP Luxemb ourg</p> | <p>Yes</p> | <p>1. No. Article 80 (1) of the amended law of 29 August 2008 on free movement of persons and immigration (Immigration Law) expressly states that third-country nationals who have been legally resident in the Grand Duchy of Luxembourg for at least five years uninterrupted legal residence preceding the submission of the application, may apply for long-term resident status. In consequence, if the third country national left the territory of Luxembourg and his/her residence permit expired during his/her absence from the territory, this cannot be considered as uninterrupted legal residence as, during the period that the residence period expires, there was no legal residence. The fact that s/he can apply during the period of absence of consecutive six months to renew his/her residence permit will be considered as a new application.</p> <p>2. N/A.</p> <p>3. YES. See answer to Q.1.</p> <p>4. YES.</p> <p>5. Article 80 (5) of the Immigration Law states that the periods of absence mentioned above may, on request, for important reasons such as pregnancy and childbirth, serious illness, study or vocational training, secondment for work reasons, including in the context of the provision of cross-border services, be extended by the Minister in charge of immigration and asylum up to a maximum of twelve consecutive months.</p> |
|  <p>EMN NCP Netherla nds</p> | <p>Yes</p> | <p>1. No. In case of non-legal absence the five-year period must be rebuilt.</p> <p>2.</p> |


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| | | | <p>N/A</p> <p>3. Yes.</p> <p>4. No.</p> <p>5. N/A</p> |
| | <p> EMN NCP Poland</p> | <p>Yes</p> | <p>1. YES. During the examined period (5 years immediately before submitting the application for a long-term EU resident's residence permit), each break in stay is taken into account, even if the foreigner did not have a residence permit during the stay outside the Republic of Poland. However, even 1 day of illegal stay means that the condition of 5 years of legal stay is not met.</p> <p>2. Situations are also allowed in which a foreigner has breaks in his/her stay due to the foreigner performing professional duties or providing work outside the territory of the Republic of Poland on the basis of an agreement concluded with an employer whose registered office is located in the territory of the Republic of Poland, or accompanying a foreigner who performs work outside the territory of the Republic of Poland on the basis of an agreement concluded with the employer whose registered office is in this territory (applies to his/her spouse or child), or a special personal situation requiring the presence of a foreigner outside the territory of the Republic of Poland and lasting no longer than 6 months, or departure outside the territory of the Republic of Poland in for the purpose of completing an</p> |


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| | | | <p>internship or participating in classes planned for the course of studies at a Polish University. The above exceptions allow the stay to be considered uninterrupted within the understanding of the Act. The above cases may refer both to foreigners who have a residence permit during their absence in Poland, as well as to those who do not have a residence permit during their absence in Poland.</p> <p>3. NO.</p> <p>4. NO.</p> <p>5. No information available.</p> |
|  | <p>EMN NCP Serbia</p> | <p>Yes</p> | <p>1. YES. If the temporary residence expires during the stay abroad and if this interruption is single stay up to six months and does not exceed a total of ten months of repeated absence, the foreigner is considered to have continuity of stay. In accordance with Article 67, paragraph 5 of the Law on Foreigners, continuous residence is considered the effective stay of a foreigner in the territory of the Republic of Serbia, with the possibility of multiple absences from the Republic of Serbia up to ten months or a single absence of up to six months, in a period of three years.</p> <p>2. At the time of submitting the application for permanent residence (long-term stay), the foreigner must have an approved temporary residence. Apart to general conditions, no additional conditions are prescribed for specific case in question.</p> |




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| | | | <p>3. YES.</p> <p>4. YES.</p> <p>5. When making a decision on the submitted request for permanent residence, in the event that request does not meet all criteria, the special circumstances of each individual case are considered, taking into account the duration of previous temporary stays, personal, family, cultural, economic and other ties with the Republic of Serbia (e.g. higher force, pandemic, treatment abroad, childbirth, work in the border zone, temporary work abroad, scientific research or professional training, etc.).</p> |
|  | EMN NCP Slovakia | Yes | <p>1. No.</p> <p>2. NA</p> <p>3. Yes.</p> <p>4. No.</p> <p>5. NA</p> |

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|  | <p>EMN NCP Slovenia</p> | <p>Yes</p> | <p>1. Yes.</p> <p>2. No additional conditions are necessary for the foreigner to include his time of absence and without legal residence in the country.</p> <p>3. No.</p> <p>4. No.</p> <p>5. N/A</p> |
|  | <p>EMN NCP Spain</p> | <p>Yes</p> | <p>1. No.</p> <p>2. .</p> <p>3. Yes.</p> <p>4. Yes.</p> <p>5. Work reasons: Six consecutive months and do not exceed in total one year (12 months).</p> |
|  | <p>EMN NCP Sweden</p> | <p>Yes</p> | <p>1. NO, if the TCN is without a permit and without having submitted an application of renewal, then the article does not apply. The absence can be taken into account if the TCN does have a legal right to reside in the country.</p> |

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| | | | 2. n/a |
| | | | 3. YES |
| | | | 4. NO |
| | | | 5. n/a |
