



Ad-Hoc Query on Expulsion of Third-Country Nationals who are Long-Term Residents

Requested by SK EMN NCP on 13th May 2014

Compilation produced on 8th July 2014

Responses from Austria, Belgium, Estonia, Finland, France, Germany, Hungary, Latvia, Lithuania, Luxembourg, Netherlands, Portugal, Romania, Slovak Republic, Slovenia, Sweden, United Kingdom plus Norway (18 in Total)

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1. Background Information

The Bureau of Border and Alien Police of the Slovak Republic is currently analysing possibilities to revise its practice and therefore is interested to learn more about how other EU Member States proceed in the following case:

A third-country national who has been granted long-term residence in your Member State leaves your country and based on that residence status enters other Member State which expels this person from Schengen area on certain grounds. How does your Member State then deal with the long-term residence of this person or in other words, how is this issue regulated in your national legislation in case the other Member State expels this third-country national from the Schengen area and

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- a) does not impose entry ban on this person
- b) imposes entry ban on this person

How does your Member State proceed in the above-mentioned situations a) and b) – are they reasons for cancelling or terminating such a long-term residence permit? Or is the residence permit still valid?







We would appreciate your response by **13th June 2014**.

2. Responses

		Wider Dissemination?	
	Austria	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	Belgium	Yes	<p>In the case in point, the other Member State shall <u>expel the third-country national from its territory only</u>. In fact the third-country national has a long-term residence permit in Belgium and the authorities of the other Member State won't replace Belgian authorities to decide on the conditions attached to the status in question.</p> <p>In the case in point, the other Member State shall <u>not impose an entry ban on the third-country national as his/her stay hasn't become illegal</u>. He/she has a long-term residence status in Belgium and based on this, he/she is entitled to move freely within the other states which comprise the Schengen Area for a period of up to three months in any half year.</p> <p>In theory the third-country national concerned, who has been expelled from the other Member State, can return to Belgium provided that his/her resident permit is still valid and that conditions attached to the right to return are fulfilled. In this regard, Article 19, §1, 2°, of the Belgian Aliens Act stipulates that <i>“the foreigner with the status of long-term resident based on Article 15bis loses his right to return in the Kingdom only if he leaves the territory of the Member States of the EU for twelve consecutive months or if he has left the Kingdom for at least six years”</i>. In addition, the Circular from 14 July 2009 foresees exceptions as follows: (a) <i>the foreigner with long-term residence status who has been absent from the territory of the EU for twelve consecutive months can, under certain conditions/in specific cases, retain his right to return to Belgium (competence of municipal authorities) and (b) the foreigner with long-term residence status who has lost his right to return can, in specific cases/under certain conditions, regain the status of long-term term resident (exclusive competence of the Immigration Office)</i>.</p> <p>In practice, Belgian authorities will of course check for what reasons the third-country national concerned has been expelled from the other Member State. They will examine whether the long term residence status has to be withdrawn based on Article 18§2 of the Belgian Aliens Law: <i>“The Minister or his delegate can decide that the foreigner who has been authorized to settle in the Kingdom based on Article 14 or who has acquired the status of long-term resident based on Article 15bis, has no longer the right to remain and/or loses the status, when this foreigner has used false or misleading information, or has made use of fraud or other illegal means which have been decisive for recognizing the right of residence or for obtaining a residence permit or authorization of establishment, or for acquiring</i></p>









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			<p>the status of long-term resident”.</p> <p>Sources:</p> <ul style="list-style-type: none"> • Immigration Office - Study Unit • Immigration Office – Removal Unit • Aliens Act • Circular from 14 July 2009 relating to the status of long-term resident.
	Estonia	Yes	Expulsion of a third country national by another Member State does not serve as a sole reason for cancellation of the long term residence permit in Estonia. The Aliens Act regulates certain grounds for terminating the long-term residence permits eg in case there is a risk for national security and in this case such information (exchanged via SIRENE) shall be carefully studied and an appropriate decision shall be made.
	Finland	Yes	<p>a) If the expelling state does not impose an entry ban, Finland might not be informed of the expulsion decision therefore the residence permit of the TCN in question is not cancelled. Please see response to b) below.</p> <p>b) Finland abides by the Schengen agreement and section 58§ para. 6 in the Alien’s Act states that: “A fixed-term or permanent residence permit or a long-term resident’s EC residence permit may be cancelled if a Schengen State asks Finland to cancel a residence permit issued to an alien by Finland on the grounds that the alien has been prohibited from entering another Schengen State and ordered to be removed from the Schengen area on the grounds referred to in section 149(1)(2) and (1)(3).” I.e. according to Schengen practice the Member State issuing the expulsion decision accompanied by an entry ban must inform the Member State, which has issued the residence permit to the TCN (in this case Finland).</p>
	France	Yes	According to Article R.531-12 of the Code on Entry and Residence of Foreigners and the Right of Asylum (CESEDA), the competent French authority who has granted a long-term residence status to a third-country national may withdraw it in case he/she is subject to a removal order imposed by another Member State on serious grounds of public order or public safety. Withdrawal of a long-term residence status involves withdrawal of the right of residence, unless the third-country national concerned cannot be subject to a removal order in accordance with international commitments.
	Germany	Yes	The withdrawal or loss of the legal status of an individual entitled to long-term residence is carried out in accordance with German Law and in compliance with articles 9 and 12 of the Directive 2003/109/EC, amended by the Directive 2011/51/EC which does not provide for the legal consequences arising from the decision of a second state for the return of third country nationals from the territory of the Union. Considering the findings and interests of the first state during the decision making process of the second state – also with a view to the obligation to take back in accordance with article 22, section 2, of the guideline mentioned above and/or the issuance of a refusal of entry – ensures the obligations to consult in accordance with article 22, section 3, subsection 1 of the directive.
	Hungary	Yes	In Hungary, the alien policing authority does not carry out forced return of a third country national who had been expelled from another Member State, nor is the expulsion from another Member State a reason for the cancellation of the long term residence permit in Hungary.
	Latvia	Yes	<p>Expulsion of a third-country national who has been granted permanent residence permit in Latvia by another Member state itself is not a reason for cancellation or terminating a permanent residence permit.</p> <p>Imposing entry ban on a third-country national who has been granted permanent residence permit in Latvia by another Member state itself</p>



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			is not a reason for cancellation or terminating a permanent residence permit.
	Lithuania	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	Luxembourg	Yes	In Luxembourg according to article 88 (2) of the modified Law of 29 August 2008 on Free Movement of Persons and Immigration, a removal decision from the territory of the European Union may be taken based on serious grounds of public policy or public security, after previous consultation with the other Member State. In case a TCN, who has a long-term residence permit granted by Luxembourg, is expelled by another Member State s/he will be readmitted into Luxemburgish territory in accordance with article 88 (3). The long-term residence status only can be lost if the violations incurred by the holder represent a real threat to public order, public safety or national security (article 84). The removal decision cannot be taken because of economic reasons. As this a decision of a punitive nature the grounds have to be established in the law. The case of expulsion by another Member State is not a ground to withdraw the long-term residence permit, except if the infraction committed represents a real threat to public order, public safety or national security in the Grand-Duchy of Luxembourg.
	Netherlands	Yes	It should be mentioned that an entry ban within the meaning of directive 2008/115/EC cannot be imposed on a person who is in the possession of a residence permit issued by another member state. Indeed, an entry ban can only be imposed on a person who is prohibited to stay on the territory of the member states. Practice in the Netherlands is based on this principle. If there are reasons (notably, if the person poses a threat to public order) to impose an entry ban on a third country national, but he/she is still in possession of a residence permit in another Member State, we will contact the other Member State with the request to withdraw the residence permit. As long as the third country national is in possession of the residence permit in the other Member State, we will not impose an entry ban. In such cases we can, however, declare the person 'unwanted', for reasons of public security (ongewenstverklaring). In such cases the third country national is not allowed to enter the territory of the Netherlands anymore, until this ban is lifted. This ban is limited to NL territory. The Dutch long-term residence permit is valid until the moment the permit is withdrawn by means of an official decision. So the mere fact that the other member state has expelled the person from the Schengen area - whether or not with the simultaneous imposition of an entry ban - does not affect the validity of the Dutch permit. However, it is possible that the reason of expelling the person is under Dutch law a ground for withdrawing the Dutch permit. In that case the possible withdrawal of the Dutch permit will be subject of further examination.
	Portugal	Yes	In accordance with the Return Directive transposition terms this decision requires a prior consultation to the Member State responsible for issuing title.
	Romania	Yes	National legislation in the area (Government Emergency Ordinance 194/2002 on aliens' regime in Romania) expressly provides for the situations when the long term residence can be terminated. Among the situations provided for by the law, expulsion or an entry ban in other member state is not mentioned.
	Slovak Republic	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	Slovenia	Yes	According to the Alien Act (57 Article) a log-term residence shall be terminated if a final secondary sentence of expulsion for alien has been adopted by responsible authority in Slovenia or in another EU Member State and an alien needs to be exiles from Slovenia or any other Member states accordingly.
	Sweden	Yes	The Swedish legislation is the same as the legislation of the Slovak Republic concerning this matter. Expulsion of a third country national

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			by another Member State is not a reason for cancellation of the long term residence in Sweden.
	United Kingdom	Yes	Expulsion of a third country national by another Member State is not, in itself, a reason for cancellation of long term residence in the United Kingdom. However, if the UK became aware that the action had been taken because, for example, the third country national had been convicted of a serious offence in another Member State, their immigration status would be reviewed and they could be expelled.
	Norway	Yes	<p>If a Schengen Member State is considering expulsion of a third country national with a residence permit from another Schengen Member State and is considering reporting this third country national to the Schengen Information System (SIS) in order to hinder entry into the entire Schengen area, then that country, which the person has a residence permit for, should be consulted. If that country wishes to uphold the residence permit, then the person should not be reported to SIS. This practice is in accordance with the Schengen-Convention.</p> <p>If Norway receives a request from another Schengen Member State about possibly reporting someone with ties to Norway, to SIS, the Norwegian authorities would consider the gravity of the offence which has been committed, in consideration of the strength of that person's personal ties to Norway. These two concerns would be evaluated in proportion to each other. (In other words, a minor offence and long-term ties to Norway would be viewed one way, a major offence and short-term ties to Norway, would be viewed another way.) In this way, the authorities would evaluate whether there are grounds for revoking the residence permit. If we don't think there are grounds for revoking a residence permit, the person will not be reported to SIS, but can potentially be expelled from the country making the consultation.</p> <p>According to Norwegian legislation the concept of expulsion (utvisning) is only used when issuing an entry ban, while the concept of rejection (bortvisning) is used in cases where issuing an entry ban is not required.</p> <p>The process is in principal the same for these two cases: A foreign national, with or without a Norwegian residence permit, may be expelled from Norway with an entry ban, when the foreign national has served or received a penalty abroad for an offence which is punishable under Norwegian law.</p>
