



Ad-Hoc Query on the application of article 19bis of Directive 2003/109/EC.

Requested by BE EMN NCP on 21 March 2014

Compilation produced on 5 May 2014

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

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1. Background Information

The Immigration Department would like to launch following Ad Hoc Query regarding the application of article 19bis of Directive 2003/109/EC, inserted by Directive 2011/51/EU. Article 8, sections 4 and 5 of Directive 2003/109/EC, inserted by Directive 2011/51/EU, foresee that if a person to whom international protection has been granted gets the status of long-term resident, the following mention should be made on the EU residence permit: “international protection granted by [name of the Member State] on [date]”.







A long-term resident can make use of his mobility rights and has the right to reside in a second Member State. If the long-term resident in the second Member State gets international protection or if this second Member State takes over the responsibility for the international protection before the second MS grants the status of long-term resident, this Member State requests the first MS (=the MS who granted the status of long-term resident) to

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insert the remark regarding international protection on the EU residence permit. The first MS has to deliver the adapted EU residence permit for long-term residents within 3 months after this request.

However, following problem arises: The long-term resident to whom the adapted EU residence permit has to be issued, does not reside anymore on the territory of the first MS. He or she has left the territory and has been granted meanwhile residence right in the other MS. How do MS proceed in reality? Which actual steps are undertaken to deliver this new (adapted) residence permit to the long-term resident in order to provide him the new RP? Invite him to a diplomatic post to issue him a new RP? Ask the TCN to return to the first MS to deliver him the new RP? Etc."



2. Responses

		Wider Dissemination?	
	Belgium	Yes	Belgium is in the process of implementing Directive 2011/51/EU and has not decided yet how to implement the mentioned article.
	Czech Republic	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	Estonia	Yes	If the long-term resident to whom international protection has been granted, is settled in another EU MS, the new residence permit card can be applied for and issued in foreign representation of Estonia under certain circumstances. The conditions are that a long-term resident has previously registered his/her stay outside Estonia in the Police and Border Guard Board and registered his/her place of residence of a foreign country in the Estonian population register. If these conditions are not filled, the residence permit card can only be issued in Estonia. If the EU MS who issued international protection to the person is question changes (therefore the mark on the card about the MS who issued international protection is no longer valid), then this means, that the person needs a new residence permit (not a new long term residence permit).
	Finland	Yes	The amendment to the Alien's Act that relates to this issue entered into force on the 1 st of October 2013. Finland has, as of yet, no experience of the situation mentioned in the query, therefore there are no agreed procedures on the issue.
	France	Yes	The question still remains and discussions are in progress.
	Germany	Yes	Para. 59a sect. 4 German Residence Ordinance reads as follows: <i>(4) If the foreigner possesses an EU long-term residence permit on grounds of para. 9a German Residence Act and he/she is granted international protection within the meaning of para. 2 sect. 13 German Residence Act by another EU Member State, before he/she is issued an EU long-term residence permit in that particular Member State, the aliens office responsible for the foreigner is to add the following annotation in the column for annotations concerning EU-long-term residence permit: "Granted international protection by [abbreviation of the respective Member State] on [date]." The annotation is to be added after three months at the latest on receipt of the respective request sent by the responsible authority of the other Member State and received by the Federal Office for Migration and</i>






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			<p><i>Refugees.</i></p> <p>Practically, the foreigner will principally have to appear in person at the local aliens office to apply for and be issued the new electronically altered residence title; it is only by absolute exception that the new residence permit is handed out by a German diplomatic mission in the other Member State.</p>
	Hungary	Yes	<p>The national legal provisions transposing Directive 2011/51/EU set out the responsibilities and tasks of the immigration and asylum authorities when a situation described above arises, yet such tasks mainly concern providing information or issuing the modified EC long-term residence permit, while national law does not contain specific procedural provisions on how to deliver the new permit to the third-country national or even how to record the biometric data in this situation, which latter task could also generate problems.</p> <p>As such situations do not occur in large numbers, we think that in such rarely occurring individual cases the foreign representations of Hungary in the relevant Member States could be entrusted with recording the biometric data needed for the issuance of the long-term residence permit as well as with delivering the permit to its holder.</p>
	Italy	Yes	<p>The removal decision is immediately enforceable even if the TCN lodges an appeal. The appeal can be lodged within 30 days from reception of the removal decision if the TCN is in Italy or 60 days if the TCN is abroad. The return can be organised immediately, in different ways, depending on the TCN's legal status. Italian legislation does not explicitly provide that a court can suspend the enforcement of a removal decision.</p>
	Latvia	Yes	<p>Latvia has implemented the new Directive from June 2013, however the situation described in the ad-hoc has not been encountered yet. In case a person would receive a residence right in other EU country, Latvia would invite this person (through his/her declared place of residence in Latvia) to arrive to Office of Citizenship and Migration Affairs for obtaining a new residence permit. As for that a person should travel to Latvia (Latvia does not issue residence permits at consular posts), it is most likely that the residence permit will not be changed until the time of its expiry. If the person will decide to renew the permit (term of validity is 5 years), s/he will travel to Latvia and will receive the residence permit with the respective additional remark.</p>
	Luxembourg	Yes	<p>1. Luxembourg transposed article 8 (4) and (5) of the directive 2003/109/EC introduced by the Directive 2011/51/EU by the law of 19 June 2013. This law modified the amended law of 29 August 2008 on free movement of persons and immigration. These dispositions were transposed in articles 82 (2) § 3 and 4 of the Law of 29 August 2008.</p> <p>Article 82 (2) § 3 says that when a third country national is granted a EU-long-term residence permit who had been granted international protection by Luxembourg, the following mention should be made on the residence permit: “The Grand Duchy of Luxembourg granted international protection granted by on [date]” (See article 13 (3) § 1 of the amended Grand-ducal regulation of 5 September 2008 on the implementation of certain dispositions of administrative formalities foreseen by the law of 29 August 2008 on free movement of persons and immigration).</p> <p>In the case that the EU long-residence permit is issued to a TCN who had been granted international protection by another Member State the following mention should be made on the residence permit: “international protection granted by [name of the Member State] on [date]”. (Article 13 (3) § 2 of the amended Grand-ducal regulation of 5 September 2008).</p>


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			<p>2. The procedure is as follows: In the case that the international protection is granted by another Member State, the Minister in charge of immigration will require information from the other Member State to know if the long-term resident continues to benefit from the international protection.</p> <p>In case that the international protection had been withdrawn by the other MS Luxembourg will not put the remark in the residence permit. When the responsibility of the international protection of the long-term resident had been transferred to the Grand-Duchy of Luxembourg after the issuance of the EU long-term residence permit the remark is modified consequently in a maximum period of three months after the transfer.</p> <p>In the case when Luxembourg had granted the international protection and the responsibility is transferred to a second MS before the issuance of the EU long-term residence permit in the other MS, the modification of the remark is consequently modified in a maximum period of three months after the reception of the application.</p> <p>Also in the case the minister in charge of immigration grants the international protection to a long-term resident before issuing the EU long-term residence permit, the minister will request the other MS who had issued the residence permit to modify it in order to register the remark established by article 13 (3) § 2 of the amended Grand-ducal regulation.</p> <p>In practice the only way to modify the residence permit will be if the TCN comes back to Luxembourg and go personally to the Directorate of Immigration.</p> <p>“In Luxembourg a third country national who applies for a residence permit or renew a residence permit must have his/her picture taken and undergo fingerprinting because the biometric data is not registered outside of the chip. Luxembourg takes two fingerprints of a third country national (left and right index) and a biometric picture to issue a biometric residence permit, as established in Council Regulation (EC) n° 380/2008 of 18 April 2008 modifying Council Regulation (EC) n° 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals. This measure was implemented on 20 May 2011. The biometrical data gathered (fingerprints and photo) for the issuing of the residence permit are stored until the handing over of the residence permit to its holder, or at the most six months after the production of the residence permit (art. 2 of the Grand-Ducal regulation of 19 May 2011 that modifies:</p> <ol style="list-style-type: none"> 1. the Grand-Ducal regulation of 5 September 2008 on the execution of certain disposition on administrative formalities foreseen by the Law of 29 August 2008 on free movement of persons and immigration 2. the Grand-Ducal regulation of 26 September 2008 on the creation of a database for treating personal data) <p>The picture will be taken every time that the residence permit will be renewed (this period can go up to 5 years).”</p>
	Netherlands	Yes	<p>The Netherlands do not have applicable policy rules nor instructions.</p> <p>Usually, in the Netherlands residence permits are procured in person. Therefore the Netherlands prefer that the Third Country National travels to and collects his document for long term residence in the first Member State. In the Schengen area Third Country Nationals are allowed to travel with a valid residence permit of one of the Member States without visa. So there is no problem to travel to the first Member State. And it is primarily the responsibility of the person himself to get a new and actual residence permit.</p>
	Poland	Yes	<p>If situation specified in art. 19a of Directive 2003/109 occurs, a third country national will be required to return to Poland in order to receive amended long term resident's EU residence card in person (in order to let the issuing body verify third country national's personal data). The card is replaced upon request and the third country national's fingerprints are collected while submitting the application</p>

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			(biometric residence permit follows the common format laid down in Regulation 1030/2002). Moreover, when submitting the application to replace a residence card, third country national shall enclose his/her current photos.
	Portugal	Yes	PT has no useful information concerning this question to exchange with other MS. The mentioned article is not implemented and no concrete situation was presented to PT.
	Romania	Yes	<p>According to art. 110 para 2² of the Government Emergency Ordinance 194/2002 on aliens regime in Romania, in the long stay residence permits issued for the beneficiaries of international protection in Romania, it is inserted the following mention „International protection granted by Romania at [date]”. The General Inspectorate for Immigration sends, within maximum one month from the receiving of the request of the interested MS, information on the situation of the international protection granted by Romania, as mentioned in the long stay residence permit.</p> <p>According to art. 110 para 2³ of the Government Emergency Ordinance 194/2002 on aliens regime in Romania, in case an alien who is already in possession of a long stay residence permit issued by another MS in which there is a mention regarding the granting of international protection, the same mention is inserted in the long stay residence permit issued based on Romania’s national legislation. Exceptions are the cases when, following the checks done by the General Inspectorate for Immigration at the competent authorities of the issuing MS, results that international protection was withdrawn by a final decision.</p> <p>The General Inspectorate for Immigration has not met any case in practice.</p>
	Slovak Republic	Yes	<p>According to the Slovak legislative, a third country national who was granted a long term residence permit after being granted a status of a person with a long term residence permit in another Member State based on the provision of international protection in this Member State, the Police (<i>of the state issuing the new document</i>) states in the notes of the document the same as stated on the residence permit issued by the Member State who previously granted him the residence permit. This does not apply if the international protection was withdrawn. Before issuing the residence permit, the Member State enquires the other Member State, which provided the third country national with the international protection, whether the international protection still lasts.</p> <p>It should be noted that if an issuance of a new long term residence permit is required on the grounds of the provision of international protection by another Member State, or because another Member State takes over the responsibility of the international protection, the applicant has to come to the respective Police department which will issue the long term residence permit. If the person does not come to the Police department, the new long term residence permit cannot be issued on the grounds of the need of biometric data.</p>
	Sweden	Yes	The proposed amendments due to the Directive 2011/51 only contains the legal rules (the amendments will probably enter into force 1 May 2014). The legislation will not contain any provisions concerning the practical procedures mentioned above. At least in the beginning the practical solutions must be solved ad hoc and we assume that the NCP:s will have an important function in this process. The most probable is that the TCN must go to a Swedish embassy in order to leave the necessary biometrics and later on to pick up the new LTR-permit.
	United Kingdom	Yes	The UK has not opted into this directive and therefore cannot comment on its implementation.

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	Norway	Yes	<p>The permanent residence permit will be lost if the foreigner resides outside of Norway for more than a continuous 2 year period. The stay outside of Norway is considered continuous even if the foreigner has had one, or even several visits, of a certain time duration to Norway. (according to Norwegian immigration law § 62 and immigration regulations § 11-8).</p> <p>A foreigner can apply to be given permission to stay abroad for longer than two years without losing their permanent residence permit, if it is clear that the person has strong ties to Norway and will be returning and the foreigner:</p> <ul style="list-style-type: none"> a) has to carry out their military service or other similar service in their home country (though this is not relevant for refugees), or b) has to be abroad because of work or studies in higher education (beyond upper secondary schooling), or c) has to be abroad because their spouse, significant other, mother or father are abroad because of work or higher education. (according to Norwegian immigration regulations § 11-8 and immigration law § 62).
