



**Ad-Hoc Query on residence permit/legal residence in accordance with Article 3 (2e) 2003/109/EC Version II**

**Requested by NL EMN NCP on [Date, 31 July 2009]**

**Compilation produced on [Date, 2 October 2009]**

**Responses from, Austria, Estonia, Finland, Germany, Hungary, Latvia, Lithuania, Netherlands, Poland, Portugal, Slovak Republic, Sweden, United Kingdom ( 13 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**

In a recent, ongoing, case the Administrative Law Division of the Council of State (the highest judicial body in Aliens Law), has asked the Netherlands Immigration and Naturalisation Service (IND) if other MS have implemented a provision in the same way as the Netherlands did.

The Legal Affairs Litigation Directorate of IND is therefore requesting your assistance.





The provision concerned is Article 3 (2,e) of Directive 2003/109/EC.

Essential in this ad hoc is the question whether an alien (TCN) is allowed to stay in the MS (i.e. in your country) awaiting the outcome of the procedure in three different situations (see questions below), and if so, is a residence permit granted for this period.

It would be very much appreciated if you could provide your responses by **21<sup>th</sup> August 2009**








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## 2. Responses

		<b>Wider Dissemination?</b> <sup>1</sup>	<p>The Administrative Law Division of the Council of State (the highest judicial body in Aliens Law) wants to know if there are any Member States which provides a formal residence <b>permit</b> in the following 3 situations:</p> <ol style="list-style-type: none"> <li>1. In case a TCN is allowed to stay in your country to await the outcome of a procedure* pursuant to legal provisions;</li> <li>2. In case a TCN is allowed to stay in your country to await the outcome of a procedure* because of a Court Decision;</li> <li>3. in case a TCN is allowed to stay in your country to await the outcome of a legal remedy against the rejection of the application for a residence permit.</li> </ol> <p><i>* 'To await the outcome of a procedure' i.e.: 'pending the outcome of the decision on an application for a residence permit'</i></p>
	<b>Austria</b>	<b>No</b>	Reply received - 'no' to wider dissemination
	<b>Estonia</b>	<b>Yes</b>	Estonia does not provide a formal residence permit in these 3 situations described in the question.
	<b>Finland</b>	<b>Yes</b>	No, a TCN is not granted a separate formal residence permit in the three mentioned situations.
	<b>Germany</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>1. If a foreigner who is staying lawfully in Germany without possessing a residence title applies for being granted a residence title, his or her stay is considered permitted until the foreigners authority takes a decision. – a formal residence permit, however, will not be issued.</li> <li>2. and 3. An objection or an action brought against the rejection of an application on being granted a residence title or its extension have on principle no suspensive effect unless such effect is expressly ordered by a court – however, also in such cases a formal residence permit is not issued.</li> </ol>



NL EMN Ad-Hoc Query: 'Residence Permit' or 'Legal Residence' (Implementation of Directive 2003/109/EC (Version II ))

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	<b>Hungary</b>	<b>Yes</b>	In the first and third case third-country nationals receive a certificate of temporary residence provided that when they apply for a residence permit they are in the possession of a valid long-term visa, national visa or previous residence permit and if that permit expires during the procedure. The same certificate is issued for third-country nationals submitting an application for a residence permit following the termination of their right of residence specified in the Act I of 2007 on the Entry and Stay of Persons Enjoying the Right of Free Movement. The certificate of temporary residence is not a formally limited residence permit in the sense of Article 3 (2,e) of Directive 2003/109/EC as the stay in Hungary in possession of this certificate shall be regarded as lawful residence in the application of Article 38 of the Act II of 2007 on the Entry and Stay of Third-Country Nationals requiring five years of lawful residence for the issue of an EC permanent residence permit. The second case is not possible under Hungarian legislation.
	<b>Lithuania</b>	<b>Yes</b>	No, in none of these 3 situations a formal residence permit is granted
	<b>Latvia</b>	<b>Yes</b>	No, in none of these 3 situations a <b>formal residence permit</b> is granted. Nevertheless an alien who has been refused the issue of a residence permit or whose residence permit has been cancelled has the right to reside in the Republic of Latvia during the time for the dispute of a decision or appeal thereof if the refusal to issue the residence permit or the cancellation of the residence permit has not been justified by his or her inclusion the List of aliens whose entry into the Republic of Latvia is prohibited.
	<b>Netherlands</b>	<b>Yes</b>	No, in none of these 3 situations a formal residence permit is granted
	<b>Poland</b>	<b>Yes</b>	Current regulations in Poland set in the Act on Aliens of the 13 of June 2003 ( Journal of Laws of 2006, No 234 it. 1694) do not cover issuing a residence permit for the time of the procedure to legalize a third-country national stay in Poland. Current regulations in such cases cover issuing national visas. <ol style="list-style-type: none"> <li>1. According to laws in Poland a third-country national, who applies for a residence permit for a fixed period, permit to settle or a long term resident's EU resident permit , is to hand in an application form in the period set in the act on aliens. To the third-country national, who handed the application form in the period stated in the act on aliens, is issued a national visa for the period of the procedure of legalizing the third-country national stay in Poland, if the procedure has not been completed until the legal stay of the third-country national in Poland has expired. After the final decision is reached, the visa is cancelled.</li> <li>2. National visas are not issued for the procedure in the Administrative Court.</li> <li>3. National visas are issued for the period of the appellation procedure.</li> </ol>
	<b>Portugal</b>	<b>Yes</b>	National legal framework does not foresees limited formal residence permits
	<b>Slovak Republic</b>	<b>Yes</b>	In none of these 3 situations a formal residence permit is granted, however when awaiting the final decision in the appeals procedure the foreigner may stay in the country. Nevertheless this is not considered to be a formal residence permit. In case of a renewal of the residence permit, if the applicant meets all the conditions for applying for the new permit and the police department does not reach a decision on the new application before the expiration of the original permit, then the original permit remains valid until the new decision is rendered.

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	<b>Sweden</b>	<b>Yes</b>	Sweden does not grant a formal residence permit in any of the three stated situations.
	<b>United Kingdom</b>	<b>Yes</b>	Any person - including 3 <sup>rd</sup> Country Nationals - who is awaiting a decision on an application made during a period of extant leave, <i>automatically</i> has that period of leave extended until that application is decided. This includes the period while an appeal could be brought or is pending. A separate formal residence permit is not therefore required in the circumstances described. It should also be noted that Council Directive 2003/109/EC about the status of 3 <sup>rd</sup> Country Nationals who are long-term residents does not apply in the UK.

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