



European Migration Network

Ad-Hoc Query on visas in expired travel documents

Requested by LT EMN NCP on 30th January 2009

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Responses from AT, BE, BG, CZ, DE, EE, EL, ES, FI, FR, HU, IT, LV, LT, MT, NL, PL, PT, RO, SE, SI, SK, UK (23 in Total)

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1. Background Information

The Lithuanian State Border Guard Service and the Migration Department under the Ministry of Interior are reviewing borders' crossing procedures in Lithuania. 1. In this context, we would like to know how other Member States deal with valid visas in expired passports – are they recognised as valid? 2. **In practice, how do you deal with situations, when a third country national provides two travel documents at he border crossing point: one travel document is valid but has no visa, another one is not valid (for example, it has no free pages for stamps) but has a valid visa. Do you allow such persons to enter the territory?**







2. Responses

		Wider Dissemination?	1. Is a visa, which is still valid but affixed to an expired travel document, recognized as valid by your country?
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			<p>2. In practice, how do you deal with situations, when a third country national provides two travel documents at he border crossing point: one travel document is valid but has no visa, another one is not valid (for example, it has no free pages for stamps) but has a valid visa. Do you allow such persons to enter the territory?</p>
	Belgium	Yes	<p>1. In principle the validity of the travel document (passport) should be longer than the validity of the visa. In cases described above there are 2 possibilities: or somebody from the embassy comes to the airport to extend the validity of the passport, if not the foreigner is refused entry and driven back to the country of departure. Please note that in such cases the carrier will also get an administrative fine of 3.750 Euro.</p> <p>2. One would be allowed to travel in this case (visa in expired passport, and another valid passport without visa), if of course the person's fulfils any other possible entry conditions.</p>
	Bulgaria	Yes	<p>According to the Law for the Foreigners in the Republic of Bulgaria, Art. 8, a foreigner may enter the Republic of Bulgaria if he/she holds <u>a regular foreign-travel document</u> as well as a visa, if required.</p> <p>According to the Ordinance for the Conditions and the Order of Issuing Visas the diplomatic and consular representations of the Republic of Bulgaria are responsible for issuing of the Bulgarian visas. When a third country national applies for a visa, the competent officials must check the validity period of his travel document. Visa shall not be issued to a foreigner whose passport or substituting travel document has expired <u>or if its term of validity will expire in 3 months after the date on which the envisaged period of stay in the Republic of Bulgaria will expire (according to the grounds of the requested visa).</u></p>
	Czech Republic	Yes	<p>Taking into account the fact that the respective question was raised several times at various occasions already (e.g. Council Working Party on Frontiers) we would like to stress the key points in this regard.</p> <p>Firstly, in accordance with the Common Consular Instructions - part V (1.3), it is not allowed to issue a visa with a validity going beyond the validity of the passport. The case of a valid visa in an expired passport should therefore not appear.</p> <p>When detecting such a case we would urge the respective border guard authority to contact immediately the Member State whose foreign consular office issued the visa to inform it about the wrong practice. The person in question should be also advised to apply for a new passport and visa.</p> <p>Secondly, should such an exceptional case appear (valid visa in an expired passport - especially in the situation if the person in question is in possession of a valid travel document and an expired travel document with a valid visa), the Czech Border Guard would apply a case by case assessment of the situation. Article 5 of the Schengen Borders Code defines entry conditions for third-country nationals, which are i.a. a possession of a valid travel document (1a) and a possession of a valid visa (1b) – therefore this does not necessarily mean that the third-country national has to be in possession of only one travel document where a valid visa is affixed.</p> <p>Besides the exceptional situations described above, in case of a short term visa, § 61 of the Czech Aliens Act stipulates that a visa shall be recognized invalid if the travel document to which it was affixed is invalid. In case of a long term visa, § 37 of the Aliens Act stipulates that the visa shall be cancelled in case the police find out reason for this under § 9 of the Aliens Act (the person in question is not in possession of a valid travel document). Under § 116 of the Aliens Act it is explained that a travel document is considered to be invalid when it has been e.g. damaged, falsified (also expired).</p>







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	Germany	Yes	<p>1. There exist 2 sorts of visas:</p> <ul style="list-style-type: none"> • the short-stay visas (Schengen visas, which are governed by EU rules), • the long-stay visas, valid for the German territory. <p>In those 2 cases, visas are issued by the German authorities for the period of validity of the passport. In any case, the validity of the visa shall not exceed the passport.</p> <p>2. However, if a third country national provides a valid travel document without a visa and a travel document that is not valid but has a valid visa at the border crossing point, such a person is allowed to enter the territory if</p> <ul style="list-style-type: none"> • the travel document with the valid visa has not lost its validity because it had been falsified etc. <p>if both travel documents have been issued by the same country</p>
	Estonia	Yes	<p>No.</p> <p>According to the State Borders Act § 11 section 3 an alien crossing the state border shall hold <u>a valid travel document</u> issued by a foreign state or an international organisation, or an alien's travel document or a permit of return issued by the Republic of Estonia in which data concerning his or her visa or residence permit are entered, unless otherwise provided by law or an international agreement.</p>
	Greece	Yes	<p>Valid visas affixed to expired passports are not recognized as valid. In order a third country national to be granted a visa, his passport must continue to be valid for at least 3 months after the expiry date of the required visa.</p>
	Spain	Yes	<p>Pursuant to the Common Consular Instructions (<i>Instrucción Consular Común</i>), a visa whose validity exceeds the validity of the travel document justifying it cannot be issued. This situation cannot therefore come about in practice. Furthermore, should it happen, it would not meet the requirements set forth in Article 5 of the Border Code (<i>Código de Fronteras</i>): being in possession of a valid travel document; in other words, one that is in effect.</p>
	France	Yes	<p>1. There exist 2 sorts of visas:</p> <ul style="list-style-type: none"> - The short-stay visas (Schengen visas, which are governed by EU rules), - the long-stay visas, valid for the French territory and only for people wanting to settle in France. <p>In those 2 cases, visas are issued by the French authorities for the period of validity of the passport. In any case, the validity of the visa shall not exceed the passport.</p> <p>2. A third country national, having a valid visa and a valid travel document may enter the French territory, even if the visa (valid) is placed on a document invalid (eg expired). It may be the case in the following example: A circulation visa, valid 1 year, has been placed on a passport that since lapsed. Such person has a new passport (valid); the visa is also valid. This person is allowed to enter the French territory. From the time such person may submit a valid travel document and a valid visa, he is allowed to enter France.</p>
	Italy	Yes	<p>No. According to art. 13 of the Law no. 388/1993 on "Convention implementing the Schengen Agreement" provides that the visa is issued in the presence of a valid travel document. For the issue of the visa is necessary that the travel document has to expire at least three months later than the expiration of the visa.</p>

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	Latvia	Yes	Latvia recognizes valid visas in valid travel documents only. There has been very active debate on this question and we have prepared amendments to Immigration Law where this provision has been laid down in a more comprehensible way so that we can avoid any misunderstandings by interpreting this regulation in future.
	Lithuania	Yes	1. No. According to the Article 22 (8) of the Law on the Legal Status of Aliens of the Republic of Lithuania, a visa shall be invalid if the travel document to which it was affixed becomes invalid. 2. No, such persons are not allowed to enter.
	Hungary	Yes	No, but pursuant to the regulations laid down in the Implementation of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals the above-mentioned situation can hardly arise. When lodging an application for a visa for a validity period not exceeding three months the applicant shall present his/her valid travel document. According to the general rules, the validity period of the travel document must exceed the planned date of exit from the territory of the Schengen States by at least three months and must have at least one suitable page where the visa can be installed.
	Malta	Yes	Should a Third Country National present himself/herself at a Border Crossing Point with an expired passport, he or she will be turned back, even if he / she has a valid visa affixed on the passport. The need of a valid travelling document is paramount. So technically, Maltese Immigration authorities do not recognise a valid visa on an expired passport. Immigration authorities will also inform the issuing authority of their oversight as visas cannot and should not be issued for periods that exceed the validity of the passport they are to be affixed upon.
	Netherlands	Yes	No. According to article 13:2 Schengen Agreement the travel document has to be valid 3 months longer than the visa. However, when this problem occurs in practice, the border control can for example decide to affix a valid visa in a new/valid passport should the passenger be in the possession of both passports instead of refusing entry. So the solution in practice depends on several factors that the border control takes into account in order to make a sound decision.
	Austria	No	This EMN NCP has provided a response to the requesting EMN NCP. However they have requested that it is not disseminated further.
	Poland	Yes	In principle – NO , unless the TCN possesses the second, valid (and authentic) passport issued on the same personal data. The situation should not concern the visas issued by the EU member states (national / Schengen), yet it arrives sometimes with regard to, for example, visas issued by the USA. In general, each case undergoes special verification.
	Portugal	Yes	1. According to the Act that approves the legal framework of entry, permanence, exit and removal of foreigners into and out of national territory, regarding the "Section II - General conditions of entry", in the Article 9º, n.º 1 Travelling documents and documents that may replace them <i>1- To enter into or depart from Portuguese territory foreign citizens have to hold an accepted and valid travelling document. And in the Article 10º, n.º 1 "Entry Visa</i> <i>1- For entering national territory, foreign citizens must hold a valid visa which is adequate to the purpose of the visit, granted in the terms of the present Act, or by the competent authorities of the States that are Parties to the Schengen Implementing Convention".</i>

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			<p>In spite of what it was written above, if for any reason the travelling document is out of time, it is possible to emit a special visa, in border post, according to the article n. ° 68°, that permits the entrance in national territory. However, <i>this is an exception</i>.</p> <p>2. In case of the two passports are grumped as one (authenticated by the issuance entities) it is possible to stamp the new passport - but never applicable in other situations.</p> <p>The solution will be: refusal of entry or exceptionally the issuance of a border visa (with a limited duration)</p>
	Romania	Yes	<p>The Government Emergency Ordinance 194/2002 on aliens' regime set that visa represents the authorisation, materialised by the application of a sticker or a stamp onto a valid travel document, which allows the alien subject to this obligation to arrive at a border crossing point in order to request the transit or temporary stay for a limited duration.</p> <p>Also, the same legal act provides that the validity of the travel document into which the visa is be applied must exceed the validity of the requested visa by at least 3 months.</p> <p>Exception from this rule are the emergencies, humanitarian reasons or national interest, international obligations assumed by Romania. Inthese situations, visas may be granted to aliens who are in possession of travel documents with a validity of less than the above mentioned, on condition that the duration of validity of the visa shall not exceed that of the document.</p>
	Slovenia	Yes	<p>In accordance with our national legislation valid visas in expired passports are not considered to be valid. The person in possession of such documents is refused entry unless an additional – valid passport is presented.</p>
	Slovak Republic	No	<p>This EMN NCP has provided a response to the requesting EMN NCP. However they have requested that it is not disseminated further.</p>
	Finland	Yes	<p>No. According to Aliens Act, section 21(2), a visa is valid for no longer than the expiry date of the travel document. In other words, valid visa should always be affixed to a valid travel document.</p> <p>2. During a transitional period Finland has allowed third-country nationals with a valid travel document to enter although the visa is fixed to a non-valid travel document. From 1.2.2010 on this will change and subsequently third-country nationals shall be refused entry according to the Schengen Borders Code or according to the Alien's Act if the visa is not fixed to the valid travel document. In some cases, a visa may be granted at the border if the preconditions of Council Decision 2003/415/EC are met.</p>
	Sweden	Yes	<p>1. No. This should only occur very rarely since visas should not be issued for longer time span than the validation of the travel document.</p> <p>2. In theory no. A visa affixed to a passport is not valid if the passport for any reason is invalid. The third country national should therefore be refused entry unless there is ground for granting an emergency visa at the border.</p>
	United Kingdom	Yes	<p>You do not need to have your residence permit (known as leave to remain) transferred to your new passport but you can do this if you wish. If you do not have it transferred to your new passport, you should carry both your old passport and your new passport when you travel to the United Kingdom, as evidence of your resident status.</p>
