Ad-Hoc Query on the validity of the long term visa (D visa)

Requested by CZ EMN NCP on 1 December 2011

Compilation produced on 25 January 2012

Responses from Austria, Belgium, Estonia, Finland, Germany, Hungary, Latvia, Lithuania, Luxembourg, Netherlands, Slovak Republic, Spain, Sweden, United Kingdom plus Norway (15 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

The Czech Republic would appreciate the opinion or experience of other Member States to the following issue.

In the Czech Republic the long term visa (D visa) is, similarly to C visas, issued with certain "validity" of visa (e.g. from 1. 1. 2011 to 30. 6. 2011) and different number of days of "allowed stay" (e.g. 120 days).

The Article 18 para 1 of the Convention Implementing Schengen Agreement (CISA) states:
"Visas for stays exceeding three months (long-stay visas) shall be national visas issued by one of the Member States in accordance with its national law or Union law."
And further para 2a: "The right of free movement laid down in paragraph 1 shall also apply to aliens who hold a valid long-stay visa issued by one of the Member States as provided for in Article 18." that is to "...move freely for up to three months in any six-month period within the territories of the other Member States...".

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The question is, whether the time spent in another Member States and/or outside Schengen area should be counted to the period of allowed stay and if the period of allowed stay is relevant to other Member States (or its simply the validity of the D visa what matters).

Therefore we would like to ask you to respond the following questions conceived as three interconnected practical examples of D visa holder with a D visa **valid from 1. 1. 2011 to 30. 6. 2011 and duration of stay 120 days** :

1. Should the D visa holder having stayed from 1 January till 30 April (120 days) in the Czech Republic be allowed to stay e.g. 30 days in another member state in June?

2. Following the example in 1a, would be the fact, that the D visa holder spent 30 days in March in another Member State relevant? In another words, would be the 30 days spent in another Member State counted to his duration of stay or not?

3. Following the example in 1a, would be the fact, that the D visa holder spent 30 days in March outside Schengen relevant? In another words, would be the 30 days spent outside Schengen area counted to his duration of stay or not?

We would very much appreciate your responses by **21 December 2011**.

2. Responses

		Wider Dissemination?	**1. Should the D visa holder having stayed from 1 January till 30 April (120 days) in the Czech Republic be allowed to stay e.g. 30 days in another member state in June?** **2. Following the example in the question No. 1, would be the fact, that the D visa holder spent 30 days in March in another Member State relevant? In another words, would be the 30 days spent in another Member State counted to his duration of stay or not?** **3. Following the example question No. 1, would be the fact, that the D visa holder spent 30 days in March outside Schengen relevant? In another words, would be the 30 days spent outside Schengen area counted to his duration of stay or not?**
	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**	No. Because the person concerned has already used all his 120 days, the visa isn't valid anymore. Art. 18 CISA clearly only applies to valid visas. 2 and 3. These questions don't really apply for Belgium, as all our visas D have to be replaced by residence permits on the territory with a period of validity until a certain fixed date. The validity expires on that day anyway, also if the alien has actually spent some time in another member state or in a third country.

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	Estonia	**Yes**	**1.** No, because the visa holder has stayed in the Schengen area for three months and the right to move freely in Schengen (according to Article 18 para 2 of the Convention Implementing Schengen Agreement) has ended. **2.** It does not matter in which Schengen Member State the person goes during his/her period of stay. **3.** The number of days the person spent outside Schengen will not be counted toward his/her duration of stay.
	Finland	**Yes**	Finland does not issue any D-visas, thus the question is not applicable.
	Germany	**Yes**	1. The holder of a valid D visa is permitted to move freely in the territory of the other Member States for a period of up to three months in a six-month period, in accordance with Article 21, section 2a in conjunction with Article 18 of the Schengen Convention. In this connection, sections 1 and 2a of Article 21 of the Schengen Convention take only the duration of validity of the D visa into account, with no consideration of a possible shorter duration of stay in the issuing state. Accordingly, upon expiry of the permitted duration of stay in the issuing state the third-country national could legally reside in another Member State during the remaining period of validity of the D visa. However, this would mean that such a D visa would grant a longer right of entry and residence in the other Schengen states than applies to the territory of the issuing state itself. Such a consequence would be contrary to the nature of the D visa as a national visa, however (Article 18 (1) of the Schengen Convention) and thus appears to be out of the question. In the stated example, the 30-day stay in another Member State in June, following expiry of the duration of stay in the issuing state, would thus not be permissible. 2. In view of the nature of the D visa as a national visa, the visa holder's right under the Schengen Convention to move freely in the other Member States can only apply for the period in which the D visa entitles the holder to reside in the issuing state (see answer to question 1). A stay in another Member State would thus count towards this permitted duration of residence. 3. A stay in a third country is not to count towards the duration of residence in the issuing state which is permitted by the D visa, as entry and residence in a third country are not governed by the Schengen Convention and the Borders Code. Where the D visa permits multiple entries, an interruption of the period of residence in the Schengen area by a verified stay in a third country has no detrimental effect and does not count towards the duration of stay permitted for the issuing state.
	Hungary	**Yes**	1.) No, the allowed number of days should cover the number of days spent in another Member State, as well, no further 30 days should be provided for enabling the visa holder to go to another Member State if he/she has already spent the maximum allowed days in the Czech Republic. 2.) Yes, that period should be counted in. 3.) No, the period spent outside the Schengen area would not be counted in the maximum days that can be spent within the Schengen area.
	Latvia	**Yes**	1. Rather no, because duration of stay is 120 days and visa holder has stayed already in Czech Republic all allowed number of days. 2. Latvia has not strong position considering that. The holder of long-stay visa should be allowed to travel to other Member States for three months in any six month period, under the same conditions as the holder of a residence permit. Latvian practice is to issue D visa without limit of the number of days (e.g., D visa valid from 01.01.2011. till 30.06.2011., altogether 181 day) and

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			thereby the holder of that visa can move freely according with the above mentioned conditions and that visa is equal to residence permit. 3. No.
	Lithuania	**Yes**	In Lithuania, it's simply the validity of D visa that matters. The D visa is issued for a defined period of time, which can be no longer than 1 year. Up till the calendar day of the expiry of the visa, the alien can move freely to and from Lithuania. 1. Lithuanian laws don't regulate the conditions of aliens' stay in other countries. 2. This fact is irrelevant. 3. This fact is irrelevant.
	Luxembourg	**Yes**	I am sorry to inform you that EMN NCP LU will not be able to answer it because we considered that we are not the competent authority to do so. We considered that this query regards the application of the Regulation (EC) 265/2010 of the European Parliament and the Council of 25 March 2010 as well as the Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 (Visa Code). From our point of view the in this case competent authority will be the legal service of the European Commission or/and the Czech administrative/jurisdictional authorities which will be occupied in the application of these regulations to a specific case.
	Netherlands	**Yes**	1. Yes. The D visa holder is allowed to stay 30 days in another member state. 2. Yes, this would be counted to his duration of stay. 3. The time spent outside the Schengen area is relevant and this would not be counted to his duration of stay.
	Slovak Republic	**Yes**	1. If the D visa has been issued by the Czech Republic, it is possible for the D visa holder to stay outside the Czech Republic for a maximum of 3 months within any six-month period (Regulation (EU) No. 265/2010). That means the D visa holder can stay in other Member State in June. In case the D visa has not been issued by the Czech Republic, the respective D visa holder already exceeded the maximum duration of stay in other Member States within the Schengen area as he/she had stayed in the Czech Republic for 120 days. That means the D visa holder must return to the Member State which issued the D visa. 2. Yes, duration of stay in another Member State which issued the D visa is counted into the three-month period that can be spent by the D visa holder outside the Member State which issued the D visa within any six-month period. 3. No.
	Spain	**Yes**	Taking into account the modification introduced by the Regulation (EU) No 265/2010 of the European Parliament and of the Council, in article 1 (2) a) and b), Spain considers that the answers to the questions are: 1. Yes. 2. No. The visa holder is allowed to stay in the Czech Republic 120 days and 90 days in the Shengen area, within the time limit of the visa (1. 2011 to 30. 6. 2011 = 180 days) 3. No.

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	Sweden	**Yes**	1. No, if it means that he will travel with the D-visa 2. Yes 3. No
	United Kingdom	**Yes**	This is not an issue for the UK, but is specific to the Schengen visa EU countries. Our current visa policy allows visitors for up to a maximum of six months, all other non visitor routes are covered by the Points Based System (visa and non visa nationals) Furthermore a UK issued visa is for the UK and **does not confer eligibility or free movement rights to other EU Member States**. Individuals wishing to travel within the EU have to obtain separate clearance (visas)
	Norway	**Yes**	1. The D visa holder having stayed from 1.1.2011 till 30.4.2011 in the Czech Republic would be allowed to stay in Norway for 30 days in June. 2. Yes, the period of stay in another Member State during the above-mentioned stay in the Czech Republic would be counted as part of the duration of stay. 3. No, provided that the D visa mentioned in the example allows for several entries into the Schengen area, a 30 days stay outside the Schengen area in March would not be deemed relevant.

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