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Calculation method of maximum allowed stay in the Schengen Area

EU Regulation 610/2013, which entered into force on 18 October 2013, introduces a new way of calculating the maximum allowed stay for third country nationals intending to travel to the Schengen Area for a short stopover. The maximum allowed stay for these nationals (regardless of whether they travel on a short stay visa basis or whether they are visa exempt, thus travelling on the basis of their international passport) is now defined as “90 days in any 180-day period”.

In the past, the maximum allowed stay was calculated by counting from the ‘very first’ date of the individual’s entry into the Schengen Area and from every ‘new first entry’ after the previous 180-day period’s expiration. This calculation method was based on the ECJ’s case law and was rather complex for border officials to verify.

On the basis of EU Regulation 610/2013, the 180-day period is now determined by counting backwards from ‘each’ day of the third country national’s stay in a Schengen Member State. The 180-day period is thus ‘shifting’. The length of the third country national’s proposed stay plus the duration of all prior stays within that 180-day period may not exceed the 90-day maximum. In this respect, the entry and exit travel days are taken into account. In practice, this will mean that an absence of a cumulative period of 90 days will allow the third country national to enter the Schengen Area for a new stay for a maximum 90 days. According to the EU Regulation, “periods of stay authorised under a residence permit or a long-stay visa will not be taken into account in the calculation of the duration of stay on the territory of the Member States”.

The new rules apply to the EEA Member States and Switzerland. However, they do not apply to the following countries as they are not (yet) part of the Schengen Area: Bulgaria, Croatia, Ireland, Romania, Cyprus and the United Kingdom.

Deloitte Belgium’s immigration and social security services team is readily available to provide more detailed information.

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