

December 9, 2013
2013-163

flash International Executive Alert

A Publication for Global Mobility and Tax Professionals by KPMG's International Executive Services Practice

European Union – New Rules for Short-Stays in Schengen Area

by Sari Viitasalo, KPMG, Helsinki, and Heleen Snieders, KPMG Meijburg & Co., Amstelveen (KPMG in Finland and KPMG Meijburg & Co in the Netherlands are KPMG International member firms)

The definition of “short stay” in the “Schengen Area”¹ has changed effective from 18 October 2013. According to a new rule – European Regulation 610/2013² – there are new calculation methods for stays in the Schengen Area. Third country nationals may stay in the Schengen Area for up to 90 days in any 180-day period. The new rule applies to both visa-free and visa-holding nationals.

Why This Matters

The basic rule has been that a short stay in the Schengen Area is permitted for a period of three months within each time frame of six months, calculated from the date of first entry.

This rule led to confusion and varying interpretations by border and visa authorities within Schengen. In particular, the assessment of frequent travelers could lead to a difficult exercise, sometimes with an unexpected denied entry as a result. Therefore there was a need to amend the rules dealing with the calculation of the authorized length of short-term stays in the Schengen Area by clear, unequivocal, simple, and harmonized rules.

It is hoped that the new rule will reduce the confusion about the calculation of stays in the Schengen Area.

According to the new calculation method, the maximum allowed stay within the Schengen Area is 90 days within *any* given 180-day period. Under the old Schengen rule, the maximum allowed duration of stay was 90 days within a six-month period following the first entry into the Schengen Area.

Background

The Schengen Borders Code (Regulation (EC) No 562/2006³) regulates the short stay of foreign nationals in Europe’s “Schengen Area” which consists of a total of 26 countries. The duration of stay was previously calculated *forward* from the first date of entry into the Schengen Area. However, the old rule caused confusion as to when to start calculating the first date of entry. According to the new rule, calculation of the 180 days is done *looking backwards each day of the stay*.

The old rule made it possible for a person to spend most of the 90 days in the Schengen Area at the end of the six-month period and then enter again for another six-month period and spend the allowed 90 days in the beginning of the new period. This made it possible for a person to stay in the Schengen Area for nearly six months on a continuous basis. With the new calculation method this is no longer possible.

Calculating Length of Stay under the New Rules

As an example of the new calculation method:

A U.S. citizen enters the Schengen Area for the first time on 1 January 2014 and stays for 20 days. The second entry is 1 March 2014 and lasts for 30 days, and the third entry is 1 May 2014 and lasts for 40 days.

In this case, on 9 June the maximum allowed stay of 90 days will have been reached and the person should leave the Schengen Area.

Because we look back 180 days, an absence of at least 20 days will be required to be granted a new entry to the Schengen Area. Therefore the next possible entry date is 30 June 2014. And at that time the maximum duration of stay will be 20 days.

(See this illustrated on page 3 in the graph.)

Stays in all Schengen countries are included in the calculation. However, stays with a residence permit or a national visa for one of the Schengen countries are not included in this calculation.

A short-stay calculator can be found on the European Commission Web site at:

<http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/border-crossing/> . Please click the link "Short-stay calculator."

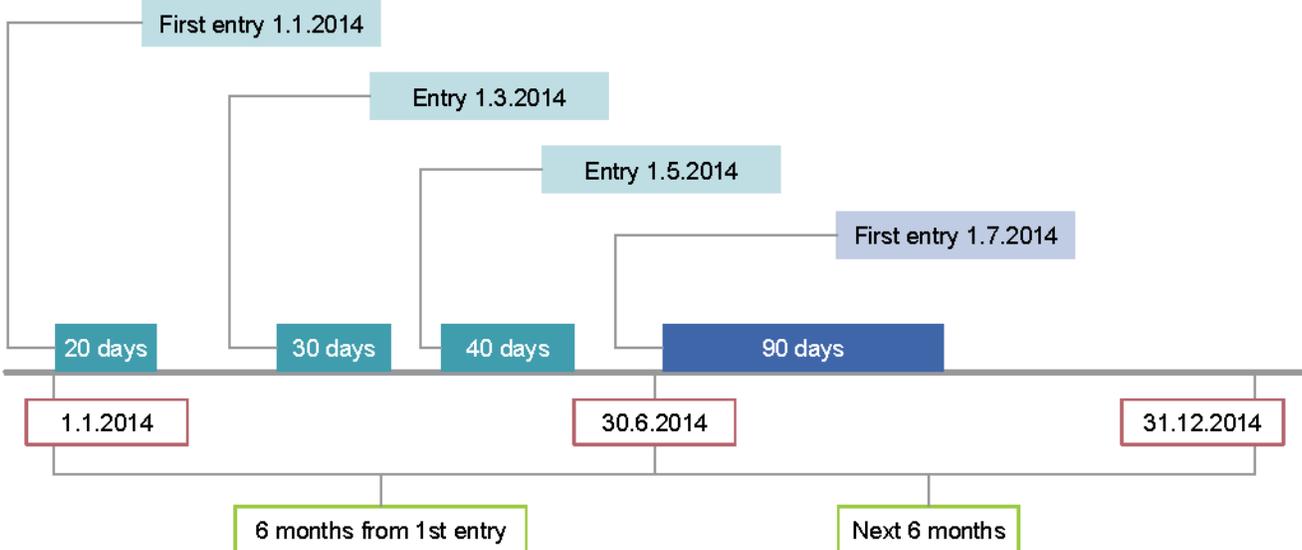
It should also be noted that the new calculation method is not applied to citizens of Antigua and Barbuda, The Bahamas, Barbados, Brazil, Saint Kitts and Nevis, Mauritius, and Seychelles.

Other Aspects of New Rules

Additionally, a passport is now required to be valid for a minimum of three months after the intended date of departure from the Schengen Area.

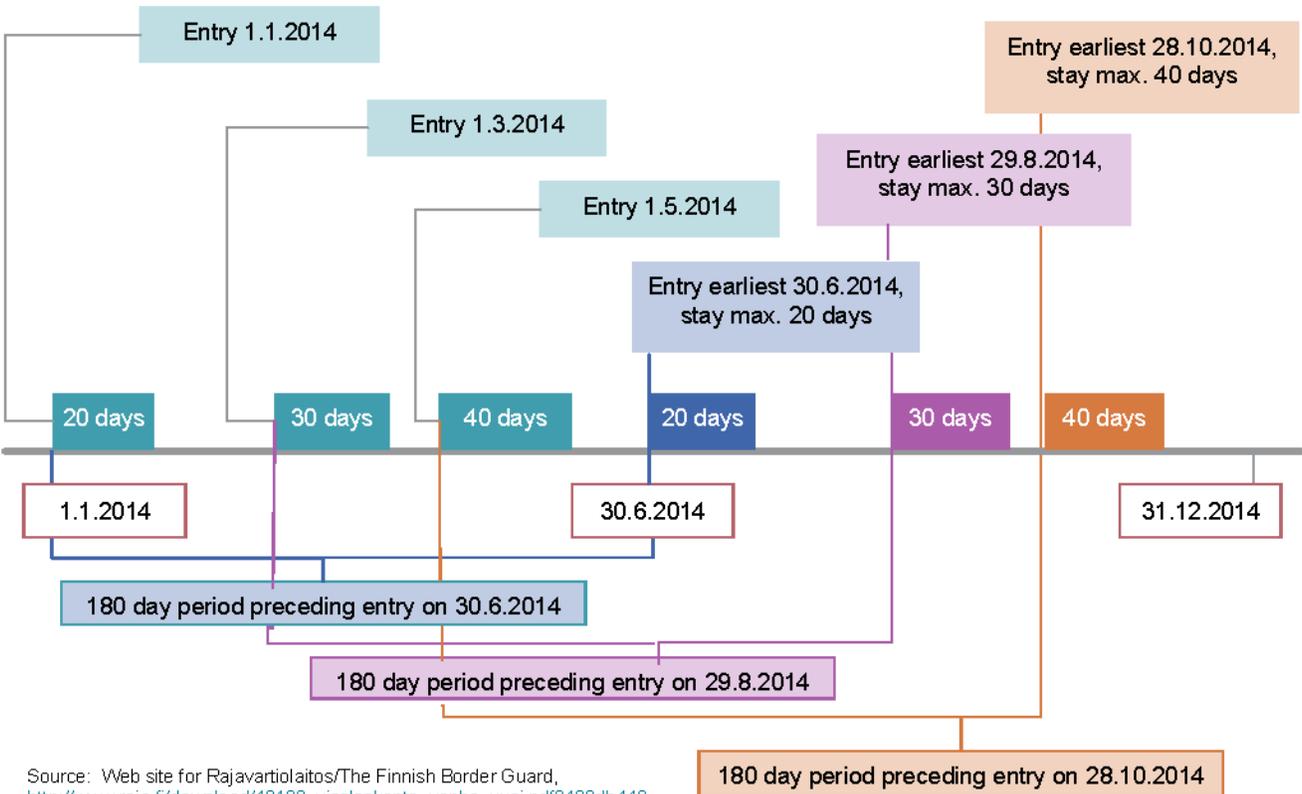
Old calculation

Maximum duration of stay 3 months within 6 months starting from first date of entry.



New calculation

Maximum duration of stay up to 90 days within any 180 day period.



Source: Web site for Rajavartiolaitos/The Finnish Border Guard,
http://www.raja.fi/download/48123_visalaskenta_vanha_uusi.pdf?462db44684b5d088

Footnotes:

- 1 Schengen member states: Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, and Switzerland.
- 2 See: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:182:0001:0018:EN:PDF> .
- 3 See: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:105:0001:0032:EN:PDF> .

* * * *

For further information or assistance, please contact your local IES professional or the following professionals in the KPMG immigration network:

Sari Viitasalo
Tel. + +358 20 760 3706
E-mail: sari.viitasalo@kpmg.fi

Heleen Snieders
Tel: +31 76 5237520
E-mail: snieders.heleen@kpmg.nl

The information contained in this newsletter was submitted by the KPMG' International member firm in Finland. The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

Flash International Executive Alert is an IES publication of KPMG LLP's Washington National Tax practice. To view this publication or recent prior issues online, please click [here](#). To learn more about our IES practice, please visit us on the Internet: click [here](#) or go to <http://www.kpmg.com> .