

Verification of the length of previous and intended stays under the old rules

The period of three months must be counted starting from the date of first entry.

The term "first entry" is to be understood as the very first entry into the territory of the Member States and then any other first entry taking place after the expiry of periods of six months after the date of very first entry. This means that continuous or successive stays of three months in total may be allowed during successive periods of six months.¹

Each day that a third-country national is present in the territory of the Member States, the following conditions must be fulfilled (if one is not \Rightarrow the stay is not legal)		
Condition to be fulfilled		Basis for calculation
<i>Condition 1: $\Sigma \leq 3$ months of uninterrupted stay</i>		Each day – looking retrospectively at the previous 90 days
<i>Condition 2: $\Sigma \leq 3$ months over a period of 6 months since E</i>		Each day – checking the period elapsed since E

Σ = length of stay (expressed in calendar days)

\leq = less than or equal

E = day of first entry, as determined as follows:

Determination of E ("day of first entry")
E = the most recent out of the following dates:
a) Date of entry in the territory of the Member States <i>after at least 6 months of continuous absence from that territory</i>
b) Date of first re-entry in the territory of the Member States after the end of an expired preceding six-month reference period
c) Day following the expiry of a preceding six-month reference period <i>if the person is present in territory of the Member States at that moment</i> (In this case, a new reference period starts running while you continue to be present in the territory of the Member States and without a new entry being required)

¹

Judgment of the ECJ of 3 October 2006, Case C-241/05 Bot vs Préfet Val-de-Marne

Example of calculation of stay:

A third-country national enters France on 1 February 2010 and stays 28 days. During March he goes to France every week (4 weeks in all) and stays 5 days each time (=20 days), in April and May he stays in France for 42 days, meaning that he will have stayed in the territory of the Member States for 90 days in total. The six-month period starts running from the date of the first entry, i.e. 1 February 2010, and the next period where the third-country national is allowed to enter will start on 1 August 2010. If the third-country national decides to enter after 1 August 2010, the next six-month period will start on the day of that entry.