



Funded by the
European Union



Ad-Hoc Query on 2024.12 Residence permits for TCNs victim of migrant smuggling

Requested by EMN NCP Luxembourg on 5 March 2024

Compilation produced on 2 May 2024

Responses from EMN NCP Belgium, EMN NCP Bulgaria, EMN NCP Croatia, EMN NCP
Cyprus, EMN NCP Czech Republic, EMN NCP Estonia, EMN NCP Finland, EMN NCP France,
EMN NCP Germany, EMN NCP Greece, EMN NCP Hungary, EMN NCP Italy, EMN NCP
Latvia, EMN NCP Lithuania, EMN NCP Luxembourg, EMN NCP Netherlands, EMN NCP
Poland, EMN NCP Slovakia, EMN NCP Slovenia, EMN NCP Spain, EMN NCP Sweden (21 in
Total)

Exported for: Wider Dissemination

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.

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 Residence Permit Directive (2004/81/EC) defines the conditions for granting residence permits to third-country nationals (TCNs) who are or have been victims of trafficking in human beings (see EMN Glossary: “Trafficking in human beings”). According to article 3(2) of this instrument, Member States *may* decide to extend the scope of the directive to “third-country nationals who have been the subject of an action to facilitate illegal immigration” (see EMN Glossary: “Facilitator”). This contains, among other actions, human smuggling (see EMN Glossary: “Smuggler”, “Smuggling of migrants”).

In Belgium, the scope of the special residence procedure for victims of trafficking has been extended to TCN “victims of migrant smuggling in aggravating circumstances” (cf. articles 61/2, 77bis and 77quater Immigration Act). These victims of smuggling may be granted a residence permit if they cooperate with the competent authorities, sever all ties with the presumed smugglers and accept the support provided by a recognized reception centre.

While the Belgian residence procedure for victims of smuggling has been in force since 2007, relatively few of these procedures have been opened to date. During a parliamentary debate in 2020, the Minister of Justice stated that the application of the residence status for victims of smuggling needed to improve. In this context, EMN Belgium would like to know whether other MS have similar special residence procedures for TCNs who have been the subject of an action to facilitate illegal immigration.

NB 1: If your country does not have such procedures, but is planning on introducing them, please provide any available information as an answer to the first question.

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.

NB 2: Please note that this AHQ only concerns TCNs who are subject of an action to facilitate illegal immigration and does not relate to TCNs victim of trafficking in human beings.

NB 3: This AHQ is requested in the framework of the "TRAQ-project" led by Myria (Federal Migration Centre) and the National Institute of Criminalistics and Criminology, with the support of the EU Internal Security Fund. The project will run until December 2025 and aims to stimulate the fight against migrant smuggling through qualitative research on the profiles of victims of migrant smuggling and their contacts with front-line services.

We would like to ask the following questions:

We would like to ask the following questions:

- 1. Does your MS provide the possibility of granting residence permits to TCNs based on the fact that they have been subject of an action to facilitate illegal immigration (e.g. smuggling)? Yes/No. If No, please provide any available information on recent parliamentary debates on the implementation of this optional provision of the Residence Permit Directive.**
- 2. If you answered Yes to Q1, is this residence procedure a) set out in law, b) set out in policy documents or c) part of administrative practice? Please specify.**
- 3. If you answered Yes to Q1, which conditions does this TCN need to fulfil in order to obtain a residence permit? If applicable, please specify the conditions for each stage of the residence procedure.**
- 4. If you answered Yes to Q1, what is the period of validity of the residence permit issued? If applicable, please specify the period of validity for each stage of the residence procedure.**

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.

5. If you answered Yes to Q1, how many first residence permits have been issued to TCNs subject of an action to facilitate illegal immigration between 2018 and 2023?

We would very much appreciate your responses by **2 April 2024**.

2. RESPONSES

1

		Wider Dissemination ²	
	EMN NCP Belgium	Yes	1. Yes. 2. The residence procedure is set out in law (art. 61/2 of the Immigration Act).

² A default "Yes" is given for your response to be circulated further (e.g. to other EMN NCPs and their national network members). A "No" should be added here if you do not wish your response to be disseminated beyond other EMN NCPs. In case of "No" and wider dissemination beyond other EMN NCPs, then for the Compilation for Wider Dissemination the response should be removed and the following statement should be added in the relevant response box: "This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further."


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.

		<p>3. The TCN should be a victim of migrant smuggling with aggravating circumstances. Under Belgian law, “migrant smuggling” is defined as contributing, by any means, directly or through an intermediary, to the entry, transit or residence of a person who is not a citizen of a MS of the EU into the territory of a MS of the EU or of a State party to an international agreement on the crossing of external borders which binds Belgium, in violation of the laws of that State, with a view to obtaining, directly or indirectly, an economic or other benefit (art. 77bis Immigration Act). Aggravating circumstances include: 1° when the offence has been committed against a minor; 2° when it has been committed by abusing the situation of vulnerability in which a person finds himself because of his illegal or precarious administrative situation, his precarious social situation, his age, a state of pregnancy, a disease, an infirmity or a physical or mental deficiency, in such a way that the person in fact has no other real and acceptable choice than to submit to this abuse; 3° when it has been committed by using, directly or indirectly, fraudulent manoeuvres, violence, threats or any form of coercion, or by resorting to abduction, abuse of authority or deception; 3bis° when committed by means of the offer or acceptance of payments or benefits of any kind to obtain the consent of a person having authority over the victim; 4° when the victim’s life has been endangered deliberately or by gross negligence; 5° when the offence has caused a disease that appears incurable, a personal work incapacity of more than four months, the complete loss of an organ or the use of an organ, or serious mutilation (art. 77quater Immigration Act). The additional conditions that need to be fulfilled differ depending on the stage of the residence procedure: - First stage: The TCN can obtain a temporary residence document (“annex 15”) during the reflection period if (s)he accepts the support provided by a specialized reception centre (art. 61/2, §2 Immigration Act). - Second stage: The TCN can obtain a residence document (certificate of registration) if (s)he has filed a complaint or made relevant statements to the authorities; and accepts the support provided by a specialized reception centre (art. 61/3, §1 Immigration Act). - Third stage: The TCN can obtain a residence permit (A card) if the criminal proceedings are ongoing; (s)he may be considered as victim of smuggling; has shown a clear intention to cooperate; severed all relations with the presumed smugglers; does not pose a threat to public order or national security; and has accepted the support provided by a recognised specialised centre (art. 61/4, §1 Immigration Act). - Fourth stage: The TCN can obtain a residence</p>
--	--	---

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.

			<p>permit (B card) if his or her complaint or statements lead to the conviction of the smugglers or if the public prosecutor established the offence of smuggling in their charges (art. 61/5 Immigration Act). During the special residence procedure, as soon as possible and at the latest during the assessment of the application for an authorisation to stay of unlimited duration, the victim should try to prove their identity by submitting a national passport, an equivalent travel document or a national identity card (art. 61/3, §4 Immigration Act; art. 110bis, §3 Royal Decree implementing Immigration Act).</p> <p>4. First stage: 45 days Second stage: 3 months (renewable once) Third stage: 6 months (renewable) Fourth stage: unlimited duration</p> <p>5. 81 (period 2018-2022; figures for 2023 are not available).</p>
	<p>EMN NCP Bulgaria</p>	<p>Yes</p>	<p>1. In accordance with Art. 24, para 1, item 17 of the Law on Foreigners in the Republic of Bulgaria (LFRB) a long-term residence permit may be granted to foreigners who have acquired statute of special protection as per Art. 25 of the Law on Combating Human Trafficking – under the order of Art. 24m. Art. 24m provides for that in the cases under Art. 24, Para. 1, item 17 the permit for long-term residence shall be issued on the basis of the act under Art. 27 of the Law on Combating Human Trafficking. For the duration of their stay in the country, foreigners who have obtained the permits under Para. 1 shall enjoy the rights of the persons with permanent residence permit, with the exception of the right under Art. 35, Para. 2. Permits under Para. 1 shall not be issued to persons who do not have identity documents and refuse assistance to find their identity. The relevant provisions of the Law on Combating Human Trafficking provide for as follows:</p>



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.

			<p>Art. 25. To persons who are victims of human trafficking and who have expressed a wish to collaborate for discovering the traffickers, shall be granted a statute of special protection for the period of the penal proceedings, which shall include:</p> <ol style="list-style-type: none">1. granting a long-term residence permit in the territory of the Republic of Bulgaria for third-country nationals in accordance with the Law on Foreigners in the Republic of Bulgaria;2. extending the stay in the asylums. <p>Art. 26. (1) Upon identifying the persons who have become victims of human trafficking the bodies of the pre-trial proceedings shall be obliged to inform them immediately about the possibility of receiving special protection if, within one month, they declare their consent to collaborate for discovering the crime.</p> <p>(2) On proposal of the State Agency for Child Protection the term under para 1 may be extended up to two months when the person – victim of human traffic is a child.</p> <p>Art. 27. (1) The prosecutor shall rule by provisions on the request of the person, victim of human trafficking, for granting statute of special protection within three days from its filing.</p> <p>(2) The refusal to grant the statute under para 1 may be appealed within three days before the superior prosecutor who shall be obliged to rule on the complaint immediately.</p> <p>2.</p> <p>The legal ground on granting residence of victims of trafficking is set out in the Law and the procedure is determined in Art.18 of the Regulation Implementing the LFRB: the applicant attaches to his/her application a letter issued by the competent state authority as a proof of the need for granting a status of special protection and a document on paid fee in accordance with Tariff 4.</p> <p>3.</p> <p>Please, see our answers to previous questions.</p>
--	--	--	---


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.

			<p>4. In general, the period of validity of the residence permit issued of victims of trafficking is up to 1 year.</p> <p>5. There are legal grounds on issuing residence permits only to victims of trafficking.</p>
	EMN NCP Croatia	Yes	<p>1. No.</p> <p>2. N/A</p> <p>3. N/A</p> <p>4. N/A</p> <p>5. N/A</p>
	EMN NCP Cyprus	Yes	<p>1. Cyprus grants residence permits to TCNs who have been smuggled and are recognised as victims of trafficking in human beings (law 60/I/2014). However, the specific provision of the Directive 2004/81/EC on victims of migrant smuggling, has not been adopted by the Republic of Cyprus therefore TCNs who</p>


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.

			<p>have been smuggled for the purposes of trafficking are solely the ones falling within this category as there is no legal provision for “victims of smuggling”. All illegal immigrants upon detention and arrival, go through a vulnerability assessment. Should they be recognised by the polis as Victims of trafficking, they are granted a residence permit. Most of the time, those who are not recognised as such, apply for asylum. Once their application is fully examined, they are granted a residence permit either as recognised refugees or a subsidiary protection status.</p> <p>2. N/A</p> <p>3. N/A. As stated above TCNs who are officially recognised as victims of trafficking in human beings, are granted a residence permit</p> <p>4. N/A</p> <p>5. N/A</p>
	<p>EMN NCP Czech Republic</p>	<p>Yes</p>	<p>1. YES. CZ provides residence permits for victims of trafficking in human beings and also for persons in connection with illegal migration, i.e. persons who have been assisted to stay illegally or for whom an illegal crossing of the state border has been organised or facilitated).</p> <p>2. In CZ the residence procedure is set out in: a) in the law - the provisions of Section 42e of Act No. 326/1999 Coll., on the residence of foreigners in the territory of the Czech Republic, as amended b)</p>

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.

			<p>Programme of support for victims of trafficking in human beings, Programme of support in combating illegal migration</p> <p>3. Such persons may be granted a residence permit on condition that they cooperate with law enforcement authorities and do not cooperate with suspected perpetrators of the offences referred to in Q1.</p> <p>4. The long-term residence permit is issued for the period necessary to achieve the purpose of the stay, but for at least 6 months. The period of validity may be repeatedly extended.</p> <p>5. 10</p>
	<p>EMN NCP Estonia</p>	<p>Yes</p>	<p>1. No. In Estonia in the context of directive 2004/81/EC, only victims of trafficking can be granted a temporary residence permit for the participation in criminal proceedings.</p> <p>2. N/A</p> <p>3. N/A</p> <p>4. N/A</p> <p>5.</p>


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.

			N/A
+	EMN NCP Finland	Yes	<ol style="list-style-type: none"> 1. No. 2. N/A 3. N/A 4. N/A 5. N/A
■	EMN NCP France	Yes	<ol style="list-style-type: none"> 1. NO <p>Article L. 425-1 of the Code on Entry and Residence of Foreign Nationals and Right of Asylum (CESEDA) provides that third-country nationals identified as victims of trafficking in human beings or pimping by competent authorities, who file a complaint against a person they accuse of committing offenses related to trafficking or pimping against them, or who testify in the context of criminal proceedings against a person prosecuted for these same offenses, are issued a temporary residence permit bearing the mention "private and family life".</p>


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.

			<p>However, there is no residence permit provided for “third-country nationals who have been the subject of an action to facilitate illegal immigration”.</p> <p>2. n/a</p> <p>3. n/a</p> <p>4. n/a</p> <p>5. n/a</p>
	<p>EMN NCP Germany</p>	<p>Yes</p>	<p>1. No. Foreigners who have been subject to actions to facilitate illegal immigration such as human smuggling are not granted a temporary residence permit for being subject to such actions. However, in such cases the deportation of a foreigner is to be suspended under certain circumstances.</p> <p>2. The temporary suspension of deportation is regulated by Section 60a Para 2 Sentence 2 Residence Act.</p> <p>3.</p>

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.

			<p>The deportation is to be temporarily suspended if the public prosecutor's office or the criminal court considers the foreigner's temporary presence in Germany to be appropriate in connection with criminal proceedings relating to a criminal offence, because it would be more difficult to investigate the facts of the case without information from the foreigner.</p> <p>4. At the latest every three months the grounds for suspending the deportation of a foreigner are to be reviewed because the foreigner's obligation to leave Germany remains enforceable.</p> <p>5. A precise breakdown is not possible, as the category of tolerated stay under Section 60a Para 2 Sentence 2 Residence Act is a collective category, of which tolerated stays for "victims of human trafficking" are only a subset.</p>
	<p>EMN NCP Greece</p>	<p>Yes</p>	<p>1. Yes, according to article 138 of the Migration Code (L.5038/2023, GG A'81), a residence permit is granted to a third-country national who has been recognized as a victim of smuggling by an Act of the competent Prosecutor of First Instance (transposition of article 8 of Directive 2004/81).</p> <p>2. The residence procedure is set out in law and relevant joint ministerial decision that determines the documents to be submitted for the issuance of the residence permit.</p> <p>3. The conditions that a third country national need to fulfil are the following (article 139, L.5038/23 transposing article 8 of Directive 2004/81):</p>



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.

		<p>After the expiry of the reflection period, or earlier if the criteria set out in subpar.(b) of this paragraph are met, the competent Prosecutor shall consider if any of the following conditions are met and shall prepare a relevant report as to whether:</p> <ol style="list-style-type: none"> a. the prolonged stay of the said person in the Greek territory would facilitate the investigations or criminal proceedings; b. the above person has shown a clear intention to cooperate; and c. he has severed all relations with the purported perpetrators of the offences referred to in Article 4, point (ib[1]) of I.5038/23 <p>2. The application for a residence permit is examined by priority and the permit is issued by decision of the Minister of Migration and Asylum.</p> <p><i>[1] Definition of a victim of smuggling: is both a natural person, for whom there are reasonable grounds to be considered a victim of any of the crimes provided for in articles 29 paragraphs 5 and 6 and 30 hereof, when they are committed by criminal organizations, according to article 187 paragraph 1 of the P.K., before the criminal prosecution is instituted for I,t as well as for the one against whom one of the above crimes was committed for which the criminal prosecution was initiated, as long as it has entered the country illegally.</i></p> <p>4. The period of validity of the residence permit is twelve (12) months and is renewed for an equal period of time, as long as the same conditions continue to be met (article 139 § 2 of L.5038/2023).</p> <p>5. N/A</p>
--	--	---

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.

	<p>EMN NCP Hungary</p>	<p>Yes</p>	<p>1. NoCurrently, there is no national debate on the application of this optional provision.</p> <p>2. N/A</p> <p>3. N/A</p> <p>4. N/A</p> <p>5. N/A</p>
	<p>EMN NCP Italy</p>	<p>Yes</p>	<p>1. YES</p> <p>2. <i>The procedure is provided for by art. 18 of the Consolidated Text on Immigration.</i></p> <p>3. <i>S/He must prove that s/he is a victim of the crime.</i></p> <p>4. <i>It has an initial duration of 6 months and can be renewed for 1 year.</i></p> <p>5.</p>



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.

			NA
	EMN NCP Latvia	Yes	<ol style="list-style-type: none"> 1. There are no specific residence permits granted for TCNs based on the fact that they have been subject of an action to facilitate illegal immigration. However, in cases where it is necessary for pre-trial investigation institutions or a court that the TCN resides in the Latvia until a criminal case investigation is finished or examined in a court, there is a possibility of granting residence a permit based on that. 2. There is possibility, if it is necessary, to issue a residence permit mentioned above. Immigration Law regulates this issue. 3. Pre-trial investigation institution or a court shall write a letter to the Office of Citizenship and Migration Affairs explaining the necessity that the TCN resides in Latvia until a criminal case investigation is finished or examined in a court. After that the TCN shall apply for a residence permit. He/she shall submit an application form and a copy of travel document. All other documents normally required for obtaining a residence permit are not required. The residence permit is issued with a right to employment. 4. The residence permit may be issued for a period not exceeding one year. If it is needed, it is possible to request the residence permit again. 5. There have been no such cases in Latvia in this time frame.


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.

	EMN NCP Lithuania	Yes	<p>1. No. Only victims of trafficking can be granted a temporary residence permit. There have been no parliamentary debates on the implementation of this optional provision.</p> <p>2. N/A</p> <p>3. N/A</p> <p>4. N/A</p> <p>5. N/A</p>
	EMN NCP Luxembourg	Yes	<p>1. NO. In Luxembourg the only residence permit that is issued is for the victim of trafficking in human beings. There has not been any parliamentary debate to extend this residence permit to victims of smuggling in aggravated circumstances. It may be possible to apply article 98bis of the amended law of 29 August 2008 on the free movement of persons and immigration, if all the conditions are met and if there is a link with illegal employment. Article 98bis transposes article 13, paragraph 4 of directive 2009/52/EC, which requires Member States to define the conditions under which they may issue residence permits of limited duration in a manner comparable to that applicable to victims of trafficking</p>


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.

			<p>in human beings. Paragraph 3 transposes this provision into national law. Article 98a only covers illegally staying third-country nationals who have been employed under particularly abusive conditions or who are minors.</p> <p>2. N/A.</p> <p>3. N/A.</p> <p>4. N/A.</p> <p>5. N/A.</p>
	<p>EMN NCP Netherlands</p>	<p>Yes</p>	<p>1. No. In the Netherlands the Residence Permit Directive (2004/81/EC) only applies to third country nationals (TCNs) who have been victims of trafficking in human beings and not to TCNs who have been subject of an action to facilitate illegal immigration (e.g. smuggling). So, the optional provision has not been implemented. Over the past years, there has been debate about the nexus between smuggling and trafficking, but as of yet, these are seen as different crimes. In contrast to trafficking in human beings, smuggling is considered a victimless crime in the Netherlands. It is important to note, however, that criminal exploitation is a form of trafficking. Therefore, victims of criminal exploitation (which can include forced smuggling) may also be eligible for a permit under the victims of trafficking regulation. Nonetheless, smuggling and trafficking are not interchangeable when it comes to granting residence permits to TCNs. An IND work instruction specifies that smuggling is considered a crime against the</p>


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.

			<p>state, whereas trafficking in human beings is considered a crime against the person. In a letter from the former Minister of Foreign Affairs (Koenders) of 3 July 2015, it was stated that the Cabinet understood the European Commission's position that vulnerable groups should receive the necessary assistance and protection but for the time being would not support granting residence permits to TCNs who have been subject of an action to facilitate illegal migration (e.g. smuggling) similar to victims of trafficking in human beings. This is because the Cabinet believed that, although victims of smuggling sometimes end up in distressing situations, a different starting point is involved here compared to trafficking in human beings. Due to this difference, the optional provision has not been implemented to date. In addition to the smuggling/trafficking-discussion that has taken place over the past years, the B8/3-regulation (which concerns victims of trafficking in human beings) and its strengths and risks have also been under discussion during several 2023 debates. In sum, when reviewing recent information on parliamentary debates, different opinions seem to exist, not only on the optional inclusion of smuggling but also on the B8/3-regulation (regarding victims of human trafficking) itself/as it is now. (Sources: IND work instruction/letter from the Minister of Foreign Affairs/reports of committee debates)</p> <p>2. N/A</p> <p>3. N/A</p> <p>4. N/A</p> <p>5. N/A</p>
	<p>EMN NCP Poland</p>	<p>Yes</p>	<p>1. No. Only victims of THB can be granted a temporary residence permit. There were no parliamentary debates on the implementation of this optional provision.</p>



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.

			<p>2. N/a</p> <p>3. N/a</p> <p>4. N/a</p> <p>5. N/a</p>
	EMN NCP Slovakia	Yes	<p>1. No. At the same time there were recently no parliamentary debates in this regard.</p> <p>2. NA</p> <p>3. NA</p> <p>4. NA</p> <p>5. NA</p>

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.

	EMN NCP Slovenia	Yes	<ol style="list-style-type: none"> 1. No. There were no recent parliamentary debates in this regard. 2. N/A 3. N/A 4. N/A 5. N/A
	EMN NCP Spain	Yes	<ol style="list-style-type: none"> 1. In response to the question asked, the Spanish State does offer the possibility of granting TCNs residence and work permits in exceptional circumstances when it deems it necessary to victims because of their cooperation for the purposes of investigation or criminal proceedings, or in view of their personal situation, and facilities for their social integration. in accordance with the provisions of LO 4/2000, of 11 January, on the rights and freedoms of foreigners in Spain and their social integration, hereinafter, LO 4/2000. Likewise, while the procedure for residence and work permit for exceptional circumstances is resolved, you may be provided with a provisional residence and work permit for exceptional circumstances, under the terms determined by regulation in Royal Decree 557/2011, of April 20, 2011, which approves the Regulation of LO 4/2000, on the rights and freedoms of foreigners in Spain and their social integration, after its reform by LO 2/2009, hereinafter, RD 557/2011. 2. The process for granting a temporary residence permit to a foreigner who is irregularly in Spain and is the victim, injured party or witness of an act of smuggling of human beings, illegal immigration, labour


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.

			<p>exploitation or illicit trafficking in labour or exploitation in prostitution by abusing his or her situation of need, It is regulated in LO 4/2000 and in its implementing regulation RD 557/2011.</p> <p>3. The procedure for granting a temporary residence permit due to exceptional conditions is regulated in RD 557/2011. This authorisation, which does not require a visa, must be requested personally by the foreigner before the competent body for its processing.</p> <p>4. By virtue of their exceptional nature, as cited in article 130 of RD557/2011, authorisations granted on the basis of temporary residence due to exceptional situations, as well as their extensions, will be valid for one year, without prejudice to the provisions of this article and the regulations on international protection.</p> <p>Holders of an authorisation granted by the head of the Secretary of State for Security, or the authority delegated by him/her, may extend the authorisation provided that the competent authorities assess that the reasons for granting the authorisation persist. Only in the event that the authorities conclude that the reasons that led to their granting have ceased to exist, may they apply for a residence permit or a residence and work permit in accordance with the provisions of article 202 of RD 557/2011.</p> <p>Foreigners may apply for a temporary residence permit or a temporary residence and work permit or, where provided for a permit to be extended due to exceptional circumstances, during the sixty calendar days prior to the expiry date of their permit. Submitting this application within the deadline will extend the validity of the previous authorisation until the resolution of the procedure. It will also be extended until the resolution is issued, in case of submitting the application within a period os 90 days after the</p>
--	--	--	---

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.

			<p>expiring date of the former authorisation.</p> <p>5. In response to the question asked, here is a table with the data about authorisations granted by TCNs who are trafficking victims in the years between 2018 and 2023.</p> <p>YEAR OF GRANTNUMBER OF PERMITS</p> <table data-bbox="562 683 875 938"> <tr><td>2018</td><td>8</td></tr> <tr><td>2019</td><td>11</td></tr> <tr><td>2020</td><td>12</td></tr> <tr><td>2021</td><td>17</td></tr> <tr><td>2022</td><td>10</td></tr> <tr><td>2023</td><td>18</td></tr> <tr><td>TOTAL</td><td>76</td></tr> </table>	2018	8	2019	11	2020	12	2021	17	2022	10	2023	18	TOTAL	76
2018	8																
2019	11																
2020	12																
2021	17																
2022	10																
2023	18																
TOTAL	76																
	<p>EMN NCP Sweden</p>	<p>Yes</p>	<p>1. Yes, the provision in the Aliens Act (Chapter 5 section 15) is wider in scope than the provision of the Directive. At the time when the provision on temporary residence permits for plaintiffs (victims) and witnesses was entered into the Aliens Act, the assessment was that the issuing of a residence permit should not be restricted to a certain offense. Consequently, a residence permit can be issued in connection to the investigation of other offenses than trafficking in human beings and human (migrant) smuggling. This means that a residence permit issued on these grounds can include persons that received assistance to enter the country irregularly.</p>														

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.

			<p>2. In law, i.e. Chapter 5, section 15 of the Aliens Act (2005:716).</p> <p>3. The provision in the Aliens Act includes any relevant persons crucial for the preliminary criminal investigation or court proceedings to be performed in the criminal case, including witnesses. The provision is applicable to minors also. The Swedish Migration Agency shall grant a temporary residence permit if four conditions are met: -a preliminary investigation is required or a main hearing in a criminal case, -the alien has clearly demonstrated his or her intention to cooperate with the investigating authorities, -the alien has broken off all contact with the persons suspected of perpetrating the crime in question during the preliminary investigation and/or, -considerations for public order and safety do not indicate that a permit should not be issued</p> <p>4. If an alien/victim, who does not hold a residence permit, wishes to request a reflection period to recover and to determine whether they wish to cooperate with the competent authorities, the leader of the preliminary investigation (or since 2022, municipal social services) shall apply for this on behalf of the victim. The reflection period is a temporary residency permit lasting 30 days, which is intended to allow the victim of a crime time to recover and provide relief from the stress of the situation so he or she can make a determination informed decision on participation in the legal process. The reflection period is an important part of the support and protection process. Preconditions for the approval of a reflection period are that it is necessary in order for the preliminary investigation or main hearing in criminal cases to be conducted and that consideration for public order and safety does not preclude the granting of the reflection period. A preliminary investigation must be initiated, which in legal terms means that there shall be reason to believe that a criminal offence that falls under the jurisdiction of public prosecution has been committed. At this stage, however, the victim does not need to have explicitly expressed a</p>
--	--	--	--

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.

			<p>willingness to cooperate with the investigating authorities or to cooperate in the preliminary investigation. The purpose of the reflection period is to give the presumed victim the opportunity to recover and reflect on their options without the imminent risk of rejection or expulsion. For an alien/crime victim who does not have a permit to remain in Sweden, the leader of the preliminary investigation at the police/prosecution authority has the option to apply for a temporary residence permit of at least six months to cover the period during the preliminary investigation and trial. The application for the permit can be made when the reflection period expires, or earlier if the necessary conditions are met. A residence permit may be renewed if the leader of the preliminary investigation so requests, however, the permit may also be revoked if the above conditions are no longer met. As with the reflection period, the victim has access to assistance from other actors including social services and the healthcare sector.</p> <p>Source: National Referral Mechanism, Swedish Gender Equality Agency</p> <p>5. No data available.</p>
--	--	--	---
