



AD HOC QUERY ON 2020.64 Early / conditionally released from penitentiary establishments TCNs (Part 1 & 2)

Requested by EMN NCP Luxembourg on 20 October 2020

Responses from Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, France, Germany, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden (21 in Total)

Disclaimer:

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1. Background information

The legislation of the Republic of Lithuania stipulates that sentenced third-country nationals, having no right to stay or reside in the Republic of Lithuania, are also subject to early / conditional release from the penitentiary establishments. An early / conditionally released third-country national is subject to probation supervision till a sentence is served and is obliged to stay in the territory of the Republic of Lithuania, and can neither leave nor be expelled from the Republic of Lithuania.

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As the Republic of Lithuania face this challenge, The Migration Department of the Republic of Lithuania would like to gather information about other Member States' practices in similar situations.

Seeing the number of questions this ad-hoc query will count as two separate ad-hoc queries because the need of having all the answers in one document.

2. Questions

1. Are TCNs, sentenced to restriction of freedom, arrest or imprisonment subject to early / conditional release from penitentiary establishments?

Available choices: Yes, No, Not Applicable

2. If you answered YES to question 1, does sentenced TCNs who have no right to stay or reside in your Member State, can benefit from early / conditional release from penitentiary establishments?

Available choices: Yes, No, It depends of the circumstances, N/A

3. If you answered YES to question 2, do early / conditionally released TCNs, having no right to stay or reside in your Member State, are allowed to stay in the country until the sentence is served or are they immediately returned to their country of origin or previous country of residence? Please explain.

4. If you answered to question 3, that you returned the convicted TCN, which institution is responsible to take the decision? At what moment of the procedure it takes the decision?

5. Does the institution which executes the decision is the same one that takes the decision? YES/NO. If no, please indicate which is the institution?

6. Does this return can be done voluntarily or it must be a forced return?

7. If early / conditionally released TCNs, having no right to stay or reside in your Member State, must stay in the territory until the sentence is served what is their legal status?

8. Are they issued a national visa or a residence permit?

9. Are they allowed to work?

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10. Are they provided with accommodation and/or social assistance?

We would very much appreciate your responses by **13 November 2020**.

3. Responses

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		Wider Dissemination ²	
	EMN NCP Austria	Yes	<p>1. Yes Yes, regarding third-country nationals who have been convicted of a criminal offence it is possible in Austria to temporarily refrain from serving a sentence because of an entry ban (Art. 133a Penitentiary System Act).</p> <p>2. Yes Yes, regarding third-country nationals who have been convicted of a criminal offence it is possible in Austria to temporarily refrain from serving a sentence because of an entry ban (Art. 133a Penitentiary System Act).</p> <p>3. Temporary exemption from the penal system requires, among other things, that the convicted person declares his or her willingness to immediately comply with the obligation to leave for the country of</p>

¹ If possible at time of making the request, the Requesting EMN NCP should add their response(s) to the query. Otherwise, this should be done at the time of making the compilation.

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."

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			<p>origin and that it can be expected that he or she will comply with this obligation (Art. 133a para 1 subpara 2 Penitentiary System Act).</p> <p>4. In Austria, the Federal Office for Immigration and Asylum is responsible for issuing return decisions and entry bans. The Federal Office for Immigration and Asylum has to issue a return decision if the relevant conditions are met and it is aware of this (Art. 52 Aliens Police Act).</p> <p>5. In Austria, the return decision is issued by the Federal Office for Immigration and Asylum. The enforcement of the return decision (deportation) is carried out by the organs of the public security service on behalf of the Federal Office for Immigration and Asylum (Art. 46 para 1 Aliens Police Act). The decision about the temporary exemption from the penal system is made by the court of execution (Art. 133a para 4 Penitentiary System Act).</p> <p>6. The departure can be voluntary. The competent immigration authority must ensure that the departure to the country of origin is monitored. If the convicted person does not comply with his/her obligation to leave the country or returns to the territory of the Republic of Austria during the period of the ban on entry, s/he is to be detained again by the organs of the public security service (Art. 133a para 5 Penitentiary System Act).</p> <p>7. n/a</p> <p>8. n/a</p> <p>9. n/a</p> <p>10. n/a</p>
	<p>EMN NCP Belgium</p>	<p>Yes</p>	<p>1. Yes</p> <p>2. Yes</p>


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			<p>3. Belgian legislation foresees that long term condemned foreigners (sentence above three years) can be released after 1/3 or 2/3 of their sentence, provided that they cooperate to their identification and return. If so the removal can be organised up to 4 months before the foreigner is in the conditions for early release. Persons who have to purge their full sentence can also be returned as of 6 months prior to the end of the sentence. As a result the third-country national in prison doesn't need to be brought to a detention centre first (provided that he has the necessary travel documents before he is released). In principle, TCNs are (after their release from prison) not allowed to stay until the sentence is served. The Immigration Office tries to remove them directly from prison to the country of origin. In specific cases however, the Court may have imposed conditions on early release which could include his staying on the Belgian territory until time served.</p> <p>It occurs that TCNs are detained in prison because they are suspected of having committed an offence. So they are not (or not yet) sentenced. It's then possible that they are released from prison pending trial under certain conditions (for example bail). In that case the Immigration Office can inform the Federal Public Service Justice about its intention to remove the TCNs (so before the trial has taken place). If the Federal Public Service Justice requests not to remove the TCNs, they will stay (illegally) in Belgium until their trial.</p> <p>4. The Immigration Office is responsible. The decision can be taken from the moment that the TCN is in the conditions of early release (so up to 4 months prior to this date) or up to 6 months before the end of the sentence. The Immigration Office will take into account the availability of travel / ID documents, the willingness of the TCN to depart (is it necessary to foresee an escort or not), the health of the TCN, the availability of flights to the third country. The decision will be based on the elements of the case file, but needs also to take into account the answers of the TCN on a questionnaire in the framework of the right to be heard (art. 41 Charter EU Fundamental Rights) as well as the non-refoulement principle.</p> <p>5. Yes and no. Drivers from the Immigration Office bring the TCN who is released from prison to the airport, where they hand him or her over to the federal police. The Immigration Office has reserved a plane ticket for the released TCN, but it's the police who will put him or her on the plane. If an escort is needed, police officers will accompany the released TCN to the country of origin. In some specific</p>
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			<p>cases humanitarian escorts can be provided instead of police escorts (i.e. medical doctor, social worker, nurse, person of trust, ILO, psychologist, ...).</p> <p>6. In principle the return organized by the Immigration Office of a TCN coming from the prison is a forced return. However, exceptions can be made on a case by case basis. If TCN released from prison receive a return decision without the organization of this return, then the TCN should organize his return by himself (which is de facto a voluntary return).</p> <p>7. They do not receive any staying permit and remain de facto in irregular stay. There may be – in specific cases – a prolongation of the return decision for the duration of their stay (but this rarely happens).</p> <p>8. No</p> <p>9. No</p> <p>10. No. They have only right to receive urgent medical assistance.</p>
	EMN NCP Bulgaria	Yes	<p>1. Yes</p> <p>2. Yes</p> <p>3. According to the national legislation, when a third-country national is early/conditionally released from penitentiary establishments and when he/she does not meet the conditions for legal residence, the following possibilities for imposing a compulsory administrative measure are regulated:</p> <ul style="list-style-type: none"> • Return to country of origin, country of transit or third country; • Expulsion.


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			<p>If a third-country national has entered the state territory legally and has a valid travel document, it is possible to give him a term from 7 days to 30 days to return voluntarily.</p> <p>4. The responsible institution which takes the decision is the Migration Directorate. The Migration Directorate takes the decision after the release from penitentiary establishments.</p> <p>5. Yes, the institution is the same. When a third-country national is early/conditionally released from penitentiary establishments, the institution which takes the return decision and executes the decision is the Migration Directorate.</p> <p>6. The return can be done voluntarily and forced return.</p> <p>7. Those third-country nationals are with illegal status.</p> <p>8. No</p> <p>9. No</p> <p>10. No</p>
	<p>EMN NCP Croatia</p>	<p>Yes</p>	<p>1. Yes</p> <p>2. No</p> <p>3. Depends on the situation, usually we prefer immediately return to their country of origin, unless the Court decide differently. If the court issues a precautionary measure, eg a ban on leaving the address, possible forced removal is coordinated with the competent court.</p>


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			<p>4. Ministry of the Interior is responsible to take the decision after the notification of release from prison.</p> <p>5. Yes. It is Ministry of the interior. In some cases with coordination with court.</p> <p>6. Depends on the situation and the citizenship, preferably forced return, but it can be done also as Assisted Voluntary Return.</p> <p>7. If the court issues a precautionary measure, eg a ban on leaving the address, TCN resides illegally in the country.</p> <p>8. No.</p> <p>9. No.</p> <p>10. No.</p>
	<p>EMN NCP Cyprus</p>	<p>Yes</p>	<p>1. Yes</p> <p>2. Yes</p> <p>3. They are released earlier and/or conditionally only under the precondition for their immediate repatriation to their country of origin or to the previous country of residence.</p> <p>4. The final decision of early release is responsibility of the President of the Republic after the suggestion of the Attorney General Office, who examine individually every case after the suggestion of</p>


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			<p>the penitentiary institution board. One of the release conditions is to be release as soon as possible when the repatriation procedure starts. After that, the Director of Civil Registry and Migration Department, issues a detention and deportation order or a return decision</p> <p>5. NO. The Immigration Department of the Police is responsible to execute the decision.</p> <p>6. It can be either one.</p> <p>7. This is not usually the case. If it happens, the TCNs get no status and they remain illegal.</p> <p>8. No</p> <p>9. No</p> <p>10. No</p>
	<p>EMN NCP Czech Republic</p>	<p>Yes</p>	<p>1. Yes</p> <p>2. Yes</p> <p>3. If a TCN without the right to stay/reside in the Czech Republic commits a criminal offence and the court decides that this offender will be sentenced to imprisonment, the court in most of the times sentences the TCN to the punishment of expulsion from the territory of the Czech Republic, too. Firstly, the convicted TCN serves the sentence of imprisonment, however, in some cases the court may decide to waive the execution of this sentence e.g. if the convict is to be expelled (this procedure is possible if the interest in extradition of the convicted person exceeds the interest in the execution of the imposed sentence of imprisonment). Secondly, if the courts decides on a conditional release of imprisonment, the TCN must still execute the second part of the sentence and leave the country – the court bids the TCN to immediately leave the</p>

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			<p>Czech Republic without waiting until the whole sentence is served. Above that, concerning the EU we proceed under the Council Framework Decision 2008/947/JHA.</p> <p>4. At the beginning, the court decides about the punishment of expulsion. Afterwards, the Police of the Czech Republic is informed about this decision and controls the execution of the sentence. The Police is also obliged to secure travel documents in cases the TCNs do not have them.</p> <p>5. No and please see above.</p> <p>6. Since it is a court's decision, the execution of the sentence of expulsion must be obeyed. Moreover, if there is a concern that the convict will hide or otherwise obstruct the execution, the court may decide to remand the convict in expulsion custody (unless the court decides on its substitution by guarantee, promise, or bail). If the convict was taken into expulsion custody or if he serves a prison sentence, the Police of the Czech Republic will also secure his departure from the Czech Republic and will take the convict from the prison upon an agreement with the presiding judge. Regarding the costs associated with the execution of expulsion, if the convict does not pay them, the Police will cover them.</p> <p>7. These convicts must obey the court decision of sentencing them to expulsion. Therefore, no legal status is provided.</p> <p>8. None.</p> <p>9. No.</p> <p>10. No.</p>
	<p>EMN NCP Estonia</p>	<p>Yes</p>	<p>1. Yes According to Art. 76 of the Penal Code (Karistusseadustik), a court may release an offender convicted in a criminal offence either the first or second degree, if the offender has served part of the imposed</p>

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			<p>punishment. Depending on the offence, this is either one third or one half of the imposed punishment, but not less than four months. The offender may also have to agree to the application of electronic surveillance. However, according to of Art. 76 subsection 4 of the Penal Code, when deciding release on parole, the court takes into consideration various aspects regarding the offender, among others the offender's living conditions and the consequences which release on parole may bring about for the offender.</p> <p>2. Yes There is no restriction in place for TCN-s to not be able to be released early or conditionally from penitentiary establishments.</p> <p>3. According to Art. 75 of the Imprisonment Act (Vangistusseadus), a prisoner who has no residence permit or right of residence in Estonia is expelled from Estonia upon release. If immediate expulsion from Estonia is not possible, the person is placed in a detention center upon release. However, in specific cases, according to Art. 74 of the Penal Code (Karistusseadustik), a court may impose supervision of conduct of a person after being released on parole. In this case, according to Art. 43 subsection 5 of the Aliens Act (Välismaalaste seadus), the TCN may have right or obligation to remain in the country, as this right derives from a judicial decision. In this case the expulsion is put on hold with a court order.</p> <p>4. The decision to release the person early or conditionally from penitentiary establishments is taken by a court. This regulation derives from the legislation of Estonia, i.e. the Code of Criminal Procedure (Kriminaalmenetluse seadustik), the Penal Code (Karistusseadustik), the Imprisonment Act (Vangistusseadus), the Aliens Act (Välismaalaste seadus), and the Obligation to Leave and Prohibition on Entry Act (Väljasõidukohustuse ja sissesõidukeelu seadus). When deciding on releasing the TCN on parole, the Police and Border Guard Board cooperates closely with the prison service, meaning that they may ask the court to not impose supervision of conduct as the person is subject to being expelled from Estonia according to Art. 426 subsection 3 of the Code of Criminal Procedure (Kriminaalmenetluse seadustik). The legal status of the TCN is determined at least 6 months before the release.</p>
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			<p>When deciding on releasing the TCN on parole, the Police and Border Guard Board cooperates closely with the prison service, meaning that they may ask the court to not impose supervision of conduct as the person is subject to being expelled from Estonia according to Art 426 (3) of the the Code of Criminal Procedure (Kriminaalmenetluse seadustik). The legal status of the TCN is determined at least 6 months before the release.</p> <p>5. No. The decision is executed by the Police and Border Guard Board.</p> <p>6. According to Art. 4272 of the Code of Criminal Procedure (Kriminaalmenetluse seadustik), the return will be a forced return.</p> <p>7. N/A</p> <p>8. No. However, in case the TCN has been imposed a supervision of conduct by a court and remains in the country, the right or obligation to remain in the country derives from a judicial decision (Art. 53 subsection 5 of the Aliens Act (Välismaalaste seadus)).</p> <p>9. Generally, no. But according to Art. 75 subsection 2 clause 5 of the Penal Code (Karistusseadustik), if the court has imposed supervision of conduct of a person after being released on parole, and has set an obligation to seek employment, a TCN is allowed to work in order to fulfil this duty.</p> <p>10. Yes, according to Art. 8 of the Social Welfare Act (Sotsiaalhoolekande seadus), emergency social assistance is provided to persons who find themselves in a socially helpless situation due to the loss or lack of means of subsistence which guarantees the person at least food, clothing and temporary accommodation. According to Art. 5 subsection 5 of the Social Welfare Act (Sotsiaalhoolekande seadus), the provision of emergency social assistance to an alien temporarily staying in Estonia is organised by the local authority in whose administrative territory the person is staying at the time he or she is in need of assistance.</p>
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	<p>EMN NCP France</p>	<p>Yes</p>	<p>1. Yes</p> <p>2. Yes</p> <p>3. Q1: France implements a scheme for the conditional release of TCNs sentenced to a term of imprisonment to be returned. This scheme is provided for and framed by the Code of Criminal Procedure and also mentioned in the Code of Entry and Residence of Foreign nationals and the Right to Asylum.</p> <p>Q2: illegally staying TCNs who are otherwise sentenced to a term of imprisonment fall within the scope of the scheme of conditional release in order to be returned, provided that their illegal stay is duly established and that they are notified with an obligation to leave the territory in order to draw the appropriate conclusions.</p> <p>Q3: the scheme of conditional release for return does not exempt a foreign national who is otherwise guilty of certain crimes or offences from the application of criminal law, i.e. the sentence. Article 729-2 of the Code of Criminal Procedure, which provides for the scheme of conditional release, refers to 'a foreign national sentenced to deprivation of liberty sentence' who is the subject of a removal order.</p> <p>This is not an exemption of the penalty, but a form of adjustment of its implementing rules. It is not a right for the foreign national concerned and if the measure is decided upon it is not subject to their consent.</p> <p>On the other hand, the convicted foreign national does not have a right to remain in France in order to exercise their rights of appeal before the Court of Appeal and, where appropriate, an appeal in cassation. The procedure for conditional release may take place before the conviction becomes final from a judicial point of view, provided that the foreign national has the possibility of being represented in France by a lawyer in order to exercise their rights of appeal. The fact remains that such release is conditional on the decision of the judicial authority, which may object on grounds relating to criminal proceedings. For example, where the personal appearance of the person concerned is required before the criminal courts.</p> <p>4. The decision to release falls within the jurisdiction of the judicial authority, i.e. depending on the nature or quantum of the sentence, the enforcement judge (single judge) or the enforcement court</p>
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			<p>(collegiate court, three judges). As stated, the procedure for conditional release may be initiated only when the foreign national is convicted, without prejudice to the possibility of implementing conditional release before the convicted foreign national has exhausted their legal remedies against that conviction, but subject, on the one hand, to the decision of the judicial authority and, on the other, to the effective possibility of representation of the foreign national before the appeal and cassation courts.</p> <p>5. NO, the executing authority is the administrative authority, acting in close coordination with the judicial authorities, first with the jurisdictions responsible for the enforcement of sentences and then with the prison services.</p> <p>6. Article 729-2 of the Code of Criminal Procedure provides that the foreign national's consent is not required; return can be executed by force. The law does not formally close the possibility for the foreign national concerned who is the subject of an obligation to leave the territory to have a period for voluntary departure to comply with that decision, but in practice this period is in most cases refused to the TCN because of their conduct on the French territory.</p> <p>7. There is no conditional release in this situation, as explained below, since conditional release concerns only convicted persons. The foreign nationals concerned are foreign persons detained under a pre-trial detention procedure pending their appearance before the criminal court Their status is duly regulated by criminal law. Their criminal status refuses to take into account the illegality of their conditions of residence.</p> <p>8. NO regarding foreign nationals in an irregular situation, pre-trial criminal detention is a legal status but does not by itself give rise to any right for the issuance of a residence document.</p> <p>9. These rights are governed by prison law : in principle defendants do not work.</p> <p>10. The question of housing does not arise in the case of persons in pre-trial detention.</p>
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			<p>Rights to social assistance are governed by social legislation, by definition the persons concerned are in an irregular situation and are held in custody; this double circumstance by nature precludes the ordinary system of social protection, without prejudice to taking into account fundamental rights, particularly in terms of health care, in the context of detention.</p>
	<p>EMN NCP Germany</p>	<p>Yes</p>	<p>1. Yes</p> <p>2. It depends of the circumstances a) After a minimum portion of the sentence has been served and when certain other conditions are met, it is possible for the remaining term of the sentence to be sus-pended and the TCN to be released on parole. b) Execution of a custodial sentence may also be waived for the purpose of extradition to another state in which criminal proceedings are to be pursued, for transfer to an international criminal court or in case of expulsion from Germany or forced return.</p> <p>3. a) The continued residence in Germany of the foreigner released on parole for the remainder of the imposed prison term is neither a precondition for release on parole, nor is it defined as a purpose of residence in the relevant provisions of residence law. Unless the foreigner possesses another right of residence, they are thus obliged to leave Germany. Consequently, the competent foreigners authority will generally undertake the necessary measures to end residence in such cases. b) Waiving execution of a custodial sentence which has not been partially suspended on parole is always contingent on extradition or transfer abroad, expulsion or another form of forced return (cases covered by answer to 2.b).</p> <p>4. a) The local foreigners authority decides on the residence-terminating measure after the competent court has ruled that a sentence is to be suspended on parole, insofar as it has not already made this decision upon the sentence becoming final. b) The competent public prosecutor's decision on waiving of execution of the custodial sentence is contingent on the ruling of the competent court on extradition of the foreigner for criminal proceedings</p>

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			<p>in another state or transfer to an international court, or on the decision by the foreigners authority on expulsion or another form of forced return.</p> <p>5. Yes.</p> <p>6. a) Voluntary departure is possible in principle in the case of release on parole, where there are no doubts regarding the foreigner's willingness to leave the federal territory. b) Waiving execution of a custodial sentence which has not been partially suspended on parole is contingent on forced termination of residence in the form of extradition or transfer, expulsion or another form of forced return.</p> <p>7. n/a</p> <p>8. n/a</p> <p>9. n/a</p> <p>10. n/a</p>
	EMN NCP Hungary	Yes	<p>1. Yes The TCNs are subject to early / conditional release from penitentiary establishments just like the Hungarian citizens, the Fundamental Law of Hungary does not allow discrimination based on origin.</p> <p>2. Yes The answer to the first question also applies to those TCNs who do not have right to stay or reside in Hungary.</p> <p>3.</p>



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			<p>Normal 0 21 false false false EN-US X-NONE X-NONE</p> <pre>/* Style Definitions */ table.MsoNormalTable {mso-style-name:"Normál táblázat"; mso-tstyle-rowband-size:0; mso-tstyle-colband-size:0; mso-style-noshow:yes; mso-style-priority:99; mso-style-parent:""; mso-padding-alt:0cm 5.4pt 0cm 5.4pt; mso-para-margin-top:0cm; mso-para-margin-right:0cm; mso-para-margin-bottom:10.0pt; mso-para-margin-left:0cm; line-height:115%; mso-pagination:widow-orphan; font-size:11.0pt; font-family:"Calibri","sans-serif"; mso-ascii-font-family:Calibri; mso-ascii-theme-font:minor-latin; mso-hansi-font-family:Calibri; mso-hansi-theme-font:minor-latin; mso-ansi-language:EN-US; mso-fareast-language:EN-US;}</pre> <p>Normal 0 21 false false false EN-US X-NONE X-NONE</p> <pre>/* Style Definitions */ table.MsoNormalTable {mso-style-name:"Normál táblázat"; mso-tstyle-rowband-size:0; mso-tstyle-colband-size:0; mso-style-noshow:yes; mso-style-priority:99; mso-style-parent:""; mso-padding-alt:0cm 5.4pt 0cm 5.4pt; mso-para-margin-top:0cm; mso-para-margin-right:0cm; mso-para-margin-bottom:10.0pt; mso-para-margin-left:0cm; line-height:115%; mso-pagination:widow-orphan; font-size:11.0pt; font-family:"Calibri","sans-serif"; mso-ascii-font-family:Calibri; mso-ascii-theme-font:minor-latin; mso-hansi-font-family:Calibri; mso-hansi-theme-font:minor-latin; mso-ansi-language:EN-US; mso-fareast-language:EN-US;}</pre> <p>Explanation: According to the Hungarian law, those TCNs who do not have right to stay or reside in Hungary must be expelled. If the expulsion was imposed with a custodial sentence to be executed or detention order, the expulsion shall be carried out after the custodial sentence or detention order has been served. It follows that they have to stay in the country until the sentence is served.</p> <p>4. N/A</p> <p>6.</p> <p>Normal 0 21 false false false EN-US X-NONE X-NONE</p> <pre>/* Style Definitions */ table.MsoNormalTable {mso-style-name:"Normál táblázat"; mso-tstyle-rowband-size:0; mso-tstyle-colband-size:0; mso-style-noshow:yes; mso-style-priority:99; mso-style-parent:""; mso-padding-alt:0cm 5.4pt 0cm 5.4pt; mso-para-</pre>
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	EMN NCP Ireland	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	EMN NCP Latvia	Yes	<p>1. Yes</p> <p>2. Yes</p> <p>3. They are immediately return to their country of origin or previous country of residence. Usually TCNs has additional punishment imposed by a court judgment – removal from the Republic of Latvia.</p>


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			<p>4. Court determines the judgment to convict TCN, usually with additional punishment – removal from Republic of Latvia. If there are no additional punishment then when TCNs are early/conditionally released State Border Guard detain TCN and SBG or OCMA issue a decision.</p> <p>5. No. State Border Guard executes decisions.</p> <p>6. Forced return, but there can be exceptions.</p> <p>7. The presence of early/conditionally released third-country nationals in Latvia is considered as illegal.</p> <p>8. No.</p> <p>9. As the result of their status, no.</p> <p>10. As the result of their status, they are not eligible to social guarantees, as for instance, they are not provided with accommodation and etc.</p>
	<p>EMN NCP Lithuania</p>	<p>Yes</p>	<p>1. Yes</p> <p>2. Yes</p> <p>3. Third-country nationals who are the subject of early / conditional release from penitentiary establishments stay in the territory of the Republic of Lithuania till a sentence is finally served.</p> <p>4. N/a</p> <p>5. N/a</p> <p>6. N/a</p>


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			<p>7. The presence of early / conditionally released third-country nationals in the Republic of Lithuania is considered as illegal.</p> <p>8. N/a.</p> <p>9. As the result of their status, no.</p> <p>10. As the result of their status, they are not eligible to social guarantees, as for instance, they are not provided with accommodation and etc.</p>
	<p>EMN NCP Luxembourg</p>	<p>Yes</p>	<p>1. Yes</p> <p>2. Yes They are subject to early release if they are not legally residing in Luxembourg. Conditional release is not applicable to them as these individuals must leave Luxembourg territory, possibly to faraway countries, so compliance with any conditions attached to conditional release would not be verifiable.</p> <p>3. No. Early release may be granted to non-resident foreigners who are subject to an expulsion or entry ban and who must leave the Grand Duchy of Luxembourg after their release. Early release is a favor and not a right. Early release is generally accompanied by the condition to pay the fine, legal costs and, if applicable, to compensate the civil party.</p> <p>4. The decision of early release is taken by the State Attorney General. In accordance with article 686 (1) and 687 of the Criminal Procedure Code, early release can be granted to: (a) a person sentenced to life imprisonment after a term of imprisonment of not less than fifteen</p>

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			<p>years;</p> <p>(b) a person who has been convicted of a second or subsequent offence for which the cumulative sentence or sentences to be served is more than twenty-two years and six months after a term of imprisonment of fifteen years;</p> <p>(c) a convicted person who has been convicted of a second or subsequent offence and whose cumulative sentence(s) is less than or equal to 22 years and six months, after having served two-thirds of the sentence(s), and</p> <p>(d) all other convicted persons, after the expiration of half of the cumulative sentence(s).</p> <p>5. No. The execution of the release is executed by the Penitentiary administration and the return decision is executed by the Return Service of the Directorate of Immigration.</p> <p>6. Voluntary return is always an option under the condition that the police does not see a security issue.</p> <p>7. N/A.</p> <p>8. N/A.</p> <p>9. N/A.</p> <p>10. N/A.</p>
	<p>EMN NCP Netherlands</p>	<p>Yes</p>	<p>1. Yes</p> <p>2. Yes</p> <p>3. TNCs with the legal right to stay in the Netherlands are eligible for conditional release. TCNs having no right to stay or reside in the Netherlands are excluded from conditional releases. In principle this latter</p>


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			<p>group needs to serve the entire sentence in the penitentiary establishment. They can, however, benefit from a strafonderbreking (suspended sentence; SOB) indefinitely. The condition for SOB is that the TCN returns to the country of origin immediately and does not return to the Netherlands. If the TCN does return to the Netherlands the sentence will be resumed.</p> <p>4. The Custodial Institutions Service (DJI) takes the final decision for SOB, after having taken into account the advice from the Public Prosecution Service (OM) and the Repatriation and Departure Service (DT&V). Moreover, DJI takes into account the interests of credible enforcement, the interests of victims and next of kin or interests of criminal law.</p> <p>5. No, DJI executes the sentence and takes the decision to grant SOB. DJI looks at the nature, gravity, background and consequences of the criminal act. In addition, the assessment also takes into account what social effects can be expected from the possible suspended sentence. All these factors need to be considered in conjunction. It is up to the DT&V to fulfil the conditions of departure. DT&V thus executes the decision taken by DJI.</p> <p>6. The return can be voluntarily as well as forced return.</p> <p>7. Not applicable, the condition for (early) release is that the TCN leaves the Netherlands. Without fulfilling this condition there will be no (early) release. The TCN is formally released upon passing the border of his country of origin.</p> <p>8. No</p> <p>9. No</p> <p>10. No</p>
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	<p>EMN NCP Poland</p>	<p>Yes</p>	<p>1. Yes In the case of conditional early release, the Polish legislator does not distinguish whether the conditionally released is a citizen of a European Union Member State or a citizen of a third-country. Thus, persons legally sentenced to imprisonment, including persons who have been granted a permit to serve a custodial sentence in the electronic supervision system, may benefit from conditional early release on the terms specified in the Act of 6 June 1997 - Executive Penal Code (Journal of Law of 2020, items 523 and 568). On the other hand, the conditions for granting a conditional early release are set out in the provisions of Art. 77-79 and art. 81 of the Act of 6 June 1997 - Criminal Code (Journal of Laws of 2020, item 1444), because conditional early release is an institution of criminal law, not of executive criminal law. Thus, the Penal Code and the Executive Code do not provide for the exclusion of the possibility of using the institution of conditional early release.</p> <p>2. Yes The Polish legislator did not indicate the legality of the stay of a third-country national among the conditions for granting a conditional early release.</p> <p>3. Foreigners who obtained conditional early release after serving part of the imprisonment sentence, who do not have the right to stay legally on the territory of Poland, must, as a rule, leave the territory of the Republic of Poland. The consequence of the illegal stay of a foreigner in Poland is the issuance of a decision obliging the foreigner to return. At this point, it should be noted that the decision obliging the foreigner to return is bound, which means that the issuing authority only checks whether the conditions for issuing the decision have been met and in the event that there are no negative premises for issuing the decision specified by law - the authority issues such a decision. It should be noted, however, that in the course of the proceedings concerning the obligation of the foreigner to return, the authority conducting the proceedings must consider the conditions for granting the foreigner protection against expulsion from the territory of Poland. As a result of a final conviction in the Republic of Poland for committing an intentional crime or a fiscal offense, the foreigner's data is entered in the register of persons whose stay in the territory of the Republic of Poland is undesirable, and one of the reasons for issuing a return decision is the binding entry of the foreigner's data to the list of foreigners whose stay in the territory is undesirable.</p>
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			<p>It should be borne in mind that a conviction by a final judgment by a Polish court to an absolute penalty of deprivation of liberty for an intentional crime or a fiscal crime - in the light of Art. 435 paragraph. 1 point 2 lit. and the Act of 12 December 2013 on foreigners (Journal of Laws of 2020, item 35) - is the basis for including the foreigner's data in the list of foreigners whose stay in the territory of the Republic of Poland is undesirable, hereinafter referred to as "list". The period for which the foreigner's data is entered in the list depends on the sentence of imprisonment that has been ordered. If a foreigner has been sentenced to imprisonment for at least 3 years, the period for which the foreigner's data is entered in the list is 5 years (Article 438 (1) (3) of the Act on Foreigners), and if the foreigner has been sentenced to imprisonment freedom of fewer than 3 years, the period for which the foreigner's data is entered in the list is 3 years (Article 438 (1) (4) of the Act on foreigners). In both cases, data for the indicated periods are entered from the end of the imprisonment.</p> <p>In addition, it should be borne in mind that the basis for including data in the list is also the conviction of a foreigner to imprisonment in a country other than the Schengen State (i.e. a country that fully applies the Schengen acquis) for an offense that constitutes a crime within the meaning of Polish law (Article 435 (1) (2) (b) of the Act on foreigners). The crime according to art. 7 § 2 of the Criminal Code is a prohibited act punishable by imprisonment for not less than 3 years or a more severe penalty. In addition, the basis for including the foreigner's data in the list is also the conviction of a foreigner in the Republic of Poland or another country of the Schengen area - for a crime punishable by imprisonment of more than one year (Article 435 (1) (2) (c) of the Act on foreigners). As in the case of the premise specified in Art. 435 paragraph. 1 point 2 lit. and the Act on Foreigners, the data are placed for periods depending on the sentence of imprisonment, which was ordered.</p> <p>Including the foreigner's data in the list results in the mandatory entry of these data, and as a consequence, the creation of the premise for obliging him to return, as specified in art. 302 paragraph. 1 point 7 of the Act on Foreigners.</p> <p>In the event that there is a basis for entering the foreigner's data on the list specified in art. 435 paragraph. 1 point 2 lit. b or c of the Act on foreigners, the data of the foreigner are also transferred by the Head of the Office for Foreigners to the Schengen Information System for the purposes of refusing entry (Article 443 (1) (2) of the Act on foreigners in connection with Article 24 (2) of Regulation No. 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II) / Journal of Laws UE.L.2006.381.4 of 2006.12.28 /).</p>
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			<p>Data of a foreigner who is in a situation stipulated in art. 435 paragraph. 1 point 2 of the Act on foreigners, insofar as this provision relates to a sentence of imprisonment, are not included in the list and, consequently, are also not transferred to the Schengen Information System for the purposes of refusing entry, in cases where there are negative premises for the entry specified in art. 436 paragraph. 1 of the Act on Foreigners.</p> <p>These include the following circumstances (appropriate to the situation of a person who has been sentenced to absolute imprisonment):</p> <ol style="list-style-type: none">1.the foreigner is a spouse of a Polish citizen and the spouse of a foreigner who has a permanent residence permit or a long-term resident's residence permit (Article 436 (1) (1) of the Act on foreigners), unless:<ol style="list-style-type: none">a. it is required for reasons of national defense or security or the protection of public safety and order, or the interests of the Republic of Poland, orb.decision refusing to grant a foreigner a temporary residence permit or a permanent residence permit, issued in connection with the finding that the marriage was concluded or exists in order for the foreigner to circumvent the provisions defining the terms and conditions of foreigners' entry into the territory of the Republic of Poland, their transit through that territory, stay in and departure from it, has become final, orc. decision obliging the foreigner to return, issued for reasons of state defense or security or protection of public safety and order or in connection with the finding that the marriage was concluded or exists in order for the foreigner to circumvent the regulations specifying the terms and conditions of foreigners' entry into the territory of the Republic of Poland, their transit through this territory, stay therein and departure from it, has become final;2. the foreigner is a minor, except when his stay on the territory of the Republic of Poland may pose a threat to the defense or national security or the protection of public safety and order (Article 436 (1) (2) of the Act on foreigners)3. the foreigner has a permanent residence permit or a long-term resident's EU residence permit granted on the territory of the Republic of Poland (Article 436 (1) (4) of the Act on foreigners);4. the foreigner has been granted subsidiary protection, the permit referred to in art. 176 or article 187 point 6 or 7 of the Act on foreigners, residence permit for humanitarian reasons, permit for a tolerated stay pursuant to art. 351 item 1 of this Act or was granted the refugee status (Article 436 (1) (5) of the Act on foreigners).
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			<p>Thus, a foreigner who has been released from the remaining sentence of imprisonment served in the Republic of Poland, who is in the situation specified in one of the negative grounds for including his data in the list (Article 436 (1) of the Act on foreigners), will not be included in a situation where there is a basis for issuing a decision obliging him to return, as specified in art. 302 paragraph. 1 point 7 of the Act on Foreigners. However, if he or she stays on the territory of the Republic of Poland without a residence title, his legal situation should be assessed from the point of view of other conditions for issuing a decision obliging to return specified in art. 302 paragraph 1 point 1-3 of the Act on foreigners. Pursuant to these regulations, the decision obliging the foreigner to return is issued to the foreigner when:</p> <ol style="list-style-type: none">1) is or has been on the territory of the Republic of Poland without a valid visa or other valid document authorizing him to enter and stay on this territory, if a visa or other document is or was required or2) did not leave the territory of the Republic of Poland after using the permissible period of his stay in the territory of all or some Schengen countries to which he was entitled without the need for a visa, in each 180-day period, unless international agreements provide otherwise, or3) has not left the territory of the Republic of Poland after using the permissible period of his stay indicated in the Schengen visa in each period of 180 days, or after using the permissible period of stay on the basis of a national visa. <p>At the same time, it should be emphasized that a negative condition for obliging a foreigner to return is the occurrence of circumstances that justify granting him ex officio a residence permit for humanitarian reasons. They are defined in Art. 348 of the Act on Foreigners. Pursuant to this provision, a foreigner is granted permission to stay on the territory of the Republic of Poland for humanitarian reasons, if obliging him to return:</p> <ol style="list-style-type: none">1) may only be made to a country in which, within the meaning of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on November 4, 1950:<ol style="list-style-type: none">1. his right to life, liberty, and personal security would be threatened, or2. he might be subjected to torture or inhuman or degrading treatment or punishment, or3. might be forced to work, or4. could be deprived of the right to a fair trial or punished without a legal basis, or2) would violate his right to family or private life, as defined in the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on November 4, 1950, or
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			<p>3) violate the rights of the child, as defined in the Convention on the Rights of the Child, adopted by the United Nations General Assembly on November 20, 1989, to a degree that significantly threatens its psychophysical development.</p> <p>Disclosure of the circumstances which should be investigated ex officio in the course of the proceedings on the obligation of the foreigner to return causes that the authority conducting the proceedings is obliged to issue a decision refusing to oblige the foreigner to return and granting a residence permit for humanitarian reasons (Article 356 (1)). the Act on Foreigners). On the other hand, a foreigner is not granted a residence permit for humanitarian reasons, if there are negative circumstances as stipulated in art. 349 of the Act on Foreigners. Pursuant to this provision, a foreigner is refused a residence permit for humanitarian reasons if there are serious grounds for believing that:</p> <ol style="list-style-type: none">1) has committed a crime against peace, a war crime, or a crime against humanity, as defined in international law, or2) is guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Art. 1 and 2 of the United Nations Charter, or3) has committed a crime on the territory of the Republic of Poland or has committed an act outside this territory which is a crime under Polish law, or4) constitutes a threat to the defense or security of the state or the protection of public safety and order, or5) incited or otherwise participated in the commission of the crimes or acts referred to in items 1-3. <p>In such a situation, however, if the foreigner would be at risk of violating the rights specified in art. 2 - 7 of the Convention for the Protection of Human Rights and Fundamental Freedoms, then he must be granted a tolerated stay permit (Article 351 (1) of the Act on Foreigners).</p> <p>The permit to stay for humanitarian reasons and the permit for tolerated stay is permanent residence permits. The granting of a residence permit for humanitarian reasons is connected with the basis for issuing a residence card, which is a residence document, which, together with a travel document, entitles a foreigner to move around the territories of the Schengen countries. Granting the tolerated stay permit is connected with the basis for issuing the "tolerated stay permit" document. This document does not entitle you to cross the border. The holders of both types of consents have full access to the Polish labor market (Article 87 (1) (4a and 5) of the Act of 20 April 2004 on employment promotion and labor market institutions / Journal of Laws of 2020, item 1409 with as amended).</p>
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			<p>4. The authority competent to oblige a foreigner to return in the first administrative instance is the commanding officer of the Border Guard post and the commanding officer of the Border Guard unit (Article 310 of the Act on foreigners). The competence of these authorities is determined by which of these authorities has found a prerequisite for issuing a decision obliging the foreigner to return, in this case - the validity of entering the foreigner's data into the register. The higher-level authority in matters concerning the obligation of a foreigner to return is the Head of the Office for Foreigners (Article 321 of the Act on Foreigners). The decision is issued as a result of the proceeding in this case by the competent authority. It is not part of any broader parole decision making process. Granting permission to stay for humanitarian reasons pursuant to art. 348 of the Act on foreigners and pursuant to art. 351 item 1 of the Act on foreigners, as part of the procedure on the obligation to return, takes place in the decision ending the procedure (Article 356 (1) of the Act on foreigners).</p> <p>5. Yes. The compulsory execution of the decision obliging to return is performed by the Border Guard. The authority competent to enforce the decision obliging the foreigner to return is the commanding officer of the Border Guard post or the commanding officer of the Border Guard unit competent for the foreigner's place of stay - in the case when the compulsory execution of the decision consists in bringing the foreigner to the border (Article 329 (4) (1)) of the Act on foreigners), or the Commandant in Chief of the Border Guard or the commanding officer of the Border Guard branch competent for the place where the foreigner crosses the border - in the case when the compulsory execution of the decision consists in bringing the border to the airport or seaport of the country to which the return (Article 329 (4) (2) of the Act on foreigners).</p> <p>6. The date of voluntary return may be specified in the return decision issued in relation to a foreigner who obtained conditional early release. As a rule, pursuant to Art. 315 paragraph. 1 of the Act on Foreigners, the decision obliging a foreigner to return specifies the period of voluntary return, which is from 15 to 30 days.</p>
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			<p>However, if there is a probability of the foreigner's escape or it is required for reasons of national defense or security or protection of public safety and order (Article 315 (2) of the Act on foreigners), the decision will not specify the date of voluntary return. Such a decision is subject to forced enforcement (Article 329 (1) and (2)). 2 point 1 of the Act on foreigners). Competence of authorities for compulsory execution of decisions - ad. 5.</p> <p>7.</p> <p>If third-country nationals after conditional release do not have any legal title to stay in the territory of Poland and have to stay in this territory until the end of serving their sentence, their stay remains illegal. Foreigners who are staying on the territory of the Republic of Poland illegally after conditional release from serving the rest of the imprisonment sentence, and there are no grounds for including their data in the list (in connection with previous conviction, as mentioned earlier), may:</p> <ol style="list-style-type: none">1) obtain a residence permit for humanitarian reasons pursuant to art. 348 of the Act on foreigners or the permit for a tolerated stay pursuant to art. 351 item 1 of the Act on foreigners as part of the procedure on the obligation to return (item 3)2) obtain a residence permit for humanitarian reasons pursuant to art. 348 of the Act on foreigners in separate proceedings for granting this consent, if the circumstances constituting the basis for its granting have come to light or appeared after the proceedings on obliging the foreigner to return, which is conducted ex officio (Article 356 (2) the Act on Foreigners);3) obtain a temporary residence permit based on the individual situation in which they find themselves, and which allows them to obtain this permit despite the fact that they have stayed in the territory of the Republic of Poland illegally so far, e.g.<ol style="list-style-type: none">a. a temporary residence permit for a foreigner who is married to a Polish citizen (Article 158 (1) (1) of the Act on foreigners);b. a temporary residence permit due to circumstances requiring a short-term stay (Article 181 (1) of the Act on foreigners);c. a temporary residence permit due to the necessity to respect the conventional right to family life (Article 187 point 6 of the Act on foreigners);d. a temporary residence permit due to the necessity to respect the conventional rights of the child (Article 187 point 7 of the Act on foreigners).
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			<p>8. The Polish legal system does not provide for the issuance of national visas on the territory of the Republic of Poland.</p> <p>9. Access to the labor market for these permits depends on the type of residence permit. As a rule, access to the labor market is possible on the basis of a work permit (Article 87 (1) (12) (c) of the Act on Employment Promotion and Labor Market Institutions), except for a permit granted pursuant to Art. 181 paragraph. 1 of the Act on Foreigners (in this case, access to the labor market is also not allowed in the case of a work permit).</p> <p>10. Social assistance is provided to foreigners legally residing in Poland.</p>
	EMN NCP Portugal	Yes	<p>1. Yes</p> <p>2. Yes</p> <p>3. They are taken immediately to the country of origin and may wait a noticeably short time in a temporary detention centre until the day of the return trip.</p> <p>4. It depends on the type of decision. In the case of having been sentenced with the additional penalty of expulsion, the decision is taken by the Court that sentenced to the main penalty (judicial decision of removal). In case of being sentenced to imprisonment being in an irregular situation in Portuguese territory, it is up to the Immigration and Borders Service to decide (administrative removal decision). The Penal Execution Court is the entity that decides on the probation of the prisoner. The Immigration and Borders Service carries out the removal.</p> <p>5. See 4.</p> <p>6. Generally, forced return.</p>


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			<p>7. Not applicable.</p> <p>8. No</p> <p>9. No</p> <p>10. No</p>
	<p>EMN NCP Slovakia</p>	<p>Yes</p>	<p>1. Yes</p> <p>2. Yes</p> <p>3. They are immediately returned. Generally, they are issued a judicial expulsion (penalty of expulsion from the territory of the Slovak Republic) which can be carried out already when the sentence is served by an early release upon the decision of the Minister of Justice.</p> <p>4. Depends on the circumstances, if the person is issued a judicial expulsion, it is the court when deciding about the guilt and punishment. Otherwise, if the judicial decision is not issued, the Ministry of Interior – the Bureau of Border and Foreign Police can issue an administrative expulsion.</p> <p>5. No, it is the Ministry of Interior – the Bureau of Border and Foreign Police.</p> <p>6. It depends on the circumstances.</p> <p>7. See the response in 3. Persons with no legal right to reside in the territory of the Slovak Republic will be returned.</p> <p>8. N/A</p>


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			<p>9. N/A</p> <p>10. N/A</p>
	EMN NCP Slovenia	Yes	<p>1. Yes</p> <p>2. Yes</p> <p>3. TCNs subject to a conditional release with custodial supervision are allowed to stay in Slovenia until the sentence is served. In fact, in accordance with the Article 13 of Foreigners Act, a TCNs are not permitted to exit the Republic of Slovenia if criminal proceedings have been initiated against such persons, or a procedure concerning a misdemeanour or any other procedure in which the presence of such person is necessary and is requested by a responsible authority.</p> <p>4. In accordance with Art. 73. of Aliens Act, the Police may grant a permission to stay in such cases(permission granted to a foreigner who must be deported to remain temporarily in the Republic of Slovenia) . A permission is granted for a period of six months and may be renewed for as long as the reasons to stay exist, after the TCNs are conditionally released and they are subject of a return decision.</p> <p>5. Yes.</p> <p>6. The TCNs's res judicata conviction for criminal offence is one of the circumstances indicating the risk of absconding and therefore they not be subject of a return decision with the deadline for voluntary return.</p> <p>7. They are allowed to stay until the reasons to stay exist. Permission to stay does not cancel or in any way change the TCN's obligation to be deported from the country.</p>


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			<p>8. No.</p> <p>9. No.</p> <p>10. A TCNs who has been granted a temporary stay in the Republic of Slovenia have the right to emergency health insurance pursuant to the Act governing health care and health insurance and to basic care. The right to basic care means the right to an allowance granted in the amount and manner specified for financial social assistance by the Act governing social support allowances. A TCNs, who fails to comply with the obligation to collaborate with the competent authorities and to obey their measures during the entire procedure and a TCNs whose identity was not confirmed due to false information in the procedures for establishing identity, are not granted with the basic care.</p>
	EMN NCP Spain	Yes	<p>1. Not Applicable As a general rule, TCNs sentenced to imprisonment until 5 years are directly returned instead of going to prison. For longer sentences, part of the penalty takes place in Spain, and the rest is substituted by removal. These decisions are foreseen in the Penal Code and are taken by the judge deciding on the criminal case. Removal is carried out by the National Police. If return is not possible, the original imprisonment sentence must be fulfilled. If a TCN having been removed for the reasons explained above is found again in Spain, the original (or remaining) imprisonment sentence applies. Exceptions are:- Sentences to less than 1 year of imprisonment (normally alternative measures are applied instead of entering in prison).- Where removal would be disproportionate.- Cases of human smuggling and THB.</p> <p>2. N/A</p> <p>3.</p> <p>4.</p>

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			<p>5.</p> <p>6.</p> <p>7.</p> <p>8.</p> <p>9.</p> <p>10.</p>
	<p>EMN NCP Sweden</p>	<p>Yes</p>	<p>1. Yes</p> <p>2. Yes</p> <p>3. They are returned as soon as possible. If necessary the person can be placed in detention awaiting removal.</p> <p>4. The decision is taken at the same time as the sentence to imprisonment. The enforcement is carried out by the Police</p> <p>5. No. Please see question 4</p> <p>6. It can be voluntary</p> <p>7. Not applicable</p>

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			8. Not applicable 9. Not applicable 10. Not applicable
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