



AD HOC QUERY ON 2021.73 Distinctions between labour exploitation and particularly exploitative labour conditions

Requested by EMN NCP Luxembourg on 3 December 2021

Responses from Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Slovakia, Slovenia, Spain, Sweden (22 in Total)

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1. Background information

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In Luxembourg there has been confusion between the interpretation and distinction between labour exploitation which can be considered as trafficking of human beings covered by the Directive 2011/36/EU of 5 April 2011 and particularly exploitative working conditions under the Employers Sanctions Directive (Directive 2009/52/EC of 18 June 2009). The Ministry of Justice and the Directorate of Immigration will like to know how other Member States differentiate between the two situations and which procedures are implemented.

2. Questions

1. Does your Member State make a distinction/difference between labour exploitation relating to trafficking of human beings and the particularly exploitative working conditions under the Employer Sanctions Directive (article 9 (1) c)?

Available choices: Yes, No, Not Applicable

2. If your answer is YES to Question 1, can you please explain in what consist of the differences, explaining if the conditions in the ESD are less stringent than when evaluating labour exploitation in trafficking of human beings?

3. In your Member State which is the authority which determine/detect if the working conditions are particularly exploitative? Can you please describe how this determination is conducted?

4. Does your Member State have a specific procedure (e.g. fast-track procedure) when confronted to particularly exploitative working conditions to grant a residence permit to an individual who is in irregular staying situation to avoid that person be returned before the public prosecutor take a decision to prosecute the offender (similar to the suspension of removal in the trafficking procedure)? YES/NO. If your answer is YES, can you please explain the procedure.

5. Does your Member State provide aid and assistance to victims covered by the ESD similarly to the ones implemented under the Directive 2011/36/EU? YES/NO. If yes can you please describe the aid and assistance provided?

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We would very much appreciate your responses by **14 January 2022**.

3. Responses

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		Wider Dissemination ²	
	EMN NCP Austria	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 Belgium	Yes	1. No In Belgium, the Sanctions Directive 2009/52/EG was transposed into national legislation in 2013 by the Law of 11 February 2013 laying down sanctions and measures against employers of illegally staying third-country nationals. The law of 11 February 2013 bans the employment of

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>undocumented migrants and establishes rights of illegally staying workers. Belgian law does not define the concept of exploitation and it is not easy to draw the line between exploitation in terms of labour law violations on the one hand and exploitation amounting to labour trafficking on the other hand. The key criterion to distinguish between these two is the human dignity concept, laid down in article 433quinquies of the Belgian Criminal Code. As we have no legislative provisions defining and sanctioning "particularly exploitative working conditions" as mentioned in article 9 (1) c) of the Employer Sanctions Directive, the answer to question 1 is "No".</p> <p>2. Not applicable</p> <p>3. Not applicable</p> <p>4. Not applicable</p> <p>5. No. Third country nationals which can be considered as victims covered by the ESD do not get the same aid and assistance as victims of trafficking in human beings for the purpose of labour exploitation (i.e. victims covered by the Directive 2011/36/EU). The Law of 11 February 2013 provides that certain organizations and the illegal workers themselves can institute legal procedures. The law also imposes certain obligations on employers who must verify whether the employee has a valid residence permit and provides for a joint liability concerning the payment of wages along the chain of contractors and subcontractors.</p>
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	<p>EMN NCP Bulgaria</p>	<p>Yes</p>	<p>1. No</p> <p>2.</p> <p>3. According to the Article 67 of the Labour Migration and Labour Mobility Act (LMLMA) the Minister of Labour and Social Policy shall exercise overall control over adherence to this act. The General Labour Inspectorate (GLI) shall carry out the specialized activity of control. According to the Article 68 of the LMLMA the GLI shall be entitled:</p> <ol style="list-style-type: none"> 1. to visit at any time the places where work is performed or occupation exercised, or being used by workers and employees, as well as to ask of persons who are located within their territory to identify themselves with personal documents; 2. to obtain from the inspected persons and entities written explanations and information, as well as certified copies of all required documents and reports; 3. to be informed directly by workers and employees on all matters related to the exercise of control, to require them to declare in writing the facts and circumstances relating to the work performed, including data on remuneration and the grounds for the stay of foreigners . <p>The GLI shall also check the received signals for violations under the rules and conditions laid down in the Bulgarian legislation. In establishing violations containing data of a committed crime, the GLI shall inform the prosecution.</p> <p>4. NO</p>
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			<p>5. There is not such an information.</p>
	<p>EMN NCP Croatia</p>	<p>Yes</p>	<p>1. Not Applicable If during the criminal investigation, elements of the criminal offense of trafficking in human beings for the purpose of labour exploitation of victims (eg. exploitative working conditions) are determined, regardless of whether it is undeclared work or non-regulated status of third-country national (work, residence), third-country national will be identified as a victim of human trafficking.</p> <p>2.</p> <p>3. During a criminal investigation police officers determine whether or not the working conditions are exploitative. If indications of a committed criminal offense are determined by labour inspectors of the State Inspectorate of the Republic of Croatia during the conduct of their independent inspections or coordinated actions with police officers, they are reported to crime police officers.</p> <p>4. NO. For such cases we don't have specific procedures. However, when police officers during a criminal investigation determine presence of elements of trafficking in human beings, and file a criminal complaint against the suspect, third-country national is identified as a victim of trafficking and has rights prescribed by the law on the victims of human trafficking, regardless of the subsequent course of criminal proceedings. If the victim of human trafficking is a third-country national who wants to stay</p>

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			<p>in the territory of the Republic of Croatia, he has the right to obtain temporary stay for humanitarian reasons, in accordance with the Aliens Act.</p> <p>5. Yes. With reference to regulations that regulate procedures and actions towards victims of trafficking in human beings, relevant protocols and standard operating procedures are applied:</p> <p>1) the Protocol for identification, assistance and protection of victims - regulates the procedure of identification of victims, procedure during her/his acceptance of the program of assistance and protection, individualization of such program, mobile teams and their duties, private accommodation, status of a victim, safe accommodation, assistance and protection of the victim and the safe return of the victim.</p> <p>2) the Protocol on the integration/reintegration of victims of trafficking in human beings - regulates procedure of integration/reintegration of victims of trafficking in human beings and the rights of victims to health care, health insurance, social care, education and access to the labour market.</p> <p>3) the Protocol on procedure for voluntary and safe return of victims of trafficking in human beings - regulates decision on return, risk assessment and safety during the return, procedure of return and the safe transport of victims.</p>
	<p>EMN NCP Cyprus</p>	<p>Yes</p>	<p>1. Yes</p> <p>2. The penalty for the offence under Article 18PH(1)(c) (corresponding to Article 9(1)(c) of the Directive) is less stringent than trafficking for labour exploitation. Specifically, the penalty is max. 5 years prison or/and 20,000</p>

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			<p>euro fine, and for labour trafficking is max. 25 years. If the prosecuting authorities can prove trafficking as well, further to the exploitation, then the case will be prosecuted under the Anti-trafficking Law.</p> <p>3. The competent authority for determining/detecting if the working conditions are particularly exploitative is the Office of Combating Trafficking in Human Beings of the Cyprus Police. The Department of Labour Relations and the Labour Inspectorate however, in case of reasonable grounds for suspicion of particularly exploitative working conditions, when investigating complaints filed by Third Country Nationals or during inspection, forwards the complaint to the competent authority for further investigation.</p> <p>4. YES, since all exploitation cases are referred to the Anti-trafficking Police Office, as soon as there are reasonable grounds to believe that exploitation occurs, the Minister of Interior (Migration Department) is notified in order to grant a residence permit, even if the person's status is irregular, until the case is investigated.</p> <p>5. If the person is not identified as a trafficking victim, but exploitation is proved, this person will be allowed to change employer and be granted a residence permit, and also be given compensation by the employer, based on the Decision of the Interdepartmental Committee.</p>
	<p>EMN NCP Czech Republic</p>	<p>Yes</p>	<p>1. No</p> <p>2. N/A</p>

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			<p>3. Czech legal order makes no distinction between labour exploitation relating to trafficking of human beings and particularly exploitative working conditions. In both cases the crime of human trafficking is committed. If there is a suspicion of committing the crime of human trafficking, it is a subject of further investigation of the Police of the Czech Republic. The working conditions in general are stated in the Labour Code. The supervisory body in the field of the protection of labour-law relations and working conditions is the State Labour Inspection Office.</p> <p>4. The likely victims of the crime of trafficking have right to obtain a long term residence for the purpose of protection upon their request. The Act on the Residence of Foreigners states, that the Ministry issues a long term residence permit for the purpose of protection to those persons whose cooperation with law enforcement agencies is essential for preventing, detection, investigation or verification of a crime and who cooperates with law enforcement authorities in criminal proceedings and does not cooperate with the suspect of committing this crime.</p> <p>5. NO</p>
	<p>EMN NCP Estonia</p>	<p>Yes</p>	<p>1. Yes</p> <p>2. Estonian legislation does not provide for a specific definition of “particularly exploitative working conditions” under ESD. However, the content of the definition has been used in sections 133 and 2601 of the Penal Code which provide criminal penalties for trafficking in human beings</p>

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			<p>and against employers for having employed irregularly staying third-country nationals and causing a danger to the life or health of the alien or the alien is subject to inhuman or degrading treatment. The wording of the Article 133 of the Penal Code (“forced to work under unusual conditions”) is much broader, goes beyond the minimum requirements of the Sanction Directive and also covers other possible situations, including less exploitative working conditions. An employer is required to guarantee legal conditions for work (including safety requirements and not endangering the employee’s health or life), to pay legal remuneration and not to discriminate against the employee. The unusual conditions is broader than illegal conditions.</p> <p>3. Regarding the risk assessment of illegal employment of third-country nationals the main actor is Estonian Police and Border Guard Board (PBGB) in cooperation with Estonian Tax and Customs Board and Labour Inspectorate. Based on the joint risk assessment the PBGB establishes an annual work plan which includes specific targeted actions as well as joint inspections with the Labour Inspectorate and Tax and Customs Board. Criminal investigations related to trafficking of human beings or under Employer Sanctions Directive are provided by the Estonian Police and Border Guard Board.</p> <p>4. Yes. The Aliens Act allows to issue a temporary residence permit to an alien who is a victim or witness in a crime related to human trafficking, or a crime in which the employer has employed an irregular migrant which has caused a threat to the alien's life or health or has involved degrading treatment. In this case, the investigative body is required to inform the alien of the conditions for obtaining a residence permit and a reflection</p>
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			<p>period. The reflection period will be granted to the alien by a decision of the Prosecutor's Office for 30-60 days from the moment of notification. The obligation to leave issued to an irregular migrant is suspended for the duration of the reflection period. Therefore, the process of issuing a residence permit for an irregular migrant who has worked in exploitative working conditions is similar to the suspension of removal in the trafficking procedure.</p> <p>5. Yes, according to the Article 226 section 2 of the Aliens Act, the Social Insurance Board (which is the responsible organisation for victim support in Estonia) provides aid and assistance to aliens who are either a victim or witness in a crime related to human trafficking, or a crime in which the employer has employed an irregular migrant which has caused a threat to the alien's life or health or has involved degrading treatment. The aid and assistance is provided during the reflection period and within the duration of the temporary residence permit, and the provided services are the following:</p> <ol style="list-style-type: none">1. counselling of victims;2. assisting victims in communicating with state and local government authorities and legal persons.3. ensuring safe accommodation;4. ensuring catering;5. ensuring access to necessary health services;6. providing necessary material assistance;7. providing necessary psychological assistance;8. enabling necessary translation and interpretation services for receiving the services provided within the framework of victim
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			<p>support services;</p> <p>9. providing other services necessary for physical and psycho-social rehabilitation of victims.</p>
<p></p>	<p>EMN NCP Finland</p>	<p>Yes</p>	<p>1. Yes</p> <p>2. It was a bit unclear what was meant with the question and especially with the distinction/difference between the two forms of labour exploitation. In which situations has there been confusion between the interpretation of these directives? More background information could've maybe helped make things a bit clearer.</p> <p>However, in Finland a distinction is made between these two cases with regard to residence permits. Section 52a of the Finnish Aliens Act concerns the issuance of a residence permit to a victim of trafficking in human beings. According to Section 52a, a victim of trafficking in human beings staying in Finland can be issued with a temporary residence permit or if in a particularly vulnerable position, the residence permit may be issued on a continuous basis. Section 52d of the Finnish Aliens Act concerns the issuance of a residence permit to a third-country national who has resided and worked in the country illegally. One of the conditions for the issuance of a temporary residence permit is that the TCN was a minor while working, or his or her work was performed under working conditions that indicate specific exploitation.</p> <p>The occupational safety and health authority (AVI) reports cases of both trafficking in human beings and illegal employment as unauthorized work to</p>

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			<p>the police. In other words, it does not differentiate these forms of unauthorized work from each other. A report for preliminary investigation is made to the Police if there is a reason to suspect work discrimination, extortionate work discrimination or trafficking in human beings. From the point of view of the Criminal Code of Finland, these two cases are not directly distinguished from each other. In the case of TCNs working illegally, the act is punishable if the employer simply employs an alien who does not have the right to perform gainful employment. In other words, particularly exploitative working conditions are not a precondition for imposing a fine on an employer. However, if the employer has also committed other offences against the employee, such as exploitative working conditions, the offence is classified accordingly in the preliminary investigation. If the employer is guilty of particularly exploitative working conditions, the classification of the offence may be trafficking in human beings or extortionate work discrimination, depending on the situation. However, these classifications are based on the Criminal Code of Finland and not the aforementioned directives. Finally, the Finnish Immigration Service assesses which residence permit is the correct one based on the classification of the offence made by the police. If the Police classifies the offence as trafficking in human beings in the preliminary investigation, a residence permit may be issued on the basis of Section 52a of the Aliens Act. If the offence has been classified as some other kind of work discrimination, a residence permit may be issued on the basis of Section 52d of the Aliens Act. In the latter case, the classification of the offence has usually been extortionate work discrimination.</p> <p>3. If the Police suspects that the employer has committed additional</p>
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			<p>offences to hiring an illegal employee, these offences are assessed in the preliminary investigation. The Police does not define what constitutes particularly exploitative working conditions. As stated in Q2, the Police may classify the offence made by the employer as extortionate work discrimination, for example. Based on this classification made by the Police, the Finnish Immigration Service may issue a residence permit on the basis of Section 52d of the Aliens Act. Whether there have been particularly exploitative working conditions or not is determined during the residence permit process when deciding if a residence permit will be issued. However, particularly exploitative working conditions have not been specifically defined, but instead they are assessed on a case-by-case basis.</p> <p>4. Yes. According to Section 52d of the Aliens Act a third-country national who is in Finland and has worked illegally is issued a temporary residence permit if he or she was residing in the country illegally during the period work, and:</p> <ol style="list-style-type: none">1) was a minor while working, or his or her work was performed under working conditions that indicate specific exploitation;2) his or her residence in Finland is justified on account of a criminal investigation or court proceedings;3) he or she is ready to cooperate with the authorities in apprehending suspected employers; and4) he or she no longer has ties with any suspects in the crime <p>The Employer Sanctions Directive requires for a residence permit to be issued for as long as the national procedure (e.g. preliminary investigation or trial) lasts. After the national proceeding have ended, the removal of the person who stayed illegally in Finland will take place. The first temporary</p>
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			<p>residence permit can be issued on this basis for a minimum of six month and a maximum of one year. If the national procedure lasts longer than the permit granted to the person, it may be possible extend the permit.</p> <p>5. In Finland, assistance to victims of human trafficking is provided through the Assistance system for victims of human trafficking. There are no special support systems in place for TCNs who have worked illegally in Finland and have been victims of particularly exploitative working conditions. However, they may also become clients of the Assistance system for victims of human trafficking as it is determined at a later stage whether they have been victims of human trafficking.</p> <p>It is also noteworthy that according to Chapter 11a of the Employment Contracts Act, the employer is liable to pay any outstanding remuneration to the employee, but the employee must claim the remuneration themselves (there is no automatic process for this).</p>
	<p>EMN NCP France</p>	<p>Yes</p>	<p>1. Yes</p> <p>2. Labour exploitation and serious labour exploitation in Trafficking in human beings are distinguished in the French Criminal Code and are the subject of specific articles and sections.</p> <p>Article 225-4-1 of the Criminal Code defines trafficking in human beings as "the act of recruiting, transporting, transferring, housing or receiving a person for the purpose of exploitation in one of the following circumstances [...] (4) in exchange for or by the giving of remuneration or any other advantage or promise of remuneration or advantage."</p>

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			<p>Labour exploitation in trafficking in human beings for is to place the victim at the disposal of the exploiter or at the disposal of a third party, even if unidentified, in order to allow the commission against the victim of the offences of :</p> <ul style="list-style-type: none">- conditions of work or lodging contrary to his dignity (art 225-14 of the Criminal Code)- of submission to forced labour or services (art 225-14-1 of the Criminal Code)- of reduction to servitude (art 225-14-2 of the Criminal Code)- of reduction to slavery and its exploitation (art 224-1 A & B of the Criminal Code) <p>Therefore, for the offence of trafficking in human beings to be materialized, three elements must be met:</p> <ul style="list-style-type: none">- An act corresponding to the recruitment, transport, transfer, reception or accommodation of victims;- A means corresponding to the manner in which the act is carried out (by coercion, violence, deception or threat);- A purpose corresponding to the end sought, i.e. exploitation whether for sexual purposes, labour or begging. <p>However, if the offence of trafficking cannot be qualified, the target offences mentioned above can be identified separately and cumulatively. Some of these offenses may result in higher penalties. On the other hand, a victim in an irregular situation will not be able to benefit from the specific victim protection regime (Code on Entry and Residence of Foreign nationals and</p>
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			<p>Right of Asylum, CESEDA) because only the offenses referred to in articles 225-4-1 to 225-4-6 (trafficking in human beings) and 225-5 to 225-10 (pimping) of the Criminal Code allow this.</p> <p>In the section "Working and living conditions contrary to human dignity, forced labour and reduction to servitude", the Criminal Code defines serious labour exploitation as "obtaining from a person, whose vulnerability or state of dependence is apparent or known to the perpetrator, the provision of services without remuneration or in exchange for remuneration that is clearly unrelated to the importance of the work performed".</p> <p>The offences related to illegal labour can be found together with other related offences, such as trafficking in human beings, abuse of vulnerability, trafficking in foreign labour and fraudulent documents, remuneration unrelated to the work performed and assistance with irregular stay.</p> <p>The two forms of exploitation mentioned remain closely linked, particularly in the context of the fight against these offenses. Indeed, the action plans against trafficking in human beings and against illegal work each include a section devoted to trafficking in human beings for labour exploitation.</p> <p>The 2016-2018 National Plan to Combat Illegal Employment specifies its objectives in the fight against human trafficking and forced labour, recalling that human trafficking for labour exploitation is a serious form of illegal labour that must also fall under the jurisdiction of labour inspectors. This extension of jurisdiction was provided for by Order 2016-413 of April 7, 2016, on the enforcement of labour law pursuant to the 2014-2016 National</p>
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			<p>Action Plan against Human Trafficking. The National Action Plan against Human Trafficking for 2019-2021 has reaffirmed these orientations, "combating human trafficking for the purpose of labour exploitation" is indeed one of the priority actions of the plan within the framework of the axis "reinforcing controls in risk sectors to protect the most vulnerable publics".</p> <p>3.</p> <p>In France, labour inspectors within the Regional Directorates for the Business, Employment, Labour and Solidarity (DREETS), the Departmental Directorates for Employment, Labour and Solidarity (DDETS) and the Departmental Directorates for Employment, Labour and Solidarity and Population Protection (DDETS-PP) are competent to determine serious labor exploitation violations. The General Directorate of Labour (DGT) is the central authority for labour inspection and has authority over the "labour divisions" of the DREETS, DDETS and DDETS.</p> <p>Labour inspection officers are also competent to establish trafficking offenses since the law of April 13, 2016 and the order of April 7, 2016 on the enforcement of labour law. Thus, these inspectors are trained and competent to detect (presumed) victims of human trafficking. This extension of competence notably makes it possible to strengthen the efficiency of inter-ministerial work between the DGT and the Central Office for Combating Illegal Employment (OCLTI), the office in charge of the fight against all forms of exploitation at work (see more information on the OCLTI below). This cooperation between the DGT and the OCLTI is formalized in an agreement between the DGT and the General Directorate of the National Gendarmerie signed on March 29, 2016. It defines the terms of cooperation</p>
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			<p>in the fight against illegal labour and human trafficking and aims to develop operational exchanges between the gendarmerie and the labour inspection. Their joint action is aimed not only at sanctioning the non-respect of workers' social rights, but also the submission to unworthy conditions of pay, work and accommodation, culminating in human trafficking for labour exploitation. The national gendarmerie deploys units to fight against illegal employment and fraud competent to fight against these forms of exploitation.</p> <p>Controls take the form of inspections at the workplace, and labour inspection officers are also responsible for controlling the application of labour law (labour code, collective agreements) in all its aspects: health and safety, working hours, employment contracts, illegal work. If serious labour exploitation is observed at the time of the investigation, the control officer may issue a report on criminal offenses (serious labour exploitation and trafficking in human beings for labour exploitation).</p> <p>The gendarmerie and the police can carry out investigations and controls on workplaces and sectors of activity that use a vulnerable workforce, which can lead to procedures relating to "illegal work" or "serious exploitation through labour that can be classified as human trafficking". Cooperation can be implemented on specific issues.</p> <p>Joint EUROPOL action days are carried out every year in different European countries in spring (all economic sectors) and in autumn in the agricultural sector to detect labour exploitation and save the victims of this type of exploitation. Different administrations take part in these days: police and gendarmerie forces, labour inspection officers, services responsible for social</p>
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			<p>security and family allowances, customs. As part of these days, checks are carried out, employers and workers are questioned to learn about possible exploitation conditions, photos and searches prove undignified living and working conditions, etc.</p> <p>The Central Office for Combating Illegal Employment (OCLTI) is an inter-ministerial authority within the Ministry of the Interior that fights against serious forms of labour exploitation and social fraud. One of the OCLTI's missions is to identify the existence of organized criminal networks or fraud on a national scale. By decree n° 2021-816 of July 25, 2021, the OCLTI's field of competence has been extended to include labour exploitation and social fraud. Regarding labour exploitation, the OCLTI has developed a scale representing the different forms of exploitation, namely:</p> <ul style="list-style-type: none">- High-intensity exploitation: human trafficking, enslavement, forced labour, reduction to servitude.- Medium-intensity exploitation: undignified working or housing conditions, unrelated remuneration.- Low-intensity exploitation: illegal labour offenses, infringements. <p>4. No, there is no specific procedure in France for admitting a foreign national to the country of residence specifically on the basis of "serious labour exploitation", as the offenses of human trafficking cover a broader field and imply the perpetration of organized crime. Generally speaking, the French system of admission to residence for foreign nationals who are victims of trafficking in human beings or pimping, or who are on a pathway out of prostitution, falls into the category of permits</p>
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			<p>issued on humanitarian grounds (see Chapter V, Title II, Book IV of the CESEDA)).</p> <p>The French system for admitting victims of trafficking in human beings or pimping to reside in France allows any foreign national, even e in an irregular situation, to benefit from a right to residence (on the basis of article L.425-1 of the CESEDA), as soon as they file a complaint against one or more persons whom they accuse of having committed acts constituting human trafficking offenses referred to in the above-mentioned articles of the Criminal Code, or testify in criminal proceedings concerning a person prosecuted for these same offenses, and provided that they had severed all ties with the presumed perpetrator(s) of these criminal offenses</p> <p>The first step in the process is to inform potential victims by the police or gendarmerie. Foreign nationals who so wish may be given a 30-day period of reflection in order to decide whether or not to cooperate with the justice system. The applicant is then issued a one-month receipt authorizing them to work and allowing them to benefit from the allowance for asylum seekers (if applicable), social support and police protection. This receipt protects the holder from any removal order issued by the administrative authority.</p> <p>This residence permit is renewed for the duration of the criminal proceedings, provided that the conditions for its issuance continue to be met.</p> <p>The granting of this residence permit may, in the event of a final conviction of the accused person(s), lead to the automatic issue of the ten year residence permit.</p> <p>This residence permit may also be issued to a foreign minor who is at least 16 years old, who meets the conditions for issuance and who declares that he or she wishes to engage in paid employment or vocational training. The</p>
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			<p>service in charge of accompanying the worker in irregular situation is the French Office of Immigration and Integration (OFII).</p> <p>5. Yes, The measures provided under French law are those intended for victims of human trafficking who are beneficiaries of the residence permit issued on the basis of article L.425-1 of the CESEDA. In addition to the right to work, the temporary residence permit issued on the basis of article L.425-1 of the CESEDA allows its holder to benefit from the protection, reception and accommodation system through:</p> <ul style="list-style-type: none"> - Legal assistance (3° of article R.425-1 of the CESEDA); - Social support (article R.425-7 of the CESEDA) and access to the reception system in an accommodation center (article R.425-8 of the CESEDA); - Coverage of health costs (article R.425-7 of the CESEDA); - The granting of the asylum seeker's allowance (article R.425-7 of the CESEDA); - Police protection throughout the criminal proceedings in case of danger (4° of article R.425-7 of the CESEDA / article R.425-10 of the CESEDA if the victim is a minor).
	EMN NCP Germany	Yes	<p>1. No</p> <p>2. n/a</p> <p>3. In Germany, the Financial Control of Undeclared Work Unit (Finanzkontrolle Schwarzarbeit) is responsible to determine/detect if the</p>

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			<p>working conditions are particularly exploitative.</p> <p>An inspection of the Financial Control of Undeclared Work Unit of the main customs offices may be carried out as a spontaneous inspection without prior notice, as an own-initiative inspection on the basis of its own risk assessment (in sectors particularly affected by undeclared work), as a key inspection of certain sectors and branches of industry, or as an advisory inspection. In principle, a high inspection density should be sought. Criteria such as preventive effect, possible monetary damage (social security contributions, taxes, etc.), possible or likely infringements, findings from previous inspections and investigations and specific indications in individual cases may be decisive in the risk-based selection of the matters to be examined, depending on the nature of the tasks.</p> <p>As a result of the inspection and investigation tasks of the Financial Control of Undeclared Work Unit (including in accordance with the Act to Combat Undeclared Work and Unlawful Employment (SchwarzArbG)), there are regular links to migration in the context of day-to-day performance of tasks. It examines, inter alia, whether foreign persons are legally resident in Germany and whether employment or commissioning is permitted. Infringements of these provisions shall be prosecuted in accordance with the relevant rules.</p> <p>In the case of information concerning a foreign national who may have been employed illegally and on unfavourable working conditions, the Financial Control of Undeclared Work Unit, in accordance with the inspection task to be carried out pursuant to section 2 of the Undeclared Work and Unlawful Employment (SchwarzArbG), checks, inter alia, whether the employer's reporting obligations under Book IV of the Social Security Code (SGB IV) are or have been complied with, foreign nationals are or have been employed in</p>
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			<p>contravention of provisions of foreign law, and that the working conditions under the Minimum Wage Act (MiLoG), the Posting of Workers Act (AEntG) and the Temporary Employment Act (AÜG) are or have been complied with and workers are or have been employed under exploitative working conditions.</p> <p>If irregularities are detected during the administrative procedure (inspection), they result in a subsequent criminal investigation. The customs administration reserves the right to re-examine conspicuous establishments at its discretion.</p> <p>In addition to the mentioned inspections, other authorities might come across (particularly) exploitative working conditions in connection to their regular work, without being formally assigned to do so. This includes e.g. social benefit authorities which can then initiate further investigations by the relevant authorities.</p> <p>4. No</p> <p>5. No</p>
	<p>EMN NCP Greece</p>	<p>Yes</p>	<p>1. Yes</p> <p>2. The national law of Greece transposed Directive 2009/52 / EC on Sanctions Against Employers in law 4052/2012 (A'41) and Directive 2004/81 / EC on Victims of Trafficking in Human Beings in law 4251/2014 (A'80). Directive 2011/36 / EU on Combating Trafficking in Human Beings has been incorporated into the country's Penal Code.</p>

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			<p><u>Victims of human trafficking</u></p> <p>According to the definition in Law 4251/2014 (Article 1a), a victim of trafficking in human beings is a natural person for which there are valid reasons, to be considered a victim in a number of provisions of the Penal Code for trafficking in human beings and for crimes against sexual freedom and economic exploitation of sexual life, as well as a natural person against whom one of these crimes was committed for which criminal prosecution was initiated, regardless of whether he/she entered the country legally or illegally. In addition, according to the same law (Article 1l), the victim of smuggling is a natural person, for which there are good reasons to be considered a victim of any of the crimes provided for in Article 29 (Obligations of individuals and employees - Sanctions) paragraph 5, 6 and 30 (Obligations of smugglers - Sanctions) of law 4251/14, when committed by criminal organizations, according to article 187 (criminal organization) paragraph 1 of the Penal Code, before the criminal prosecution as well as the natural person against whom one of the above crimes was committed for which the criminal prosecution was initiated, since he/she has entered the country illegally ".</p> <p>Regarding the labour exploitation of victims of trafficking in human beings, par. 3 of article 88 of law 4052/2012, pursuant to articles 9 and 10 of the Directive on employer sanctions, stipulates that " when an employer uses the work or services of an illegally residing third-country national, <u>knowing that he/she is a victim of trafficking</u>, he/she is penalized as provided for in paragraph 3 of Article 323A of the Penal Code, unless the employer has already been prosecuted or convicted for the same act against the same employee under the same article of the Penal Code Code ".</p> <p>The above article 323A of the Penal Code for trafficking in human beings,</p>
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			<p>provides the penalties for anyone who, through the use of force, threat of violence or other coercive means or by imposition or abuse of power, recruits, kidnaps, transports, detains illegally, sponsors, delivers or receives another person for the purpose of exploiting him/her. The concept of exploitation includes the finding of illicit property gain from, inter alia, the victim's work or begging (labor exploitation).</p> <p><u>Particularly exploitative working conditions</u></p> <p>With regard to particularly exploitative working conditions, national law follows the definition of Article 2 of the Directive on sanctions against employers (Article 78, Law 4052/12) and the term "particularly exploitative working conditions" describes "working conditions, including those resulting from discrimination on grounds of gender or other discrimination, which is manifestly disproportionate to the working conditions of legally employed persons, affecting, for example, the health and safety of workers and are to the detriment of human dignity. "</p> <p>Penalties for employers who employ illegally residing third-country nationals are also defined (as above for the labor exploitation of victims of trafficking in human beings) by Article 88 of Law 4052/2012 (par. 1c), pursuant to Articles 9 and 10 of the Employers' Penalties Directive, as follows: "An employer who intentionally employs illegally residing third-country nationals whose employment is accompanied by particularly exploitative working conditions shall be penalised, regardless of the imposition of administrative sanctions, with a sentence of imprisonment of at least five (5) months ".</p> <p>3. The Labour Inspectorate (SEPE) is responsible for scrutinizing employers regarding the labour exploitation of employed third-country nationals. The task of the Inspectorate is to monitor the implementation of the provisions</p>
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			<p>of labour law, including the provisions on the legality of employment of third-country nationals, and legislation to promote the principle of equal treatment regardless of racial or ethnic origin.</p> <p>Given that third-country migrants residing and working illegally in the country are more vulnerable to labour exploitation and exploitative working conditions (Commission Communication (COM (2021) 592 final), targeted examinations are being implemented in areas where there is a greater risk of illegal employment of foreigners. In order to identify the sectors of economic activity that employ a higher number of illegally residing third-country nationals, specific parameters such as the percentage of the total workforce, the delinquency observed in the sector, etc. are taken into account. According to the annual reports submitted by the Ministry of Labour and Social Affairs to the European Commission for the implementation of the Employers' Sanctions Directive, The Labour Inspectorate (SEPE), in order to conduct the targeted examinations , uses "Risk Analysis", which is a subsystem of the information system. The criteria used are adapted firstly to the combat against undeclared employment, of which the employment of illegally residing foreigners is a big part, and secondly to the fight against under-declared employment. The examinations are largely focused on sectors that generally show high delinquency while at the same time a large number of employees are active in them.</p> <p>4. According to Greek law (par. 1d, article 19a of law 4251/14), a residence permit is granted for humanitarian reasons to third-country nationals who are in Greece and who have been employed either in particularly exploitative working conditions or as minors.</p> <p>5. Pursuant to the Employers' Sanctions Directive, Greek law provides</p>
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			<p>(articles 81-89, Law 4052/12) for measures to protect illegally residing third-country nationals, such as obliging employers to pay them all due wages, facilitating the complaints made by illegally employed migrants, ensuring the right of access to the competent courts and authorities to assert their legal rights in accordance with current labour law and the enforcement of any court decisions against their employers, even if they have returned or have been forced to return to their home country. In addition, it provides for the protection of victims by the competent authorities, who must, as a matter of priority, provide them with translation and interpretation services when they do not speak or understand the Greek language, as well as informing them about their legal rights and providing any necessary legal assistance.</p> <p>Finally, Law 4443/2016 (A ' 323) provides for fines and penalties for violating the legislation on the principle of equal treatment at work and includes provisions for appeal, judicial protection and reversal of the burden of proof.</p>
	<p>EMN NCP Hungary</p>	<p>Yes</p>	<ol style="list-style-type: none"> 1. Yes 2. In the Criminal Code of Hungary, employment in particularly exploitative working conditions constitutes the qualified case of "Illegal employment of a third-country national" (Section 356). In addition to the work-related exploitation to the detriment of a third-country national, a precondition to establish this felony is the employment in the absence of valid residence and work permit. 3. If a potential victim of trafficking of human beings is found during a labour inspection, the labour inspector must comply with Subsection (1) of

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			<p>Section 2 of Government Decree No. 354/2012. (XII.13) on the identification order of victims of trafficking in human beings (hereinafter: "Government Decree No. 354/2012"): "In the occasion the body that performs the identification, in its scope of procedure obtains knowledge or detects otherwise that a Hungarian citizen, or a person who holds a permit of free movement and residence, is presumably a victim of human trafficking, shall conduct an identification conversation with this person."The labour inspectors should specifically look for the following signs of victimization regarding labour exploitation according to Annex 1 of Government Decree No. 354/2012:Working conditions High probability 1. Extensive working hours 2. The person is not allowed to have a break from work or a day off3. The person cannot keep the money earned 4. Excessive fees for transportation, accommodation, food Medium probability 1. The person has no employment contract or the circumstances are not corresponding to the contract 2. The working conditions are unilaterally set by the employer 3. The person believes to owe money to the employer 4. The workplace is not appropriately equipped for accidents 5. The person does not know the address of the workplace 6. The person cannot tell his/her qualification and what does he/she actually works7. Continuously changing workplace</p> <p>4. No. There is a single procedure to be followed by the authorities in case a third-country national is identified as victim of work-related exploitation.</p> <p>5. The authorities take the necessary measures to ensure the right to stay. In line with EU Directive 2004/81/EC, TCN victims are entitled to reflection period of 1 month allowing them to recover and escape the influence of the</p>
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			<p>perpetrators of the offences so that they can make an informed decision as to whether to cooperate with the competent authorities The victim shall be granted a certificate of temporary stay by the immigration authority for this period; then, if third-country national indicates his / her intention to cooperate with law enforcement, the authority shall issue a residence permit for humanitarian purposes for a period of 6 months, renewable by 6 months from time to time. Victim support services (e.g. sheltered accommodation) are provided for third-country nationals according to the general rules.</p>
	<p>EMN NCP Italy</p>	<p>Yes</p>	<p>1. Yes</p> <p>2. Directive 2011/36/EU, which concerns the prevention and repression of trafficking in human beings and the protection of victims, was transposed in Italy by Legislative Decree No. 24 of 4 March 2014. The Directive requires Member States to introduce effective instruments for the prevention and prosecution of criminal behaviour, ensuring adequate compensation to victims. It also requires Member States to put in place effective measures aimed at facilitating, through appropriate protection tools, the reporting by victims of their exploitative conditions.</p> <p>Directive 2009/52/EU, which aims to introduce sanctions, of varying nature and seriousness, against those who employ illegally staying third-country nationals and to introduce adequate forms of protection for workers, was transposed in Italy by Legislative Decree No. 109 of 16 July 2012. Among the forms of protection, the provision of special residence permits of limited duration in favour of workers employed in particularly exploitative working conditions and when they are minors.</p>

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			<p>A combined reading of these rules highlights the following points: (i) Identification of the potential victim: Member States are obliged to put in place legislative measures providing for the use of specific indicators; to ensure that, for the period necessary for the procedure, the person is not removed from the territory; and to train the staff of the competent authorities. (ii) Reflection period: Member States should provide victims with a reflection period to enable them to recover and escape the influence of the offenders. (iii) Cooperation with authorities: Member States should ensure that criminal proceedings and the protection of victims are not dependent on their reporting, testifying or cooperating with justice. (iv) Protection and support services and socio-occupational inclusion: Member States have an obligation to ensure that victims are provided with adequate accommodation; health care and medical assistance, including psychological support; access to free legal aid; translation and interpretation services; material (financial) assistance; access to the labour market, education and training; access to protection systems for victims of violent crimes. (v) Remedies: Obligation to ensure that victims have access to adequate compensation, including back pay and unpaid contributions, regardless of their legal status. Victims have the right to compensation for moral and material damage, the right to return to their country (financial support and travel documents) and to receive the sums due in their own country.</p> <p>This being said, the Italian legislation provides for specific provisions for victims of trafficking and serious exploitation, including labour exploitation, which allow them to escape from this condition and to participate in a programme of assistance and social integration. More specifically, Article 18 of the Consolidated Act on Immigration (Legislative Decree no. 286 of 1998)</p>
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			<p>regulates the issuance of a residence permit for reasons of social protection, now called "special cases". This protection can be applied when situations of violence or serious exploitation, including in the field of employment, are ascertained in relation to a foreigner, if there is a danger to his safety as a result of an attempt to escape the conditioning of a criminal association or of statements made in criminal proceedings.</p> <p>Elements characterising the seriousness of exploitation are</p> <ul style="list-style-type: none">- concrete dangers for the foreigner's safety (in the light of general parameters relating to the protection of primary human assets, arising from the emergence of a danger to life and psycho-physical integrity as well as in the case of limitations to the victim's personal freedom)- actuality/imminence of the danger (concrete danger and imminence of the same are attributable to the person's will to escape from subjection to the criminal organisation dedicated to committing the crimes referred to in Articles 600, 601 and 603 bis of the Criminal Code). <p>The residence permit can be issued either following a complaint by the victim (so-called judicial route, upon proposal or opinion of the Public Prosecutor) or in the absence of the latter (so-called social route). The permit is initially valid for six months, but on expiry it can be renewed for work or study reasons, thus allowing the complete and final integration of the foreigner in the social context. The law also introduces a single programme of emersion, assistance and social integration which guarantees the victim, on a transitional basis, adequate accommodation, food and health care and, subsequently, the continuation of assistance and social integration. Law no. 17 of 26 February 2007 extended the scope of the above-mentioned article, as regards access to the emersion programme, also to citizens of EU Member States who are in a situation of serious and</p>
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			<p>actual danger.</p> <p>Article 22, from paragraph 12-bis to paragraph 12-quater of the cited Legislative Decree 286/1998 provides for the issuance of a special residence permit in favour of workers who are victims of situations of "particular exploitation".</p> <p>Paragraph 12-bis integrates the main case of paragraph 12 (i.e. employment of irregularly staying workers) with new aggravating circumstances, which consider the cases of employment of irregularly staying foreign workers characterized by exploitation.</p> <p>The circumstances in question, defined by the following paragraph 12-quater as "particularly exploitative" employment, are</p> <ul style="list-style-type: none">- the case in which the workers employed (under such conditions) are more than three;- the case in which employed workers are discovered who are in fact minors of non-working age; and- the hypothesis in which the employed workers have been exposed to the exploitative situations referred to in Article 603 bis, paragraph 3: (i) the repeated payment of wages in a manner clearly different from the national or territorial collective agreements entered into by the most representative trade unions at national level, or in any case disproportionate to the quantity and quality of the work performed (ii) the repeated violation of regulations on working hours, rest periods, weekly rest, compulsory leave, holidays; (iii) the existence of violations of regulations on safety and hygiene in the workplace; (iv) the subjection of the worker to degrading working conditions, surveillance methods or housing situations.
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			<p>It is established that, in such cases, a residence permit may be issued by the Questore, on the proposal or with the favourable opinion of the Public Prosecutor, to a foreigner who has lodged a complaint and cooperates in the criminal proceedings brought against the employer. This residency permit, called 'special cases', lasts for six months and may be renewed for one year or for any longer period necessary for the criminal proceedings to be concluded. It allows the carrying out of work activities and can be converted, upon expiration, into a residency permit for subordinate work or autonomous work.</p> <p>Therefore, in the case of Art. 18 - serious exploitation - this risk is totally pervasive, so much so that it compresses the personal freedom of the individual and unravels beyond the work activity. In the case of Art. 22 - particular exploitation - the circumstances described are limited to the phase in which the work is carried out.</p> <p>3. According to Italian law, the process of determination (or identification) of victims of labour exploitation consists of a preliminary and a formal phase, implementing the most important supranational and national provisions (Convention No. 29 of 1930 on Forced Labour; Convention No. 105 of 1957 on the Elimination of Forced Labour; Art. 4, European Convention on Human Rights; Protocol to Convention No. 29 - 2014; ILO Recommendation No. 203 on Forced Labour; Council of Europe Convention No. 197 on Combating Trafficking in Human Beings; Directive 2004/81/EC; Directive 2011/36/EU; Directive 2009/52/EC; Directive 2012/29/EU; Law No. 288/2003; Law No. 199/2016; Legislative Decree No. 286/1998). This identification process consists of multiple actions implemented by</p>
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			<p>different actors, and is aimed at the gradual emergence of relevant elements in order to ensure immediate support measures that meet the needs of workers who are victims of exploitation.</p> <p>That said, preliminary identification is aimed at an initial analysis of the circumstances that may reasonably suggest that the person concerned is a victim of labour exploitation or is at risk of becoming one. Preliminary identification can be carried out by anyone who has reasonable doubt that they are dealing with a potential victim of labour exploitation (public authorities, personnel of all supervisory and inspection bodies, officials or magistrates belonging to the investigating magistracy, law enforcement agencies, immigration offices of the Police Headquarters and Prefectures, operators of local social and health services, staff of third sector organisations and of the reception system, trade unions, staff in the field of recognition of international protection, guardians of unaccompanied foreign minors, anti-violence centres, and in general, all those who have contact with potential victims).</p> <p>Formal identification constitutes a phase, usually subsequent, of the identification process necessary to establish whether the person is or has been a victim of labour exploitation and whether he/she can therefore benefit from measures aimed at protection, safety, specific and legal assistance, according to the legislation in force. Formal identification gives the person the status of a victim, as determined by the authorities and/or legally authorised personnel, and allows access to specific protection mechanisms.</p> <p>According to current legislation, formal identification is carried out by:</p> <ul style="list-style-type: none">- officials or magistrates belonging to the investigating magistracy, as part of investigation activities or following a complaint by the victim of labour
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			<p>exploitation;</p> <ul style="list-style-type: none">- staff of local authorities or private entities authorised to implement programmes of emersion, assistance and social integration addressed to third-country nationals, victims of trafficking and serious exploitation, pursuant to art. 18, par. 3-bis of the Legislative Decree no. 286 of 25 July 1998, without any obligation to report to the investigating magistracy. The INL inspectors, being qualified and competent to acquire the information and evidence of the existence of the illegal case under examination, also intervene in the phase of formal identification of the victims, in order to provide useful elements for the more effective management of the measures of protection, assistance and social integration of the victims (or for their activation if not previously carried out), as well as for the purpose of making the prescribed information to the competent Public Prosecutor's Office and cooperating in the phase of investigations which may be initiated. <p>In the case of third-country nationals, who are victims of trafficking for the purpose of labour exploitation (art. 601 of the Criminal Code) or of serious exploitation in the labour context, according to the unlawful cases provided for by art. 18 of Legislative Decree no. 286/1998, the formal identification is carried out by the prosecuting authority within the framework of criminal proceedings initiated following a complaint by the victim (so-called judicial path - art. 18, paragraph 1 of Legislative Decree no. 286/1998); or, in the case of third-country nationals who are victims of trafficking for the purpose of labour exploitation (art. 601 of the Criminal Code), within the framework of criminal proceedings initiated following a complaint by the victim. 286/1998); or, if the person does not denounce and joins a programme of assistance and social integration, the formal identification is carried out by</p>
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			<p>the body in charge of assisting the victims of serious exploitation, which may be a local authority or a private association or body provided it is registered in the second section of the register referred to in Art. 52 of Presidential Decree 394/1999 (so-called social path - Art. 18, par. 1 and 3-bis of Legislative Decree 286/1998).</p> <p>4. Yes.</p> <p>As mentioned above, the Italian legislation, pursuant to art. 18 of the Legislative Decree no. 286/1998, has provided for a "double track" aimed at allowing foreign persons who are victims of situations of serious exploitation, including labour exploitation, which can be traced back to certain criminal offences to access specific protection and assistance programmes and to obtain a special residence permit.</p> <p>The term "double track" refers to the fact that a residence permit can be issued both in the event that criminal proceedings have been initiated in relation to the facts of violence or serious exploitation, following a complaint by the victim (the so-called "judicial path"), and in the event that the victim has filed a complaint. In the first case, i.e. when there has been a denunciation of violence or serious exploitation and the victim has not reported it, the residence permit can be issued both in the case where criminal proceedings have been initiated in relation to the facts of violence or serious exploitation, following the complaint of the victim (so-called judicial pathway), and in the case where the person does not denounce and adheres to a program of assistance and social integration, relying on a body specifically responsible for assisting victims of serious exploitation, which may be a local authority or an association or private organization provided that it is registered in the second section of the register referred to in Article</p>
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			<p>52 of Presidential Decree 394/99 (so-called social pathway). In the first case, i.e. when criminal proceedings have been initiated, the residence permit is issued upon the proposal or favourable opinion of the Public Prosecutor in charge; in the case of the social pathway, the Questore does not have to wait for the opinion of the Public Prosecutor's Office and can proceed with the issuance of the residence permit exclusively upon the proposal of the body implementing the assistance programme. In the hypotheses of particular labour exploitation referred to in paragraph 12-bis of the same legislative decree, a specific residence permit is issued. This permit is issued by the Questore, upon proposal or with the favourable opinion of the Public Prosecutor, to the foreigner who has filed a complaint and cooperates in the criminal proceedings brought against the employer (Art. 22, par. 12-quater and quinquies of the Legislative Decree no. 286/1998).</p> <p>5. Foreign persons who are victims of trafficking for the purpose of labour exploitation as well as victims of serious labour exploitation who find themselves in a situation of imminent danger to their safety may adhere to the aid and assistance measures provided for by the Single Programme of Emergency, Assistance and Social Integration, referred to in art. 18, par. 3-bis of Legislative Decree no. 286 of 25 July 1998. This Programme provides for the guarantee to the victims of adequate accommodation, board and lodging, health care and a customised path of social integration (language and vocational training, information and accompaniment to work).</p> <p>With reference to the cases covered by the ESD, third-country nationals, victims of particular labour exploitation, as referred to in article 22,</p>
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			<p>paragraph 12-quater of the Legislative Decree no. 286/1998, can be received by the local authorities belonging to the Reception and Integration System (SAI) for applicants and holders of international protection, as referred to in article 1-sexies of the Legislative Decree no. 416/1989 and subsequent amendments, within the limits of available places and if they do not access specifically dedicated protection systems.</p> <p>The SAI system provides for integrated reception projects, financed by the National Fund for Asylum Policies and Services. In partnership with the third sector, the local authorities guarantee board and lodging services, economic support, information, accompaniment, assistance and orientation measures, as well as the construction of individual socio-economic integration paths.</p>
<p>==</p>	<p>EMN NCP Latvia</p>	<p>Yes</p>	<p>1. Yes</p> <p>2. There is no clear distinction in Criminal Law between particularly exploitative working conditions and labour exploitation relating to trafficking of human beings, but it cannot be said that it is not possible to prosecute persons for activities corresponding to exploitative working conditions. Labour exploitation relating to trafficking of human beings have to include following elements: recruitment, transportation, transfer, concealment, accommodation or reception.</p> <p>If any of these elements do not full fill, there should be apply paragraph of Criminal Law corresponding "Violation of Provisions Regarding Employment of Persons" - For a person who commits violation of restrictions or provisions regarding employment of persons provided for in law, if it has been committed by the employer and if substantial harm has been caused</p>

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			<p>thereby.</p> <p>3. State Border Guard, State Labour Inspectorate, State Police. State Labour Inspectorate implements state supervision and control in the fields of labour relations and labour protection. State Border Guard - supervision and control in the fields of entry, residence and employment of third country nationals. In the case of employment of third country nationals, State Labour Inspectorate and State Border Guard do joint checks. State Police is investigate cases of particularly exploitative working conditions and exploitation relating to trafficking of human beings.</p> <p>4. No.</p> <p>5. No.</p>
	EMN NCP Lithuania	Yes	<p>1. Yes</p> <p>2. The crime of trafficking in human beings is defined in Article 147 of the Criminal Code. In case of adults, the crime of trafficking consists of the presence of elements from three groups: criminal acts (e.g., recruitment, transportation, transfer etc.); the means of overcoming the trafficked person's will (e.g., use or threat of the use of force, fraud, deception etc.); and the purpose of exploitation, including the forced labor or services, slavery, and practices similar to slavery. Article 147¹ singles out exploitation for forced labor or services. Article 147² prohibits knowingly</p>

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			<p>using the labor or services of a trafficked person. The punishment under Article 147 is for trafficking for whatever purpose; the punishment under Article 147¹ is for the exploitation of the forced labor of trafficked persons; the punishment under Article 147² knowingly participating in the forced labor exploitation.</p> <p>In contrast to these, Article 292¹ of the Criminal Code specifies punishment for employers (natural or legal persons) who employ illegally staying third-country nationals under particularly exploitative conditions. To incriminate under Article 292¹ it is sufficient to establish that the working conditions are particularly exploitative. Although the Criminal Code does not specify the criteria for evaluating the conditions, given that this Article transposes the requirements of Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009, the same definition would presumably apply. In contrast, to incriminate under Article 147 (and, consequently, 147¹ and 147²), the presence of elements from all three groups must be shown (act, means, and purpose). According to Article 19 of the Recommendations for the Identification of Victims of Trafficking in Human Beings, Pretrial Investigation, and Interinstitutional Cooperation, approved by Order No. I-327/1V-1015/A1-758 of 17 December 2015 of the General Prosecutor, the Minister of the Interior and the Minister of Social Security and Labor, the key difference between the two articles is the presence of the exploited person's free will: labor under particularly exploitative working conditions will not be considered as trafficking in human beings if the person voluntarily consented to work under such conditions. However, it should be noted that consent is irrelevant where it was achieved by using the means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of</p>
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			<p>power or of a position of vulnerability or of the giving or receiving of payments or benefits.</p> <p>In sum, the difference between labor exploitation as a form of trafficking and labor exploitation as such is not a matter of the stringency of working conditions but rather rests on the presence or the absence of the exploited person's consent. Moreover, the application of Article 292¹ of the Criminal Code applies to illegally staying third-country nationals only, while Article 174 applies to all persons within the jurisdiction, regardless of their nationality or legal status.</p> <p>3. The State Labor Inspectorate under the Ministry of Social Security and Labor. The State Labor Inspectorate conducts planned and unplanned inspections to check that the labor standards and norms are observed. There is no definition of "particularly exploitative working conditions" in Lithuanian law and the State Labor Inspectorate does not determine it. In accordance with the Law on Employment, the State Labor Inspectorate (together with the State Tax Inspectorate, the Financial Crimes Investigation Service and the police) detects and determines administrative violations and may, among other measures listed in the said law, impose fines on employers for the illegal work of third-country nationals (a category that would subsume work under "particularly exploitative working conditions" within the meaning of Directive 2009/52/EC), require the termination of work relations and the payment of the cost of the return of the illegally staying third-country national to their country of origin. However, whether or not the conditions of illegal work involving illegally staying third-country nationals were "particularly exploitative" and require criminal punishment would be determined by criminal investigation on a</p>
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			<p>case-by-case basis.</p> <p>4. Yes. When such individuals cooperate with a pretrial investigation institution or court, they may be granted a temporary residence permit under Article 26(2) of the Law on the Legal Status of Foreigners. According to Article 49¹ of the said law, the application for a temporary residence permit on these grounds must be intermediated by the pretrial investigation institution or court. They may be eligible for basic health insurance and social services, and they are allowed to work during the validity period of the temporary residence permit issued on the grounds of cooperation with law enforcement. However, in contrast to third-country nationals who are victims of trafficking, victims of labor exploitation do not have the right to a reflection period with all the related benefits (e.g., staying in the Refugee Reception Center during the reflection period).</p> <p>5. No, in case of victims of human trafficking the assistance provided by the state is more comprehensive. Nonetheless, if a victim of exploitation decides to cooperate with law enforcement, depending on their financial situation, the municipality may provide basic health insurance and some social benefits.</p>
	<p>EMN NCP Luxembourg</p>	<p>Yes</p>	<p>1. Yes</p> <p>2. Article 382-1 (1) 2) of the Luxembourg Penal Code defines labour exploitation in the framework of human trafficking as "exploitation of that person's labour or services in the form of forced or compulsory labour or</p>

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			<p>services, servitude, slavery or practices similar to forced or compulsory labour or services, and in general in conditions which are contrary to human dignity".</p> <p>On the other hand, article 572-2 (8) of the Luxembourg Labour Code defines 'particularly exploitative working conditions' as "working conditions, including those resulting from gender based or other discrimination, where there is a striking disproportion compared with the terms of employment of legally employed workers which, for example, affects workers' health and safety, and which offends against human dignity".</p> <p>The labour exploitation put emphasis in the forced or compulsory labour or services, servitude, slavery and in the fact that general conditions that are contrary to human dignity.</p> <p>On the contrary, on the "particularly exploitative working conditions", there is a labour relationship. However, the main element is that the working conditions are totally disproportionately compared to the legally employed workers. In this case, the employee entered into the relationship willingly because of his/her precarious condition and the employer is taken advantage of the victim because of his/her immigration status.</p> <p>Nevertheless, there are some cases in which it is difficult for an authority in a construction site, company or local to distinguish between both situations as both shared similar elements and the victims in most of the cases are not willing to talk with the authorities.</p> <p>3. In principle, the detection or determination of the "particularly exploitative working conditions" is done by the inspectors of the Inspectorate of Labour and Mines, by the officers and agents of the Grand ducal police, by the Customs and Excise officers from the grade of senior</p>
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			<p>brigadier upwards and by the public servants of the Directorate General of Small and Medium size business (article 573-1 of the Labour Code) duly authorized by the respective minister. However, the Labour inspectors and the agents of the Directorate General must act in their legal framework. Normally, the visits to a construction site, company or business establishment can be triggered by denunciation or random control. The labour inspectors can request from the owner of the establishment or its administrator a copy of the identification and residence permit of the third-country national working in the establishment (article 572-3 (1) 1 of the Labour Code). The agents of the Directorate General can request all documents related to the business permit.</p> <p>The main task of the labour inspectors of the Inspections, Controls and Investigations (ICE) service is to ensure that national legislation is applied and to put an end to situations that are in contradiction with the legal, regulatory, administrative and contractual provisions in the field of labour law, health and safety at work. Labour inspectors are also responsible for advising and assisting employees and employers during their inspections in companies, and for providing practical legal and technical information on the implementation of legal, regulatory, administrative and conventional provisions in the field of labour law.</p> <p>4. No. Even though article 98bis of the amended law of 29 August 2008 on free movement of persons and immigration (Immigration Law) states that the third-country national irregular staying migrants can obtain the same residence permit as the one granted to victims of human trafficking – article 95 (1) of the Immigration Law) when they are victim of illegal employment which occurred in particularly exploitative working conditions or</p>
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			<p>where a minor is involved (article 572-5 (1) 3 and 5 of the Labour Code), there is no specific procedure for granting them a suspension of removal or any other similar measure in order to avoid that the third-country national be returned before the public prosecutor decides to press charges.</p> <p>5. No. Besides the possibility of obtaining a residence permit in accordance with article 98bis of the Immigration Law (see answer to Q.4) the only additional aid and assistance is the one foreseen in article 572-7 of the labour code which states that "illegally staying third-country nationals who are illegally employed shall, before the enforcement of any return decision, be systematically and objectively informed by the controlling officers of the rights conferred on them by the Labour Code, including the possibility of having recourse to free legal aid. However, this assistance is limited in the large majority of cases to recover the unpaid salaries that are owed to the third-country national.</p>
	<p>EMN NCP Netherlands</p>	<p>Yes</p>	<p>1. Yes However, it depends on the circumstances in specific cases. In the case of particularly exploitative working conditions, as described in the ESD, there may indeed be labor exploitation as a form of human trafficking (Sr 273f), which will be dealt with under criminal law. However, it is also possible that not all criteria of this article (273f Sr) are met and there is serious disadvantage to the employee, for example (serious) violation of the labor laws for which administrative sanctions can be imposed, and/or violation of other articles in the Criminal Code, for example articles 197, b, c and d. The Employer Sanctions Directive does not provide a description of particularly</p>

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			<p>exploitative working conditions in Article 9 (1) c. In the correlation table for implementation of the ESD in the Foreign Nationals Employment Act, Article 9(1) "criminal offenses" refers to: "Articles 197, b, c and d Sr and in extreme cases 273f; article 43a Sr; article 57 Sr; article 19c Wav; Article 19b, second paragraph, Wav".Reference is therefore not only made to human trafficking article 273f DCC.</p> <p>2. The criminalization of labor exploitation can be divided into three phases: the preliminary phase (for example because someone is recruited), the employment phase and the final phase of taking advantage. In the preliminary phase and during the employment phase there must be (the 'components') the performance of an act using a means of coercion with the intent of exploitation. There must also be a causal relationship between the means of coercion and the act. The criteria for (the intent of) exploitation are: (1) the nature and duration of the employment, (2) the restrictions for those involved, and (3) the economic advantage for the employee. Labor exploitation itself is not punishable as an offence. In the final stage of profit taking, the condition for criminal liability is that someone has benefited (regarding any benefit derived from the exploitation) from the exploitation.</p> <p>In addition to (possible) labor exploitation in a criminal sense, there are labor situations with serious abuses and poor employment practices, which the Inspection regards as serious disadvantage. This concerns situations in which an employer seriously violates the labor laws for wages, working hours, working conditions and/or legal work on one or more occasions: there is then a serious violation of one or more of these laws. This concerns, for example, situations without (demonstrable) coercion and/or situations</p>
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			<p>in which the employer does not (demonstrably) act with the intent of exploitation; this as a distinction from criminal law.[1]</p> <p>[1] This information was provided by the Ministry of Social Affairs and Employment on 13 January 2022.</p> <p>3. If people are forced to work in very poor conditions and circumstances, then this may represent a case of labor exploitation. The Netherlands Labor Authority (NLA) combats these malpractices by identifying and detecting them.</p> <p>The Inspectorate assesses all reports containing indications of labor exploitation and serious disadvantage. Reports with leads are submitted for assessment to the biweekly Information Square, in which both inspectors from supervision and detectives from the investigative branch participate. Emergency reports are assessed in the meantime with detectives and followed up. The results of the assessment of the reports are: not to be processed, to be investigated or to be investigated by the investigative branch.</p> <p>After a report leads to a case, an inspector conducts an investigation. An investigation starts with, among other things, collecting information about the employer, contact with the reporter and/or the relevant colleague service and a preliminary exploration for possible inspection. This phase is called preliminary investigation. In this phase, an investigation can be terminated in connection with, among other things, the unavailability of the reporter or possible victim(s), the cessation of the company and/or the lack of indications of serious disadvantage. If necessary, the investigation is then</p>
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			<p>transferred to a colleague service.</p> <p>If it appears after the preliminary investigation that there are indications of serious disadvantage, further investigative measures will be taken. These investigative actions can be the following: observation, hearing the reporter and witnesses, requesting information from fellow services and possibly from banks and companies and carrying out a workplace inspection. During such an inspection, all workers are usually checked and briefly heard as a witness. The administration is also being investigated. If during the workplace inspection the suspicion of labor exploitation arises then direct coordination takes place with the investigative branch.</p> <p>Cases can be closed in various ways, via transfer to the investigative branch, no enforcement result (no violation of labor laws detected), enforcement result of a partner service (for example regarding housing), violations of labor laws, whether or not in combination with other criminal offenses (as travel documents and people smuggling). Violations cannot always be enforced, for example if the employer is bankrupt or can no longer be traced.</p> <p>There are rules for the criminal law approach to human trafficking, which are described in the Instructions for Human Trafficking of the Public Prosecution Service (OM).³⁵ The basic principles include: human trafficking is tackled in an integrated manner (with partners, through administrative and criminal law), signals of human trafficking are detected in all cases were picked up, and victim care takes a central place. These rules and principles also apply to criminal investigations into labor exploitation that the Inspectorate carries out under the authority of the Functional Public Prosecutor's Office (FP) of the Public Prosecution Service. The reports</p>
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			<p>received by the investigative branch of the Inspectorate therefore follows a process in which all reports are assessed. This process is described on page 10 of the report sent to the House of Representatives on 15 November.[1] https://www.rijksoverheid.nl/binaries/rijksoverheid/stukken/kamerstukken.. . Inspection-szw /report-inspection-szw.pdf</p> <p>In 2016 the Manual for experts on multidisciplinary cooperation against trafficking in human beings for labor exploitation was published.[2]</p> <p>[1] SZW, 'Rapportage Inspectie SZW', 2021, rapportage-inspectie-szw.pdf, last accessed on 14 January 2022.</p> <p>[2] CVV, 'Handreiking integrale aanpak arbeidsuitbuiting', 2021, tk-bijlage-1-handreiking-integrale-aanpak-arbeidsuitbuiting.pdf, last accessed on 14 January 2022; This information was provided by the Ministry of Social Affairs and Employment on 13 January 2022.</p> <p>4. The Netherlands Police, the KMar and NLA can offer a reflection period when there is the slightest indication that a person has been subjected to trafficking in human beings. The reflection period can be offered to third-country national victims who have no lawful residence (e.g. not by persons in the asylum or Dublin procedure until their transfer, as they have rightful residence based on their asylum application), in order to decide whether or not to report the crime. The reflection period thus gives temporary lawful residence to potential victims, but no residence permit is issued when the reflection period is offered. The reflection period has a maximum duration of three months and has no minimum duration. Victims are not required to cooperate with authorities during this reflection period.</p>
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			<p>When the third-country national decides to report the crime and the IND is notified of this by the Netherlands Police or KMar, the filing of the police report is regarded as an application for the temporary residence permit for victims and witnesses of human trafficking (B8) and consequently a temporary residence permit for the duration of the criminal investigation and possible prosecution is granted. This permit grants legal residence in exchange for cooperation with authorities in the ongoing investigation for the duration of the criminal investigation or procedure. Victims of human trafficking can also apply for an extended residence permit after they have been staying in the Netherlands on the aforementioned temporary permit for three years or when the Public Prosecution Service (Openbaar Ministerie) has decided to prosecute a case of human trafficking of which the applicant is a victim. There is an exception to the requirement of cooperation, which applies to victims unable to cooperate with authorities, namely if the victim is a minor, if due to his or her mental state the victim is unable to give a statement, or if giving a statement cannot be expected due to threats by the traffickers. This is called schrijnend pad (distressing path).</p> <p>5. Yes on the basis of 2011/36/EU the (presumed) victim of Trafficking of human beings has the right to medical and psychiatric care, counseling, legal aid, to be informed on the progress and course of a criminal case, and to food and housing, for which they receive financial compensation. They also have a right to have an interpreter present during all interactions with the IND, Public Prosecutor and the Dutch Police etc., free of charge.</p>
	EMN NCP	Yes	1. Yes

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	Poland		<p>More information in the attachment ahq_2021.73_-_q1_pl_ncp.docx</p> <p>2. One of the main criteria distinguishing between human trafficking for the purposes of forced labour and particularly exploitative conditions is the fact that in the case of human trafficking the perpetrator gains control over the employee or another person performing work, which results in human rights violation. On the other hand, under relevant provisions of the national regulations, the level of the employee rights violation can hardly be regarded as one of these criteria.</p> <p>3. The currently applicable Act of 13 April 2007 on the National Labour Inspectorate, as well as other acts and regulations do not specify prevention and combatting of human trafficking as a separate task falling within the competence of labour inspectors. The National Labour Inspectorate has, however, been incorporated in the system of authorities cooperating in the area of prevention of human trafficking, including forced labour, and involved in the issues related to the employment of foreigners staying illegally in the territory of Poland since 1 July 2007, i.e. when the array of tasks of the NLI was extended to include inspections of legality of employment of foreigners. Labour inspectors serve as inspection authorities having access to work establishments and other work places of foreigners. This is where a particular susceptibility occurs to cases of human trafficking for the purposes of forced labour, illegal employment of foreigners, including their illegal stay in the territory of Poland, and violations of employee rights of foreigners.</p> <p>The main powers of a labour inspector which are used to carry out the tasks</p>
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			<p>as specified above are the following:</p> <ul style="list-style-type: none">• free access to the premises, buildings and rooms of the inspected entity;• demanding from all the employees and persons who are or used to be employed at or who perform or used to perform work for the benefit of the inspected entity on grounds other than an employment relationship, including self-employed persons as well as persons using the services of employment agencies, written and oral explanations in relation to matters covered by the inspection as well as summoning and interrogating such persons in connection with the inspection;• recording visual inspections, and results thereof, of buildings, rooms and workstations with sound or image recording equipment;• checking the identity of persons performing work or staying on the premises of the inspected entity, as well as persons using employment agency services, interrogating them and demanding statements with regard to the legality of employment or performance of any other paid activity;• ensuring confidentiality of the circumstances that would allow to reveal the identity of an employee or a person providing information about the matters covered by the inspection to a labour inspector;• initiating an inspection without an authorisation, i.e. following the presentation of a labour inspector's identity card, if factual circumstances justify an immediate commencement of inspection of the entrepreneur;• lack of obligation of a labour inspector to notify the inspected entity of his/her presence if such notification could affect inspection results. <p>Information which may point to human trafficking, including forced labour,</p>
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			<p>or employment of foreigners staying illegally in the territory of Poland usually comes from:</p> <ol style="list-style-type: none">1. complaints or requests for inspection received by the NLI;2. observation carried out by a labour inspector in the framework of an inspection conducted in a work establishment or another place of work (in particular based on the visual inspection of workplaces, workstations and processes of work, information – obtained in the course of inspection – from employees, the employer or their representatives and other individuals, documents related to the performance of work by employees or persons performing work on another basis than an employment relationship, etc.). <p>Labour inspectors can also suspect the occurrence of human trafficking or employment of foreigners staying illegally in Poland during an inspection of a workplace with accommodation space for foreigners on its premises (or in direct vicinity), frequently arranged in basements, cellars, garages, attics etc.</p> <p>It should, however, be borne in mind that taking direct actions in cases related to the crime of trafficking in human beings, including for the purposes of forced labour, as well as crimes related to the employment of foreigners staying in the territory of Poland without a valid residence document, falls outside the remit of the National Labour Inspectorate. In particular, a labour inspector is not authorised to conduct operational and investigative activities. The role of the National Labour Inspectorate is to inform the competent law enforcement authorities of the circumstances identified during an inspection, indicating a possible criminal offence. Conducting operational and legal activities aimed at verifying the information provided by the NLI is the responsibility of the law enforcement</p>
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			<p>and judicial authorities.</p> <p>The measures taken by a labour inspector in this respect are limited to:</p> <ol style="list-style-type: none">1. identification of features characteristic of a given crime,2. notification of competent authorities:<ul style="list-style-type: none">• the Border Guard – if the case concerns foreigners,• the Police or the Prosecutor’s office – in other cases. <p>4. Answer: YES</p> <p>Moreover, pursuant to Art. 187(4) of the Act of 12 December 2013 on the Foreigners, a foreigner may be granted a temporary residence permit for the duration of criminal proceedings against an entity entrusting the performance of work in which the foreigner appears in the capacity of a party injured as a result of the criminal offence of entrusting the performance of work under particularly exploitative working conditions, as referred to in Art. 10.1 of the Act on the Consequences of Entrusting the Performance of Work to Foreigners Staying Unlawfully in the Republic of Poland.</p> <p>Additionally, Art. 187(5) of the Act on the Foreigners provides for the possibility to grant a temporary residence permit to a foreigner if directly before applying for the permit the foreigner was staying within the territory of the Republic of Poland on the basis of the temporary residence permit referred to in Art. 187(4) of the a/m Act, until the receipt of outstanding remuneration from an entity entrusting the performance of work or its subcontractor (after fulfilling the conditions defined in the Act)</p> <p>The subject is contained in the Foreigners Act, Chapter 9 Stay in the Republic of Poland of foreign nationals who are victims to trafficking of</p>
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			<p>human beings. In accordance with Article 170 of the aforementioned Act, a foreign national who is presumed to be a victim to trafficking of human beings as defined in Article 115 § 22 of the Act of 6 June 1997 on the Penal Code (Journal of Laws of 2020, items 1444 and 1517, and of 2021, items 1023 and 2054), is issued a certificate confirming that such a presumption exists. Furthermore, under Article 171(1) of the said Act, a foreign national is regarded to be staying legally in the Republic of Poland throughout the validity period of the certificate issued (i.e. the certificate referred to in Article 170).</p> <p>Under Article 186 of the Foreigners Act, a temporary residence permit for victims to trafficking in human beings is issued to a foreign national who jointly meets the following conditions:</p> <ul style="list-style-type: none">• he/she is staying in the Republic of Poland;• he/she has established cooperation with the authority competent for investigating the criminal offence referred to in Article 189a §1 of the PC, and in the case of a minor foreign national – he/she has been given the status of an injured party in proceedings into the criminal offence referred to in Article 189a §1 of the PC.;• he/she has severed all contacts with persons suspected of committing the criminal offence referred to in Article 189a §1 of the PC. <p>It is important that temporary residence permits for victims of trafficking of human beings are issued in accordance with Article 177 of the Foreigners Act for a period of at least 6 months. Furthermore, in accordance with Article 179 of the said Act, the authority in charge of the procedure to issue a temporary residence permit for victims to trafficking of human beings to a foreign national who does not have sufficient command of the Polish language shall ensure that the foreign national is provided with the services</p>
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			<p>of an interpreter.</p> <p>Pursuant to the Art. 195 of the Act of 12 December the foreigner who is a victim of the trafficking in human beings might be also granted a permanent residence permit for the stay within the territory of the Republic of Poland. Moreover, the National Labour Inspectorate supports foreigners in pursuing their employee rights by conducting information and prevention activities. In every one of 16 district labour inspectorates (located in capital cities of provinces) and in sub-district offices (in other larger towns) of the National Labour Inspectorate, as well as in the Counselling Centre at Chief Labour Inspectorate in Warsaw every person can obtain legal advice, free of charge, on labour law, occupational safety and health, as well as legality of employment. Advice may be sought in person or by telephone (and also in written form, including via e-mail)</p> <p>Responding to an increased interest of migrants (mostly Ukrainian nationals) in obtaining knowledge on the legality of employment and labour law, in February 2018 the National Labour Inspectorate Counselling Centre in Warsaw launched a nationwide helpline for foreigners where they can obtain legal advice on the a/m issues, free of charge, in Ukrainian and Russian.</p> <p>One of the significant prevention activities in which the National Labour Inspectorate was recently involved was developing in 2019-2020 of a guide on forced labour, targeted mainly at employers and aimed at helping employers prevent forced labour. The publication "Forced labour. Guide: how to identify and combat it" was developed by a working group composed of representatives of public authorities, companies and professional organisations, non-governmental organisations, trade unions, as well as representatives of the scientific milieu.</p>
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			<p>If an entity entrusting work to an individual does not fulfil its obligation to comply with the labour law provisions (including those concerning remuneration and other benefits resulting from an employment relationship), occupational safety and health rules and regulations or provisions on legality of employment – a person performing work (also a foreigner) may file a complaint with the National Labour Inspectorate. Based on the complaint, a labour inspector conducts an inspection of the entity covered by the complaint and the complainant receives written information on its results.</p> <p>As per the existing regulations, labour inspectors are obliged to keep confidential (especially with regard to the employer) the fact that an inspection is conducted as a result of a complaint, as well as the personal data of the worker or another person who filed the complaint. The a/m information may be disclosed only upon written consent of the complainant. If the measures taken by the National Labour Inspectorate prove ineffective, a worker may take legal action to pursue their rights (it is also possible to take the case directly to the labour court, without filing a complaint with the NLI). Information on the results of the inspection provided by a labour inspector may serve as evidence in legal proceedings against the employer. The court may also admit evidence in the form of documentation from the inspection and interview the labour inspector who was in charge of the inspection in the capacity of a witness.</p>
	<p>EMN NCP Slovakia</p>	<p>Yes</p>	<p>1. No However, the legal provisions are under preparation. Within the National Programme of Fight against Trafficking in Human Beings 2019 – 2023 the</p>

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			<p>Slovak Republic specified as one of its goals to define the distinction between trafficking in human beings for the purpose of forced labour and bad (exploitative) labour conditions. In 2021 the data were collected in order to analyse the cases from practice. The data are collected by Labour Inspectorates within their work. The comprehensive data will be available in February 2022 and will be provided to the Ministry of Interior of the Slovak Republic. The aim is to increase the quality of detecting and investigating the trafficking in human beings criminal offense.</p> <p>2. NA</p> <p>3. The National Unit for Combating Irregular Migration of the Bureau of Border and Foreign Police is the only unit within the Ministry of Interior of the SR which investigates the human trafficking criminal offence. This includes also the trafficking in human beings where labour exploitation is detected. In practice this means that it is also the Unit which detects, checks and investigates the cases where exploitative labour conditions occurred, which were considered as labour exploitation and fulfil the subject matter of the trafficking in human being criminal offence. Criminal Code of the SR defines also the criminal offence of illegal employment. Anyone who illegally employs a person, who is in the SR in breach of the legal provisions although he/she was in last 24 month convicted for this offence, commits criminal offence of illegal employment. Stricter punishment will be given to the offender if he/she conducts this offence regardless of the previous conviction for similar criminal offence if the person is employed under exploitative labour conditions including labour conditions comprising elements of discrimination when there is a clear</p>
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			<p>imbalance in comparison with labour conditions of the legally employed persons and this discrimination impacts the health, security and is in breach of human dignity.</p> <p>To define if the labour conditions are exploitative is the responsibility of the law enforcement authorities (police, prosecutor). The provided definition of the criminal offence of illegal employments comes from the transposition of Article 9, par. 1 of the Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals.</p> <p>4. The specific procedure is used only in cases when the exploitative labour conditions are investigated as trafficking in human beings criminal offence. In that case a so-called tolerated residence can be granted. A police department may, upon the request of a prosecuting authority, grant the tolerated residence to a third country national who was illegally employed under particularly exploitative working conditions or to an illegally employed minor person, if the presence of this third country national in the SR is necessary for the purpose of criminal proceedings. Tolerated residence shall be granted by a police department for 180 days. A police department may extend tolerated residence by 180 days, repeatedly as well, up to the time of valid completion of criminal proceedings or by the time of the payment of the due amount of remuneration for performed work to a third country national. A prosecuting authority or a person authorised by the Ministry of Interior shall inform a third country national about the possibility and conditions of the granting of tolerated residence for this reason and about the rights and duties which follow therefrom.</p>
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			<p>5. In the Slovak Republic there is a specialised Programme for support and protection of human trafficking victims (further as Programme) of the Ministry of Interior of the SR and is available for all victims where there are indications that they were victims of human trafficking. When identifying the victim who wants to join the programme the procedure in line with the Directive 2011/36/EU and in line with internal documents of the Ministry of Interior on the specialised programme part of which is also the identification process is taken. If there is an indication that the person could have been a victim of human trafficking, he/she is included in the programme regardless of his/her (non)cooperation with the law enforcement authorities. In cases of labour exploitation, we so far did not have a person who was referred as a victim based on the ESD, so we have no experiences in this regard. Some of the cases of labour exploitation within the human beings trafficking are from the point of view of determination unclear since there is a no clear distinction what can be considered as only particularly exploitative labour conditions breaching the Labour Code within suspicion of human trafficking. The reason mainly is that also in case the violence or threat of violence or restriction of personal freedom is not present, in human trafficking area it is necessary to take into account the abuse of the status of the offender, abuse of vulnerability or vulnerable status of the victim as tools or obligatory signs of human trafficking. Hence within the National Programme of Fight against Trafficking in Human Beings 2019 – 2023 the Slovak Republic specified as one of its goals to define the distinction between trafficking in human beings for the purpose of forced labour and bad (exploitative) labour conditions with a deadline until December 2023. The aim is to analyse the cases of human trafficking for the purpose of</p>
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			labour exploitation and the breach of the Labour Code regarding the bad labour conditions. The aim is to define a borderline between these 2 phenomenon.
	EMN NCP Slovenia	Yes	<p>1. Yes</p> <p>2. Under Slovenian legislation, the definition of THB is provided in Article 113(1) of the Criminal Code which states: »Whoever with the purpose of exploitation of prostitution or other forms of sexual abuses, forced labour, slavery, servitude, commission of criminal offences or trafficking in human organs, human tissue or blood, buys, takes over, accommodates, transports, sells, hands over or disposes in another manner the other person, or recruits, exchanges or transfers control over such a person or serves as an agent in such acts, irrespective of the consent of such a person, shall be punished by imprisonment of one up to ten years and by a fine.»</p> <p>In Slovenia, the conditions for crimes of trafficking in human beings for the purpose of forced labour are far more stringent than for other forms of exploitation of workers (including the conditions stated in the ESD). First of all, trafficking in human beings must include all three components: an action, the use of certain means and the purpose of exploitation. Moreover, according to ILO Forced Labour Convention, 1930 (No. 29) the concept of forced labor requires two elements:</p> <ul style="list-style-type: none"> - a work or service is awarded to someone under threat of punishment, and - the work is carried out involuntarily.

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			<p>3. Victims of labour exploitation can be detected by competent governmental institutions as well as non-governmental organizations, while the official identification of victims of trafficking in human beings can only be made by the Police.</p> <p>4. Yes. Article 2, Point 27 of the Foreigners Act (Official Gazette of the Republic of Slovenia, No. 91/21 - official consolidated text and 95/21 - amended, hereinafter: Foreigners Act) defines the victim of the illegal employment as: »Victim of illegal employment shall mean a foreign minor who is not an EU citizen and is employed or works while illegally staying in the Republic of Slovenia, or a foreigner who is not an EU citizen and is employed or works in particularly exploitative working conditions as specified in the Act governing the prevention of undeclared employment and work.« The issuance of permission to stay and temporary residence permits for victims of illegal employment is regulated by Article 50 of the Foreigners Act. The police shall allow a victim of illegal employment, who is staying illegally in the Republic of Slovenia, ex officio or upon the victim's request, to stay for a period of 90 days in order to decide whether or not to cooperate as a witness in criminal proceedings against the employer regarding the criminal offence of illegal employment or if he or she has brought an action against his or her employer for the enforcement of employment rights. On reasonable grounds, a victim of illegal employment may be allowed to stay for an additional period of up to 90 days. A stay may be refused if the residence of a victim illegal employment in the</p>
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			<p>Republic of Slovenia would represent a threat to the public order, security or international relations of the Republic of Slovenia, or if there is a suspicion that his or her residence in the country will be associated with terrorist or other violent acts, illegal intelligence activities, drug trafficking or the commission of any other criminal acts.</p> <p>Notwithstanding other conditions set out in the Foreigners Act, a victim of illegal employment may be issued a temporary residence permit if he or she is willing to participate as a witness in criminal proceedings, as confirmed by the competent public prosecutor, and if it has filed a lawsuit against the employer for the exercise of rights arising from the employment relationship and its presence in the territory of the Republic of Slovenia is important for court proceedings, which is confirmed by the competent court</p> <p>A temporary residence permit shall not be issued to a victim of illegal employment in the following cases:</p> <ul style="list-style-type: none">-if the conditions for issuing a permit referred to in the preceding paragraph are not met;- if his or her residence in the Republic of Slovenia would represent a threat to the public order, security or international relations of the Republic of Slovenia, or if there is a suspicion that his or her residence in the country might be associated with terrorist or other violent acts, illegal intelligence activities, drug trafficking or the commission of any other criminal acts;-if during a permit procedure it is determined that a victim of illegal employment has made voluntary contact with the employer who is suspected, charged with or accused of a criminal offence of illegal employment;-if in a permit procedure there is a reasonable suspicion that the victim's criminal complaint is false or it can be reasonably concluded that his or her
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			<p>cooperation is false.</p> <p>A victim of illegal employment must apply for a temporary residence permit with the competent authority in the Republic of Slovenia prior to the expiry of the period of permitted stay in the Republic of Slovenia. A victim of illegal employment shall be issued a certificate of timely application by the competent state authority, which shall serve as a temporary residence permit until the administratively final decision on the application. A victim of illegal employment who has no means of subsistence shall be exempt from administrative fees, the cost of printed materials and the cost of interpretation and translation incurred in the temporary residence permit procedure.</p> <p>A temporary residence permit may be issued to a victim of illegal employment for the foreseen period of criminal proceedings but for not less than six months and not more than one year. Until the criminal proceedings are concluded and provided that the conditions laid down in this Article are met, a temporary residence permit may be extended, at the request of a victim of illegal employment for periods of up to one year. With regard to a victim of illegal employment whose employer failed to pay the sums due, a temporary residence permit may be extended beyond the conclusion of the criminal proceedings for a period of up to one year, at the victim's request and provided that the conditions laid down in this Article are met, upon the submission of evidence of an action brought for the payment of the sums due. If the sums due are paid before the expiry of the residence permit, the victim of illegal employment must notify the administrative unit that issued the residence permit or the administrative unit in the area of his or her residence.</p> <p>A subsequent temporary residence permit may be issued to a victim of</p>
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			<p>illegal employment for another reason for residence in the Republic of Slovenia if he or she complies with the conditions for being issued such a permit. An application for a subsequent permit must be lodged prior to the expiry of the previous permit.</p> <p>5. Yes. During the authorised period of stay, victims of illegal employment shall enjoy the rights guaranteed by the Foreigners Act to foreigners who are allowed a temporary stay, and the right to free translation and interpretation. The police and non-governmental organisations must inform such victims of the possibility of and conditions for acquiring a residence permit, while in cases where the victim of illegal employment is an unaccompanied minor, they shall make every effort to establish contact with his or her family.</p> <p>A victim of illegal employment who has been issued a temporary residence permit and has no means of subsistence shall have the right to emergency health care in accordance with the Act governing health care and health insurance, and to financial assistance in the amount and manner specified for financial assistance in the Act governing social security benefits. Funds for the payment of financial assistance shall be provided by the social work centre in the area of the foreigner's residence. A victim of illegal employment may take up employment or work with another employer during the validity of the temporary residence permit under the same conditions.</p>
	EMN NCP	Yes	1. Yes

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	Spain		<p>2. According to article 117a.9 of our Penal Code, the actual labor exploitation is punished separately when the aim of trafficking is such labor exploitation. This means that sanctions are added instead of having to choose between trafficking (art. 177a) and crimes against workers (arts. 311-318).</p> <p>3. Since it is a crime, this is determined by the court. Police forces and Labor Inspection take jurisprudence into account when deciding to switch from administrative to criminal proceedings. In general, "particularly exploitative" should be a situation close to servitude.</p> <p>4. Article 59a of our Alien Law establishes the procedure for victims of trafficking, including for labor exploitation. Article 59 sets a similar procedure for victims and witnesses who cooperate in criminal cases against human smuggling, labor exploitation, labor trafficking or prostitution. There is no reflection period.</p> <p>5. Aid and assistance are provided, although the measures are not as extensive as in trafficking cases.</p>
	EMN NCP Sweden	Yes	<p>1. Yes</p> <p>2. Sweden has provisions on "forced labour" (trafficking in human beings) and "forced labour or work under unreasonable conditions" (human exploitation, which does not amount to trafficking in human beings). The</p>

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			<p>latter provision entered into force in 2018. It encompasses forced begging also. The unreasonable conditions mentioned could for example entail work for very low pay or that a worker is subjected to unacceptable safety conditions. Whereas the offense of trafficking in human beings does not require that exploitation has taken place, i.e. taking trafficking measures suffices, the offense of human exploitation requires that it has. The definition human exploitation is similar to that in the Employer Sanctions Directive. It does not, however, require irregular stay.</p> <p>3. Primarily The Swedish Police Authority and the Swedish Work Environment Authority (detect) in work place inspections and other measures. The Swedish Migration Agency and social partners also play a role in detection. Ultimately, courts rule and determine.</p> <p>4. There is no specific procedure for presumed victims of particularly exploitative working conditions (human exploitation). Provisions to grant residence permits for cooperation in criminal proceedings is not limited to victims of human trafficking. For example, in 2021 a large number of such permits were issued to presumed victims of human exploitation. The Swedish Migration Agency prioritises such applications and they are normally examined and finalised within two working days.</p> <p>5. Yes, victims of human exploitation can receive aid and assistance on the same conditions as victims of trafficking in human beings.</p>
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