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Ad-Hoc Query on 2022.31 Migration legislation provisions for the entry and residence of TCNs in the territory of a Member State

Requested by EMN NCP Greece on 3 June 2022

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

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1. BACKGROUND INFORMATION

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According to Greek migration legislation, in order for a third-country national to apply for a residence permit, he/she must have previously entered the country as a holder of a national (type D) visa, with the exception of certain categories of residence permits. Recently, Greece is considering amending national migration legislation on issues of entry and residence for third-country nationals.

In this framework and seeing that the introduction of the amendment is going to be done soon, we would like to ask EMN Member States to answer the following questions.

As discussed with the co-chair of the Ad-hoc Query Working Group we will request the answers by 24 June 2022

We would like to ask the following questions:

1. In your member state does national legislation provide for a TCN, who has applied for residence permit (without having entered the territory as a holder of a visa) to have the residence permit delivered by consular authorities of your state in their country of origin?
YES/NO
2. If your answer to Q1 is YES, for which categories of residence permits is this provision applicable?
3. If your answer to Q1 is YES, please describe briefly the relevant procedure for the different categories of residence permits listed under Q2
4. Does your national legislation provide that a residence permit may be issued to a TCN who enters the territory with a visa granted in accordance with the Schengen acquis (f.ex visa C or visa VTL)? YES/NO
5. If your answer to Q4 is YES, for which categories of residence permits is this provision applicable?



We would very much appreciate your responses by 24 June 2022.

2. RESPONSES

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		Wider Dissemination ²	
	EMN NCP Belgium	Yes	<ol style="list-style-type: none"> 1. No. The actual residence permit has to be obtained through the municipal authorities or the Office of Foreigners. 2. N/A 3. N/A 4. Yes 5. <ul style="list-style-type: none"> • A single permit can be obtained from a legal short stay in Belgium • A residence permit for study purposes can be obtained from a legal stay in Belgium. The TCN student has to hand in their application for a residence permit in the municipality where they are residing before their legal stay ends and has to be enrolled at a recognised institution of higher education to pursue a full-time study at the time of application. • In certain cases, a residence permit for family purposes can be obtained from a legal stay in Belgium.
	EMN NCP Bulgaria	Yes	<ol style="list-style-type: none"> 1. No 2.

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>3.</p> <p>4. No</p> <p>5.</p>
	EMN NCP Croatia	Yes	<p>1. Yes. (depending on the technical possibilities in certain diplomatic missions or consular offices of the Republic of Croatia)</p> <p>2. A third-country national who requires a visa to enter the Republic of Croatia and has been granted temporary residence in the Republic of Croatia shall submit an application for a residence permit at a diplomatic mission or consular office of the Republic of Croatia.</p> <p>3. There is no difference in the categories of issued residence permits from Q2. The obligation to apply for a residence permit in a diplomatic mission or consular office of the Republic of Croatia depends on whether a third-country national needs a visa to enter the Republic of Croatia. In that case, a third-country national who requires a visa to enter the Republic of Croatia and has been granted temporary residence in the Republic of Croatia shall submit an application for a residence permit at the diplomatic mission or consular office of the Republic of Croatia on the prescribed form. After establishing the identity of the third-country national, the data are printed in the prescribed form from the system of the Ministry of Foreign and European Affairs, and the applicant confirms the accuracy of the printed data by signing the form. The police administration or police station or diplomatic mission or consular office of the Republic of Croatia shall issue a certificate of the submitted request. When the application for a residence permit is submitted to a diplomatic mission or consular office of the Republic of Croatia, the prepared residence permit is taken over exclusively at the diplomatic mission or consular office of the Republic of Croatia where the application was submitted.</p> <p>4. Yes.</p> <p>5. There is no difference in residence permits, but it depends on whether the third-country national needs a visa to enter.</p>

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	EMN NCP Cyprus	Yes	<ol style="list-style-type: none"> 1. No. All residence permits are delivered personally to the TCN or his/her legal representative in Cyprus. 2. N/A 3. N/A 4. N/A. Cyprus is not a full member of the Schengen area. 5. N/A
	EMN NCP Czech Republic	Yes	<ol style="list-style-type: none"> 1. NO 2. N/A 3. N/A 4. NO 5. N/A
	EMN NCP Estonia	Yes	<ol style="list-style-type: none"> 1. Yes. 2. This provision is applicable to following categories of residence permits: <ol style="list-style-type: none"> 1) to settle with a spouse; 2) to settle with a close relative; 3) for study; 4) for employment; 5) for enterprise.



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			<p>3. According to Estonian legislation a TCN can submit an application for a residence permit to the respective embassy of Estonia or if TCN is staying legally in Estonia, to Police and Border Guard Board. The residence card shall be issued to TCN in person at the embassy of Estonia or the service office of the Police and Border Guard Board indicated in temporary residence permit application.</p> <p>When submitting the application at an embassy, the processing of the application shall begin when the application arrives at the service office of the Police and Border Guard Board in Estonia, who shall verify whether the necessary documents for application have been properly submitted and whether the conditions necessary for the issue of the residence permit are satisfied.</p> <p>4. Yes.</p> <p>5. This provision is applicable to all listed in answer to Q 2 categories of residence permits.</p>
+	EMN NCP Finland	Yes	<p>1. YES. The usual process for residence permit applications submitted outside Finland is that the residence permit card is delivered to the Finnish embassy where the application was submitted. Since June 2022, a new fast track process was introduced for certain types of residence permit applications where it is possible for the Finnish Immigration Service to issue a D-type visa along with a residence permit to allow for a faster entry into Finland after receiving a positive decision on a residence permit application. Applicants issued with a D-type visa do not need to wait for the delivery of the residence permit card to the relevant embassy but can receive their residence permit card in Finland after entering the country with the D-type visa.</p> <p>2. All first residence permits. D-type visa is available for specialists, EU Blue Card holders, start-up entrepreneurs, intra-corporate transfers and the family members of holders of aforementioned residence permit types.</p> <p>3. Applications for first residence permits can be submitted in Finland at a Finnish Immigration Service service point or in a Finnish embassy abroad. Several Finnish embassies have outsourced the processes for registering residence permit applications and delivering decisions and residence permit cards to VFS Global. The applications are processed and decisions are issued by the Finnish Immigration Service. The applicant receives the decision either through the Finnish Immigration Service's Enter Finland online service, by mail or in person at the embassy or VFS Global service point. For applications submitted abroad the residence permit cards are usually delivered to the relevant Finnish embassy or VFS</p>



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			<p>Global service point with the exception of the fast track mentioned in the answer for Q1. In the fast track cases the visa sticker for the D-type will be printed on the applicant's passport by the relevant Finnish embassy and the applicant receives the residence permit card after their arrival in Finland. The process is the same for all residence permit types with the only difference being that the fast track process is only available for the residence permit types listed in the answer for Q2.</p> <p>4. YES. According to the Finnish Alien's Act (301/2004) section 49.1.5. an alien who has entered the country without a residence permit is issued with a temporary or continuous residence permit in Finland if the requirements for issuing such a residence permit abroad are met and if refusing the residence permit would be manifestly unreasonable.</p> <p>5. All categories.</p>
	EMN NCP France	Yes	<p>1. NO The foreign national must hold a long-stay visa obtained from the consular authorities in the country of residence to enter France and then apply for a residence permit on arrival in France.</p> <p>2. n/a</p> <p>3. n/a</p> <p>4. This may happen in certain cases (e.g. residence permits for students, trainees or students - mobility programme) but each case is examined individually and the decision is taken on a case by case basis.</p> <p>5. see Q4</p>
	EMN NCP Germany	Yes	<p>1. No.</p> <p>2. n/a</p> <p>3. n/a</p>



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			<p>4. Yes</p> <p>5. After entry with a Schengen visa (as defined in Art. 2 No. 2 of Regulation (EC) No. 810/2009), a residence permit may be issued to extend the stay for longer-term purposes if the prerequisites for a legal entitlement for the issuance exist and these prerequisites have only arisen after entry (Section 39 Ordinance Governing Residence). This does not apply in the case of an entitlement for the issuance of a residence permit for the purpose of studying, for a study-related internship or for participation in the European Voluntary Service.</p>
	EMN NCP Greece	Yes	<p>1. NO</p> <p>2. N/A</p> <p>3. N/A</p> <p>4. YES</p> <p>5. According to national migration legislation this provision is applicable in the following categories of residence permits:</p> <ol style="list-style-type: none"> 1) for investment activity 2) for real estate property owners 3) for digital nomads 4) for family members of an EU citizen or a Greek national
	EMN NCP Hungary	Yes	<p>1. The Hungarian National Directorate General of Aliens' Affairs will examine the application for a residence permit of a foreigner who wishes to enter Hungary for a longer period. In the case of a positive decision, the applicant will receive a visa (D) for a maximum stay of 30 days, which will allow him/her to enter Hungary to collect his/her residence permit.</p> <p>2. -</p>


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			3. - 4. No 5. -
	EMN NCP Italy	Yes	1. NO 2. N.A. 3. N.A. 4. NO 5. N.A.
	EMN NCP Latvia	Yes	1. No. 2. N/a 3. N/a 4. Yes. Legislation of Latvia does not prohibit issuance of residence permit to a TCN who has entered with for example visa C, however, this is not explicitly included in the legislation. Latvia's national legislation stipulates that after entering Latvia


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			<p>a TCN during his/her legal stay in Latvia shall arrive at the Office of Citizenship and Migration Affairs in order to receive a residence permit.</p> <p>5. This provision is applicable for any kind of residence permits.</p>
	EMN NCP Lithuania	Yes	<p>1. NO.</p> <p>There are several categories of TNCs who can submit the application for a temporary residence permit to the diplomatic representations or consular authorities of Lithuania in their country of origin:</p> <ul style="list-style-type: none"> • TNCs who have the right to restore the citizenship of Lithuania or are persons of Lithuanian origin (Article 28 of the Law on the Legal Status of Foreigners) • intra-corporate transferees (managers, specialists, interns) (Article 28 of the Law on the Legal Status of Foreigners) • employees, shareholders, and managers of a large investment project (Article 15⁵ of the Law on Investments) <p>However, in all these instances, foreigners or their authorized representatives must pick up their residence permits at the Migration Department in Lithuania.</p> <p>2. Applications for temporary residence permits may be submitted. However, as mentioned in the answer to Q1, residence permits are not delivered by consular authorities but must be picked up in person in Lithuania.</p> <p>3. When a TNC applies for a temporary residence permit from their country of origins at a diplomatic representation or a consular institution of Lithuania, a consular officer or another authorized employee</p> <ul style="list-style-type: none"> • checks that the consular fee has been paid • checks that the information in the application has been entered correctly • certifies the copies of the original documents submitted by the applicant • provides the applicant with information on further action • sends the application to the Migration Department by diplomatic mail. <p>The Migration Department registers the application and reviews it in accordance with its procedures. If it is decided not to issue a temporary residence permit, the Migration Department informs the TNC by email about the reasons for this decision. Similarly, if additional documents are required, communication is by email. If it is decided to issue a temporary residence permit, the TNC is informed that he/she must arrange a visit to the Migration Department to provide his/hers</p>


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			<p>biometric data.</p> <p>4. YES</p> <p>5. The categories of residence permits are not specified.</p>
	EMN NCP Luxembourg	Yes	<p>1. No.</p> <p>2. N/A.</p> <p>3. N/A.</p> <p>4. No. In order to issue a residence permit, the third country national should have applied for an authorisation of stay from their country of origin (article 39 of the amended law of 29 August 2008 on free movement of persons and immigration) for one of the following categories foreseen in article 38 of the Immigration Law: a) salaried worker; b) blue card holder (highly skilled worker); c) ICT; d) posted worker; e) seasonal worker; f) independent worker; g) sportsmen; h) students, i) pupil, j) volunteer; k) jeune au pair; l) researcher; m) family member; n) investor, and o) private reasons, and the Minister in charge of Immigration should have granted the authorisation of stay. In principle the third-country national cannot applied on the territory of Luxembourg as the application will be declared inadmissible.</p> <p>If a visa is required for entering the Schengen area, then the Luxembourg diplomatic mission or the diplomatic mission which represents the interests of Luxembourg will issue a D-Visa (long-term visa) for entering the Schengen area. Once the third-country national has declared her/his arrival to the municipality in which s/he is going to reside. At the latest within three months of the declaration of arrival, the issuance of the residence permit must be requested from the Immigration Department of the Ministry of Foreign and European Affairs, enclosing the following documents</p> <ul style="list-style-type: none"> - a copy of the full passport (all pages), currently valid; - a copy of the declaration of arrival issued by the local authority; - proof of suitable accommodation - proof of transfer of the issuing fee of EUR 80.00; <p>The application for a residence permit can only be processed by the Directorate of Immigration after receipt of the medical certificate granted after a compulsory medical examination. (article 40 (2)) of the Immigration Law).</p>



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			5. N/A.
	EMN NCP Netherlands	Yes	<p>1. No</p> <p>2.</p> <p>3.</p> <p>4.</p> <p>5. (Short elaboration on question 4): Most^[1] third country nationals need to apply for a provisional residence permit (Machtiging tot Voorlopig Verblijf – MVV), which functions as a Schengen type D visa and residence permit at the same time.^[2] This is called an Entry and Residence application (Toegang en Verblijf – TEV). It is often a sponsor who applies for the MVV and residence permit. A sponsor is a person or organisation that wants the TCN to come to the Netherlands. For example the family member in the Netherlands, the school or employer. In some cases, if there is a desire to stay in the Netherlands but no sponsor, the TCN can apply themselves. If the application is approved, the person can collect the MVV from the Dutch embassy or consulate in the country of origin or continual stay. The third country national can travel to the Netherlands with the MVV and collect the requested residence permit from the Immigration and Naturalisation Services (Immigratie- en Naturalisatiedienst – IND) in the Netherlands.</p> <p>Whether an MVV is required prior to entry is mainly determined by nationality. There are also specific situations that exempt TCN from applying for an MVV. For exemptions on the MVV, consult Mvv exemptions IND.</p> <p>^[1] You do not need a provisional residence permit if you have the nationality of one of the following countries: Australia, Canada, Japan, Monaco, New Zealand, Vatican City, United Kingdom, United States of America, South Korea, Switzerland. Immigration and Naturalisation Service (IND), 'Provisional residence permit (MVV)', https://ind.nl/en/provisional-residence-permit-mvv, last accessed on 13-6-2022.</p> <p>^[2] Immigration and Naturalisation Service (IND), 'Provisional residence permit (MVV)', https://ind.nl/en/provisional-residence-permit-mvv, last accessed on 13-6-2022.</p>


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	EMN NCP Poland	Yes	<p>1. No.</p> <p>2. n/a</p> <p>3. n/a</p> <p>4. YES</p> <p>5.</p> <p>To all, with exceptions of temporary residents permits granted for the purpose of work (temporary residence and work permit and Blue Card) – in case where a foreigner stays on the basis of a Schengen visa issued for the purpose of tourism and of visiting family or friends (the proceeding cannot be initiated in that case).</p> <p>The procedure for granting a temporary residence permit or permanent residence permit (national or under directive 2003/109/EC) cannot be initiated also if, while applying for a permit, a foreigner is staying in Poland on the basis of a visa Schengen authorizing only the entry to this territory, issued due to humanitarian reasons, due to the interest of the state or international obligations.</p>
	EMN NCP Slovakia	Yes	<p>1. No. Only a notification/decision on the (non)granting of a residence permit can be delivered to the third-country national via the consular office. Based on the above notification, the third-country national will apply at the Slovak Embassy for a national visa (if visa is needed for entry), which is used to enter the Slovak Republic. After entering the Slovak Republic, the third-country national can take over the residence permit card at the locally relevant Foreign Police Department in the Slovak Republic.</p> <p>2. NA</p> <p>3. NA</p> <p>4. Yes. Granted Schengen visa is not a reason to reject an application for residence. However, it is not possible to apply for a residence permit in the territory of the Slovak Republic with a type C Schengen visa, with the exceptions mentioned in</p>

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			<p>question 5.</p> <p>5. This applies to the following categories of residence permits:</p> <ul style="list-style-type: none"> • permanent residence for 5 years in case that the applicant has been issued a Schengen visa by another Member State on the basis of an agreement on representation in issuing Schengen visas between the Slovak Republic and another Member State • temporary residence if the applicant is a person with a granted status of the Slovak living abroad • based on the Article 45a of the Act on Residence of Foreigners based on which the Ministry of Interior can grant permanent residence for 5 years even without fulfilling of the conditions set by the above Act (in theory in some specific life situations)
	EMN NCP Slovenia	Yes	<p>1. Yes.</p> <p>2. First temporary residence permit.</p> <p>3. An application for the first temporary residence permit shall be lodged with a diplomatic mission or consular post of the Republic of Slovenia abroad. An application is then forwarded to the competent administrative unit in Slovenia which then decides on the application. If the first temporary residence permit is granted, the diplomatic mission or consular post of the Republic of Slovenia abroad shall serve a first temporary residence permit on a foreigner in person.</p> <p>4. Yes</p> <p>5. As per the general rule of the Foreigners Act, the first temporary residence permit in the Republic of Slovenia must be obtained before entry into the country, however, certain exceptions apply:</p> <p>1. Single permit for the purpose of employment or work</p> <p>A foreigner who legally resides in the Republic of Slovenia on the basis of a valid visa C issued by the competent authority of the Republic of Slovenia or another state party to the Convention implementing the Schengen Agreement of 14 June 1985, and wishes to reside in the Republic of Slovenia for the purpose of employment or work, may apply for a first single permit with the competent authority in the Republic of Slovenia, provided that the foreigner is:</p> <ul style="list-style-type: none"> - a sports trainer, a professional sportsperson or a private sports worker who is listed in the register of professional


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		<p>sportspersons or the register of private sports workers and has concluded a training contract, an employment contract or a work contract with a club or a sports organisation established in the Republic of Slovenia;</p> <ul style="list-style-type: none"> - a person who will perform a clerical profession or religious activity in a registered religious community or a person who will organise or lead charitable and humanitarian activities within an established humanitarian organisation or registered religious community in the Republic of Slovenia, and submits a certificate issued by the registered religious community on performing activities in this community or a certificate issued by the established humanitarian organisation on organising or leading charitable and humanitarian activities in this organisation; - a foreign media reporter or a foreign correspondent who is already accredited in the Republic of Slovenia; - a person who on the basis of the opinion of the responsible ministry demonstrates an economic interest in the Republic of Slovenia; - a person who on the basis of the opinion of the responsible ministry demonstrates an interest of the Republic of Slovenia in the area of education, science and culture. <p>2. Temporary residence permit for research, higher and higher education A researcher, university teacher or university associate who legally resides in the Republic of Slovenia on the basis of a valid visa C issued by the competent authority of the Republic of Slovenia or another state party to the Convention implementing the Schengen Agreement of 14 June 1985, and has concluded a hosting agreement with a research organisation or a higher education institution in the Republic of Slovenia, may also apply for a first temporary residence permit with the competent authority in the Republic of Slovenia.</p> <p>3. EU Blue Card A foreigner who legally resides in the Republic of Slovenia on the basis of a valid visa C issued by the competent authority of the Republic of Slovenia or another state party to the Convention implementing the Schengen Agreement of 14 June 1985, and has already concluded an employment contract with an employer, may apply for a first EU Blue Card with the competent authority in the Republic of Slovenia. A foreigner may reside in the territory of the Republic of Slovenia for 90 days from the date of entering the country or until the expiry of the permit or visa, if this period is shorter. The foreigner or his or her employer must apply for a first EU Blue Card with the competent authority in the Republic of Slovenia within 30 days of entering the Republic of Slovenia.</p> <p>4. Temporary residence permit for study purposes A foreigner who legally resides in the Republic of Slovenia on the basis of a valid visa C issued by the competent authority of the Republic of Slovenia or another state party to the Convention implementing the Schengen Agreement of 14 June 1985 or on the basis of a visa D issued by the competent authority of another EU Member State for study purposes and who submits evidence of enrolment may apply for a first temporary residence permit with the competent authority in the</p>
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			<p>Republic of Slovenia.</p> <p>5. Foreigners of Slovenian descent A foreigner who is a Slovenian descendant to the second generation in direct descent and who legally resides in the Republic of Slovenia on the basis of a valid visa C issued by the competent authority of the Republic of Slovenia or another state party to the Convention implementing the Schengen Agreement of 14 June 1985, may apply for a first temporary residence permit with the competent authority in the Republic of Slovenia.</p> <p>6. A foreigner whose residence in the Republic of Slovenia is in the interests of the Republic of Slovenia A first temporary residence permit may also be issued to a foreigner who is already staying in the Republic of Slovenia.</p>
	EMN NCP Spain	Yes	<p>1. YES</p> <p>2. Investors, entrepreneurs, highly skilled workers (except Blue card), researchers, intra-corporate transferees, students, holders of non-lucrative visas and self-employed professionals.</p> <p>3. When the applicant has not yet entered the territory as a holder of a visa, following procedures apply:</p> <p>Investors and Entrepreneurs:</p> <ul style="list-style-type: none"> • TCN applies for a visa to the consular authorities. After checking that all requirements are met, consular authorities issue a visa, which is a valid document for residence for 1 year <p>Highly skilled workers (except Blue Card), researchers, and intra-corporate transferees:</p> <ul style="list-style-type: none"> • Employer applies online for a residence permit on behalf of the TCN to a specialized administrative body located in Spain. After checking that all requirements are met, the administrative body issues a residence permit to the TCN. Then, the TCN applies for a visa to the consular authorities abroad, which will issue a visa for a duration of 1 year. <p>Students, holders of non-lucrative visas and self-employed professionals:</p> <ul style="list-style-type: none"> • TCN applies for a visa to the consular authorities, which transfer the dossier to the immigration authorities in Spain. After checking that all requirements are met, immigration authorities send back the dossier to the consular authorities abroad, which will issue a visa which is a valid document for residence for 1 year.

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			<p>4. YES</p> <p>5. Investors, entrepreneurs, highly skilled workers (except Blue card), researchers, and intra-corporate transferees.</p>
	EMN NCP Sweden	Yes	<p>1. Yes. But Sweden doesn't process visas and resident permit at all mission abroad. For example within the Schengen area there is only five missions that deals with migration related issues. We also have these kind of exemptions in Asia for example.</p> <p>2. Generally all sorts of permits when it comes to TCN. It's also possible to conduct interviews, take biometrics and give out resident permits cards for example.</p> <p>3. Se above Q1</p> <p>4. The general rule in migration governance in Sweden is that a residence and work permit should be applied for and issued before entry in Sweden. However, some exceptions apply. Students, family reunification and seasonal workers are among those that may be issued a residence and work permit while remaining in the country if they meet the conditions in the individual case. In order to carry out these changes from within Sweden, student must have completed 30 credits and apply before the current permit expires if they meet the conditions in the individual case.</p> <p>5. Se Q4.</p>
