



AD HOC QUERY ON 2019.72 Legislation acts on Organizing and Facilitation of Unauthorised Crossing of State Border and Assisting in Unauthorised Stay in the Territory of the State

Requested by Ludmila Touskova on 17 July 2019

Compilation produced on 25 September 2019

Responses from Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Slovakia, Slovenia, Spain, Sweden, United Kingdom (24 in Total)

Disclaimer:

The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.

1. Background information

With this ad-hoc query, we would like to obtain more information about legislation on following criminal acts in other EU Member States:

- a) Organizing and Facilitation of Unauthorized Crossing of State Border,
- b) Assisting in Unauthorized Stay in the Territory of the State.

Disclaimer:

The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.

The replies of this AHQ will be used as an input for reflections as regards possible amendment of the Criminal Code concerning these criminal acts in the Czech Republic.

2. Questions

1. Does your Member State's Criminal Code provides a definition of above-mentioned criminal acts?

Please bear in mind that the precise title of the concrete criminal act is not crucial, decisive is the material rule incorporated in the provision.

2. If the answer to the first question is YES - can you provide us with wording of these criminal acts, including possible sentence/penalty?

We would very much appreciate your responses by **14 August 2019**.

3. Responses

1

		Wider Dissemination ²	
	EMN NCP	Yes	1. Yes.

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."



Disclaimer:

The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.

	Austria		<p>---</p> <p>Source: Ministry of the Interior</p> <p>2. Art. 114 Aliens Police Act 2005 - Smuggling of Persons Legislative status taken into account: 31.07.2019</p> <p>1. Any person who facilitates the unlawful entry or transit of an alien in/through a member state of the European Union or a neighbouring country of Austria with the intent to enrich oneself or a third person unlawfully, is to be sentenced by the court to imprisonment of up to two years.</p> <p>2. Anyone who has already been convicted of smuggling within the meaning of para 1 within the last five years, is to be sentenced to imprisonment of up to three years. A conviction by a foreign court in proceedings in accordance with the principles of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms is also deemed as such.</p> <p>3. Anyone who commits the offence according to para 1</p> <ol style="list-style-type: none"> 1. commercially (Art. 70 Criminal Code), 2. with regard to at least three aliens or 3. in a way that places the alien in a state of torture for a longer time, especially during transportation <p>is to be sentenced by the court to imprisonment of six months to five years.</p> <p>4. Anyone who commits the offence under para 1 as a member of a criminal organisation or in such a way that the life of the alien, to whom the offence relates, is endangered, is to be sentenced by the court to imprisonment of one to ten years.</p> <p>5. Aliens, whose unlawful entry or transit is facilitated by the offence, are not to be punished as involved in the offence (Art. 12 Criminal Code). Their return or deportation may wait, if and as long as this is necessary to hear them about the facts of the case.</p> <p>6. In the event of imminent danger, the bodies of the public security service are authorised to provisionally secure objects carried by the perpetrator or means of transport or containers used to commit the offence, in order to secure confiscation (Art. 19a Criminal Code), forfeiture (Art. 20 to 20c Criminal Code) or requisition (Art. 26 Criminal Code). The loading of the means of transport may be handed over to the holder of the registration licence or his/her representative. The court shall be informed immediately of the measures taken.</p> <p>7. Para 1 to 4 shall apply to offences committed abroad, irrespective of the criminal laws of the place of the offence, if Austrian interests have been violated by it.</p>
--	---------	--	--


Disclaimer:

The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.

			<p>Art. 115 Aliens Police Act 2005 – Remunerated assistance to unauthorised residence Legislative status taken into account: 31.07.2019 1. Any person, who with the intent of unlawfully enriching himself or a third party by paying a remuneration not of minor value, facilitates the unauthorised residence of an alien in the territory of a Member State of the European Union is to be sentenced by the court to imprisonment of up to one year or a fine of up to 360 daily rates. 2. Anyone who commits the offence commercially or in relation to a larger number of aliens is to be sentenced by the court to imprisonment of up to three years. 3. The alien, who benefited or was to benefit from the assistance according to para 1, is not to be punished as involved in the offence. 4. The proceeding concerning the offence referred to in para 1 shall be the responsibility of the courts of first instance. --- Source: Ministry of the Interior</p>
	EMN NCP Belgium	Yes	<p>1. The Immigration Act of 15.12.1980 (so not the Criminal Code) contains a definition of human smuggling.</p>
	EMN NCP Bulgaria	Yes	<p>1. According to the Criminal Code of the Republic of Bulgaria, art. 279. para. 1 - Whosoever enters or exits through the state border without permit of the respective bodies of the authority or, though by a permit, however not at the places determined for that purpose, shall be punished by imprisonment.</p> <p>2. According to the Criminal Code of the Republic of Bulgaria, art. 280. para. 1 - Whosoever takes across the border of the country individuals or groups of people without permit of the respective</p>

Disclaimer:

The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.

			<p>bodies of the authority or, though by a permit but not at the places determined for that purpose, shall be punished by imprisonment. Art. 281. Para. 1 Whoever, with the purpose of obtaining for himself or for somebody else property benefit, illegally assists a foreigner to reside or move into the country contrary to the law, shall be punished by imprisonment</p> <p>The quoted legislation in the current answer explains the measures which are foreseen when implementing the imposition of punishment for the organization, facilitation and support of unregulated stay and crossing of the state border in the Republic of Bulgaria.</p>
	<p>EMN NCP Croatia</p>	<p>Yes</p>	<p>1. Yes</p> <p>2. The Criminal Code defines criminal acts, as follows:</p> <p>Unlawful Entry into, Movement or Residence in the Republic of Croatia, another EU Member State or Signatory of the Schengen Agreement Article 326 (1) Whoever enables or assists out of gain another person to illegally enter, move or reside in the Republic of Croatia or another EU Member State or Signatory of the Schengen Agreement shall be punished by imprisonment from one to eight years. (2) If during the commission of the criminal offence referred to in paragraph 1 of this Article the life or limb of a person illegally entering, moving or residing in the Republic of Croatia or another EU Member State or Signatory of the Schengen Agreement is endangered, or the said person is treated in an inhumane or degrading manner, or the offence is committed by a public official in the performance of his or her official duties, the perpetrator shall be punished by imprisonment from three to twelve years.</p> <p>Committing a Criminal Offence as a Member of a Criminal Association</p>



Disclaimer:

The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.

			<p>Article 329</p> <p>(1) Whoever, knowing about the aim of a criminal association or its criminal activities, commits a criminal offence as a member of such an association or incites another to commit a criminal offence as a member of such an association shall be punished by:</p> <p>3. imprisonment from three to twelve years in the case of a criminal offence for which a maximum penalty of eight years is prescribed;</p> <p>4. imprisonment from three to fifteen years in the case of a criminal offence for which a maximum penalty of ten or twelve years is prescribed;</p> <p>(2) Whoever, knowing about the goal of a criminal association or its criminal activity, assists another to commit a criminal offence as a member of such an association shall be punished by imprisonment prescribed in paragraph 1 of this Article or his or her punishment may be mitigated .</p> <p>(3) If the perpetrator referred to in paragraph 1 or 2 of this Article substantially contributes to the discovery of a criminal association, his or her punishment may be mitigated.</p> <p>The Law on Foreigners also defines such acts as misdemeanors, as follows:</p> <p>Prohibition to assist a foreigner</p> <p>Article 43</p> <p>(1) It is prohibited to assist and attempt to assist a foreigner in illegal crossing of the state border, in transit across the state territory if the alien entered the Republic of Croatia illegally, and in his illegal stay.</p> <p>Article 225</p> <p>(3) The punishment of imprisonment in the duration of up to 60 days and a fine in the amount of HRK 23,000.00 for each foreigner provided assistance shall be imposed on a natural person who assisted or attempted to assist the foreigner in the illegal crossing, transit and illegal stay in the Republic of Croatia (Article 43).</p> <p>(4) A fine in the amount of HRK 50,000.00 shall be issued against a legal person in the case referred</p>
--	--	--	---

Disclaimer:

The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.

			<p>to in paragraphs 2 and 3 of this Article, and a fine in the amount of HRK 23,000.00 against the responsible person in the legal person, for each foreigner provided transport or assistance. (5) In the case of misdemeanors referred to in paragraphs 3 and 4 of this Article, the protective measure of seizure of items and the protective measure of prohibition to perform the activity may also be issued.</p>
	EMN NCP Cyprus	Yes	<p>1. No, but the Aliens and Immigration Law does.</p> <p>2. Please see the attached file with the relevant articles of the Aliens and Immigration Law cypriot_immigration_law.docx</p>
	EMN NCP Czech Republic	Yes	<p>1. Yes</p> <p>2. The current wording in the Criminal Code of above-mentioned criminal acts in the Czech Republic is as follows: Section 340 of Act No. 40/2009 Coll., Criminal Code <i>Organizing and Facilitation of Unauthorized Crossing of State Border</i> (1) Whoever organizes for another unauthorized crossing of a state border or whoever facilitates or enables another to cross a state border without authorization or facilitates or assists another after crossing a state border in transportation through the territory of the Czech Republic or whoever organizes such transportation, will be sentenced to imprisonment for up to two years or to prohibition of certain activity. (2) An offender will be sentenced to imprisonment for six months to five years, to confiscation of assets or to a pecuniary penalty, if he a) commits the act referred to in sub-section (1) as a member of an organized group,</p>





Disclaimer:

The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.

			<p>b) exposes another person to inhumane or humiliating treatment by such an act, c) commits such an act for payment, d) commits such an act repeatedly, or e) commits such an act with the intention to conceal or facilitate commission of another criminal act. (3) An offender will be sentenced to imprisonment for two to eight years or to confiscation of assets, if he</p> <p>a) commits the act referred to in sub-section (1) as a member of an organized group an for payment, b) exposes another person to risk of death by such an act, c) causes grievous bodily harm by such an act, d) gains for himself or for another substantial profit by such an act, e) commits such an act with a weapon, or f) commits such an act in a state of national peril or a state of war. (4) An offender will be sentenced to imprisonment for five to twelve years, eventually in parallel to this sentence also to confiscation of assets, if he</p> <p>a) causes death by the act referred to in sub-section (1), b) causes grievous bodily harm of at least two persons by such an act, c) gains for himself or for another extensive profit by such an act, d) commits such an act as a soldier in a state of national peril or a state of war. (5) Preparation is criminal.</p> <p>Section 341 of Act No. 40/2009 Coll., Criminal Code <i>Assisting in Unauthorized Stay in the Territory of the Czech Republic</i> (1) Whoever assists another person in unauthorized stay in the territory of the Czech Republic with the intention to gain material or other profit, will be sentenced to imprisonment for up to one year or to prohibition of certain activity. (2) An offender will be sentenced to imprisonment for up to three years, if he</p> <p>a) organizes the act referred to in sub-section (1), b) commits such an act as a member of an organized group, c) commits such an act repeatedly, or d) commits such an act with the intention to conceal or facilitate commission of another criminal act. (3) An offender will be sentenced to imprisonment for six months to five years, to confiscation of assets or to a pecuniary penalty, if he</p>
--	--	--	---




Disclaimer:

The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.

			<p>a) gains for himself or for another substantial profit by the act referred to in sub-section (1), or b) commits such an act in a state of national peril or a state of war. (4) An offender will be sentenced to imprisonment for two to eight years, eventually in parallel to this sentence also to confiscation of assets, if he a) gains for himself or for another extensive profit by the act referred to in sub-section (1), or b) commits such an act as a soldier in a state of national peril or a state of war.</p>
	EMN NCP Estonia	Yes	1. Yes.
	EMN NCP Finland	Yes	1. Yes, Finland has legislation on point a) but not on point b).
	EMN NCP France	No	
	EMN NCP Germany	Yes	1. Yes.


Disclaimer:

The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.

	<p>EMN NCP Greece</p>	<p>Yes</p>	<p>1. Yes.</p> <p>2. Law.4251/2014, article 29, sections 1 and 6</p> <p>1. Third country nationals are forbidden from the rental of real estate when they don't have a passport or other travel document which is approved from national agreements, and a valid visa in the country or a residence permit.</p> <p>6. Whoever facilitates the illegal stay of a third country national or holds back the investigation of the police authorities for tracking down, apprehend and return, is punished with imprisonment for at least one (1) year and with penalty fee of at least five thousand (5.000) euro. If the above acted with respect to illegal profit, the punishment is imprisonment for at least two (2) years and penalty fee of at least ten thousand (10.000) euro.</p>
	<p>EMN NCP Hungary</p>	<p>Yes</p>	<p>1. Currently there is an ongoing infringement procedure against Hungary because of a similar provision. Because of the ongoing infringement procedure we are not able to share further information regarding the specific nature of the provision.</p> <p>2. N/A</p>
	<p>EMN NCP Italy</p>	<p>Yes</p>	<p>1. Italian legislation on the above mentioned crimes is disciplined by the article 12 of the Legislative Decree n. 286/1998 (Testo Unico, T.U) 286/1998 (Consolidated Act on Immigration). According to these provisions, the crime of Organizing and Facilitation of Unauthorized Crossing of State Border refers to the execution of acts intended to favor the entry of a foreigner citizen into the national territory or those actions intended to secure illegal entry into another State of which the person is not a national or does not have the right of permanent residence. This crime is punishable by imprisonment lasting from one to five years and a financial penalty with an amount of 15.000 euros</p>

Disclaimer:

The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.

			<p>for each person illegally brought into the State. In addition, it should be mentioned that the crime of facilitating illegal migration not only refers to the activities strictly related to favor the entry of foreign citizens into the territory of the State but also to those intended to guarantee the success of such operations. Moreover, these sanctions can be enlarged with the imprisonment from 5 to 15 years if one of the following cases occurs:</p> <ul style="list-style-type: none"> The act refers to the illegal entry or stay of 5 or more persons; The life of the persons carried has been exposed to real danger in order to illegally bring them into the State or guaranteeing their illegal stay; The person illegally brought into the State has been exposed to inhuman or degrading treatment; The fact is organized by three or more persons with each using international transport services through the furniture of false or illegally obtained documents ; The authors of the fact have the availability of weapons or explosive materials; <p>The crime of Assisting in Unauthorized Stay in the Territory of the State is disciplined by the article Italian legislation (Article 12, comma 5, Legislative Decree n. 286/1998) foresees that whoever favors the illegal permanence of the foreigner in the territory of the State shall be punished with imprisonment of up to four years and a fine of up to thirty million lire (to be converted in euros). In addition, comma 5 bis of Article 12, Legislative Decree n. 286/1998 foresees that whoever, gives accommodation or transfers, even on a rental basis, a property to a foreigner who does not have a residence permit at the time of signing or renewing the lease with the aim to obtain an unfair profit, is liable to imprisonment for a period of between six months and three years.</p> <p>2. Please See question 1.</p>
	<p>EMN NCP Latvia</p>	<p>Yes</p>	<p>2. Criminal law of the Republic of Latvia defines the liability for the following criminal offences.</p> <p>Section 285. Illegal Movement of a Person Across the State Border (1) For illegal movement of a person across the State border, the applicable punishment is the deprivation of liberty for a period of up to two years or temporary</p>



Disclaimer:

The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.

			<p>deprivation of liberty, or community service, or a fine.</p> <p>(2) For the commission of the same acts, if they have been committed by a public official, using its official position, or a group of persons according to a prior agreement, or for illegal movement of several person across the State border in one time, the applicable punishment is the deprivation of liberty for a period of up to five years or temporary deprivation of liberty, or community service, or a fine, with or without the confiscation of property.</p> <p>(3) For the commission of the same acts, if they have been committed by an organized group or they have resulted in serious consequences, or also who commits illegal movement of a large number of persons, that is, more than five persons at one time, across the State border, the applicable punishment is deprivation of liberty for a period of two and up to eight years, with or without confiscation of property and with or without probationary supervision for a period up to three years.</p> <p>(4) For the commission of the same acts, if they have resulted in death of two or several human beings, the applicable punishment is deprivation of liberty for a period of three and up to fifteen years, with probationary supervision for a period up to three years.</p> <p>Movement includes a wide spectrum of activities that can be committed by the offenders to provide (organize, facilitate and implement) illegal transfer (movement) of the persons across the border.</p> <p>Section 285.1 Ensuring the Possibility to Residing Illegally in the Republic of Latvia</p> <p>(1) For knowingly ensuring persons the possibility to reside illegally in the Republic of Latvia, if it has been committed by a group of persons or by a public official using his or her official position, the applicable punishment is the deprivation of liberty for a period of up to two years or temporary deprivation of liberty, or community service, or a fine, with the deprivation of the right to take up a specific office for a period of up to five years.</p> <p>(2) For knowingly ensuring persons the possibility to reside illegally in the Republic of Latvia, if it has been committed for the purpose of acquiring property or if such possibility is ensured for two or several persons, the applicable punishment is the deprivation of liberty for a period of up to four years or temporary deprivation of liberty, or community service, or a fine, with the deprivation of the right to take up a specific office for a period of up to five years and with or without confiscation of property.</p>
--	--	--	---

Disclaimer:

The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.

	<p>EMN NCP Lithuania</p>	<p>Yes</p>	<p>1. Yes.</p> <p>2. Please find the translation of Article 292 from the Chapter XLII "Crimes and misdemeanours against government order" of the Criminal Code of the Republic of Lithuania: *</p> <p>Article 292. Unlawful Transportation of Persons across the State Border</p> <p>1. A person who unlawfully <i>transports across the state border</i> of the Republic of Lithuania an alien not having a permanent place of residence in the Republic of Lithuania or transports or conceals in the territory of the Republic of Lithuania such an alien who has illegally crossed the state border of the Republic of Lithuania shall be punished by a fine or by arrest or by a custodial sentence for a term of up to six years.</p> <p>2. A person who commits the acts provided for in paragraph 1 of this Article for mercenary reasons or where this poses a threat to human life, shall be punished by a custodial sentence for a term of up to eight years.</p> <p>3. A person who organises the acts provided for in paragraph 1 of this Article shall be punished by a custodial sentence for a term of four up to ten years.</p> <p>4. A legal entity shall also be held liable for the acts provided for in this Article. *</p> <p>Wording of related articles 291 and 292(1): "291. Illegal Crossing of the State Border" and "Article 292(1). Employment of Third-Country Nationals Illegally Staying in the Republic of Lithuania" of the Criminal Code (same Chapter XLII) in English can be found via this link: https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/28b18041843311e89188e16a6495e98c?jfwid=-td2hf5dv1</p>
	<p>EMN NCP</p>	<p>Yes</p>	<p>1. Yes. Articles 382-4 to 382-5 of the Luxembourg Penal Code sanction the organizing and facilitation</p>


Disclaimer:

The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.

	Luxembourg		<p>of unauthorized crossing of State Border, and the assisting in unauthorized stay in the territory of the State.</p> <p>Article 382-4 covers not only illegal entry but also irregular stay in Luxembourg. Article 382-5 establishes the aggravated circumstances.</p> <p>2. Article 382-4: Any person who, through direct or indirect assistance, has knowingly facilitated or attempted to facilitate the unlawful entry, irregular transit or, for profit, the illegal stay of a third-country national on or through the territory of Luxembourg, the territory a Member State of the European Union or a State Party to the Convention signed in Schengen on 19 June 1990, or the territory of a State Party to the Protocol against the Smuggling of Migrants by Land, Sea and Air, additional to the United Nations Convention against Transnational Organized Crime, signed in Palermo on 12 December 2000, shall be sentenced to imprisonment of three to five years and a fine of from 10,000 to 50,000 euros or one of these penalties only.</p> <p>Article 382-5: The offense provided for in article 382-4 shall be sentenced to imprisonment of five to ten years and a fine of from 50,000 up to 100,000 euros in the following cases:</p> <p>1 ° when it was committed by a person who has authority over the victim or by a person who has abused the authority or facilities conferred by his functions;</p> <p>2 ° when it was committed by an officer or a public officer, a depositary or a law enforcement officer acting in the performance of his duties;</p> <p>3 ° when it was committed against a minor;</p> <p>4 ° when it has been committed by abusing the particularly vulnerable situation in which a person finds himself because of her/his illegal or precarious administrative situation, her/his precarious social situation, a state of pregnancy, a sickness, an infirmity or a physical or mental disability, so that the person has no real and acceptable choice other than to submit to the abuse;</p> <p>5 ° when it was committed by making direct or indirect use of fraud, violence, threats or any form of coercion;</p> <p>6 ° where the life of the victim has been endangered deliberately or by gross negligence;</p> <p>7° where the offense has caused an illness that appears to be incurable, a permanent physical or mental disability, the complete loss of an organ or of the use of an organ, or a serious mutilation;</p> <p>8 ° when the activity concerned is a usual activity;</p> <p>9° when it constitutes an act of participation in the principal or subsidiary activity of an association, whether or not the offender is an author.</p>
--	------------	--	---


Disclaimer:

The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.

	<p>EMN NCP Malta</p>	<p>Yes</p>	<p>1. Maltese Legislation imposes liability on any person involved in the organization and facilitation of unauthorized crossing of state border as well as on any person assisting in such unauthorized stay by virtue of article 337A of the Criminal Code and article 32(1)(a) of the Immigration Act (Cap 217 of the Laws of Malta).</p> <p>2. 337A. (1) Any person who with the intent to make any gain whatsoever aids, assists, counsels or procures any other person to enter or to attempt to enter or to leave or attempt to leave or to transit across or to attempt to transit across, Malta in contravention of the laws thereof or who, in Malta or outside Malta, conspires to that effect with any other person shall, without prejudice to any other punishment under this Code or under any other law, be liable to the punishment of imprisonment from six months to five years or to a fine (multa) of twenty-three thousand and two hundred and ninety-three euro and seventy-three cents (23,293.73) or to both such fine and imprisonment and the provisions of articles 21 and 28A and those of the Probation Act shall not apply:</p> <p>Provided that where the persons aided, assisted, counselled, procured or the object of the conspiracy as aforesaid number more than three the punishment shall be increased by one to three degrees: Provided also that where the offence is committed –</p> <p>(a) as an activity of a criminal organization; or</p> <p>(b) while endangering the lives of the persons aided, assisted, counselled, procured or the object of the conspiracy as aforesaid, the punishment shall always be increased by two degrees even when the first proviso does not apply.</p> <p>(2) Without prejudice to the provisions of article 5, the courts in Malta shall also have jurisdiction over the offence in this article where –</p> <p>(a) the offence is committed even if only in part in the territory of Malta or on the sea in any place</p>

Disclaimer:

The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.

			<p>within the territorial jurisdiction of Malta;</p> <p>(b) the offender is a Maltese national or permanent resident in Malta within the meaning of article 5(1)(d);</p> <p>(c) the offence is committed for the benefit of a legal person established in Malta.</p> <p>32.(1) Any person who –</p> <p>(a) aids or assists any person to land or attempt to land in Malta, or to reside in Malta, contrary to the provisions of this Act, or any person to land or attempt to land, or to reside in, or to leave any other State contrary to the law on entry, residence and exit of that State, or conceals or harbours any person whom he knows, or has reasonable ground for believing, to be in Malta contrary to the provisions of this Act</p> <p>shall be guilty of an offence and shall be liable, on conviction by the Court of Magistrates, to a fine (multa) not exceeding eleven thousand and six hundred and forty-six euro and eighty-seven cents(11,646.87) or to imprisonment for a term not exceeding two years or to both such fine and imprisonment, unless a greater punishment is established for such offence by another law:</p> <p>Provided that the Principal Immigration Officer may decide not to institute proceedings on any person who aids or assists any other person in any immediate situation of danger to land or attempt to land or transit through Malta, when such acts have been committed with a view to providing humanitarian assistance.</p>
	<p>EMN NCP Netherlands</p>	<p>Yes</p>	<p>1. Yes, with regard to 'Organizing and Facilitation of Unauthorized Crossing of State Border' the Dutch state provides for a certain understanding in Article 197a of the Dutch Code of Criminal</p>



Disclaimer:

The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.

			<p>Procedure.</p> <p>2. A. Regarding 'Organizing and Facilitation of Unauthorized Crossing of State Border' the Dutch Code of Criminal Procedure provides the following:</p> <ol style="list-style-type: none">1. Any person who provides assistance to another person to obtain entry to the Netherlands or to transit the Netherlands, another member state of the European Union, Iceland, Norway or any state which has acceded to the Protocol against the Smuggling of Migrants by Land, Sea and Air concluded in New York on 15 November 2000 supplementing the Convention against Transnational Organised Crime concluded in New York on 15 November 2000, or provides that person with opportunity, means or information enabling him to do so, while he knows or has serious reason to suspect that such entry or transit is unlawful, shall be guilty of the smuggling of human beings and shall be liable to a term of imprisonment not exceeding four years or a fine of the fifth category.2. Any person who in pursuit of gain provides assistance to another person to acquire residence in the Netherlands or another member state of the European Union, Iceland, Norway or any state which has acceded to the Protocol referred to in subsection (1), or provides that person with opportunity, means or information enabling him to do so, while he knows or has serious reason to suspect that said residence is unlawful, shall be liable to a term of imprisonment not exceeding four years or a fine of the fifth category.3. If any of the offences defined in subsections (1) and (2) is committed in the performance of any office or practice of any profession, a term of imprisonment not exceeding six years or a fine of the fifth category shall be imposed and the court may order disqualification of the person concerned from holding that office or practicing that profession and publication of its judgment.4. If any of the offences defined in subsections (1) and (2) is committed by a person who makes a profession or habit of it or by several persons in concert, a term of imprisonment not exceeding eight years or a fine of the fifth category shall be imposed.5. If any of the offences defined in subsections (1) and (2) results in grievous bodily harm or is likely to endanger the life of another person, a term of imprisonment not exceeding twelve years or a fine of the fifth category shall be imposed.6. If any of the offences defined in subsections (1) and (2) results in death, a term of imprisonment not exceeding fifteen years or a fine of the fifth category shall be imposed.7. In the application of this section, the Netherlands shall also be understood to mean the public
--	--	--	---

Disclaimer:

The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.

			<p>bodies Bonaire, St. Eustatius and Saba.</p> <p>B. With regard to 'Assisting in Unauthorized Stay in the Territory of the State': Illegal stay and assisting in Unauthorized Stay in the Territory of the State are not punishable. In 2013, a bill was submitted to criminalize the illegal stay of adult foreign nationals as a violation. With this, the government wanted to prevent and combat the illegal coming to and staying in the Netherlands. The proposal did not make humanitarian aid to illegal immigrants punishable. However, the bill was withdrawn in 2014. However, the Criminal Code (197b Penal Code) stipulates that providing employment to illegally staying foreigners is punishable. In addition, allowances (such as rent and healthcare allowances) can be refused due to the fact that a family member is not lawfully staying in the Netherlands.</p>
	EMN NCP Poland	Yes	<p>1. Yes, in the subject matter, three main offenses can be distinguished in the polish Penal Code (Act of June 6, 1997 - Penal Code / Journal of Laws. 2018.1600 CU with later amendments/):</p> <ol style="list-style-type: none"> 1. crossing the state border of the Republic of Poland contrary to regulations - art. 264 § 2 2. organization of crossing the state border of the Republic of Poland contrary to regulations - art. 264 § 3 of the Penal Code; 3. facilitating to another person to stay on the territory of the Republic of Poland against the law - art. 264 a of the Penal Code; <p>and in the Code of Petty Offences (the Act of 20 May 1971 Code of Offences / Journal of Laws 2019.821 j. with later amendments) crossing the state border of the Republic of Poland against the regulations as well as attempting and aiding and abetting are also defined in art. 49a.</p>
	EMN NCP Slovakia	Yes	<p>1. Yes.</p>

Disclaimer:

The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.

			<p>2. We provide both English and Slovak version of the wording of the crime of smuggling as regulated in the Criminal Code of the Slovak Republic.</p> <p>Smuggling Section 355</p> <p>(1) Any person who organises illegal crossing of the State Border of the Slovak Republic, or a transfer through its territory, for a person who is neither a citizen of the Slovak Republic nor a person with permanent residence in the territory of the Slovak Republic, or who enables such activity or aids and abets it, shall be liable to a term of imprisonment of one year to five years.</p> <p>(2) Any person who, with the intention of obtaining financial or other material benefit for himself or another either directly or indirectly, for a person who is neither a citizen of the Slovak Republic nor a person with permanent residence in the territory of the Slovak Republic,</p> <p>a) organises illegal crossing of the State Border of the Slovak Republic, or a transfer through its territory, or who enables such activity or aids and abets it, or</p> <p>b) for the purpose referred to in letter a), manufactures, procures, provides or has in his possession a forged passport or a forged identity card,</p> <p>shall be liable to a term of imprisonment of three to eight years.</p> <p>(3) The offender shall be liable to a term of imprisonment of seven to ten years if he commits the offence referred to in paragraphs 1 or 2,</p> <p>a) and obtains larger benefit for himself or another through its commission,</p> <p>b) by a reason of specific motivation,</p> <p>c) in a manner that may pose a danger to lifes and health of facilitated persons, or constitutes inhuman or degrading treatment or abuse of facilitated persons, or</p> <p>d) acting in a more serious manner.</p> <p>(4) The offender shall be liable to a term of imprisonment of ten to fifteen years if he commits the offence referred to in paragraphs 1 or 2,</p> <p>a) and causes grievous bodily harm or death through its commission,</p> <p>b) and obtains substantial benefit for himself or another through its commission, or</p> <p>c) as a member of a dangerous grouping.</p> <p>(5) The offender shall be liable to a term of imprisonment of twelve to twenty years if he commits the offence referred to in paragraphs 1 or 2,</p>
--	--	--	--



Disclaimer:

The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.

			<p>a) and causes grievous bodily harm or death to several persons through its commission, b) and obtains large-scale benefit through its commission, or c) under a crisis situation.</p> <p>Section 356 Any person who, with the intention of obtaining financial or other material benefit for himself or another either directly or indirectly, enables or helps a person, who is neither a citizen of the Slovak Republic or of another EU Member State or a national of the Contracting Party to the EEA Agreement nor a person with permanent residence in these territories to stay or get an illegal job in the territory of the Slovak Republic or in another EU Member State or the Contracting Party to the EEA Agreement shall be liable to a term of imprisonment of two to eight years.</p> <p>Prevádzachstvo § 355 (1) Kto pre osobu, ktorá nie je štátnym občanom Slovenskej republiky alebo osobou s trvalým pobytom na území Slovenskej republiky, organizuje nedovolené prekročenie štátnej hranice Slovenskej republiky alebo prechod cez jej územie, alebo také konanie umožní, alebo v ňom pomáha, potrestá sa odňatím slobody na jeden rok až päť rokov. (2) Kto v úmysle získať pre seba alebo iného priamo či nepriamo finančnú výhodu alebo inú materiálnu výhodu pre osobu, ktorá nie je štátnym občanom Slovenskej republiky alebo osobou s trvalým pobytom na území Slovenskej republiky, a) organizuje nedovolené prekročenie štátnej hranice Slovenskej republiky alebo prechod cez jej územie, alebo také konanie umožní, alebo v ňom pomáha, alebo b) na účel podľa písmena a) vyrobí, zaobstará, poskytne alebo drží falošný cestovný doklad alebo falošný doklad totožnosti, potrestá sa odňatím slobody na tri roky až osem rokov. (3) Odňatím slobody na sedem rokov až desať rokov sa páchatel potrestá, ak spácha čin uvedený v odseku 1 alebo 2 a) a získa ním pre seba alebo iného väčší prospech, b) z osobitného motívu, c) spôsobom, ktorý môže ohroziť životy a zdravie prevádzaných osôb alebo znamená neľudské zaobchádzanie alebo ponižujúce zaobchádzanie, alebo zneužívanie prevádzaných osôb, alebo</p>
--	--	--	---


Disclaimer:

The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.

			<p>d) závažnejším spôsobom konania. (4) Odňatím slobody na desať rokov až pätnásť rokov sa páchatel' potrestá, ak spácha čin uvedený v odseku 1 alebo 2 a) a spôsobí ním ťažkú ujmu na zdraví alebo smrť, b) a získa ním pre seba alebo iného značný prospech, alebo c) ako člen nebezpečného zoskupenia. (5) Odňatím slobody na dvanásť rokov až dvadsať rokov sa páchatel' potrestá, ak spácha čin uvedený v odseku 1 alebo 2 a) a spôsobí ním ťažkú ujmu na zdraví viacerým osobám alebo smrť viacerých osôb, b) a získa ním prospech veľkého rozsahu, alebo c) za krízovej situácie.</p> <p>§ 356 Kto v úmysle získať pre seba, alebo iného priamo či nepriamo finančnú výhodu, alebo inú materiálnu výhodu osobe, ktorá nie je občanom Slovenskej republiky alebo občanom iného členského štátu Európskej únie alebo občanom zmluvného štátu Dohody o Európskom hospodárskom priestore, alebo nemá trvalý pobyt na ich území, umožní, alebo pomáha zotrvať, alebo sa nedovolené zamestnať na území Slovenskej republiky, iného členského štátu Európskej únie alebo zmluvného štátu Dohody o Európskom hospodárskom priestore, potrestá sa odňatím slobody na dva roky až osem rokov.</p>
	EMN NCP Slovenia	Yes	2. see above
	EMN NCP Spain	Yes	1. Yes


Disclaimer:

The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.

			<p>2. 1. Intentionally assisting a third country national to enter or transit through the Spanish territory in breach of the law: fine or three months to one year imprisonment. No punishment if only for humanitarian reasons. If it is done for profit, punishment is in the highest half of the range mentioned above. Aggravating circumstances, increasing punishment to 4 to 8 years imprisonment, are: If committed by a criminal organization. Extra aggravation for the chiefs of the organization. If life of migrants is put at risk or there is risk of serious injuries. If committed by an authority or a civil servant: additionally they lose their job and won't be able to apply again for any public job for 6 to 12 years. 2. Intentionally and for profit assisting a third country national to stay in Spain in breach of the law: fine or three months to one year imprisonment. In both cases, for legal persons: fine.</p>
	<p>EMN NCP Sweden</p>	<p>Yes</p>	<p>1. This is regulated in the Swedish Aliens Act Chapter 20 Paragraph 7 Any person who intentionally assists an alien to remain unlawfully in Sweden, a Member State of the European Union, or Iceland, Norway or Switzerland by hiding the alien or by some other such action shall, if the act has been committed for financial gain, be sentenced to prison for at most two years or, if there are mitigating circumstances, to a fine. paragraph 8 Any person who intentionally assists an alien to unlawfully enter or pass through Sweden, a Member State of the European Union or Iceland, Norway or Switzerland shall be sentenced for human smuggling to imprisonment for at most two years.</p>

Disclaimer:

The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.

	EMN NCP United Kingdom	Yes	<p>1. Yes.</p> <p>2. The relevant offences are contained within sections 25, 25A and 25B of the Immigration Act 1971. The definition of these offences can be found at http://www.legislation.gov.uk/ukpga/1971/77/section/25 http://www.legislation.gov.uk/ukpga/1971/77/section/25A http://www.legislation.gov.uk/ukpga/1971/77/section/25B The maximum sanction for each of these offences is 14 years imprisonment, a fine or both.</p>
---	------------------------------	-----	--
