



EMN Ad-Hoc Query on The implementation and execution of EU Directives concerning public order or public security

Requested by Laura CLETON on 7th December 2016

Residence

Responses from Austria, Belgium, Croatia, Czech Republic, Estonia, Finland, Germany, Hungary, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Slovak Republic, Sweden, United Kingdom, Norway (17 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.

Background information:


The Advisory Committee for Migration Affairs (ACVZ) in The Netherlands is currently preparing a recommendation for the Dutch government on the application of public policy in migration affairs. By launching this EMN AHQ, the Committee wishes to enhance its understanding of the legislation and enforcement practices of public policy in other EU Member States.


The Qualification Directive, the Citizens Rights Directive and the Family Reunification Directive stipulate the rejection, withdrawal and refusal to renew of legal residence. The ACVZ would like to know how EU Member States have interpreted these legal provisions and how they have implemented them in their national systems.

Questions

1. How are the legal provisions from the Qualification Directive, Citizens Rights Directive and Family Reunification Directive with regard to public policy implemented in your Member State?
2. Could you send a text preferably in English, but if unavailable in your national language, of the article in which you have implemented the respective paragraphs?
3. Which criteria determine whether an application is rejected, or legal residence is withdrawn on the grounds of public order?
4. Which aspects are taken into account to determine whether the subject poses a genuine, present and sufficiently serious threat to public order?
5. What do you consider serious grounds of public policy or public security in the sense of article 28, paragraph 2 of the Citizens Rights Directive 2004/38/EG?
6. What do you consider imperative grounds of public security in the sense of article 28, paragraph 3 of the Citizens Rights Directive 2004/38/EG?
7. What do you consider a serious crime or a particular serious crime in the sense of article 14 and 17 of the Qualification Directive 2011/95/EU?
8. Do you have examples (e.g. of case law) of what constitutes a genuine, present and sufficiently serious threat to public order, preferably in English, but if unavailable in your national language?

Responses

	Country	Wider Dissemination	Response
	Austria	Yes	<p>1. Art. 14 para 4 of the Qualification Directive has been transposed in Art. 6 para 1 subparas 3 and 4 of the Austrian Asylum Act. Art. 17 para 1 lit d of the Qualification Directive has been transposed in Art. 9 para 2 subpara 2 and Art. 9 para 1 subpara 3a Asylum Act. Art. 27 and 28 of the Citizens Directive have been transposed in Art. 55 para 3 Settlement and Residence Act and in Art. 66 and 67 Aliens Police Act. Art. 6 of the Family Reunification Directive has been transposed in Art. 11 para 1 subpara 1 Settlement and Residence Act and in Art. 35 para 4 subpara 2 Asylum Act. The fundamental right to private and family life needs to be considered in such cases (Art. 11 para 2 subpara 1 in conjunction with para 4 subpara 1 Settlement and Residence Act; Art. 35 para 4 subpara 2 Asylum Act).</p> <p>2. English translations of the above mentioned Austrian legislation are available under http://www.unhcr.at/english/austrian-asylum-legislation.html .</p> <p>3. This is decided by the competent authority on a case-by-case basis. The decision has to be based on the anticipated behaviour of the foreigner in the future. The entire behaviour of the foreigner concerned has to be taken into account (see for instance, Administrative High Court, 15 April 2010, 2008/22/0005).</p> <p>4. This has to be decided by the competent authority on a case-by-case basis taking into account all relevant circumstances (see Question 3). It is not necessary that the foreigner concerned has been convicted of an offence (see Administrative High Court, 19 February 2014, 2011/22/0009).</p> <p>5. Art. 28 para 2 of the Citizens Rights Directive has been transposed through Art. 66 para 1 of the Austrian Aliens Police Act. Accordingly, an expulsion decision may only be issued against EEA-citizens or their family members with permanent residence, if their stay constitutes a grave danger (Ger. schwerwiegende Gefahr) for the public order or security.</p> <p>6. Art. 28 para 3 of the Citizens Rights Directive has been transposed through Art. 66 para 3 of the Austrian Aliens Police Act. Accordingly, an expulsion decision may only be issued against Union citizens who have resided in Austria for ten years, if it can be assumed due to the personal behavior of the foreigner that the stay in Austria would endanger the public security of Austria decisively and with lasting effect (Ger. wenn</p>


			<p>aufgrund des persönlichen Verhaltens des Fremden davon ausgegangen werden kann, dass die öffentliche Sicherheit der Republik Österreich durch seinen Verbleib im Bundesgebiet nachhaltig und maßgeblich gefährdet würde).</p> <p>7. According to Art. 17 para 1 of the Austrian Criminal Code, crimes are acts committed with intent, which are threatened with life imprisonment or imprisonment of more than three years. The status of subsidiary protection may be withdrawn if the foreigner has been convicted by an Austrian court for a crime within the meaning of Art. 17 Criminal Code or by a foreign court in a fair trial for a similar offence (Art. 9 para 2 Asylum Act). However, particularly serious crimes have to be more serious than “ordinary” crimes meeting this threshold.</p> <p>8. See, for example, the decisions of the Austrian Administrative High Court, 24 May 2016, Ra 2016/21/0143; 5 May 2015, Ra 2015/22/0059; 26 March 2015, 2013/22/0297, available under www.ris.bka.gv.at/vwgh .</p>
	Belgium	Yes	<p>1. See the table of equivalence in attachment.</p> <p>2. See the table of equivalence in attachment. The text in the table is in Dutch, because unfortunately we do not have a recent version of the Belgian Immigration Act in English.</p> <p>3. The Belgian Immigration Act is rather vague about this. Criteria to determine whether an application can be rejected or legal residence can be withdrawn on the grounds of public order, are not defined. Thus this is handled on a case-by-case basis. Of course the decision has to be proportional. Different articles of the Belgian Immigration Act mention it is possible to refuse or withdraw an application because of reasons of public order or national security. But there should be given careful consideration, besides the threat to public order, to inter alia family and private life. For example article 43 of the Belgian Immigration Act. (which is a transposition of article 28 of the Directive 2004/38/EG): ‘... When the minister or his representative considers taking such decision, he takes into account how long the individual has stayed on the territory, his age, his state of health, his family and economic situation, his social and cultural integration, and his links with his country of origin’.</p> <p>4. The terms ‘public order’ or ‘public security’ are abstract. The interpretation of these terms is a discretionary power of the Belgian State Secretary for Asylum Policy and Migration. Different aspects could be taken into</p>

account, for example the impact on society of the offence, how many offences the foreign national has already committed, whether or not the offence has a profit-making nature, the period of time since the last conviction, circumstances in which the offence was committed, whether or not the foreign national is willing to change his ways, ... It's not necessary that the foreign national has been convicted to be considered a genuine, present and sufficiently serious threat to public order. On numerous occasions the Belgian Council for Alien Law Litigation (Raad voor Vreemdelingenbetwistingen / Conseil du Contentieux des Etrangers) has ruled as follows: 'De beoordeling of een bepaalde gedraging de openbare orde schaadt, behoort tot de discretionaire bevoegdheid van de overheid. Het gedrag van een vreemdeling is primordiaal om vast te stellen of een vreemdeling een gevaar uitmaakt voor de openbare orde en de wetgever bepaalt nergens dat het gevaar voor de openbare orde enkel kan afgeleid worden uit veroordelingen of in verdenkingstellingen. (= The assessment whether or not a certain behavior harms public order, is a discretionary power of the government. The behavior of a foreign national is paramount to determine whether or not a foreign national is a danger to public order. The legislator has stated nowhere that a danger for public order can only be determined on the basis of convictions or indictments)'

5. Article 28 paragraph 2 of the directive 2004/38/EG has been transposed through article 45 § 3 (see the table of equivalence in attachment) of the Belgian Immigration Act. 'Serious grounds' haven't been further elaborated.

6. Article 28 paragraph 3 of the directive 2004/38/EG has been transposed through article 45 § 4 (see the table of equivalence in attachment) of the Belgian Immigration Act. 'Imperative grounds' haven't been further elaborated.

7. Articles 14/4 b and 17/1 b of the directive 2011/95/EU have been transposed through articles 55/3/1 § 1 and 55/4 § 1 of the Belgian Immigration Act (see the table of equivalence in attachment). 'serious crime' or 'Particularly serious crime' haven't been elaborated further. In line with article 14/4 of the directive, article 55/3/1 § 1 of the Belgian Immigration Act states that refugee status can be revoked on the basis of a particularly serious crime, but to do this a conviction by final judgment is necessary. On 07.06.2016 the Belgian Council for Alien Law Litigation made a ruling (nr. 169 319) relevant to this matter. A Somali national is arrested at sea by Belgian soldiers because of piracy. He is brought to Belgium where he is convicted. Later he applies for asylum. Because he is convicted by final judgment for a particularly serious crime, refugee status is refused and he is excluded from subsidiary protection. A violation of article 14 of the

			<p>directive 2011/95/EU is invoked, but the council rejects the appeal. (http://www.rvv-ccce.be/nl/arr/proc/volle-rechtsmacht/date/2016?search_arr=piraterij&=Toepassen).</p> <p>8. Examples of case-law: A. Ruling Belgian Council for Alien Law Litigation on 15.09.2014 (number 129 337, paragraph 2.1.3.). The contested decision is an expulsion decision with a 10 year entry ban. The foreign national has family in Belgium, including an underage daughter who has the Belgian nationality. Because he has been convicted more than once for drug related crimes, the Belgian Immigration Office believes that the foreign national poses a genuine, present and sufficiently serious threat. A violation of articles 20 and 21 (transposition of article 6.2 of directive 2003/86/EC) is invoked, but the council rules in favor of the Belgian Immigration Office. (http://www.rvv-ccce.be/nl/arr?search_arr=129337&=Toepassen). B. Ruling Belgian Council for Alien Law Litigation on 17.08.2016 (number 173 213, paragraph 3.5.2.3.). The contested decisions are an order to leave the territory with detention for the purpose of removal, and an 8 year entry ban. The court rules that the Belgian immigration Office is right in claiming that the foreign national poses a genuine, present and sufficiently serious threat, although the foreign national has already done his time in prison. (http://www.rvv-ccce.be/nl/arr?search_arr=173213&=Toepassen) C. Ruling Belgian Council for Alien Law Litigation on 29.06.2015 (number 148 780, paragraph 2.2.3.). The contested decision is an expulsion decision with a 10 year entry ban. The foreign national has family in Belgium (a wife and 4 underage children who all have the Dutch nationality). Because he has been convicted in both Belgium and the Netherlands for drug related crimes, the Belgian Immigration Office believes that the foreign national poses a genuine, present and sufficiently serious threat. A violation of article 43 (transposition of article 27 and 28 of the directive 2004/38/EC) is invoked, but the council rules in favor of the Belgian Immigration Office. (http://www.rvv-ccce.be/nl/arr?search_arr=148780&=Toepassen) Sources for the answers to this AHQ: • Immigration Office – Study Unit, Legal Department, Family Reunification Department and Department of Detainees • Office of the Commissioner General for refugees and Stateless Persons – Legal Department • Belgian Council for Alien Law Litigation – Website (only case law) • Belgian Immigration Act of 15.12.1980 • Law of 10.08.2015 amending the Belgian Immigration Act (concerning threats to society and national security in applications for international protection)</p>
	Croatia	Yes	<p>1. The Directive 2004/38/EC Article 24(1) has been transposed into national Croatian law through Article 153(1) of the Aliens Act which provides: “A national of an EEA Member State and members of his family, regardless whether they are nationals of an EEA Member State or not, provided that they are entitled to stay in</p>

the Republic of Croatia, shall have equal rights as nationals of the Republic of Croatia in accordance with the Treaty on of Functioning of the European Union.” Article 24(2) of the Directive cannot be find explicitly implemented into national legislation. While Article 24(2) of the Directive has not been explicitly transposed under the current Croatian laws it is possible to secure equal treatment as for the Croatian citizens. According to Art. 6 of the Family Reunification Directive, the Member States may reject an application for family reunification on grounds of public policy, public security or public health. Further, Member States may withdraw or refuse to renew a family member's residence permit on grounds of public policy or public security or public health. It has been transposed into an Article 66 (5), Right to family reunification in the Act on the International And Temporary Protection.

2. The Foreigners Act - <https://ec.europa.eu/migrant-integration/librarydoc/the-foreigners-act-130/2011-74/2013> Act on the International And Temporary Protection - <http://www.refworld.org/docid/4e8044fd2.html>

3. In the Act on the International And Temporary Protection under the Article 30 Exclusion of asylum and Article 31 Exclusion of subsidiary protection the criteria which determine whether an application is rejected, or legal residence is withdrawn on the grounds of public order has been stated.


4. The aspects taken into the account are done case by case assessment by the relevant authorities. The relevant laws are Law on General Administrative Procedure Official Gazette 143/13 and Law on Administrative Disputes Official Gazette 20/10.

5. The serious grounds of public policy or public security in the sense of article 28, paragraph 2 of the Citizens Rights Directive 2004/38/EG have been transposed into the Croatian national law in the Foreigners Act Article 106 Expulsion in view of increased social danger.

6. The imperative grounds of public security in the sense of article 28, paragraph 3 of the Citizens Rights Directive 2004/38/EG have been covered by the Foreigners Act Article 104 Protection against expulsion.

7. Please see answer to Q 3.

8. Since Croatia's entry into the EU, there has not been any relevant national case law in this regard.

	<p>Czech Republic</p>	<p>Yes</p>	<p>1. Please see the answer below.</p> <p>2. Implementation of Article 14 par. 4 of Qualification Directive: Section 17 of the Asylum Act No 325/1999 Coll. (1) Asylum shall be withdrawn if i) Legitimate reasons why the recognised refugee should be considered to be a threat to national security exist, or j) the recognised refugee has been lawfully convicted of an extremely serious crime and therefore poses a threat to national security. Implementation of Article 17 and 19 of Qualification Directive: Asylum Act No 325/1999 Coll. Section 15a (exclusion) (1) Subsidiary protection cannot be granted if there exist reasonable grounds for suspicion that the foreign national who made the application for international protection a) has committed a crime against peace, a war crime or a crime against humanity within the meaning of international documents which contain provisions on such crimes, b) has committed a serious crime, c) has committed acts that are contrary to the principles and goals of the United Nations Organisation, or d) poses a threat to national security. (2) Subsection 1 applies mutatis mutandis to a foreign national inciting another person to commit the crimes listed in subsection 1 or participating in committing such crimes. (3) Furthermore, subsidiary protection cannot be granted to a foreign national who has committed one or more crimes other than the crimes described in subsection 1 outside the Territory, if he/she has left the country of which the foreign national is a citizen, or if the foreign national is a stateless person, the country of his/her last permanent residence, with the sole intention of avoiding criminal prosecution for such crimes, provided that such crimes are crimes punishable by imprisonment in the Czech Republic. Section 17a (withdrawing) (1) Subsidiary protection shall be withdrawn if a) the circumstances due to which subsidiary protection was granted have ceased to exist or have changed to such extent that subsidiary protection is no longer necessary, b) a person enjoying subsidiary protection should have been or has been excluded from the possibility of being granted subsidiary protection for reasons stated in Section 15a, c) misrepresentation or omission of certain facts, including the use of forged or altered documents, was decisive for granting of subsidiary protection, or d) a person enjoying subsidiary protection has committed a particularly serious crime. (2) When assessing the reasons specified in subsection 1, the Ministry shall consider whether the change in circumstances is of such a significant and non-temporary nature that the person enjoying subsidiary protection no longer faces a risk of suffering serious harm. Consideration shall also be given to whether the person enjoying subsidiary protection cites severe circumstances supported by previous instances of persecution which would justify rejection of the protection of the country of which the foreign national is a citizen or, if the foreign national is a stateless person, of the country of his/her last permanent residence. (3) If the reason for which subsidiary protection has been granted for the purpose of family reunification ceases to exist and if no other reason warranting special consideration is found for its</p>
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continuation, subsidiary protection for the purpose of family reunification shall be withdrawn. Directive 2004/38 (freedom of movement in the EU) Transposition of the Article 27 paragraph 1 (subject to this chapter Member States may restrict freedom of movement and stay of citizens of the European Union and their family members regardless their nationality on the grounds of public order, public security or public health, these reasons must not be applied for economic reasons) is projected into the variety of provisions of the Head IV of the Act on Residence of Foreign Nationals in the Czech Republic. As provisions transposing the above-mentioned article, with respect to the regulations concerning “public order”, it is necessary to consider the following: Act No. 326/1999 Coll., on Residence of Foreign Nationals in the Czech Republic, as amended: Section 87d paragraph 1, b) and c) Section 87d paragraph 2, b) Section 87e paragraph 1, b) and c) Section 87f paragraph 3, c), d) and e) Section 87k paragraph 1, a), b), c) and d) Section 87l paragraph 1, a), b), b) and e) Section 119 paragraph 2, b) Section 120 paragraph 2 Section 174a Beyond the above-mentioned Act, it is necessary to mention at least the Charter of Fundamental Rights and Freedoms of the Czech Republic (2/1993 Coll.) and its Article 14. Directive 2003/86 (family reunification) Transposition of the Article 6 paragraph 1 (Member States may reject an application for entry and residence of family members on the grounds of public order, public security or public health). Act on Residence of Foreign Nationals in the Territory of the Czech Republic: Section 46 paragraph 3, Section 56 paragraph 1, c) and g), Section 56 paragraph 2 a), Section 9, paragraph 1, g), h), i) and j), Section 62 paragraph 1. Article 6 paragraph 2 (Member States may withdraw residence permits or refuse to renew its validity to a family member on the grounds of public order, public security or public health. When decision-making, Member States are taking into consideration, besides Article 17, also the seriousness or kind of offense against public order or public security committed by the family member, or danger which may result from such a person). Act on Residence of Foreign Nationals in the Territory of the Czech Republic: Section 46a, Section 174a, Section 119 paragraph 4.


3. See below.

4. See below.


5. See below.

6. Questions 3-6: The terms public order, respectively public security, are by the Czech legislation interpreted as follows: While interpreting the terms "public order", respectively "serious violation of public order" it is necessary to take into consideration not only the overall meaning of legislation, but also take into account the

			<p>different circumstances of the creation, origin and purpose of provisions where these terms are used. By violation of public order in accordance with the Act on Residence of Foreign Nationals in the Territory of the Czech Republic it can be regarded only such behaviour, which constitutes real, actual and sufficiently serious threat to one of the vital interests of the society. Also in such case the individual circumstances of the life of a foreigner and his/her overall life situation should be taken into consideration, particularly whether the decision would be reasonable in relation to interference into the private and family life of the applicant. It is always necessary to take into account the context of the provision of the Act on Residence of Foreign Nationals in the Czech Republic where the term “public order”, respectively “serious violation of public order” is used. The interpretation of these terms may differ with respect to the context of the provision. When interpreting the term “serious violation of public order” in the context of the Section 87e in connection with the Section 87d of the Act on Residence of Foreign Nationals (as a reason for refusal to issue a temporary residence permit to the family member of the EU citizen) it is for example necessary to take into consideration the impact of the decision not only on the family member of the EU citizen, but also on the EU citizen himself/herself. Denial of the right to stay to the family member of the EU citizen may result in the fact that the EU citizen himself/herself will be forced to leave the territory of the EU which might be in contradiction with the Article 20 of the Treaty on European Union assuming that the EU citizen would be deprived of a substantial part of rights resulting from his/her EU citizenship. Above-mentioned should be particularly taken into account if the applicant (family member of the EU citizen) takes care of minor children-citizens of the CR/EU in the Territory. These terms shall be interpreted in harmony with the EU (see Article 27 of the Directive 2004/38/EC). For the use of the provision of the “public order” the fact of mere infringement of the law is not sufficient (since all infringements of the law are regarded as violation of public order), but the actual, current and sufficiently serious threat must exist which concerns the fundamental interest of the society. Nevertheless, the above-mentioned threat to fundamental interests of the society must be caused by personal behaviour of the applicant. It is always necessary to consider whether behaviour of the applicant suggests (respectively whether it is likely) that a serious violation of public order (or public security) will occur. The past behaviour (previous criminal convictions) is not by itself the reason of the violation of public order; it can only be taken into account if the likelihood of recurrence of committing a crime exists with respect to the future behaviour of the applicant. When assessing the existence of the threat to the public order in cases of persistent criminality it is necessary to take into consideration especially the nature of crimes, their frequency and caused damage or injury. As the violation of the public order (breach of the peace) cannot be regarded just the fact of marriage of convenience itself or illegal entry or stay in the Territory of the Czech Republic as these do not represent</p>
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			<p>genuine, current and sufficiently serious threats to any of the basic interests of the society. Illegal entry to the Territory and illegal stay in the Territory of the Member State alone cannot be regarded as threat to public order by which the right of residence would be questioned. It is necessary to apply the above-mentioned principles also in the case of interpretation of the term “security of the state”, the term which has to be, as well as the term public order, interpreted restrictively. The term “security of the state” according to its general interpretation includes internal and external security in the sense of preserving the integrity of the country and its institutions</p> <p>7. The terms “serious crime” and “particular serious crime” are interpreted in line with UNHCR handbook regarding exclusion (Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees, HCR/GIP/03/05, 4 September 2003). It means that especially the attacks against life and health of persons (murder, rape, arson) are considered as serious or particular serious crimes. However, the individual assessment of each case is necessary.</p> <p>8. N/A</p>
	Estonia	Yes	<p>1. Directive 2004/38/EC is transposed into the Citizen of the European Union Act of the Republic of Estonia. The Qualification Directive 2011/95/EU and the Directive 2003/86/EC on the right to family reunification are transposed into the Act on Granting International Protection to Aliens of the Republic of Estonia. Directive 2003/86/EC is also transposed to the Aliens Act. In all of these acts it is stipulated that in case there is reasonable and solid grounds to believe that the person poses a threat to public order or national security or public health his application or valid residence permit/visa/right of residence shall be terminated. According to the Act on Granting International Protection to Aliens this provision also gives the right to detain or remove the person from the country. Discretion lies within the authority of the Police and Border Guard Board under the Ministry of Interior of the Republic of Estonia.</p> <p>2. Due to the fact that these provisions are mentioned in several paragraphs please use the links below in order to see the implementations: Citizen of the European Union Act accessible at: https://www.riigiteataja.ee/en/eli/515062016002/consolide Act on Granting International Protection to Aliens accessible at: https://www.riigiteataja.ee/en/eli/529042016002/consolide Aliens Act accessible at: https://www.riigiteataja.ee/en/eli/522042016002/consolide</p>


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| | | <p>3. In case there are reasonable and solid grounds to believe that the person poses a threat to public order or national security or public health.</p> <p>4. Discretion lies within the authority of the Police and Border Guard Board under the Ministry of Interior of the Republic of Estonia. Each and every case is assessed independently taking into account all of the relevant individual elements. If needed Estonian Security Police is consulted.</p> <p>5. According to the Law Enforcement Act of the Republic of Estonia significant threat is a threat to a person's health, proprietary benefit of significant value, the environment, or a threat of the commission of a criminal offence</p> <p>6. Discretion lies within the authority of the Police and Border Guard Board under the Ministry of Interior of the Republic of Estonia. Each and every case is assessed independently, if needed Estonian Security Police is consulted. Imperative grounds of public security must be established in accordance to the Law Enforcement Act, Penal Code and decision of the responsible authorities.</p> <p>7. According to the Law Enforcement Act of the Republic of Estonia serious threat is a threat to a person's life, physical inviolability, physical liberty or proprietary benefit of great value, or a threat of the occurrence of a serious environmental damage, or a threat of the commission of a criminal offence in the first degree provided for in Chapter 15 of the Penal Code or of a criminal offence provided for in Chapter 22 of the Penal Code. Within the meaning of this Act, an infringement of physical inviolability is a severe violation of the right of sexual self-determination or causing of serious damage to health.</p> <p>8. There is no case law regarding the EU citizens or beneficiaries of international protection, but the Supreme Court of Estonia has made a decision on annulment of a long-term residence's residence permit on the grounds of threat to public order. The decision is only available in Estonian: http://www.nc.ee/?id=11&tekst=RK/3-3-1-1-14 In short the Supreme Court stated that a threat to the public order (according to the relevant Aliens Act provision) is a situation where on the basis of objective evaluation of the circumstances it may be considered sufficiently probable that in the near future the person may commit a similar offence. For this kind of evaluation one has to assess the gravity of the already committed offence, its nature and the likelihood of any recurrence. This is a forecast decision and to verify it the court can only give</p> |
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			an assessment whether the risk of harm of the protected legal interest is probable taking into account the established facts.
	Finland	Yes	<p>1. They are implemented in the Aliens' Act.</p> <p>2. "Aliens' Act 304/2001 Third country nationals: Section 36 General requirements for issuing residence permits (1) A residence permit may be refused if the alien is considered a danger to public order, security or health or to Finland's international relations. Endangering public health does not, however, prevent the issuing of an extended permit, if the requirements for issuing a permit are otherwise met. Endangering international relations does not, however, prevent the issuing of a residence permit on the basis of family ties or issuing a residence permit to an alien who has been issued with a long-term resident's EC residence permit by a Member State of the European Union. (358/2007) Section 66a (380/2006) Consideration in connection with an application made on the basis of family ties If a residence permit has been applied for on the basis of family ties, account must be taken of the nature and closeness of the alien's family ties, the duration of his or her residence in the country and the cultural and social ties of his or her family to the home country when considering the refusal of the permit. The same applies to consideration when deciding on the cancellation of a residence permit issued on the basis of family ties or on the removal from the country of the sponsor or his or her family member. Section 114 Issuing residence permits to family members of beneficiaries of international or temporary protection (1) A residence permit is issued on the basis of family ties to a family member of a refugee or an alien who has been issued with a residence permit on the basis of the need for subsidiary protection or humanitarian protection, or who has enjoyed temporary protection if: 1) the sponsor lives in Finland or has been issued with a residence permit for the purpose of moving to Finland; and 2) the applicant is not considered a danger to public order, security or health. (323/2009) (2) If any of the circumstances mentioned in subsection 1(2) emerge, an overall consideration is made taking account of the sponsor's possibilities for leading a family life with the applicant in a third country. In the consideration, the importance of the family tie for the persons concerned shall be taken into account. (3) If the sponsor has been granted a residence permit on the basis of the need for subsidiary protection, and the ground for issuing the permit was an armed conflict, or if he or she has been granted a residence permit on the basis of humanitarian protection or temporary protection, it is taken into account in the overall consideration that there is no absolute impediment to the sponsor's return to his or her home country. (323/2009) (4) Issuing a residence permit referred to in this section does not require that the alien have secure means of support if the family was formed</p>

			<p>before the sponsor entered Finland. (549/2010) Section 148 Grounds for refusal of entry (1) An alien may be refused entry into the country if: 1) he or she does not meet the requirements for entry laid down in section 11; 2) he or she refuses to give the necessary information on his or her identity or journey, or deliberately gives false information on these; 3) upon application for a visa or residence permit, he or she deliberately gave false information on his or her identity or journey, which affected the issue of the visa or residence permit; 4) during his or her short residence in Finland, he or she has rendered him or herself incapable of sustaining him or herself; 5) there are reasonable grounds to suspect that he or she may earn income through dishonest means; 6) there are reasonable grounds to suspect that he or she may sell sexual services; 7) he or she crossed the border from outside or through a border crossing point without permission to cross the border at a time when the border crossing point was closed; 8) on the basis of an earlier prison sentence or for other reasons, there are grounds to suspect that he or she may commit an offence which is punishable by imprisonment in Finland, or commit repeated offences; 9) he or she was sentenced for an offence during his or her residence in Finland; 10) on the basis of his or her earlier activities or for other reasons, there are grounds to suspect that he or she may engage in activities that endanger Finland's national security or relations with a foreign State; or 11) a decision referred to in Articles 1-3 of Council Directive 2001/40/EC on the mutual recognition of decisions on the expulsion of third country nationals has been issued to remove him or her from the country. (2) An alien who has entered the country without a residence permit and who is required to hold a visa or residence permit to stay in Finland but who has not applied for one or has not been issued with one may also be refused entry.</p> <p>Section 149 (358/2007) Grounds for deportation (1) An alien who has resided in Finland under a residence permit may be deported if: 1) he or she resides in Finland without the required residence permit; 2) he or she is found guilty of an offence carrying a maximum sentence of imprisonment for a year or more, or if he or she is found guilty of repeated offences; 3) he or she has, through his or her activities, shown that he or she is liable to endanger other people's safety; or 4) he or she has been engaged, or on the basis of his or her previous activities and for other reasons there are grounds to suspect that he or she may engage in activities that endanger Finland's national security or relations with a foreign State. (2) An alien who has been issued with a long-term resident's EC residence permit in Finland may be deported only if he or she poses an immediate and sufficiently serious threat to public order or security. (3) In addition, an alien may be deported on grounds provided in subsection 1(2) if his or her punishment has been waived on the basis of criminal irresponsibility under Chapter 3, section 4 of the Penal Code. (4) A refugee may be deported in the cases referred to in subsection 1(2)-(4). A refugee may not be deported to his or her home country or country of permanent residence against which he or she still needs international protection. A refugee may only be deported to a</p>
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			<p>State which agrees to admit him or her. EU-citizens: Section 156 (360/2007) Public order and security (1) A requirement for an EU citizen's and his or her family member's entry into and residence in the country is that they are not considered a danger to public order or security. (2) Preventing entry into and removal from the country on grounds of public order or security must be based solely on the alien's own behaviour and not merely on any previous convictions. The behaviour of the alien must represent a genuine, immediate and sufficiently serious threat affecting a fundamental interest of society. Justifications that are isolated from the particulars of the case or that rely on considerations of general prevention will not be accepted. Section 167 (360/2007) Grounds for refusing EU citizens, their family members or other relatives entry into Finland EU citizens or their family members can be refused entry into the country, if their right of residence has not been registered or they have not been issued a residence card, and if they: 1) do not meet the requirements for entry laid down in section 155, 156 or 156a; 2) by resorting repeatedly to social assistance provided in the Act on Social Assistance or other comparable benefits or in other similar manner during their short-term stay, become an unreasonable burden on Finland's social security system; 3) would be required to have their right of residence registered or a residence card issued in order to continue their residence in Finland, but do not meet the requirements for registering the right of residence or for being issued with a residence card; or 4) have been prohibited from entering the country on grounds of public order or security. Section 168 (360/2007) Grounds for deporting EU citizens and their family members (1) EU citizens whose right of residence has been registered, or their family members who have been issued with a residence card, may be deported if they fail to meet the requirements for the right of residence laid down in section 158a, 161d or 161e, or if they are considered a danger to public order or security under section 156 or to public health under section 156a. (2) EU citizens who have been granted a right of permanent residence, or their family members who have been granted a permanent residence card, may only be deported on serious grounds of public order or security. (3) EU citizens who have resided in the country legally for the previous ten years may only be deported on imperative grounds of public security. (4) An EU citizen who is a minor can only be deported on imperative grounds of public security, unless the deportation is in the best interests of the child. (5) Imperative grounds as laid down in subsections 3 and 4 are considered to exist where an EU citizen is guilty of an act which is punishable by no less than one year of imprisonment, and where he or she, on grounds of the seriousness of the crime or of continued criminal activity, is considered a danger to public security, or where there are grounds for suspecting that he or she is seriously endangering the national security of Finland or another State."</p>
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| | | <p>3. The nature and the seriousness of the crimes, repeat offending, residence period in Finland vs. the time since the crimes were committed, ties to Finland.</p> <p>4. The behaviour of the individual in question is the deciding factor. Previous criminal convictions do not in themselves constitute the grounds for rejecting an application or withdrawing legal residence. The behavior of the individual must pose a genuine, present and sufficiently serious threat to public order, which affects key interests of the society. Other aspects include as mentioned in the response the Q3. The nature and the seriousness of the crimes, repeat offending, residence period in Finland vs. the time since the crimes were committed, and ties to Finland.</p> <p>5. "Aliens' Section 168 (360/2007) Grounds for deporting EU citizens and their family members (2) EU citizens who have been granted a right of permanent residence, or their family members who have been granted a permanent residence card, may only be deported on serious grounds of public order or security." The individual has been convicted of particularly aggravated crimes (homicides, violent crimes, sexual offences, narcotics offences). The convictions support the evidence of a behavior that can be considered a threat to public order and safety. The criminal convictions do not themselves result in the removal from the country. The probability of criminal behaviour in the future is also assessed. Repeat offending and participation in organized crime can also form a sufficient threat to public order and safety.</p> <p>6. "Aliens' Act Section 168 (360/2007) Grounds for deporting EU citizens and their family members (3)EU citizens who have resided in the country legally for the previous ten years may only be de-ported on imperative grounds of public security." Imperative grounds as laid down in subsection 3 are considered to exist where an EU citizen is guilty of an act which is punishable by no less than one year of imprisonment, and where he or she, on grounds of the seriousness of the crime or of continued criminal activity, is considered a danger to public security, or where there are grounds for suspecting that he or she is seriously endangering the national security of Finland or another State.</p> <p>7. "Aliens' Act Section 88 (323/2009) Subsidiary protection (2) An alien is not issued with a residence permit on the basis of subsidiary protection if there are reasonable grounds to suspect that he or she has committed: 1) a crime against peace, war crime or crime against humanity as defined by international agreements concerning such crimes; 2) an aggravated crime; or 3) an act which violates the aims and principles of the United Nations." Possible grounds for exclusion: the individual has been convicted of particularly aggravated crimes</p> |
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			<p>(homicides, violent crimes, sexual offences, narcotics offences). An individual assessment is made, that also takes into account repeat offending and other criminal offences.</p> <p>8. Decisions by the Supreme Administrative Court 8.2.2016/340 KHO:2016:11 In Finnish only: http://www.finlex.fi/fi/oikeus/kho/vuosikirjat/2016/201600340 8.2.2016/341 KHO:2016:12 In Finnish only: http://www.finlex.fi/fi/oikeus/kho/vuosikirjat/2016/201600341</p>
	German y	Yes	<p>1. The legal provisions for the protection of public security and order laid down by - Directive 2011/95/EU are implemented by the Asylum Act (Section 33 subs. 2 and 4 and Section 4 subs. 2 of the Asylum Act) and by the Residence Act (Section 25 subs. 2, second sentence in conjunction with subs. 1 second sentence, Sections 53 – 55 and Section 60 subs. 8 of the Residence Act), - Directive 2004/38/EC are implemented by the Freedom of Movement Act/EU (Sections 6 and 7 of the Freedom of Movement Act/EU), - Directive 2003/86/EU are implemented by the Residence Act (Section 5 subs. 1 no. 2, Section 8 subs. 1, Sections 53 – 55 of the Residence Act).</p> <p>2. English translations of the Acts mentioned above are available for download from: http://www.gesetze-im-internet.de/englisch_asylvfg/index.html http://www.gesetze-im-internet.de/englisch_aufenthg/index.html http://www.gesetze-im-internet.de/englisch_freiz_gg_eu/index.html</p> <p>3. The particular facts and circumstances of each individual case shall be examined in detail; the decision shall be taken on the basis of the findings of this examination and respect the principle of proportionality. The degree of public interest in an expulsion shall be determined by the degree of concrete and immediate danger represented by the foreigner. This public interest shall be weighed against the foreigner's interest in continued residence in Germany, which, in turn, will depend to a significant extent on their integration in Germany or the loss of their roots in the country of origin and their and their family's interest in living in Germany (this includes issues covered by the European Convention on Human Rights). If the public interest in expulsion is more important than the foreigner's interest in continued residence, the authorities will not grant a residence title or refuse to renew an existing residence title and the foreigner will be expelled or, in the case of Union citizens and their family members, lose their right to enter and reside in Germany. Depending on the length of residence, the hurdles for the withdrawal of the right of entry and residence for Union citizens and their family members will increase. Recognised refugees benefit from particular protection against expulsion (Section 53</p>


subs. 3 of the Residence Act), and beneficiaries of subsidiary protection are assumed to have a particularly significant interest in remaining in Germany (Section 55 subs. 1 no. 5 of the Residence Act).

4. All elements of the individual case shall be taken into account, in particular the personal circumstances of the foreigner and the type of the potential danger he or she represents. If, for example, the danger stems from the foreigner's being sentenced to a term of imprisonment, the type and the details of the individual offence shall be examined, with a particular focus on the danger of repeat offences (e.g. drug offences related to a foreigner's addiction); the criminal records shall therefore be examined as a matter of routine. If (part of) the prison sentence is suspended on probation, the legal prognosis shall be taken into account when gauging the danger. The foreigner will be expelled if the foreigners' authority, after careful examination of all facts, concludes that further residence in Germany would, with sufficient probability, be a risk to public security and order.

5. Serious grounds of public policy or public security apply if there is a risk of repeat crimes and serious offences in the sense that the foreigner has been non-appealably sentenced to a term of imprisonment of at least three years for a single crime and the punishment has not been suspended on probation (no. 6.4.1 of the General Administrative Regulation on the Freedom of Movement Act/EU, available for download in German from http://www.verwaltungsvorschriften-im-internet.de/bsvwvbund_03022016_MII2100972.htm).

6. Pursuant to Recital 24 to the Directive 2004/38/EU, imperative grounds of public security only apply in exceptional circumstances, i.e. if the person concerned has been sentenced non-appealably to a prison term or a term of youth custody of at least five years for one or more intentionally committed offences, or if preventive detention has been ordered in connection with the most recent non-appealable conviction, if the security of the Federal Republic of Germany is affected or if the person concerned poses a terrorist threat (Section 6 subs. 5 of the Freedom of Movement Act/EU, no. 6.5 of the General Administrative Regulation on the Freedom of Movement Act/EU).

7. A non-appealable sentence for a particularly serious crime in the sense of article 14 of the Directive 2011/95/EU is defined as a prison sentence for at least three years due to a crime or particularly serious offence. This also applies to a non-appealable sentence to a term of imprisonment or youth custody of at least one year for one or more intentionally committed offences against the life or limb or the sexual self-determination of a person, against property or for resistance against enforcement officers, provided that the

			<p>offence was conducted through the use of force, through threats of danger to life or limb or through deception (Section 3 subs. 4 of the Asylum Act in conjunction with Section 60 subs. 8, first and third sentence of the Residence Act). The term “serious crime” used in article 17 of Directive 2011/95/EU is also used in Section 4 subs. 2, first sentence, no. 2 of the Asylum Act. Whether a “serious crime” has been committed is determined by the severity of the non-appealable sentence. This non-appealable sentence is a precondition for a significant interest in expulsion (and only a “significant” interest) (Section 54 subs. 2 nos. 1 and 1a of the Residence Act). There is a differentiation between a “particularly” serious crime (see above) and a serious crime. The former will largely provide grounds for a “particularly” serious interest in expulsion (Section 54 subs. 1 nos. 1 and 1a of the Residence Act). In contrast, a serious crime is punished by a more lenient sentence, even if the cases are similar.</p> <p>8. See Federal Constitutional Court, Order of the First Chamber of the Second Senate of 19 October 2016 – 2 BvR 1943/16 – available for download in German from http://www.bverfg.de/e/rk20161019_2bvr194316.html</p>
	Hungary	Yes	<p>1. The legal provisions of the Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification regarding public policy have been incorporated in statutory law, namely in Act 2 of 2007 on the Admission and Right of Residence of Third-Country Nationals. And the legal provisions of the Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation regarding the Act 1 of 2007 on the Admission and Residence of Persons with the Right of Free Movement and Residence.</p> <p>2. s. 13. (1) h) of Act 2 of 2007 on the Admission and Right of Residence of Third-Country Nationals For entry into the territory of Hungary and for stays in the territory of Hungary for an intended duration of more than ninety days within any one hundred eighty day period the entry conditions for third-country nationals shall be the following: (...) they are not subject to expulsion or exclusion, they are not considered to be a threat to public policy, public security or public health, or to the national security of Hungary; s. 18. (1) of Act 2 of 2007 Unless otherwise prescribed in this Act, new residence permits or the extension of existing ones shall be refused, or if already issued shall be withdrawn from third-country nationals: a) who fail to comply with either of the requirements set out in Paragraphs a), c)-i) of Subsection (1) of Section 13; (...) s. 43. (1) c) of Act 2 of 2007 The immigration authority shall independently order the exclusion of a third-country national</p>


whose whereabouts are unknown or who resides outside the territory of Hungary, and whose entry and residence represents a threat to national security, public security or public policy. s. 43. (1) d) of Act 2 of 2007 Subject to the exception set out in this Act, the immigration authority shall order the expulsion of a third-country national under immigration laws whose entry and residence represents a threat to national security, public security or public policy. s. 45. of Act 2 of 2007 The immigration authority shall have regard for the following factors before adopting an expulsion order under immigration laws concerning a third-country national who is holding a residence permit issued on the grounds of family reunification: a) the duration of stay; b) the age and family status of the third-country national affected, possible consequences of his/her expulsion on his/her family members; c) links of the third-country national to Hungary, or the absence of links with the country of origin. (2) Any third-country national who: a) resides in the territory of Hungary under immigrant or permanent resident status; b) is bound to a third-country national residing in the territory of Hungary under immigrant or permanent resident status by marriage or registered partnership, and has a residence permit, may be expelled only if his/her continued residence represents a serious threat to national security, public security or public policy. Section 33. of Act 1 of 2007 on the Admission and Residence of Persons with the Right of Free Movement and Residence The right of free movement and residence of the persons to whom this Act applies may be restricted in compliance with the principle of proportionality and based exclusively on the personal conduct of the individual concerned, where such personal conduct represents a genuine, present and sufficiently serious threat affecting public policy, public security, national security or public health. s. 40. (2) c) of Act 1 of 2007 The competent authority may expel an EEA national or his/her family member who represents a genuine, present and sufficiently serious threat affecting the internal security of Hungary, if granted the right of entry or residence. Paragraph 95 point o) of the above mentioned Act (on Asylum): „The present Act serves partial compatibility with the following Community Legal Acts: o) Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugee or for persons eligible for subsidiary protection, and for the content of the protection granted.”

3. An expulsion order on the grounds of public order may be issued upon the initiative of law enforcement agencies within the national Police. s. 13. (1) h) of Act 2 of 2007 For entry into the territory of Hungary and for stays in the territory of Hungary for an intended duration of more than ninety days within any one hundred eighty day period the entry conditions for third-country nationals shall be the following: (...) h) they are not subject to expulsion or exclusion, they are not considered to be a threat to public policy, public security or


public health, or to the national security of Hungary; s. 18. (1) a) of Act 2 of 2007 Unless otherwise prescribed in this Act, new residence permits or the extension of existing ones shall be refused, or if already issued shall be withdrawn from third-country nationals: a) who fail to comply with either of the requirements set out in Paragraphs a), c)-i) of Subsection (1) of Section 13. Therefore once the holder of a resident permit is considered a threat to public policy, the residence permit shall be withdrawn. Paragraph 8 of the Hungarian Asylum Act (number: above mentioned) „(1) A foreigner shall not be recognised as refugee in respect of whom any of the disqualifying circumstances determined in Article 1 D, E or F of the Geneva Convention prevails. (2) In the course of the application of Article 1 F b) of the Geneva Convention, an act shall qualify as a serious, non-political, criminal act upon the commission of which, with regard to the totality of the circumstances, including the objective intended to be attained through the crime, the motivation of the crime, the method of commission and the means used or intended to be used, the ordinary legal aspect of the crime dominates over the political aspect and it is punishable by a term of five or more years imprisonment according to the relevant Hungarian rules of law. (3) In the course of the application of Article 1 F c) of the Geneva Convention acts contrary the purposes and principles of The United Nations are especially: a) terrorist acts b) financing terrorism c) subornation on acts mentioned in points a) and b)” Paragraph 15 of the Hungarian Asylum Act: „No subsidiary protection shall be granted to a foreigner, a) in whose case there is good reason to assume that aa) s/he committed a crime against peace, a war crime or a crime against humanity as defined in international instruments; ab) s/he committed a crime, which is punishable by a term of five or more years imprisonment under the relevant Hungarian law; ac) s/he committed a crime contrary to the purposes and principles of the United Nations; b) his/her stay in the territory of Hungary violates national security.”

4. On one hand the following aspects must be taken into consideration while assessing the matter of public order: - the severity of the punishment imposed; - the sentence served; - the degree of participation in the criminal act; - the severity of the harm caused; - the probability of committing a criminal act once again. Furthermore, when issuing an order of expulsion, the following aspects also need to be taken into account: - the duration of stay in Hungary; - the age and family status of the third-country national affected, possible consequences of his/her expulsion on his/her family members; - links of the third-country national to Hungary, or the absence of links with the country of origin.

5. In such cases the law enforcement agencies have jurisdiction to assess the matter of public security.

			<p>6. In such cases the law enforcement agencies have jurisdiction to assess the matter of public security.</p> <p>7. See answer to question number 4.</p> <p>8. There is no national case law regarding the matter. Recently there was one judicial hearing which partially evoke the question of public order, however the court did not specify what constitutes genuine, present and sufficiently serious threat to public order.</p>
	Latvia	Yes	<p>1. The provisions on public policy of the Citizens Rights Directive have been implemented in the Cabinet of Ministers Regulation “Procedures for the Entry and Residence in the Republic of Latvia of Citizens of the Union and their Family Members” (No.675, 30.11.2011). The directive has been transposed rather literary, not indicating precise criteria for the determining a level of threat to public policy. The provisions on public policy of the Family Reunification Directive have been implemented in the Immigration Law where the formulation of the reason of revocation or refusal of the residence permit has been indicated more clearly – defining the criminal offence that can be a ground for refusing/revoking a residence permit. The provisions on public policy of the Qualification Directive have been implemented in the Asylum Law, where cases when refugee status or alternative status is not granted or conditions for withdrawal of refuge status or alternative status are defined.</p> <p>2. a) the Citizens Rights Directive: Cabinet of Ministers Regulation “Procedures for the Entry and Residence in the Republic of Latvia of Citizens of the Union and their Family Members” (No.675, 30.11.2011): Art. 23. No visa shall be issued to a family member of a Union citizen or the existing visa shall be suspended or annulled, where the family member of the Union citizen poses a direct, actual and sufficiently serious threat to public security, public policy or public health. Art. 55. A registration certificate, permanent residence card, residence permit or permanent residence permit shall not be issued if (...): 55.5. competent State authorities have provided information indicating that the person poses a threat to public security, public policy or public health. Art. 56. A Union citizen and his or her family member shall lose the right of residence in the Republic of Latvia and the registration certificate, permanent residence card, residence permit or permanent residence permit issued to him or her shall be annulled, where: 56.7. competent State authorities have provided information indicating that the person poses a threat to public security, public policy or public health. Art. 58. Where a Union citizen or his or her family member residing in the Republic of Latvia poses a threat to public security or public policy, the Minister for the Interior shall issue a return decision in which it shall be</p>

		<p>requested to leave the Republic of Latvia within one month and, if necessary, a prohibition to enter the Republic of Latvia for up to three years shall be determined. Art. 59. The return decision shall be issued where the Union citizen or his or her family member poses a genuine, present and sufficiently serious threat to public security or public policy. Prior criminal convictions may not constitute grounds for a return decision. b) the Family Reunification Directive: Immigration Law: Art. 34. (1) The issue or registration of a residence permit shall be refused if: 8) a foreigner by a judgement of a court has been found guilty of committing such criminal offence in the Republic of Latvia or outside it, for which the sentence – deprivation of liberty for a time period, which exceeds three years – is provided for by the law of the Republic of Latvia. This condition shall not apply if the status of a stateless person in the Republic of Latvia has been granted to the foreigner or the conviction has been extinguished or set aside in accordance with procedures laid down in law, but with regard to criminal offences committed in foreign countries – at least five years have elapsed after serving of the sentence of deprivation of liberty; Art. 35 (1) A temporary residence permit shall be annulled if: 4) a foreigner by a judgment of a court has been found guilty of committing such criminal offence in the Republic of Latvia or outside it, for which a sentence is provided for by the laws of the Republic of Latvia – deprivation of liberty for a time period which is longer than two years; c) the Qualification Directive: Asylum Law: Section 45 (1) Cases when refugee status is not granted 3) the person has committed a crime against peace, a war crime or a crime against humanity, as defined in international documents; 4) prior to arrival in the Republic of Latvia the person has committed a crime, which is not of political nature and which in accordance with the law of the Republic of Latvia should be recognised as a particularly serious crime; 6) there is reason to believe that the person poses a threat to national security or public order and safety; 7) the person, who has been recognised as guilty of committing a particularly serious crime by a court judgement of the Republic of Latvia, poses a threat to the society of Latvia. Section 46 (1) Cases when alternative status is not granted 1) the person has committed a crime against peace, a war crime or a crime against humanity, as defined in international documents; 2) the person has committed a crime which, in accordance with the law of the Republic of Latvia, is recognised as a serious or an especially serious crime; 4) there is a reason to believe that the person poses a threat to national security or public order and safety; 5) prior to the arrival in the Republic of Latvia the person has committed a crime, for which the deprivation of liberty would be applied, if it had been committed in the Republic of Latvia and has left his or her country of origin solely in order to avoid punishment for this crime. Section 56 Conditions for the withdrawal of refugee status 1) the conditions of Section 45, Paragraph one of the Asylum Law apply to such person; Section 58 Conditions for the withdrawal of alternative status 1) the</p>
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	Lithuania	Yes	<p>1. The issues of control of the stay and residence of aliens in the Republic of Lithuania are referred to in Article 4 of the Law of the Republic of Lithuania Law on the Legal Status of Aliens (hereinafter: the ‘Law’), paragraph 2 of which stipulates that assessment of a threat posed by an alien to national security is carried out by the State Security Department of the Republic of Lithuania, and assessment of a threat to public policy or the community – by the Police Department under the Ministry of the Interior of the Republic of Lithuania or</p>

the State Border Guard Service under the Ministry of the Interior of the Republic of Lithuania, within their respective remit. Article 6(1) and (2) of Directive 2003/86/EC is implemented by Article 35(1)(1) and Article 50(1)(14) of the Law, which stipulate that an alien is refused the issue or renewal of a residence permit in the Republic of Lithuania if his residence in the Republic of Lithuania may represent/represents a threat to national security, public policy or public health. Articles 27 and 28 of Directive 2004/38/EC are implemented by Article 98(2) of the Law, which stipulates that a citizen of an EU Member State and his family member are refused admission into the Republic of Lithuania if their stay in the Republic of Lithuania may represent a threat to national security or public policy; Article 98(1), point 1 of Article 106(1), point 1 of Article 106(2), and Article 106(3) and (6) of the Law, which stipulate that the right to temporarily reside in the Republic of Lithuania granted to a citizen of an EU Member State and/or to his family member is withdrawn if the stay of this citizen and/or his family members in the Republic of Lithuania may represent a threat to national security or public policy, and the right to permanently reside – if their stay in the Republic of Lithuania may represent a serious threat to national security or public policy. Provisions of Directive 2011/95/EU regarding a threat to public policy are implemented by Article 4, Article 88(2)(5), Article 88(3)(4), Article 90(1)(9) and Article 90(2)(3) of the Law, according to which refugee status is not granted or refugee status granted to an alien is withdrawn if there are serious grounds for believing that the stay of the alien in the Republic of Lithuania represents a threat to national security or he has been convicted by a final judgment of a particularly serious crime and represents a threat to the community. Subsidiary protection is not granted or subsidiary protection granted to an alien is withdrawn if there are serious grounds for believing that the stay of the alien in the Republic of Lithuania represents a threat to national security or the community.

2. Republic of Lithuania Law on the Legal Status of Aliens Article 4. Control of Stay and Residence of Aliens in the Republic of Lithuania

2. Assessment of a threat posed by an alien to national security shall be carried out by the State Security Department of the Republic of Lithuania (hereinafter: the 'State Security Department'), while assessment of a threat to public policy or the community shall be carried out by the Police Department under the Ministry of the Interior of the Republic of Lithuania (hereinafter: the 'Police Department') or the State Border Guard Service.

3. Upon the receipt of an alien's application for the issue of a residence permit in the Republic of Lithuania (hereinafter: a 'residence permit'), the Migration Department must, in deciding on the granting of asylum in the Republic of Lithuania or temporary protection to the alien, apply to the institutions specified in paragraph 2 of this Article which, within their remit, assess whether there are threats to national security, public policy or the community as specified in paragraph 2 of this Article. A residence permit shall be granted to an alien only upon the receipt by the said institutions of the conclusion

			<p>that the alien does not represent a threat to national security and public policy or the community. Asylum in the Republic of Lithuania or temporary protection shall be granted to an alien only upon the receipt of the conclusion that the alien does not represent a threat to national security as well as the conclusion that the alien who is granted subsidiary protection in accordance with the procedure laid down by this Law does not represent a threat to the community, while an alien who is granted refugee status or temporary protection has not been convicted by an effective court judgment of a grave crime and represents a threat to the community. The conclusions specified in this paragraph shall be submitted not later than within 14 calendar days from the receipt of an application. In the event that, for important reasons, the State Security Department and the Police Department or the State Border Guard Service is not able to submit conclusions specified in this Article within the set time limit, they shall inform the Migration Department thereof. The total duration of the time limit for the submission of conclusions may not exceed 28 calendar days. 4. Having obtained the information that an alien who has been issued a residence permit or any other document confirming his right to reside in the Republic of Lithuania as specified in this Law represents a threat to national security, the State Security Department shall immediately notify the Migration Department about this and the latter shall, not later than within 14 calendar days, withdraw the issued residence permit or the alien's right to reside in the Republic of Lithuania and shall immediately inform the alien about this. 5. Having established that an alien who has been issued a residence permit or any other document confirming his right to reside in the Republic of Lithuania as specified in this Law represents a threat to public policy, the Police Department or the State Border Guard Service shall immediately notify the Migration Department about this and the latter shall, not later than within 14 calendar days, take a decision on the withdrawal of the issued residence permit or the alien's right to reside in the Republic of Lithuania and shall immediately inform the alien about this. 6. The State Security Department, having obtained the information that an alien who has been granted refugee status, subsidiary or temporary protection represents a threat to national security, the Police Department or the State Border Guard Service, having established that an alien who has been granted subsidiary protection represents a threat to the community, an alien who has been granted refugee status or temporary protection is convicted by an effective court judgment of a grave crime and represents a threat to the community, shall immediately notify the Migration Department about this. The Migration Department shall take a decision on the withdrawal of refugee status, supplementary or temporary protection not later within 14 calendar days of receipt of the information, having received the alien's oral or written explanations. If the Migration Department takes a decision to withdraw refugee status, supplementary or temporary protection, the grounds for appeal against the decision must be clarified for the alien. Article 35. Grounds for Refusing to Issue or Renew an Alien's</p>
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			<p>Residence Permit 1. An alien shall be refused the issue or renewal of a residence permit if: 1) his residence in the Republic of Lithuania may represent a threat to national security, public policy or public health; Article 50. Grounds for Withdrawing a Temporary Residence Permit 1. A temporary residence permit shall be withdrawn for an alien if: 14) the alien's residence in the Republic of Lithuania represents a threat to national security, public policy or public health; Article 88. Exclusion 2. An asylum applicant who meets the criteria set in Article 86(1) of this Law shall be excluded from being a refugee if: 5) there are serious grounds for considering that his stay in the Republic of Lithuania represents a threat to national security or he has been convicted by a final judgment of a particularly serious crime and represents a threat to the community. 3. An asylum applicant who meets the criteria set out in Article 87(1) of this Law shall be excluded from being eligible for subsidiary protection where: 4) there are serious grounds for considering that his stay in the Republic of Lithuania represents a threat to national security or to the community; Article 90. Withdrawal of Asylum 1. Refugee status granted to an alien shall be withdrawn if the alien: which he was granted refugee status have ceased to exist; 9) there are serious grounds for considering that his stay in the Republic of Lithuania represents a threat to national security or he has been convicted by a final judgment of a particularly serious crime and represents a threat to the community. 2. Subsidiary protection granted to an alien shall be withdrawn if the alien: 3) obtained subsidiary protection although it should not have been granted or, upon granting him subsidiary protection, the circumstances specified in Article 88(3) of this Law transpired. Article 98. Grounds for Refusing Admission into the Republic of Lithuania to a Citizen of an EU Member State and his Family Member A citizen of an EU Member State and his family member shall be refused admission into the Republic of Lithuania if: 2) their stay in the Republic of Lithuania may represent a threat to national security or public policy; Article 98(1). Assessment of Threat to National Security or Public Policy Represented by a Citizen of an EU Member State or his Family Member 1. An assessment of threat to national security or public policy represented by a citizen of an EU Member State or his family member shall in each specific case be based exclusively on the conduct of the person in question. The person's conduct must represent a genuine and present threat. The assessment may not be based on circumstances not related to a specific case, general prevention or exclusively on the commission of a criminal act. 2. A decision to refuse admission into the Republic of Lithuania to a citizen of an EU Member State or his family member on grounds of representing a threat to national security or public policy or to withdraw his right to reside in the Republic of Lithuania must be based on objective data (facts) and be proportionate. Article 106. Withdrawal of the Right to Reside in the Republic of Lithuania 1. The right to temporarily reside in the Republic of Lithuania granted to a citizen of an EU Member State and/or to his family member shall be withdrawn where: 1) the stay</p>
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of this citizen and/or his family members in the Republic of Lithuania may represent a threat to national security or public policy; 2. The right to permanently reside in the Republic of Lithuania granted to a citizen of an EU Member State and/or to his family member shall be withdrawn where: 1) the stay of this citizen and/or his family members in the Republic of Lithuania may represent a serious threat to national security or public policy; 3. The right to reside in the Republic of Lithuania of a minor citizen of an EU Member State, where it is in his best interest, or a citizen of an EU Member State who has uninterruptedly resided in the Republic of Lithuania for the last ten years may be withdrawn only if this citizen of the EU Member State represents an extreme threat to national security. 6. Upon withdrawal of the right to reside in the Republic of Lithuania, a citizen of an EU Member State and/or his family members shall be under the obligation to leave from the Republic of Lithuania, and in the event of the failure to comply with this obligation or in the cases provided for in point 1 of paragraph 1, point 1 of paragraph 2 and paragraph 3 of this Article they shall be expelled in accordance with the procedure laid down by this Law.

3. A decision is taken on a case-by-case basis with due consideration of all the circumstances relevant to a specific case, and assessment in each case is based on a person's conduct. The decision must be proportionate and is based on findings of fact and norms of legal acts of the Republic of Lithuania.

4. A threat represented by an alien to public policy or the community is, within the respective remit, assessed by the Police Department or the State Border Guard Service (SBGS). Criteria of assessment of a threat to public policy or the community, as set by the Police Department, are stipulated in Order No 5-V--758 of the Police Commissioner General of Lithuania of 31-08-2015 on Approval of the Description of the Procedure for Verifying Data on an Alien with a View to Determining whether the Alien Represents a Threat to Public Policy or the Community and for Drawing up a Conclusion on the Threat to Public Policy or the Community. In assessing a threat to public policy and the community and a threat of irregular migration, officers of the SBGS comply with the Description of the Procedure for Verifying Data on an Alien's Threat to Public Policy or the Community and a Threat of Irregular Migration and Drawing up a Conclusion on the Threats approved by Order No 4-460 of the Commander of the SBGS of 28 December 2015.

5. Criteria of assessment of a threat to public policy or the community, as set by the Police Department (articles of Order No 5-V--758): 12. An alien is deemed to represent a threat to public policy or the community if it is established that there exists at least one of the following criteria: 12.1. he has been convicted for a less serious, serious or grave crime; 12.2. he has been convicted for a crime punishable by a

		<p>custodial sentence of not less than one year; 12.3. he is or, during the last five years, was subject to an official warning or court obligations in accordance with the Law of the Republic of Lithuania on Organised Crime Prevention; 12.4. he is suspected of commission of a serious or grave crime; 12.5. he is subject to compulsory medical treatment provided for in Article 98 of the Criminal Code of the Republic of Lithuania; 12.6. search for the person has been announced by a foreign state in the Schengen Information System and/or in the Interpol database as a suspect, accused or convict of a crime, or an alert has been issued in the Interpol database regarding the criminal acts that the person had committed or may commit, or an alert has been published in the Schengen Information System for the person's specific check; 12.7. according to available criminal intelligence, there is a ground for believing he represents a threat to public policy or the community.</p> <p>13. An alien may be considered as representing a threat to public policy or the community if it is established that: 13.1. he has been convicted for a misdemeanour or a less serious crime; 13.2. he is suspected of commission of a minor or less serious crime; 13.3. information concerning the criminal acts committed by him has been received from foreign law enforcement authorities; 13.4. he systematically commits administrative offences of the same type or has committed, over the period of one year, at least two administrative offences, at least one of which being a serious infringement of administrative law; 13.5. he intentionally demonstrates, by his conduct, orally or in writing, the lack of respect for publicly accepted standards of behaviour and demeans the State of the Republic of Lithuania or civil servants on grounds of their activities; 13.6. he has actively participated in unauthorised events or during mass events (sports events, etc.), incited discord, or participated in violence. Criteria of assessment of a threat to public policy and the community and a threat of irregular migration, as set by the SBGS (articles of Order No 4-460):</p> <p>8. An alien's stay or residence in the Republic of Lithuania poses a threat to public policy or the community if, according to available criminal intelligence and pre-trial investigation data, it is established that: 8.1. the person is associated with the processes of smuggling and unlawful possession of excise goods, and irregular migration; 8.2 the person has, over the last five years, maintained contacts with the persons organising or carrying out the unlawful acts referred to in point 8.1 the illegal activities engaged in arranging or persons.</p> <p>9. A threat of an alien's irregular migration may emerge where it is established that: 9.1. the alien had already unlawfully entered the Republic of Lithuania and had been expelled from the country; 9.2. the alien has abused the asylum procedure in Lithuania; 9.3. the alien had been issued a Schengen visa, which was annulled upon establishing the alien had obtained it by fraud or caused a risk of irregular migration already when staying in the Schengen Area; 9.4. the alien has wilfully infringed the procedure for entry into and stay in the Republic of Lithuania; 9.5. the alien has repeatedly applied to diplomatic missions of the European Union Member States for the issue of a</p>
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			<p>Schengen visa, however the issue of the visa to him has been refused on grounds of representing a threat of irregular migration or there being reasonable doubts as to the authenticity of the supporting documents produced by the alien; 9.6. according to available criminal intelligence and pre-trial investigation data, the alien is associated with the trafficking of human beings across the state border or has links with organisers of this criminal act.</p> <p>6. Article 28, paragraph 3 of the Citizens Rights Directive 2004/38/EG is implemented in the Republic of Lithuania Law on the Legal Status of Aliens Article 4 p. 2 and Article 106, para. 3 and para. 6. Please find these articles of the Law on the Legal Status of Aliens in the reply to Question 2.</p> <p>7. The Criminal Code of the Republic of Lithuania defines the concepts of a serious crime and a grave crime. Article 11 Crime 5. A serious crime is a premeditated crime punishable, under the criminal law, by a custodial sentence of the duration in excess of six years, but not exceeding ten years of imprisonment. 6. A grave crime is a premeditated crime punishable, under the criminal law, by a custodial sentence of the maximum duration in excess of ten years.</p> <p>8. We do not have any examples of case law.</p>
	Luxembourg	Yes	<p>1. For the Qualification Directive the term public policy has been implemented in articles 8 last paragraph, 57 (1) and 58 (1) and (2) of the Law of 18 December 2015 on international protection and temporary protection. For the Citizens' Rights Directive and Family Reunification Directive the term public policy is transposed in articles 27 (1), (2), (3), (4), 29, 30 (1), 32, 34 (2), 4, 45-2 (2), 70 (1), 72 (1) and 78 (1) of the amended Law of 29 August 2008 on free movement of persons and immigration. This law transposes the Directives n° 2004/38/EC and n° 2003/86/EC.</p> <p>2. Law of 18 December 2015: Art. 57. (1) Dès que possible après qu'une protection internationale a été octroyée, les bénéficiaires du statut de réfugié et les bénéficiaires du statut conféré par la protection subsidiaire obtiennent un titre de séjour valable pendant une période d'au moins trois ans et renouvelable, à moins que des raisons impérieuses liées à la sécurité nationale ou d'ordre public ne s'y opposent. Art. 58. (1) Les bénéficiaires du statut de réfugié obtiennent un titre de voyage établi selon l'annexe à la Convention de Genève et destiné à leur permettre de voyager hors du territoire luxembourgeois, à moins que des raisons impérieuses de sécurité nationale ou d'ordre public ne s'y opposent. (2) Les bénéficiaires du statut conféré par</p>

la protection subsidiaire se trouvant dans l'impossibilité d'obtenir un passeport national obtiennent des documents qui leur permettent de voyager, à moins que des raisons impérieuses de sécurité nationale ou d'ordre public ne s'y opposent. For the other articles see amended Law of 29 August 2008 (see attached document).


3. The notion of public order may cover a conviction for having committed a serious crime.

4. See answer to question 3. Article 101 (1) 2 of the amended law of 29 August 2008 on the free movement of persons and immigration (Immigration Law) establishes that a third-country national may have her/his residence permit withdrawn if s/he is considered to be a threat to public policy, public security or public health. Article 101 (2) of the Immigration Law expressly indicates that the measures taken on grounds of public policy or public security must be based exclusively on the personal conduct of the individual to whom those measures relate. That conduct must constitute a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. Furthermore, the justifications that are not linked to the individual case or that are based on considerations of general prevention shall not be accepted. Even though there is no definition of "public order" (public policy) in the Immigration Law, the concept of "public order" has been interpreted by the Criminal Courts and the European Court of Justice (CJEU). The Court of Appeal establishes that a trouble to public order requires that criminal offences must be sanctioned in the country where the offence was committed (Cour d'Appel, 7 March 1908), meaning that the criminal offence must be committed in Luxembourg. As mentioned above, the threat must be genuine, present and sufficiently serious to society to be considered as such. A presupposed threat to public order cannot be used to revoke or withdraw a residence permit (See CJEU C-30/77 of 27 October 1977). As a consequence, Luxembourg cannot withdraw a residence permit of a third-country national for a criminal conviction in another MS, except if the convicted person represents a threat according to the terms mentioned above.


5. See answer to question 4.


6. See answer to question 4.

7. See answer to question 4.

			8. Yes. Judgment of the Court of Appeal of 7 March 1908.
	Netherlands	Yes	<p>1. The provisions of these Directives have been transposed in the Aliens Decree 2000 (Vreemdelingenbesluit 2000 (Vb2000)). The provisions relevant to public order are: Family Reunification Directive: Articles 3.77, 3.78, 3.86 and 3.87 Vb2000 Citizens Rights Directive: Articles 8.18, 8.22 and 8.24 Vb2000 Qualification Directive: Articles 3.105c, 3.105d, 3.105e and 3.105f Vb2000. Policy rules have been laid down in the Aliens Act Implementation Guidelines 2000 (Vreemdelingencirculaire 2000).</p> <p>2. See attachment</p> <p>3. See attachment</p> <p>4. See attachment</p> <p>5. We don't have elaborated the serious grounds of public policy or public security in our national regulations. The assessment will takes place with regards to the individual circumstances of the case. For examples of our case law, please see the references to the rulings under question 8.</p> <p>6. We don't have elaborated the imperative grounds in our national regulations. The assessment takes place with regards to the individual circumstances of the case</p> <p>7. There is evidence of a particularly serious crime if the foreign national has been sentenced by the court, which judgment has become final and conclusive, to a term of imprisonment or to a custodial punishment with a total duration of at least 10 months. Criminal offences committed or punished abroad are also be taken into account. The assessment will weigh which consequences of those criminal offences would have under Dutch law, if those criminal offences had been committed on Dutch territory and had been tried by a Dutch court. There is evidence of a serious crime if: 1. the foreign national has been sentenced to a term of imprisonment or a custodial punishment with a total duration of at least six months; and 2. at least one of the convictions relates to a to a crime which in its nature is a threat to society. A suspended sentence with probation will be taken into account if it is related to: • drugs crimes, sex crimes or violent crimes; • human trafficking; or • committing, preparing and facilitating a terrorist crime</p>

8. Within Dutch case law, a number of rulings of the high administrative court exist, as well as a large number of ruling od the regional courts. A few are included by means of internet link. The ruling are only available in Dutch. To facilitate any transcription, I have noted the paragraphs in which the presence (or lack thereof) of a genuine, present and sufficiently serious threat to public order is elaborated. As a general outline, an increasing burden of proof at the side of the state can be noted. a. In the ruling of the reginal court (paragraph 9), as reaffirmed by the State Counsel as High Administrative Court, human trafficking is considered a genuine, present and sufficiently serious threat to public order, due to the nature of the crimes, which often coincide with a violent acts. Also, a appreciation of the probation office was available, which concluded that there was a risk that he would repeat his offences. https://www.raadvanstate.nl/uitspraken/zoeken-in-uitspraken.html?q=201103936%2F1%2FV1&search_type=all&date_from=&date_until=&entity=Verdict b. In paragraph 3.4 to 3.7 of this ruling of the State Counsel as High Administrative Court the accumulation of petty crimes, alcohol addiction and the lack of willingness to improve are insufficient to prove a genuine, present and sufficiently serious threat to public order, as the Immigration office could not clarify why the criminal court had not issued a additional measure. https://www.raadvanstate.nl/uitspraken/zoeken-in-uitspraken/tekst-uitspraak.html?id=75665&summary_only=&q=Burger+van+de+unie+Actuele+bedreiging+van+een+fundamenteel+belang+van+de+samenleving+2004%2F38 c. In this ruling (paragraph 5. to 5.2), the State Counsel as High Administrative Court accepts that a genuine, present and sufficiently serious threat to public order has been adstrued, taking into account the actions of the TCN who threatened his victim while being detained, and who during the hearing did not show an understanding of the seriousness of his crime. https://www.raadvanstate.nl/uitspraken/zoeken-in-uitspraken/tekst-uitspraak.html?id=88477&summary_only=&q=Actuele+bedreiging+van+een+fundamenteel+belang+van+de+samenleving d. in this ruling, the State Counsel as High Administrative Court has deemed the presence of grounds mentioned in articles 1F of the convention relating of the status of refugees sufficient to assume a genuine, present and sufficiently serious threat to public order. https://www.raadvanstate.nl/uitspraken/zoeken-in-uitspraken/tekst-uitspraak.html?id=84159&summary_only=&q=Burger+van+de+unie+Actuele+bedreiging+van+een+fundamenteel+belang+van+de+samenleving+2004%2F38 e. in paragraph 1.3 of this ruling, the State Counsel as High Administrative Court has deemed that a total of 4 convictions of drug-related crimes, over a period of 20 years, in combination with several convictions for petty crimes, is insufficient to issue an entry ban for a period of more than 5 years to a TCN, as the state has not demonstrated a genuine, present and sufficiently

			<p>serious threat to public order because the convictions are dates from 2007 and the TCN has not been convicted to lengthy prison sentences since. The TCN did not hold a residence permit in the Netherlands.</p> <p>https://www.raadvanstate.nl/uitspraken/zoeken-in-uitspraken/tekst-uitspraak.html?id=88408&summary_only=&q=Actuele+bedreiging+van+een+fundamenteel+belang+van+de+samenleving For further elaboration, see the attachment.</p>
	Poland	No	
	Slovak Republic	Yes	<ol style="list-style-type: none"> 1. See the tables of equivalence in the attached document. 2. See the tables of equivalence below. The text in the tables is in Slovak language, however, most of the provisions are incorporated in the following answers in English. As for the Qualification Directive, see answer to Q.7 below. 3. According to the Article 33 (6 b) and Article 36 (1 b) of the Act No. 404/2011 on Residence of Aliens and Amendment and Supplementation of Certain Acts (hereinafter referred to as Act on Residence of Aliens), the Police department shall reject an application for temporary residence permit or annul the residence if there is a justified suspicion that a third-country national would threaten the state safety, public order or public health during his/her residence. According to the Article 2 (j) of this Act, threat to public order shall be understood as the violation or threat to the interest protected by law regarding fundamental human rights and freedoms, protection of minors and other vulnerable persons or repeated violation of an interest protected by law regarding due exercise of public administration, environment, public order or citizen coexistence. In terms of free movement of persons, according to the Article 11 (1) and (2) of the Act on Residence of Aliens, a police department at a border crossing point can refuse entry through an external border for a Union citizen or a family member of a Union citizen only in such a case, if there is a justified suspicion that s/he would seriously threaten the state safety/public order, or if it is necessary for the protection of public health. A decision on the refusal of entry for a Union citizen or a family member of a Union citizen due to the threat to the state safety or public order must be based exclusively on personal behaviour of such a person, whereas such personal behaviour must represent an immediate and sufficiently serious threat to the state safety or public order. Criminal offences committed in the past by a Union citizen or by a family member of a Union citizen are not,

			<p>without any connection with a justified suspicion of a serious threat to state safety or public order, a reason for entry refusal.</p> <p>4. Each case is assessed individually and it is in the jurisdiction of the administrative authority which has decision-making powers in order to assess the risk.</p> <p>5. This provision has been transposed into the national legislation as follows: A police department can administratively expulse a Union citizen who has the right of permanent residence of union citizen or the family member of the Union citizen who has the right of permanent residence of family member of union citizen, if s/he represents a serious threat for the state safety or public order. The police department can impose an entry ban in the decision on his/her administrative expulsion up to ten years.</p> <p>6. This provision has been transposed into the national legislation as follows: A police department shall not administratively expulse a Union citizen who a) has had an authorised residence in the Slovak Republic territory for at least ten years; this shall not apply, if s/he represents a serious threat for the state safety; or b) is a child younger than 18 years of age; this shall not apply, if the expulsion of this child is in his/her interest.</p> <p>7. As regards a particularly serious crime in accordance with the Article 14 of the Qualification Directive, it is not directly defined in Act on Asylum to which the Qualification Directive has been transposed but the definition has been taken from the Criminal Code. The category of a “particularly serious crime” is defined in the Slovak criminal law as “a crime carrying a custodial penalty of more than ten years and which shall be considered as a particularly serious crime”. As regards a serious crime in accordance with the Article 17 of the Qualification Directive, this category is defined in the same way as the category of a particularly serious crime in accordance with the Article 14 of the Qualification Directive and shall also be considered as a particularly serious crime.</p> <p>8. N/A</p>
	Sweden	Yes	<p>1. The legal provisions with regards to public policy in the Citizens’ Rights Directive were transposed into Swedish law through amendments to the Aliens Act (2005:716) and Aliens Ordinance (2006:97) which entered into force on 30 April 2006. A follow up of the transposition of the Citizens Rights Directive was made in 2012 (Ds 2012:60) and amendments were made to the Aliens Act in 2014. A special investigator also</p>

suggested changes with regard the stay, refusal of entry and expulsion of EEA citizens in 2012 which led to a clearer distinction in the Aliens Act regarding EEA citizens and third country citizens in 2014. Similarly, with regard to the implementation of the Family Reunification Directive and the Qualification Directive, changes to the Aliens Act entered into force on the 1 May 2006 and the 1 January 2010 respectively. Refusal of residence permit due to public policy concerns are dealt with in Chapter 5 of the Aliens Act, withdrawal of permits are regulated in Chapter 7, and refusal of entry and expulsion are covered in Chapter 8.

2. Aliens Act, chapter 5, section 17a Särskilda skäl mot att bevilja uppehållstillstånd 17 § Vid prövningen av en ansökan om uppehållstillstånd enligt detta kapitel ska det, utom i fall som avses i 1, 2, 2 a, 2 d, 3 eller 4 §, särskilt beaktas om den sökande gjort sig skyldig till brottslighet eller brottslighet i förening med annan misskötsamhet. Vid prövning av uppehållstillstånd enligt 3 a § första stycket 1 och andra stycket ska det särskilt beaktas om utlännen eller utlännings barn kan antas bli utsatt för våld eller för annan allvarlig kränkning av sin frihet eller frid om uppehållstillstånd skulle beviljas. Uppehållstillstånd enligt 3 § första stycket 2 eller 3 och 3 a § andra stycket får beviljas endast efter medgivande också av den förälder till vilken anknytning inte åberopas, om den föräldern har del i vårdsnaden av barnet. Uppehållstillstånd ska inte beviljas en person som har ställning som varaktigt bosatt i en annan EU-stat, eller hans eller hennes anhöriga, om personen utgör ett hot mot allmän ordning och säkerhet. Lag (2014:198). 17 a § Uppehållstillstånd får vägras i sådana fall som avses i 3 §, om • 1. oriktiga uppgifter medvetet lämnats eller omständigheter medvetet förtigits som är av betydelse för att få uppehållstillståndet, • 2. en utlänning adopterats eller ett äktenskap ingåtts eller ett samboförhållande inletts uteslutande i syfte att ge utlännen rätt till uppehållstillstånd, eller • 3. om utlännen utgör ett hot mot allmän ordning och säkerhet. Aliens Act, chapter 7, section 6 Uppehållstillstånd får återkallas för den som inte är medborgare i en EU-stat även i andra fall än som avses i 2 §, om ett beslut om avvisning eller utvisning har meddelats i en EU-stat eller i Island, Norge, Schweiz eller Liechtenstein och beslutet är grundat på att det finns ett allvarligt hot mot den allmänna ordningen eller den inre säkerheten och på att • 1. utlännen i den beslutande staten har dömts för ett brott för vilket det är föreskrivet fängelse i minst ett år, eller • 2. utlännen är skäligen misstänkt för att ha begått ett grovt brott eller att det finns starka skäl som tyder på att utlännen avser att begå ett sådant brott. Aliens Act, chapter 8, section 11 Avvisning och utvisning av hänsyn till allmän ordning och säkerhet 11 § En EES-medborgare eller en familjemedlem till en EES-medborgare får avvisas i anslutning till inresan eller under de tre första månaderna efter inresan av hänsyn till allmän ordning och säkerhet. En EES-medborgare eller en familjemedlem till en EES-medborgare som inte avvisas i anslutning till inresan eller under de tre första månaderna efter inresan enligt första stycket får därefter utvisas av hänsyn till allmän ordning och säkerhet. Lag (2014:198). According to Chapter 8

Section 11 of the Aliens act an EEA citizen or a family member of an EEA citizen may be refused entry in connection with the entry or during the first three months after the entry with regard to public order or security. An EEA citizen or a family member of an EEA citizen who is not refused entry in connection with the entry or during the first three months after entry may after that be expelled with regard to public order or security.


3. An application for residence permit may be refused in cases where the applicant is considered a threat to public order and security. However, the Migration Agency and the Courts shall in their assessment of the application also consider possible obstacles to the execution of a rejection and an expulsion order. According to the preparatory works to the Aliens Act such a decision should not be granted if it cannot be enforced.

4. According to Chapter 8 Section 12 of the Aliens Act, a refusal of entry or expulsion under Chapter 8 Section 11 may only occur if the alien's own behaviour constitutes a genuine, real and sufficiently serious threat to a fundamental interest of society. Previous criminal convictions may not in themselves constitute grounds for such a decision. Economic reasons may not form the basis for the decision.

5. According to Chapter 8 Section 14 of the Aliens Act, an EEA citizen or a family member of an EEA citizen who has a permanent right of residence may only be refused entry or expelled under Chapter 8 Section 11 if there are exceptional reasons.

6. According to Chapter 8 Section 14 of the Aliens Act an EEA citizen who is a child may only be refused entry or expelled according to Section 11 if it is strictly necessary for reasons of public safety. An EEA national who has lived in Sweden during the previous ten years may be expelled in accordance with section 11 only when it is strictly necessary for reasons of public security.

7. According to Chapter 5, section 17a (3) Aliens Act, a residence permit may be denied if the applicant constitutes a threat to public order and security. The concept of public order and security is in accordance with EU law. A general statement about the type of crime that should motivate the rejection of an application for a residence permit cannot be made without an assessment in the individual case. The application of the provision is to be used restrictive and it requires that the alien's behavior constitutes a serious and real threat to a fundamental interest of society. Such threats are primarily the case of intentional crimes.

			<p>8. Considering the concept of public order and security the Migration Court of Appeal made the following assessment in case MIG 2009:21. On 2 November 2004, person A was sentenced to imprisonment for three years and six months by a Danish court for serious drug offenses. The judgment was coupled with expulsion from Denmark with a lifetime ban on re-entry. The judgment from the Danish court establishes that he was caught on 29 June 2004 with possession of 495.8 grams of heroin and 10 grams of hashish. The court found that the quantity of drugs was so great that he should have realized that the drugs were intended to be sold on to a larger number of people. The Swedish Migration Court of Appeal found that the crime he had been guilty of was of very serious nature and must be considered to be of such a nature that it constitutes a direct threat to human life and health. The circumstances underlying the conviction are evidence of his behavior amounting to a serious and real threat to the fundamental interests of society. The Migration Court of Appeal found that person A by his behavior constituted a threat to public order and security. What he has put forward regarding his family situation and living conditions in general in Sweden does not alter the assessment. Considering what constitutes a serious threat to public order the Migration Court of Appeal made the following assessment in case MIG 2008: 46. In determining whether an application for a residence permit on grounds of family reunification should be denied because the applicant constitutes a threat to public order and safety, shall in addition to the nature and extent of the crime and the ties with the family member, also the time elapsed since the applicant last was convicted of crimes be taken into account. The assessment shall take particular account of crime directed against the family member. An applicant has been deemed entitled to a residence permit, given his strong ties to Sweden and the fact that his last known crime was about ten years in the past, even though he has been guilty of repeated and serious crime in part directed against a family member. However, another applicant who committed repeated offenses, where a significant portion of these were directed against the own family, and where four years had passed since the last known offense, was still considered to be a threat to public order and safety, and was denied a residence permit.</p>
	United Kingdom	Yes	<p>1. The Citizenship Directive 2004/38/EC has been transposed into UK law through the Immigration (European Economic Area) Regulations 2006 ('the EEA Regulations 2006'). Part 4 of the EEA Regulations 2006 provides for the removal and exclusion of EEA nationals and their family members on grounds of public policy and public security. On 3 November 2016 the Immigration (European Economic Area) Regulations 2016 ('the EEA Regulations 2016') were laid before Parliament. The EEA Regulations 2016 will replace the EEA Regulations 2006. With the exception of regulation 9, which entered into force in November 2016, the</p>

rest of the EEA Regulations 2016 enter into force on 1 February 2017. The UK has not opted in to the Family Reunification Directive.

2. The Citizenship Directive 2004/38/EC has been transposed into UK law through the Immigration (European Economic Area) Regulations 2006 ('the EEA Regulations 2006'). Part 4 of the EEA Regulations 2006 provides for the removal and exclusion of EEA nationals and their family members on grounds of public policy and public security. On 3 November 2016 the Immigration (European Economic Area) Regulations 2016 ('the EEA Regulations 2016') were laid before Parliament. The EEA Regulations 2016 will replace the EEA Regulations 2006. With the exception of regulation 9, which entered into force in November 2016, the rest of the EEA Regulations 2016 enter into force on 1 February 2017. The UK has not opted in to the Family Reunification Directive.

3. Part 4 of the EEA Regulations 2006 can be found online at:
<http://www.legislation.gov.uk/uksi/2006/1003/part/4/made>

4. Part 4 of the EEA Regulations 2006 can be found online at:
<http://www.legislation.gov.uk/uksi/2006/1003/part/4/made>

5. Decisions made on public policy or public security grounds must be made in accordance with regulation 21 of the EEA Regulations 2006. Regulation 21 implements Articles 27 and 28 of Directive 2004/38/EC.

6. Decisions made on public policy or public security grounds must be made in accordance with regulation 21 of the EEA Regulations 2006. Regulation 21 implements Articles 27 and 28 of Directive 2004/38/EC.

7. The Home Office has published guidance which is available here:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/466151/EEA_FNO_Cases_v4_0.pdf New guidance on EEA public policy and public security decisions will be published on the government website at www.gov.uk on 1 February 2017.

8. The Home Office has published guidance which is available here:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/466151/EEA_FNO_Cases_v4_0.pdf

[0.pdf](#) New guidance on EEA public policy and public security decisions will be published on the government website at www.gov.uk on 1 February 2017.

9. Serious grounds of public policy or public security are not defined in either the Free Movement Directive or the EEA Regulations 2006. New guidance on EEA public policy and public security decisions will be published on the government website at www.gov.uk on 1 February 2017.


10. Serious grounds of public policy or public security are not defined in either the Free Movement Directive or the EEA Regulations 2006. New guidance on EEA public policy and public security decisions will be published on the government website at www.gov.uk on 1 February 2017.

11. Imperative grounds of public policy or public security are not defined in either the Free Movement Directive or the EEA Regulations 2006. ‘Imperative grounds’ must be interpreted more widely than threats to the state or its institutions, and can, for example, include serious criminality, such as drug dealing as part of an organised group (see Tsakouridis (European citizenship) [2010] EUECJ C-145/09). New guidance on EEA public policy and public security decisions will be published on the government website at www.gov.uk on 1 February 2017.

12. Imperative grounds of public policy or public security are not defined in either the Free Movement Directive or the EEA Regulations 2006. ‘Imperative grounds’ must be interpreted more widely than threats to the state or its institutions, and can, for example, include serious criminality, such as drug dealing as part of an organised group (see Tsakouridis (European citizenship) [2010] EUECJ C-145/09). New guidance on EEA public policy and public security decisions will be published on the government website at www.gov.uk on 1 February 2017.

13. Conduct which (a) involves the use of violence, results in substantial financial gain or is conducted by a large number of persons in pursuit of a common purpose or (b) the offence or one of the offences is an offence for which a person who has attained the age of twenty-one and has no previous convictions could reasonably be expected to be sentenced to imprisonment for a term of three years or more.

14. The United Kingdom did not sign the recast Qualification Directive 2011/95/EU. The UK’s guidance on consideration of articles 14 and 17 of the Council Directive 2004/83/EC of 29 April 2004 (the Qualification

			<p>Directive (QD)) can be found in our published asylum instructions on Exclusion from the Refugee Convention and the Revocation of Refugee Status. These Home Office policy instructions provide details about what is to be considered a serious crime. Both these instructions are available on the Gov.UK website at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/534985/exclusion_and_article_33_2_refugee_convention.pdf https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/493918/revocation_of_refugee_status_v4_0_EXT.pdf</p> <p>15. The CJEU has consistently emphasised that member states have discretion to determine the circumstances which justify the use of the public policy provision. In particular in the CJEU case of Yvonne van Duyn v Home Office. (Workers) [1974] EUECJ R-41/74 (see paragraph 18). We do not have any specific examples of what constitutes a genuine, present and sufficiently serious threat to public order.</p> <p>16. The CJEU has consistently emphasised that member states have discretion to determine the circumstances which justify the use of the public policy provision. In particular in the CJEU case of Yvonne van Duyn v Home Office. (Workers) [1974] EUECJ R-41/74 (see paragraph 18). We do not have any specific examples of what constitutes a genuine, present and sufficiently serious threat to public order.</p>
	Norway	Yes	<p>1. Norway is not bound by these Directives, which have not been implemented.</p> <p>2. We cannot see that the query refers to specific paragraphs or sections in the law. Based on the following questions, though, the most relevant paragraph (portions cited below) appears to be the Norwegian Immigration Act section 122, which can be found here in English: https://www.regjeringen.no/en/dokumenter/immigration-act/id585772/ and here in the authentic Norwegian version: https://www.udiregelverk.no/en/documents/relevant-acts-and-regulations/utlendingsloven/kap13/122/</p> <p>3. No response.</p> <p>4. See answer to question 8 below.</p>

5. “Art 28: (2). The host Member State may not take an expulsion decision against Union citizens or their family members, irrespective of nationality, who have the right of permanent residence on its territory, except on serious grounds of public policy or public security.” Norwegian Immigration Act: Section 122 Expulsion in the interests of public order or security, para 1: “EEA nationals and their family members, and foreign nationals as mentioned in section 110, fourth paragraph, of this Act who have a right of residence under section 111, second paragraph, or section 114, second paragraph, may be expelled when this is in the interests of public order or security. It is a condition for expulsion that the personal circumstances of the foreign national pose, or must be assumed to pose, a real, immediate and sufficiently serious threat to fundamental societal interests.”

6. “3. An expulsion decision may not be taken against Union citizens, except if the decision is based on imperative grounds of public security, as defined by Member States, if they: (a) have resided in the host Member State for the previous ten years; or (b) are a minor, except if the expulsion is necessary for the best interests of the child, as provided for in the United Nations Convention on the Rights of the Child of 20 November 1989.” Norwegian Immigration Act: Section 122 para 2: “A foreign national who may be expelled under the first paragraph may nevertheless not be expelled if the foreign national (a) has a right of permanent residence under sections 115 or 116, unless weighty public order or security considerations indicate that it is necessary, (b) is an EEA national who has stayed in the realm for 10 years, unless it is compellingly necessary in the interests of public security, or (c) is an EEA national who is a minor, unless it is compellingly necessary in the interests of public security. However, this does not apply to minors if expulsion of the minor is necessary in order to safeguard the minor’s best interests.”

7. The QD is not implemented in Norwegian law. Regarding QD Article 17 Exclusion (1) (b) “serious crime” we would probably look to our definition of “serious crime” under the exclusion ground “serious non-political crime”, as stipulated in the Norwegian Immigration Act section 31 (1) (b), cf. the Refugee Convention (1951) Article 1 F (b). Our definition of “serious...crime” in the domestic section has a natural starting point in the definition of “serious” given by the UNHCR in the following Guidelines, II B 14 <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=3f5857684&skip=0&query=guidelines> Regarding QD Article 14 Revocation of, ending of or refusal to renew refugee status (4) (b) (“having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that Member State”), Norway has a similar rule in the Norwegian Immigration Act section 31 (2): “Nor does the right to be recognised as a refugee under section 28 (Norwegian Immigration Act), first paragraph (b), apply if the

foreign national has been convicted by final judgment of a particularly serious crime and for this reason constitutes a threat to Norwegian society.” This rule has rarely been applied in Norway, but when defining “particularly serious crime”, it is natural to start with the definition of “serious crime”, as given above, and expect that the wording “particular” indicates a requirement of something more than an “ordinary” serious crime.

8. Norwegian Immigration Act: Section 122 Expulsion in the interests of public order or security Para 1: EEA nationals and their family members, and foreign nationals as mentioned in section 110, fourth paragraph, of this Act who have a right of residence under section 111, second paragraph, or section 114, second paragraph, may be expelled when this is in the interests of public order or security. It is a condition for expulsion that the personal circumstances of the foreign national pose, or must be assumed to pose, a real, immediate and sufficiently serious threat to fundamental societal interests. The King may by regulations make further provisions regarding the definition of public order and security. Para 4: No decision is made for expulsion under the provisions of this paragraph if, in view of the seriousness of the offence and the foreign national’s connection with the realm, it would constitute a disproportionate measure against the foreign national or against the foreign national’s family members. In the assessment of whether expulsion constitutes a disproportionate measure, emphasis shall be given to, among other things, how long the person concerned has stayed in the realm, age, state of health, family situation, financial situation, social and cultural integration in the realm, and connection with the country of origin. In cases concerning children, the child’s best interests shall be a fundamental consideration. Norwegian Immigration Regulations (detailing the Immigration Act): Section 19-29 Rejection or expulsion in the interests of public order or security Rejection or expulsion in the interests of public order or security, see section 121 and section 122, first paragraph, of the Norwegian Immigration Act may only be grounded in the foreign national's personal circumstances and may only take place where there is provision for sanctions against Norwegian nationals for corresponding offences. Previous convictions cannot alone form the basis for rejection or expulsion. Rejection or expulsion in the interest of public order presupposes the presence of a real and sufficiently serious threat to a fundamental societal interest, beyond the disturbance of social order entailed by any breach of the law. Rejection or expulsion in the interest of public order or security may inter alia take place if the foreign national (a) is dependent on narcotic substances or other toxic substances, and the dependence arose before the foreign national was granted right of residence, or (b) according to competent health service personnel obviously suffers from a serious mental disorder, a manifest psychosis involving states of agitation, delusions or hallucinations with states of

			<p>bewilderment, and the condition arose before the foreign national was granted right of residence. (https://www.regjeringen.no/globalassets/upload/jd/dokumenter/forskrifter/immigration-regulations.pdf) The above versions of the regulations in English do not have legal status, and were translated from the Norwegian version as it was per April 1, 2014. However, in our best judgement, the above English text appears to be a decent translation of the relevant current Norwegian regulations (per January 2017).</p>
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