



European Migration Network

Ad-Hoc Query on the understanding of the notions of “public policy” and “public security”

Requested by LT EMN NCP on 25th June 2009

Compilation produced on 22nd September 2009

Responses from [Austria](#), [Belgium](#), [Bulgaria](#), [Czech Republic](#), [Estonia](#), [Finland](#), [Germany](#), [Hungary](#), [Ireland](#), [Italy](#), [Latvia](#), [Lithuania](#), [Netherlands](#), [Portugal](#), [Slovak Republic](#), [Slovenia](#), [Sweden](#) (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.

1. Background Information

The Lithuanian authorities are now in the process of drafting provisions of the Aliens' Law which will transpose the directive 2008/115/EC of the European Parliament and of the Council of the 16 December 2008 on common standards and procedures in Member States for returning illegally staying third country nationals. In this context, we are also considering the possibility of defining or providing for a sample/non-exhaustive list of cases which can indicate that an alien poses a risk to public security or public policy.




We would like to receive some information if any Member State has established a list of cases or a definition of the notions of “public policy” and “public security” (or other similar notions, such as “national security”), or maybe there are some procedures established for assessing such risk. We would be grateful for any information on this matter.

Please send your replies **by the 17th of July**. Thank you!


2. Responses

		Wider Dissemination?	Does your country have a definition of “public policy” or “public security” (or other similar notions, such as “national security”), or a list of cases when an alien can be considered as posing risk to public policy or public security, or an established procedure for

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.






			assessing such risk, or anything else of the kind?
	Austria	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	Belgium	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	Bulgaria	Yes	<p>According to the <u>Law for the Protection of the Classified Information</u> "National security" is a status of the society and the state, at which are protected the basic human and civil rights and liberties, the territorial entity, the independence and the sovereignty of the country and is guaranteed the democratic functioning of the state and the civil institutions, as result of which the nation preserves and increases its well-being and is developing.</p> <p>"Interests of the Republic of Bulgaria, connected with the national security" are the guaranteeing of the sovereignty and the territorial entity and the protection of the constitutionally established order in the Republic of Bulgaria, including:</p> <ol style="list-style-type: none"> revealing, prevention and counteraction to encroachments on the independence and the territorial entity of the country; revealing, prevention and counteraction to secret encroachments, which impede or threaten the political, the economic and the defence interests of the country; receiving of information about foreign countries or of foreign origin, necessary for taking of decisions by the supreme bodies of the state power and the state government; revealing, prevention and counteraction to secret encroachments, directed to forceful change of the constitutionally established order in the country, which guarantees exercising of human and civil rights, democratic representation on the basis of multi – party system and the activity of the institutions, established by the Constitution; revealing, prevention and counteraction to terrorist actions, to illegal traffic of people, arms and drugs, as well as to illegal traffic of products and technologies, placed under international control, money laundering and other specific risks and threats. <p>According to the <u>Law for the Foreigners in the Republic of Bulgaria</u> the issuing of visa and entering in the country shall be refused to a foreigner when:</p> <ol style="list-style-type: none"> with his activities he has put or could put in danger the security or the interests of the Bulgarian State or about whom there are data that he acts against the security of the country; with his activities he has discredited the Bulgarian state or has derogated the prestige and the dignity of the Bulgarian people; there are data that he is a member of a criminal group or organisation or that he implements terrorist activity, smuggling and illegal transactions with arms, explosives, ammunitions, strategic raw materials, products and technologies with double use as well as illegal traffic of anaesthetic and psychotropic substances and precursors and raw materials for their production; there are data that he implements trade with people and illegal bringing persons in the country and bringing out of the country persons to other states; he has been expelled from the Republic of Bulgaria sooner than 10 years ago and has not restored in 6 months term after the expel the funds spent for this by the country; he has committed premeditated crime on the territory of the Republic of Bulgaria which according to the Bulgarian legislation is to be punished with more than 3 years imprisonment; he has made an attempt to enter the country or to pass through it using false or forged documents, visa or residence permit; it could be supposed that he will disseminate grave infectious disease, suffers from a disease which according to the criteria

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


			<p>of the Ministry of health or the World Health Organisation represents a threat for public health or when he does not have a certificate for vaccination, or comes from a region with complicated epidemic or epizootic situation;</p> <p>9. he has no ensured maintenance and the necessary obligatory insurances during the stay in the country and funds ensuring opportunity for returning back;</p> <p>10. at previous entering and stay he has systematically breached the border, the passport - visa, the currency or the customs regime of the Republic of Bulgaria;</p> <p>11. at previous stay he has breached the labour or tax legislation of the country;</p> <p>12. he has no visas or tickets for the following countries along the route;</p> <p>13. to the person has been imposed compulsory administrative measure not to enter the country and this measure is in force;</p> <p>14. he is included in the informational massif of the unwelcome foreigners in the country, maintained by the Minister of Interior and by the Minister of Foreign Affairs.</p> <p>15. applies for an entry visa by a document for final leaving of the territory of another country where he has stayed by this moment;</p> <p>16. applies for a visa by invalid document for travelling abroad or by other substituting document.</p> <p>It shall be possible to be refused the issuing of visa or entry in the state to a foreigner, in case:</p> <p>1. there are data that he wants to enter the country in order to commit a crime or breach of the public order;</p> <p>2. at previous stay in the country he has committed breach of the public order;</p> <p>3. his entering in the country might harm the relations of the Republic of Bulgaria with another state;</p> <p>4. there are data that the purpose of the entering is to stay in the country as immigrant without having special permission for this;</p> <p>5. there are data that the purpose of the entering is to use the country as transit point for migration to third country.</p> <p>6. during a previous stay in the country he has been socially supported by the state;</p> <p>7. he is not in position to substantiate reliably the declared purpose of travelling.</p> <p>8. there is enacted penal provision for imposed fine by the order of this law, which has not been paid;</p> <p>9. the foreigner does not have sufficient resources to provide his/her maintenance according to the duration and the terms of the stay in the Republic of Bulgaria, as well as to return in the state of his/her permanent residence or to pass through the Republic of Bulgaria;</p> <p>10. has presented a document of untrue contents or has declared incorrect data.</p>
	<p>Czech Republic</p>	<p>Yes</p>	<p>Even though the terms <i>public order</i> and <i>state security</i> are cited in a number of Czech laws, they are nowhere strictly defined.</p> <p><i>Public order</i> is such a situation where rules of conduct (both those explicitly detailed by the laws and those not explicitly detailed), that are in general opinion of the majority of people in certain place and at certain time regarded as a necessary condition of peaceful situation, are respected. It is up to the administrative subjects to judge whether a conduct is inconsistent with public order.</p> <p>In the case of dealing with foreign nationals, <i>public order</i> concerns the issues of crossing the border, fulfilling the conditions of residence, law-abidingness, or, abuse of rights of foreign nationals residing in the Czech Republic.</p> <p>Likewise, whether a foreign national poses a risk for <i>state security</i> is considered on individual basis. The Supreme Administrative Court</p>

EMN Ad-Hoc Query: “public policy” and “public security”



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.

			of the Czech Republics holds that the state security means “securing of sovereignty, independence, territorial integrity, defence power and protection of democratic foundation of the state, particularly in the respect of preservation of constitutional system, life, health and possessions of the population (not just individual citizens).”
	Estonia	Yes	According to the Ministry of the Interior a national security is a public interest which consists of protecting the citizens and through that state’s constitutional order. We do not have a list of cases when an alien can be considered a risk to the national security. In every case the risk is assessed individually.
	Finland	Yes	There is no exhaustive listing of acts posing a risk to public policy or public security. Public policy is often combined with public order, though the notion of these two is not quite similar. Public order is considered to refer to constitutional principles, while public policy is wider of its scope and covers also public order. Organised crime, terrorism and espionage would fall within the scope of public security. As mentioned before, an exhaustive list of crimes posing a risk to public security would be difficult to compose. Within the Finnish Immigration Service it is a common policy that all acts sanctioned in the Criminal Procedure Act are considered posing a risk to public order (i.e. public policy). Section 168 of the Finnish Aliens Act indicates a small scale determination of cases where an alien can be considered as posing a risk to public security: “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.”
	Germany	Yes	At various points, the current German Residence Act (AufenthG) envisages the following: <ul style="list-style-type: none"> • a reference being made to “public security” and to “public policy”, although no detailed definition of these two terms is provided, • catalogues of individual cases, alongside dangers to “public security” and “public policy” that have consequences in terms of the subject’s right of residence. The reader is, for example, referred to the regulations in respect of the expulsion of foreign nationals (§§ 53, 54, 55 AufenthaltG, to be found in the annex). Within Germany, no legislative procedure in respect of the implementation of the Return Directive 2008/115/EC has to date been initiated. At this point in time, we must proceed on the assumption that the terms “public policy” and “public security” as used in this Directive are not going to be defined more closely.
	Hungary	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	Ireland	Yes	Ireland is currently not participating in (“opted in to”) Directive 2008/115/EC (the “Return” Directive). Therefore, we have not transposed the concepts of “public policy” or “public security” in the context of this Directive.

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





			<p>Under domestic legislation section 3(3) of the Immigration Act 1999 (as amended) provides that the Minister for Justice, Equality and Law Reform may have regard to factors including national security and public policy in determining whether or not make a deportation order in relation to a non-national.</p> <p>Ireland has transposed Directive 2004/38/EC (the “Free Movement” Directive) via the European Communities (Free Movement of Persons) (No. 2) Regulations 2006 and the European Communities (Free Movement of Persons) (Amendment) Regulations 2008. These Regulations provide for restrictions on the right of residence on grounds of public policy, public security or public health and that the Minister may remove a person from the State if : “in the opinion of the Minister, the conduct or activity of the person is such that it would be contrary to public policy or it would endanger public security or public health to permit the person to remain in the State.”</p> <p>The recently published <i>Communication from the Commission on guidance for better transposition and application of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States</i> gives Member States some guidance on the concepts of public policy and public security in the context of the application of that Directive.</p>
	<p>Italy</p>	<p>Yes</p>	<ul style="list-style-type: none"> • “public policy” (“ordine pubblico”): <p>“public policy” is not defined by a specific rule. As interpreted by the Constitutional Court, public policy is a constitutionally protected value as heritage of the community (understood as legal value). An alien who represents a threat to public order is expelled by a decision of the Minister of Interior;</p> <ul style="list-style-type: none"> • "National security" (“sicurezza dello Stato”): <p>the Law identifies the behaviours that may represent a risk for State security, such as the performance of acts suitable to subvert the law of the State and participation in terrorist activities, including international ones, or their facilitation. The alien is expelled by a decision of the Minister of Interior or, in some cases, of the prefect (the Territorial representative of the Ministry of Interior);</p> <ul style="list-style-type: none"> • "Public security" (“sicurezza pubblica”): <p>The Law identifies the persons that are endangering public safety. They are:</p> <ul style="list-style-type: none"> - Persons must be considered, on the basis of facts, which are usually involved in trafficking crimes; - Persons who, because of behaviours and standard of life and on the basis of factual evidence, must be considered, live habitually, even in part, with the proceeds of criminal activities; - Persons who, by their behaviour and on the basis of facts, must be regarded as dedicated to commit crimes that offend or endanger the physical or moral integrity, health, security or public quietness. <p>In these cases, the police authorities make an assessment of dangerousness and the Prefect take a expulsion order.</p> <p>The immigration law also considers dangerous aliens who were convicted, even after application of the penalty on request, for a range of offenses covered by the Code of Criminal Procedure (e.g. robbery, theft, murder, kidnapping, etc.) or drug offenses, against sexual freedom offences, the facilitation of illegal immigration to Italy and illegal emigration from Italy to other countries or for crimes directed at recruiting people to be devoted to prostitution or the exploitation of prostitution or the exploitation of minors for illegal activities.</p> <p>In these cases the police authorities automatically revoke the residence permit without any assessment of risk, with the exception for long-term residents or foreigners holding residence permit for family reasons or who have exercised their right to family reunification. Consequently, the Prefect provides the expulsion order.</p>

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

	Latvia	Yes	<p>In relation to „public security” the State Security Police is using the term “national security” the definition can be found in the National Security Law.</p> <p>The national security is a state, attained as a result of joint, purposeful measures implemented by the State and society, in which the independence of the State, its constitutional structure and territorial integrity, the prospect of free development of society, welfare and stability are guaranteed.</p> <p>The National Security Law determines the national security system and tasks of such, the competence of the persons or institutions responsible for the national security system and the principles and procedures of co-ordination, implementation and control of their activities.</p> <p>In accordance with the Immigration Law and its dependant legal regulations in the competence of the State Security Police is the control of entry and residence of foreigners in the Republic of Latvia in order to establish whether persons’ entry and residence in the Republic of Latvia will not create threats to the State security or substantially endanger public order. Paragraph 1 of section 61 of the Immigration Law states the cases when the decision regarding including a third-country national in the List of those persons for whom the entry in the Republic of Latvia is prohibited shall be taken (by the Minister for the Interior) if:</p> <ol style="list-style-type: none"> 1) competent State authorities have reason to believe that a third-country national participates in anti-state or criminal organisations or is a member thereof; 2) competent State authorities have reason to believe that a third-country national causes a threat to national security or public order and safety or, by entering Latvia, may hinder pre-trial investigations or the work of law enforcement institutions in discovering a criminal offence. 3) competent State authorities have reason to believe that a third-country national has committed or is planning to commit a serious or extremely serious crime; 4) a third-country national has committed a crime against humanity, an international or war crime or has participated in mass repression if such has been determined by a court judgement; 5) competent foreign authorities have supplied information which forbids a third-country national to enter and reside in the Republic of Latvia; or 6) the entry and residence of a third-country national into the Republic of Latvia is not desirable for other reasons on the basis of an opinion delivered by competent authorities of the Republic of Latvia. <p>Public order is not defined in our national legislation, still the responsible institution for obtaining the public order in accordance with the Law on Police is the State Police.</p>
	Lithuania	Yes	<p>Yes for the “public policy”, no for the “public security”.</p> <p>An order of the General Commissioner of the Police of the Republic of Lithuania establishes a list of the main criteria which must be assessed by a police officer, when deciding if there is a possible risk for public policy. The criteria are as follows:</p> <ul style="list-style-type: none"> - the alien was convicted for a heavy or a very heavy crime; - the alien was convicted for a crime, when s/he received a sentence of imprisonment for at least a year; - the alien is under an official warning or a liability established by a court under the Law on the Prevention of Organised Crime; - the alien is reasonably suspected as having committed a heavy or a very heavy crime, or there is evidence that s/he intends to commit such crimes;

EMN Ad-Hoc Query: “public policy” and “public security”


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.

			<ul style="list-style-type: none"> - the alien is under compulsory medical treatment, foreseen by the article 98 of the Criminal Code; - the alien is wanted by another country for a crime, for which the Lithuanian Criminal Code foresees imprisonment for at least a year. <p>Additional criteria that the police officer may take into account:</p> <ul style="list-style-type: none"> - personal conduct; - expired previous convictions for a crime; - administrative infringements committed within the last 2 years.
	Netherlands	Yes	<p>When deciding whether a person is a risk for public policy in general the following criteria are taken into account:</p> <ul style="list-style-type: none"> - the situation when there are serious reasons for considering that the alien has committed a crime as mentioned in article 1F of the Geneva Convention on Refugees (a crime against peace, a war crime, a crime against humanity, or a serious non-political crime); - the alien has been convicted for a crime for which he or she received a sentence of imprisonment or a sentence of community service, or the situation that the alien has accepted an unconditional fine; - the alien is under compulsory medical treatment, foreseen by the article 37 of the Criminal Code. <p>Public policy also contains public peace, morality, public health and international relations. With regards to those aspects no specific rules are established.</p> <p>With regards to the public security no clear criteria are established. No criminal conviction is necessary. There have to be concrete indications that a person is a threat to national public security. In these cases one can think of a report of the General Intelligence and Security Service.</p>
	Portugal	Yes	<p>“Public security” is a vague concept referred to in the Law only in abstract terms. Such concepts must be subject to interpretation and adjusted to each individual case by the decision maker (either administrative or judicial), in accordance to the specific circumstances of the actual case, and duly integrated in the legal framework of the national system involved.</p> <p>One has to assess if a certain behavior represents a threat to public security in a degree that substantiates commencing expulsion proceedings, namely actions that are deemed as felonies by the penal laws. In addition, it is necessary to assess the seriousness of the actions in real terms.</p> <p>In the Portuguese case, it does not seem admissible to adopt a list of set criteria to determine the cases of risk to public security.</p>
	Slovak Republic	Yes	<p>Slovakia does not have a definition of a public policy or a public security in a national legislation. Based on the Act on Residence of Foreigners when assessing the application for the residence permit the security of the state is taken into account. The application for the residence permit is refused when it is suspected that the foreigner will cause a threat to the security of the state, public order, health or rights and freedoms of the others. This is assessed on a case by case basis. At the same time the foreigner when applying for a residence permit has to prove his/her integrity by submitting a criminal records extract of the Slovak Republic as well as from the countries where s/he has a citizenship or a country where s/he was residing in last 3 years. Police can in the process of decision making ask for a transcript of criminal records.</p>
	Slovenia	Yes	<p>“Public policy” and “public security” are not defined as a general definition in Republic of Slovenia. They are used depending on the</p>

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

		<p>specific legislation.</p> <p>Regarding refusal of entry of third country nationals, Minister of Interior of Republic of Slovenia issued a Regulation on refusing entry in Republic of Slovenia to a third country national, issuing a visa at border crossings and procedure for revoking visas, that regulates public policy.</p> <p>According to the above-mentioned Regulation the third country national can be refused to enter on the bases of public policy or internal security of Republic of Slovenia if there is a reason to suspect that his stay would be connected especially with:</p> <ul style="list-style-type: none"> - carrying out terrorist or other violent actions; - carrying out illegal intelligence activities; - carrying out criminal offences; - threat to public policy. <p>Reasons to suspect that the stay of a third country national in Republic of Slovenia is connected with carrying our terrorist or other violent actions exists especially:</p> <ul style="list-style-type: none"> - if a third country nationals is a citizen of a country in which terrorists or violent acts are quite frequent and the reason for his stay can not be substantiated reliably; - if informations exists indicating that the third country national might be a member of a terrorist organisations terrorist groups or organised violent groups; - if informations exists indicating that a third country national, while staying could carry out terrorist or other violent actions in Republic of Slovenia. <p>Reason to suspect that the stay of a third country national is connected with carrying out illegal intelligence activities in Republic of Slovenia exists especially when Slovenian intelligence-security agency on the bases on their intelligence analyses, that the entry of a third country national represents a threat to national security on the grounds of carrying out illegal or other activities.</p> <p>Reason to suspect that the stay of a third country national is connected with carrying out criminal acts in Republic of Slovenia exists especially:</p> <ul style="list-style-type: none"> - if a third country national has been sentenced in Republic of Slovenia for a criminal offence punishable by penalty involving deprivation of liberty of a least one year; - if a third country national has been prosecuted for a criminal offence persecuted by official duty in last two years; - if a third country national posses objects for committing criminal offences; - if informations exists or circumstances are indicating, that the third country national could carry out criminal offence in Republic of Slovenia. <p>Reason to suspect that the third country national will be a threat to public policy in Republic of Slovenia exists especially:</p>
--	--	---

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

			<ul style="list-style-type: none"> - if informations exists or if circumstances are indicating that third country national while living in Republic of Slovenia could threat public policy; - if a third country national enters with intention to participate on public gathering and is expected that he will violate public policy and possesses objects, prohibited on public gathering; - if a third country national has been in Republic of Slovenia punished for a minor offence according to the legal acts regulating public policy, specially legal acts on state border, aliens and illicit drugs, at least two times in last two years; - if informations exist or in circumstances are indicating that a third country national will abuse his stay in Republic of Slovenia to illegally enter another country or facilitate other person the illegal entry to another country; - if he attempts to enter Republic of Slovenia with a motor vehicle that does not fulfil the conditions for use in Republic of Slovenia or third country national does not fulfil the conditions for operating such a vehicle.
	Sweden	Yes	<p>No, in Sweden we have no such list, neither for “public policy” nor for “public security”.</p> <p>The question regarding public policy and security is in each case tried individually. The Swedish Migration Board takes guidance from the available verdicts from the European court. Some of these with relevance to public policy and security are:</p> <p>Case 30/77 (Bouchereau)</p> <p>Joint cases 115/81 and 116/81 (Adoui and Cornuaille)</p> <p>In the case C-348/96 (Calfa) the court says that the punishment of automatic lifetime expulsion are not in line with the community law. This principle is elaborated in the joint cases C-482/01 and C-493/01 (Orfanopoulos and Oliveri) in which it is stated that expulsion can not be an automatic punishment at all.</p>

Annex Germany: respective sections German Residence Act:

Section 53

Mandatory expulsion

A foreigner shall be expelled, if he or she

1. has been unappealably sentenced to a prison term or a term of youth custody of at least three years for one or more intentionally committed offences or to several prison terms or terms of youth custody for intentionally committed offences totalling at least three years within a fiveyear period or preventive detention has been ordered in connection with the most recent unappealable conviction,
2. has been unappealably sentenced to at least two years' youth custody or to a prison term for an intentionally committed offence under the Narcotics Act, for a breach of the peace under the conditions specified in Section 125a, sentence 2 of the Penal Code or for a breach of the peace committed at a prohibited public gathering or a prohibited procession pursuant to Section 125 of the Penal Code and the sentence has not been suspended on probation, or
3. has unappealably received a custodial sentence for smuggling in foreigners pursuant to Section 96 or Section 97 and the sentence has not been suspended on probation.

Section 54

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.*

Regular expulsion

A foreigner will generally be expelled if

1. he or she has been unappealably sentenced to at least two years' youth custody or to a prison term for one or more intentionally committed offences and the sentence has not been suspended on probation,
2. he or she is unappealably convicted of smuggling in foreigners pursuant to Section 96,
3. he or she cultivates, produces, imports, carries through the Federal territory, exports, sells, puts into circulation by any other means or traffics in narcotics without authorisation and in contravention of the provisions of the Narcotics Act, or if he or she aids or abets such acts,
4. he or she participates as a perpetrator of or accessory to acts of violence against persons or property which are committed concertedly from within a crowd in a manner which endangers public safety at a prohibited or disbanded public gathering or in a prohibited or disbanded procession,
5. facts justifiably lead to the conclusion that he or she belongs to or has belonged to an organisation which support terrorism or supports or has supported such an organisation; expulsion may only be based on membership or supportive acts in the past insofar as the form the basis for a currently prevailing danger,
- 5a. he or she endangers the free democratic basic order or the security of the Federal Republic of Germany, participates in acts of violence or publicly incites to violence in pursuit of political objectives or threatens the use of violence,
6. he or she, in the course of an interview which serves to clarify reservations regarding entry or continued residence, fails to reveal previous stays in Germany or other states to the German diplomatic mission abroad or to the foreigners authority or furnishes false or incomplete information on key points regarding links with persons or organisations who or which are suspected of supporting terrorism; expulsion on this basis shall only be permissible if the foreigner is expressly informed prior to the interview of the security-related purpose of the interview and the legal consequences of furnishing false or incomplete information; or
7. he or she belonged to the leadership of an organisation which has been unappealably banned because its purpose or activities are in breach of the criminal laws or he or she opposes the constitutional order or the concepts of international understanding.

Section 54a

....

Section 55

Discretionary expulsion

(1) A foreigner may be expelled if his or her stay is detrimental to public safety and law and order or other substantial interests of the Federal Republic of Germany.

(2) A foreigner may be expelled in accordance with sub-section 1 in particular if he or she, either in Germany or abroad,

1. a) has furnished false or incomplete information in order to obtain a German residence title, a Schengen visa, a passport substitute, eligibility for exemption from the passport obligation or the suspension of deportation or,
b) notwithstanding a legal obligation, has failed to cooperate in measures undertaken by the authorities responsible for implementing this Act or the Convention Implementing the Schengen Agreement
in administrative proceedings conducted by authorities of a state applying the Convention Implementing the Schengen Agreement, provided that the foreigner was informed beforehand of the legal consequences of such action,
2. has committed a breach of legal provisions, court rulings or official orders, excepting isolated or minor breaches, or has committed an offence outside of the Federal territory which is to be regarded as an intentionally committed offence in the Federal territory,
3. contravenes a legal provision or official decree pertaining to the practice of prostitution,
4. uses heroin, cocaine or a comparably dangerous narcotic and is not prepared to undergo a course of rehabilitation treatment or evades such treatment,
5. endangers public health through his or her behaviour or is homeless for a prolonged period,

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.*

6. claims social welfare for himself/herself, his or her dependents or other persons belonging to his or her household,
 7. receives an educational allowance for persons outside of his or her own family or an allowance for young adults in accordance with Book Eight of the Social Code; this shall not apply for a minor whose parents or parent possessing the sole right of care and custody is lawfully resident in the Federal territory,
 8. a) publicly, at a meeting or by disseminating literature, endorses or promotes a crime against peace, a war crime, a crime against humanity or terrorist acts of comparable importance in a manner conducive to disturbing public safety and order
b) incites hate against sections of the population or calls for violence or arbitrary measures against the same in a manner conducive to disturbing public safety and order or attacks the human dignity of others by insulting, maliciously disparaging or slandering sections of the population,
 9. specifically and continuously brings his or her influence to bear on a child or a young person in order to instil or intensify a hate of persons belonging to other ethnic groups or religions,
 10. prevents another person from participating in life in the Federal Republic of Germany on an economic, cultural or social level by reprehensible means, in particular through the use or threat of violence or
 11. coerces or attempts to coerce another person into entering into marriage.
- (3) In reaching the decision on expulsion, due consideration shall be accorded to
1. the duration of lawful residence and the foreigner's legitimate personal, economic and other ties in the Federal territory,
 2. the consequences of the expulsion for the foreigner's dependents or partner who is/are lawfully resident in the Federal territory and who lives/live with the foreigner as part of a family unit or cohabits with the foreigner as his or her partner in life,
 3. the conditions specified in Section 60 (2), sentence 3 for the suspension of deportation.

(complete text: http://www.en.bmi.bund.de/cln_012/nn_122730/Internet/Navigation/EN/ActsAndRegulations/actsAndRegulations__node.html__nnn=true)