



**Ad-Hoc Query on withdrawing temporary and permanent non-asylum residence permits because of issues of public order in other EU member states**

**Requested by NL EMN NCP on 29 January 2015**

**Compilation produced on 31 March 2015**

**Responses from Austria, Belgium, Croatia, Czech Republic, Estonia, Finland, France, Germany, Hungary, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Slovak Republic, Slovenia, Spain, Sweden and Norway (20 in Total)**

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**1. Background Information**

The Netherlands is sometimes confronted with criminal third country nationals who hold a residence permit of another EU country. In order to examine the possibilities of co-operation with other EU Member states in dealing with these individuals, we would like to find out about the possibilities in your country to withdraw a residence permit because of issues of public order. Therefore we would like to ask you the following questions.


1. What are the criteria in your country for withdrawing temporary non-asylum residence permits because of issues of public order?
2. What are the criteria in your country for withdrawing permanent non-asylum residence permits because of issues of public order?

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3. Does your country withdraw non-asylum residence permits based on issues of public order in other member states?


We would very much appreciate your responses by **Monday 26 February 2015**.

**2. Responses**

		<b>Wider Dissemination?</b>	
	<b>Austria</b>	<b>Yes</b>	<p>1. According to Art. 52 para 4 Aliens Police Act the Federal Office for Immigration and Asylum has to issue a return decision to a third country national who resides lawfully in Austria if, inter alia,</p> <ul style="list-style-type: none"> <li>- Subpara 1: one of the grounds for refusal of Art. 11 para 1 and 2 Settlement and Residence Act is fulfilled or becomes known subsequently to the last issuing of the person's residence permit, but would have been an obstacle to the issuing if known earlier.</li> <li>- Subpara 4: one of the grounds for refusal of Art. 11 para 1 and 2 Settlement and Residence Act is fulfilled and constitutes an obstacle to the issuing of a further residence permit in the future.</li> </ul> <p>One of these grounds for refusal listed in Art. 11 para 2 Settlement and Residence Act is:</p> <ul style="list-style-type: none"> <li>- The alien's residence may not conflict with public interests (subpara 1).</li> </ul> <p>This conflict with public interests is further specified in Art. 11 para 4 Settlement and Residence as following:</p> <ul style="list-style-type: none"> <li>- The alien's residence constitutes a threat to public order and security</li> <li>- The alien has a close relationship to an extremist or terrorist group and with regard to the group's existing structures or expected developments in their environment, extremist or terrorist acts of that group cannot be excluded.</li> </ul> <p>According to Art. 53 para 1 Aliens Police Act, an entry ban might be issued by the Federal Office to a third country national with the return decision. To determine the duration of the entry ban, the alien's previous conduct and the extent to which the person's stay being a threat to public order and security has to be considered and therefore, the following provisions contain very detailed definitions of such threat to public order and security:</p> <p>A threat to public order and security (Art. 53 para 2 Aliens Police Act) is assumed in case of:</p> <ol style="list-style-type: none"> <li>1. a legally binding final sentence for certain administrative offences</li> <li>2. a legally binding final sentence for administrative offences to a fine of minimum EUR 1000 or primary prison sentence</li> <li>3. a legally binding final sentence for a violation of the Settlement and Residence Act or Aliens Police Act</li> <li>4. a legally binding final sentence for financial offences or violations of foreign exchange control regulations, committed with intent</li> <li>5. a legally binding final sentence for a violation of prostitution regulations</li> <li>6. a third country national's inability to prove sufficient means of subsistence</li> <li>7. a third country national's getting caught exercising a occupation which the person is not allowed to work in according to the Act Governing the Employment of Foreign Nationals, with some exceptions</li> <li>8. a marriage (or civil union) of convenience</li> </ol>


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			<p>9. an adoption of convenience  A grave threat to public order and security (Art. 53 para 3 Aliens Police Act) is assumed in case of:</p> <ol style="list-style-type: none"> <li>1. a legally binding final sentence to imprisonment from a certain level of penalty onwards</li> <li>2. a legally binding final sentence for a crime committed with intent and within a time period of three months after the third country national's entry</li> <li>3. a legally binding final sentence for procuring</li> <li>4. a legally binding final sentence for repeat offences as well as for criminal offences as defined by the Aliens Police Act or to the Settlement and Residence Act</li> <li>5. a legally binding final sentence to imprisonment for more than five years</li> <li>6. given reasonable grounds for the assumption that the third country national is involved in certain ways (further specified in the Act) in activities with a terrorist background or is or was affiliated with a criminal organization or a terrorist association</li> <li>7. given reasonable grounds for the assumption that the third country national's conduct constitutes a threat to national security, particularly because the person was involved in acts of violence within a public context</li> <li>8. a third country national publicly approves of or promotes a crime against peace, a war crime, a crime against humanity or any terrorist activity of comparable significance, in an assembly or via the dissemination of writings.</li> </ol> <p>2. To issue a return decision against a third country national who holds a permanent residence permit („Permanent right of residence EU“), the provisions of Art. 53 para 3 Aliens Police Act have to be fulfilled, so the third country national's residence has to constitute an actual, grave threat to public order and security (Art. 52 para 5 Aliens Police Act).</p> <p>3. According to Art. 28 para. 2 Settlement and Residence Act, third country nationals' resident permits may be withdrawn if a legally binding final and enforceable (forced) return decision (residence ban), which has its reasons in public issues (namely in an acute threat to public order and security or to national security), has been issued by another state within the EEA and this residence ban</p> <ul style="list-style-type: none"> <li>- is based on a criminal conviction for an offense committed with intent, which is punishable by imprisonment of a term of at least one year or</li> <li>- was issued because of given reasonable grounds for suspecting that the third country national committed crimes mentioned above or concrete indications for plans to commit these crimes within the territory of a state of the EEA or</li> <li>- was issued because the third country national violated entry and residence legislation of the deciding country.</li> </ul> <p>The provisions of para. 2 are not to be implemented if that would lead to a violation of article 2 and 3 of the ECHR, protocol no. 6 (concerning the abolition of the death penalty) or protocol no. 13 (concerning the abolition of the death penalty in all circumstances) to the convention. (Art. 28 para 3 Settlement and Residence Act)</p> <p>In case the withdrawal according to para. 2 would interfere with the right to a private and family life, tis withdrawal is only admissible if imperatively necessary to achieve the objectives laid down in Art. 8 para 2 ECHR. (Art. 28 para 4 Settlement and Residence Act)</p> <p>Indeed, existing jurisprudence also emphasized the necessity of a consideration of interests according to Art. 8 ECHR.</p>
	<b>Belgium</b>	<b>Yes</b>	<p>1. Conditions are imposed for temporary residence. If one of the conditions is the absence of facts of public order, it may that the residence will not be prolonged in case of violation of this condition (no further information could be obtained).</p>



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			<p>2. In case of permanent residence or temporary residence without public order criteria (condition for renewal), the residence may only be terminated by means of a Ministerial Decision concerning expulsion or a Royal Decree concerning expulsion. If a foreign national does not have the status of establishment, (s) he can be expelled in case of violation of public order. For established foreign nationals (for TCN this means in general a legal, uninterrupted stay of at least 5 years) there has to be a serious breach of public order (regulations) before an expulsion decision can be taken. There is no concrete penalty (f.i. terms of conviction) described; the law only mentions a serious breach. Thus this is handled on a case-by-case basis; the only criteria is that the decision has to be proportional.</p> <p>3. A such this is possible, but given the poor information exchange between MS in this regard, this happens rather seldom.</p>
	<p><b>Croatia</b></p>	<p><b>Yes</b></p>	<p>1. &amp; 2. The Aliens Act (Official Gazette, No.: 130/11 and 74/13) provides that temporary stay of an alien shall terminate if the prohibition of entry and stay in the Republic of Croatia is in force. Permanent stay shall terminate if an alien is prohibited from entering and residing in the Republic of Croatia, i.e. if this is required by reasons of protecting public order, national security or public health. Prohibition of entry and stay, i.e. a period in which an alien is prohibited from entering to and staying in the Republic of Croatia, shall be determined by way of an alien decision on expulsion. An alien may be expelled from the Republic of Croatia if he/she poses a threat to public order, national security or public health. The notion of public order denotes fundamental human and moral principles upon which the system of the Republic of Croatia shall rest, whereas the intensity of the public order breach shall be judged against the circumstances of a specific case. When making a decision on expulsion, account shall be taken of the duration of an alien's stay, economic relations and the degree of social and cultural integration in the Republic of Croatia, and his/her ties to the country of origin. Further, account shall be taken of the best interest of a minor and the needs of other vulnerable persons, the family life and health conditions of a foreigner against whom measures shall be taken. Vulnerable persons shall be persons with disabilities, the elderly, pregnant women and single-parent families with underage children, victims of violence and minors, especially the unaccompanied minors. An alien may lodge an appeal against police directorates, i.e. police precincts, and an administrative dispute may be initiated against a decision passed by the Ministry of the Interior.</p> <p>3. The Aliens Act prescribes that in instances where another EEA state has passed a decision on expulsion for an alien, the competent authority shall take account of the interest of such an EEA state in the procedure of visa issuance or granting stay in the Republic of Croatia. If an alien has already been granted stay in the Republic of Croatia, while posing a threat to public order in another EEA member-state, such a fact shall be judged against all circumstances of the specific case. Namely, it is required to establish whether or not the alien also poses a threat to public order in the Republic of Croatia, and when making a decision on expulsion, account needs to be taken of the duration of an alien's stay, economic relations and the degree of social and cultural integration in the Republic of Croatia, and his/her ties to the country of origin.</p> <p><i>Source: Ministry of the Interior</i></p>



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	<b>Czech Republic</b>	<b>Yes</b>	<p>1. In the Czech Republic the withdrawing of temporary non-asylum residence permits related to issues of public order is governed by the Act No. 326/1999 Coll., On the Residence of Foreign Nationals On the Territory of the Czech Republic.</p> <p>According to this Act only conduct that would constitute a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society could be treated as a reason for withdrawing residence permit.</p> <p>It is always necessary to assess whether the personal conduct of the applicant suggests that there is a serious violation of public order.</p> <ul style="list-style-type: none"> <li>• Behavior in the past, such as previous criminal conviction, does not in itself cause a breach of public order (and a reason for withdrawing the residence permit), especially if longer period has passed. It can be taken into account only if there is a likelihood of recurrence of the offense.</li> <li>• A spent conviction cannot be considered as a serious breach of public order because it does not represent any present threats.</li> <li>• When assessing the existence of a threat to public order in cases of persistent crime, it is necessary to examine in particular the nature of crimes, their frequency and damage or harm caused.</li> <li>• The marriage of convenience, illegal entry or illegal residence in the Czech Republic cannot be itself considered as disturbing of public order because it is not a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society.</li> </ul> <p>It is always necessary to take into account the individual circumstances of life of the foreigner and the overall situation, in particular whether the decision would have been adequate in terms of interference in private and family life of the foreigner.</p> <p>2. There is no difference in the criteria for temporary and permanent residence permits, but each and every case has to be treated individually in order to take into account the individual circumstances of each case.</p> <p>3. Department for Asylum and Migration Policy (OAMP) can decide to withdraw residence permit based on issues of public order in other member states.</p>
	<b>Estonia</b>	<b>Yes</b>	<p>1. Temporary and permanent residence permit may withdraw by concerned authority in following cases:</p> <ul style="list-style-type: none"> <li>- an alien has submitted falsified documents or false information regarding the relevant matters;</li> <li>- an alien does not observe the constitutional order and does not act in compliance with the Estonian laws;</li> <li>- the activity's against the Estonian state and the security thereof;</li> <li>- an alien is inciting or may incite national, racial, religious or political hatred or violence;</li> <li>- an alien has served in a career position in the armed forces of a foreign state, has been assigned to the reserve forces thereof or has retired therefrom;</li> <li>- an alien is in the active service or in the contractual service of the armed forces of a foreign state;</li> <li>- an alien has committed a criminal offence for which he or she has been sentenced to imprisonment for a term for more than one year and his or her criminal record has not expired;</li> <li>- an alien has been repeatedly punished in Estonian for intentionally committed crime against the state and his punishment has not expired;</li> <li>- an alien has been repeatedly punished pursuant to criminal procedure for intentionally committed criminal offences;</li> <li>- an alien belongs to a criminal organisation, or is connected with the illegal conveyance of narcotics, psychotropic substances or persons across the border or the temporary control line, or is a member of a terrorist organisation, or has committed or there is a good reason to believe that may commit an act of terrorism, or is involved in financing or supporting terrorism or money laundering;</li> </ul>

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			<ul style="list-style-type: none"> <li>- an alien is employed by an intelligence or security service of a foreign state;</li> <li>- an alien has received or there is good reason received special training or special preparation in landing operations, or in diversion or sabotage activities, or other special training, and the knowledge and skills acquired in the process of such training can be directly applied in the formation or training of illegal armed units;</li> <li>- an alien has participated or there is good reason to believe that he or she has participated in punitive operations against civil population or;</li> <li>- with regard to an alien there is good reason to believe that he or she has committed crimes against humanity or a war crimes.</li> </ul> <p>2. In case of the refusal to issue a residence permit for a long-term resident for the reason that the person may constitute a threat to public order will be taking into account (additionally to cases named in 1<sup>st</sup> answer) the length of the period of stay in Estonia of an alien and connections with Estonia and the county of origin.</p> <p>3. No, there is no such ground.</p>
	<b>Finland</b>	<b>Yes</b>	<p>1. - 2. According to Section 36, Subsection 1 of the Finnish Aliens Act (General requirements for issuing residence permits), <u>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.</u>  <u>Grounds for cancelling residence permits</u> are listed in Section 58 of the Finnish Aliens Act and include e.g. the following:</p> <ul style="list-style-type: none"> <li>- A fixed-term or permanent residence permit or a long-term resident's EC residence permit may be cancelled if false information on the alien's identity or other matters relevant to the decision was knowingly given when the permit was applied for, or if information that might have prevented the issue of the residence permit was concealed.</li> <li>- A fixed-term residence permit may be cancelled if the grounds on which the permit was issued no longer exist.</li> <li>- A fixed-term or permanent residence permit or a long-term resident's EC residence permit may be cancelled if a Schengen State asks Finland to cancel a residence permit issued to an alien by Finland on the grounds that the alien has been prohibited from entering another Schengen State and ordered to be removed from the Schengen area on the grounds referred to in section 149(1)(2) and (1)(3).</li> </ul> <p>3. A residence permit can be withdrawn on a case-by-case basis if public order has been endangered in other Member States. In practice, such crimes might come to knowledge of the Finnish authorities if another Schengen Member State is going to remove a person from the Schengen area and/or impose a Schengen entry ban and is, by using the Schengen consultation process, requesting Finland to cancel a valid residence permit issued by Finland.</p>
	<b>France</b>	<b>Yes</b>	<p>1. The Code for Entry and Residence of Foreign Persons and the Right of Asylum (CESEDA) which governs the law applicable to foreign nationals in France provides several criteria related to withdrawal of a temporary residence permit under specific circumstances. Such withdrawal is authorized for migrants liable to criminal court proceedings under the French penal code because of trafficking in human beings, pimping and solicitation, criminal association, exploitation of begging, robbery in public transportation, forced funding request, drug offences.</p> <p>Moreover, the same code provides the possibility to refuse the issuance of a temporary residence permit to a foreign national which represents a threat to public order. This rule also applies for the renewal of the temporary residence permit.</p>




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			<p>2. The CESEDA provides also the possibility to refuse the issuance of a permanent (or a ten year) residence permit in case of threat to public order. This reservation is not possible for renewal application of ten year / permanent residence permits. In this case, if the authority decides to refuse the renewal of the residence permit because of issues of public order, it is necessary to adopt an expulsion measure for this foreign national before refusing the permit.</p> <p>However; if the foreign national benefits from protection against his/her removal, the CESEDA provides that the ten year residence permit can be withdrawn if the foreign national is subject to definite conviction for crime or offence against the nation, State or public order. In this case, the permanent resident permit is replaced by a temporary one.</p> <p>Moreover, the code also provides the automatic withdrawal of the ten year residence permit for the foreign national subject to conviction of violence against minors leading to mutilation or permanent disability or of complicity in this crime.</p> <p>In addition, other conditions for withdrawal exist when the foreign national is subject to exclusion order, when he/she lives polygamously or he/she is married to a polygamous spouse.</p> <p>3. French law does not prevent the French authority from considering issues of public order in third countries when appreciating the threat to public order represented by a foreign national living in France. Moreover, some convictions in third countries can appear on the French criminal record under international agreements.</p> <p>The French Council of State (Conseil d'Etat) upheld several decisions of refusal of issuance or renewal of residence permits or of removals for crimes committed out of France (for example, offences against law on foreign nationals in Belgium, membership of an organisation which committed attacks in third countries, etc.).</p> <p>Moreover, the CESEDA allows to withdraw a residence permit issued by France or by another EU member state if a member state has proceeded to his/her removal.</p> <p>As a conclusion, French authorities need to appreciate on a case by case basis the existence and seriousness of the threat and determines whether it threatens public order. This threat is appreciated in the context of the threat itself, of the protection of the foreign nationals and of his private and family life. The fact that the foreign national holds a criminal record with offences is not sufficient, the threat needs to be clearly identified and the grounds for refusal listed.</p>
	<p><b>Germany</b></p>	<p><b>Yes</b></p>	<p>1. and 2. Where a foreigner poses a danger to public order and security or to other substantial interests of Germany, this is punishable by expulsion. According to the severity of the danger posed by the foreigner, expulsion lies within the authority's discretion, generally takes place or is mandatory. The respective criteria pertaining to expulsion are stipulated in Sections 53, 54 and 55 of the Residence Act. The public interest in expulsion and the foreigner's personal interest in remaining in the country are to be weighed up in the decision and any special protection from expulsion is to be taken into consideration (Residence Act, Section 56). A direct legal consequence of expulsion is expiry of the - temporary or permanent - residence title pursuant to Section 51 (1) No. 5 of the Residence Act, in view of which revocation of the residence title is not necessary. Legislative proceedings are currently underway for an amendment to the law regarding expulsion.</p> <p>3. A risk to public order in another member state may provide grounds for expulsion where this is expressly stipulated, e.g. when false information is furnished to authorities of a Schengen state in visa procedures (Residence Act, Section 55 (2), No. 1) or in case of an offence committed outside of Germany which is to be regarded in Germany as an intentionally committed offence (Residence Act, Section 55 (2),</p>



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			<p>No. 2). On the basis of the prognosis which is to be carried out, the foreigner's behaviour abroad must indicate that the foreigner constitutes a continuing danger in Germany. An English version of the Residence Act is to be found at: <a href="http://www.gesetze-im-internet.de/englisch_aufenthg/index.html">http://www.gesetze-im-internet.de/englisch_aufenthg/index.html</a> .</p>
	<p><b>Hungary</b></p>	<p><b>Yes</b></p>	<p>1. Section 13(1) h) and j) of Act II of 2007 on the entry and residence of third-country nationals set out that 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 security or public health, or to the national security of Hungary; i) they are not persons for whom an alert has been issued in the SIS for the purposes of refusing entry. Section 50(1) of Government Decree 114/2007 sets out that the competent regional directorate of the Office of Immigration and Nationality (OIN) requests the opinion of the Constitution Protection Office and the Counterterrorist Center concerning certain cases of applications for a residence permit for reasons of public security and national security, however, it is not carried out on a regular basis. Practically in most of the cases the threat to public policy is assessed according to the databases available for the OIN and based on the information provided by the third-country national applicant. The application form necessitates filling the sections on the following questions: whether the application for residence permit has ever been refused, whether the applicant has ever been convicted of a crime (including the country, date, type of crime committed and the punishment imposed), whether the applicant has ever been expelled from Hungary. Based on the information provided by the applicant and the official information available for the OIN from databases, or occasionally by contacting other competent authorities, the assessment is always carried out on a case by case basis, there is no written scale or similar system in effect for evaluating the threat the third-country national might mean. Such assessment can also be made when the third-country national already holds a residence permit and if justified, the permit can be withdrawn, as Section 18(1) of Act II of 2007 sets out that the residence permit shall be withdrawn if the third-country national does not fulfill the conditions set out in Section 13(1) a), c)-i).</p> <p>2. According to Section 97 of Government Decree 114/2007 the Constitution Protection Office and the Counter Terrorism Centre issue their official opinion on whether the applicant for permanent residence permit means a threat to the national security of Hungary in all applications for long-term residence permit. According to Section 97/A of Government Decree 114/2007 the Police issue their official opinion on whether the applicant means a threat to the public security of Hungary in all applications for long-term residence permit. It is therefore primarily the obligation of these special authorities to collect and assess information on the applicant concerning criminal background as well as involvement in activities threatening public and national security. The OIN is bound by the opinion of these special authorities when making a decision in the application procedure for permanent residence permit. According to Section 37(1) a) of Act II of 2007 the immigration authority may withdraw a permanent residence permit if the circumstances based on which it was issued have changed to an extent that the criteria for authorization is no longer satisfied, and if a period of five years has not elapsed from the date of issue of the permit. Nevertheless, even after five years the permanent residence permit shall also be withdrawn according to Section 37(2) d) of Act II of 2007 if the third-country national to whom it was issued is expelled or excluded.</p> <p>3. As Section 18(1) of Act II of 2007 sets out that the residence permit shall be withdrawn if the third-country national does no longer fulfill the admission conditions, and as during the admission procedure the crimes committed in other Member States also had relevance for</p>





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			<p>decision-making, such information can also be taken into account when considering the withdrawal of the residence permit based on issues of public policy.</p> <p>Nevertheless, in this regard we would like to draw the attention to the ruling of the CJEU in the C-33/07 Jipa case, which although concerned the restriction of the exercise of the right to free movement, but has relevance for how to take into account issues of public policy in other Member States. According to this preliminary ruling a measure limiting the exercise of the right of free movement must be adopted in the light of considerations pertaining to the protection of public policy or public security in the Member State imposing the measure. Thus it cannot be based exclusively on reasons advanced by another Member State to justify a decision to remove a Community national from the territory of the latter State. That does not, however, rule out the possibility of such reasons being taken into account in the context of the assessment which the competent national authorities undertake for the purpose of adopting the measure restricting freedom of movement.</p>
	<b>Italy</b>	<b>Yes</b>	<p>1 - 2. In Italy, according to the <i>Consolidated Act on Immigration</i> (Articles 5 and 9), temporary and long-term residence permits are withdrawn in the following cases:</p> <ul style="list-style-type: none"> <li>➤ Any entry or residence permit requirement ceases to be met. Entry requirements provides that the person (Article 4 (3): <ul style="list-style-type: none"> <li>a) Should not be considered a threat to public order or the security of the State or of a State with which Italy has signed agreements for the abolition of controls at the internal borders and the free movement of people;</li> <li>b) Should not be a subject of an alert in the SIS (Schengen Information System)</li> <li>c) Should not be convicted for crimes concerning drugs, sexual violence, facilitation of illegal immigration to Italy or of illegal migration from Italy to other States or for crimes aimed at recruiting people for the purposes of prostitution or exploitation of prostitution or of minors to employ in illegal activities;</li> </ul> </li> <li>➤ The holder of the permit is expelled. In the case of long-term residents, however, the Prefect who takes the expulsion measure must take into account the following: <ul style="list-style-type: none"> <li>a) the age of person concerned;</li> <li>b) the length of stay in Italy;</li> <li>c) the consequences of the expulsion for the person concerned and his/her family members;</li> <li>d) The existence of family and social ties in Italy and the absence of such ties with the Country of origin (Article 9(11)). 11).</li> </ul> </li> </ul> <p>On these grounds, the withdrawal of a long-term residence permit may not be followed by the expulsion of the third-country national, and the authorities may issue a residence permit of a different kind (Article 9(9))</p> <p>3. National legislation provides that a residence permit may be withdrawn if another Member State has entered the name of the person concerned in the SIS.</p>
	<b>Latvia</b>	<b>Yes</b>	<p>1. Pursuant to Article 35 (1) of Immigration Law, a temporary residence permit is withdrawn (annulled) if a foreigner by a judgment of a court has been found guilty of committing such criminal offense 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.</p> <p>2. Pursuant to Article 36 (1) of Immigration Law, a permanent residence permit is withdrawn (annulled), if a foreigner by a judgment of a court has been found guilty of committing a serious or especially serious criminal offense in the Republic of Latvia.</p>



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			3. Yes, in case of temporary residence permits. Please see answer to question No 1.
	<b>Lithuania</b>	<b>Yes</b>	<p>1-2. The temporary residence permit can be withdrawn if:</p> <p>a) there is a reasonable ground to believe that the alien has committed a crime against peace, humanity or a war crime or has provoked to commit such crimes, or participated in other ways in committing such crimes;</p> <p>b) the alien poses threat to public order.</p> <p>The permanent residence permit can be withdrawn if the alien poses threat to public order.</p> <p>The decision on whether the alien poses threat to public order is taken after individual examination of the case, but there are certain criteria which are taken into account. It is presumed that the alien may pose threat to the public order if:</p> <p>a) s/he was convicted for a serious or a very serious crime (serious crime – where the maximal penalty is from 6 to 10 years of imprisonment, very serious crime – maximal penalty is higher than 10 years of imprisonment, according to the Lithuanian Criminal Code);</p> <p>b) s/he was convicted for a crime and received a penalty of at least 1 year of imprisonment;</p> <p>c) s/he is under official warning or court injunctions which are applied according to the Law on Organised Crime Prevention;</p> <p>d) s/he is suspected of having committed a serious or very serious crime, and there are evidence that s/he intends to commit such crimes in the future;</p> <p>e) s/he is under compulsory medical treatment foreseen by the Criminal Code;</p> <p>f) a foreign state has issued an alert in SIS or Interpol database because the alien is being wanted as a suspect, prosecuted or convicted for a crime, or there is an alert in the Interpol database that the alien carried out or can carry out criminal activities, or there is an alert in SIS on specific checks.</p> <p>It can also be presumed that the alien may pose threat to the public order if:</p> <p>a) the alien systemically commits administrative infringements of the same type, or during 1 year commits 2 or more administrative infringements where at least one of them is a heavy one;</p> <p>b) by actions, verbally or in a written form the alien demonstrates disrespect to the behaviour norms existing in the society, humiliates the state of the Republic of Lithuania or civil servants due to their work;</p> <p>c) the alien actively participated in illegal events or, during mass events, promoted discords or participated in actions of violence.</p> <p>3. Yes, it can happen that the alien will be considered as posing a threat to the public order – see point (f) above.</p>
	<b>Luxembourg</b>	<b>Yes</b>	<p>1. 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 his/her residence permit withdrawn if s/he is considered to be a threat to public policy, public security or public health.</p> <p>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.</p>

EMN Ad-Hoc Query on withdrawing temporary and permanent non-asylum residence permits because of issues of public order in other EU member states

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			<p>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.</p> <p>2. See answer to question 1. There is no difference in the criteria for withdrawing temporary and permanent residence permits.</p> <p>3. 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.</p>
	<b>Netherlands</b>	<b>Yes</b>	<p>1. To determine whether a (temporary or permanent) residence permit can be withdrawn on the grounds of public order the Netherlands uses a sliding scale. The following factors will be taken into account: the maximum penalty for the offence, the duration of stay of the third-country national and the actual sentence. To determine this, a norm has been set to which all individual cases are assessed.</p> <ul style="list-style-type: none"> <li>– If the maximum penalty for the committed offence is 6 years imprisonment, and the duration of stay is less than 3 years, the permit can be withdrawn if the third-country national is sentenced to a minimum of 1 day of imprisonment. Per extra year of stay, up to a minimum of 15 years of stay, the threshold for withdrawing the permit is raised. If the duration of stay is at least 15 years the permit can be withdrawn in case of a sentence of 65 months of imprisonment or more.</li> <li>– If the maximum penalty for the committed offence is more than 6 years of imprisonment, the threshold will be raised from 1 day of imprisonment when the duration of stay is less than 3 years, to 48 months of imprisonment when the duration of stay is at least 15 years.</li> <li>– If the holder of the residence permit committed at least 3 offences which led to imprisonment or juvenile detention, the threshold for withdrawing the residence permit is lower. No matter what the maximum penalty for the offence is, the threshold will be raised from 1 day of imprisonment when the duration of stay is less than 3 years, to 14 months of imprisonment when the duration of stay is at least 15 years.</li> </ul> <p>2. There is no difference in the criteria for temporary and permanent residence permits.</p> <p>3. The Dutch Immigration Service (IND) can decide to withdraw a non-asylum residence permit based on convictions for crimes committed in other Member States and is willing to correspond with other EU Member states on individual cases.</p>
	<b>Poland</b>	<b>Yes</b>	<p>1. Following to art. 101 § 3 of the Act on foreigners of 2013 a temporary residence permit shall be revoked when:</p> <ul style="list-style-type: none"> <li>- the purpose of stay which was the reason for granting the temporary residence permit ceased to exist</li> <li>- the foreigner has ceased to meet the requirements for granting a temporary residence permit due to the declared purpose of stay</li> <li>- the foreigner’s data has been entered in the register of foreigners whose stay in the territory of the Republic of Poland is undesirable</li> <li>- it is justified by national security or defence, protection of public safety and order.</li> </ul> <p>Following to art. 435 § 1 of the Act on foreigners the data of a foreigner shall be entered and stored in the register of foreigners whose stay in the territory of the Republic of Poland is undesirable when:</p>

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		<p>- a foreigner has been convicted by a final judgement in:</p> <ul style="list-style-type: none"> <li>a) the Republic of Poland – for an intentional crime or tax crime to pay a fine or serve a prison sentence or</li> <li>b) a country other than a Schengen country - for an offense to serve a prison sentence for more than one year</li> <li>c) the Republic of Poland or another Schengen state – for an offense to serve the prison sentence for more than one year</li> </ul> <p>- the foreigner’s entry into or stay within the territory of the Republic of Poland is undesirable due to obligations arising from the provisions of ratified international agreements applicable to the Republic of Poland</p> <p>- it is justified by national security or defence, the protection of public order and safety or the interests of the Republic of Poland.</p> <p>The expression “public order” itself is not defined by Polish law.</p> <p>Each case is examined individually in accordance with the Code of administrative procedure. All circumstances are taken under consideration. A decision revoking the residence permit must contain a justification.</p> <p>In practice the fact of committing a crime in Poland, the number of these crimes, the period when they were committed, the behavior of the foreigner after having committed the crime, how the prison sentence have been served, the possibility of resocialization, the level of integration with Polish society and family life established in Poland are taken under consideration.</p> <p>2. Following to art. 199 § 1 of the Act on foreigners a permanent residence permit shall be revoked when among others:</p> <ul style="list-style-type: none"> <li>- it is justified by national security or defence, the protection of public safety and order</li> <li>- was convicted in the Republic of Poland by a final judgement for an intentional offence and sentenced to minimum 3 years of imprisonment following to art. 215 § 1 point 2 of the Act on foreigners a foreigner shall have long-term resident’s EU residence permit revoked when he/she poses a real and serious threat to national security or defence or the protection of public security and order.</li> </ul> <p>The above mentioned threats may not be relied on for economic purposes.</p> <p>In the proceedings on revocation of a long-term resident’s EU residence permit on the above mentioned grounds the following should be taken into account:</p> <ul style="list-style-type: none"> <li>a) the duration of the foreigner’s stay in the territory of the Republic of Poland</li> <li>b) the foreigner’s age</li> <li>c) the foreigner’s ties with Poland or the absence of ties with the country of origin</li> <li>d) the consequences of the revocation for the foreigner and his/her family members.</li> </ul> <p>The above mentioned rules result from the provisions of the Directive 2003/109/EC.</p> <p>The expression “public order” itself is not defined by Polish law – more explanation: see point 1.</p> <p>In case of revocation of long-term resident’s EU residence permit the proceeding shall establish if the foreigner constitutes a real and serious threat to public order.</p> <p>3. As it has been already mentioned the revocation of temporary residence permit may be justified by the presence of foreigner’s data in the register of foreigners whose stay in the territory of the Republic of Poland is undesirable.</p> <p>Following to art. 435 § 1 of the Act on foreigners the data of a foreigner shall be entered and stored in the register of foreigners whose stay in the territory of the Republic of Poland is undesirable when the foreigner has been convicted by a final judgment in a country other than a Schengen state – for an offence constituting a crime under Polish law or in another Schengen state - for an offence to serve a prison sentence for more than one year.</p> <p>In practice there is no exchange of information between member states concerning prison sentences.</p>
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			<p>There is a possibility of consultations in accordance with art. 25 § 2 of the Schengen executive convention if the state has entered data of a foreigner into the SIS for the purpose of refusal of entry and stay in case of disturbing public order, when the foreigner has residence permit issued by Polish authorities.</p> <p>Following to the consultations the Polish organ decides if there are reasons for revocation of a Polish residence permit. In case of revocation of a Polish residence permit due to offences to public order in another member state the case must contain premises of protection of public order in Poland.</p>
	<b>Slovak Republic</b>	<b>Yes</b>	<p>1. According to the legislation of the Slovak Republic, “threat to the public order” shall be a reason for rejection or withdrawal of permanent residence permit of a foreigner residing in the territory of the Slovak Republic. “Threat to the public order” is defined in the legislation as “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”.</p> <p>2. As for the permanent residence permit, the respective Police department is obliged to consider the level of threat to the state safety or public order. If there is a risk that the third country national may threaten the state safety or public order during his/her stay, his/her application for permanent residence permit may be rejected or withdrawn.</p> <p>3. Legislation of the Slovak Republic does not stipulate specific reasons for the withdrawal of residence permit based on issues of public order in other Member States. However, if it is proved that a third country national has e.g. repeatedly violated public order or committed a crime in another Member State, it shall be a reason for withdrawal of a permanent or a temporary residence permit in case that based on his/her previous acts, there is a risk that the person may threaten state safety or public order of the Slovak Republic. The assessment of such facts depends on case to case basis.</p>
	<b>Slovenia</b>	<b>Yes</b>	<p>1. Under the Alien Act residence permit shall be terminated in case of valuation of public order and if the final secondary sanction of alien expulsion is imposed on the alien in the Republic of Slovenia, or if expulsion is imposed on the alien as a legal consequence of a sentence according to the Penal Code (Official Gazette of RS, nos. 55/08 and 50/12), or the final decision on expulsion is imposed on the alien by another Member State of the European Union, for which the alien is deported from the Republic of Slovenia;</p> <p>2. There is no difference in the criteria for temporary and permanent residence permit</p> <p>3. Yes.</p>
	<b>Spain</b>	<b>Yes</b>	<p>1. The temporary residence authorizations shall expire when knowledge it has, through diplomatic channels, through Interpol or any other means of international judicial and police cooperation, that their holders are claimed in relation to criminal cases arising from criminal offenses serious, by judicial or police authorities of other countries, provided that the acts for which they are sought constitute offenses in Spain, notwithstanding his arrest where appropriated.</p>

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			<p>They also expire when the holders have been expressly issued an entry ban by a decision of the Minister of the Interior, for their contrary activities to Spanish interests or human rights or their notorious connections with criminal, national or international organizations activities, or other judicial or administrative reasons for the adoption of this measure, without prejudice to his arrest where appropriated.</p> <p>2. The authorization of long-term residence shall expire when an expulsion order is issued to the holders who participate in activities contrary to national security or which may prejudice Spain's relations with other countries, or be involved in activities contrary to public policy activities planned as very serious in the Organic Law on Protection of Public Safety.</p> <p>3. See answer to question 1.</p>
	<b>Sweden</b>	<b>Yes</b>	<p>1. There are no general provisions in the Swedish national legislation allowing for a (temporary or permanent) residence permit to be withdrawn because of issues of public order. In the context it can be mentioned that a residence permit may be withdrawn from an alien who has not yet entered Sweden, if there are special grounds. However issues of public order are not the main aim of this regulation.</p> <p>2. There is no difference between temporary and permanent residence permits.</p> <p>3. National legislation allows for the Swedish Migration Board to withdraw a residence permit, in accordance with Article 3.1 a of the Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals. The regulation does not apply to family members of citizens of the European Union, Iceland, Norway or Switzerland, who have exercised their right to free movement. There is no difference in the criteria for temporary and permanent residence permits. A residence permit may be withdrawn if a refusal-of-entry or expulsion order has been issued in a state belonging to the European Union or in Iceland, Norway or Switzerland and the order is based on there being a serious threat to public order or internal security and on</p> <ul style="list-style-type: none"> <li>– the alien having been convicted in the state issuing the order of an offence for which a sentence of at least one year's imprisonment is prescribed, or</li> <li>– the alien being suspected on reasonable grounds of having committed a gross offence or there being strong grounds to indicate that the alien intends to commit such an offence.</li> </ul> <p>A residence permit may not be withdrawn before consultation with the state that has ordered a refusal of entry or expulsion.</p>
	<b>Norway</b>	<b>Yes</b>	<p>1. According to Art. 67 in the Norwegian Immigration Act, a foreigner holding a temporary residence permit may be expelled:</p> <ul style="list-style-type: none"> <li>a. where the foreign national less than five years previously while abroad has served or received a penalty for an offence which under Norwegian law is punishable by imprisonment for a term exceeding one year. The same shall apply where a special sanction has been imposed as a result of a criminal offence as mentioned,</li> <li>b. where the foreign national less than one year previously while in Norway has served or received a penalty or special sanction for an offence which is punishable by imprisonment for a term exceeding one year,</li> </ul> <p>In addition an expulsion needs to fulfill the requirements to proportionality.</p>



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			<p>2. According to Art.68 in the Norwegian Immigration Act, a foreigner holding a permanent non-asylum residence permit may be expelled:</p> <p>a. where the foreign national less than five years previously while abroad has served or received a penalty for an offence which under Norwegian law is punishable by imprisonment for a term of or exceeding two years. The same shall apply where a special sanction has been imposed as a result of a criminal offence as mentioned,</p> <p>b. where the foreign national less than one year previously while in Norway has served or received a penalty or special sanction for an offence which is punishable by imprisonment for a term of or exceeding two years</p> <p>In addition an expulsion needs to fulfill the requirements to proportionality.</p> <p>3. YES. See the answers in question 1 a) and 2 a).</p>
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