

Ad-Hoc Query from Austria

Requested on 28th June 2016

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Criminal convictions and termination of the right to stay



Responses from:

Responses from Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Hungary, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Slovak Republic, Slovenia, Sweden, United Kingdom, Norway (22 in total)

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1. Background Information

This query has been posed by the Austrian Federal Ministry of the Interior.

Questions:

- 1. Does your country make use of article 6 (6) of the directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals?**
- 2. Regarding to the question above does your country have a legal provision allowing a court to decide on a criminal conviction of an alien, which leads *à ex lege* to the termination of the right to stay on the territory?**
- 3. If yes, please describe the procedure in detail.**

2. Responses

Austria	YES	<p>1. In Austria Article 6 (6) is not applied in law and in practice. In Austria in case of a criminal conviction by a court a separate administrative procedure and decision is needed regarding the termination of the right to stay, which allows the expulsion of the person. Source: Federal Ministry of the Interior.</p> <p>2. N/A.</p> <p>3. N/A.</p>
Belgium	Yes	<p>1. No</p> <p>2. No</p> <p>3. /</p>
Bulgaria	Yes	<p>1. According to art. 42, para. 2 of the Law for the Foreigners in the Republic of Bulgaria (LFRB) – By imposing the compulsory administrative measure under para. 1 the right of stay of the foreigner in the Republic of Bulgaria shall be withdrawn and a prohibition of entering the Republic of Bulgaria shall be imposed, whereas para. 1 stipulates the cases in which a compulsory administrative measure – Expulsion is imposed. According to art. 42h of the LFRB, a compulsory administrative measure – Prohibition of entry may be imposed simultaneously with compulsory administrative measure – Revoking of the right of stay and – Compulsory taking to the border.</p> <p>2. According to art. 42, para. 2 of the Law for the Foreigners in the Republic of Bulgaria (LFRB) – By imposing the compulsory administrative measure under para. 1 the right of stay of the foreigner in the Republic of Bulgaria shall be withdrawn and a prohibition of entering the Republic of Bulgaria shall be imposed, whereas para. 1 stipulates the cases in which a compulsory administrative measure – Expulsion is imposed. According to art. 42h of the LFRB, a compulsory administrative measure – Prohibition of entry may be imposed simultaneously with compulsory administrative measure – Revoking of the right of stay and – Compulsory taking to the border.</p> <p>3. According to art. 42, para. 2 of the Law for the Foreigners in the Republic of Bulgaria (LFRB) – By imposing the compulsory administrative measure under para. 1 the right of stay of the foreigner in the Republic of Bulgaria shall be withdrawn and a prohibition of entering the Republic of Bulgaria shall be imposed, whereas para. 1 stipulates the cases in which a compulsory administrative measure – Expulsion is imposed. According to art. 42h of the LFRB, a compulsory administrative measure – Prohibition of entry may be imposed simultaneously with compulsory administrative measure – Revoking of the right of stay and – Compulsory taking to the border.</p>

		<p>4. Art. 10, para. 1, pt. 6 of of LFRB stipulates that issuing a visa or entry of a person can be refused in case when he/she has been sentenced for an intentionally committed crime on the territory of Bulgaria, which according to Bulgarian law is punishable by not less than one year of imprisonment. Thus the sentence as a result of the criminal proceedings may only be a reason for imposing compulsory administrative measures â Prohibition of entry " and â Revoking of the right of stay ".</p> <p>5. Art. 10, para. 1, pt. 6 of of LFRB stipulates that issuing a visa or entry of a person can be refused in case when he/she has been sentenced for an intentionally committed crime on the territory of Bulgaria, which according to Bulgarian law is punishable by not less than one year of imprisonment. Thus the sentence as a result of the criminal proceedings may only be a reason for imposing compulsory administrative measures â Prohibition of entry " and â Revoking of the right of stay ".</p> <p>6. Art. 10, para. 1, pt. 6 of of LFRB stipulates that issuing a visa or entry of a person can be refused in case when he/she has been sentenced for an intentionally committed crime on the territory of Bulgaria, which according to Bulgarian law is punishable by not less than one year of imprisonment. Thus the sentence as a result of the criminal proceedings may only be a reason for imposing compulsory administrative measures â Prohibition of entry " and â Revoking of the right of stay ".</p> <p>7. According to the Bulgarian law, imposing compulsory administrative measures, respectively the implementation of art. 6 (6) of Directive 2008/115/EC is carried out in separate administrative proceedings and is beyond the powers of the criminal courts.</p> <p>8. According to the Bulgarian law, imposing compulsory administrative measures, respectively the implementation of art. 6 (6) of Directive 2008/115/EC is carried out in separate administrative proceedings and is beyond the powers of the criminal courts.</p> <p>9. According to the Bulgarian law, imposing compulsory administrative measures, respectively the implementation of art. 6 (6) of Directive 2008/115/EC is carried out in separate administrative proceedings and is beyond the powers of the criminal courts.</p>
Croatia	Yes	<p>1. Yes.</p> <p>2. No.</p> <p>3. N/a.</p>
Cyprus	Yes	<p>1. Yes, it is provided in the national law provisions which transposed Directive 115/2008, but it provides only for an administrative decision</p> <p>2. No, according to the relevant legislation in Cyprus, the termination of the right to stay and expulsion is possible only by an administrative decision.</p> <p>3. n/a</p>
Czech Republic	Yes	<p>1. Actually yes but from the other side - the right to stay terminates ex lege on condition the decision on administrative expulsion became enforceable â so there is only one decision and it is the decision on expulsion.</p> <p>2. Yes, but only on condition that the court sentenced the respective foreigner to the penalty of expulsion from the territory â in this situation, the right to stay terminates ex lege. If a court sentences the foreigner and imposed other penalty than the expulsion, the Ministry has to decide on the termination of stay (there are also other conditions).</p> <p>3. See above.</p>

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Estonia	Yes	<p>1. Yes.</p> <p>2. The Penal Code stipulates that in case a court convicts a citizen of a foreign state of an intentional criminal offence and imposes imprisonment, the court may impose expulsion with prohibition on entry for up to ten years as supplementary punishment on the offender. After the imprisonment, the forigner is in general removed from the country immediatly.</p> <p>3. -</p>
Finland	Yes	<p>1. Yes</p> <p>2. No, after a criminal conviction by a court, a separate administrativer procedure is needed for a return decision.</p> <p>3. N/a</p>
France	Yes	<p>1. Yes. The Directive 2008/115/EC has been transposed into national law by the law on immigration, integration and nationality (16 June 2011).</p> <p>2. Yes, the penal code provides a sanction following certain types of criminal convictions known as banishment from the French territory (à Interdiction du territoire franÃ§aisâ ITF) which leads â ex legeâ to the termination of the right to stay. It is imposed, either permanently or for a maximum period of ten years, by a court upon any alien convicted of a felony or a misdemeanour. It can be a principal sentence or an additional one. Regarding temporary banishment: after the end of the ban, the person is allowed to come back to France provided that he/she fulfils the conditions. Regarding permanent banishment: the person cannot come back to France except if his/her sentence is lifted. NB: Coming back to France before the end of the ban is punishable by three yearsâ imprisonment and a new banishment from the French territory for another maximum period of ten years. According to the provisions of articles 131-30-1 and 131-30-2 of the Penal Code some foreigners cannot be affected by this sentence.</p> <p>3. The procedure is governed by the Article 131-30 of the Penal Code and Article L. 541-1 of the Code on Entry and Residence of Foreigners and Right of Asylum (CESEDA). The sentence is ordered by the criminal court and not by the administrative authority. It leads to the prohibition of entering into or staying on the French territory. â Banishment from French territory automatically involves the removal of the convicted person to the frontier, at the end of his prison sentence, where applicable. Where banishment from French territory is imposed together with an immediate custodial sentence, its enforcement is suspended during the execution of the sentence. It resumes from the day when the custodial sentence has ended, for the length of time determined by the convicting judgment. Banishment from French territory imposed at the same time as a custodial sentence does not prevent the sentence being made subject to measures of semi-liberty, external placement, placement under electronic surveillance or permission to leave prison, with a view to preparing a request for the ban to be liftedâ. Appeals: It is possible to appeal against the ITF to the criminal jurisdiction which rendered it. This is only possible for an ITF which constitutes an additional sentence. The request can be made after the lapse of six months from the date of the conviction. The foreigner has to reside outside France, unless he is assigned or imprisoned in France. In case of denial of the request or for ITFs which are principal sentences, the alien may refer to the President of the French Republic for the purpose of exercising the right to a presidential pardon.</p>

Germany	Yes	<p>1. Yes. With regard to asylum, under section 5 of the Asylum Act (AsylG), the Federal Office for Migration and Refugees is responsible for deciding on asylum applications. If such applications are turned down, the foreigner is obliged to leave the country (return decision) if there is no prohibition of deportation in force in accordance with section 60 subsection (5) or (7) of the Residence Act (AufenthG) or deportation is not suspended by section 60a of the Residence Act. In the same way as the rejection of an application for international protection, a decision to terminate legal residence ex lege or on the basis of a decision handed down by an authority is, as a matter of principle, issued in conjunction with a request to leave the country, coupled with a deportation notice in the event that the foreigner does not depart voluntarily, as well as with a time-limited ban on entry and residence (the ban on entry and residence immediately becomes effective ex lege in case of an expulsion, but if a deportation notice is issued, it is only made effective when it is enforced). In accordance with section 71 of the Residence Act (AufenthG), the immigration authorities of the Federal Länder are responsible for the remaining residence- and passport-related measures. The latter are able to make decisions on returns and order deportations and entry bans.</p> <p>2. No. A criminal conviction by a court does not directly lead ex lege to the termination of the right to stay on the territory. This requires a separate ruling on expulsion on the part of the immigration authority in which the criminal conviction is to be taken into consideration as a fact which gives rise to a public interest in the termination of the right to stay. The weight of the public interest increases with the sentence. This interest needs to be weighed up against the foreigner's personal interest in continued residence (sections 53-55 of the Residence Act).</p> <p>3. n.a.</p>
Hungary	Yes	<p>1. Yes. According to the Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals: Article 42: (1)[1] The immigration authority, if it finds that a third-country national who has lawfully resided in the territory of Hungary no longer has the right of residence, shall adopt a resolution to refuse his/her application for a residence permit or to withdraw the document evidencing right of residence of the third-country national in question, and - with the exceptions set out in this Act - shall order him/her to leave the territory of the Member States of the European Union. The third-country nationals may seek remedy against the expulsion order in the appeal submitted to challenge the resolution adopted to refuse the application for residence permit or to withdraw the document evidencing right of residence. (2)[2] If the court's decision is for expulsion or the immigration authority considers that the conditions for the third-country national's expulsion under this Act do exist, the immigration authority shall - with the exceptions set out in this Act - adopt a decision ordering the third-country national in question to leave the territory of the Member States of the European Union. (3)[3] The immigration authority shall prescribe the time limit for voluntary departure in its resolution ordering expulsion, or in its ruling adopted for carrying out the expulsion ordered by the court so that it falls between the seventh and the thirtieth day following the time of delivery of the resolution for expulsion to the third-country national, if the third-country national affected agrees to leave the territory of the Member States of the European Union on his/her own accord, except where the cases defined by this Act apply. The time period provided for above shall not exclude the possibility for the third-country national concerned to leave earlier. (4)[4] Where justified by the personal circumstances of the person expelled - such as the length of stay in the territory of Hungary, on account of which more time is required for making preparations for departure, or the existence of other family and social links -, the immigration authority may - upon request or on its motion - extend the period for voluntary departure by a period of up to thirty days. If the child who is in the parental custody of an expelled third-country national pursues studies in a public education institution, the immigration authority may - upon request or on its motion - extend the period for voluntary departure by a period up to the end of the running semester. Extension of the time limit for voluntary departure shall be ordered by way of a ruling. (5) Enforcement of ruling on the extension of the time limit for voluntary departure may be contested. (6) No time limit for voluntary departure shall be specified, or the immigration authority may set the deadline for leaving the territory of the Member States of the European Union before the seventh day following the time of delivery of the resolution for expulsion in the following cases: a) the third-country national's right of residence was terminated due to his/her expulsion or exclusion, or for whom an alert has been issued in the SIS for the purpose of refusing entry and the right of residence;</p>

b) the third-country national's application for residence permit was refused by the authority on the grounds referred to in Paragraphs b) and d) of Subsection (1) of Section 18;

c)[5] the third-country national has expressly refused to leave the territory of the Member States of the European Union voluntarily, or, based on other substantiated reasons, is not expected to abide by the decision for his/her expulsion; d) the third-country national's residence in Hungary represents a serious threat to public security, public policy or national security. (7) If according to the immigration authority's resolution, expulsion is to be carried out by way of deportation, a time limit shall not be specified for voluntary departure.

(8)[6] The provisions of Subsections (3)-(4) shall apply with respect to persons eligible for preferential treatment, taking due account of their special needs stemming from their specific situation. Expulsion Ordered Under Immigration Laws and Exclusion Section 43.[7]

(1) The immigration authority shall independently order the exclusion of a third-country national whose whereabouts are unknown or who resides outside the territory of the Republic of Hungary, and:

a)[8] who must not be allowed to enter the territory of Hungary under international commitment; or

b) who is to be excluded by decision of the Council of the European Union;

c) whose entry and residence represents a threat to national security, public security or public policy;

d) who has failed to repay any refundable financial aid received from the State of Hungary;

e)[9] who has failed to pay any instant fine or a fine imposed in conclusion of a misdemeanor proceeding within the prescribed deadline, and there is no possibility to enforce it.

(2) Subject to the exception set out in this Act, the immigration authority shall order the expulsion of a third-country national under immigration laws who:

a)[10] has crossed the frontier of Hungary illegally, or has attempted to do so;

b) fails to comply with the requirements set out in this Act for the right of residence;

c) was engaged in any gainful employment in the absence of the prescribed work permit or any permit prescribed under statutory provision;

d) whose entry and residence represents a threat to national security, public security or public policy; or

e) whose entry and residence represents a threat and is potentially dangerous to public health.

2. Yes. See above and the following section of Criminal Code. Section 59 (1) Perpetrators of citizenship other than Hungarian, whose presence in the country is not desirable, shall be expelled from the territory of Hungary. Persons expelled shall leave the territory of the country and may not return for the duration of the term of expulsion. (2) Persons granted asylum may not be expelled. (3) Expulsion may be imposed upon a person who has the right of free movement and residence or a person with the right of residence in the territory of Hungary under permanent resident or refugee status only in connection with the commission of a criminal offense that is punishable by imprisonment of five or more years. (4) Expulsion may only be imposed upon a person sentenced to a term of imprisonment of ten years or more: a) who has been residing in the territory of Hungary legitimately for not less than ten years; or b) * who is lawfully residing in the territory of Hungary and whose right to family union would be injured; provided that the presence of the perpetrator in the country is assessed as posing a potential and considerable risk to public safety. Section 60 (1) Expulsion may be ordered for a definite term, or permanently. (2) The minimum duration of a fixed-term expulsion shall be one year, its maximum duration shall be ten years. (2a) * Where an executable term of imprisonment is imposed for the unlawful crossing of border barrier (Criminal Code, Section 352/A), vandalism of border barrier (Criminal Code, Section 352/B) or obstruction of construction works on border barrier (Criminal Code, Section 352/C), expulsion under Subsection (1a) of Section 85 may not be omitted. If expulsion is ordered for a specific term, it shall be double of the term of imprisonment, but at least two years. The term of expulsion may be defined either in years, months and days. (3) Permanent expulsion may be imposed upon a person who was sentenced to a term of imprisonment of ten years or more, and presence of the perpetrator in the country is assessed as posing a potential and considerable risk to public safety taking into account the severity of the criminal offense, the nature of the act and the connections of the perpetrator. A person with the right of free movement and residence may not be expelled permanently.

		<p>(4) The duration of expulsion shall begin when the sentence becomes enforceable. The period of time of imprisonment served shall not be included in the duration of expulsion. (5) Upon request, the court may release a person subject to permanent expulsion from the effect of such expulsion if such person is deemed worthy and if ten years have passed since the expulsion.</p> <p>3. See above.</p>
Latvia	Yes	<p>1. The Republic of Latvia does not use the Article 6 (6) of the Directive 2008/115/EC. It means that the separate decisions should be taken on the termination of legal stay of the foreigner and return decision.</p> <p>2. There is no legal provision allowing a court taking decision on criminal case to take a decision on termination of the right to stay on the territory of Latvia.</p> <p>3. N/A</p>
Lithuania	Yes	<p>1. Yes. The issue of granting or refusing to grant asylum to an alien and his return from the Republic of Lithuania is decided in the course of a single administrative procedure. The issue of refusing to grant a residence permit to an alien who poses threat to national security and the issue of this expulsion are decided in the course of a single administrative procedure. The decision on expulsion of an alien indicates the period of an entry ban which means that the decision of expulsion and imposition on an entry ban are taken at the same time.</p> <p>2. No. According to the Penal Code the return or expulsion of an alien is not a form of criminal liability.</p> <p>3. N/A</p>
Luxembourg	Yes	<p>1. In Luxembourg article 6 (6) of the directive 2008/115/EC was transposed by law of 1 July 2011 in articles 111 and 112 of the amended law of 29 August 2008 on free movement of persons and immigration. In Luxembourg, the return decision (article 109 (1) and 111 (1) of the amended law of 29 August 2008 on free movement of persons and immigration) or expulsion (article 116 (1)) of a third-country national is given by the Ministry in charge of Immigration in a separate administrative procedure from the criminal proceedings.</p> <p>2. N/A.</p> <p>3. N/A.</p>
Netherlands		<p>1. Yes, the Netherlands make use of article 6(6) of directive 2008/115/EC. A decision which constitutes the refusal of an application for a residence permit is also considered as a return decision and by right has the effect that: - the third-country national no longer lawfully resides in the Netherlands unless another legal ground for lawfull residence is applicable to him; - the third-country national has to leave by himself the country within the given period for voluntary departure, failing which can result in a removal. The aforementioned decision can also constitute an entry ban.</p> <p>2. No, the Netherlands do not have this provision.</p> <p>3. --</p>
Poland	Yes	<p>1. The Polish law allows the possibility of making use of article 6 (6) of the directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals. It must be underlined, however, that it is possibly only with relation to administrative decisions.</p>

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		<p>2. No. There are not legal provisions allowing a court to decide on a criminal conviction of an alien, which leads à ex legeà to the termination of the right to stay on the territory. A criminal conviction of an alien may cause then the termination of residence permit (always in the form of administrative decision issued by relevant administrative authority, e.g. local governor).</p> <p>3. n/a</p>
Portugal	Yes	<p>1. Yes. In the sense that the mentioned art 6(6) does not preclude the relevant national legal framework on this matter.</p> <p>2. Yes.</p> <p>3. Removal accessory penalty (article 151 of Allines Act) The removal accessory penalty can be applied to the foreign citizen who does not live in the country condemned for a malicious crime with a penalty for a period higher than 6 months in prison or a fine as an alternative to the prison for a period higher than 6 months. 2â The same penalty can be applied to a foreign citizen resident in Portugal, condemned for a malicious crime with a penalty for a period higher than 1 year in prison, however it should be taken into account when the penalty is applied the seriousness of the facts practiced by the defendant, his/her character, the eventual reincidence, the degree of social integration, the special prevention and the period of residence in Portugal. 3â Without prejudice of the arrangements of the preceding number, the removal accessory penalty can only be applied to the permanent resident foreign citizen when his/her conduct seriously threatens the public policy or national. 4â Once the removal accessory penalty decreed the executive judge shall order the executive order as soon as two thirds of the prison sentenced are served. 5â The executive judge may decide on the anticipation of the execution of the removal accessory penalty, as a substitute for the granting of parole, as soon as he/she decides on the parole presuppositions as fit and if half the prison penalty has been served. Cancellation of residence permit (art. 85 od Aliens Act) 1- A residence permit will be cancelled whenever: a) Its holder has been object to an expulsion decision from national territory; or b) The residence permit has been obtained on grounds of false or fraudulent declarations, of false or forged documents, or through fraudulent means; or c) In relation to the holder of which there are strong reasons to believe that he / she committed serious criminal acts, or there is strong evidence that he / she intends to commit acts of that same nature, specifically in European Union territory; or d) By reasons of public order or security.</p>
Slovak Republic	Yes	<p>1. Yes, it does (Article 77(1) of the Act No. 404/2011 Coll. on Residence of Aliens and on changes and amendments to some acts, as amended).</p> <p>2. Yes.</p> <p>3. If a third country national with a residence (permanent or temporary) permit is issued a judicial expulsion, his/her residence is withdrawn. If a third country national with a residence permit is convicted of a crime and he/she was not issued a sentence of expulsion by the Court, the Police department can administratively expel him/her from the territory of the Slovak Republic by which his/her residence permit is automatically withdrawn.</p>

Slovenia	Yes	<p>1. Yes</p> <p>2. Yes.</p> <p>3. Provisions are laid in Aliens Act as follows: Article 61 (Termination of residence) (1) Residence may be revoked with respect to an alien who possesses a permanent residence permit in the Republic of Slovenia in the following circumstances: â if he was convicted in a court of law of a criminal offence and given an unconditional prison sentence of more than three years; â if he has posed a threat to the country, its public security and order. (2) Residence with respect to an alien who is legally residing in the Republic of Slovenia, excluding an alien who possesses a permanent residence permit of the Republic of Slovenia, may be terminated in the following circumstances: â if he is residing in Slovenia in contravention of the purpose for which the permit was issued; â if he refuses to comply with decisions issued by state bodies; â if he was convicted in a court of law of a criminal offence and given an unconditional prison sentence of more than three years; â if he runs out of funds to support himself and does not secure any other means of support for the duration of his stay in the Republic of Slovenia. Article 62 (Decision on the termination of residence) (1) The decision on the termination of residence referred to in the preceding Article shall be issued by the administrative unit in the area of which the alien resides. (2) The decision on the termination of residence specified in the preceding paragraph shall specify a deadline by which the alien must depart the Republic of Slovenia in accordance with the third paragraph of Article 60 of this Act, and the period of time during which the alien shall not be permitted to re-enter the country, whereby this period of time may not be less than six months and not more than five years. (3) In reaching a decision on the termination of residence, the authority referred to in the first paragraph of this Article shall take into account the length of stay of the alien concerned in the country, his personal, family, economic and other ties linking him to Slovenia, and the effect that the termination of residence would have on him and his family. (4) An alien may lodge an appeal against the decision specified in the first paragraph of this Article within three days. (5) In judging how long an alien should be prohibited from re-entering the country, the authority which issued the decision on the termination of residence shall take into account the type and gravity of the circumstances by reason of which the alien's stay in Slovenia is undesirable. (6) When the decision on the termination of residence has become final, the competent authority shall notify the authority responsible for the input of data in the Schengen Information System of the entry ban.</p>
Sweden	Yes	<p>1. Yes</p> <p>2. A court can decide on a criminal conviction of an alien and in the same judgement decide on expulsion.</p> <p>3. Regarding question 1 - The normal procedure when the Migration Agency refuse an application for residence permit from an alien staying in Sweden is to decide on refusal of the application and on expulsion within the frame of the same decision. Regarding question 2 - In Sweden it's the District courts, not the migration authorities, that decides on expulsion in connection with committed crimes. The court can, after request from the prosecutor, decide on expulsion in the same judgement as the criminal conviction.</p>

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United Kingdom	Yes	<p>1. The UK has not opted in to the Returns Directive.</p> <p>2. Section 3(6) of the Immigration Act 1971 allows for the deportation of foreign nationals who are aged 17 and over and have been convicted of criminal offences in the United Kingdom where a term of imprisonment can be imposed and the sentencing court recommends deportation. This is a recommendation only and the foreign criminal will still be subject to the same individual consideration that others receive. If it is decided to follow this recommendation and deport the individual on the grounds that it would be conducive to the public good, the deportation order will invalidate any leave to enter or remain in the United Kingdom given before the order is made or while it is in force.</p> <p>3. A more detailed explanation of the policy and process around the deportation of foreign national criminals can be found on gov.uk in the guidance on Deporting non EEA foreign nationals. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/426906/Deport-non_eea_Foreign_Nationals.pdf</p>
Norway	Yes	<p>1. Norway is not bound by this directive.</p> <p>2. No.</p> <p>3. N/A</p>

