



## Ad-Hoc Query on ‘pronouncement of undesirability’

Requested by NL EMN NCP on 21 January 2010

Compilation produced on 23 March 2010

[Responses from Belgium, France, Germany, the Netherlands and the United Kingdom \(5 in Total\)](#)

*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**

In the Netherlands the Immigration and Naturalisation Service (IND) is entitled, on behalf of the State Secretary for Justice, to pronounce a foreign national undesirable pursuant to Article 67 of the Aliens Act 2000. A pronouncement of undesirability (exclusion order) is an (administrative) measure for the purpose of preventing foreign nationals who are not or are no longer permitted to stay in the Netherlands from entering or remaining in the country. In most cases, this concerns foreign nationals who have committed an offence.

The pronouncement of undesirability makes it an offence for the foreign national to reside in or return to the Netherlands without authorisation.



The Aliens Police is curious if this administrative measure is also known in other European countries.

We are aware that the translation ‘*pronouncement of undesirability*’ of the Dutch term ‘*ongewenstverklaring*’ is very literally, maybe the term ‘*exclusion order*’ sounds more familiar to you. The glossary does not provide a proper definition.

It would be very much appreciated if we could receive your answers **by 24 February 2010**.

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## 2. Responses



		Wider Dissemination? <sup>1</sup>	<p>1) <i>Do you have a separate (administrative) measure for the purpose of preventing foreign nationals who are no longer permitted to stay in your country from entering or remaining in the country? In the Netherlands in most cases, this concerns foreign nationals who have committed an offence or foreign nationals who are a risk to national security.</i></p> <p>2) <i>If yes, is a separate decision in favour of a pronouncement of undesirability (exclusion order) issued and can the foreign national lodge an application for review?</i></p> <p>3) <i>Does the pronouncement of undesirability makes it an offence for the foreign national to reside in or return to your country? If so, to which punishment (imprisonment) can he or she be sentenced?</i></p>
	<b>Belgium</b>	<b>Yes</b>	<p>1) No. In Belgium, there are Ministerial Decisions of expulsion and Royal Decrees concerning expulsion (Ministeriele Besluiten tot terugleiding en de Koninklijke Besluiten tot uitzetting). The MD of Expulsion is a decision taken by the Minister of Migration and Asylum Policy with regard to a foreign national having a right to remain more than three months on the territory who threatened public order or national safety and/or did not observe the conditions stipulated for his residence and/or a violation of the rules restricting his freedom. The foreign national will normally have a minimum of 15 days to leave the territory. The Royal Decree concerning expulsions is applied to established foreign nationals (gevestigde vreemdelingen – they have a comparable status to long term residents) who seriously threatened public order or national safety. Implementation of this Royal Decree must be deliberated in the Council of Ministers if it is based on the political activity of a foreigner. These two measures must be premised on the personal behaviour of the non-national. The deadline to execute this Royal Decree is in principle one month. As a result the foreigner cannot enter the territory during a period of ten years, unless the measure is suspended or withdrawn.</p> <p>2) Against these two measures a devolutive/non-suspensive appeal can be filed with the Aliens Litigation Council (administrative court)</p> <p>3) The mere fact of entering the Belgian territory or residing illegally is an offence, punishable by a prison sentence of 8 days to 3 months or/and by a fine (art. 75 Aliens Act). In reality however, there are very few prosecutions on this legal basis alone. A person against whom a Ministerial Decision of expulsion or a Royal Decree concerning expulsion was taken and who re-enters the Belgian territory or resides on Belgian territory without authorization, will be punished by a prison sentence of 1 month to 1 year and by a higher fine (art. 76 Aliens Act).</p>
	<b>France</b>	<b>Yes</b>	<p>1) Yes. In France, there are various administrative measures for the purpose of preventing foreign nationals who are no longer permitted to stay in France from remaining or entering again in the country. They are ‘expulsion orders’ more than ‘exclusion orders’ as you mention it.</p> <ul style="list-style-type: none"> <li>• <i>The ban from the French territory (interdiction judiciaire du territoire français)</i></li> </ul>

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		<p>It is pronounced against a foreign national who has committed an offence or a crime, but is a <b>judicial measure</b>. It prevents a convicted foreign national from entering and residing on the French territory for a fixed period or permanently.</p> <p><b>The 3 measures below are administrative:</b></p> <ul style="list-style-type: none"> <li>• <b>The Order to leave the French territory or removal order (<i>ordre de quitter le territoire français</i>)</b> It applies to foreign nationals whose issue or renewal of residence permit was denied or whose residence permit has been withdrawn.</li> <li>• <b>The deportation decree (<i>arrêté préfectoral de reconduite à la frontière</i>)</b> It applies to foreign nationals residing illegally in France and is issued in cases of threat to public order.</li> <li>• <b>The expulsion decree (<i>arrêté d'expulsion</i>)</b> It is also granted to foreign nationals whose conduct is likely to seriously threaten public order (CESEDA, Article L. 521-1). The expulsion decree is a measure of administrative police which is delivered by the Minister of Interior or the prefect. Expulsion may be imposed 'in case of extreme urgency', 'when it is an urgent need for state security or public safety' and in case of 'violation of the fundamental interests of the state', 'activities of a terrorist nature' or 'acts of explicit and deliberate provocation to discrimination, hatred or violence against a specific person or a group of persons'. In these cases, expulsion can be imposed without the foreign national to receive any guarantee of procedure (CESEDA article L. 522-1).</li> </ul> <p><b>2) Yes. The foreign national can lodge an application for review in the four cases aforementioned:</b></p> <ul style="list-style-type: none"> <li>• <b>The ban from the French territory (<i>interdiction judiciaire du territoire français</i>)</b> It can not be granted an application to lift a ban from the territory unless the foreign national resides outside France.</li> <li>• <b>The Order to leave the French territory or removal order (<i>ordre de quitter le territoire français</i>)</b> The foreign national must appeal within one month before the administrative court to request the cancellation. This appeal is suspensive, which means that until the court did not rule, the foreign national can not be expelled.</li> <li>• <b>The deportation decree (<i>arrêté préfectoral de reconduite à la frontière</i>)</b> A foreign national who is subject to a decree of deportation may, within 48 hours after the administrative notification, request its cancellation to the president of the administrative court. The decision of the president of the administrative court or his representative may be appealed within a month before the president of the litigation section of the Council of State or a State counsellor appointed by him. This appeal is not suspensive.</li> <li>• <b>The expulsion decree (<i>arrêté d'expulsion</i>)</b> It is possible to lodge a jurisdictional appeal or an application for abrogation.</li> </ul>
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**EMN Ad-Hoc Query: pronouncement of undesirability**

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			<p>- In the case of <b>appeal</b>, a foreign national who is subject of an expulsion decree, may request a cancellation to the administrative judge within a maximum of 2 months after the notification of the judgment. The appeal for cancellation is not suspensive and does not allow the foreign national to stay in France.</p> <p>If the appeal is rejected by the court, an appeal before the administrative court of appeal is allowed. It must be filed within a maximum of 2 months after the notification of the judgment.</p> <p>- In the case of <b>abrogation</b>, the expulsion decree may at any time be revoked by the authority which imposed it (prefect or minister of Interior) at the request of the foreign national. To lodge an application for abrogation, the foreign national must reside outside France unless he is in jail or under house arrest in France.</p> <p><b>3) Yes.</b> Once the foreign national has received an expulsion order and has exhausted all possible appeals, he must imperatively leave the territory under pain of <b>three years imprisonment</b>. Under CESEDA, article L. 624-1, 'any foreign national who attempts to evade the execution of an expulsion order shall be punished by a sentence of three years imprisonment'. The court may also impose the ban of the territory for a period not exceeding 10 years against a convicted foreign national.</p>
	<b>Germany</b>	<b>Yes</b>	<p>1) Yes. Expulsion obliges the third-country foreigner to leave the country, and at the same time bans him/her from re-entering and taking up residence once more. Please refer for details regarding expulsion to the German reply to the ad hoc query on deportation (expulsion) and removal of foreign-national prisoners of the UK EMN NCP of 26 March 2009. If a third-country foreigner is deported at the border, or is deported because of not having voluntarily complied with the obligation to exit the country, this also results in an entry and exit ban. This ban is in principle indefinite in duration, but may be time-limited at the foreigner's request. The legal basis for the entry and exit ban is constituted by section 11 of the Residence Act.</p> <p>2) Yes. The measures mentioned in the reply to Question 1 are handed down as an administrative act of the responsible immigration authority. It is possible to file an objection against this to the superior authority, and following this the administrative courts may be appealed to</p> <p>3) Yes. Up to three years' imprisonment or a criminal fine is imposed on anyone who enters or stays in Germany despite an entry and exit ban (section 95 subs. 2 No. 1 of the Residence Act). If the unlawful residence is brought about solely by negligence, this constitutes an administrative offence which may be punished by an administrative fine of up to Euro 3,000 (section 98 subs. 1 and 5 of the Residence Act).</p>
	<b>Netherlands</b>	<b>Yes</b>	<p>1) Yes, the Immigration and Naturalisation Service (IND) is entitled, on behalf of the State Secretary for Justice, to <i>pronounce a foreign national undesirable</i> pursuant to Article 67 of the Aliens Act 2000. A pronouncement of undesirability (exclusion order) is a separate (administrative) measure for the purpose of preventing foreign nationals who are not or are no longer permitted to stay in the Netherlands from entering or remaining in the country. In most cases, this concerns foreign nationals who have committed an offence or foreign nationals who are a risk to the national security. The pronouncement of undesirability makes it an offence for the foreign national to reside in or return to the Netherlands without authorisation.</p>

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			<p>2) Yes. A foreign national may lodge an application for review in respect of a pronouncement of undesirability. The foreign national shall not, however, be permitted to stay in the Netherlands pending the outcome of such an application.</p> <p>3) Yes. Any foreign national who stays in the Netherlands whilst he or she is aware or may reasonably assume that he or she has been pronounced undesirable, is guilty of an offence pursuant to Article 197 of the Penal Code and may be sentenced to a maximum of six months' imprisonment.</p>
	<b>United Kingdom</b>	<b>Yes</b>	<p>1) Yes Section 3(5) of the Immigration Act 1971 states that a Foreign National shall be liable to deportation from the UK if amongst other reasons the Secretary of State deems his deportation to be conducive to the public good. In these cases the person may have committed a criminal offence or the Secretary of State may decide that a person's behavior is not conducive to the public good without the need for a conviction. We also seek to deport where a person is a risk to national security. In addition to this we may remove a person where they only have a limited leave to enter or remain and do not observe a condition attached to the leave or where they remain beyond the time limited by the leave or where a person belongs to family which is being deported.</p> <p>2) Yes we serve a person with a notice of intention to deport and give them the reasons why we wish to take this action. Appeals provisions vary based on the reason for deportation. In cases where a person is subject to Automatic Deportation, that is where they have received a custodial sentence of 12 months or more, the person will receive an out of county appeal unless they can prove that they fall under one of the exceptions to Automatic Deportation. Exceptions can include an asylum claim or where the person can prove that they are an EEA National for example. In all other cases where we seek to deport, the person receives an in country right of appeal.</p> <p>3) Yes Section 24 of the Immigration Act 1971 states that any Foreign National who knowingly enters the UK in breach of a Deportation Order shall be guilty of an offence punishable on summary conviction with a fine of not more than £200 or with imprisonment for not more than 6 months, or with both.</p>

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