



Ad-Hoc Query on criminal penalties against illegally entering or staying third-country nationals

Requested by COM on 13th July 2009

Compilation produced on 21st September 2009

Responses from Austria, Belgium, Bulgaria, Czech Republic, Estonia, Finland, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom
(22 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

EU legislation requires Member States to apply criminal penalties to persons involved in smuggling, trafficking or, in serious cases, employing illegally staying third country nationals, but no such obligation exists under EU law in relation to third-country nationals illegally entering or staying in the EU. However, the Commission is aware that the national legislation of some Member States does provide for criminal penalties against third-country nationals who illegally entered or stayed on their territory. The purpose of this ad-hoc query is to have a more complete and systematic picture of the situation in Member States on this latter aspect within the overall framework of the fight against illegal immigration.

It would be appreciated, therefore, if you could provide your response to the following:

- 1. Does your national legislation provide for criminal penalties for third-country nationals who have illegally entered or who are illegally staying in the territory of your country?**






EMN Ad-Hoc Query: Criminal penalties against illegally entering or staying third-country nationals

***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.*

2. If Yes, please provide details of the legislation in question (e.g. title of the specific law, date of its entry into force, scope and conditions of its application, penalties provided).

It would be very much appreciated if you could provide your responses by **21st August 2009**.

2. Responses

		Wider Dissemination?	
	Austria	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	Belgium	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	Bulgaria	Yes	No, at present Bulgarian national legislation does not provide for criminal penalties for illegally entering or staying TCNs in the country.
	Czech Republic	Yes	<p>1. In general, Czech legislation does not provide for criminal penalties for illegal entry and staying in the territory of the Czech Republic. There are, however, two cases of illegal entry for which criminal penalties apply.</p> <p>2. Crossing the frontier with use of force or threat of imminent use of force is considered crime and a person who commits it may be sentenced to 1 to 15 years in prison (depending on the scope of violence, organization of the criminal act, injuries or death incurred) or forfeiture of property.</p> <p>Those who violate regulations of international flights by entering the territory of the Czech Republic in any kind of means of air transport may be sentenced to 6 months to 3 years in prison.</p> <p>Thus stipulates the Criminal Code (Act No. 140/1961 Coll., entered into force on January 1, 1962) as well as the new Criminal Code (Act No. 40/2009 Coll.) that will enter into force on January 1, 2010.</p>
	Estonia	Yes	<p>In some cases, yes. According to the Penal Code illegal crossing of the state border and illegal stay is considered as criminal offences as follows:</p> <p>§ 258. Illegal crossing of state border or temporary border line of Republic of Estonia (1) Illegal crossing of the state border or temporary border line of the Republic of Estonia, if committed: 1) in disregard of a stop signal or order given by a Border Guard official;</p>


EMN Ad-Hoc Query: Criminal penalties against illegally entering or staying third-country nationals

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

			<p>2) by a group; 3) by a means of transport in a location not intended for crossing; 4) and a punishment for a misdemeanour has been imposed on the offender for the same act is punishable by a <u>pecuniary punishment or up to one year of imprisonment.</u></p> <p>(2) The same act, if committed: 1) by using violence, or 2) by causing serious damage to health; is punishable by <u>4 to 12 years' imprisonment.</u></p> <p>§ 260. Stay of alien in Estonia without legal basis An alien who stays in Estonia without a legal basis at least twice within a year shall be punished by a <u>pecuniary punishment or up to one year of imprisonment.</u></p> <p>In other cases illegal entry and stay is considered as misdemeanour and is punishable by a fine or by detention.</p>
+	Finland	Yes	<p>1. Yes. 2. Penal provisions for violating Aliens Act are provided in Chapter 12, Section 185 of the Finnish Aliens Act (30.4.2004):</p> <p>Chapter 12 Penal provisions Section 185 <i>Violation of the Aliens Act</i> (1) An alien who 1) resides in the country without the required travel document, visa or residence permit, or through negligence fails to comply with the obligation to register his or her residence or apply for a residence card or permanent residence card, 2) without right to gainful employment is gainfully employed or pursues a trade, 3) fails to comply with the obligation to report under section 118, or another obligation under section 119, or a request under section 130 to appear before the authorities to submit information on his or her residence, or 4) enters the country despite a prohibition of entry on grounds of public order or security or public health <u>shall be sentenced to a fine for violation of the Aliens Act. (360/2007)</u></p> <p>(2) A person who deliberately or through gross negligence fails to comply with the obligation under section 174 or 175 shall also be sentenced for violation of the Aliens Act. (3) A person who deliberately or through gross negligence fails to comply with the obligation under section 174 or 175 of this Act or section 19 or 20 of the Act on the Processing of Personal Data by the Border Guard is also sentenced for violation of the Aliens Act. (581/2005)</p>



EMN Ad-Hoc Query: Criminal penalties against illegally entering or staying third-country nationals

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

	<p>Germany</p>	<p>Yes</p>	<p>1. Yes.</p> <p>2. The penal provisions that apply to the illegal entry and the illegal stay of third-country nationals are regulated in § 95 of the German Residence Act (Aufenthaltsgesetz – AufenthG) of July 30, 2004, which came into force on January 01, 2005.</p> <p>The criminal law provisions outside the Criminal Code that relate to the right of residence contained in § 95 (and following) of the AufenthG are designed to ensure adherence to the provisions of the law relating to aliens. Such provisions can only be applied if the right of residence is relevant, which is for the most part determined in accordance with § 1 AufenthG and with the elements of the offence in question. Therefore, only aliens (as defined in § 2, Paragraph 1 of the AufenthG) can be considered to be offenders, to the extent that they do not fall under the exceptions contained in § 1, Paragraph 1 of the AufenthG. Citizens of the European Union, together with members of their family who are entitled to free movement and who are third-country nationals, and nationals of the countries falling within the European Economic Area – that is, Norway, Iceland and Liechtenstein – together with members of their families, are covered by these penal provisions only to the extent that these are expressly declared to be applicable under § 11, Paragraph 1, Clause 1 of the German Freedom of Movement Act/EU (Freizügigkeitsgesetz - FreizügG/EU). It is, nevertheless, possible for any person – including Germans or Citizens of the European Union – to render himself or herself liable to prosecution in connection with §§ 26 and 27 of the German Criminal Code (Strafgesetzbuch - StGB) by virtue of incitement or aiding and abetting in respect of the punishable offence. However, persons who, when viewed objectively, can be said merely to have been acting in a permissible manner within the context of their profession or honorary position – for example, doctors, spiritual ministers or lawyers – will not, in general, be held to have been aiding and abetting.</p> <p>It is also necessary for the penal provision in question to be applicable, which is determined in accordance with §§ 2 to 9 of the StGB. Furthermore, it is a matter of principle that only intentional conduct shall attract liability, as per § 15 of the StGB. In the event of there being any reasonable cause for suspicion of punishable infringements of the law, the authorities responsible in accordance with §§ 71 and 72 of the AufenthG for measures relating to the right to remain and the right to an identification document shall, as a part of their fulfilment of their functions, give notice of such reasonable cause for suspicion to the relevant law enforcement authorities, who shall for their part notify the relevant authority responsible for aliens of the initiation of criminal proceedings and of the completion of such proceedings (§ 87, Paragraph 4, Clauses 1 and 3 of the AufenthG).</p> <p>Under § 95 of the AufenthG, criminal offences in respect of the right of residence are divided up in accordance with the degree of the applicable penalty, into offences punishable by up to a year's custodial sentence or a financial penalty (Paragraphs 1 and 1a) and those punishable up to three years' custodial sentence or a financial penalty (Paragraph 2), with the following elements – in the broader sense – having a bearing on the issue of illegal entry or illegal stay:</p> <ul style="list-style-type: none"> • <u>Paragraph 1</u> <ul style="list-style-type: none"> ○ A stay without the necessary pass and without any replacement pass or identification (Number 1), ○ A stay without the necessary residence document (Number 2), ○ An unauthorised entry (Number 3), ○ An infringement of a prohibition on leaving the country (Number 4),
---	-----------------------	-------------------	---





EMN Ad-Hoc Query: Criminal penalties against illegally entering or staying third-country nationals

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

			<ul style="list-style-type: none"> ○ False statements given when the subject's identity is being determined (Number 5), ○ An infringement of obligations in respect of an exceptional leave to remain, within the context of the examination, determination and ensuring of the subject's identity (Number 6) ○ Repeated infringements in respect of restrictions placed upon the subject's movement arising out of an enforceable obligation to leave the country (Number 7). <ul style="list-style-type: none"> ● <u>Paragraph 1a</u> <ul style="list-style-type: none"> ○ Intentional unauthorised employment while in possession of a Schengen Visa. ● <u>Paragraph 2</u> <ul style="list-style-type: none"> ○ Infringement of a prohibition on entering the country or staying there (Number 1), ○ False statements provided when making an application for a residence document or for an exceptional leave to remain (the suspension of deportation) or the use of a document obtained in this manner (Number 2). <p>The remaining Paragraphs of § 95 of the AufenthG regulate the criminal liability of attempts to commit the offences already outlined (Paragraph 3), the confiscation of documents used for the purposes of deception (Paragraph 4), the special exemption of refugees from criminal liability in accordance with the Geneva Convention on Refugees of 1951 (Paragraph 5), and the placing on an equal footing of entry and stay either without a residence document or with an illegally or fraudulently obtained residence document (Paragraph 6).</p> <p>Law - english version: AufenthaltsG, FreizügG/EU www.bmi.bund.de; StGB http://www.gesetze-im-internet.de/englisch_stgb/index.html.</p>
	Hungary	Yes	Hungary does not provide for criminal penalties against third-country nationals who illegally enters or stays on its territory.
	Ireland	Yes	<p>The most relevant piece of legislation in this regard is the Immigration Act 2004. The Immigration Act 2004 sets out certain offences in relation to breaches of conditions of entry, registration and residence of non-nationals in the State. The relevant sections are set out as follows:</p> <p>Section 4 - Permission to Land - Contravention of subsections 5(b), (c), (d) and subsections (6) and (8) is an offence.</p> <p>Section 6 - Approved port - Section 6(4) provides that landing in the State in contravention of this section is an offence.</p> <p>Section 9 - Obligations of non-nationals to register - Contravention of subsections (2), (3) and (4) is an offence</p> <p>Section 11 - Requirements as to documents of identity and supply of information - Contravention of this section is an offence.</p> <p>Section 13 of the Immigration Act 2004 provides for penalties for persons convicted guilty of an offence under the Act of a fine not exceeding €3000 or to imprisonment for a term not exceeding 12 months or both on summary conviction.</p> <p>A copy of the Act is attached for reference.</p>


EMN Ad-Hoc Query: Criminal penalties against illegally entering or staying third-country nationals

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.

			 Immigration_Act_2004.pdf
	Italy	Yes	In Italy the Law relating to public safety (AS 733 - B) is going to establish the crime of illegal immigration. This Law, however, has yet published in the Official Journal. For this reason, the IT EMN NCP reserves the right to respond with the requested details as soon as the related Law will be made official.
	Latvia	Yes	<p>In cases when a person for the first time has illegally crossed the border of the Republic of Latvia there are no criminal penalties provided in the national legislation, but if the person has <u>repeatedly</u> illegally crossed the border of the Republic of Latvia <u>within one years time</u> a criminal penalty is applied.</p> <p>Section 284 of the Criminal Law states that the person who has repeatedly illegally crossed the state border within the period of one year can be punished by the deprivation of the liberty for the time period up to three years, or by custody, or by forced labour, or by money fine up to sixty minimum monthly wages.</p> <p>If the person is residing in the Republic of Latvia without any valid personal identification documents and is using false identity the actions of this person contain indications of a crime and this corresponds to the section 281 of the Criminal Law. The section 281 of the Criminal Law states that hiding of ones identity while residing in the Republic of Latvia without personal identification documents or using other persons or forged personal identification documents is punished by deprivation of the liberty for the time period up to two years or by forced labour, or by money fine up to forty minimum monthly wages.</p> <p>The Criminal Law came into force on April 1, 1999. The section 284 came into force on January 1, 2005. The section 281 also came into force on January 1, 2005.</p>
	Lithuania	Yes	<p>Aliens who have illegally entered or are illegally staying in Lithuania might be detained by the law enforcement institution (up to 48 hours) or on a court order (for more then 48 hours). There is only one case, with several exceptions, when an illegal migrant can be punished by a criminal penalty.</p> <p>Article 291 of the Criminal Code of the Republic of Lithuania stipulates the following:</p> <p>Article 291. Illegal Crossing of the State Border</p> <ol style="list-style-type: none"> 1. A person who illegally crosses the state border of the Republic of Lithuania shall be punished by a fine or by arrest or by imprisonment for a term of up to two years. 2. An alien who unlawfully enters the Republic of Lithuania seeking to exercise the right of asylum shall be released from criminal


EMN Ad-Hoc Query: Criminal penalties against illegally entering or staying third-country nationals

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

			<p>liability under paragraph 1 of this Article.</p> <p>3. An alien who commits the act provided for in paragraph 1 of this Article with the intent of illegally crossing into a third state from the Republic of Lithuania shall be released from criminal liability according to paragraph 1 of this Article where he is, in accordance with the established procedure, subject to deportation back to the state from the territory whereof he illegally crosses the state border of the Republic of Lithuania or to the state whose citizen he is.</p>
	<p>Luxembourg</p>	<p align="center">Yes</p>	<p>Yes, Luxembourg provides for criminal penalties against third- country nationals who illegally entered or stayed on its territory. It is provided within the law of 29th. of August 2008 which concerns free circulation of people and immigration, in Memorial An°138 of the 10th of September 2008.</p> <p>The law was implemented in the 1st. October 2008 and it includes under chapter 7, "Les sanctions" (penalties), pp 2049-2050:</p> <ul style="list-style-type: none"> - Section 1 and 2 deal with penalties which the third-country national who enters or remains irregularly on the territory can incur. - Articles 140, 141 and 142 contain penalties which are applicable to those who have committed offences against the procedures and rules of residence in the national territory; -Under section 3 penalties against those who provide assistance to irregular entry and unauthorised residence are also described. <p>Here below we send a detailed description of the law as it is published:</p> <p>Chapitre 7. – Les sanctions <i>Section 1. – L’entrée et le séjour irréguliers</i> Art. 139. Sont punies d’une amende de 25 à 250 euros:</p> <p>a) ...</p> <p>b) les membres de la famille (ndr : d’un citoyen de l’Union) ressortissants d’un pays tiers qui ont omis de solliciter dans le délai prescrit la délivrance de la carte de séjour prévue à l’article 15;</p> <p>c) les personnes qui ont omis de faire dans les délais prescrits une déclaration d’arrivée conformément aux articles 36 (ndr :pour un séjour de moins de trois mois, une déclaration d’arrivée est à faire à la commune dans les trois jours de l’entrée sur le territoire) et 40, paragraphe (1) (ndr :pour un séjour de moins de trois mois, une déclaration d’arrivée est à faire à la commune dans les trois jours de l’entrée sur le territoire) ou de solliciter la délivrance du titre de séjour conformément à l’article 40, paragraphe (2) (ndr : avant l’expiration d’un délai de trois mois, le ressortissant de pays tiers doit solliciter la délivrance d’un titre de séjour);</p> <p>d) les personnes qui n’ont pas fait de déclaration de départ et n’ont pas remis leur titre de séjour au ministre conformément à l’article 40, paragraphe (4). (ndr : le ressortissant de pays tiers qui veut quitter le pays pour plus de six mois doit remettre son titre de séjour au ministre et faire une déclaration de départ auprès de l’autorité communale)</p> <p>Art. 140. L’étranger qui est entré ou a séjourné sur le territoire luxembourgeois sans satisfaire aux conditions légales ou qui s’y est maintenu au-delà de la durée autorisée ou qui ne se conforme pas aux conditions de son autorisation est puni d’un emprisonnement de huit jours à un an et d’une amende de 251 à 1.250 euros ou d’une de ces peines seulement.</p> <p>Est puni des mêmes peines, le travailleur étranger qui occupe un emploi sans y être autorisé ou en dehors des limites</p>



EMN Ad-Hoc Query: Criminal penalties against illegally entering or staying third-country nationals

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

			<p>et des conditions de son autorisation.</p> <p>Art. 141. Est puni d'un emprisonnement d'un mois à deux ans et d'une amende de 251 à 3.000 euros ou d'une de ces peines seulement, l'étranger qui a sciemment fait à l'autorité compétente de fausses déclarations ou a sciemment produit des pièces falsifiées ou inexactes pour entrer sur le territoire ou pour obtenir une autorisation ou un titre de séjour ou une autorisation de travail ou un renouvellement du titre de séjour ou de l'autorisation de travail.</p> <p><i>Section 2. – La méconnaissance des décisions d'éloignement</i></p> <p>Art. 142. Est puni d'un emprisonnement de six mois à trois ans et d'une amende de 251 à 3.000 euros ou d'une de ces peines seulement, tout étranger qui éloigné ou expulsé, est rentré au pays malgré une interdiction d'entrée sur le territoire.</p>
	<p>Malta</p>	<p align="center">Yes</p>	<p><u>Answer for Question No 1:-</u> Yes, Maltese national legislation provides for criminal penalties for third-country nationals who have illegally entered or who are illegally staying in the territory.</p> <p><u>Answer for Question No 2:-</u> The Immigration Act, Chapter 217 of the Laws of Malta, and the Regulations adopted there under, regulate immigration issues. The law has been amended several times since its entry into force in 1970. Illegal entry was decriminalised in the year 2002 to address the new asylum related scenario, linked to irregular entry. The scope of the legislation in question is to restrict, control and regulate immigration into Malta and to make provision for matters ancillary thereto.</p> <p>However, Article 32 of the Immigration Act, establishes penalties, among others in respect of:-</p> <ol style="list-style-type: none"> 1. Entry into Malta without the required documentation (passport, visa, identity documents) 2. Entry into Malta with falsified documents 3. Bypassing of entry procedures, such as failure to present oneself upon arrival to Immigration authorities. <p>The Act also contemplates penalties in connection with the illegal employment of persons who do not possess the necessary documentation, as well as the forging of documents, possession of forged documents and making false declarations. Smuggling to and from Malta is also an offence under the Immigration Act. Penalties that may be imposed upon conviction for such crimes include a fine not exceeding €1,646 or imprisonment for a term not exceeding two years or may encompass a penalty which includes both a fine and imprisonment.</p> <p>Court proceedings can be initiated against employers of illegal migrants immediately follow and if found guilty the migrant is deported. The is prosecuted by either the Police or the national Employment agency (ETC) and if found guilty he can be fined a penalty starting from €165 for every illegal migrant he employs.</p> <p>The Law Employment and Training Services Act 1990 Legal Notice 110-93 also contemplates the suspension of the business license but to date this has not been enforced.</p>




EMN Ad-Hoc Query: Criminal penalties against illegally entering or staying third-country nationals

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.

	Netherlands	Yes	No, the Netherlands do not provide in the Dutch Aliens Act for criminal penalties for third-country nationals who have illegally entered or who are illegally staying in the territory.
	Poland	Yes	<p>1.Yes, Polish national legislation provides for criminal penalties for third –country nationals who have illegally entered or who are illegally staying in the territory of Poland.</p> <p>2.Details of the legislation</p> <p>The Penal Code of 6 June 1997 (Journal of Laws 1997, no. 88, item 553) According to Art. 264 § 2 whoever crosses the border of the Republic of Poland in violation of the relevant regulations with the use of violence threats or deceit or in co-operation with other persons shall be subject to the penalty of deprivation of liberty for up to 3 years.</p> <p>Date of entry into force: 24.08.2005</p> <p>The Petty Offences Code of 20 may 1971 (unified text, Journal of Laws 2007, no. 109, item 756) According to Art. 49a § 1 whoever crosses the border of the Republic of Poland in violation of the relevant regulations shall be liable to a fine*.</p> <p>Date of entry into force: 24.08.2005</p> <p>Act on Aliens of 13 June 2003 (Journal of Laws 2006, no. 234, item 1694) According to Art. 148 sec.1 pt.1. whoever resides on the territory of the Republic of Poland without the required authorisation shall be liable to a fine*.</p> <p>Date of entry into force: 01.09.2003</p> <p>According to Art. 148 sec.1 pt.10.It. a whoever has entered the territory of the Republic of Poland on the basis of the local traffic border permit and resides out of the border area, within which the holder of the permit is entitled to move shall be liable to a fine*.</p> <p>Date of entry into force: 01.01.2009</p> <p>* 20 PLN to 5000 PLN, 1€= ca.4.07 PLN</p> <p>Polish national legislation also provides for criminal penalties for organising illegal entrance and stay on the territory of Poland.</p> <p>The Penal Code of 6 June 1997 (Journal of Laws 1997, no. 88, item 553) According to Art. 264 § 3 whoever organises the crossing of the border of the Republic of Poland for other persons, in violation of the</p>




EMN Ad-Hoc Query: Criminal penalties against illegally entering or staying third-country nationals

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

			<p>relevant regulations shall be subject to the penalty of deprivation of liberty for a term of between 6 months and 8 years.</p> <p>Date of entry into force: 01.05.2004</p> <p>According to Art. 264a § 1 whoever, in order to achieve material or personal benefit, enables or facilitates other person the residence on the territory of the Republic of Poland, in violation of the relevant regulations shall be subject to the penalty of deprivation of liberty for a term of between 3 months and 5 years.</p> <p>Date of entry into force: 01.05.2004</p>
	Portugal	Yes	No. Portuguese legal framework does not foreseen criminal sanctions addressed to third-country nationals who have illegally entered or who are illegally staying in the national territory.
	Slovak Republic	Yes	<p>Based on the Act No. 48/2002 Coll. on the Residence of Foreigners and on Amendments and Modifications to Some Other Acts as Amended, section 76, sub-section 1, letter a) a person commits a misdemeanour, if s/he enters the territory of the Slovak Republic without authorisation, stays on the territory of the Slovak Republic without authorisation, (...). A fine up to 1.659 € may be imposed for this kind of a misdemeanour. This kind of misdemeanours shall be heard by police units. Revenues from fines shall constitute an income of the state budget of the Slovak Republic. Pursuant to Section 57, subsection 1, letter c) of the same Act any alien who has entered the territory of the Slovak Republic without authorisation or stayed on the territory of the Slovak Republic without authorisation will be administratively expelled by a police department and will be refused re-entry for a period of up to five years, one year being the minimum period.</p> <p>Based on the Act No 300/2005 Coll. (Criminal Code), Section 354, subsection 1, whosoever crosses the State border by violence or threat of immediate violence shall be punished by a term of imprisonment of between three and eight years.</p> <p>Section 357 of the same Act stipulates that 'Whosoever enters the territory of the Slovak Republic by a means of air transport in breach of the provisions governing international flights shall be punished by a term of imprisonment of between six months and three years.'</p>
	Slovenia	Yes	<p>Please note that we have no criminal penalties for illegal entry and illegal stay. These offences are considered to be misdemeanours.</p> <p>Sanctions for third county nationals for illegal entry and stay are provided in Aliens Act (originally Zakon o tujcih). It is available at http://www.uradni-list.si/1/content?id=87651&part=&highlight=zakon+o+tujcih and entered into force on 13 August 2008.</p> <p>Relevant provisions are: Article 96 Aliens shall be liable to a fine of between 400 and 1200 EUR for the following offences: 1) not possessing a valid travel document (Article 7);</p>

EMN Ad-Hoc Query: Criminal penalties against illegally entering or staying third-country nationals

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

			<p>2) not having a permit to enter the Republic of Slovenia (Article 8);</p> <p>3) not leaving the country once their residence permit has expired</p> <p>Article 98 Aliens shall be liable to a fine of between 500 and 1200 EUR the following offences:</p> <p>1) entering the Republic of Slovenia illegally (Article 11);</p> <p>2) residing in the Republic of Slovenia in contravention of the purpose for which their residence permit was issued (fifth paragraph of Article 30);</p> <p>3) residing in the Republic of Slovenia illegally (Article 47).</p>
	Spain	Yes	<p>1. No.</p> <p>2. Not Applicable.</p>
	Sweden	Yes	<p>1. Yes</p> <p>2. The Aliens Act (2005:716), which entered into force on 31 March 2006, provides the following legislation in Chapter 20 Section 1, 2 and 4:</p> <p>Section 1 – 2: A fine shall be imposed on an alien who is staying in Sweden intentionally or through negligence without having the prescribed permit and without the alien having applied for such a permit or a person in charge of a preliminary investigation having applied for a temporary residence permit for the alien.</p> <p>An alien who is staying in Sweden intentionally even though he or she did not have the right to return to Sweden according to an enforced expulsion order shall be sentenced to imprisonment for at most one year or, if the offence is minor, to a fine. This provision is not applicable if the alien is considered to be a refugee or in need for subsidiary protection.</p> <p>In the case of minor offences, prosecution shall only be initiated if this is called for in the public interest.</p> <p>Section 4: An alien who intentionally passes an outer border under the Schengen Convention in an impermissible way shall be sentenced to a fine or imprisonment for at most one year.</p>
	United Kingdom	Yes	<p>Yes, UK legislation does provide for criminal penalties for third country nationals who have illegally entered or are illegally staying in the country. This is set out in <u>Immigration Act 1971 s.24(1)</u>. The section sets out the offences of entering the UK either without leave, in breach of a deportation order, overstaying or breaching the conditions of their leave.</p> <p>The penalties provided in the legislation are either a fine of up to £5000 or imprisonment for no more than 6 months. The section came into force on 01/01/1973.</p>

EMN Ad-Hoc Query: Criminal penalties against illegally entering or staying third-country nationals

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.

			See below for a link to the legislation: http://www.statutelaw.gov.uk/content.aspx?LegType=All+Legislation&title=immigration+act+1971&searchEnacted=0&extentMatchOnly=0&confersPower=0&blanketAmendment=0&sortAlpha
--	--	--	---
