ROYAL NORWEGIAN
MINISTRY OF JUSTICE AND PUBLIC SECURITY

EFTA Surveillance Authority
Avenue des Arts 19H

Your ref.	Our ref.	Date
	25/2458 - KBH	27.06.2025

Request for information concerning Norway's expulsion practice for petty crimes

The Ministry of Justice and Public Security ("the Ministry") refers to the letter from EFTA Surveillance Authority ("the Authority") dated 2 April 2025, and later correspondence by e-mail of 15 May 2025.

In the letter, the Authority expresses that they would like to garner additional information from the Norwegian Government with respect to how Circular UDI RS 2010-022, and Sections 121(1)(c) and 122 of the Norwegian Immigration Act, are applied in practice by the relevant authorities. It contained six points with further description of what was requested.

We hereby offer our response to your request, which must be seen in the context of our previous responses on the same topic. For the sake of coherence in the response, some of the points will be answered together.

Regarding the request to provide decisions (point 1-3):
The Authority has requested copies of all decisions to expel or reject EEA nationals and their family members based on Circular UDI RS 2010-022 from November 2023, as well as all decisions to reject or expel UK nationals and other beneficiaries covered by the Separation Agreement from November 2023, based on Circulars UDI RS 2010-022 or UDI RS 2010-024.
Together with the Directorate of Immigration ("UDI") and the Immigration Appeals Board ("UNE"), the Ministry have tried to the best of our ability to accommodate the request for an overview of all decisions. Due to the high number of cases, it is, as previously communicated, cf. e-mail dated 11 April 2025, not practically possible to

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provide you with copies of all the decisions as requested. We have attached the relevant statistics in this regard in Appendix 2 and 3 to this letter.

However, in an effort to provide the Authority with decisions that will give an overview of Norway`s practise in this area, we have attached 18 decisions from UDI, and three decisions from UNE, pursuant to Sections 121(1)(c) and 122 of the Immigration Act (21 cases in total). In addition, we have attached two decisions pursuant to Section 67 regarding UK-nationals, and one decision pursuant to Section 122(2) regarding an UK-national. These are the only three decisions that UDI have been able to identify where it is clear that the UK national is covered by the Separation Agreement[1]. From UNE we have attached three cases regarding UK-nationals. Unfortunately, it has not been possible to translate the decisions into English, as this would be disproportionately burdensome.

We emphasise that all decisions are made on the basis of the referred circulars, insofar as the circulars provide guidance for the specific case. As mentioned in Section 1.2 of Circular UDI RS 2010-022, the circular is to be regarded as advisory, it is not exhaustive and does not describe a static practice. A concrete assessment must be made in each individual case.

Regarding the request of criminal statistics (point 4):
The Authority`s request of detailed statistics linking the different decisions to the different types of crime, is unfortunately not a request that can be fulfilled in practise. UDI does not have statistics on the type of crimes or other offences for which individuals are rejected or expelled pursuant to Sections 121 or 122 of the Immigration Act. Due to the high number of decisions, it is not possible for UDI to manually review them all, and it is therefore not feasible to produce the requested statistics. UNE on the other hand, have made a manually counting, which is provided to you in Appendix 3.

Regarding the requested statistics relating to Norwegian citizens, we have consulted the relevant agencies that might have this type of statistics on convictions in Norwegian courts, but the feedback is that this type of statistical breakdown or estimates of the punishment a Norwegian citizen receives for committing an offense, does not exist in the Norwegian administration.

However, in order to give you the best possible overview of our practice in this area, we will in the following provide a more detailed description of the different types of cases associated with Sections 121 and 122 of the Immigration Act.
Pursuant to Section 121(1)(c) and 122(1), a decision to reject (expulsion without an entry ban) or expel (expulsion with an entry ban) can only be made when it is in the interest of public order or security, and only if the EEA national poses, or is assumed to pose, a real, immediate and sufficiently serious threat to fundamental societal interests.

The EEA States have a certain margin of appreciation regarding what they consider to pose a threat to their community, cf. case C-41/74 Van Duyn. Hence, we hold the view that it is up to the Norwegian authorities to define the type of crimes from which we

[1] There may be some minor errors in the statistics, and the number of UK-nationals covered by the Separation Agreement who has been expelled may therefore be slightly higher.

consider it necessary to protect Norway and the Norwegian community, and that this may vary from time to time.

That being said, even though the EEA States have a certain margin of appreciation regarding what they consider to pose a threat to their community, the threat must still be of a certain level and pose a sufficiently serious threat to fundamental societal interests. When interpreting this, the Immigration Authorities consider all relevant legal sources, including guidelines from the European Commission, relevant case law and national guidelines.

According to practice, expulsion requires that the EEA national has been convicted of a crime and sentenced either to a fine or to imprisonment. Minor criminal offences, which separately would not be considered to pose a threat to fundamental societal interests, may be assessed differently if repeated several times. With regard to theft, this is addressed in Circular UDI RS 2010-022, section 10.3.1.

Crimes typically encompassed by Section 122(1) of the Immigration Act are crimes of unlawful gain, violent crimes, violations of the Movement of Goods Act (illegal smuggling) and drug felonies. As explained further under point 5, an EEA national may be rejected (but not expelled) even if he or she has not been convicted in Norway.

An EEA national who has acquired the right of permanent residence may not be expelled unless "serious grounds of public order or security considerations indicate that it is necessary". There is a clear distinction between the regular "grounds" of public policy or public security pursuant to Section 122(1), and the serious grounds that must be met in order to expel an EEA national who has acquired the right of permanent residence, cf. Section 122(2)(a).

According to practice, criminal conduct that leads to shorter periods of imprisonment or a fine will fall outside the scope of the term "serious grounds of public policy". A longer period of imprisonment is required to even consider a criminal conduct to fall within the scope. Hence, the threshold to expel an EEA national pursuant to Section 122(2)(a) is much higher than pursuant to Section 122(1).

Examples of types of criminal conduct that may fall within the scope of the provision are cases of serious violence, domestic violence, sexual exploitation, and aggravated drug felonies.

Further, there is a very high threshold for expelling an EEA national who has been residing in Norway for over ten years. In Section 122(2)(b) of the Immigration Act, it is stated that an EEA national who has stayed in the realm for 10 years may not be expelled, unless it is "compellingly necessary in the interests of public security."

According to practice, a very long period of imprisonment is required to even consider criminal conduct to fall within the scope. Very serious drug trafficking, sexual exploitation, money laundering, corruption and other forms of organised crime are examples of crimes that may be considered to fall within the scope.

It is important to emphasise that a conviction does not automatically lead to expulsion or rejection, but a criminal conviction may trigger an examination of the circumstances in order to determine whether there are reasons to take measures on grounds of public order or public security. Circular UDI RS 2010-022 provides guidance on *when* the Immigration Authorities *may* consider expelling or rejecting an EEA national based on the most common types of violations.

Regarding the request of police reports (point 5):
The Authority has noted that Section 9.2 of Circular UDI RS 2010-022 refers to the police's preparation of a case, and has requested additional information concerning how this assessment functions in practice.

First of all, it is important to emphasise that no EEA national is expelled with an entry ban unless they have been convicted of a crime and sentenced either to a fine or to imprisonment. According to practice, it is only possible to *reject* an EEA national if they have not been convicted. There is no practice of expelling a person before a judgement or fine is final and enforceable.

An EEA national may be rejected if they refuse to accept a fine, if they are not mentally capable of accepting a fine or being prosecuted, or if there are other reasons why they cannot be fined or prosecuted at that moment.

The police must write a report explaining why the EEA national cannot be fined or prosecuted, and they must also explain why they believe that the EEA national represents a threat to fundamental societal interests.

The most common situations involving rejection are when an EEA national refuses to accept a fine, or an EEA national is encountered in a situation where the circumstances give reason to suspect that they may commit a crime. For example, an EEA national is found by the police in a car with false license plates, where several of the other passengers have previously been convicted for theft either in Norway or abroad, and they are traveling with equipment suitable for committing theft or burglary. Furthermore, they do not have employment or residence in Norway and lack a credible purpose of their stay. At that point, it is not possible to convict them in Norway, but there are reasons to conclude that they represent a threat to fundamental societal interests.

Pursuant to Section 19-29 third paragraph of the Immigration Regulations, an EEA national may also be rejected if he or she has an addiction or suffers from a serious mental disorder. The police must write a report regarding the EEA national's addiction and explain why he or she represents a threat to fundamental societal interests, including how the person has behaved during their stay in Norway. When considering rejection of a person due to serious mental health issues, the police must obtain a declaration from medical personal regarding the medical diagnosis. If it has not already been done by medical personal, the police must also write a report explaining why the person represents a threat to fundamental societal interests and describe their behaviour during their stay in Norway.

We have attached three relevant police reports as examples.

Regarding the request of factors to be considered (point 6):
The Authority has requested examples of factors that have been considered upon rejection or expulsion, but which are not listed in the Circular UDI RS 2010-022.

It is important to emphasise that the Circular provides thresholds for when cases of expulsion or rejection may be initiated and it is not exhaustive. Every case is initiated by the police, and these thresholds serve as guidance for when the police may consider opening a case. In our view, it is neither possible nor effective to regulate in a guideline every offence that an EEA national may commit. Doing so would require mentioning the entire penal code and all other potentially applicable laws; a method we do not find appropriate.

Instead, the guideline includes the most common offences and the most typical factors considered in the overall assessment, as this is most useful for caseworkers and the police. This helps ensure consistent practice within the Immigrations authorities. Other offences not mentioned in the guideline may include burglary, various types of sexual offences, e.g. rape and sexual abuse of children.

However, an individual assessment is always carried out in each case, and the factors that may be taken into account may vary from case to case. Therefore, the list of relevant factors is not exhaustive. The personal circumstances considered will depend on the nature of the offence and may also vary from case to case and over time.

Additionally, the proportionality assessment will vary, particularly in cases where the EEA national has some form of connection to Norway, especially family ties and/or children residing here. For example, when the EEA national has violated the Movement of Goods Act, some relevant factors are presented in section 10.8.3 of the guideline. Other relevant factors that may be taken into account can include:

- driving without a valid driver's license
- the EEA national has committed similar offences in another country
- whether the EEA national attempted to flee when stopped for inspection
- false customs declarations.

Section 10.8.3 specifically includes the option that "Other information indicates that there is a risk of similar re-offending", which clearly shows that the list is not exhaustive.

In practice, a concrete individual assessment of the case and the threat the EEA national represents is conducted before it is decided whether he or she will be allowed to continue residing in Norway. A condition for expulsion or rejection is that the personal circumstances of the EEA national must pose, or must be assumed to pose, a real, immediate and sufficiently serious threat to fundamental societal interests.

Previous criminal convictions alone do not automatically constitute grounds for restricting the freedom of movement. This is also clearly stated in Section 19-29 of the Immigration Regulation.

Section 19-29 of the Immigration Regulations also states that expulsion must solely be based on the foreign national's personal circumstances. The Immigration Authorities consider whether it is likely that the EEA national in the future will commit a crime similar to a crime for which they have already been convicted. It is sufficient that there is a risk that this may occur, but the threat must be real and imminent. When conducting this assessment, the Immigration Authorities consider several relevant factors related to the personal situation of the EEA national, i.a.; whether they have a place of residence in Norway, the family situation, employment, health, financial situation, the seriousness of the crime committed, the time that has passed since the crime was committed, the circumstances surrounding the offence, and whether there are previous criminal convictions.

The attached decisions will demonstrate how different factors are taken into consideration when the Immigration Authorities decide to expel or reject an EEA national.

Yours sincerely,

Sissel Leganger (e.f.)
Deputy Director General

Kristine Bjørnsund Hosar
Ministry Advisor

The document is approved electronically, as such no handwritten signatures are required.

Attachments

1. Statistics regarding expulsion cases for the period November 2023 until April 2025
2. Statistics from UNE
3. 21 decisions regarding EEA nationals, 6 decisions regarding UK nationals, 3 police reports