EMN Ad-Hoc Query on Ad-Hoc Query on the criteria for application of exclusion clause – danger to the community and danger to the state security – while reviewing the applications for international protection

Requested by SK EMN NCP on 6th September 2016

Protection

Responses from Austria, Belgium, Bulgaria, Croatia, Czech Republic, Estonia, Finland, Germany, Hungary, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Slovak Republic, Sweden, Norway (18 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.

Background information:

With regards to the arrival of a high number of unverified persons from countries where various terrorist groups operate, there is a risk that among these persons might be individuals to whom exclusion clause under the Directive 2004/83/EC of 29 April 2004 could be applied. According to the Art. 17 para 1 (d) “a third country national or a stateless person is excluded from being eligible for subsidiary protection where there are serious reasons for considering that: (d) he or she constitutes a danger to the community or to the security of the Member State in which he or she is present.”

However, at the same time, this Directive does not explicitly specify the kind of behaviour that could be considered as dangerous to the community or state security and leaves it exclusively to the discretion of an EU Member State how it is going to assess this danger.
Based on the above-mentioned, the Slovak Republic would like to find out how your Member State assesses these persons and how it uses the exclusion clause:

Questions

1. 1. Does your Member State’s national asylum legislation define the term: a. “danger to the state security”; b. “danger to the community” ? If yes, please specify.
2. 2. What actions, deeds or behaviour of the applicant can constitute a danger to the community?
3. 3. What actions, deeds or behaviour of the applicant can constitute a danger to the state security?
4. 4. If an assessment of whether a person is dangerous to the community is based on classified information, does the applicant: a.) have legal right to access this information and comment on it? b.) have the possibility to ask for access to this information and comment on it in case this is not stipulated by law (i.e. it is not a legal right)? c.) If you answered yes in a) or b), how can the applicant access the classified information in practice?
5. 5. If an assessment of whether a person is dangerous to the state security is based on classified information, does the applicant: a.) have legal right to access this information and comment on it? b.) have the possibility to ask for access to this information and comment on it in case this is not stipulated by law (i.e. it is not a legal right)? c.) If you answered yes in a) or b), how can the applicant access the classified information in practice?

Responses

	Country	Wider Dissemination	Response
	**Austria**	Yes	**1.** No (see Art. 6 para 1 subparas 3 and 4 Asylum Act and Art. 9 para 2 subpara 2 Asylum Act). **2.** Pursuant to Art. 6 para 1 subpara 4 Asylum Act, an alien is ineligible for asylum status, if he has been convicted by final judgment of a particularly serious crime and, by reason of such punishable act, represents a danger to the community (“Gefahr für die Gemeinschaft”). Furthermore, according to Art. 9

			para 2 subpara 2 Asylum Act, the status of subsidiary protection may be withdrawn if the alien constitutes a danger to the community ("Gefahr für die Allgemeinheit"). These provisions implement Art. 14 para 4 (b) and Art. 17 para 1 (d) of the Qualification Directive (2004/83/EC). Therefore, they have to be interpreted in conformity with European Union law and the jurisprudence of the Court of Justice of the European Union. According to the explanatory remarks to the legislative proposal for the current Art. 9 Asylum Act, a danger to the community does not require a crime ("Verbrechen") within the meaning of the Austrian Criminal Code, but may also flow from several less severe criminal offences (see www.parlament.gv.at/PAKT/VHG/XXIV/I/I_00330/fname_167909.pdf, p. 9). However, according to a decision of the Austrian Constitutional Court (13 October 2011, U 1907/10), a danger to the community or security of a country requires a punishable act which is at least similarly severe as the acts listed in Art. 17 para 1 (a)-(c) of the Qualification Directive. Furthermore, in the light of the Geneva Refugee Convention, a danger to the security or the community of a country may only be assumed if the existence or the territorial integrity of a state is in danger or if there are particularly grave criminal acts (e.g. including the death of a person, rape, drug trafficking, robbery with the use of a weapon). **3.** According to Art. 6 para 1 subpara 3 Asylum Act, an alien is also ineligible for asylum status, if for reasonable grounds he constitutes a danger to the security of the Republic of Austria. Furthermore, pursuant to Art. 9 para 2 subpara 2 Asylum Act, the status of subsidiary protection may be withdrawn if the alien constitutes a danger for the security of the Republic of Austria. Again, these provisions implement the respective provisions of the Qualification Directive and have to be interpreted accordingly (see response to Question 2). **4.** a) Yes. According to Art. 45 para 3 General Administrative Procedures Act, the parties shall be given the opportunity to take notice of the results of the evidence taken and to comment on it. b) n/a. c) In general, the parties have the right to access the file at the authority (Art. 17 General Administrative Procedures Act). Therefore, the party to the proceedings can appear before the authority and demand access to the file. Furthermore, the parties ex officio have to be given the opportunity to take notice of the evidence taken (see response to Question 4 a). The form in which the parties have to be informed of the evidence depends on the circumstances. However, the parties must receive the information which is necessary for the exercise of their rights (High Administrative Court, 18 January 2001, 2000/07/0090). **5.** Please see the response to Question 4.

	**Belgium**	Yes	**1.** Article 55/4 § 2 of the Belgian Immigration Act provides that a foreigner is excluded from subsidiary protection if he is a danger to the community or national security. a) The Belgian immigration Act does not clearly define a danger to the community or danger to the national security, but there should be reasonable grounds to consider the person as a danger to national security (Article 52/4 of the Law of 15/12/1980). This could be considered as an assessment of proportionality. However it should be emphasized that Article 52/4 of the Immigration Act refers to the refusal of the refugee status and that Article 55/4 on the exclusion from subsidiary protection mentions, but does not define a danger to the community. b) The Belgian Immigration Act defines a danger to the community as having been convicted by a final judgement of a particularly serious crime (Article 52/4 of the Law of 15/12/1980). However, yet again, Article 52/4 of the Immigration Act refers to the refusal of the refugee status and Article 55/4 on the exclusion from subsidiary protection mentions, but does not define a danger to the national security. Furthermore a person can also be excluded from subsidiary protection if he has committed a serious crime (as in Article 17 (b) AQD)). **2.** The Minister or his authorized representative will send all the elements regarding the danger to the community to the Office of the Commissioner for Refugees and stateless Persons (CGRS). On the basis of these elements the CGRS can exclude the asylum applicant from subsidiary protection (Article 55/4 § 2 of the Law of 15/12/1980) or refuse the refugee status (article 52/4 of the Law of 15/12/1980). The refugee status or subsidiary protection status can also be withdrawn on these grounds (Article 55/3/1 and Article 55/5/1 of the Law of 15/12/1980). Due to the fact that a danger to the community is not clearly defined in the Immigration Act, and in particular not for what concerns the exclusion of subsidiary protection; it is not possible to list the actions that could be considered as constituting a danger to the community. Furthermore if a person has committed a serious crime, it is more likely he will be excluded from subsidiary protection on the ground of having committed a serious crime (in accordance with Article 17 (b) of the Asylum Qualification transposed into article 55/4, § 1 of our Immigration Act). A wide range of actions can be considered as such a serious crime. It is likely that all crimes qualified in the penal law as such (murder, rape,…) will be considered as a serious crime by the CGRS and the Belgian Appeal Board (Council for Aliens Law Litigation). However also serious offences as described in the penal law (theft, “blows and injuries”, serious drug offences, etc.. can be considered as a serious crime and can be a ground to exclude a person from subsidiary protection. It is therefore important to understand that the qualification of a “crime” in the penal law does not apply for what concerns the term “serious crime” as in Article 55/4 §1 of the Immigration Act. Please find enclosed a judgement of the

			Council for Aliens Law Litigation on the interpretation of Article 17 (b) of the AQD and Article 55/4 §1 of the Belgian Immigration Act). (in French) **3.** For what concerns the actions or behaviour of the asylum applicant to be considered as a danger to the state security is to a large extent the discretion of the Minister or his representative. The Minister or his authorized representative will send all the elements regarding the danger to the national security to the Office of the Commissioner for Refugees and stateless Persons. Whether an individual is considered as a danger to state security and whether he should be excluded on this ground from an international protection status is based on a case by case decision and it is not possible to list the actions, deeds or behaviour constituting a danger to the state security. **4.** If an applicant is excluded from subsidiary protection due to the fact he or she is considered to be a danger to the community for example because he or she convicted of a serious crime, this will be apparent from the motivation of the decision and the relevant information will be added to the administrative file. The rejected applicant for international protection and his lawyer get access to the file and to the information the decision is based on. An appeal against the exclusion of the CGRS can be lodged with the Council for Aliens Law Litigation (CALL). **5.** If an applicant is excluded from subsidiary protection due to the fact he or she is considered to be a danger to national security, this will be apparent from the motivation of the decision and the relevant information will be added to the administrative file. The rejected applicant for international protection and his lawyer get access to the file and to the information the decision is based on. However it is possible that in some cases classified information will be withheld from the administrative file. (Besides, the Law of 11 April 1994 concerning the disclosure of information by the administration of the Federal administrative authorities does not oblige to grant access to the administration documents that they have at their disposal if national security is involved). In such cases the CGRS can ask the security services or police to provide information that is suitable to add to the administrative file. (It is not possible for the CGRS to take a decision of refusal or exclusion of a protection status merely based on classified information). Also in this case, an appeal against the exclusion of the CGRS can be lodged with the Council for Aliens Law Litigation (CALL).
	**Bulgaria**	Yes	**1.** The Law on Asylum and Refugees does not define the term: a. a danger to the state security; b. a danger to the community.

			2. In the Law on Asylum and Refugees (LAR) there is no list of actions, deeds or behaviour of the applicant that can constitute a danger to the community. According to LAR art. 58 (9) (revoked – SG 52/07; new – SG 109/07, in force from 01.01.2008; amend. – SG 80/15, in force from 16.10.2015; prev. par. 7, amend. – SG 101/15) Where an application for international protection is received, the competent authorities shall obligatorily request a written opinion of the State Agency "National Security", which shall be taken into account for passing a judgment in the proceedings according to the general procedure. **3.** In the Law on Asylum and Refugees (LAR) there is no list of actions, deeds or behaviour of the applicant that can constitute a danger to the state security. According to LAR art. 58 (9) (revoked – SG 52/07; new – SG 109/07, in force from 01.01.2008; amend. – SG 80/15, in force from 16.10.2015; prev. par. 7, amend. – SG 101/15) Where an application for international protection is received, the competent authorities shall obligatorily request a written opinion by the State Agency "National Security", which shall be taken into account for passing a judgment in the proceedings according to the general procedure. **4.** In compliance with art. 29a. (new – SG 101/15) The foreigner and his representative are entitled to file an application for access to the collected information, based on which a decision is taken, except for in cases where the disclosure of information or of the sources thereof could endanger national security, the security of organizations or of persons providing information or of the person it is related to, or this would prevent the examination of the application for international protection, or this would impede international relations of the Member States. **5.** In compliance with art. 29a. (new – SG 101/15) The foreigner and his representative are entitled to file an application for access to the collected information, based on which a decision is taken, except for in cases where the disclosure of information or of the sources thereof could endanger national security, the security of organizations or of persons providing information or of the person it is related to, or this would prevent the examination of the application for international protection, or this would impede international relations of the Member States.
	**Croatia**	Yes	**1.** No, the Article 30 Exclusion of asylum of the Act on International and Temporary Protection 2015 does not include a danger to the state security or danger to the community as a grounds for an application for an asylum to be excluded. However, the Article 31 Expulsion of subsidiary protection of the Act on International and Temporary Protection 2015 regulates that subsidiary protection shall be

			denied in cases that the foreign national constitutes a threat to the national security or public order of the Republic of Croatia. **2.** The law does not list actions which lead to the conclusion that the foreign national is a danger to national security or a public order of the Republic of Croatia. **3.** N/A **4.** N/A **5.** N/A
	**Czech Republic**	Yes	**1.** The Act No. 325/1999 Coll., on Asylum, as amended, does not define in more details the terms “danger to the state security” or “danger to the community. The terms are not defined as regards the administrative law, their closer definition is up to the judicature. Not even the European Community Law, specifically the Qualification Directive on which the Czech legal order is based, does not contain the definition of these terms. As regards the Act on Asylum, these terms are mentioned there in connection to the reasons for withdrawal and termination of asylum or subsidiary protection (§ 17) and in connection to the possible issuance of a decision in the matter of detention of an applicant for international protection in the reception centre or in the detention facility for foreign nationals (§ 46a, paragraph 1.c) if the person poses the threat to the security of state. The Act on Asylum does use the terms such as the “threat to the security of the state” and “public order” in §73 paragraph 3c in connection to the possible reasons not to permit entry into the Territory of the Czech Republic (the Ministry of the Interior shall deny entry into the Territory to a foreign national). **2.** As already stated, the term “danger to the community” is not mentioned in the Czech asylum legislation and thus the term is not defined. From the terminological point of view, we can mention the term “public order” which seems to be the closest term to the term “community” as regards the meaning. The Czech judicature (practice of the courts) has dealt with the term several times. According to the practice of the courts, following deeds and behaviour can be included in the meaning: disrespecting the final and enforceable decision on administrative expulsion, or expulsion sentence etc. According to the judicature, the term “public order” is most often interpreted in terms of administrative law, its criminal impact has not been sorted yet (more examples in the file attached).

			3. By the term “danger to the state security” we understand the behaviour of an applicant for international protection which is of harmful character and the person thus does not deserve to be granted international protection. By such behaviour we mean for example the threat to fundamental constitutional establishment of the Czech Republic – for example the threat to the state sovereignty, territorial integrity, illegal possession of arms etc. (more detailed information also in the file attached). **4.** A person in question has a right to access classified information, respectively has a right to be familiarized with a necessary part of the content of such classified information, according to the § 87 paragraph 1 of the Act on Asylum, to which the Article 23 paragraph 1 of the Directive 2013/32/EU has been transposed. However, a foreigner in question is familiarized with such information in a form which does not threaten the security of the Czech Republic and its interests. In such instances, it is necessary in case of a representative of an applicant for international protection to undergo security clearance, in the sense of the Act on the Protection of Classified Information. **5.** See the answer above - applies similarly to the answer above.
	**Estonia**	Yes	**1.** Although there are references to the terms of “danger to the state security” and “danger to the community” in the Act on Granting International protection to Aliens, there is no definition of these terms in the asylum legislation. What might be „danger to the state security” and „danger to the community„ is assessed by Estonian Internal Security Service and the Police and Border Guard Board if it is appropriate. Additionally, although there is no definition for the terms in the asylum legislation, it is formulated in the Aliens Act, which deals with third country nationals in general. **2.** This kind of list has not been established in asylum legislation and therefore it has to be assessed in a case by case basis. **3.** This kind of list has not been established in asylum legislation and it is decided on a case by case basis based on information received from the Estonian Internal Security Service. The Penal Code chapter 15 enacts the offences against the state which can be considered as danger to the state security (e.g. acts of terrorism etc). Also the Aliens Act stipulates the deeds and behaviour that can constitute a danger to the state security (e.g the person has committed crimes against humanity, the TCN is in the active service or in the contractual service of the armed forces of a foreign state, the TCN has participated or there is good reason to believe that he or she has participated in punitive operations against civil population etc).

			4. The applicant has a legal right to ask from the responsible authority which procedures have been carried out about him/her. If it has been established that a person is dangerous to the community, this is stated in the decision. If the decision is based on classified information it is added to the personal file of the applicant. The rejected applicant for international protection or his/her lawyer can ask to access the personal file. However, in case the decision is based on the classified info there is always a possibility to deny access to that classified information. **5.** See previous answer.
	**Finland**	Yes	**1.** No. According to the Finnish legislation, danger to the state security or danger to the community are not grounds for exclusion from refugee status or subsidiary protection status. In Finland, exclusion clause applies to political crimes (crime against peace, war crime, crime against humanity, an act that violates the aims and principles of the United Nations). These grounds apply both to asylum and subsidiary protection. Regarding non-political crimes, serious/aggravated crimes can be also grounds for exclusion, and hence also a person who poses a danger to the state security/community may be excluded on this basis. However, when it comes to exclusion from a refugee status, a serious non-political crime is only grounds for exclusion if the crime took place outside Finland, before the person entered Finland. When it comes to exclusion from subsidiary protection status, an aggravated crime is grounds for exclusion regardless of where the crime took place. (Aliens Act, Sections 87 and 88) **2.** - **3.** - **4.** - **5.** -
	**Germany**	Yes	**1.** A foreign national is no refugee, if there are serious grounds for considering him or her a threat to the security of the Federal Republic of Germany or if he or she represents a danger to the community, because he or she has been effectively sentenced to a prison sentence of at least three years for a crime or a very serious offence (according to current jurisdiction there must be a danger of re-offending in case of such serious offence) (section 60(8) 1st sentence Residence Act, section 3 (2) Asylum Act). A foreign national may constitute a danger to the community, if he or she has been finally sentenced to at least one

			year of imprisonment or youth detention for one or several intentional offences against the life, physical integrity, sexual self-determination, or property of another or for resistance against law enforcement officers, if this offence has been committed with the use of violence or threatening to harm life or limb or by means of trickery (section 60(8) 3rd sentence Residence Act). However, these reasons for exclusion do not automatically trigger an exclusion from the granting of the refugee status. Rather, the Federal Office must decide at its discretion. Accordingly not only the public's interest in revoking the granting of rights must be considered, but also the foreign national's reasonable interest in the maintenance of the status (protection of confidence, solidification of stay). **2.** Section 60(8) Residence Act (see above) includes an exhaustive description of all crimes that apply, depending on the scope of the punishment. **3.** It is considered a danger to the Federal Republic, e.g. if someone is a member or active supporter of an organization on the EU list of terrorist organizations. Propaganda or collecting donations for such organization may already be considered serious reasons. **4.** After being confronted with the reasons for the revocation proceedings the foreign national has the right to comment (section 73(4) Asylum Act). He or she has the right to review the records and this guarantees access to the relevant information and the grounds for the intended revocation. Decisions of the asylum authorities can be appealed to the Administrative Courts. **5.** See answer in 4.4
	**Hungary**	Yes	**1.** The asylum legislation does not define the above mentioned terms. Further laws define the term of the „national security interest" as follows: National security interest is the ensuring of the sovereignty and the safeguarding of the constitutional order of the Republic of Hungary, including – the detection of any endeavours with offensive intentions against the independence and territorial integrity of the country, – detection and warding off of concealed endeavours interfering with or threatening the political, economic, and defence interests of the country, – acquisition of information on foreign countries or of foreign origin required of government decisions, – detection and warding off of any concealed endeavours aimed at the alteration or disturbance of the constitutional order of the country ensuring the exercising of fundamental human rights, the democracy of representation based on a multi-party system, and the operation of constitutional institutions, – detection and preventing of acts of terrorism, illegal arms and drug trafficking, as well as the illegal circulation of internationally controlled products and

			technologies (Act CXXV of 1995 on the National Security Services, Section 74.) Any actions endangering these interests might be a danger to the state security. Counter Terrorism Centre and Constitution Protection Office are competent authorities in further answering this question. Both participate in the asylum-procedure as expert authorities. **2.** Counter Terrorism Centre and Constitution Protection Office are competent authorities in answering the question, how the above mentioned rules are applied in practice. **3.** Counter Terrorism Centre and Constitution Protection Office are competent authorities in answering the question, how the above mentioned rules are applied in practice. **4.** The general rules concerning the access and use of classified documents are applicable. Counter Terrorism Centre and Constitution Protection Office are competent authorities in further answering this question. **5.** The general rules concerning the access and use of classified documents are applicable. Counter Terrorism Centre and Constitution Protection Office are competent authorities in further answering this question.
	Latvia	Yes	**1.** 1. No, there is no explicit definition of the terms “danger to the state security” and “danger to the community” (public order and safety) in the national legislation. **2.** 2. A person can be considered dangerous to the community if she/he e.g. had been lawfully convicted of committing a criminal offense. **3.** 3. A person constitutes a danger to the state security if he/she participates by any means in committing a crime against peace, crime against humanity, crime of terrorism, crime of extremism or war crime or crimes targeted against the state. **4.** a) No, according to the national legislation person who is being considered dangerous to the community nor his/her legal representative has no access to classified information. In addition the Asylum Law stipulates - the asylum seeker or his or her representative has the right to become acquainted with the information contained in the asylum file, except cases when disclosure of such information: 1) may prejudice the national interests of Latvia; 2) may prejudice the safety of the persons

			who provide information or the safety of the persons to whom the information relates; 3) may affect the investigatory activities of the institutions involved in the asylum procedure, which are connected with the examination of the application; b) No. **5.** 5. a) No, according to the national legislation person who is being considered dangerous to the state security nor his/her legal representative has no access to classified information. In addition the Asylum Law stipulates - the asylum seeker or his or her representative has the right to become acquainted with the information contained in the file, except cases when disclosure of such information: 1) may prejudice the national interests of Latvia; 2) may prejudice the safety of the persons who provide information or the safety of the persons to whom the information relates; 3) may affect the investigatory activities of the institutions involved in the asylum procedure, which are connected with the examination of the application. b) No.
	**Lithuania**	Yes	**1.** No, the Law on the legal status of aliens has no definition of the mentioned terms: “danger to the state security” and “danger to the community”. **2.** According to the Law (article 4), assessment of a threat posed by an alien to national security shall be carried out by the State Security Department of the Republic of Lithuania **3.** According to the Law assessment of a threat to public policy or the community shall be carried out by the Police Department under the Ministry of the Interior of the Republic of Lithuania or the State Border Guard Service. **4.** If the information is classified an alien is not familiarized with information presented in a document. However, an alien has a right to appeal a decision to the Supreme Administrative Court of Lithuania. In this case the court will review the classified information. **5.** See answer to Q4
	**Luxembourg**	Yes	**1.** No. Article 50 (1) d) of the Law of 18 December 2015 on international protection and temporary protection (Asylum Law) transposed article 17 of the Directive 2004/83/EC. **2.** There is no definition on which actions constitute a danger to the community (public order). The Minister in charge of Immigration and Asylum in this issue has a discretionary power on a case by case

			basis (See First instance Administrative Court, 3rd Chamber n° 30584 of 27 February 2013). Even though there is no definition of “public order” (public policy) in the Asylum Law nor in the Immigration Law (amended law of 29 August 2008 on free movement of persons and immigration), the concept of “public order” has been interpreted by the Criminal Courts and the European Court of Justice (CJEU). The Court of Appeal establishes that a trouble to public order requires criminal offences to be sanctioned in the country where the offence was committed (Cour d’Appel, 7 March 1908), meaning that the criminal offence must be committed in Luxembourg. In this context we can consider serious crimes (e.g. fraud, robbery, etc.) **3.** As mentioned above, there is no definition on state security. The threat is analyzed on a case by case basis by the Minister in charge of Immigration and Asylum who has a wide discretionary power. Actions that can be considered as a threat to national security are the criminal offences established in articles 101 to 136 of the Criminal Code: a. Threats and complots against the Grand-Duke and the grand-ducal family as well as against the Government; b. Threats to individuals benefiting of international protection (article 112-1) c. Crimes committed against the external security of the State (article 113 to 123; eg. Treason, collaboration with an external power to make war against the Grand-Duchy, espionage, providing military intelligence on military installations, etc.) d. Crimes committed against the internal security of the State (articles 124 to 135; e.g. To stir civil war, killing, destroying or looting of municipalities or villages, raise a militia without the prior authorization of the Government, taking control of property of the State, etc.) e. Terrorist acts (articles 135-1 to 135-17) f. Serious violations of international humanitarian law. **4.** In principle article 18 paragraph 1 of the Law of 18 December 2015 establishes that the Minister will grant access to the information on which the decision is or will be taken. However, paragraph 2 establishes that if diffusing this information will compromise national security, the security of the organisations or individuals who have provided it, the access to this information would only be available to the Administrative Courts. Nevertheless, in order to guarantee the rights of the applicant, the substance of this information, if it is pertinent to the examination of the application, is communicated to the legal counsel of the applicant in order to guarantee the confidentiality. **5.** See answer to question 4.

	Netherlands	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	Poland	Yes	**1.** No. **2.** Art. 17 section1 (c) of this Directive has been implemented into the Polish legal system in the form of art. 20 section 1 point. 2 (c) of the Act on granting protection to foreigners within the territory of Poland. However the terms "danger to the state security" or "danger to the community" are not defined by Polish law. Those terms are unclear, and in each case can be clarified only by the Polish courts through its interpretation. However, this provision is rarely used. In order to understand the meaning of this term we have to place it in a provision which also introduces other basis for exclusion of foreigners from the possibility of granting international protection. Among these basis there can be also found committing of the serious crime or activities contrary to the purposes and principles of the United Nations. Therefore we can presume that the above terms involve a situation in which the foreigner, although he did not commit any crime, would still be a threat to the state or society. **3.** to be completed **4.** In this case, the most likely, we would be dealing with the refusal to grant subsidiary protection due to a committed crimes. But it is possible that we also apply art. 20 para 1 point. 2 (c) of the Act on granting protection to foreigners within the territory of Poland, especially in cases where the applicant has not committed a crime but he has extremist views or his behaviour indicates that he may commit such an act in the future. **5.** to be completed **6.** In this case, the most likely, we would be dealing with the refusal to grant subsidiary protection due to a committed crimes. But it is possible that we also apply art. 20 para 1 point. 2 (c) of the Act on granting protection to foreigners within the territory of Poland, especially in cases where the applicant has not committed a crime but he has extremist views or his behaviour indicates that he may commit such an act in the future. **7.** to be completed

			8. n/a **9.** to be completed **10.** n/a
	**Portugal**	Yes	**1.** No. These concepts are universally qualified as undefined legal concepts and, subsequently, the situation must be considered case by case. **2.** A person can be considered dangerous to the community if convicted by judicial sentence with that mention expressed, for instance. **3.** When PT applies security of State, the interpretation of this concept is based on the Portuguese criminal framework that regulates crimes against the security of the State, such as violation of state secrecy, espionage, evidence of national interest, outrage symbols and harm to the honour of the president of the Portuguese republic, etc. This is formalized in the national Criminal Law and the grounds/sources of this interpretation are the national criminal law and the Constitution of the Portuguese Republic. **4.** Yes, the applicant or his/her legal representative has the possibility to access the information. **5.** See answer above.
	Slovak Republic	Yes	**1.** a) No b) No In the Slovak asylum legislation there is no explicit definition of the terms “danger to the state security” nor “danger to the community”. **2.** In judicial practice, a person can be considered dangerous to the community if s/he e.g. had been lawfully convicted of committing a criminal offense. The Slovak Republic considers a person being dangerous to the community when there is a reasonable suspicion that s/he committed a deliberate crime in the territory of the Slovak Republic. **3.** A person constitutes a danger to the state security if she participates by any means in committing a crime against peace, crime against humanity, crime of terrorism, crime of extremism or war crime or crimes targeted against the state. These crimes are listed in the Criminal Code. For assessing a person as

			dangerous to the state security, a mere reasonable suspicion of participation in such crimes is enough, whereas the person does not have to commit these crimes but s/he can be aiding and abetting by any means with committing or planning, (e.g. membership of terrorist organisation, logistical support etc.) **4.** a) No. (In case of assessing persons as dangerous to the community, the Slovak legislation does not guarantee the applicant nor his legal representative an access to classified information.) b) Yes. c) The legal representative can ask the originator of the classified information to authorise access to this information on a one-off basis to the extent necessary for the procedure. **5.** a) No. (In case of assessing persons as dangerous to the state security, the Slovak legislation does not guarantee the applicant nor his legal representative an access to classified information.) b) Yes. c) The legal representative can ask the originator of the classified information to authorise access to this information on a one-off basis to the extent necessary for the procedure.
	Sweden	Yes	**1.** a. Yes. According to the Swedish Aliens Act an alien who is considered to be a "danger to state security" might be excluded from being eligible to subsidiary protection. b. Yes. If an alien has been convicted as perpetrator of a "particularly serious crime", this might rend him/her to be considered as a "danger to the community". **2.** This is considered on a case by case basis. No general statements can be given. **3.** This is decided on a case by case basis depending on information given by the Swedish Security Service. **4.** The same applies as seen below. **5.** a. Yes, to some extent. Some classified information might always be denied access to for the applicant. b. Yes but the possibility to gain access to any classified information is always stipulated by law. c. In practice this information would normally be sent to the applicant's legal advisor.
	Norway	Yes	**1.** Norway does not have a specific definition of these terms. In Norway, the legal basis for excluding a foreign national due to concerns for national security, is taken from the Norwegian Immigration Act §31: Exclusion from the right to recognition as a refugee under section 28. "A foreign national shall not be entitled to recognition as a refugee under section 28 (Norwegian Immigration Act), first paragraph, if

			he or she falls within the scope of Article 1D or E of the Geneva Convention relating to the Status of Refugees of 28 July 1951, or where there are serious reasons for considering that he or she (a) has committed a crime against peace, a war crime or a crime against humanity, as defined in the international instruments drawn up to make provisions in respect of such crimes, (b) has committed a serious non-political crime outside Norway's borders, prior to his or her admission to Norway as a refugee, or (c) has been guilty of acts contrary to the purposes and principles of the United Nations. Nor does the right to be recognised as a refugee under section 28 (Norwegian Immigration Act), first paragraph (b), apply if the foreign national has been convicted by final judgment of a particularly serious crime and for this reason constitutes a threat to Norwegian society. If there are grounds for expelling a foreign national out of regard for fundamental national interests under section 126, second paragraph, then section 126, fifth paragraph, applies. Nor shall a foreign national be entitled to recognition as a refugee under section 28, first paragraph (b), apply if there are grounds for expelling him or her based on fundamental national interests, or the foreign national, having been convicted by final judgment of a particularly serious crime, thereby constitutes a danger to Norwegian society. Nor shall a foreign national be entitled to recognition as a refugee under section 28, first paragraph (b) apply if the foreign national left his or her country of origin solely in order to avoid penal sanctions for one or more criminal acts that might have been punishable by imprisonment if the acts had been committed in Norway. If a foreign national who falls within the scope of the first paragraph (a) or (c) or the second paragraph has already been granted a residence permit as a refugee under section 28, the residence permit may be revoked. Section 74 shall apply to foreign nationals who fall within the scope of the first to fourth paragraphs, but who under section 73, second paragraph, nevertheless are protected against refoulement." **2.** From the Norwegian Immigration Act: "Nor shall a foreign national be entitled to recognition as a refugee under section 28, first paragraph (b), apply if there are grounds for expelling him or her based on fundamental national interests, or the foreign national, having been convicted by final judgment of a particularly serious crime, thereby constitutes a danger to Norwegian society. Nor shall a foreign national be entitled to recognition as a refugee under section 28, first paragraph (b) apply if the foreign national left his or her country of origin solely in order to avoid penal sanctions for one or more criminal acts that might have been punishable by imprisonment if the acts had been committed in Norway." **3.** From the Norwegian Immigration Act: "Nor shall a foreign national be entitled to recognition as a refugee under section 28, first paragraph (b), apply if there are grounds for expelling him or her based on fundamental national interests, or the foreign national, having been convicted by final judgment of a

			particularly serious crime, thereby constitutes a danger to Norwegian society. Nor shall a foreign national be entitled to recognition as a refugee under section 28, first paragraph (b) apply if the foreign national left his or her country of origin solely in order to avoid penal sanctions for one or more criminal acts that might have been punishable by imprisonment if the acts had been committed in Norway." **4.** a) NO, but the foreign national does have the right to legal assistance from a lawyer with security clearance and can appeal even if there is confidential information that they do not get access to. b) NO **5.** a) NO, but the foreign national does have the right to legal assistance from a lawyer with security clearance and can appeal even if there is confidential information that they do not get access to. b) NO