



## **EMN Ad-Hoc Query on AHQ on legal framework and practical aspects regarding stowaways**

Requested by Vytautas EŽERSKIS on 28th August 2017

### **Irregular Migration**

Responses from Austria, Belgium, Croatia, Czech Republic, Finland, France, Germany, Hungary, Latvia, Luxembourg, Netherlands, Poland, Portugal, Slovak Republic, Slovenia, Spain, United Kingdom (17 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:**


12 stowaways have been stranded on the Lithuanian-flagged ferry shuttling in the Black Sea between Istanbul (Turkey) and Odessa (Ukraine). All persons claimed that they do not possess any travel documents. Later on, one person presented the Moroccan passport. Apparently, stowaways stated that they are from Morocco and Algeria. They illegally got onto the ferry in Istanbul. Both Ukraine and Turkey, parties to 1965 Convention on Facilitation of International Maritime Traffic, have been reluctant to co-operate with Lithuania and accept the stowaways. Turkey claims to be investigating whether stowaways got into the ferry in Istanbul but this is taken more than three weeks.




Since this situation is on-going, Lithuania would like to request to share the following information on your MS experience at your earliest convenience.





### **Questions**



1. Have you experienced cases when stowaways are identified on board of ships operating with the national flag of your country in the waters of third countries (not crossing the territory of Schengen area)?
2. If yes, how do you resolve this situation under your law? I.e., what are the procedures in your country when stowaways identified on board of ship (operating in or outside EU) have no documents and their identity is in question?
3. Do you have any experience in cooperating with Turkey or Ukraine in the process of their return?
4. If there were similar cases in your MS, could you please provide the contact details of your national contact point for possible consultation?


### **Responses**


	<b>Country</b>	<b>Wider Dissemination</b>	<b>Response</b>
	Austria	Yes	<ol style="list-style-type: none"><li>1. No. Source: Federal Ministry of the Interior.</li><li>2. N/A.</li><li>3. No. Source: Federal Ministry of the Interior.</li><li>4. No. Source: Federal Ministry of the Interior.</li></ol>



	Belgium	Yes	<p>1. No</p> <p>2. NA</p> <p>3. No. Pursuant to Annex VI item 3.1.4 of Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code), the master is obliged to notify the competent authorities promptly of the presence of stowaways on board. In principle, a case-by-case examination should be carried out if any such cases arise. Stowaways remain under the responsibility of the master, which includes arranging return transport to the port of origin. The Schengen Borders Code does not contain any provisions for direct measures to be taken against these persons (e.g. refusal of entry). If the person attempts to disembark the ship and to gain illegal entry or if it becomes known that the person intends to file an request for protection, the border police must be notified so that further measures can be initiated.</p> <p>4. There were no similar cases. But if you want more information, you can contact the head of the Border Control Unit of the Immigration Office (Nancy.Bracke@ibz.fgov.be).</p>
	Croatia	Yes	<p>1. No</p> <p>2. N/A</p> <p>3. No</p> <p>4. N/A</p>
	Czech Republic	Yes	<p>1. No.</p> <p>2. N/A</p> <p>3. No.</p>

			4. N/A
	Finland	No	
	France	No	
	Germany	Yes	<p>1. No such cases have arisen in the remit of the Federal Police so far.</p> <p>2. Pursuant to Annex VI item 3.1.4 of Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code), the master is obliged to notify the competent authorities promptly of the presence of stowaways on board. In principle, a case-by-case examination should be carried out if any such cases arise. Stowaways remain under the responsibility of the master, which includes arranging return transport to the port of origin. The Schengen Borders Code does not contain any provisions for direct measures to be taken against these persons (e.g. refusal of entry). If the person attempts to disembark the ship and to gain illegal entry or if it becomes known that the person intends to file an request for protection, the border police must be notified so that further measures can be initiated. In the event that the trip is due to end at a German port, the master is obliged to hand the person over to the competent border police authorities (Federal Police, Harbour Police). The competent border police authorities then implement all further border police measures, for instance, refusal of entry. The competent transport contractor is responsible for bearing any costs incurred in accordance with the relevant sections of the Residence Act (Sections 63 ff. of the Residence Act).</p> <p>3. No.</p> <p>4. n/a</p>
	Hungary	Yes	1. No, Hungary is a landlocked country.



			<p>2. -</p> <p>3. -</p> <p>4. -</p>
	Latvia	Yes	<p>1. Latvia has not experienced such cases when stowaways are identified on board of ships operating with the national flag of your country in the waters of third countries (not crossing the territory of Schengen area).</p> <p>2. There are no specific national regulations on stowaways adopted in the Republic of Latvia. When dealing with issues related with stowaways, Latvia applies directly provisions of FAL Convention, the EU regulations on the specific issues in this field and Maritime Code of the Republic of Latvia. In 2015 FRONTEX working party was developing the project document - Best Practice and Guidelines on Border Checks at Sea Ports, which includes the provisions on stowaways.</p> <p>3. Latvia has experience in cooperating with Turkey in the field of implementing transit clauses defined in readmission agreement between EU and Turkey. Concerning cooperation with Ukraine on return issues Latvia has experience in implementing of readmission agreement between the EU and Ukraine on returns to and transits via Ukraine.</p> <p>4. There were no similar cases in Latvia.</p>
	Luxembourg	Yes	<p>1. Yes.</p> <p>2. Even though Luxembourg does not have an external maritime border it has a large merchant fleet. The Law of 9 November 1990 to establish a Luxembourg Maritime Register in Section VII (Disciplinary provisions and penalties) indicates that the International Convention relating to Stowaways (Brussels, of 10 October 1957) is relevant to this section. Also articles (44), (45) and (46) of the law of 14 April 1992 establishing a Maritime disciplinary and penal code deal with the procedure of how to handle a stowaway. It mainly concerns rules on the formalities for a captain on whose ship a stowaway is found and on the penalties and costs that may be incurred by the captain,</p>

			<p>the ship owner and the stowaway. Article (45) 1 of the law of 14 April 1992 establishes that if the captain of a Luxemburgish ship discovers a stowaway s/he must inform the Commissioner for Maritime Affairs who will inform the public prosecutor office. The public prosecutor office will decide if the person must be repatriated (article (45) 2) or if the stowaway must be removed (article (45) 3). In the latter situation the person must be handed to the competent authorities of the first scheduled port of call of a State Party to the International Convention relating to Stowaways. If the public prosecutor decides to remove the person it must be handed to the competent authorities of the first scheduled port of call of a State Party to the International Convention relating to Stowaways. However, if the captain considers that the person is not going to be treated accordingly to the dispositions of the convention or the person objects to the disembarkation in that port, it must be done in another port where the disembarkation is possible (article (45) 3 § 2). The public prosecutor is the competent authority to decide on the disembarkation (article (45) 3 § 1). The captain is notified by the public prosecutor a decision which either allows or forbids him/her to disembark the stowaway, and that confirms that the stowaway remains under the responsibility of the ship's captain. The stowaway is only notified of the decision that the public prosecutor had ordered his/her disembarkation. The stowaway can object this decision that will be taken into consideration by the captain (article (45) 3 § 2 and 3).</p> <p><b>3.</b> No.</p> <p><b>4.</b> N/A.</p>
	Netherlands	Yes	<p><b>1.</b> This depends upon whether the ship is on its way to the Netherlands or not. It occurs that a stowaway is found (which is not similar to being identified) on board of a ship that is already on its way to a destination. Regardless of in which waters the ship is sailing, the shipping company shall be obliged to facilitate the return. Unless the stowaway has already communicated himself or through the captain with the authorities of the country, where the ship will moor, that he or she wants to apply for asylum there.</p> <p><b>2.</b> Usually if the ship is sailing under the Dutch flag, it is on its way to the Netherlands (e.g. returning from Morocco). Arrived in Rotterdam, the stowaway will be refused from entering the Schengen Area conform the Schengen Border Code. If the ship then heads back to Morocco, the stowaways can</p>

			<p>stay on board. If this is not the case, the executive party, which is the Sea Port Police in Rotterdam, takes care of the identification, even if they have documents, and shall work with the Repatriation and Departure Service on the return of the stowaway. According to the Dutch legislation (Art. 4 Aliens Act), the costs of the return can be recovered from the shipping company if he can be blamed for unjustly shipping the stowaways. The Repatriation and Departure Service takes care of the potential temporary travel documents, however in many cases the shipping companies are actively involved in the rapid return of the stowaways too, to prevent extra costs. The shipping company is often willing to use its network at the concerning embassies to get the temporary travel documents as soon as possible, which has turned out to be effective. (As soon as there is an asylum indication, the abovementioned procedure is not applicable and the foreign national will flow into the border procedure at the Justitieel Centrum Schiphol).</p> <p><b>3.</b> No the Immigration and Naturalisation Service has no experience with this. However, it could be possible that any of the executives (the Seaport Police in Rotterdam or Royal Netherlands Marechaussee in IJmuiden) have dealt with this in the past.</p> <p><b>4.</b> See Q3</p>
	Poland	Yes	<p><b>1.</b> The Polish Border Guard recorded one case in Świnoujście in the Maritime Border Guard Department a few years ago. It concerned a citizen of Côte d'Ivoire who jumped out of the ship calling for "asylum". In addition, the foreigner claimed that he was a minor (it turned out that he was an adult). The foreigner applied for international protection, but the Head of the Office for Foreigners issued a decision to discontinue the refugee status procedure.</p> <p><b>2.</b> There are no specific national regulations on stowaways adopted in Poland. But it should be stressed that after this case the Maritime Border Guards Department has developed procedure for border guard officers how to proceed when the stowaways are identified on board of ships.</p> <p><b>3.</b> Poland has got a good experience with Ukraine regarding readmission agreement. Working meetings at the central level are organised by the Polish Border Guard Headquarters with the purpose to exchange practical experiences and assessment of the implemented readmission agreement as well as regular meetings of the Border Plenipotentiaries in Poland and Ukraine which are organised by the</p>

			<p>Commander of Bieszczadzki and Nadbużański Division of the Border Guard</p> <p>4. Please contact with PL EMN Team: <a href="mailto:esm@mswia.gov.pl">esm@mswia.gov.pl</a></p>
	Portugal	Yes	<p>1. No.</p> <p>2. N/A.</p> <p>3. No.</p> <p>4. N/A.</p>
	Slovak Republic	Yes	<p>1. No. Due to the fact that the Slovak Republic does not have a maritime border, it does not have any experience with such cases.</p> <p>2. N/A</p> <p>3. No.</p> <p>4. N/A</p>
	Slovenia	Yes	<p>1. no</p> <p>2. n.a.</p> <p>3. We have had only practice of voluntary return. No practical cooperation with Turkish or Ukrainian authorities took place.</p> <p>4. n.a.</p>



	Spain	Yes	<ol style="list-style-type: none"> <li>1. There have not been reported cases of stowaways in the waters of third countries, where it was not possible to return them to their origin, being unnecessary to bring them to Spain.</li> <li>2. -</li> <li>3. -</li> <li>4. -</li> </ol>
	United Kingdom	Yes	<ol style="list-style-type: none"> <li>1. The UK have not experienced any cases of this nature.</li> <li>2. The UK believes it is the responsibility of the country who's waters they are in, not the country who's flag the ship bears, to deal with them.</li> <li>3. N/A</li> <li>4. N/A</li> </ol>