



AD HOC QUERY ON 2021.31 FR AHQ on applicable sanctions and fines to carriers

Requested by EMN NCP France on 6 May 2021

Responses from Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Hungary, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain (21 in Total)

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1. Background information

This AHQ is related to the collection of information concerning the sanctions for carriers (which are covered by Article 26 of the Convention implementing the Schengen Agreement and Directive 2001/51/EC of 28 June 2001).

Carriers are increasingly litigating the fines imposed on them. The office in charge of the fines for carriers (Sub-Directorate of the Fight against irregular migration) within the General Directorate of Foreign Nationals in France at the ministry of the Interior is preparing two legal disputes at the Council of State (deadline mid May). But they also would like to know the national policy and practices in each Member State in order to think about a potential future change in the legislation.

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If you can provide your answer before mid May, that would be helpful for the legal disputes.
This AHQ counts as 2 queries.

2. Questions

- 1. Are there any financial penalties for airlines failing to return TCNs who have been refused entry in your country?**
- 2. If you answer YES to Q1, what are the amounts imposed?**
- 3. Do they classify as criminal or administrative offenses?**
- 4. How do the competent authorities establish the airlines' failure to comply with their obligations? Do these classify as an obligation of result (airlines are obliged to return TCNs in the country of origin or of residence whatever means they use) or obligation of means (they have to prove that they have put all the necessary measures in place to ensure the return of TCNs even if they eventually did not return them)?**
- 5. Do your border guards typically escort the passenger in the plane and stay with them till the arrival?**
- 6. Do you have difficulties in returning airline passengers who were refused entry to your territory? if yes, please explain what these are.**
- 7. How often are airlines appealing the fines imposed on them?**
- 8. Do the administrative courts uphold the first instance administrative decisions in these cases or do they give right to the airlines' appeal and for instance reduce the amount of fines? please explain briefly**

We would very much appreciate your responses by **3 June 2021**.

3. Responses

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¹ If possible at time of making the request, the Requesting EMN NCP should add their response(s) to the query. Otherwise, this should be done at the time of making the compilation.

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		Wider Dissemination ²	
	EMN NCP Austria	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	EMN NCP Belgium	Yes	<p>1. Financial penalties are foreseen for carriers transporting third-country nationals who don't have valid travel documents (in application of article 4 of the carrier sanctions directive). But no extra penalties are imposed on airlines failing to return TCNs who have been refused entry in our country. However, as a last resort, BE authorities can take over the removal and charge the carrier with all related costs. These do not constitute financial penalties.</p> <p>2. //</p> <p>3. //</p> <p>4. If the carrier does not foresee a booking as required, or does not foresee escorts as requested. Thus, this constitutes an obligation of means.</p> <p>5. If it is a Belgian airline, the BE federal police escorts the passenger to his/her final destination. In case it is not a Belgian carrier, the federal police escorts them to the airplane where the foreign escorts take over the inadmissible person.</p>

² A default "Yes" is given for your response to be circulated further (e.g. to other EMN NCPs and their national network members). A "No" should be added here if you do not wish your response to be disseminated beyond other EMN NCPs. In case of "No" and wider dissemination beyond other EMN NCPs, then for the Compilation for Wider Dissemination the response should be removed and the following statement should be added in the relevant response box: "This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further."

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			<p>6. Difficulties might occur when the passenger no longer has any identity document or does not have the nationality of the country where she/he departed from.</p> <p>7. 2016: 7 appeals 2017: 0 appeals 2018: 1 appeal 2019: 1 appeal 2020: 4 appeals</p> <p>8. 2016:</p> <ul style="list-style-type: none">• 6 appeals won by the Immigration Office (4 further appeals lodged, no decision yet)• 1 appeal still awaiting decision <p>2017: / 2018: Case taken off the role 2019: No decision yet 2020: No decision yet</p> <p><u>In conclusion:</u> There is limited data, but the courts have, in the past and generally speaking, upheld the fines imposed at first instance.</p> <p><u>Legal Framework:</u> <u>Implementation of Article 4 Carrier Sanctions Directive</u></p> <ol style="list-style-type: none">1. Member States shall take the necessary measures to ensure that the penalties applicable to carriers under the provisions of Article 26(2) and (3) of the Schengen Convention are dissuasive, effective and proportionate [...] <p><u>By Article 74(4) Immigration Act</u> A public or private carrier who has brought into the Kingdom a passenger who does not have the documents required by Article 2 or who is in one of the other cases referred to in Article 3, must carry him or cause him to be carried without delay to the country from which he came or to any other country where he may be admitted.</p> <p>§2 The public or private carrier who has brought a passenger into the Kingdom is also obliged to escort the</p>
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			<p>passenger if</p> <p>a) the carrier who was to take him to his country of destination refuses to take him on board, or</p> <p>b) the authorities of the country of destination refuse him entry and send him back to the Kingdom, and he is refused access to the Kingdom because he does not have the documents required by Article 2 or because he is in one of the other cases referred to in Article 3.</p> <p>§3 If the passenger does not have the documents required by Article 2 and immediate deportation is not possible, the public or private carrier shall be jointly and severally liable with the passenger to pay the latter's accommodation, subsistence and health care costs.</p> <p>The King shall determine the modalities for the reimbursement of these costs.</p> <p>§ 4 If it is established that the public or private carrier is clearly failing to comply with its obligation to escort a passenger who is not in possession of the documents required by Article 2 or who is in one of the other cases referred to in Article 3, by not responding to two successive formal notices, sent by registered letter, from the Minister or his delegate, requesting it to comply with its obligation to escort, the Minister or his delegate may, taking into account the principle of proportionality, organise an escort by force. In this case, the carrier is obliged to pay the costs of the deportation organised by the Minister or his delegate, as well as the costs of the passenger's accommodation, stay and health care.</p> <p>The King shall determine the details of the procedure relating to escorting by order of the Minister or his delegate, as well as the details of the reimbursement of costs.</p>
	<p>EMN NCP Bulgaria</p>	<p>Yes</p>	<ol style="list-style-type: none"> 1. There have not been any cases so far of refusal by airlines to return third-country nationals who have been refused entry in the country. 2. See the answer to question 1. 3. According to the Bulgarian legislation this type of violations are administrative. 4. The airlines' failure to comply with their obligations is established taking into account the result (airlines are obliged to return third-country nationals at their own expense to the country from which they have been transported; to the country that has issued the travel document with which the foreigner has arrived; or to

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			<p>another country where he/she will be admitted to enter).</p> <p>5. Border guards accompany the passenger to the plane and hand him/her over to the cabin crew.</p> <p>6. There are difficulties in returning airline passengers who were refused entry to the territory due to delayed organisation of their return. Therefore, in some cases passengers remain with refused permission in the area under the control of the border checkpoint for a period of several days.</p> <p>7. In general, the airlines pay the fines imposed on them without recourse to appeal.</p> <p>8. The administrative courts do not always uphold the first instance administrative decisions in cases brought upon airlines' appeal. There are no specific statistics on this issue. In some cases, the court reduces the amount of the imposed fine.</p>
	<p>EMN NCP Croatia</p>	<p>Yes</p>	<p>1. Yes</p> <p>2. The following penalties are prescribed by the Act on foreigners in art. 249.(OJ 133/20):</p> <p>Art 249.</p> <p>(1) A fine in the amount of HRK 50,000.00, for each transported third-country national, shall be imposed on the carrier - a legal entity that brought a third-country national who does not have a valid travel document or other document used for crossing the state border, valid visa or residence permit (Article 52, paragraph 1)</p> <p>(2) A fine in the amount of HRK 50,000.00, for each transported third - country national, shall be imposed on the carrier - a legal entity which has not transported a third - country national from the border crossing or from the Republic of Croatia at its own expense (Article 52, paragraphs 2 and 3).</p> <p>(3) A fine in the amount of HRK 50,000.00, for each transported third-country national, shall be imposed on the carrier - a legal entity that has not borne the costs of returning the third-country national (Article 52, paragraphs 2 and 3).</p> <p>(4) For the offenses referred to in paragraphs 1 and 2 of this Article, a fine in the amount of HRK 23,000.00</p>

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			<p>shall be imposed on the responsible person in the legal entity for each transported or assisted third-country national.</p> <p>(5) A fine in the amount of HRK 23,000.00, for each transported third-country national, shall be imposed on the carrier - a natural person who brought a third-country national who does not have a valid travel document or other document used for crossing the state border, valid visa or residence permit (Article 52, paragraph 1).</p> <p>(6) A fine in the amount of HRK 23,000.00, for each transported third - country national, shall be imposed on the carrier - a natural person who did not take the third - country national from the border crossing or from the Republic of Croatia at his own expense (Article 52, paragraphs 2, 3 and 4.).</p> <p>(7) A fine in the amount of HRK 23,000.00 for each transported third-country national shall be imposed on the carrier - a natural person who has not borne the costs of returning the third-country national (Article 52, paragraphs 2, 3 and 4).</p> <p>(8) Imprisonment of up to 60 days or a fine in the amount of HRK 23,000.00 for each assisted third-country national shall be imposed on a natural person who assists or attempts to assist a third-country national in illegal crossing, transit and illegal stay in the Republic of Croatia (Article 53).</p> <p>(9) For the offenses referred to in paragraph 8 of this Article, confiscation of objects and means shall be mandatory if the carrier is the owner of the means of transport.</p> <p>3. They are classified as misdemeanors.</p> <p>4. According to art. 52. Act on foreigners (OJ 133/20) the carrier who brought TCN to whom entry is refused shall immediately take him from the border crossing point or from the Republic of Croatia and bear the costs of the transport. If this is not possible, the carrier shall find another way of transportation and bear the costs thereof. If another way of transportation is not possible immediately, the carrier shall assume the costs incurred during the third-country national's stay and return.</p> <p>5. No</p> <p>6. We have no difficulties. In the case of the transport of potentially dangerous passengers, the Ministry of the Interior will, based on the risk assessment, recommend whether an escort is required and inform the airline, in accordance with the provisions of the National Civil Aviation Protection Program.</p>
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			<p>7. Only in cases when they were not able to determine that the passenger uses a forged travel document or visa / residence permit, etc.</p> <p>8. In all cases the (air) carrier has the right to appeal and in certain cases the court may reduce the penalty.</p>
	<p>EMN NCP Cyprus</p>	<p>Yes</p>	<p>1. Yes</p> <p>2. Fines imposed under the Aliens and Immigration Law (Carriers' obligations) (146(I)/2007 art.5.(1) & (2). The 1st administrative fine relates to the lack of proof of travel documents, at the amount of €2947. The 2nd administrative fine of €4953, is imposed in regard to the lack of provision of travel details.</p> <p>3. Administrative Offenses</p> <p>4. Obligation of means</p> <p>5. No it is not a typical procedure. However police officers might escort the passenger in the plane and stay with them until the arrival, only when the passenger refuses to return. The typical procedure is that the officer accompanies the passenger until the plane's cabin, delivers the travel documents of the passenger, to the pilot of the plane and then exiting the craft.</p> <p>6. In certain cases, only if the flight is fully booked. At this case the airline has an obligation to seek for a new flight seat for the passenger, and cover the expenses costs.</p> <p>7. According to the article 7.-(1) & (2) of the Aliens and Immigration Law (Carriers' obligations) (146(I)/2007), the airlines may appeal to the Director of the Civil Registry and Migration Department within 15 days. Such appeals are rare (15% of the cases) and are almost always rejected.</p> <p>8. The airlines may also appeal to the Administrative Court (even without appealing to the Director, see Q7). Such cases are really rare (1 in the past years, which was also rejected by the Court)</p>

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	<p>EMN NCP Czech Republic</p>	<p>Yes</p>	<ol style="list-style-type: none"> 1. Yes. 2. The amount imposed ranges from CZK 100,000 to 500,000. 3. Administrative offenses. 4. These classify as an obligation of result. However, the airline shall not be liable for an offense if it proves that it has made all the efforts that could have been required to prevent the offense (strict liability with reasons for liberation). 5. It depends on the passenger's profile (his behaviour and willingness to return back). In case of suspicion that, according to the passenger's behaviour, the passenger will resist returning back (the air carrier may also request assistance), the passenger is accompanied to the aircraft and is, if necessary, under supervision until the end of boarding. 6. No. 7. Very rarely. In the last couple of years no fines have been imposed and thus no appeals have been registered. 8. Following the good cooperation with airlines so far and the fact that no fines have been imposed in the last couple of years, there are no proceedings before administrative courts.
	<p>EMN NCP Estonia</p>	<p>Yes</p>	<ol style="list-style-type: none"> 1. Yes, it is regulated by the <u>Aliens Act</u> § 299 p 2, that a direct delivery, by a legal person engaged in transport operations, of a person who has no legal basis for the stay in Estonia or in the transit zone to the state border of Estonia, transit zone or temporary borderline, is punishable. 2. Fines are limited of up to 6,400 euros per each person delivered.

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			<p>3. These are the misdemeanour cases which are classified as the offence proceedings (both misdemeanour cases and criminal cases are under offence proceedings).</p> <p>4. A person who has no document enabling him or her to cross the border, will be heard as a witness to clarify all the relevant circumstances. Copies of all pages and boarding passes of a person's documents will be taken by the authorities and added to the misdemeanor case file. Also an official, who identified a person, will be heard as a witness. A transporter is obliged to verify before accepting a foreigner onto their transport vehicle whether a person has a legal basis for entry into Estonia or stay in the transit zone and has a document necessary for crossing the border. Transporter is also obliged to return a person from the Estonian border, back to the same place where a person was boarded or back to the country of location of a person, if foreigner has no legal basis to entry Estonia. So far, we have no refusals from the carriers to return a person.</p> <p>5. No, persons are not escorted, but they are under official's surveillance until the departure of the plane.</p> <p>6. Although that carriers are returning persons, there might be difficult to get a ticket for the next flight.</p> <p>7. No fines have been imposed to any carrier at the air border for the last eight years.</p> <p>8. Yes, if a decision has made regarding the misdemeanours case, it might be appealed in an administrative court. But we have no cases and practice on that.</p>
	<p>EMN NCP Finland</p>	<p>Yes</p>	<p>1. No. The Finnish Aliens Act prescribes that the airline is obliged to transport an alien who is refused entry. However, the Aliens Act does not prescribe financial penalties for carriers in the event the airline does not comply with the obligation to transport an alien who is refused entry.</p> <p>2. -</p>

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			<p>3. -</p> <p>4. The Finnish Aliens Act prescribes that the airline is obliged to transport an alien who is refused entry. However, the Aliens Act does not prescribe financial penalties for airlines in the event the airline does not comply with the obligation to transport an alien who is refused entry. According to the Finnish Aliens Act, if an alien is refused entry, the carrier which transported him or her across the external border to Finland is obliged to transport him or her to:</p> <ol style="list-style-type: none">1) the country of embarkation;2) the country which issued the alien with the travel document on which he or she travelled; or3) any country to which the alien is certain to be admitted. <p>These provisions also apply to the carrier if a third-country national in transit through Finland is refused entry in accordance with the Schengen Borders Code and if:</p> <ul style="list-style-type: none">- another carrier, which was supposed to transport the alien to the country of destination, refuses to take him or her on board;- or the authorities of the country of destination have refused the alien entry and he or she has been sent back to Finland. <p>If an alien who has been refused entry does not have funds for his or her return journey, the carrier which transported him or her across the external border is obliged to arrange his or her transport at its own cost. If immediate transport is not feasible, the carrier also bears any costs that arise from the alien's stay. Airlines are obliged to return TCNs in the country of origin or of residence whatever means they use.</p> <p>5. In an overwhelming majority of cases the passenger is only escorted up to the departure gate, and extremely rarely all the way to the destination. The need for inflight escorts is evaluated on a case-by-case basis. In Finland, the police is the main authority responsible for setting escorts.</p> <p>6. Yes. Judging by numbers the biggest hurdle is returning those passengers, which arrive on an airline that doesn't have daily or even weekly operations. In these cases they will either have to be returned on another airline, or wait in a hotel until the next available connection, which might be up to a week away. If the passenger who has been refused entry does not have funds for his or her return journey, the carrier is obliged to arrange his or her transport at its own cost. If immediate transport is not feasible, the carrier also bears any costs that arise from the alien's stay. Even though airlines are legally obliged to cover all resulting</p>
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			<p>costs, practical arrangements with airlines can often be very challenging. At times the government has initially had to cover these costs and then have the airline return the money later. This also applies to airlines which only fly charter flights and don't necessarily have a regular schedule at all. During Covid19 various negative test requirements in different countries obviously mean practical challenges to returns. Direct return is often not possible due to there being no available connections, and a transit through several countries might mean different requirements in each.</p> <p>7. -</p> <p>8. -</p>
	<p>EMN NCP France</p>	<p>Yes</p>	<ol style="list-style-type: none"> 1. If airlines fail to return TCNs, the penalty that may be imposed on the carrier is an administrative penalty. 2. The maximum amount is 30,000 euros (article L.821-10 of the Code of entry and residence of foreign nationals and right of asylum) 3. Failure to return is an administrative offence. No criminal penalties shall be imposed on the carrier verbalised. It risks only a financial fine in the event of failure to comply with its obligation. This infringement is detected as many times as there are non-returned passengers 4. Failure to return is recorded in a report drawn up by a border guard (border police or customs). In order for the report to be admissible, the border guard must establish that the company has not used all the means to allow the return of the national. This is an obligation of means. 5. The border guards take in charge the third country national in the waiting area since their refusal of entry and accompany them to the door of the aircraft where the commander takes the TCN in charge and let them enter the plane. Border guards sometimes accompany and stay with the TCN to the point of arrival of the flight.

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			<p>6. Difficulties can be encountered in returning the TCN. If the company is responsible for the failure, it can be recorded as an offence.</p> <p>7. 17 % of all fines imposed in France where a carrier fails to comply with its obligations are challenged before the administrative courts.</p> <p>8. Decisions on fines imposed on companies can be appealed on a full basis before the administrative court, which will give judgment. If one of the parties is not satisfied, it may appeal the decision to the Administrative Court of Appeal, which will give judgment. One or both parties may appeal on a point of law to the Conseil d'État (Council of State), the highest level of administrative jurisdiction in France. 90 % of all disputes launched by the companies are won by the State. The courts, whether the administrative court at first instance or the administrative court of appeal, confirm the decisions taken by the Ministry of the Interior. They sometimes modify the amount of the fine imposed according to the context of the case.</p>
	EMN NCP Germany	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	EMN NCP Hungary	Yes	<p>1. Yes.</p> <p>2. In cases, when an airline refuses to return third-country nationals, who were transported by the airline to the territory of Hungary and were returned, the police authority arranges the transportation of the person with another airline.</p> <p>The costs incurred during the procedure (flight ticket and the costs of the reception of the person until the departure of the given flight) may be reclaimed by the Police in civil litigation from the airline which refused to fulfill its obligations.</p> <p>Imposition of a fine does not apply in the cases, when the airline refuses it's return obligation.</p>

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			<p>3. The refusal of the obligation to return is neither a criminal offense nor a misdemeanor therefore no criminal or infringement proceedings are initiated. The Police may reclaim the costs and claims indicated in the first point under a civil litigation procedure.</p> <p>4. The airline fulfills its obligation to return if the passenger subjected to return is transported from the territory of Hungary. This is checked by the authority that accompanies the returned passenger to the departing flight and makes sure that the passenger boards the aircraft. On this basis, the fulfillment is an obligation of result.</p> <p>5. The returned passenger is accompanied by the Police only at the airport until boarding the aircraft, travel to the destination country is done by the person independently.</p> <p>6. There were no problems indicated by the police authorities at international airports regarding the return of passengers carried out by airlines.</p> <p>7. Given that formal proceedings can not be initiated against the airline for refusing it's obligation of return, there is no procedure that can be appealed. In the case of Hungary, the airlines complied in all cases with the return therefore the Police did not initiate civil litigation against them. The airlines lodged appeals against the imposed fines for public order offence, as follows:</p> <ul style="list-style-type: none">• in 2018, fines for public order offence were imposed on airlines in 193 case, an appeal was launched in 3 cases;• in 2019, fines for public order offence were imposed on airlines in 142 case, there were no appeals launched;• in 2020, fines for public order offence were imposed on airlines in 19 case, there were no appeals launched. <p>8. Airlines rarely request judicial review. According to the data concerning the last 5 years, there was only 1 case, in 2017, when an airline brought the issuance of a fine for public order offence to court. The case was also addressed by the European Court of Justice. On the basis of the decision the competent Hungarian court annulled both the first instance imposition of the fine, and second instance decisions upholding it, therefore the imposed fine was exempt from payment.</p>
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	<p>EMN NCP Italy</p>	<p>Yes</p>	<ol style="list-style-type: none"> 1. Yes national legislation envisages penalties for airlines in such cases 2. The penalty starts from 3.500 euro up to 5.500 euro for each irregular TCN. The penalty is reduced to about 1.833 euro if payed within 60 days from the date of notification of the infringement. 3. Administrative offence. 4. Actually both situations are assessed meaning that airlines are obliged to return irregular TCNs also using other methods, for example paying a different airline. 5. The escort is provided just in case the passenger poses or seems to pose a threat and/or refuses boarding. In that case border guards carry out the escort till the passenger leaves the aircraft in the place of destination. 6. The difficulties are mostly related to the avialability of flights in a short time. This issue has been especially revealed in the last year because of the significant decrease of air connections because of Covid 19 outbreak. Out of that issue, normally we don't have particular problems and most of returns are performed without escort. 7. Border Police is just in charge of detection and notification of the the offenses reporting them to the competent authority. Appeal is out of Border Police jurisdiction. 8. The administrative courts are entitled to aphold the first instance, cancel the decision or confirming it reducing the amount
	<p>EMN NCP Latvia</p>	<p>Yes</p>	<ol style="list-style-type: none"> 1. There were no financial penalties imposed for airlines failing to return TCNs who have been refused entry in Latvia. There were no such cases. All returns were successful. The current practice of the Republic of Latvia in case of disembarkation of inadmissible foreigners (foreigners whose entry is refused) is the following:

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			<ul style="list-style-type: none"> • If a foreigner is delivered by airlines does not have the right for entry, the State Border Guard without delay notify the aircraft operator on inadmissible person found and make consultations on removal of a foreigner under the ICAO Convention. The provisions of Immigration law defines that in case if it is not possible to return inadmissible foreigner immediately back to the country he or she has arrived from, it is possible to detain this foreigner until it is possible to remove him/her, but no longer than for 48 hours. • In case if it is not possible to remove the foreigner within 48 hours the return procedure with regard to this foreigner is initiated. <p>In accordance with Regulation of the Cabinet of Ministers the State Border Guard is entitled to recover from carrier the expenses related with forced return, detention and holding under temporary custody of a foreigner. The Regulation mentioned prescribes the procedures by which the expenses shall be determined. The State Border Guard issue a decision on recovery of expenses from the carrier.</p> <p>An air carrier is penalized by imposing an administrative sanction for carriage of foreigners who do not have the documents necessary for entering into the Republic of Latvia. Article 68.6 of Immigration Law defines that in that case an administrative fine of the amount from 3000 and up to 5000 Euro shall be imposed on the carrier.</p> <p>2. N/a</p> <p>3. N/a</p> <p>4. N/a</p> <p>5. N/a</p> <p>6. See explanation of Latvian practice given in Q1.</p> <p>7. There is 2 step appeal procedure in Latvia. At first the decision on imposed fine shall be contested to the Chief of the institution that issued a decision (Chief of the State Border Guard). After that the decision taken by the Chief of the State Border Guard is to be appealed to the Court. Latvian practice is the following: the contests are mostly received from the national airline (AirBaltic). There were no cases of appeals submitted</p>
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			<p>to the Court after the Chief of the State Border Guard has taken a contest decision.</p> <p>8. The Chief of the State Border Guard is entitled to take one of the following decisions:</p> <ul style="list-style-type: none"> • uphold the decision taken; • revoke a decision taken; • reduce the amount of the fine imposed.
	<p>EMN NCP Lithuania</p>	<p>Yes</p>	<p>1. NO. According to Article 20 of Law No. I-1863 of 8 October 1991 on the Principles of the Activities of Transport, if the State Border Guard Service determines that a foreigner transported by a carrier does not have the travel documents required for entry into the Republic of Lithuania, the carrier can be fined by a fine ranging from €3186 to €5214 for each foreigner transported without the required travel documents. As per Article 26 of the Law, the default fine is €4200, which may be reduced to the minimum or increased to the maximum depending on the presence of alleviating or aggravating circumstances (typically, the carrier's cooperation or non-cooperation with the State Border Guard Service). However, the above amounts are fines for transporting foreigners without valid travel documents, and <u>not</u> for failing to return TCNs. This point was established by Vilnius Regional Court in case EI-1357-1047/2019, in which it fully satisfied the appeal by Ryanair DAC against a fine of €3186 imposed for refusing to return a TCN with a forged visa. On the other hand, while the Law does not specify financial penalties for carriers refusing to return TCNs, Article 19§3 of the law establishes that if the carrier is unable to return a foreigner who has been refused entry, the carrier has an obligation to cover the expenses related to the foreigner's presence at the border control point and the subsequent return arranged by the State Border Guard Service. According to Order No. 1V-420 of 19 December 2005 of the Minister of the Interior, these expenses consist of the costs of food, travel ticket, as well as security and escorting to the foreign country. Thus, failing to return TCNs does entail certain financial costs to the responsible carrier that are potentially higher than if they chose to fulfil their obligation.</p>

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			<p>2. Not applicable.</p> <p>3. Administrative</p> <p>4. Article 19 of the Law on the Principles of the Activities of Transport establishes the carrier's obligation to at its own expense transport the foreigner to the country of departure or the country that has issued the travel document or some other country that the foreigner has the right to enter. If the carrier is unable to return the foreigner itself, it must immediately find alternative means of direct transport and cover the related expenses. If the carrier is unable to find alternative means, it must cover the expenses related to the foreigner's presence at the border control point and the subsequent return arranged by the State Border Guard Service.</p> <p>5. Yes. According to Order No. 1V-429 of 24 December 2004 of the Minister of the Interior, police or State Border Guard Service officers accompany the returned person to the border of the Republic of Lithuania or, if it is necessary, to the country of origin or the foreign country which the foreigner has the right to enter.</p> <p>6. NA</p> <p>7. No statistics is available. It may be indicative that, over the past three years, Ryanair DAC has appealed against decisions of the Police Department and the State Border Guard Service in 20 different cases, of which only 2 dealt with fines for refusing to return TCNs.</p> <p>8. No statistics is available. Administrative courts in such cases have typically upheld the first instance decisions. For example, on 9 March 2007, Vilnius Regional Administrative Court rejected the appeal of flyLAL - Lithuanian Airlines AB (I-2446-662/2007). On 23 February 2007, Vilnius Regional Administrative Court rejected the appeal of České Aerolinie AS (I-2856-437/2007). On 30 October 2006, the Supreme</p>
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			<p>Administrative Court of Lithuania rejected the appeal of Air Baltic Corporation AS (N-502-1524-06). All these cases involved third-country nationals travelling without the required visa and courts have consistently interpreted Article 20 of the Law that requires carriers to ensure that passengers have the required travel documents to mean that they also check whether passengers have the visa when it is required.</p> <p>The two notable cases where administrative courts vacated lower instance decisions both involved Ryanair DAC. In both those cases (EI-1357-1047/2019 and EI-1616-595/2019), Ryanair was fined for transporting TCNs with forged travel documents (one travelling with a forged national visa of Greece and another travelling with a forged national ID of Italy) and subsequently refusing to return them to the countries where they came from. In both cases, Vilnius Regional Court decided that the carrier's refusal to transport TCNs back to the country where they came from (a putative dereliction of its obligations under Article 19) should not have been fined on the basis of Article 20 of the Law on the Principles of the Activities of Transport.</p>
	<p>EMN NCP Luxembourg</p>	<p>Yes</p>	<p>1. National law foresees penalties for airlines who transport passengers who do not have valid travel documents for entry or who fail to transmit complete and correct passenger information. There are currently no financial penalties foreseen for airlines failing to return TCNs who have been refused entry. The airline is however obliged by national law to pay the living expenses, including health expenses, of the person. We have not yet encountered a case of an airline refusing to return travelers who have been refused entry. Article 106 (1) of the amended law of 29 August 2008 on free movement of persons and immigration states that in order to prevent refusal of entry into the territory, airlines are obliged to transmit to the Grand-Ducal Police information on the passengers coming from a non-EU country they are going to transport to the international airport of Luxembourg (which is the only external border). Article 107 (1) adds that the airline that disembarks a third-country national without a valid travel document and, where applicable, the required visa, must take him or her back to the country of origin or to any other country where he or she may be admitted. According to article 107(2), this obligation to return also applies to the airline when a third-country national in transit is refused entry to the territory for the reasons mentioned above, if: a) the airline that was</p>

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			<p>supposed to transport the person concerned to the country of destination refuses to embark the person, or b) the authorities of the country of destination have refused to allow the person concerned to enter its territory and have sent him/her back to Luxembourg (article 107 (2)).</p> <p>For the cases provided for in article 107(1) and (2), the airline is obliged to pay the living expenses, including health expenses and the return cost of the person (art. 107 (3)). Also, according to article 108, the airline will be subject to the administrative sanctions foreseen in article 147.</p> <p>2. Article 147 (1) establishes that the administrative sanction is of 5.000 Euro per passenger transported. Article 148 foresees the same fine for when, in violation of article 106(1), an air company, did not pass on the information, or did not provide it within the time limit, or transmitted incomplete or erroneous information on the passengers coming from a non-EU country they are going to transport to the international airport of Luxembourg. This fine must be paid in favor of the National Treasury.</p> <p>3. This is an administrative offense.</p> <p>4. Article 108 (2) establishes that the airline failure to comply with the obligations is recorded in a report drawn up by the Grand Ducal Police. A copy of the report is notified to the airline.</p> <p>5. In Luxembourg, the law foresees that the airline must return the person (article 107 (1) and (2)) and must cover the cost of the return of the person (article 107 (3)) in any of the two hypotheses. We believe that this would correspond to an obligation of result. Once again, we have not yet encountered an instance when an airline has failed to return a passenger.</p> <p>No. In principle, the Grand Ducal Police will escort the person into the plane and disembark before the departure.</p> <p>6. No. Most of the flights landing in Luxembourg International Airport come from Schengen countries. There are very few flights that come from outside of the Schengen area (UK, Cape Verde and Turkey). The airlines which operate these international flights are cooperative.</p> <p>7. We have registered only one case of (informal) appeal in the last few years (2018).</p>
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			8. n/a.
	EMN NCP Netherlands	Yes	<p>1. Yes, airlines failing to return TCNs who have been refused entry in the Netherlands (a so-called Article 4 file) may be criminally liable and subject to a fine. The border guards will draw up an official report in all cases in which a non-documented or incorrectly documented foreign national has been brought into the Netherlands as a result of the transporter's failure to comply with the duty of care or copying (see Article 4, first, second and third paragraphs. , Aliens Act, article 5, first and second paragraph, Aliens Act, article 65, third paragraph, Aliens Act and article 197a Penal Code). The officer in charge of border surveillance forwards all reports to the Public Prosecution Service. The Public Prosecution Service first offers a transaction to the violator of the duty of care or copying. [1]</p> <p>In addition, airlines may be responsible to recover the costs made by Dutch government organisations for the third-country national, but this is not considered a financial penalty.[2]</p> <p>[1] Information provided by DT&V, 21 May 2021. [2] Information provided by DT&V, 21 May 2021.</p> <p>2. Regarding fines: In the case of an Article 4 file, a fine may be imposed. This amount is between EUR 4,200 and EUR 8,000 when presented as a settlement. But when convicted by the court, this is between 5000 euros and 9500 euros.[1]</p> <p>Regarding the recovering of costs made by Dutch government organisations: The amounts imposed are equal to the total costs made by Dutch government organisations for a third-country national who has been refused entry. The government organisations provide an overview of costs related to the deportation and stay of the third-country national to the Repatriation and Departure Service (Dienst Terugkeer en Vertrek, DT&V). The costs are determined based on standardised rates.[2] Costs made while the third-country national is finishing a criminal sentence or awaiting the outcome of an entry procedure are not charged to the airline.[3]</p>

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			<p>[1] Information provided by Royal Netherlands Marechaussee, 28 May 2021.</p> <p>[2] A1/9, Immigration Act Implementation Guidelines (Vc) 2000. For standardised rates, see: Annex 22, Immigration Decree (Vb) 2000.</p> <p>[3] Repatriation and Departure Service, 'De Terugvoerplicht,' https://www.dienstterugkeerenvertrek.nl/de-terugvoerplicht/te-verhalen-kosten/uitzonderingen, last accessed on 6 May 2021.</p> <p>3. In the case of an Article 4 file, the airlines' failure to comply with the duty of care or copying is classified as a criminal penalty (article 197a Penal Code).</p> <p>The recovering of costs by Dutch government organisations to the airline follows from the Aliens Act and is not classified as a criminal or administrative penalty.</p> <p>4. There is an obligation of result: the costs as specified in question 2 can be charged to the airline if it is not possible for the airline to return the third-country national within a reasonable time. [1] In practice, a reasonable time constitutes 48 hours.[2]</p> <p>[1] A1/9, Immigration Act Implementation Guidelines (Vc) 2000. [2] Information provided by DT&V, 21 May 2021.</p> <p>5. Border guards of the Royal Netherlands Marechaussee escort the passenger during the flight if there are indications that the third-country national may resist the return. In other cases, passengers travel independently.[1]</p> <p>[1] Dienst Terugkeer en Vertrek, 'Gedwongen terugkeer,' https://www.dienstterugkeerenvertrek.nl/het-terugkeerproces/gedwongen-terugkeer, last accessed on 6 May 2021.</p> <p>6. If a claim is placed on the airline, that airliner will receive a Removal order (RO) (Chicago Convention). On the basis of that RO (in combination with guiding or covering letter), the foreign national who has been refused at the border, should be able to return to the last embarkation point. However, if the last embarkation point is in a third country (where the foreign national has transferred, for example), not all countries agree to return (often because the foreign national does not have official travel and / or ID</p>
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			<p>documents). Then the Dutch government (DT&V) still has to apply for a travel document through the foreign national and / or the authorities of the country of origin.[1]</p> <p>[1] Information provided by DT&V, 21 May 2021.</p> <p>7. Appeals against fines (Article 4 file): data not available.</p> <p>Appeals against the recovering of costs: In the years before corona about 5 objections per year were made by a small number of airlines. No notice of objection was filed in the past year (2020), but airlines do sometimes ask for an explanation about the reason for the invoice and about the obligation to return.[1]</p> <p>[1] Information provided by DT&V, 21 May 2021.</p> <p>8. Regarding fines: Airlines can always appeal against a fine in the case of Article 4 files. There is no information available on the outcome of these cases.[1]</p> <p>Regarding the recovering of costs: these actions hold up in court. However, the costs must then be well substantiated. If there is no proper substantiation for a cost item, this item will be canceled (or the amount will be deducted for which there is no substantiation).[2]</p> <p>[1] Information provided by Royal Netherlands Marechaussee, 28 May 2021. [2] Information provided by DT&V, 21 May 2021.</p>
	<p>EMN NCP Poland</p>	<p>Yes</p>	<p>1. Sanctions deriving from article 26 par. 2 and 3 of the Convention implementing the Schengen Agreement and Directive 2001/51/EC of 28 June 2001) are imposed on all carriers who brought a foreigner to the border who did not have a valid travel document authorizing him to cross the border, the required visa or other valid document entitling him to enter and stay in the territory of the Republic of Poland. These sanctions are not limited only to carriers who failed to return the person not accepted for entry.</p>

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			<p>2. The fine is from the equivalent of 3,000 up to 5,000 euro for each person, however, the sum of penalties for a single group of people may not exceed the equivalent of 500,000 euro.</p> <p>3. Bringing to the border a foreigner who does not have a valid travel document authorizing him to cross the border, the required visa, or other valid document entitling him to enter and stay in the territory of the Republic of Poland is classified as an administrative offense.</p> <p>4. The sanctions are imposed for bringing to the border a foreigner who does not have a valid travel document authorizing him for entry into the territory of the Republic of Poland and not for failing to return the person not admitted for entry.</p> <p>5. Under the provisions of the Act of 12 December 2013 on foreigners, a foreigner refused entry to the territory of the Republic of Poland is brought by the Border Guard to the border or to the airport or seaport of the country to which he is brought if his behavior justifies the assumption that the foreigner may pose a safety threat to an international land, air or sea communications. Typically escort of passengers is not necessary.</p> <p>6. No. Several years ago there happened some difficulties but they have been resolved through negotiations with the airlines.</p> <p>7. Rarely. The scale of appeals against such decisions in recent years is as follows: 2018 – 31, 2019 – 22, 2020 – 9 (the data applies to all carriers, not only airlines).</p> <p>8. Mostly administrative courts uphold the decisions.</p>
	EMN NCP	Yes	<p>1. Carriers providing transport to Portuguese territory, by air, sea or land, of foreign citizens not meeting the</p>

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	Portugal		<p>conditions for entry shall be obliged to return them, as quickly as possible, to the starting point of their transportation or, when this is not possible, to the country of issuance of their travel document or any other location where their admission is guaranteed.</p> <p>Until their time of return, such passengers shall be the responsibility of the carrier, together with fees for their stay at a waiting area or similar space.</p> <p>Financial penalties are only imposed to the carriers when passengers do not meet objective legal criteria to enter or travel, even if that does not imply a denial of entry. A good example is the transportation of passengers without a necessary visa or a unrecognized travel document.</p> <p>The same applies otherwise, in which a denial of entry does not necessarily means a financial penalty under art.194º provisions, without prejudice to other costs.</p> <p>2. For each citizen who was refused entry, the penalty applied is €4000 to €6000, if within the scope of article 194º of the law</p> <p>3. Administrative offense</p> <p>4. Companies are obliged to transport TCN who has been refused entry to the origin. (Article 41 of law)</p> <p>5. Passengers are generally accompanied until boarding and take off. Exceptionally, when there is a risk to the safety of the passenger or the flight, the passenger is escorted by border guards.</p> <p>6. There are usually no difficulties.</p> <p>7. No data available</p> <p>8. It depends on each case. There are no elements to allow identifying a trend.</p>
	EMN NCP Slovakia	Yes	<p>1. Yes. The obligations of carriers are listed in the Article 108 of the Act on Residence of Foreigners. In case of breaking these obligations, the carrier conducts an administrative delict following Article 117 par. 1 a) of</p>

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			<p>the Act on Residence of Foreigners.</p> <p>2. Following Article 117 par. 2 of the Act on Residence of Foreigners for the administrative delict of not fulfilling the obligation of the carrier to return the third-country national (TCN) the police department shall impose a fine between EUR 3,000 and EUR 5,000 per each transported TCN.</p> <p>3. Administrative delict (following Article 117 par. 2 of the Act on Residence of Foreigners)</p> <p>4.</p> <ol style="list-style-type: none">1. This is established following the individual assessment of the case. The carrier however has a set period until when he is obliged to return the TCN to relevant state (following Article 108 par. 2 of the Act on Residence of Foreigners).2. Following Article 108 par. 2 and 3 of the Act on Residence of Foreigners: Not later than 24 hours after the arrival or within the period as specified upon the agreement with the police department at the border crossing, the carrier who transports the TCN to the border crossing shall be obliged to transport him/her back to the country he/she was transported from, to the country which issued the travel document he/she travelled with or to any other country where his/her admission is arranged if<ol style="list-style-type: none">a) the entry of the TCN to the Slovak Republic was refused;b) the TCN transited the territory of the Slovak Republic and authorities of other country refused his/her entry to their territory and returned him/her to the territory of the Slovak Republic; orc) other carrier that should have transported the TCN to other country refused the transport.If the carrier is unable to fulfil the duty specified above, it shall be obliged to immediately provide for alternative transport of the TCN and bear the costs of the transport or, if immediate alternative transport is impossible, the carrier shall be obliged to provide for payment of costs of the TCN's residence and return. <p>5. No.</p> <p>6. No.</p> <p>7. We did not have such cases.</p>
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			8. NA
	EMN NCP Slovenia	Yes	<ol style="list-style-type: none"> 1. Yes, there are. 2. The amount is 3500 to 6200 EUR for the legal entity and 200 to 1000 EUR for the responsible person of the legal entity. 3. It is an administrative offence. 4. There is an obligation of the result. 5. Escort is provided only in exceptional circumstances. 6. We have no difficulties. Airlines comply with the demands. 7. We have not received any appeals against the fines. 8. If there was an appeal, the results in the second instance may be one of the following: <ul style="list-style-type: none"> - Annulment of the first instance decision and end of the procedure, - Approval of the first instance decision and execution of the fine in full amount with the addition of the costs of the procedures.
	EMN NCP Spain	Yes	<ol style="list-style-type: none"> 1. Yes 2. 10.001 to 100.000 euro. 3. Administrative.

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			<p>4. It is an obligation of result.</p> <p>5. No</p> <p>6. No, unless asylum is applied for.</p> <p>7. Information not available.</p> <p>8. Information not available.</p>
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