



Ad-Hoc Query on implementing Council Directive 2001/51/EC

Requested by HU EMN NCP on 5th November 2012

Compilation produced on 13th December 2012

Responses from [Austria](#), [Belgium](#), [Bulgaria](#), [Estonia](#), [Finland](#), [France](#), [Germany](#), [Greece](#), [Hungary](#), [Italy](#), [Latvia](#), [Lithuania](#), [Luxembourg](#), [Malta](#), [Portugal](#), [Slovak Republic](#), [Slovenia](#), [Spain](#), [Sweden](#), [United Kingdom](#) plus (20 in Total)

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Background Information

There is an ongoing internal consultation (following the results of a Schengen evaluation mission this year) whether revision of Hungarian legislation would be necessary, in order to provide for an explicit legal base to fine carriers if a third country national is refused entry because of a lack of valid visa. The current Hungarian Act, in line with the existing acquis, requires carriers only to check their passengers for their valid travel documents, and imposes fines for failure to do so.

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1. Hungary would like inquire about other MSs' national legislation, and the practice of implementing Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985.
2. In particular, whether national legislation explicitly provides for the application of financial penalties for carriers in case of the carrier's failure to determine the existence of a valid visa (not only travel documents).
3. The actual text of national legislation in force would be much appreciated.

Please provide your responses by **26th November 2012**.

2. Responses

		Wider Dissemination? 1	
	Austria	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	Belgium	Yes	<ol style="list-style-type: none"> 1. The 2001/51 Directive relating to carrier sanctions was transposed in national legislation in the amended Belgian Aliens Law of 1980 (Vreemdelingenwet van 15 december 1980), more precisely in articles 74.2, 74.3 and 74.4bis under Title III bis ('responsibilities of carriers with regards to the access of aliens to the territory'), providing for both criminal and administrative sanctions for carriers who brought aliens into the territory without proper documentation. Originally, Belgian authorities applied criminal sanctions for carriers, however, in 1995 the House of Representatives established that this type of sanctions was "ineffective" (see: http://www.dekamer.be/FLWB/PDF/48/1709/48K1709002.pdf) and as a consequence, in practice these were replaced by administrative sanctions (art. 74/4). The Belgian authorities consequently make use of these administrative sanctions. 2. Yes, the documents the carrier is required to check are listed in Article 2 of the Aliens Law and specifically mention a valid travel document, foreseen of a valid visa. 3. To our knowledge, the actual text of legislation is only available in NL and FR and can be found via following link: https://dofi.ibz.be/sites/dvzoe/FR/Documents/19801215_F.pdf

¹ 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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	Bulgaria	Yes	<p>The Directive is transposed into the national legislation and in particular in the Law for the foreigners in the Republic of Bulgaria (LFRB) and into the Regulations for its implementation. When applying this Directive questions and disagreements were raised by the Association of air carriers in Bulgaria. The last stated that they should not have responsibilities for checking the validity of visas and it would not be right to pay fines for failure to comply with these requirements. Regardless of their stance, currently the requirements of the Directive for the air carriers are strictly applied and those carriers who do not meet the legal requirements are sanctioned.</p> <p>According to the LFRB, Art. 20, Par. 1, the carrier transporting by land, air or sea to and / or from the Republic of Bulgaria, before performing the service is obliged to establish:</p> <ul style="list-style-type: none"> - Validity of the travel document of the TCN and the availability of Bulgarian visa where needed; - Availability of visas, if required, for the country / countries that persons want to visit or through the territory of which they want to pass, in the case of airport transit or transit through the territory of the Republic of Bulgaria; <p>Par. 2 says that when a TCN is refused entry into the Republic of Bulgaria on the grounds of breach of the duty under par. 1, the carrier is obliged at own expense, when requested by the border control, to return the TCN to the state from which he was transported into the state which issued the travel document by which the TCN has arrived, or in another country where he will be admitted.</p> <p>Par. 3 says that the carrier is also obliged at own expense to return also in accordance with paragraph 2 and TCN transiting through Bulgaria, for whom the subsequent carrier refuses to transport him to the final destination state.</p> <p>Par. 4 says that the provisions of paragraphs 2 and 3 shall also apply in respect of the TCN returned back to the Republic of Bulgaria, who transited through the country.</p> <p>There are administrative-penal provisions for obligations not fulfilled by the carrier, including when the carrier has not check the illegally residing person for availability of valid visa. Under Article 51 of the LFRB a carrier who fails to fulfill its obligations under Article 20 shall be punished by a fine or penalty in the amount of 6,000 to 10,000 Levs per transported person.</p>
	Cyprus	Yes	
	Czech Republic	Yes	
	Denmark	Yes	
	Estonia	Yes	<p>According to Alian's Act § 290 transporter is required to verify before accepting a foreigner onto their transport vehicle if an alien has a legal basis for entry into Estonia or stay in the transit zone (for example visa) and a document necessary for crossing the border (travel document). Transporter must return alien back to the same place where an alien boarded the means of transport of the transporter, or back to the country of location of an alien.</p> <p>A direct delivery, by a natural person engaged in transport operations, of an alien 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 by a fine (Alien's Act § 299).</p> <p>Alien's Act</p> <p>http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=XXXXXX14K1&keel=en&pg=1&ptyyp=RT&tyyp=X&query=v%E4lismaalaste</p>

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	Finland	Yes	<p>1.-3. <i>Obligations and financial penalties on carriers</i> are prescribed in Chapter 11 of the Aliens Act.</p> <p>Section 173 (<i>Carriers' obligation to check</i>) A carrier shall ensure that an alien whom it brought to Finland by air, land, rail or sea from outside the Schengen area and who is not an EU citizen or comparable person holds a travel document required for entry into the country and the required visa or residence permit.</p> <p>Section 179 (<i>Financial penalties on carriers</i>) (1) A carrier who violates the obligation to report laid down in section 173 or the obligation to provide information laid down in section 20 of the Act on the Processing of Personal Data by the Border Guard is liable to financial penalty (financial penalty on a carrier). The penalty for violation of section 173 amounts to 3,000 euros per transported person. The penalty for violation of section 20 of the Act on the Processing of Personal Data by the Border Guard amounts to 3,000 euros per each journey where passenger information is missing or inadequate, or where false information has been supplied. (2) No financial penalty on a carrier is imposed if: 1) the carrier can prove that that it has fulfilled its obligation to ensure that the alien held the required travel document and the required visa or residence permit when taken on board; 2) the required travel document, visa or residence permit has proved to be a forgery and the forgery has not been easy to detect; 3) transporting a person without the required travel document, visa or residence permit or the mistake in supplying air passenger data has been excusable, all circumstances considered; or 4) imposing a penalty would be otherwise unreasonable under the circumstances. Subsection 2(1) does not apply to a penalty imposed for violation of section 20 of the Act on the Processing of Personal Data by the Border Guard. (581/2005)</p>
	France	Yes	<p>1. French legal regime related to carriers' liability is based on Annex 9 of the Chicago Convention of 7 December 1944 and on Community law (Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985 and Directive 2001/51/EC of 28 June 2001).</p> <p>In France, the legal basis is Articles L. 625-1 to L. 625-6 and R. 625-1 à R. 625-16 of the Code on Entry and Residence of Foreigners and Right of Asylum (Code de l'entrée et du séjour des étrangers et du droit d'asile = CESEDA).</p> <p>This legal regime applies to French metropolitan territory and French overseas territories and departments.</p> <p>Air, maritime, or road carriers shall be obliged to ensure that foreign nationals are in possession of the travel documents required for entry into French territory. It consists in verifying the validity of identity and travel documents presented by passengers and, depending on the case, entry visas into the Schengen area, overseas visas, airport transit visas and residence permits.</p> <p>If an anomaly is detected (lack, identity fraud, falsification, counterfeiting or expiration of the documents), a carrier shall refuse to transport the passenger who did not present all required documents to reach his/her final destination.</p> <p>During checks carried out at the border, if a passenger is not in possession of the required documents, the French responsible authorities – the Central Directorate of Border Police (Direction centrale de la police aux frontières = DCPAF) and the customs office (service des douanes or Direction générale des douanes et droits indirects = DGDDI) – take the decision to refuse entry of the passenger and draw up an official report against the carrier establishing the failure to check if the passenger had the required documents.</p>

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			<p>2. According to Article L. 625-1 of the Code on Entry and Residence of Foreigners and Right of Asylum, this failure is punished with financial penalties up to € 5.000.</p> <p>However, adjustments of financial penalties have been enshrined in Article L. 625-3 to encourage carriers to cooperate with French authorities. Penalties can be reduced to € 3.000 if carriers have scanned the documents presented by the passengers and sent these data to the border police. Penalties can be reduced by 50% if carriers have detected late an anomaly and refuse a passenger to board his/her onward flight.</p> <p>On the other hand, national law provided for stricter penalties if the passenger is an unaccompanied minor. In that case, carriers have to pay financial penalties immediately.</p> <p>In addition to financial penalties, carriers shall be obliged to return the passenger who was refused entry into French territory and, if necessary, to assume responsibility for the costs of placement in a waiting area before his/her removal.</p> <p>Carriers may be relieved of their liability in two cases:</p> <ul style="list-style-type: none"> - if they provide evidence that valid documents were presented on departure, - if the passenger submits at the border an asylum application which is not considered as manifestly unfounded (Article L.625-5, 1° and 2°). <p>3. National legislation is available from the following links:</p> <ul style="list-style-type: none"> - Articles L. 625-1 to L. 625-6 of the Code on Entry and Residence of Foreigners and Right of Asylum (Code de l'entrée et du séjour des étrangers et du droit d'asile = CESEDA): http://www.legifrance.gouv.fr/affichCode.do;jsessionid=471E6B61568142027C90CC16F6660A6C.tpdjo15v_1?idSectionTA=LEGISCTA000006147792&cidTexte=LEGITEXT000006070158&dateTexte=20121127 - Articles R. 625-1 à R. 625-16 of the Code on Entry and Residence of Foreigners and Right of Asylum (Code de l'entrée et du séjour des étrangers et du droit d'asile = CESEDA): http://www.legifrance.gouv.fr/affichCode.do;jsessionid=471E6B61568142027C90CC16F6660A6C.tpdjo15v_1?idSectionTA=LEGISCTA000006163300&cidTexte=LEGITEXT000006070158&dateTexte=20121127 http://www.legifrance.gouv.fr/affichCode.do;jsessionid=471E6B61568142027C90CC16F6660A6C.tpdjo15v_1?idSectionTA=LEGISCTA000006163301&cidTexte=LEGITEXT000006070158&dateTexte=20121127 http://www.legifrance.gouv.fr/affichCode.do;jsessionid=471E6B61568142027C90CC16F6660A6C.tpdjo15v_1?idSectionTA=LEGISCTA000006163302&cidTexte=LEGITEXT000006070158&dateTexte=20121127
	Germany	Yes	<p>1. The EC Directive 2001/51/EG is being implemented in the legislation regarding the residence, employment and the integration of foreigners living in the German Federal Territory (German Residence Act) which has become effective on 1st January 2005 in the form of article 1 of the German Immigration Act.</p> <p>2. Section 63 German Residence Act obliges any and all carriers arriving on German Federal Territory to only carry out such</p>

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		<p>transportation if the foreigners concerned are in possession of a passport as required and of an essential residence title (in the form of a visa or other residence title). In the event of non-compliance, the carrier may be threatened with and ordered to pay a penalty payment which may be fixed at between 1,000 and 5,000 Euros for each foreigner. In the case of infringement of the carrier's obligation to verify the entry conditions as described above, the carrier shall also be obliged to immediately return the foreigner concerned in accordance with Section 64 German Residence Act and he shall be liable in accordance with Section 66, paragraph 3 German Residence Act, to pay for any costs arising from the stay and termination of stay of the foreigner.</p> <p>3. The text of the relevant provisions of the Law reads as follows:</p> <p>Section 63 Obligations of transport contractors</p> <p>(1) A transport contractor may only transport foreigners into the Federal territory if they are in possession of a required passport and a required residence title.</p> <p>(2) The Federal Ministry of the Interior or a body designated by the Federal Ministry of the Interior may, in consultation with the Federal Ministry of Transport, Building and Urban Development, prohibit a transport contractor from transporting foreigners into the Federal territory in contravention of sub-section 1 and threaten a fine in case of violation. Any objections or legal actions shall have no suspensory effect; this shall also apply with regard to the imposition of a fine.</p> <p>(3) The fine against the transport contractor shall be no less than 1 000 euros and no more than 5 000 euros for each foreigner whom he transports in contravention of a ruling pursuant to sub-section 2. The fine may be fixed and enforced by the Federal Ministry of the Interior or a body designated by the said ministry.</p> <p>(4) The Federal Ministry of the Interior or a body designated by the Federal Ministry of the Interior may agree arrangements for implementation of the obligation specified in sub-section 1 with transport contractors.</p> <p>Section 64 Return transport obligation on the part of transport contractors</p> <p>(1) If a foreigner is refused entry, the transport contractor who transported him or her to the border shall be required to remove him or her from the Federal territory forthwith.</p> <p>(2) The obligation pursuant to sub-section 1 shall apply for a period of three years with regard to foreigners who are transported into the Federal territory without a required passport, passport substitute or a required residence title and who are not refused entry because they cite political persecution or the circumstances referred to in Section 60 (2), (3), (5) or (7). The obligation shall expire if the foreigner is granted a residence title under the terms of this Act.</p> <p>(3) On request from the authorities charged with carrying out the police control of cross-border traffic, the transport contractor shall be required to transport the foreigner to the state which issued the travel document or from which he or she was transported, or to another state in which his or her admission is ensured.</p> <p>Section 66 Parties liable for costs; furnishing of security</p> <p>(1) Costs arising in connection with the enforcement of a geographic restriction, refusal of entry, removal or deportation are to be borne by the foreigner.</p> <p>(2) In addition to the foreigner, parties who have provided the foreigners authority or the diplomatic mission abroad with an undertaking that they shall bear the costs of the foreigner's departure shall also be liable for the costs specified in sub-section 1.</p>
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			<p>(3) In the cases covered by Section 64 (1) and (2), the transport contractor shall, in addition to the foreigner, be liable for the costs pertaining to return transportation of the foreigner and for the costs which arise from the time of the foreigner's arrival at the border crossing point to enforcement of the decision on admission. A transport contractor who culpably contravenes a ruling pursuant to Section 63 (2) shall, in addition to the foreigner, be liable for any other costs arising from refused entry in cases covered by Section 64 (1) or from deportation in cases covered by Section 64 (2).</p> <p>(4) A party shall be liable for the costs of deportation or removal,</p> <ol style="list-style-type: none"> 1. if that party has employed a foreigner who was not permitted to pursue the economic activity under the provisions of this Act, 2. if that party is an contractor for whom an employer has performed services as a direct sub-contractor and the party was aware or should have been aware, if he or she had exercised due diligence, that the employer deployed a foreigner as an employee to perform the service who was not permitted to pursue the economic activity under the provisions of this Act, 3. if that party is a prime contractor or intermediate contractor without a direct contractual relationship to the employer but is aware of the employment of a foreigner who was not permitted to pursue the economic activity under the provisions of this Act, 4. if that party commits a punishable offence pursuant to Section 96, or 5. if that party is the foreigner, to the extent that such costs cannot be recovered from the other liable parties. <p>The persons listed in sentence 1, nos. 1 to 4 shall be liable as joint and several debtors within the meaning of Section 421 of the Civil Code.</p> <p>(4a) Liability pursuant to sub-section 4, no. 1 is waived if the employer has fulfilled his or her obligations under Section 4 (3), sentences 4 and 5 and his or her notification obligation pursuant to Section 28a of Book Four of the Social Code in connection with Sections 6, 7 and 13 of the Data Collection and Transfer Ordinance or pursuant to Section 18 of the Posted Workers Act, unless he or she was aware that the foreigner's residence title or the document confirming permission to stay in the Federal territory (pending asylum procedures) or confirming suspension of deportation was forged.</p> <p>(5) The party liable for costs may be required to furnish security. The order for security to be furnished by the foreigner or the party liable for costs pursuant to sub-section 4, sentences 1 and 2 may be enforced by the authority which has issued the order without a prior writ of execution and without allowing a period for payment, if recovery of the costs would otherwise be at risk. By way of security for the costs relating to the foreigner's departure from the Federal territory, return air tickets and other travel vouchers which are in the possession of a foreigner who is to be refused entry, removed, expelled or deported or who is permitted to enter and stay in the Federal territory solely for the purpose of filing an application for asylum may be confiscated.</p>
	Greece	Yes	<ol style="list-style-type: none"> 1. In the case of Greece, Council Directive 2001/51/EC of 28 June 2001 is implemented in national law by article 88 of Law 3386/2005, which is the main migration legislation in force. 2. Yes, Greek national legislation explicitly provides for the application of financial penalties which can from €5.000 up to €30.000 for each person transferred, in cases of airlines or shipping companies, as well as any other individual or legal entity performing any type of public carriage of persons that fail to determine the existence of a valid travel document and a visa, when required. In cases of relapse in the same calendar year, these penalties can be doubled but cannot exceed the amount of €30,000. 3. Article 88 of Law 3386/2005 "Obligations of carriers – Penalties" reads as following: "1. Captains of ships or other vessels or airplanes and drivers of any means of transportation transferring into Greece third country nationals from abroad who do not have the right to enter the Hellenic territory or whose entry has been prohibited for any reason, as well as those who pick them up from the entry points, the outer or inner borders so as to promote them in the Country or in the territory of a EU

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		<p>member state or a third country or facilitate their transportation or provide them with accommodation for concealment are sentenced to:</p> <ol style="list-style-type: none"> a. imprisonment of up to ten (10) years and a fine amounting from ten thousand (10.000) euros to thirty thousand (30.000) euros for each transferred person; b. imprisonment for at least ten (10) years and a fine amounting from thirty thousand (30.000) euros to sixty thousand (60.000) euros for each transferred person if the offender acts with a view to making a profit, or by profession or habit, or is a recidivist or is a public servant or tourist, marine or travel agent, or if two or more persons act jointly; c. imprisonment for at least fifteen (15) years and a fine of at least two hundred thousand (200.000) euros for each transferred person, if this activity can be dangerous for human lives; d. life imprisonment and a fine of at least seven hundred thousand (700.000) euros, if death has been involved in case (c). <p>2. Captains or pilots of ships, vessels or aircrafts and drivers of any means of transport shall not accept to carry persons who do not hold the required travel documents or have not undergone regular police control. Violators shall be punished pursuant to the provisions of paragraph 1 of this article. This offence shall be considered committed, in case of sea and air means of transport, if the person who boarded illegally is found in such means of transport on commencement of the control by competent state bodies before the departure or takeoff or after the arrival of the ship or the landing of the aircraft, and in case of other means of transport, if the person who boarded illegally is found in such means of transport during the last exit control or near the borders. The penalties of paragraph 3 hereof shall also apply to the persons referred to in this paragraph.</p> <p>3. Airlines or shipping companies, as well as any other individual or legal entity performing any type of public carriage of persons shall not accept for carriage and shall take all measures precluding the carriage from abroad to Greece of third-country nationals who do not possess the required passports or other travel documents and visas, where required. Airlines that violate the above obligations shall incur, by decision of the airport master, a monetary fine of EUR five thousand (€5,000) to EUR thirty thousand (€30,000) for each carried person. Shipping companies, as well as any other individual or legal entity shall incur the same monetary fine by decision of the General Secretary of the Region. In case of relapse in the same calendar year, the said monetary fines may be doubled but cannot exceed EUR thirty thousand (€30,000), by decision of the competent body.</p> <p>4. The persons referred to in paragraphs 1, 2 and 3, as well as travel agencies and the owners of the means of transport shall be fully liable for the cost of living and refolement of the said persons abroad. Persons who guaranteed the repatriation of a third-country national shall also be liable, if the terms of entry or residence were violated. The assessment and payment of the said monetary fine shall be effected pursuant to the provisions of the Code of Collection of Public Revenue.</p> <p>5. The persons referred to in the first sentence of paragraph 1 or the owners of the means of transport or their agents in Greece shall, immediately after the arrival of the means of transport in Greece, deliver to police passport control agencies arrival cards or lists of passengers who are third-country nationals, whom they carry to Greece and vice versa. They shall have the same obligation on arrival of charter flights from third countries. A decision of the Minister of Public Order shall determine the particulars of the said cards or lists.</p> <p>6. The above penalties shall not be imposed in case of rescue of people at sea and in case of carriage of people in need of international protection, as dictated by the international law of the sea.</p> <p>7. The provisions of Article 253A of the Code of Criminal Procedure are also applicable in offences provided for in Article 87 and the present Article regardless of whether the prerequisites of Articles 187 and 187A of the Penal Code are met.</p> <p>8. The deadline for lodging an appeal and the lodging of such appeal against the conviction for violations of the present Article, as well as violations of paragraphs 5, 6 and 7 of the previous Article, do not suspend the execution of the decision.</p>
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			<p>9. The three-member Court of Appeal has jurisdiction for crimes provided for in the present Article as well as in Article 87 and the procedure applied is the one provided for in Article 20 of law 663/1977 (Official Gazette 215 A'), as in force.</p> <p>10. The property which is a product of criminal activity or is acquired in any way from a product of such a criminal activity or the property which was used, partly or in total, for criminal activity is seized and if there is no case of returning it to its owner, according to Articles 310 par. 2 and 373 of the Code of Criminal Procedure, it is obligatorily confiscated with the passing of sentence of the competent court. The confiscation is imposed even if the property belongs to a third person, provided that he knew about the criminal activity when acquiring the property. If the property or the product mentioned in the previous subparagraph exceeds the amount of four thousand (4.000) euros and cannot be confiscated, assets of a value equal to the value of the abovementioned property or product are seized and confiscated under the conditions laid down in the previous subparagraph.</p> <p>11. The provisions of the present Article and paragraphs 5, 6 and 8 of Article 87 also apply to punishable acts committed abroad, either by a national or an alien, even if such acts are not considered punishable under the law of the country in which they were committed. ”</p>
	Hungary	Yes	There is an ongoing internal consultation (following the results of a Schengen evaluation mission this year) whether revision of Hungarian legislation would be necessary, in order to provide for an explicit legal base to fine carriers if a third country national is refused entry because of a lack of valid visa. The current Hungarian Act, in line with the existing acquis, requires carriers only to check their passengers for their valid travel documents, and imposes fines for failure to do so.
	Ireland	Yes	
	Italy	Yes	<ol style="list-style-type: none"> 1. Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985 was transposed in Italy through Law Decree n. 87 of 7th April 2003. This provisions modified the 1998 Consolidated Act on Immigration. 2. Italian legislation explicitly provides for the application of financial penalties for carriers in case of the carrier's failure to determine the existence of documents required for entry into the territory of the State. 3. The actual text of national legislation in force is the following: <u>Consolidated Immigration Act, art. 12, comma 6</u>, “The air, sea or land carrier is required to ensure that the alien carried is in possession of the documents required for entry into the territory of the State, as well as reporting to the border police presence on board of irregular immigrants. In case of violation of one of the obligations referred to in this paragraph, the payment of a sum of €3,500 to €5,500 for each of the foreigners transported shall be imposed”.
	Latvia	Yes	<ol style="list-style-type: none"> 1. Requirements of the Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985 are laid down in the Immigration Law and Latvian Administrative Violations Code. In accordance with Section 21 of the Immigration Law a carrier (a merchant whose commercial activities are related to the carriage of persons by sea, air or road transport) has the duty to ascertain that the foreigner is carrying the necessary documents for entry. If this duty is not fulfilled, the carrier must deliver the foreigner to the relevant country and cover all expenses. In accordance with Section 114.² of the Latvian Administrative Violations Code in case of the carriage of persons without necessary travel documentation a fine shall be imposed on the carrier. 2. Section 114.² “Carriage of Persons to the Republic of Latvia without Travel Documentation” of the Latvian

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			<p>Administrative Violations Code: In the case of the carriage of citizens of such state that is not a Member State of the European Union or European Economic Area, from such states to the Republic of Latvia, if the referred to persons do not have the <u>necessary travel documentation</u> to cross the border of the Republic of Latvia and if the carrier has performed it by sea, air or land transport – a fine shall be imposed on a natural or legal person in an amount from LVL 1700 up to LVL 2800 for every person carried.</p> <p>3. Section 21 of the Immigration Law determined that a carrier (a merchant whose commercial activities are related to the carriage of persons by sea, air or road transport) has the duty to ascertain that the foreigner is carrying <u>the necessary documents for entry</u>.</p>
	Lithuania	Yes	<p>In the course of the implementation of Council Directive 2001/51/EC of 28 June 2001 on supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985, the Law on the amendment and supplement of the Law on the Fundamentals of Transport activities of the Republic of Lithuania has been passed, providing the duties of carriers in transporting foreigners, and their liability for the transportation of foreigners, where the carrier may be subject to a penalty of from 11000 to 18000 litas for each alien transported without the required documents.</p> <p>[excerpt from the Law] Article 20. Liability of Carriers</p> <p>1. The carriers which are engaged in the carriage of passengers by air or sea or which carry groups of passengers by bus land transport on international special and charter routes must, when carrying aliens to the territory of the Republic of Lithuania across the state border, ensure that the latter hold the travel documents which are required to enter the Republic of Lithuania. The carriers shall have the right to check the travel documents of the passengers in order to ascertain that the passenger is in possession of the travel documents required to enter the Republic of Lithuania.</p> <p>2. Where the State Border Guard Service establishes that the alien carried by the carrier referred to in paragraph 1 of this Article is not in possession of the travel documents which are required to enter the Republic of Lithuania, the carrier shall be imposed a fine in the amount from LTL 11000 to LTL 18000 for each alien carried without the required documents.</p> <p>3. A carrier shall not be imposed any fine where:</p> <ol style="list-style-type: none"> 1) the alien being carried applies for asylum in the Republic of Lithuania in compliance with the Law of the Republic of Lithuania on the Legal Status of Aliens; 2) the carrier proves that when taking the alien to the vehicle it ascertained that the alien was in possession of the travel documents required to enter the Republic of Lithuania; 3) the State Border Guard Service establishes that an alien's travel document required to enter the Republic of Lithuania has been falsified. <p>4. Where the State Border Guard Service establishes that the carrier referred to in paragraph 1 of Article 19⁽¹⁾ of this Law has failed to provide, in accordance with the procedure laid down by the Government or an institution authorised by it, or has provided incomplete or incorrect information referred to in paragraph 2 of Article 19⁽¹⁾ of this Law, the carrier shall be imposed a fine in the amount from LTL 11000 to LTL 18000 for each carriage of aliens about whom the carrier has failed to provide the information referred to in</p>

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			paragraph 2 of Article 19 ⁽¹⁾ of this Law or has provided incomplete or incorrect information.
	Luxembourg	Yes	<ol style="list-style-type: none"> 1. In Luxembourg, Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985 is transposed by Law of 29 August 2008 on free movement of persons and immigration in articles 106, 107 and 108. 2. Article 108 of the Law of 29 August 2008 expressly foresees financial sanctions when there is a carrier's failure to determine the existence of a valid visa. The financial sanction is of 4000 euros for transported passenger (article 147). 3. Article 108 says: « (1) L'entreprise de transport aérien qui débarque sur le territoire un ressortissant de pays tiers démunie d'un document de voyage valable et, le cas échéant, du visa requis ou qui n'a pas transmis les renseignements visés à l'article 106 ou qui ne les a pas transmis dans le délai prévu, ou qui a transmis des renseignements incomplets ou erronés, encourt les sanctions prévues aux articles 147 et 148 respectivement. (2) Le manquement est constaté par un procès-verbal établi par la Police grand-ducale. Copie en est remise à l'entreprise de transport aérien. (3) L'entreprise de transport aérien a accès au dossier et est mise à même de présenter ses observations écrites dans un délai d'un mois sur le projet de sanction. La décision du ministre qui est motivée, est susceptible d'un recours en réformation. » ((1) The airline that landed on the territory a third country national without a valid travel document and, where applicable, the required visa or who has not communicated the information referred to in Article 106 or who has not submitted within the time specified, or who provided information that is incomplete or incorrect, will incur the penalties referred to in Articles 147 and 148 respectively. (2) The failure is established by a report drawn up by the Grand Ducal Police. Copy shall be submitted to the airline. (3) The airline has access to the file and is set to present his written observations within a period of one month on the proposed sanction. The Minister's decision is motivated and is subject to an appeal for reversal.²⁾
	Malta	Yes	<ol style="list-style-type: none"> 1. Hungary would like inquire about other MSs' national legislation, and the practice of implementing Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985. 2. In particular, whether national legislation explicitly provides for the application of financial penalties for carriers in case of the carrier's failure to determine the existence of a valid visa (not only travel documents). <p>Yes, Maltese legislation explicitly provides for this.</p> <ol style="list-style-type: none"> 3. The actual text of national legislation in force would be much appreciated.

² This is a free translation of the article for illustration purposes. The only valid text is the French version.

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			Please find attached Article 15 of Chapter 217 of the Laws of Malta and are available online.
	Netherlands	Yes	
	Poland	Yes	
	Portugal	Yes	<p>Article 41 of the Immigration Act, addressed to the Carriers' responsibilities, states that :</p> <p>1- Any carrier which transports into Portuguese territory, by air, sea or land, a foreign citizen who does not hold the necessary conditions for entering, has to provide for his / her return, at the earliest possible moment into the territory where he / she embarked in that means of transport, or, should that be impossible, into the Country where the respective travelling document was issued, or, alternatively, into any other territory where his / her admission is guaranteed.</p> <p>2- In the interim period and before embarking takes place, the passenger is under the charge of the carrier, and is the carriers' responsibility to cover any expenses related to the period of stay of the passenger in a temporary accommodation centre or equivalent premises.</p> <p>3- Whenever justified the foreign citizen that does not hold conditions of entry is removed from Portuguese territory, escorted by SEF.</p> <p>4- The carrier is also responsible for the payment of costs related to the escort of the citizens as well as for the payment of the respective fee.</p> <p>5- The stipulations of the preceding paragraphs are equally applicable in case of refusal of entry of a foreign citizen in transit, provided: a) The carrier which was supposed to take him / her aboard and supply transport to the Country of final destination refuses to do so; b) The authorities of the Country of destination have refused his / her entry and sent him / her to Portuguese territory.</p> <p>In terms of Regulatory offences, article 194.ºstates that: The transportation into Portuguese territory of a foreign citizen who does not hold a valid travelling document or visa by a transport operator or by any person exercising a professional activity is an regulatory offence punishable for each foreign citizen carried from €000 up to €6000, in case of corporate bodies, and of €3000 up to €5000, in case of individuals.</p>
	Romania	Yes	
	Slovak Republic	Yes	<ol style="list-style-type: none"> 1. The SR has transposed the Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985 into its Act on Residence of Foreigners. 2. Yes the financial penalties are defined in the law, more specifically in the Act on Residence of Foreigners. According to this Act the carrier is liable in case the third country national is transported to the borders of the SR without a valid travel document or a visa if this is required. For breaking the obligation to check the validity of the travel document or passport and transporting the third country national to the borders of the SR the carrier may be fined with a penalty in a sum from 3000 – 5000 EUR for each transported third country national.

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			<p>3. This is defined in the Article 108 and 117 of the Act on Residence of Foreigners (No. 404/2011)</p> <p>The Act in English version may be downloaded here: http://www.emn.sk/phocadownload/documents/act_on_residence_of_aliens_21_10_2011_en.pdf</p>
	Slovenia	Yes	<p>Provisions are implemented into Article 16 of Aliens Act as follows:</p> <p>A carrier may bring an alien to the state border or into the territory of the Republic of Slovenia by land, air or water only if the alien concerned has an appropriate travel document and entry permit which he/she is required to have as a national of a specific country.</p> <p>2) If an alien is refused entry into the Republic of Slovenia, the carrier which brought him/her by air, water or land to the state border must, at the request of the border control authority, return the alien into the state from which he/she was brought or into the state which issued the travel document to the alien or into any other state which is ready to accept him/her.</p> <p>3) If the carrier cannot take the alien from the Republic of Slovenia in accordance with the second paragraph of this Article he must immediately and at his own expense find another carrier to do so.</p> <p>4) The carrier who brought the alien to the state border or into the territory of the Republic of Slovenia contrary to the first paragraph of this Article shall cover the costs of accommodation and removal of the alien. Following return or removal of the alien Police issue act of carrier's obligation to cover costs of alien's accommodation and removal. Carrier may appeal against the act within eight days following issuance. Ministry of interior shall decide regarding appeal.</p> <p>5) The obligations laid down in the second, third and fourth paragraph of this Article shall also apply to the carrier who conveys by air, land or water an alien to the state border or into the territory of the Republic of Slovenia who travels in transit and who has been refused further transport by another carrier or who has been refused entry in the state of his destination and was returned to the Republic of Slovenia.</p> <p>Aliens Act is available at: http://www.uradni-list.si/1/content?id=104605</p>
	Spain	Yes	<p>1. Article 54.2 b) of the Spanish Aliens Act (Organic Law 4/2000) explicitly establishes as very serious offence the fact of transporting aliens without having checked the validity of their visas. The financial penalties for carriers established by the law are fines of 5,000 to 10,000 euros for each traveler transported or a lump-sum minimum of 750,000 euros, irrespective of the number of travelers transported.</p> <p>2. The actual text of the Aliens Act establishes: Article 54.2 b) says "2. The following shall be deemed very serious offences: Transporting aliens by air, sea or land to Spanish territory, by carriers without having checked the validity and currency of their passports, travel documents or identity documents, or, if appropriate, of the relevant visas, of which the aforesaid aliens must be the holders;" Article 55.1 c) provides that: "The offences classified in the above Articles shall be punished as follows: Very serious offences ... except for the breach described in Article 54.2.b hereof, when the fine shall be 5,000 to 10,000 euros for each traveler transported or a lump-sum minimum of 750,000 euros, irrespective of the number of travelers transported."</p>
	Sweden	Yes	<p>Yes, Sweden has implemented the Directive 2001/51/EG in the national law. Included also permits required for entry into Sweden.</p> <p>3 Actual text of Aliens Act Chapter 19 "Liability for costs". Chapter 19. Liability for costs</p>

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			<p>The alien's liability for travel costs</p> <p>Section 1 An alien who is refused entry or expelled is liable to pay the cost of his or her own journey to the place to which he or she is required to travel through the action of an authority.</p> <p>The carrier's liability for costs</p> <p>Section 2 If an alien who has come to Sweden on a ship or aircraft direct from a state that is not covered in the Schengen Convention is refused entry because the alien does not have a passport or the permits required to enter the country or the funds for his or her journey home, the carrier is liable to reimburse the State for the cost of the alien's journey from Sweden, the travel cost from Sweden and back again for the supervisory personnel who need to accompany the alien and the cost of the alien's subsistence here before the refusal of entry can be enforced, if the delay in enforcement is due to the carrier.</p> <p>The carrier (the owner or operator of the ship or aircraft) shall be exempted in full or in part from this liability if the carrier shows that he or she had fair reason to assume that the alien was entitled to enter Sweden or it appears clearly unreasonable to demand reimbursement of the cost on account of the size of the cost or other grounds.</p> <p>Section 3 If an alien who is employed on board a ship or aircraft leaves the ship or aircraft during its stop in Sweden and enters Sweden unlawfully and is refused entry the carrier is liable to -reimburse the costs of the alien's journey from Sweden and - meet the costs for the alien's subsistence for the three months immediately after his or her entry to Sweden.</p> <p>The provisions concerning an alien employed on board a ship or aircraft are also applicable to an alien who has travelled on such a ship or aircraft without permission.</p> <p>If the ship or aircraft has a foreign owner or operator, the commander is liable to meet the costs under the first paragraph on behalf of the owner or operator if this is not clearly unreasonable.</p> <p>Section 4</p>
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			<p>The decision on the liability to reimburse costs is issued by the authority that enforces the refusal of entry.</p> <p>Special charge</p> <p>Section 5 A carrier that has not fulfilled its responsibility for controls under Chapter 9, Section 3 shall pay a special charge if the refusal-of-entry order is issued because the alien does not have a passport or the permits required for entry into Sweden and the decision has become final and nonappealable or has been enforced even though it has not entered into force.</p> <p>The carrier shall, however, not pay a special charge if the carrier shows that he or she had fair reason to assume that the alien was entitled to enter Sweden or it appears clearly unreasonable to levy the charge.</p> <p>Section 5a A carrier that has not fulfilled its obligation to provide information under Chapter 9, Section 3a will be required to pay a special charge. However, the carrier shall not pay a special charge if 1. the carrier shows that the failure to provide information was not due to fault or neglect, or 2. it appears clearly unreasonable to levy the charge.</p> <p>Section 6 The special charge under Section 5 shall be set at no more than SEK 46 000 for each alien. The special charge under Section 5a shall be set at no more than SEK 46 000 for each flight that has been made without the carrier having fulfilled its obligation to provide information.</p> <p>Section 7 The question of whether the carrier shall pay a charge under Section 5 is examined by the authority that has to enforce the refusal of entry.</p> <p>The question of whether the carrier shall pay a charge under Section 5a shall be examined by the police authority that has requested the information.</p> <p>Charges under Section 5 shall be paid to the Swedish Migration Board. Charges under Section 5a shall be paid to the National Police Board. The charges accrue to the State.</p> <p>Court cases concerning the levying of the charge shall be handled as general cases. The Act on the Collection of Debts to the State (1993:891) contains provisions on collection.</p>
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			<p>Section 8</p> <p>The Government may issue regulations instructing a government agency other than a police authority to examine the question of whether the carrier shall pay a charge under Section 5a.</p>
	United Kingdom	Yes	<p>Legislation within the Immigration and Asylum Act 1999 (hyperlink to external UK government legislative website) was given Royal assent on the 11 November 1999 and came into effect thereafter. At section 40 the circumstances resulting in a charge for aviation and sea carriers who bring passengers without proper documents to the UK is set out. This includes carriers ensuring a passenger can provide an immigration document to prove identity and nationality (subsection 1 (a)) and any required visa (subsection (b)). The sum payable is currently set at £2000 (subsection 2) although the UK is currently considering increasing this, remaining within the limitations set by Article 4 of the Directive. Section 40A and 40B of the same act set out the notification, objection and appeals processes that are in place. No changes to UK legislation have had to be made to implement the 2001/51 Directive as we were already within the terms set by it.</p>
	Croatia	Yes	
	Norway	Yes	
