



## **Ad-Hoc Query on the TCN ship crewmembers**

**Requested by EE EMN NCP on 13<sup>th</sup> May 2014**

**Compilation produced on 2<sup>th</sup> July 2014**

*Disclaimer: The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.*

### **1. Background Information**

Estonia is currently planning changes to the Aliens' Act. Ministry of the Interior would like to find out the national regulation regarding TCN crew-members as a part of these changes.



Aliens' Act currently does not provide special regulation for TCN crew-members. This far the practice has been that TCN crew-member are required to hold seafarers' identity document and in accordance to the ILO convention they are issued a certificate in the port (provided the vessel arrives at the port in Estonia), that they are allowed to stay in Estonia for the duration of the ship is in port.

We would very much appreciate your responses by June 3<sup>rd</sup> 2014.

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1. If the crew-member who is a TCN, who holds an seafarers' identity document (as identified by ILO convention) issued by the third country and would like to start working on the vessel under the flag of your MS, is he/she required to hold a residence permit, work permit or any other legal grounds to work on the ship or is it sufficient to have the seafarers' identity document issued by the third country?
2. Does your national legislation provide a special regulation for TCN crew-members employed on the vessels under the flag of your MS that differs from general regulation for TCN (e.g. requirement for legal grounds for stay, or there is a special regulation applied, or the national legislation states that the conditions of stay on the vessels under the flag of your MS ensue from the convention/international agreements etc.)?
3. If there is a special regulation, then in which legal acts is it included and what does that regulation entail?

## 2. Responses<sup>1</sup>








	<b>Austria</b>	<b>No</b>	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	<b>Belgium</b>	<b>Yes</b>	<p>1. Answer to question 1</p> <p>The TCN crew-member does not necessarily need a residence permit to start working on a vessel under Belgian flag. Every crew-member (whatever his nationality) must be registered with the Seamen's General Welfare Fund (Hulp- en Voorzorgskas van Zeevarenden/Caisse de Secours et de Prévoyance en faveur des Marins -HVKZ). This is a public social security institution, specifically to give service and support to seafarers.</p> <p>If the TCN is registered with the HVKZ, he is exempt from holding a work permit B based on Article 2.8 of the Royal Decree of 9 June 1999 concerning the employment of foreign employees. With this exemption it is possible to apply for a long term residence permit (but it is not required to have such a permit to be allowed to work on the vessel).</p> <p>2. Answer to question 2.</p> <p>In Belgium, there is no special regulation regarding the conditions of stay for TCN crew-members employed under Belgian flag. A TCN can apply for a long term residence permit based either on a work permit B or on an official exemption from this work permit. A number of exemptions are laid down in Article 2 of the Royal Decree of 9 June 1999, including the exemption granted to workers registered with the HVKZ (Article 2, 8°). The TCN crew-member can thus apply for a long stay residence permit based on the exemption of work permit B.</p> <p>3. Answer to question 3</p>

<sup>1</sup> 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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			As mentioned above, the exemption from the work permit B is included in the Royal Decree of 9 June 1999 concerning the employment of foreign employees. This decree sums up the categories of exemptions (30 based on job categories, 10 based on residence status) and the different work permits (A – B – C).
	<b>Bulgaria</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>1. No, for a TCN it is sufficient to have the seafarers' identity document issued by the third country and a valid license in order to start work on a Bulgarian ship.</li> <li>2. There is a regulation for the crew members of <b>commercial</b> ships under Bulgarian flag, which also concerns the TCN crew members.</li> <li>3. In <b>art. 88 of the Commercial Maritime Code</b> the following regulations are set for the crew members of <b>commercial</b> ships under Bulgarian flag: <ul style="list-style-type: none"> <li>- at least 25 % of the crew members must be Bulgarian citizens;</li> <li>- all crew members must hold licenses issued according to the International Convention on Bridge Watchkeeping Duties and Standards of Training and Certification of Seafarers, signed in London on July 7<sup>th</sup>, 1978;</li> <li>- all crew members must be fluent in the language set for the ship by the ship owner;</li> </ul> </li> </ol> <p>the captain and the chief engineer must be Bulgarian citizens or citizens of EU/EEA Member-State or the Swiss Confederation.</p>
	<b>Cyprus</b>	<b>Yes</b>	-
	<b>Czech Republic</b>	<b>No</b>	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	<b>Denmark</b>	<b>Yes</b>	-
	<b>Estonia</b>	<b>Yes</b>	Aliens' Act currently does not provide special regulation for TCN crew-members. This far the practice has been that TCN crew-member are required to hold seafarers' identity document and in accordance to the ILO convention they are issued a certificate in the port (provided the vessel arrives at the port in Estonia), that they are allowed to stay in Estonia for the duration of the ship is in port.
	<b>Finland</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>1) The TCN crew member of a ship does not need a residence permit if he/she works on a vessel registered in the merchant marine trading vessels register. It makes no difference under which nation's flag the vessel sails. If the person is living in Finland, he/she needs a residence permit.</li> <li>2-3) Art. 44§ of the Alien's Act states that a seafarer who holds an internationally valid seafarer's identity document, is allowed to disembark the vessel, and stay in the vicinity of the port without a travel document or a visa for the duration that the vessel is moored at the particular port. The legislation does not separate between vessels sailing under Finnish flag or other nation's flags.</li> </ol>
	<b>France</b>	<b>Yes</b>	In accordance with the French legislation (law n°2008-324 relating to the nationality of crew-members), crew-members working on a vessel under the French flag are citizens of : <ul style="list-style-type: none"> <li>- France,</li> <li>- a European Union member state,</li> <li>- a state that is part of the agreement concerning the European Economic Area,</li> </ul>







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			- the Swiss Confederation. Third country nationals are not allowed to work on a vessel under the French flag.
	<b>Germany</b>	<b>Yes</b>	Seamen on board of a vessel sailing on the High Seas under the German flag do not require a residence title and hence they do not require a permit for the purposes of paid employment. The seamen will undergo border checks as required by the law for foreign nationals when leaving the vessel anchoring in a German harbour and will be given the opportunity to go ashore while the ship is in port or to leave the country via an airport where they are exempt from the requirement to bear a residence title and for the purposes of verification are provided with a permit.
	<b>Greece</b>	<b>Yes</b>	-
	<b>Hungary</b>	<b>No</b>	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	<b>Ireland</b>	<b>Yes</b>	-
	<b>Italy</b>	<b>Yes</b>	Crew-members fall within «special cases» of entry into Italy for work purposes, together with highly specialised staff from companies with headquarters or branches in Italy, university professors and lecturers, translators and interpreters, artists or technical staff in the entertainment sector, TCNs who are intended to play any professional sport with Italian sports clubs, journalists/correspondents who are officially accredited in Italy, and trained nurses who are hired by public or private health facilities. The relevant visa are issued by the diplomatic missions and consular posts following quicker and simplified procedures which vary according to the bilateral agreements, if any, existing between Italy or the EU and the TCN's country of origin. These visas allow crew members to stay on board of the vessel in territorial waters or domestic ports. However, in case of disembarkation, the regular provisions for visa issuance apply.
	<b>Latvia</b>	<b>Yes</b>	Crew-members, working on the vessels under the flag of Latvia and if these vessels are involved in international carriage, are not required to hold a residence permit or work permit in Latvia. This is the exception from the general rules and has been stipulated in the Immigration Law, Article 9, part 3, clause 4. The same regulation concerns crew-members, working on the vessels, not registered under the flag of Latvia. They are allowed to stay in the administrative territory of the port without a visa.
	<b>Lithuania</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>1. If the crew member starts working for a Lithuanian ship, for more than 3 months, s/he can obtain a national long-term (D) visa (or else, a temporary residence permit). S/he is not required to obtain a work permit.</li> <li>2. There is no particular legislation provided for this particular group of TCNs. The order of the ministers of interior and foreign affairs, which establishes rules for issuing visas, only mentions that this particular category of TCNs is allowed to receive a national long-term visa; in the same spirit, the order of the minister of social security and labour, which establishes rules for issuing work permits, states that this particular category of TCNs doesn't have to obtain work permits.</li> <li>3. n/a</li> </ol>

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	<b>Luxembourg</b>	<b>Yes</b>	<p>1. The Law of 29 August 2008 on free movement of persons and immigration does not have special regulations for sailors. Luxembourg ratified the convention Seafarers' Identity Documents Convention (Revised) C-185 on 20 September 2011 and it is in force. This law was approved by Law of 10 July 2011 published on the Mémorial A-147 of 22 July 2011. In this case article 6.7.a) of the Convention applies and the sailor can enter the territory with the seafarer's identity document and a valid passport. S/he does not need to have a residence permit or a work permit.</p> <p>2. No.</p> <p>3. N/A</p>
	<b>Malta</b>	<b>Yes</b>	-
	<b>Netherlands</b>	<b>Yes</b>	<p>1. A TCN who has his place of residence in another country and works as a seafarer on a sea vessel under the flag of The Netherlands, must have neither a work permit nor a residence permit.</p> <p>2. Yes.</p> <p>3. According to article 3.31 of the Aliens Decree, a TCN, who is a seafarer on a vessel under the flag of the Netherlands, can apply for a residence permit for the purpose of work when he meets the follow conditions:</p> <p>a) The seafarer must already have worked on a sea vessel for at least 7 years and still has an employment contract for al least 12 months.</p> <p>b) The seafarer must have sufficient long-term means of support. This income must be available for at least 12 moths.</p> <p>c) The seafarer must have his place of residence in the Netherlands.</p> <p>When the seafarer meets the conditions, and a residence permit will be granted, he does not need a work permit.</p>
	<b>Poland</b>	<b>Yes</b>	-
	<b>Portugal</b>	<b>Yes</b>	<p>1. The Portuguese legal framework requires to a TCN crewmember to work on a vessel under PT flag a residence permit or a working visa.</p> <p>2. No.</p>
	<b>Romania</b>	<b>Yes</b>	<p>National legislation does not provide for special provisions for the crew members who are employed on vessels under Romanian flag. For this category general legislation on employment is applied:</p> <ul style="list-style-type: none"> <li>- Getting a work authorization which is the official document which allows the owner to be employed or poseted in Romania – before applying for a long stay visa for employment</li> <li>- Getting, based on the work authorization, a long stay visa for employment which allows the owner to travel to Romania to be employed</li> <li>- Getting a residence permit for work purposes which is the identification document issued to a TCN by the General Inspectoaret for Immigration and prove the stay and work right in Romania – after entering the country based on a long stay visa for employment.</li> </ul>

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	<b>Slovak Republic</b>	<b>Yes</b>	The Slovak Republic has not ratified ILO Seafarer's Identity Documents Convention. However, according to the Act No. 435/2000 on Maritime Navigation, the TCN is not required to hold a residence permit or a work permit (Article 23 (7)).
	<b>Slovenia</b>	<b>Yes</b>	-
	<b>Spain</b>	<b>Yes</b>	-
	<b>Sweden</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>1. Yes, a crew member on a Swedish vessel is obliged to have a permission of employment issued by the Swedish Public Employment Service. Regulated in Ordinance (SFS 1989:548) regarding permission for employment on vessels.</li> <li>2. N/A</li> <li>3. Yes, it's a special regulation that also stipulates certain exceptions such as permission of employment not necessary if the TCN has a work permission or that the TCN has been employed for a certain period of 12 months during 18 month period etc.</li> </ol>
	<b>United Kingdom</b>	<b>Yes</b>	<p>Seamen from outside the European Economic Area (EEA) who arrive in the UK from another jurisdiction on a vessel of which they are crew members and who intend to depart the UK on that vessel will normally be allowed to enter the UK without leave under Section 8(1) of the Immigration Act 1971. They can remain on board without needing permission to work. This includes those working on vessels spending some time in UK waters, including those undergoing repairs and maintenance, irrespective of whether they are flagged in the UK or other countries.</p> <p>Non-EEA seamen seeking entry to the UK to join a vessel that is due to leave UK waters may also do so without having permission to work as described in paragraph 128 of the Immigration Rules. Those seeking entry to join a vessel which will not leave for a foreign port and will be operating wholly or largely within UK waters, however, do require permission to work. This too is not affected by where the vessel is flagged unless the vessel is covered by EU mainland cabotage regulations, in which case non-EEA workers have to meet the immigration regulations of the Member State in which the vessel is flagged.</p>
	<b>Norway</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>1. If the crew-member who is a TCN, who holds an seafarers' identity document (as identified by ILO convention) issued by the third country and would like to start working on the vessel under the flag of your MS, is he/she required to hold a residence permit, work permit or any other legal grounds to work on the ship or is it sufficient to have the seafarers' identity document issued by the third country? <a href="#">See question 2 for the rules on residence permits and seafarers ID.</a></li> <li>2. Does your national legislation provide a special regulation for TCN crew-members employed on the vessels under the flag of your MS that differs from general regulation for TCN (e.g. requirement for legal grounds for stay, or there is a special regulation applied, or the national legislation states that the conditions of stay on the vessels under the flag of your MS ensue from the convention/international agreements etc.)?  - For Norwegian ships in Norwegian trade, the ordinary rules for TCN apply. This includes (i) the requirement for having a residence permit (because of the work) in section 55 of the Norwegian Immigration Act, (ii) the provisions with requirements for giving residence permits for work (sections 23-26 of the Act and chapter 6 of the Immigration regulations), and (iii) the need for having a valid passport or</li> </ol>

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		<p>other travel document according to section 10-2 of the Regulations (as seafarers ID is not recognized for this purpose).</p> <p>- For Norwegian ships in foreign trade, the Immigration Act does not apply, which means that there is no requirement for having a residence permit.</p> <p>Some of the rules for immigration control in Norwegian ports still apply. Especially advance (i) notification on crew members, (ii) notification of foreigners who want to disembark, (iii) the requirement of having a passport, or (iv) travel document or <u>seafarers ID</u> (ILO 108/185 or IMO FAL) for disembarkation or shore leave, and (v) the need for a visa if the seafarer is not exempted from this requirement.</p> <p>See the extract from the Immigration Regulations below (question 3) for the definition of foreign and Norwegian trade.</p> <p>3. If there is a special regulation, then in which legal acts is it included and what does that regulation entail? This is included in the Immigration Act and the Immigration regulations.</p> <p>Norwegian Immigration Act (the Act) section 6 para 5 The Act shall not apply to Norwegian ships in foreign trade. The King may by regulations make further provisions in respect of when the Act, or provisions laid down pursuant to the Act, shall apply to Norwegian ships in foreign trade that call at Norwegian ports.</p> <p>Immigration Regulations Section 1-16 Application of the Act to Norwegian ships in foreign trade which call at Norwegian ports</p> <p>The provisions of section 16 of the Act and sections 4-17 to 4-21 and section 4-24 of the Regulations are applicable to Norwegian ships in foreign trade which call at Norwegian ports.</p> <p>Norwegian fishing vessels that deliver their catch in a Norwegian port are not deemed to be engaged in foreign trade. Moreover, Norwegian ships are not deemed to be engaged in foreign trade when they take goods or passengers on board in a Norwegian port and deliver the goods or disembark passengers in another Norwegian port. However, this does not apply to ships that are covered by the Regulations on an extended trading area for cargo ships registered in the Norwegian International Ship Register (NIS), laid down by Royal Decree of 11 August 1989 No. 802 or to ships covered by section 3, second paragraph, of the Regulations of 30 June 1987 No. 579 on special trading areas for vessels and mobile installations that are engaged in petroleum activities and registered in the Norwegian International Ship Register.</p>
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