

**ECRE**

EUROPEAN COUNCIL  
ON REFUGEES AND EXILES

CONSEIL EUROPEEN  
SUR LES REFUGIES  
ET LES EXILES

## **CARRIERS' LIABILITY**

**Country up-date on the application of carriers' liability in European States**

## **CARRIERS' LIABILITY**

The information given below is updated as of February 1999.  
It has been collected contacting the relevant ECRE Member Agencies.

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# AUSTRIA

Member Agency    Asylkoordination  
Contact person    Ms. KNAPP

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## 1. Legal basis for carriers' liability

1997 Aliens Act (entered into force in January 1998)
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## 2. To what carriers does it apply?

law	YES	practice	YES
Air	✓	Air	*
Land	✓	Land	*
Rivers (frontier with Hungary)	✓	Rivers	*

\*The law entered into force just recently, and there is no relevant practice. According to Caritas, which intervenes when asylum seekers arrive at airports, no fine has ever been levied in the case of airlines.

## 3. What is the sanction?

An administrative fine?            YES, if the carrier does not disclose information which would be useful to identify the aliens without valid entry documents.

The covering of all costs incurred as the result of transporting inadmissible passengers?            NO

Deportation costs?            YES

## 4. Carriers' liability applies also when asylum seekers are involved?

YES

**5. Carriers' liability only refers to aliens without valid entry documents arriving from outside the Schengen area?**

NO, it applies in any case.

**6. Concerns of the Human Rights Committee**

In its Concluding Observations on Austria (CCPR/C/79/Add.103, 19 November 1998), the Human Rights Committee expressed its concern about certain features of Austrian law and procedure concerning asylum seekers and immigrants. These concerns relate - among other things - to "sanctions against passenger carriers and other pre-frontier arrangements that may affect the rights of any person to leave any country, including his or her own, in violation of Art. 12, para. 2 of the International Covenant on Civil and Political Rights".

# BELGIUM

Member Agency OCIV  
Contact person Isabelle Poppe

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## 1. Legal basis for carriers' liability

Law 15 December 1980, as modified in 1987 and 1995
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## 2. To what carriers does it apply?

law	YES	practice	YES
Air	✓	Air	✓
Land	✓	Land	✓
Sea	✓	Sea	✓

## 3. What is the sanction?

An administrative fine? YES

The covering of all costs incurred as the result of transporting inadmissible passengers? YES (housing, health care, etc.)

Deportation costs? YES

## 4. Details on the carriers

**Professional carriers** may conclude a Convention with the government. If they prove that they used due diligence in checking the passenger's travel documents, the fine is suspended. However, the government can require that the terms of the Convention be reviewed if the carrier, in the previous year, brought in a high number of aliens without valid entry documents. Up to now, approximately 20 professional carriers have concluded such a Convention.

The sanctions apply also to **non-professional carriers**, which cannot conclude any Convention.

## **5. Details on the sanctions**

If the aliens without valid entry documents are more than 5, the offence falls under penal law. If they are less than 5, it is an administrative infraction.

## **6. Carriers' liability applies also when asylum seekers are involved?**

YES, but there are special provisions.

As soon as the asylum request is deemed admissible, the fine is suspended.

## **7. Carriers' liability only refers to aliens without valid entry documents arriving from outside the Schengen area?**

NO, it applies in any case, also when the passengers are in transit.

## **8. Further information**

Carriers have the obligation to check if the passengers, though travelling on valid travel documents/visa, have not been declared 'inadmissible' by a Benelux country (for instance on the grounds of a previous expulsion).

# DENMARK

Member Agency Danish Refugee Council

Contact person Anne La Cour

*Please note that the information on Denmark could not be updated.  
The Member Agency will provide further information by the end of March 1999.*

## 1. Legal basis for carriers' liability

Law entered into force in 1989

## 2. To what carriers does it apply?

law	YES	practice	YES
Air	✓	Air	✓
Land		Land	
Sea		Sea	

## 3. What is the sanction?

An administrative fine? YES

The covering of all costs incurred as the result of transporting inadmissible passengers? NO

Deportation costs? YES

## 4. Carriers' diligence

Airlines are required to submit convincing evidence that they had done all that was possible to prevent the arrival of the passengers without valid entry documents.

**5. Carriers' liability applies also when asylum seekers are involved?**

YES

**6. Carriers' liability only refers to aliens without valid entry documents arriving from outside the Schengen area?**

NO, it applies in any case, also when the passengers are in transit.



# FINLAND

Member Agency    Refugee Advice Centre  
Contact person    Leena-Kaisa Åberg

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## 1. Legal basis for carriers' liability

- Aliens Act (1983);
- Penal Code, following amendments introduced in order to comply with the Schengen Convention (relevant amendments entered into force in January 1999).

## 2. To what carriers does it apply?

law*	YES	practice**	YES
Air	✓	Air	
Land	✓	Land	
Sea	✓	Sea	

\* Neither the Aliens Act nor the Penal Code specify which carriers are concerned.

\*\* There is no relevant practice concerning the application of the new provisions of the Penal Code. As to the Aliens Act, it does not seem that fines have ever been levied.

## 3. What is the sanction?

An administrative fine?            YES

The covering of all costs incurred as the result of transporting inadmissible passengers?    NO

Deportation costs?                YES

## 4. Carriers' liability applies also when asylum seekers are involved?

NO

If the alien without valid entry documents is an asylum seeker, the fine is suspended. If the alien without valid entry documents is granted refugee/humanitarian status, the fine is cancelled. In theory, if the alien is not given either humanitarian or refugee status, the carrier is liable to pay a fine. However, the

authorities do not impose the payment if more than three months have elapsed since the arrival of the alien.

**5. Carriers' liability only refers to aliens without valid entry documents arriving from outside the Schengen area?**

The Aliens Act, which was adopted prior to the entry into force of the Schengen Convention, does not make any distinction.  
The Penal Code, instead, refers just to carriers coming from outside the Schengen area.

# FRANCE

Member Agency France Terre d'Asile

Contact person Armelle Crozet

## 1. Legal basis for carriers' liability

Ordonnance 1945

## 2. To what carriers does it apply?

law	YES	practice	YES
Air	✓	Air	✓
Land	✓	Land	✓
Sea	✓	Sea	✓

## 3. What is the sanction?

An administrative fine? YES

The covering of all costs incurred as the result of transporting inadmissible passengers? NO

Deportation costs? YES, but just for air carriers.

## 4. Carriers' liability applies also when asylum seekers are involved?

NO

But only if the asylum application is not deemed manifestly unfounded.

## 5. Carriers' liability only refers to aliens without valid entry documents arriving from outside the Schengen area?

NO, it applies in any case.

## 6. Further information

Carriers' liability does not apply if the carrier demonstrates that the alien's travel documents did not show any manifest irregularity.

# GERMANY

Member Agency    Pro Asyl  
Contact person    Barnd Misovic

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## 1. Legal basis for carriers' liability

Aliens Act, Art. 73-74
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## 2. To what carriers does it apply?

law	YES	practice	YES
Air	✓	Air	✓
Land	✓	Land	*
Sea	✓	Sea	✓

\* To the Member Agency's knowledge, there is no relevant practice.

## 3. What is the sanction?

An administrative fine?            YES

The covering of all costs incurred as the result of transporting inadmissible passengers?            NO (housing, health care, etc.)

Deportation costs?            YES

## 4. Details on the sanctions

The fine differs according to the carrier concerned (air and sea carriers pay higher fines).

The fine is increased when the Ministry of Interior had ordered the carrier not to transport a person without valid entry documents.

In agreement with the Ministry of Transport, the Ministry of Interior may deny to air and sea carriers transporting passengers without valid entry documents the right to land/disembark.

## 5. Carriers' liability applies also when asylum seekers are involved?

YES, but there are special provisions.

When transporting passengers without valid entry documents, carriers are liable to sanctions for three years following the passenger's arrival into Germany. Carriers' liability does not apply if the person without valid entry documents is given a positive legal status (this means refugee/humanitarian/any status which is not mere tolerance).

**6. Carriers' liability only refers to aliens without valid entry documents arriving from outside the Schengen area?**

NO, it applies in any case.

# GREECE

Member Agency    Greek Refugee Council  
Contact person    Athanassia Sikiotou

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## 1. Legal basis for carriers' liability

There is much legislation and it has been amended several times, also after the entry into force of the Schengen Convention.  
There is a specific law/regulation for each kind of carrier.

## 2. To what carriers does it apply?

law	YES	practice	YES
Air	✓	Air	✓
Land	✓	Land	✓
Sea	✓	Sea	✓

## 3. What is the sanction?

An administrative fine?        YES

The covering of all costs incurred as the result of transporting inadmissible passengers?        NO

Deportation costs?        YES, but just for air carriers.

## 4. Carriers' liability applies also when asylum seekers are involved?

YES

In practice, when an alien without valid entry documents lodges an asylum application, the fine is not levied.

## 5. Carriers' liability only refers to aliens without valid entry documents arriving from outside the Schengen area?

NO, it applies in any case.

## **6. Further information**

It seems that the Greek legislation on carriers' liability is extremely tough and regularly implemented.

The fines are different according to the kind of carrier (air carriers pay the highest fines).

# IRELAND

Member Agency Irish Refugee Council

Contact person Sara Macnees

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## 1. Legal basis for carriers' liability

There is no law providing for carriers' liability. The government seems to have put forward a paper on the subject, but this is still a draft. In 2 or 3 months there should be something more precise.



# ITALY

Member Agency Italian Refugee Council  
Contact person Antonella de Donato

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## 1. Legal basis for carriers' liability

1998 Aliens Act (Legge n. 40/98 "Disciplina dell'immigrazione e norme sulla condizione dello straniero")
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## 2. To what carriers does it apply?

law	YES	practice	YES
Air	✓	Air	✓
Land	✓	Land	
Sea	✓	Sea	✓

## 3. What is the sanction?

An administrative fine? YES

The covering of all costs incurred as the result of transporting inadmissible passengers? NO (housing, health care, etc.)

Deportation costs? YES

## 4. Carriers' obligations

The carrier must report to the Border Police on the presence of aliens without valid entry documents on board. If the carrier does not comply with this obligation, it is liable to pay the fine.

## **5. Carrier's diligence/good faith**

In practice, the administrative fine is not levied when the alien without valid entry documents has been hiding in a sealed lorry/container transported by a sea carrier. In these cases, the carrier's good faith is presumed.

## **6. Carriers' liability applies also when asylum seekers are involved?**

The carrier is exempted from the obligation of bringing back the alien when he/she is an asylum seeker. Nothing is said as far as the imposition of the administrative fine is concerned.

## **7. Carriers' liability only refers to aliens without valid entry documents arriving from outside the Schengen area?**

NO, it applies in any case.

## **8. Further information**

The carrier is obliged to bring the alien without valid entry documents back to the country where he/she was coming from, or to the country which had issued a travel document. In practice, the alien without valid entry documents is always deported to the country where he/she was coming from.

# LUXEMBOURG

Member Agency Caritas  
Contact person Agnès Rausch

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## 1. Legal basis for carriers' liability

1995 Aliens Act (Lois sur l'entrée et le séjour des étrangers, 18 août 1995)
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## 2. To what carriers does it apply?

law*	YES	practice**	YES
Air	✓	Air	
Land		Land	
Sea		Sea	

\* The only carriers taken into consideration by the law are the airlines ('entreprises de transport aérien').

\*\* It seems that these sanctions have never been implemented.

## 3. What is the sanction?

An administrative fine? YES

The covering of all costs incurred as the result of transporting inadmissible passengers? YES (housing, health care, etc.), but jointly with the passenger.

Deportation costs? YES

## 4. The diligence requirement

The fine is not levied if the passenger showed the requested documents when checking in, or if the documents did not have any manifest irregularity.

## **5. Country of deportation**

The carrier has to transport the alien without valid entry documents to the country where he/she embarked or to any other country where he/she can be admitted.

## **6. Carriers' liability applies also when asylum seekers are involved?**

YES, but there are special provisions.

The fine is not levied if the alien without valid entry documents is an asylum seeker and the asylum application has not been declared inadmissible or manifestly ill-founded.

## **7. Carriers' liability only refers to aliens without valid entry documents arriving from outside the Schengen area?**

NO, it applies in any case.

# THE NETHERLANDS

Member Agency Dutch Refugee Council

Contact person Mr. Marshel

## 1. Legal basis for carriers' liability

Guidelines adopted in 1994 to implement Art.6 of the Aliens Law
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## 2. To what carriers does it apply?

law	YES	practice	YES
Air	✓	Air	✓
Land		Land	
Sea	✓	Sea	✓

## 3. What is the sanction?

An administrative fine? YES

The covering of all costs incurred as the result of transporting inadmissible passengers? NO

Deportation costs? YES

## 4. Carriers' liability applies also when asylum seekers are involved?

YES, but there are special provisions.

The fine is not levied when the airlines transport asylum seekers from countries where UNHCR is not present. In these cases, the airlines should contact the Ministry of Justice before arrival.

## 7. Carriers' liability only refers to aliens without valid entry documents arriving from outside the Schengen area?

NO, it applies in any case.

# NORWAY

Member Agency Norwegian Refugee Council

Contact person

## 1. Legal basis for carriers' liability

The law which is currently in force is about to be amended
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## 2. To what carriers does it apply?

law	YES	practice	YES
Air	✓	Air	✓
Land	✓	Land	✓
Sea	✓	Sea	✓

## 3. What is the sanction?

An administrative fine? YES

The covering of all costs incurred as the result of transporting inadmissible passengers? NO

Deportation costs? YES

## 4. Carriers' liability applies also when asylum seekers are involved?

There is no special provision in the law.

## 5. Carriers' liability only refers to aliens without valid entry documents arriving from outside the Schengen area?

NO, it applies in any case.

# PORTUGAL

Member Agency Portuguese Refugee Council  
Contact person Rita Nogueira Ramos

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## 1. Legal basis for carriers' liability

Decree No. 20044 (8 August 1988)

## 2. To what carriers does it apply?

law	YES	practice	YES
Air	✓	Air	✓
Land	✓	Land	
Sea	✓	Sea	✓

## 3. What is the sanction?

An administrative fine? YES

Please note that the fine is levied by the administrative authorities, but appeals against it are dealt with by lower criminal courts.

The covering of all costs incurred as the result of transporting inadmissible passengers? YES

Deportation costs? YES

## 4. Carriers' liability applies also when asylum seekers are involved?

YES

## 5. Carriers' diligence

It seems that carriers are charged only in cases where serious negligence is proven.

# SPAIN

Member Agency    CEAR  
Contact person    Jorge Canarias

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## 1. Legal basis for carriers' liability

State Ports and Merchant Shipping Act (Ley 27/1992, de Puertos del Estado y de la Marina Mercante)
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## 2. To what carriers does it apply?

law	YES	practice	YES
Air		Air	
Land		Land	
Sea	✓	Sea	✓

## 3. What is the sanction?

An administrative fine?            YES    Fines have been imposed on shipping companies only when a stowaway escapes from the ship

The covering of all costs incurred as the result of transporting inadmissible passengers?            NO

Deportation costs?            YES

## 4. Carriers' liability applies also when asylum seekers are involved?

There is no special provision in the law.

## 5. Carriers' liability only refers to aliens without valid entry documents arriving from outside the Schengen area?

NO, it applies in any case.



## **6. Further information**

Even if it is a party to the Schengen Agreements, Spain has not established any system of carriers' liability under those Agreements yet.

The legislation currently in force was adopted prior to the entry into force of the Schengen Agreements and, apart from the case of sea carriers, it does not establish any legal framework for carriers' liability.

# SWEDEN

Member Agency Swedish Refugee Council

Contact person Karin Hammerskjold

## 1. Legal basis for carriers' liability

Aliens Act 1989

## 2. To what carriers does it apply?

law	YES	practice	YES
Air	✓	Air	
Land		Land	
Sea	✓	Sea	

## 3. What is the sanction?

An administrative fine? YES The Police may impose fines when the carriers refuses to take responsibility for the return of an inadmissible passenger.

The covering of all costs incurred as the result of transporting inadmissible passengers? NO

Deportation costs? YES

## 4. Carriers' liability applies also when asylum seekers are involved?

NO

## 5. Carriers' liability only refers to aliens without valid entry documents arriving from outside the Schengen area?

NO, it applies in any case.

# SWITZERLAND

Member Agency OSAR  
Contact person Jürg Schertenleib

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## 1. Legal basis for carriers' liability

There is no law providing for carriers' liability. According to some newspaper articles published recently, it seems that the government will take some steps on this matter.

# UNITED KINGDOM

Member Agency British Refugee Council

Contact person Richard Lumley

## 1. Legal basis for carriers' liability

Carriers' liability Act 1987, as amended

## 2. To what carriers does it apply?

law	YES	practice	YES
Air	✓	Air	✓
Land (Channel)	✓	Land (Channel)	✓
Sea	✓	Sea	✓

## 3. What is the sanction?

An administrative fine? YES

The covering of all costs incurred as the result of transporting inadmissible passengers? YES

Deportation costs? YES

## 4. Carriers' liability applies also when asylum seekers are involved?

YES

## 5. Further information

Immigration officials may be stationed at airports abroad, to advice airlines whether passports and visas are genuine. There is evidence that people have been turned back from check-in desks and not permitted to fly to the UK. There have also been instances when airlines refused to let people off planes in the UK, on some occasions with the connivance of immigration officers, so that they could not apply to enter and therefore the airline would not be fined.

# SUMMARY

## **Legislation on carriers' liability**

All the States parties to the Schengen Convention and those who have concluded a parallel Convention (Norway and Iceland) have introduced legislation setting up a system of carriers' liability.

Among the States who do not apply either the Schengen agreements or the parallel agreement, the UK is the only one to have a legislation on carriers' liability. Ireland and Switzerland are the only States with no carriers' liability legislation, but both have policy intentions in that regard.

## **Definition of a carrier**

According to the Schengen Convention, a 'carrier' is defined as: 'any natural or legal person whose occupation is to provide passenger transport by air, sea or land.' The definition of a carrier applied by the Schengen States, either in the law or in practice, is consistent with this provision.

## **Obligation to take charge of returning the alien**

Under Art.26, para. 1 a) of the Schengen Convention, States shall introduce in their domestic legislation provisions ensuring that the carrier which has brought an alien who is refused entry into the territory of one of the contracting parties returns the alien without delay. The obligation should apply to any sort of carrier (air, land, sea) and to the return towards a non-Schengen State.

National legislations are not homogeneous in this respect. Some of them impose the obligation to take responsibility for the return just on air carriers (France, Greece, Luxembourg), and most of them do so in practice.

In no national legislation, apart from the Finnish Penal Code, is a distinction made between carriers coming from within the Schengen area and those coming from outside.

In the States' practice, the carrier returns the alien without valid travel documents to the State from which he/she was transported. It should be noted, however, that the Schengen Convention lists, among the non-Schengen States to which the alien shall be returned, the State from which the alien was transported, the State which issued the travel document on which the alien travelled, and any other non-Schengen State to which the alien is guaranteed entry.

## **Penalties for transporting aliens without the necessary travel documents**

Under Art.26, para.2 and 3 of the Schengen Convention, the contracting parties undertake to impose penalties on carriers transporting aliens who do not possess the

necessary travel documents. The obligation refers to air and sea carriers, as well as to international coaches.

All the States having a legislation on carriers' liability provide for such penalties, in the form of a fine.

Some States (Belgium, Luxembourg, Portugal, UK) provide for a further penalty: the carrier must assume all the costs arising from the alien's presence on the territory (it must cover detention costs -if any-, accommodation, health care, and so on).

### **Exceptions to carriers' liability when asylum seekers are involved**

Sometimes, the law establishes an exception to carriers' liability when asylum seekers are involved (Belgium, Finland, France, Germany, Luxembourg). In these cases, the fine is suspended until the asylum request is declared admissible (Belgium, France, Luxembourg) or until the alien is given a positive status (Finland, Germany).

### **Implementation of carriers' liability provisions**

It seems that fines to land carriers are hardly ever levied.

### **The smuggling of illegal immigrants**

All the monitored States (also those not having a legislation on carriers' liability) have adopted criminal provisions applying to the smuggling of illegal immigrants.

### States who have ratified the Schengen Agreements

	<b>Schengen Conventions (Schengen Agreement of 14 June 1985; 1990 Convention applying the Schengen Agreement of 14 June 1985)</b>	<b>Parallel Agreements to the Schengen Conventions (Luxembourg, 19 December 1996)</b>
<b>Austria</b>	YES	
<b>Belgium</b>	YES	
<b>Denmark</b>	YES	
<b>Finland</b>	YES	
<b>France</b>	YES	
<b>Germany</b>	YES	
<b>Greece</b>	YES	
<b>Iceland</b>	NO	YES
<b>Ireland</b>	NO	NO
<b>Italy</b>	YES	
<b>The Netherlands</b>	YES	
<b>Norway</b>	NO	YES
<b>Portugal</b>	YES	
<b>Spain</b>	YES	
<b>Sweden</b>	YES	
<b>Switzerland</b>	NO	NO
<b>United Kingdom</b>	NO	NO

**CONVENTION  
APPLYING THE SCHENGEN AGREEMENT OF 14 JUNE 1985**

**EXTRACTS**

**Chapter 6 - Measures relating to organised travel**

**Art.26**

1. Subject to the obligations arising out of their accession to the Geneva Convention of 28 July 1951 relating to the Status of Refugees, as amended by the New York Protocol of 31 January 1967, the Contracting Parties undertake to incorporate the following rules in their national legislation:
  - a) If an alien is refused entry into the territory of one of the Contracting Parties the carrier which brought him to the external border by air, sea or land shall be obliged to assume responsibility for him again without delay. At the request of the border surveillance authorities the carrier must return the alien to the Third State from which he was transported , to the Third State which issued the travel document on which he travelled or to any other Third State to which he is guaranteed entry.
  - b) The carrier shall be obliged to take all necessary measures to ensure that an alien carried by air or sea is in possession of the travel documents required for entry into the territory of the Contracting Parties.
2. The Contracting Parties undertake, subject to the obligations arising out of their accession to the Geneva Convention of 28 July 1951 relating to the Status of Refugees, as amended by the New York Protocol of 31 January 1967, and in accordance with their constitutional law, to impose penalties on carriers who transport aliens who do not possess the necessary travel documents by air or sea from a Third State to their territories.
3. Paragraph 1(b) and paragraph 2 shall also apply to carriers of groups by coach over international road links, with the exception of border traffic.

**Art.27**

1. The Contracting Parties undertake to impose appropriate penalties on any persons who, for purposes of gain, assists or tries to assist an alien to enter or reside within the territory of one of the Contracting Parties contrary to the laws of that Contracting Party on the entry and residence of aliens.
2. If a Contracting Party is informed of the facts referred to in paragraph 1 which constitute an infringement of the legislation of another Contracting Party, it shall inform the latter accordingly.
3. Any Contracting Party which requests another Contracting Party to prosecute, on the grounds of the infringement of its own legislation, offences such as those referred to in paragraph 1, must specify, by means of an official denunciation or a certificate from the competent authorities, the provisions of law which have been infringed.



## TREATY OF AMSTERDAM

### EXTRACTS

#### **Article 73i**

In order to establish progressively an area of freedom, security and justice, the Council shall adopt:

(a) within a period of five years after the entry into force of the Treaty of Amsterdam, measures aimed at ensuring the free movement of persons in accordance with Article 7a, in conjunction with directly related flanking measures with respect to external border controls, asylum and immigration, in accordance with the provisions of Article 73j(2) and (3) and Article 73k(1)(a) and (2)(a), and measures to prevent and combat crime in accordance with the provisions of Article K.3(e) of the Treaty on European Union;

(b) other measures in the fields of asylum, immigration and safeguarding the rights of nationals of third countries, in accordance with the provisions of Article 73k;

[...]

#### **Article 73j**

The Council, acting in accordance with the procedure referred to in Article 73o, shall, within a period of five years after the entry into force of the Treaty of Amsterdam, adopt:

(1) measures with a view to ensuring, in compliance with Article 7a, the absence of any controls on persons, be they citizens of the Union or nationals of third countries, when crossing internal borders;

(2) measures on the crossing of the external borders of the Member States which shall establish:

(a) standards and procedures to be followed by Member States in carrying out checks on persons at such borders;

(b) rules on visas for intended stays of no more than three months, including:

(i) the list of third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement;

(ii) the procedures and conditions for issuing visas by Member States;

(iii) a uniform format for visas;

(iv) rules on a uniform visa;

(3) measures setting out the conditions under which nationals of third countries shall have the freedom to travel within the territory of the Member States during a period of no more than three months.

**PROTOCOL  
INTEGRATING THE SCHENGEN ACQUIS INTO THE  
FRAMEWORK OF THE EUROPEAN UNION**

THE HIGH CONTRACTING PARTIES,

NOTING that the Agreements on the gradual abolition of checks at common borders signed by some Member States of the European Union in Schengen on 14 June 1985 and on 19 June 1990, as well as related agreements and the rules adopted on the basis of these agreements, are aimed at enhancing European integration and, in particular, at enabling the European Union to develop more rapidly into an area of freedom, security and justice,

DESIRING to incorporate the above-mentioned agreements and rules into the framework of the European Union,

CONFIRMING that the provisions of the Schengen acquis are applicable only if and as far as they are compatible with the European Union and Community law,

TAKING INTO ACCOUNT the special position of Denmark,

TAKING INTO ACCOUNT the fact that Ireland and the United Kingdom of Great Britain and Northern Ireland are not parties to and have not signed the above-mentioned agreements; that provision should, however, be made to allow those Member States to accept some or all of the provisions thereof,

RECOGNISING that, as a consequence, it is necessary to make use of the provisions of the Treaty on European Union and of the Treaty establishing the European Community concerning closer cooperation between some Member States and that those provisions should only be used as a last resort,

TAKING INTO ACCOUNT the need to maintain a special relationship with the Republic of Iceland and the Kingdom of Norway, both States having confirmed their intention to become bound by the provisions mentioned above, on the basis of the Agreement signed in Luxembourg on 19 December 1996,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty establishing the European Community,

**ARTICLE 1**

The Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Finland and the Kingdom of Sweden, signatories to the Schengen agreements, are authorised to

establish closer cooperation among themselves within the scope of those agreements and related provisions, as they are listed in the Annex to this Protocol, hereinafter referred to as the "Schengen acquis". This cooperation shall be conducted within the institutional and legal framework of the European Union and with respect for the relevant provisions of the Treaty on European Union and of the Treaty establishing the European Community.

## ARTICLE 2

1. From the date of entry into force of the Treaty of Amsterdam, the Schengen acquis, including the decisions of the Executive Committee established by the Schengen agreements which have been adopted before this date, shall immediately apply to the thirteen Member States referred to in Article 1, without prejudice to the provisions of paragraph 2 of this Article. From the same date, the Council will substitute itself for the said Executive Committee.

The Council, acting by the unanimity of its Members referred to in Article 1, shall take any measure necessary for the implementation of this paragraph. The Council, acting unanimously, shall determine, in conformity with the relevant provisions of the Treaties, the legal basis for each of the provisions or decisions which constitute the Schengen acquis.

With regard to such provisions and decisions and in accordance with that determination, the Court of Justice of the European Communities shall exercise the powers conferred upon it by the relevant applicable provisions of the Treaties. In any event, the Court of Justice shall have no jurisdiction on measures or decisions relating to the maintenance of law and order and the safeguarding of internal security.

As long as the measures referred to above have not been taken and without prejudice to Article 5(2), the provisions or decisions which constitute the Schengen acquis shall be regarded as acts based on Title VI of the Treaty on European Union.

2. The provisions of paragraph 1 shall apply to the Member States which have signed accession protocols to the Schengen agreements, from the dates decided by the Council, acting with the unanimity of its Members mentioned in Article 1, unless the conditions for the accession of any of those States to the Schengen acquis are met before the date of the entry into force of the Treaty of Amsterdam.

## ARTICLE 3

Following the determination referred to in Article 2(1), second subparagraph, Denmark shall maintain the same rights and obligations in relation to the other signatories to the Schengen agreements, as before the said determination with regard to those parts of the Schengen acquis that are determined to have a legal basis in Title III a of the Treaty establishing the European Community.

With regard to those parts of the Schengen acquis that are determined to have legal base in Title VI of the Treaty on European Union, Denmark shall continue to have the same rights and obligations as the other signatories to the Schengen agreements.

#### ARTICLE 4

Ireland and the United Kingdom of Great Britain and Northern Ireland, which are not bound by the Schengen acquis, may at any time request to take part in some or all of the provisions of this acquis.

The Council shall decide on the request with the unanimity of its members referred to in Article 1 and of the representative of the Government of the State concerned.

#### ARTICLE 5

1. Proposals and initiatives to build upon the Schengen acquis shall be subject to the relevant provisions of the Treaties.

In this context, where either Ireland or the United Kingdom or both have not notified the President of the Council in writing within a reasonable period that they wish to take part, the authorisation referred to in Article 5a of the Treaty establishing the European Community or Article K.12 of the Treaty on European Union shall be deemed to have been granted to the Members States referred to in Article 1 and to Ireland or the United Kingdom where either of them wishes to take part in the areas of cooperation in question.

2. The relevant provisions of the Treaties referred to in the first subparagraph of paragraph 1 shall apply even if the Council has not adopted the measures referred to in Article 2(1), second subparagraph.

#### ARTICLE 6

The Republic of Iceland and the Kingdom of Norway shall be associated with the implementation of the Schengen acquis and its further development on the basis of the Agreement signed in Luxembourg on 19 December 1996. Appropriate procedures shall be agreed to that effect in an Agreement to be concluded with those States by the Council, acting by the unanimity of its Members mentioned in Article 1. Such Agreement shall include provisions on the contribution of Iceland and Norway to any financial consequences resulting from the implementation of this Protocol.

A separate Agreement shall be concluded with Iceland and Norway by the Council, acting unanimously, for the establishment of rights and obligations between Ireland and the United Kingdom of Great Britain and Northern Ireland on the one hand, and Iceland and Norway on the other, in domains of the Schengen acquis which apply to these States.

#### ARTICLE 7

The Council shall, acting by a qualified majority, adopt the detailed arrangements for the integration of the Schengen Secretariat into the General Secretariat of the Council.

#### ARTICLE 8

For the purposes of the negotiations for the admission of new Member States into the European Union, the Schengen acquis and further measures taken by the institutions within its scope shall be regarded as an acquis which must be accepted in full by all States candidates for admission.

## **ANNEX**

### **SCHENGEN ACQUIS**

1. The Agreement, signed in Schengen on 14 June 1985, between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders.

2. The Convention, signed in Schengen on 19 June 1990, between the Kingdom of Belgium, the Federal Republic of Germany, the French Republic, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands, implementing the Agreement on the gradual abolition of checks at their common borders, signed in Schengen on 14 June 1985, with related Final Act and common declarations.

3. The Accession Protocols and Agreements to the 1985 Agreement and the 1990 Implementation Convention with Italy (signed in Paris on 27 November 1990), Spain and Portugal (signed in Bonn on 25 June 1991), Greece (signed in Madrid on 6 November 1992), Austria (signed in Brussels on 28 April 1995) and Denmark, Finland and Sweden (signed in Luxembourg on 19 December 1996), with related Final Acts and declarations.

4. Decisions and declarations adopted by the Executive Committee established by the 1990 Implementation Convention, as well as acts adopted for the implementation of the Convention by the organs upon which the Executive Committee has conferred decision making powers.

### **ANNEX 9 TO THE 1944 CHICAGO CONVENTION ON INTERNATIONAL CIVIL AVIATION**

#### **Standard 3.37.1**

“Contracting States shall not fine operators in the event that passengers are found inadmissible, unless there is evidence to suggest that the carrier was negligent in taking precautions to the end that the passengers complied with the documentary requirements for entry into the receiving State”.

#### **Standard 3.36**

A note is attached to Standard 3.36, which provides for the repatriation of inadmissible passengers, specifying that the contents of this provision are not “to be constructed so as to allow the return of a person seeking asylum in the territory of a Contracting State, to a country where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion”.