



**Ad-Hoc Query on the recovery of costs for overnight stays to airline companies**

**Requested by FR EMN NCP on 22<sup>nd</sup> January 2015**

**Reply requested by 19<sup>th</sup> February 2015**

**Responses from Austria, Belgium, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom plus Croatia and Norway (20 in Total)**

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**1. Background Information**

The Sub-directorate for the Fight against Illegal Immigration which is part of the General Directorate for Foreign Nationals in France is currently reflecting on the implementation of article L.213-6 of the Code of Entry and Residence of Foreigners and the Right for Asylum (Code d'entrée et du séjour des étrangers et du droit d'asile - CESEDA) that gives the possibility to charge airline companies for the overnight stays of non-admitted individuals who have been disembarked at the Roissy Charles de Gaulle Airport and maintained within the "waiting area for persons awaiting

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removal”. In this context, the Sub-directorate for the Fight against Illegal Immigration would like to have some feedback on European practice and experience.

For this purpose we would like to ask you the following questions:

1. What is the current practice in your country regarding the recovery of costs for overnight stays to the different airline companies that disembark non-admitted individuals within the “waiting area for persons awaiting removal”?
2. What kind of contentious procedures are there between your country and the airline companies disembarking non-admitted individuals placed in a “waiting area for persons awaiting removal”? How do you deal with these disputes?

We would appreciate to have your responses by **Thursday, 19<sup>th</sup> February 2015**.

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







		Wider Dissemination? <sup>2</sup>	
	<b>Austria</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>1. In accordance with Art. 113 para. 4 Aliens Police Act, carriers, which did not fulfill their obligations, have to reimburse the costs, which arise in connection with a rejection at the border of a foreigner. This includes particularly the costs, which arise for accommodation, subsistence and possible medical care. Carriers who have met their obligations (e.g. return transport in case of rejection at the border) are not liable to pay compensation. Those costs are borne by the Federal Ministry of the Interior.</li> <li>2. In this regard, there are no contentious procedures. There are only pending proceedings at the Provincial Administrative Courts in connection with the sanctions against carriers within the meaning of Art. 112 Aliens Police Act.</li> </ol> <p>Source: Federal Ministry of the Interior</p>
	<b>Belgium</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>1. If the Immigration Office refuses the entry to a person, this person is brought to a detention center that by Royal Decree is equal to a place situated at the border. In only exceptional cases (e.g. when is flight is possible within a couple of hours), the person remains in the transit area. Airlines are responsible for the costs of these persons as foreseen in the Convention of Civil Aviation (Chicago), i.e. in case of the use of clearly forged documents or no documents. If the forgery is not evident, or the person has been</li> </ol>

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			<p>refused for not having fulfilled the other entry conditions (unclear travel reasons, <u>not enough means of existence</u>, SIS, ...), no charges are asked to the airlines. Then the only cost for them is the costs of the return. The airline company can be charged an administrative fine – based on a report from a police officer - between 2.000 and 5.000 Euro (depending if a protocol agreement with the Immigration Office has been concluded or not) plus the detention costs of 186 Euro a day. Two different invoices will be made in this case.</p> <p>2. Against the administrative fine an appeal is possible at the Court of First Instance; against the fine (invoice) for the detention cost no appeal or dispute is possible.</p>
	<b>Bulgaria</b>	<b>Yes</b>	
	<b>Cyprus</b>	<b>Yes</b>	
	<b>Czech Republic</b>	<b>Yes</b>	<p>1. The recovery of costs for overnight stays of non-admitted individuals (who are in the area for persons awaiting removal) are covered by the airline companies according to Article 104 (5) of the Act No. 326/1999 Coll., on the residence of foreigners in the territory of the Czech Republic.</p> <p>2. At present we are not aware of any proceeding conducted against the Czech Republic.</p>
	<b>Denmark</b>	<b>Yes</b>	
	<b>Estonia</b>	<b>Yes</b>	<p>1. Estonia does not have this kind of cases in practice.</p> <p>2. N/A.</p>
	<b>Finland</b>	<b>Yes</b>	<p>1. The carriers' liability to cover the costs of the return transport is prescribed in the Finnish Aliens Act (301/2004), section 176. If an alien who has been refused entry does not have funds for his or her return journey, the carrier is obliged to arrange his or her transport at its own cost. If immediate transport is not feasible, the carrier also bears any costs that arise from the alien's stay.</p> <p>If an alien has stayed in the country after disembarking from a vehicle without the required travel document, visa, residence permit or funds sufficient for his or her residence in the country, the carrier is obliged to reimburse any costs incurred by the State as a result of the alien's residence and refusal of entry. If the alien has stayed in the country after disembarking from a vessel, the master of the vessel, the shipowner and the shipping agent used by the shipowner are jointly and severally liable for the compensation.</p> <p>2. The obligation for airlines to cover the cost of the return is prescribed in the Finnish Aliens Act. The airlines have adopted this requirement and are aware of it. The Border Guard has continuous cooperation and regular meetings with the airlines in order to ensure that the airlines have proper knowledge about their responsibilities deriving from immigration legislation.</p>



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	<b>France</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>1. The Ministry of Interior relaunched a discussion on this practice so that article L. 213-6 of the Code of Entry and Residence of Foreigners and the Right for Asylum could be implemented again as it was not implemented anymore since December 2007 (see above "Background Information").</li> <li>2. The reactivation of the whole process of invoicing to the airline companies for the costs of overnight stays by the French state will inevitably lead the Ministry of Interior's administration to a contentious procedure with the concerned airline companies that will probably dispute the validity of this measure.</li> </ol>
	<b>Germany</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>1. According to German law, the airline is legally obligated to pay for several expenses caused by the non-admittance of the individual (article 64, 66 section 3, 67 section 3 line 2 Alien's Act "Aufenthaltsgesetz"). This includes possible costs for overnight stays.</li> <li>2. As there is a clear legal provision, there is no need for a specific "contentious procedure". Instead, the general rules for administrative action apply. This includes objection ("Widerspruch") and proceedings in front of the administrative courts.</li> </ol>
	<b>Greece</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>1. According to Law 4251/2014 "Code of Migration and Social Integration and other provisions" article 3, the airline companies that carry persons who don't fulfil all the requirements for their entry into the country, are obliged to cover all the living expenses of persons awaiting removal (food, staying expenses, medicine etc).</li> <li>2. There are no disputes between the Greek state and the airline companies since there is the above mentioned explicit legal provision that provides for the obligation of the airline companies to cover all the living expenses of such persons.</li> </ol>
	<b>Hungary</b>	<b>Yes</b>	1-2. According to the Hungarian practice the airline companies disembarking non-admitted individuals placed in a "waiting area for persons awaiting removal" must recover the costs of the overnight stays of these individuals to the authority which provides food and accommodation to them while waiting to be returned (for maximum 8 days) based on the invoice sent to the concerned airline company, as well as the concerned airline company must return the individuals free of charge or cover the costs of their return.
	<b>Ireland</b>	<b>Yes</b>	
	<b>Italy</b>	<b>Yes</b>	
	<b>Latvia</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>1. The current practice of the Republic of Latvia in case of disembarkation of inadmissible foreigners is the following: <ul style="list-style-type: none"> <li>- If a foreigner is delivered by airlines and does not have the right for entry, the State Border Guard without delay notify the aircraft operator on inadmissible person found and make consultations on removal of a foreigner under the ICAO Convention. The provisions of Immigration Law defines that in case if it is not possible to return inadmissible foreigner immediately back to the country he or she has arrived from, it is possible to detain this foreigner until it is possible to remove him/her, but no longer than for 48 hours.</li> <li>- In case if it is not possible to remove the foreigner within 48 hours the return procedure with regard to this foreigner is initiated.</li> </ul> </li> </ol> <p>In accordance with Regulation of the Cabinet of Ministers 894 adopted on 22 November 2011 "<i>Procedures for Determining and Recovering of Expenses, which have arisen due to the Forced Return, Detention and Holding under Temporary Custody of a Foreigner or Returning of a Foreigner to the Country, which Takes the Person back</i>", the expenses related with forced return, detention and holding</p>







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			<p>under temporary custody of a foreigner shall be recovered from the carrier. The Regulation prescribes the procedures by which the expenses shall be determined. The State Border Guard issue a decision on recovery of expenses from the carrier.</p> <p>An air carrier is also penalized by imposing an administrative sanction for carriage of foreigners who do not have the necessary travel documents. Article 114.<sup>2</sup> of <b>Administrative Violations Code</b> defines that an administrative fine of the amount from 3000 and up to 5000 Euro shall be imposed on the carrier, who brought a foreigner without travel documentation on the territory of the Republic of Latvia.</p> <p>2. The Court solves the disputes between the State Border Guard and the air carrier.</p> <p>The judgment of ECJ in case C-575/12 of air carrier Air Baltic Corporation AS vs State Border Guard was taken on 4 September 2014. The request has been made in proceedings between Air Baltic Corporation AS (‘Air Baltic’), an airline company, and State Border Guard concerning the border control authorities’ decision to impose an administrative fine on Air Baltic for transporting to Latvia a person who did not have the travel documents necessary to cross the border. The substance of the case was the following: Air Baltic delivered third-country nationals, who were a subject to a visa requirement for entry to the territory of the European Union and who at the time on border checks at the external border presented a valid visa contained in an invalid travel document and a valid travel document containing no visa. Air Baltic was penalized by the State Border Guard with the administrative fines for delivery of these foreigners, as they were considered by the State Border Guard as inadmissible persons and refused their entry.</p>
	<b>Lithuania</b>	<b>Yes</b>	<p>1. If the foreigner does not fulfil the entry conditions for third-country nationals laid down in Article 5 of the Schengen Borders Code, entry to the territory of the Republic of Lithuania is refused. An officer of the State Border Guard Service (SBGS) (senior officer on duty) takes the decision on the refusal of entry and fills in the Standard form for refusal of entry at the border as laid down in Part B of the Annex 5 of the Schengen Borders Code. The actions of the carrier who has brought the passenger without valid documents are laid down in the Article 5 of the Schengen Border Code and in the Practical Handbook for Border Guards (Schengen Handbook). The responsibilities of the carrier carrying foreigners are also laid down in the Article 19 of the Republic of Lithuania Law on Fundamentals of Transport Activities (Žin., 1991, Nr. 30-804).</p> <p>In practice, the foreigner is returned on the same flight back, that is, s/he waits in the transit zone. If the foreigner has to wait for the flight for a longer period of time, s/he is brought to the detention facility which is in the zone of limited access, that is, the foreigner does not access the territory of the Republic of Lithuania. At the detention facilities the foreigner awaits the next flight in the area for refused persons which has the basic facilities (a bed, a table, a chair, a wardrobe, a shower, a sink and a bathroom). If the foreigner has to wait for more than 6 hours, the officers provide her/him with food (give a dried food supply package) or the carrier provides food.</p> <p>2. There have never been any disputes between the officers and the carriers as the SBGS has never applied to recover the costs.</p>
	<b>Luxembourg</b>	<b>Yes</b>	<p>1. According to article 107 (1) of the amended law of 29 August 2008 on the free movement of persons and immigration an airline company which disembarks onto the territory a third-country national not in possession of a valid travel document and, where necessary, not in possession of the visa must escort him/her, or arrange for him/her to be escorted, to the country from</p>




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			<p>where he/she came or to any other country into which he/she may be admitted. The airline is also bound to pay the costs of stay, including healthcare expenses, and the costs of return of the person concerned (article 107 (3)).</p> <p>2. According to article 108 (2) the Grand-ducal police draws up a report of the non-compliance with the applicable rules. This report has to be notified to the airline company. Article 108 (3) allows the airline company to appeal seeking reversal of the decision of the Minister in charge of Immigration. Seen that the appeal does not have suspensive effect, the Luxembourg Registrar (l'Administration de l'enregistrement et des domaines) will proceed to collect the duties issuing an invoice. If the airline company challenges the invoice a contentious procedure is opened.</p>
	<b>Malta</b>	<b>Yes</b>	<p>1. Article 15(4) of the Immigration Act makes it possible for the Principal Immigration Officer to request the carrier to cover the costs 'of stay and return' of persons not accepted for entry. In practice this is not really an issue as the majority of the inadmissible passengers leave on the same flight.</p> <p>2. Any decision taken by the Principal Immigration Officer may be appealed before the Immigration Appeals Board.</p>
	<b>Netherlands</b>	<b>Yes</b>	<p>1. When an individual is found inadmissible, and an immediate return flight is not available and when overnight stay is required, the inadmissible will be brought to the 'lounge' (international zone after first passport control) of Schiphol airport. The inadmissible is free to stay in the 'lounge' until his return flight. In general, for staying in the lounge no costs are recovered from airlines. The only costs that can be recovered in this situation are costs that are made when escorts were deemed necessary due to e.g. aggressive behaviour etc.</p> <p>In other situations (e.g. when an individual needs to be brought to a detention centre) when the individual has stayed in a detention centre and has eventually returned, certain costs for staying in a detention centre can be recovered.</p> <p>2. Airlines may appeal any decision to recover costs.</p>
	<b>Poland</b>	<b>Yes</b>	
	<b>Portugal</b>	<b>Yes</b>	
	<b>Romania</b>	<b>Yes</b>	
	<b>Slovak Republic</b>	<b>Yes</b>	<p>1. National legislation of the Slovak Republic regulates obligations of the carrier as follows: The carrier transporting persons to the territory of the Slovak Republic through the external air or water border and the carrier transporting persons within regular international bus lines except for border traffic, must not transport to the border crossing a third country national without a valid travel document including visa, if required. The visa can be substituted with a residence permit according to the special regulation.</p> <p>The carrier which transported a third country national to the border crossing is obliged not later than 24 hours from the arrival or within the period as specified upon the agreement with the police department to transport him/her back to the country which he/she was transported from, to the country which issued the travel document he/she travelled with or to any other country where his/her admission is arranged if:</p>


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			<p>third country national was refused entry to the Slovak Republic; the third country national transited the territory of the Slovak Republic and authorities of other country refused his/her entry to their territory and returned him/her to the territory of the Slovak Republic; other carrier that should have transported the third country national to other country refused the transport.</p> <p>If the carrier cannot fulfil the abovementioned obligations, according to the national legislation the carrier is obliged to provide an alternative transportation of the third country national and bear the costs or if an alternative transportation is not possible, the carrier is obliged to cover costs associated with stay (accommodation) of the third country national and his/her return.</p> <p>This means that the carrier is obliged to bear the costs for transport for each traveller who was rejected entry to the territory of the Slovak Republic during his/her entire stay in the area for persons awaiting removal.</p> <p>2. The respective police department initiates administrative proceedings against the airline for each traveller who has not sufficient documents for the entry to the Slovak Republic and was transported by the carrier to the territory of the Slovak Republic and at the same time the airline is imposed from 3000 up to 5000 EUR fine for each transported traveller. The decision on imposition of administrative fine is delivered to the airline immediately. After the decision comes into force, the police department verifies whether the imposed fine has been settled by the airline. If the fine is not settled within the required time limit, the case is handled by the respective authority in order to collect the fine.</p>
	<b>Slovenia</b>	<b>Yes</b>	<p>1. In Republic of Slovenia practice is that in case of refusal of entry at the border crossing point based on responsibility of respective airline company (such as aliens without visa or valid visa, passport or valid passport) all recovery costs for overnight stays are reckoned to the airline company. The amount is same for all companies without difference. In all other cases (such as false passport/visa, no financial means, measures by the SIS, no founded reasons to enter and stay in territory, overstay, etc) all recovery costs for overnight stays are covered by the country through state budget. In cases when airline company is responsible to cover all costs the procedure for payment is laid down by the Alien Act based on which the Recovery Cost and Return Decision is issued. The amount is defined by the special so called "Service and Goods Tariff". Average recovery cost for person which is in the return process app. 16 hour is 330 EUR.</p> <p>More detail specifications of the recovery cost:          - 1 day of recovery cost : 21 EUR          - 1 hour (services done by the Police); 15,65 EUR + 22% VAT          - food&amp;drink costs are submitted to airline company on the spot.</p>
	<b>Spain</b>	<b>Yes</b>	<p>1. Costs are covered initially by the airport authority, who then recovers them from the airlines.</p> <p>2. None.</p>
	<b>Sweden</b>	<b>Yes</b>	<p>1. The relevant legal provisions of the Aliens Act (2005:716) are the following:          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</p>

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			<p>1 the cost of the alien's journey from Sweden,</p> <p>2 the travel cost from Sweden and back again for the supervisory personnel who need to accompany the alien and</p> <p>3 <b>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.</b></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</p> <p>1 the carrier shows that he or she had fair reason to assume that the alien was entitled to enter Sweden or</p> <p>2 it appears clearly unreasonable to demand reimbursement of the cost on account of the size of the cost or other grounds.</p> <p>Please note that it is only under these circumstances that the liability rests with the carrier:</p> <ul style="list-style-type: none"> <li>- Entry into Sweden from outside the Schengen area</li> <li>- The alien is not in the possession of a passport, permits required to enter the country or the funds for his or her journey home, no other grounds for refusal of entry are applicable for the liability to rest with the carrier.</li> <li>- The delay is due to the carrier.</li> </ul> <p>According to police authorities at Stockholm's Arlanda Airport (which is the major airport in Sweden for international flights) this appears to be a very minor problem currently. On average 1 to 2 passengers/aliens are in transit per week. Police authorities do not require carriers to reimburse costs.</p> <p>2. As stated above the phenomenon is of very minor occurrence. Carriers are not asked to reimburse costs; hence there are no reports on disputes over costs with carriers.</p>
	<p><b>United Kingdom</b></p>	<p><b>Yes</b></p>	<p>1. In practice carriers could receive demands for payment of detention expenses in two types of case:</p> <p>(a) <u>Passengers refused leave to enter</u></p> <p>The majority of cases will be passengers who arrive from abroad and failed to satisfy the Immigration Officer that they qualified for entry under the published Immigration Rules, and who are refused leave to enter. In such cases the Immigration Officer will serve a removal direction on the inbound carrier or their agents. The passenger may be detained by the Border and Immigration Agency or its agents as required, pending the outcome of any application for leave to enter. If the passenger is granted leave to enter the detention costs are borne by the Home Office. If they are refused leave to enter or refused Discretionary Leave, then any costs of detention or maintenance, up to a maximum of 14 days detention must be borne by the carrier under Schedule 2 to the Immigration Act 1971. If the carrier is not satisfied</p>




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			<p>that the passenger arrived on one of their vessels, they may take this up with the Immigration Officer at the time the Removal Directions are served. The carrying out of the removal directions illustrates that the carrier has accepted that the passenger arrived on one of their vessels, along with associated liabilities such as detention costs.</p> <p>(b) <u>Illegal entrants</u> Where a passenger gains entry in breach of the Immigration laws, by bypassing immigration controls, the inbound carrying company is liable for detention costs, up to a maximum of 14 days.</p> <p>The ability to recover costs from airlines is laid down in the Immigration Act (1971) and the Asylum and Immigration Act (1996):</p> <p>Paragraph 16 of Schedule 2 to the Immigration Act 1971 provides for the detention of passengers who are required to submit to further examination or passengers in respect of whom directions for removal may be given. Paragraphs 19 and 20 of Schedule 2 allow the Secretary of State to recover from carriers any expenses incurred in respect of the custody, accommodation and maintenance of such passengers.</p> <p>Paragraph 9 of Schedule 2 to the Asylum and Immigration Act 1996 amended the 1971 Act so as to limit the carrier's responsibility to any period of detention not exceeding 14 days.</p> <p>2. If the carrier was not satisfied that they carried the passenger, the matter should be raised with the Immigration Officer at the time the directions are served. The Detention Costs Recovery Unit will invoice the carrier or the agents identified on the removal directions as having brought the passenger to this country. Carriers should retain the removal directions to check against any invoices sent by Detention Costs Recovery Unit. If the carrier or their agents do not consider that they are liable for the charges as stated, the reasons should be given in writing within 14 days of the date of the invoice, to the address given on the invoice.</p> <p>The detention charges are reviewed annually and carriers are notified of any changes.</p>
	<p><b>Croatia</b></p>	<p><b>Yes</b></p>	<p>1. The Republic of Croatia has not prescribed the overnight stay cost coverage for the non-admitted foreigners. However, Art. 41, par. 2 of the Foreigners Act prescribes duties of carriers, i.e. a carrier who transports a foreigner whose entry was refused shall be obliged to take him away from the border crossing point or from the Republic of Croatia without any delay and to bear the cost of such transport, or if it would not be possible a carrier shall be obliged to find some other way of transportation and to bear the cost of such transportation. If some other way of transportation shall not be possible immediately, the carrier shall assume the costs incurred during residence and return of a foreigner. Art.225, par. 2 of the same Act prescribes a fine of HRK 23,000.00 per every transported foreigner if the carrier fails to assume the costs of foreigners' return.</p>

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			2. In practice, there were no cases of sort.
	Norway	Yes	<p>1. Our regulations are such that we can fine any airline which accepts passengers without a visa, as long as it is a flight that originated outside of Schengen. These fines are approximately 343 Euros per passenger. This is not possible if the flight originates within Schengen.</p> <p>When it comes to providing bed and breakfast, we usually use the Trandum Aliens Detention Center outside Oslo. If that is fully booked, then we use the Detention Center at the Lillestrøm Police station.</p> <p>We have never actually charged airlines with the costs of providing Bed and Breakfast, even though we do believe we could do so. This has just not been practiced in Norway.</p>

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