



Ad-Hoc Query on the National legal framework concerning the status of stowaways

Requested by BE EMN NCP on 11th December 2014

Compilation produced on 2nd February 2015

Responses from Austria, Belgium, Czech Republic, Finland, France, Germany, Latvia, Lithuania, Luxembourg, Netherlands, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, plus Norway (17 in Total)

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1. Background Information

The number of stowaways arriving in Belgium has dropped significantly over the years. Although it is methodological difficult to give exact numbers concerning stowaways, the Belgian Immigration Office reported that in 2005, 128 people were refused entry to the Schengen territory, as they did not comply with the entry requirements. In 2013 there were only 37 individuals. Among these, most are stowaways. Despite a high number of stowaways initially encountered by the Belgian authorities, it is not always clear what should happen upon their arrival. With this *EMN Ad Hoc Query* the Federal Migration Centre hopes to get a better understanding of the legal framework and practice in other European countries.

The Federal Migration Centre (full name: Federal Centre for the analysis of migration flows, the protection of fundamental rights of foreigners and the fight against trafficking in human beings) is an independent public body, which is legally mandated to analyze migration flows, to protect the human rights of migrants and to stimulate the fight against human trafficking and human smuggling. Since 2008, the Federal Migration Centre has been part of the Belgian contact point for the European Network on Migration. It is within its legal mandate that the Federal Migration Centre started working on the

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access to the territory through the external maritime borders. During its fruitful encounters with the relevant actors it encountered some legal questions concerning the disembarkation of stowaways.

Questions:


1. Does your national law foresee specific provisions on stowaways?
2. Is there systematic disembarkation of stowaways?
3. Does disembarkation only occur under specific circumstances? And, if so, which are these and how are these evaluated?
4. Which authority decides on the disembarkation of stowaways? On the basis of which legal provision?
5. What kind of decision is notified to the captain? What kind of decision is notified to the stowaway? Does it concern a refusal of entry, conform Annex V of the Schengenborderscode (Standard form for refusal of entry at the border) or/and a decisions on the disembarkation? How do the authorities inform the stowaway of its decision(s) and does he/she have the possibility to appeal these decisions (when different decisions are taken please specify which ones are subject to appeal)?
6. In the event of disembarkation of a stowaway, does he or she receive a decision to enter the territory? If not, which authority decides on the entry (or refusal thereof) to the territory of a disembarked stowaway? On the basis of which legal provisions?

We would very much appreciate your responses by **11th January 2015**.


2. Responses

		Wider Dissemination?	
	Austria	Yes	1. <i>Does your national law foresee specific provisions on stowaways?</i> There are hardly any specific provisions on stowaways. Austria has no maritime border with a third country or major shipping. At the national border to Hungary and Germany there are two lakes, but also here the issue is not particularly regulated. Thus, regular border control, aliens and asylum legislation would apply to such cases on trains, boats, airplanes or other vehicles.



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			<p>Austria acceded to the International Maritime Organisation's Convention on Facilitation of International Maritime Traffic, which includes standards and recommended practices for dealing with stowaways</p> <p>In the annex to article 1 of the civil aviation reporting ordinance (<i>Zivilluftfahrt-Meldeverordnung</i>), which lists incidents to be reported, the discovery of a stowaway is named under external security.</p> <p>2.-6. Not applicable.</p>
	Belgium	Yes	<p>1. <i>Does your national law foresee specific provisions on stowaways?</i></p> <p>Belgian national law on stowaways is dispersed over various legislative texts and mainly concerns rules on the formalities for a captain on whose ship a stowaway is found and on the penalties and costs that may be incurred by the captain, the ship owner and the stowaway.</p> <p>Article 18 of EU Regulation 562/2006 establishing the Schengen Borders Code read, in conjunction with Article 3.1.4 of Annex VI to that Regulation, provides that the Master of a ship must inform the authorities promptly, and if possible even before the ship enters port, of the presence on board of stowaways. The stowaway remains the responsibility of the Master of the ship.</p> <p><i>Article 2 of the Royal Decree of 11 April 2005 on the border control at the maritime border</i> determines in more detail that a list of stowaways on board must be sent to the authorities at least 24 hours before arrival in a Belgian port.</p> <p><i>Article 45 of the Law of 5 June 1928 revising the Disciplinary and Criminal Code for Merchant Shipping and Sea Fishing</i> makes it an offence for a captain who has knowledge of a stowaway not to immediately inform the federal police upon arrival in a Belgian port. The captain may hand over the stowaway to the police if the Belgian port is the ship's first port of call after discovery of the stowaway, but the police may force the stowaway to re-embark. Non-compliance may result in a fine (art.45bis).</p> <p><i>Article 46 of the same law</i> provides that captains may not allow stowaways to disembark without approval of the police. Again, a violation will be fined. If the stowaway is caught, he may be forced to re-embark or may be returned at the expense of the ship owner. <i>Article 44</i> provides that stowaways disembarking in a Belgian port will be punished with 8 days to 1 year in prison or with a fine. Persons aiding stowaways face the same penalty (in practice not enforced).</p> <p>Finally, under <i>Article 45bis</i>, the costs of maintenance and return of the stowaway must, in principle, be borne by the ship owner. A guarantee may be demanded from the ship owner. Non-compliance may, again, be fined.</p> <p>However, the law on Aliens of 15 December 1980, does not contain any provisions relating to the situation of stowaways.</p> <p>2. <i>Is there systematic disembarkation of stowaways?</i></p> <p>No, from the foregoing legislative framework, it is clear that Belgian law contains no obligation on the authorities to accept the disembarkation of a stowaway. In respect of the Geneva Convention of 1951 relating to the status of Refugees, stowaways who claim asylum are disembarked.</p> <p>3. <i>Does disembarkation only occur under specific circumstances? And, if so, which are they and how are these evaluated?</i></p> <p>Disembarkation only occurs under specific circumstances:</p> <ul style="list-style-type: none"> • Medical condition of the stowaway. • When the situation on board is of such a nature that it does not justify that the stowaway remains there (ex. hygiene). • For reasons of public order.


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			<ul style="list-style-type: none"> • When it concerns a minor: when a minor is detected on board, the Immigration Office and the Guardianship service will be informed. When there is a doubt about the minority, an age determination procedure will be conducted. While awaiting the age determination results, the stowaway remains on board. • When the stowaway wishes to file a request for asylum. In that case the procedure provided for in the Aliens Act of 15 December 1980 will be started: the stowaway should request asylum immediately when questioned about his or her motives to travel to Belgium. Disembarkation takes place after the ship owner has deposited a guarantee for the costs of maintenance and return; the stowaway will be detained in a location (detention center) close to the border according to Article 74/5 §1,2° of the Aliens Act. If the stowaway's asylum request is refused, he will be returned, either with the ship that had brought him to Belgium or otherwise at the expense of the ship owner. In the meantime, he will be detained according to Article 74/5 of the Aliens Act. <p>4. Which authority decides on the disembarkation of stowaways? On the basis of which legal provision? The Federal Police. In the execution of the articles 14 and 15 of the Schengen Borders code (Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders) and in execution of Annex VI (point 3.1.4. of the Schengen Borders Code). Legal basis:</p> <ul style="list-style-type: none"> • Royal Decree of 11 April 2005 on the border control at the maritime border • Law of 5 June 1928 revising the Disciplinary and Criminal Code for Merchant Shipping and Sea Fishing • Law of 3 May 1999 concerning the repartition of competences following the integration of the Maritime Police, Aviation Police and Railway Police in the Federal Police. <p>5. What kind of decision is notified to the captain? What kind of decision is notified to the stowaway? Does it concern a refusal of entry, conform Annex V of the Schengenborderscode (Standard form for refusal of entry at the border) or/and a decision on the disembarkation? How do the authorities inform the stowaway of its decision(s) and does he/she have the possibility to appeal these decision (when different decisions are taken please specify which ones are subject to appeal) ? The captain is notified a decision which either allows or forbids him to disembark the stowaway, and that confirms that the stowaway remains under the responsibility of the ship's captain (in accordance with Annex 6, point 3.1.4 of the Schengenborderscode). The decision is notified by the Police authorities. The stowaway does not receive any decision on his behalf.</p> <p>6. In the event of disembarkation of a stowaway, does he or she receive a decision to enter the territory? If not, which authority decides on the entry (or refusal thereof) to the territory of a disembarked stowaway? On the basis of which legal provisions? When the stowaway is disembarked and according to the specific situation, the Immigration office will take the necessary decisions: 'refusal of entry at the border' and a decision relating to his/her detention in a closed detention center. These decisions are delivered based upon the provisions in the Alien Law of 15 December 1980 (and following the application of the Schengenborderscode and can be appealed).</p>
	Czech Republic	Yes	Not applicable (inland country)


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	Finland	Yes	<p>1. Yes. Finnish national law on stowaways is in two legislative texts: Finnish Aliens Act (301/2004) and Criminal Code (39/1889). Aliens Act mainly concerns rules, similarly than in Belgium, on the formalities for a captain on whose ship a stowaway is found and on the penalties and costs that may be incurred by the captain or the ship owner (Aliens Act, chapter 11). In the Criminal Code there are rules concerning stowaways who enter to Finland without permit or without valid documents. In such cases person is suspected of Border Offence (Criminal Code chapter 17 section 7).</p> <p>Article 18 of EU Regulation 562/2006 establishing the Schengen Borders Code read, in conjunction with Article 3.1.4 of Annex VI to that Regulation, provides that the Master of a ship must inform the authorities promptly, and if possible even before the ship enters port, of the presence on board of stowaways. The stowaway remains the responsibility of the Master of the ship.</p> <p>2. No. Situation is same as in Belgium, Finnish law contains no obligation on the authorities to accept the disembarkation of a stowaway. In respect of the Geneva Convention of 1951 relating to the status of Refugees, stowaways who claim asylum are disembarked. NOTE: There have been only 1-3 cases of detected stowaways yearly in past ten years in Finland.</p> <p>3. Yes. Disembarkation only occurs under specific circumstances. Specific circumstances for disembarkation are same as introduced in Belgian answer. In case of seeking asylum, investigation will start by Border Guard (or police). In this investigation identity and route will be found out. Stowaway can be detained based on Aliens Act chapter 7 regulations (will be located mainly to detention center). There is also responsibility of carrier to care of the costs of return transport (Finnish Aliens Act, chapter 11, section 176). The Finnish Immigration Service conducts the primary asylum investigation and makes decisions concerning asylum, residence permit or refusal of entry.</p> <p>4. The Finnish Border Guard. Based in execution of Schengen Border Code. Competence of Border Guard in legislated in the Finnish Border Guard Act (578/2005).</p> <p>5. Situation in Finland is same than in Belgium. The captain is notified a decision which either allows or forbids him to disembark the stowaway, and that confirms that the stowaway remains under the responsibility of the ship's captain (in accordance with Annex 6, point 3.1.4 of the Schengen borders code). The decision is notified by the Border Guard (or police / customs when operating as border control authority). The stowaway does not receive any decision on his behalf.</p> <p>6. When the stowaway is disembarked according to the specific situation, Border Guard (or police) will take care of the investigation where identity and circumstances will be found out. The Finnish Border Guard (or police) makes decision concerning refusal of entry. Process of asylum investigation is introduced in answer 3.</p>
	France	Yes	<p>1. France is part of the FAL Convention (International Maritime Organization) that foresees, in principle, a disembarkation of stowaways at the first port when they are discovered. However it is up to the public authorities to decide whether there is disembarkation or not (norm 4.9.1). Still according to the FAL Convention, stowaways with valid travel documents should be allowed to disembark so that their return is the earliest possible effective (norm 4.9.2). Finally disembarkation should also be allowed in the case where it is in practice impossible to keep stowaways on board or that other factors come into play (such as when stowaways represent a security risk for the operation of the vessel, for the health of the crew or of the stowaways themselves) (norm 4.9.3).</p>


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			<p>The French legislation foresees that the case of stowaways possessing no travel document comes under the article 5 of the regulation n°562/2006 of March, 6th 2006 establishing a Community Code governing the movement of persons across borders. The same ruling applies for stowaways as for any other third country national arriving at an external border. When a stowaway arrives in a port where he/she does not fulfill the entry conditions on the territory, he/she receives a written and motivated decision of refusal of entry into the territory except if the stowaway seeks asylum (Code, CESEDA, article L.213-4/2).</p> <ol style="list-style-type: none"> 2. Disembarkation as explained in Q1 is not systematic: public authorities according to the FAL Convention can decide that it is practical for stowaways to remain on board if they don't seek asylum. 3. Disembarkation occurs when : <ul style="list-style-type: none"> - Stowaways seek asylum - It is in practice impossible to keep stowaways on board - There are other factors such as health or security risks at stake (see above Q1). 4. Authorities in charge of cross-border controls are the Central Directorate of Border Police (Direction Centrale de la Police aux Frontières, DCPAF) and the Customs Service (DGDDI). They do not always decide on disembarkation but decide on the entry on the territory. 5. The captain/the transport company is informed of his/its failure of obligation to documentary check (Chicago Convention). He/It must either redirect the stowaway back to the country of departure and/or has to pay a 5 000 euros fine for this offence (exonerated from it when identity documents of the stowaway can be showed or when the stowaway's asylum application has been declared not manifestly unfounded). <p>The stowaway is directly informed of the eventual refusal of entry into the territory and the transport company must redirect him/her back to the country of departure (and this is consistent with the Annex V of the Schengen Border Code). The stowaway can have one clear day before repatriation. In any case, he/she can be placed in a "waiting area" the time (20 days maximum) that his/her repatriation is organized. If repatriation has not been organized after this time, the stowaway is allowed to enter into the territory. This placement in "waiting area" also applies when the stowaway seeks asylum and is disembarked for this purpose while waiting for a decision. If his/her asylum application is considered as manifestly unfounded, he/she receives a notification of refusal of entry into the territory and has 48 hours to appeal for annulment of this decision to the administrative tribunal which has then 72 hours to give a final decision. This appeal has suspensive effect. The appeal can be then either successful and the stowaway is allowed to enter into the territory or rejected and he/she has then 15 days to make appeal to the administrative court while the appeal is not suspensive and the stowaway can be redirected to the country of departure at any time before the judicial decision.</p> <p>See above Q4 and 5.</p>
	Germany	Yes	<p>1. <i>Does your national law foresee specific provisions on stowaways?</i> No. The Headquarter of the Federal Police of Germany has decreed special guidelines concerning stowaways. According to this, stowaways have to be legally treated as ordinary passengers.</p>


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			<p>2. <i>Is there systematic disembarkation of stowaways?</i> No.</p> <p>3. <i>Does disembarkation only occur under specific circumstances? And, if so, which are these and how are these evaluated?</i> German stowaways can be taken off board at the request of the captain. The same applies to foreigners who have sneaked on board in Germany and to foreigners who are in possession of a residence permit. German and foreign stowaways that have sneaked on board in a German harbour are to be taken off board without request of the captain, provided that they don't carry their passport (Germans) or the requirements for entry into the state they're heading for are not fulfilled (foreigners).</p> <p>4. <i>Which authority decides on the disembarkation of stowaways? On the basis of which legal provision?</i> The Federal Police of Germany, respectively the Hamburg Maritime Police (responsible for the Port of Hamburg), are the decision taking authorities on basis of the national alien's law / asylum law.</p> <p>5. <i>What kind of decision is notified to the captain? What kind of decision is notified to the stowaway? Does it concern a refusal of entry, conform Annex V of the Schengen border code (Standard form for refusal of entry at the border) or/and a decisions on the disembarkation? How do the authorities inform the stowaway of its decision(s) and does he/she have the possibility to appeal these decisions (when different decisions are taken please specify which ones are subject to appeal)?</i> This of course depends on the decision taken on the basis of the individual from case and therefore can not be answered generally. In case of refusal of entry, the required procedures of Annex V of the Schengen border code are conducted.</p> <p>6. <i>In the event of disembarkation of a stowaway, does he or she receive a decision to enter the territory? If not, which authority decides on the entry (or refusal thereof) to the territory of a disembarked stowaway? On the basis of which legal provisions?</i> No. The Federal Police of Germany, respectively the Hamburg Maritime Police (responsible for the Port of Hamburg) are the decision taking authorities.</p>
	<p>Latvia</p>	<p>Yes</p>	<p>1. Does your national law foresee specific provisions on stowaways? There are no specific national regulations on stowaways adopted in the Republic of Latvia. When dealing with issues related with stowaways, Latvia applies directly provisions of FAL Convention, the EU regulations on the specific issues in this field and Maritime Code of the Republic of Latvia. FRONTEX working party elaborates the project document - Best Practice and Guidelines on Border Checks at Sea Ports, which includes the provisions on stowaways.</p> <p>2. Is there systematic disembarkation of stowaways? Latvia applies the provisions of the FAL Convention in accordance with international protection principles as set out in international instruments, such as the UN Convention relating to the Status of Refugees of 28 July 1951 and the UN Protocol relating to the Status of Refugees of 31 January 1967, and relevant national regulations.</p>


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			<p>3. Does disembarkation only occur under specific circumstances? And, if so, which are these and how are these evaluated? In the Republic of Latvia disembarkation of stowaways is not acceptable, except in specific cases upon circumstances that are mentioned in FAL Convention: if there are extenuating security and health, as well as humanitarian reasons. There are not so many cases in Latvia when the illegal immigrants try to enter the territory of Latvia as stowaways. There were only 3 stowaways detected during the time period from 1996 till 2015. The detected stowaways were not allowed to enter the territory of the Republic of Latvia.</p> <p>4. Which authority decides on the disembarkation of stowaways? On the basis of which legal provision? In the specific cases mentioned in reply on the previous question the authorities that carry out border control functions decide on disembarkation of a stowaway.</p> <p>5. What kind of decision is notified to the captain? What kind of decision is notified to the stowaway? Does it concern a refusal of entry, conform Annex V of the Schengenborderscode (Standard form for refusal of entry at the border) or/and a decisions on the disembarkation? How do the authorities inform the stowaway of its decision(s) and does he/she have the possibility to appeal these decisions (when different decisions are taken please specify which ones are subject to appeal)? In case if the decision is taken with regard to stowaway that allows him/her to disembark in previously mentioned exceptional cases, the decision is notified to the captain and the stowaway. The refusals of entry are no issued with regard to the stowaway.</p> <p>6. In the event of disembarkation of a stowaway, does he or she receive a decision to enter the territory? If not, which authority decides on the entry (or refusal thereof) to the territory of a disembarked stowaway? On the basis of which legal provisions? The decision taken with regard to a stowaway allows him/her to enter the territory with the aim to avoid the threatening conditions of his/her special cases and this permit does not give for the stowaway the right to stay legally on the territory. The procedures of entry, residence, transit, exit provisions of foreigners are determined in Immigration law.</p>
	<p>Lithuania</p>	<p>Yes</p>	<p>1. The relations between carriers and passengers are regulated by the Civil Code of the Republic of Lithuania, and liability for travelling as a stowaway using means of maritime transport is provided for in the Code of Administrative Offences of the Republic of Lithuania. The right to examine such cases of administrative offences and to impose administrative penalties is granted to captains of ships. If a passenger is not in possession of a ticket and does not fulfil the entry conditions for third-country nationals laid down in Article 5 of the Schengen Borders Code, a decision on refusal of entry is taken.</p> <p>2. Officers of the State Border Guard Service (SBGS) do not check tickets of passengers.</p> <p>3. Article 5 of the Schengen Borders Code lays down the entry conditions for third-country nationals. Specific rules for the persons who use means of maritime transport for crossing the state border are stipulated in Part 3 of Annex VI of the Schengen Borders Code, which requires crew and passengers to fulfil the conditions laid down in Article 5. If there are stowaways present on board, the ship's captain must, before the ship enters port, notify of the presence on board of such persons. The issue of grant/refusal of entry will be decided depending on whether the foreigner fulfils the entry conditions for third-country nationals laid down in Article 5 of the Schengen Borders Code.</p>


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			<p>4. A decision on the grant or refusal of entry into the country for passengers not fulfilling the entry conditions for third-country nationals laid down in Article 5 of the Schengen Borders Code is taken by the SBGS.</p> <p>5. If a foreigner does not meet the conditions of entry for third-country nationals laid down in Article 5 of the Schengen Borders Code, a decision on refusal of his entry is taken, and a refusal of entry at the border is drawn up in compliance with Annex V of the Schengen Borders Code. The foreigner may appeal against the decision to refuse entry in accordance with the procedure laid down by the Law of the Republic of Lithuania on Administrative Proceedings. In compliance with Article 138 of the Law of the Republic of Lithuania on the Legal Status of Aliens, the appeal may be lodged within 14 days from the day of service of the decision.</p> <p>6. A decision on the grant or refusal of entry is taken by the SBGS. If a foreigner does not fulfil the entry conditions for third-country nationals laid down in Article 5 of the Schengen Borders Code, a decision on refusal of entry is taken in compliance with Article 13 of the Schengen Borders Code, and a refusal of entry at the state border is drawn up.</p>
	<p>Luxembourg</p>	<p>Yes</p>	<p>1. Yes. Even though Luxembourg does not have an external maritime border it has a large merchant fleet. The Law of 9 November 1990 to establish a Luxembourg Maritime Register in Section VII (Disciplinary provisions and penalties) indicates that the International Convention relating to Stowaways (Brussels, of 10 October 1957) is relevant to this section. Also articles (44), (45) and (46) of the law of 14 April 1992 establishing a Maritime disciplinary and penal code deal with the procedure of how to handle a stowaway. It mainly concerns rules on the formalities for a captain on whose ship a stowaway is found and on the penalties and costs that may be incurred by the captain, the ship owner and the stowaway.</p> <p>Article (45) 1 of the law of 14 April 1992 establishes that if the captain of a Luxemburgish ship discovers a stowaway s/he must inform the Commissioner for Maritime Affairs who will inform the public prosecutor office. The public prosecutor office will decide if the person must be repatriated (article (45) 2) or if the stowaway must be removed (article (45) 3). In the latter situation the person must be handed to the competent authorities of the first scheduled port of call of a State Party to the International Convention relating to Stowaways.</p> <p>2. No.</p> <p>3. As it was mentioned above, if the public prosecutor decides to remove the person it must be handed to the competent authorities of the first scheduled port of call of a State Party to the International Convention relating to Stowaways. However, if the captain considers that the person is not going to be treated accordingly to the dispositions of the convention or the person objects to the disembarkation in that port, it must be done in another port where the disembarkation is possible (article (45) 3 § 2).</p> <p>4. The public prosecutor is the competent authority to decide on the disembarkation (article (45) 3 § 1).</p> <p>5. The captain is notified by the public prosecutor a decision which either allows or forbids him/her to disembark the stowaway, and that confirms that the stowaway remains under the responsibility of the ship's captain. The stowaway is only notified of the decision that the public</p>


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			<p>prosecutor had ordered his/her disembarkation. The stowaway can object this decision that will be taken into consideration by the captain (article (45) 3 § 2 and 3).</p> <p>That will depend on the country of disembarkation, because as we mentioned Luxembourg does not have external maritime borders.</p>
	Netherlands	Yes	<p>1. <i>Does your national law foresee specific provisions on stowaways?</i> Dutch national law does not foresee in specific provisions on stowaways. In case of a stowaway general provisions/legislations on refusal of entry or asylum are applied, according to the situation. National legislation is laid down in the Aliens Act 2000 ('Vreemdelingenwet 2000') and complements the SBC and other EU-regulations. National and EU-legislation is further operationalised and elaborated in the Aliens Decree 2000 ('Vreemdelingenbesluit 2000'), the Regulation on Aliens 2000 ('Voorschrift Vreemdelingen 2000') and the Aliens Act implementation guidelines 2000 ('Vreemdelingencirculaire 2000'). Dutch national law on stowaways is dispersed over various legislative texts (Dutch Alien Act) and mainly concerns rules on the formalities for a captain on whose ship a stowaway is found and on the penalties and costs that may be incurred by the captain, the ship owner and the stowaway. Article 18 of EU Regulation 562/2006 establishing the Schengen Borders Code read, in conjunction with Article 3.1.4 of Annex VI to that Regulation, prescribes that the Master of a ship must inform the authorities promptly, and if possible even before the ship enters port, of the presence on board of stowaways. The stowaway remains the responsibility of the Master of the ship. <i>Relevant provisions on refusals and asylum (applicable on stowaways)</i> Article 5 Aliens Act 2000 provides that the alien onboard a ship or aircraft who is refused has to leave the country, with the same means of transport, or designated transport. Article 6 Aliens Act 2000 determines that an alien who has been refused access may be required to adhere to designated area or place Article 65 Aliens Act 2000 provides in specific rules on the return of the refused alien by the captain to a destination outside of the territory of The Netherlands with the same ship or if not possible within a reasonable timeframe with alternative transport. Article 6.2 and 6.2 Aliens Decree 2000 provides in the competence of claiming costs and specifies which costs can be claimed Article 3 Aliens act 2000 If a person has asked for asylum the Dutch Immigration Service (IND) gives a so called 'special jurisdiction' to refuse further admittance to the country</p> <p>2. <i>Is there systematic disembarkation of stowaways?</i> No, Dutch law contains no obligation on the authorities to accept the disembarkation of a stowaway. In respect of the Geneva Convention of 1951 relating to the status of Refugees, stowaways who claim asylum are disembarked systematically.</p> <p>3. <i>Does disembarkation only occur under specific circumstances? And, if so, which are they and how are these evaluated?</i> Other than asylum, disembarkation only occurs under specific circumstances e.g.: <ul style="list-style-type: none"> • Medical condition of the stowaway. • When the situation on board is of such a nature that it does not justify that the stowaway remains there (e.g. endanger safe operations onboard, no facilities to accommodate stowaway etc). • For reasons of public order. • The stowaway is a minor </p>



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			<p>If the stowaway is in the possession of a valid travel document the border guard authorities will cooperate to make travel arrangements to repatriate the stowaway by other means of transport (e.g. by plane). If the captain/shipmaster/owner of the ship wishes to make arrangements to repatriate a stowaway without a valid travel document, in cases other than above specific circumstances, the border authorities will try to cooperate, under certain conditions/criteria. E.g. the stowaway has to cooperate, arrange return (including obtain valid travel documents) within the timeframe of the visit of the ship in the port.</p> <p>4. Which authority decides on the disembarkation of stowaways? On the basis of which legal provision? The Dutch border guard authorities: Royal Netherlands Marechaussee or Seaport Police Rotterdam Legal basis: Article 46 Alien Act 2000: authorities responsible for the supervision and compliance with legal regulations regarding border control,</p> <p>5. A. What kind of decision is notified to the captain? B. What kind of decision is notified to the stowaway? C. Does it concern a refusal of entry, conform Annex V of the Schengenborderscode (Standard form for refusal of entry at the border) or/and a decision on the disembarkation? D. How do the authorities inform the stowaway of its decision(s) and does he/she have the possibility to appeal these decision (when different decisions are taken please specify which ones are subject to appeal)? A: The captain is notified by receiving a removal order, that the refused stowaway has no permission to stay on the territory and that he is responsible for his/her removal. The decision is notified in writing by the relevant border authority. The removal order may be subject to administrative appeal. B/C: If the stowaway is refused entry, he/she will receive a decision of refused entry (standard form for refusal conform annex V part B SBC) and a decision to adhere to a designated area or place (e.g. ship). If the stowaway claims asylum, he/she will receive a decision to refuse further admittance to the country and will be transferred to the immigration services for the handling of the asylum application. D. The authorities inform the stowaway of its decisions in person (orally, using an interpreter) and in writing. All mentioned decisions under B are subject to appeal.</p> <p>6. In the event of disembarkation of a stowaway, does he or she receive a decision to enter the territory? If not, which authority decides on the entry (or refusal thereof) to the territory of a disembarked stowaway? On the basis of which legal provisions? According to the specific situation the border authority will take the necessary decisions (see question 4). In the event of disembarkation for repatriation, the stowaway will receive a refusal of entry. In case of processing an asylum application the immigration services will decide on the outcome of that claim. These decisions are delivered based upon the provisions in the Dutch Alien Act 2000.</p>
	Portugal	Yes	<p>1. The concept 'stowaway' is not explicitly defined in the Portuguese Immigration Act (Act 29/2012, of August 9). Nevertheless, this act establishes the general requirements for entering national territory, which in the case of a stowaway are not met, hence his/her entry is refused.</p> <p>2. No.</p>



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			<p>3. Yes, in situations of application for asylum. When the citizen is escorted for purposes of returning to his/her country of origin. However, if all the conditions are ensured, usually stowaways remain on board.</p> <p>4. In accordance with national legislation, the Portuguese Immigration and Borders Service is the authority responsible for deciding on the disembarkation, or refusal of disembarkation, of stowaways.</p> <p>5. If the stowaway remains on board, the captain is notified that the stowaway is under the captain's responsibility. On the other hand, if the stowaway is refused to enter national territory, the carrier receives a notification stating that the stowaway is under its responsibility. Regularly, the type of decision notified to the passenger is the first refusal of entry into national territory, in accordance with Annex V of the Schengen Borders Code, on grounds of non-compliance with the general requirements for entering the Country. Such decision may be challenged, and the stowaway is entitled to appeal, pursuant to the law.</p> <p>6. No, exception made in situations of escorts to the airport, or in case of application for asylum. Disembarkation for entering and remaining in the country does not apply.</p>
	Romania	Yes	<p>1. Does your national law foresee specific provisions on stowaways? Romania applies the provisions of art. 18 of the Regulation 562/2006 – Schengen Border Code, respectively the special provisions set by point 3 of Annex VI referring to checks at maritime borders. Thus, the ship master must communicate immediately to the competent authorities, up to the deadline provided in point 3.1.2 of Annex VI, about the presence on board of stowaways. As long as the stowaways are on board they are under the responsibility of the ship master. Also, the specific measures that must be taken in case of stowaways are set by the following legal acts: - Government Ordinance 58 of 1999 on Romania's accession to the Convention on facilitating international maritime traffic (FAL), adopted in London on 9 April 1965 by the international Conference on facilitating the voyage and maritime transportation, modified and completed by amendments from 1984, 1986, 1989, 1991, 1993 and 1994. - Government Decision 1335 of 2000 on approval the methodological norms implementing the provisions of the Convention on facilitating international maritime traffic (FAL), adopted in London on 9 April 1965, as well as the national standards and procedures. - Law 86 of 2007 on accepting certain amendments to the annex of the Convention on facilitating international maritime traffic (FAL), adopted in London on 9 April 1965, adopted in London by the Facilitation Committee of International Maritime Organization through the Resolution FAL 6 (27) of 9 September 1999 and Resolution FAL 7 (29) of 10 January 2002.</p> <p>2. Is there systematic disembarkation of stowaways? In Romania it is not realized a systematic disembarkation of stowaways.</p> <p>3. Does disembarkation only occur under specific circumstances? And, if so, which are these and how are these evaluated? Disembarkation of stowaways is done in certain conditions: - in cases when the stowaways apply for asylum. In these cases the border police officers act according to the Law 122 on 2006 on asylum in Romania as well as the cooperation protocol between the Border Police and the General Inspectorate for Immigration.</p>


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			<p>- in cases of security, health or humanitarian exceptional reasons (force majeure, medical situations that require hospitalization, major accident of the vessel, other event that can jeopardize the vessel/persons on board security).</p> <p>4. Which authority decides on the disembarkation of stowaways? On the basis of which legal provision? Ministry of Internal Affairs through the Border Police, according to the provisions of art. 14 and 15 of the Regulation (EC) 562 of 2006 – Schengen Border Code, of point 3.1.4 of Annex VI as well as of Government Emergency Ordinance 104 of 2001 on organization and functioning of Romanian Border Police.</p> <p>5. What kind of decision is notified to the captain? What kind of decision is notified to the stowaway? Does it concern a refusal of entry, conform Annex V of the Schengen borders code (Standard form for refusal of entry at the border) or/and a decisions on the disembarkation? How do the authorities inform the stowaway of its decision(s) and does he/she have the possibility to appeal these decisions (when different decisions are taken please specify which ones are subject to appeal)? The stowaways are not permitted to disembark. Following the check-in they are handed over the form on refusal of entry, according to Annex V of the Regulation (EC) 562 of 2006 – Schengen Border Code. In cases when, during the vessel check, other persons that those communicated by the ship master are detected hidden on board they are assimilated to stowaways. Therefore they will not be permitted to disembark and, after the subsequent checks they will be handed over the form on refusal of entry. According to the provisions of Government Emergency ordinance 194 of 2002 on aliens' regime in Romania the carrier will be fined. The stowaways can litigate against the measure of refusal of entry, according to the provisions of art. 7 of Law 554 of 2004 within 30 days. The litigation may be addressed to the head of the border checking point or to the Territorial Inspectorate of Border Police.</p> <p>6. In the event of disembarkation of a stowaway, does he or she receive a decision to enter the territory? If not, which authority decides on the entry (or refusal thereof) to the territory of a disembarked stowaway? On the basis of which legal provisions? In case of disembarkation of a stowaway who applied for asylum the authority that can issue a decision on access to the territory in the General Inspectorate of Immigration, according to the provisions of Law 122 of 2006 on asylum in Romania.</p>
	Slovak Republic	Yes	Due to the fact that Slovak Republic does not have a maritime border, it can be only concluded that national legal framework does not foresee any provisions on a stowaway as an irregular migrant, i.e. a person with illegal residence in the territory of the Slovak Republic who crossed the external border as a stowaway.
	Slovenia	Yes	<p>1. There are no legal provisions in this regard in our national legislation. Captain of the vessel is obliged to inform competent authorities about stowaways and to maintain responsibility and control over stowaways in accordance with Schengen Borders Code. Stowaways are usually marked on so called “stowaway list” given to competent authorities by the captain upon arrival. Stowaways are refused to enter the country. Captain of the ship is given instructions how to proceed.</p> <p>2. Systematic disembarkation is not applicable.</p>

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			<p>3. Stowaways may be disembarked in case of international protection application, procedure is done by the competent authority in the field of international protection. In case of urgent medical care requirement the stowaway is returned back to the vessel once the medical care is done.</p> <p>4. Border control authority – the Police are authorized to allow or prevent disembarkation.</p> <p>5. Captain is informed from the Police about the procedure to be done, his/hers responsibilities in accordance with Schengen Borders Code. In case of application for international protection are both the captain and the stowaway informed about their rights and procedure to follow. In case of refusal of entry the appropriate form is given to the stowaway. In case of international protection application denial appropriate written decision is given to the applicant.</p> <p>6. In case of disembarkation because of international protection application appropriate procedure follows in accordance with national legislation (International Protection Act.). In case of medical care accommodation in Aliens centre may follow. Written accommodation decision is given in accordance with our national legislation (Aliens Act).</p>
	Spain	Yes	<p>1. Yes, through a joint instruction of the Ministry of Interior and the Ministry of Labour and Social Affairs.</p> <p>2. No</p> <p>3. Yes. Disembarkation takes place when:</p> <ul style="list-style-type: none"> - The stowaways are unaccompanied minors. - Asylum is applied for and the ship doesn't stay long enough in Spanish harbours to go through the border procedure (8 days maximum). - The asylum application is admitted. - The company takes charge of the return costs. - There are no proper conditions on board for the stowaways. This is evaluated by boarding the ship, together with medical services and an interpreter, where necessary. <p>4. The Government Delegate, based on the above mentioned circumstances.</p> <p>5. In case the stowaways stay on board, the captain must sign a document taking charge of them. If the stowaway declares he wants to disembark, a refusal of entry takes place. If he tries to disembark, a return procedure can be applied. For minors, the same procedures as inside the territory apply. In case of asylum, the border procedure is applicable. Information, notifications, legal assistance, possibility to appeal are equal to the procedures at BCPs (concerning refusal of entry, return, international protection, repatriation of minors).</p> <p>6. There is only a decision to enter the territory in case an asylum application is admitted.</p>
	Sweden	Yes	<p>1. See Belgian answer.</p>

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			<p>2. See Belgian answer. (Sweden has very few stowaways)</p> <p>3. The Police authorities decide whether disembarkation could be an alternative. If refusal of entry is the actual decision there is a circumstance around the ship's destination that matters.</p> <p>4. The Police authorities (the Swedish Aliens Act).</p> <p>5. It's possible to appeal but the enforcement of the decision can take place.</p> <p>6. It's the Police that have the responsibility. If there is a question of asylum the issue belongs to the Migration Board.</p>
	Norway	Yes	<p>1. <i>Does your national law foresee specific provisions on stowaways?</i> In Norwegian national law special provisions on stowaways are foreseen in the Immigration Act and the General Civil Penal Code. According to the Act of 15 May 2008 on the entry of foreign nationals into The Kingdom of Norway and their stay in the realm (the Immigration Act) Section 16, a foreign national who is a stowaway on board a ship or an aircraft may not go ashore in the realm without the permission of the police. The King may by regulations make further provisions in respect of the conditions on which stowaways shall be granted entry to the realm, as well as in respect of administrative procedures and the right of appeal in such cases. Further special provisions are foreseen in the Immigration Regulations sections 4-20, 4-21 and 4-24. When a stowaway arrives with an aircraft or a ship, the commander of the aircraft or the master of the ship has an obligation to give advance notification to the police according to the Immigration Regulations section 4-24. According to Section 301 of the General Civil Penal Code, any person who goes on board a ship or conceals himself there for the purpose of unlawfully accompanying the ship to or from a foreign port or hunting ground outside the realm shall be liable to fines or imprisonment for a term not exceeding six months.</p> <p>2. <i>Is there systematic disembarkation of stowaways?</i> No. According to the Immigration Regulations section 4-24, the provisions on foreign seamen (section 4-17 and 4-18) apply correspondingly to foreign stowaways on Norwegian or foreign ships who wish to go ashore in a Norwegian port. Stowaways will normally not meet these conditions, as a consequence of their lack of identity documents or visa. In such cases the police have the authority to refuse disembarkation.</p> <p>3. <i>Does disembarkation only occur under specific circumstances? And, if so, which are these and how are these evaluated?</i></p> <p>4. <i>Which authority decides on the disembarkation of stowaways? On the basis of which legal provision?</i> According to the Immigration Regulations section 4-20, permission to go ashore may be granted even if the conditions of section 4-17 third paragraph are not met, on the basis of humanitarian grounds, national considerations or consideration for international obligations. The police shall refer the question of whether such permission to go ashore is to be granted to the Directorate of Immigration for decision. If a foreign stowaway claims to be a refugee or otherwise provides information that indicates that the protection provisions in section 73 of the Immigration Act are applicable (Absolute protection against refoulement), the case shall, according to the Immigration Regulations section 4-21,</p>

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			<p>be submitted to the Directorate of Immigration for consideration and decision. Such foreign nationals shall normally be granted permission to go ashore, but subject to the conditions imposed in a decision by the Directorate of Immigration.</p> <p>5. <i>What kind of decision is notified to the captain? What kind of decision is notified to the stowaway? Does it concern a refusal of entry, conform Annex V of the Schengen borders code (Standard form for refusal of entry at the border) or/and a decisions on the disembarkation? How do the authorities inform the stowaway of its decision(s) and does he/she have the possibility to appeal these decisions (when different decisions are taken please specify which ones are subject to appeal)?</i></p> <p>6. <i>In the event of disembarkation of a stowaway, does he or she receive a decision to enter the territory? If not, which authority decides on the entry (or refusal thereof) to the territory of a disembarked stowaway? On the basis of which legal provisions?</i></p> <p>If a stowaway is granted permission to go ashore in accordance with the Immigration Regulations section 4-20 or 4-21, s/he will receive a decision to enter the territory by the Directorate of Immigration.</p> <p>If a stowaway is rejected, according to the Immigration Act section 17, s/he will first get a prior notice and be notified about the decision. He or she can appeal the decision. In practice s/he will be notified through the captain. According to the Immigration Regulations section 4-17 cf. § 4-20, the master of the ship (captain) has an obligation to take on board again any stowaway who has been refused permission to go ashore or by other means take the person concerned out of the realm as further directed by the police.</p> <p>Pursuant to the Immigration Act section 91, the owner or hirer of the means of transport shall be obliged to meet all expenses. When it is deemed necessary, the police shall require a guarantee from the ship's owner, charterer, master of agent for the expenses for which the latter is liable under section 17-16 of the Regulations, see section 91 of the Act, when a stowaway goes ashore without permission f the police, see the Immigration Regulations section 4-20 cf. § 4-18.</p>
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