

Summary of EMN Ad-Hoc Query No. 2016.1036

Existing legal framework on false documents

1. INTRODUCTION

This summary highlights the main findings of the EMN Ad-Hoc Query on the existing legal framework on false documents¹ launched by the European Commission on 4th of March 2016. It is based on contributions from 22 EU Member States² and Norway.

2. BACKGROUND AND CONTEXT

The Action Plan against migrant smuggling adopted on 27th May 2015 included as one of its key aims the enhancement of the EU police and judicial response to organised migrant smuggling.

Subsequent to the adoption of the Action Plan on migrant smuggling, the Council conclusions of 10th March 2016 also acknowledged the risk presented by the worrying increase in false or stolen identification documentation being used to facilitate unlawful entry into the (Member) States.

In this context, the Commission launched an Ad-Hoc Query to gather updated information on the existing legal framework in the Member States on the use, procurement, supply and production of false documents as well as on the sanctions applied to commercial companies responsible for carrying passengers using forged or counterfeit documents into the EU and between (Member) States.

¹ Fraudulent travel or identity document are defined as 'any travel or identity document: a) that has been falsely made or altered in some material way by anyone other than a person or agency lawfully authorised to make or issue the travel or identity document on behalf of a State; or b) that has been improperly issued or obtained through misrepresentation, corruption or duress or in any other unlawful manner; or c) that is being used by a person other than the rightful holder.' See [EMN Glossary](#) [last accessed on 15 April 2015].

² AT, BE, CZ, CY, DE, EE, EL, ES, FI, FR, HR, HU, LV, LU, LT, MT, NO, PL, SE, SI, SK, UK.

3. SUMMARY

3.1. What criminal and/or administrative sanctions (please specify) do Member States have in place for:

a) *Individuals using a false Travel Document/National ID card, etc. to enter the Member State or fraudulently apply for an extensions to stay in the territory*

In the majority of (Member) States which replied to the Ad-Hoc Query the use of false identity documents and travel documents is a criminal offence:

★ Imprisonment is a possibility in all the reporting (Member) States (**AT, BE, CZ, CY, DE, EE, EL, ES, FI, FR, HR, HU, LV, LU, LT, NO, PL, SE, SK, UK**).

★ However, in some (Member) States the punishment could be limited to a fine, depending on the characteristics of the forgery and the intentions of the individual concerned (**AT, DE, EE, FI, NO, UK**);

★ In four (Member) States both imprisonment and additional administrative sanctions are foreseen (**BE, EL, FR, LU, PL**).

In terms of the length of the prison sentence, this varies across the (Member) States between one month and ten years: at least six months (**EL**), from one month up to one year (**AT, BE, CY, ES, LV**), up to two years (**FI, NO, SE**), up to three years (**CZ, EE, HR, HU, LU**), up to four years (**LT**), up to five years (**FR, DE, PL**) and up to ten years (**SK, UK**). In all the Member States, the nature and the length of the sentence depend on whether the forgery is considered to be 'petty' or 'aggravated'.³ For example, for

³ The consideration as petty or aggravated forgery depend on the circumstances of the offence, in particular on the nature of the document forged or the technical equipment procured for the forgery. In some (Member) States (e.g. FI, FR), the regular forgery of documents by organized criminal organisation is considered an aggravating circumstance.

aggravated forgery the punishment could go up to four years of imprisonment in Finland, up to six years in Sweden and Lithuania and up to ten in Czech Republic. In the Czech Republic and Slovakia an additional judicial decision on expulsion can be issued.⁴

b) *The provision and/or procurement of false documents in order to assist the illegal border crossing of someone into their territory (migrant smuggling)*

In this regard, it is important to distinguish between (Member) States who have a specific law punishing the provision and/or procurement of false documents and those who penalise this offence within the framework of their legislation governing the 'facilitation of irregular migration':

★ Some (Member) States (**CZ, EL, ES, FI, HR, LU, SK**) have specific provisions for the procurement of false documents to facilitate irregular migration: Finland penalises it with either a fine or imprisonment for up to two years, while the Czech Republic, Croatia and Spain foresee imprisonment for up to three years. In Luxembourg the applicable sanctions may entail imprisonment (from eight days to up to three years) and a fine (between EUR 251 and 12,500) or only one of the two. In Greece, the punishment is imprisonment for at least three months; if the offence is perpetrated on a regular basis (for example by organised criminal organisations) and under aggravated circumstances (for example it harms a third person), the imprisonment could be up to ten years. In Slovakia, the imprisonment could go up to twenty years depending on circumstances.

★ In other (Member) States the provision or procurement of false documents is punishable in terms of facilitation of irregular immigration (**BE, CY, FR, HU, LT, NO, PL, SE** and **UK**). In these cases, imprisonment varies between up to six months (**BE**) and ten years (**LT**), depending whether there are aggravating circumstances linked the smuggling of migrants.

★ In two (Member) States (**DE, EE**) the provision or procurement of false documents is considered a criminal offence in terms of facilitating third country nationals' stay in the country without a legal basis. This offence is punishable with a prison sentence of up to one year in Estonia. In **NO**, facilitation of irregular residency is an additional provision which penalises the procurement of false documents.

c) *The production of false documents designed to be used by organized crime groups, migrant smugglers or individuals to enter and/or reside in Member States irregularly.*

The sanctions applicable for the production of false documents vary across the (Member) States, but are similar to those penalising the use of forged documents.

Figure 1 Years of imprisonment for production of false documents

Years (up to)	(Member) State
(At least) six months	EL
One year	AT, BE, EE, LV
Two years	FI, HU, SE, LU (individuals)
Three years	CZ, CY, EE (if identity document), ES, HR, LU (organized crime), SK
Four years	LT
Five years	DE, HR (if organized crime), PL
Six years	NO (if organized crime)
Seven years	FR
Ten years	CY and EL(if aggravated forgery); UK.
Twelve years	SK

Several (Member) States (**AT, EE, FI, LU, PL, UK**) provide for a pecuniary punishment as an alternative/complement to imprisonment. For example, France punishes organized crime groups, migrant smugglers and individuals who assist migrants to enter and reside irregularly on a regular basis with both a seven-year-long imprisonment sentence and a fine of EUR 100,000.

d) *The use of forged or counterfeit supporting documents to support fraudulent applications for genuine travel documents, visas or extensions to permission to remain in a Member State.*

In the majority of the reporting (Member) States, the forgery of identity and travel documents and of other official documents is punished as follows:

⁴ CZ underlines that terms of punishment can significantly vary according to circumstances.

- ★ With imprisonment up to six months (**NO**), up to one year (**AT, LV**), three years (**CZ, FI, HR**), four years (**LT**), five years (**DE, PL**), ten years (**UK**) or up to twelve years (**SK**).
- ★ If the forgery is aggravated (for example due to having used the name of a civil servant or a public officer or by forging a bank document and/or an electronic signature), the individual is liable for up to five (**BE**) or ten years (**LU**) of imprisonment.
- ★ With imprisonment of two years and a fine of EUR 30,000 for requesting the issuance of a document on a fraudulent basis, and of up to five years and EUR 75,000 for the production of forged documents (**FR**). At least one year of imprisonment and a fine of EUR 10,000 as minimum (**EL**).

As for the offences mentioned above, some (Member) States also provide for economic sanctions as an alternative to imprisonment depending on the circumstances of the forgery (**AT, FI, LV, NO, PL, SE, UK**). In Belgium, if the offence is committed by a civil servant or public officer, s/he is also disqualified and cannot take office for a certain amount of time. In Slovakia the punishment could include a judicial decision on expulsion of up to fifteen years.

3.2. What administrative sanctions are applied in Member States to Carrying Companies who allow passengers using forged counterfeit travel or identity documents to board flights, trains, ferries and coaches?

In all (Member) States,⁵ administrative sanctions are applied to carriers who allow passengers using forged counterfeit travel or identity documents to board flights, trains, ferries and coaches.⁶

- ★ Less than or equal to EUR 5,000 per passenger: **BE, CY, FI, HR, LU, LT, LV, UK**;
- ★ From EUR 5,000 to EUR 15,000: up to EUR 10,000 in three Member States (**CZ**,⁷ **FR** and **ES**); in Austria several exceptions apply, which are linked to the status of the foreigner (for example, whether the alien is later given the status of refugee) and the actual possibility for the carrier to identify the forged documents before travelling (due diligence);
- ★ In several other (Member) States (**EE, LU, NO, SE**), the carrier is required to bear the costs for transporting the foreigner back to the country

⁵ Greece did not provide information on question 2. Slovakia mentioned that national legislation does not specify sanctions for carrying companies.

⁶ Three (Member) States (**DE, HU, PL**) did not mention the amount of the administrative sanction for Carrying Companies.

⁷ In **CZ**, between EUR 3,700 and up to EUR 18,500.

where (s)he came from or to his/her country of origin (**EE**) plus the costs for the personnel accompanying the alien, as well as the alien's subsistence before the return is enforced when the delay is due to the carrier (**NO, SE**), and healthcare expenses (**LU**). No administrative sanctions are foreseen in these countries.

- ★ Four Member States (**AT, HU, SE, UK**) provide for the possibility of "special sanctions", i.e. less severe, to be imposed on the carrier in case the company is able to demonstrate it operated with due diligence and it was not possible to spot the forged documents. If the forgery is not evident, Luxembourg and Malta do not punish the carrier.

3.3. Are any statistics on investigations, prosecutions and convictions for the above mentioned offences available?

Relevant statistics on the number of forged documents identified or cases initiated were provided by **AT, CZ, CY, EE, FI, FR, HR, HU, LT, LV, PL** and **SE**.

Figure 2 Statistics of forged documents or initiated cases

Member State	2014	2015
Number of forged documents identified		
Austria ⁸	14,469	13,738
Croatia	328	312
Cyprus	159	97
Finland	NA	117,658
France	14,308	NA
Hungary	2,335	2,436
Malta ⁹	32	26
Norway	866	767
Slovak Republic	82	179
Number of cases initiated		
Czech Republic	457	550
Estonia ¹⁰	322	352

⁸ Total sum of offences related to each article relevant to the subject of the Ad-Hoc Query

⁹ Counterfeit are respectively 115 (2014) and 104(2015).

¹⁰ Prosecutions (criminal law)

Latvia ¹¹	186	77
Lithuania ¹²	402	313
Poland ¹³	1,593	2,892
Sweden ¹⁴	247	
Number of convictions		
Czech Republic	291	329
Slovak Republic ¹⁵	76	152

¹¹ Prosecutions (criminal law)

¹² Pre-trial investigations

¹³ Proceedings initiated by Border Guard (Penal Code)

¹⁴ Total for 2014 and 2015

¹⁵ Sentences of imprisonment: 31 (2014) and 39 (2015)