

**QUESTIONNAIRE FOR THE NATIONAL REPORT ON THE IMPLEMENTATION
OF THE DIRECTIVE:**

CARRIERS LIABILITY OF 28 JUNE 2001

IN REPUBLIC OF POLAND

By

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| FIRST PART |
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1. NORMS OF TRANSPOSITION AND JURISPRUDENCE

Q.1.A. Identify the **MAIN** (because of its content) norm(s) of transposition and indicate its legal nature

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)
- About legal nature in the table below: legislative refers to a norm adopted in principle by the Parliament; regulation refers to a norm complementing the law and adopted in principle by the executive power; circular or instructions refer to practical rules about implementation of laws and regulations and adopted in principle by the administrative authorities

*Please **duplicate** the table below if there is more
than one **MAIN** norm of transposition*

| |
|---|
| This table is about: <input checked="" type="checkbox"/> a text already adopted <input type="checkbox"/> a text which is still a project to be adopted |
| TITLE: Act on Aliens |
| DATE: 13 June 2003 |
| NUMBER: ----- |
| DATE OF ENTRY INTO FORCE: 1 September 2003; however, with respect to provisions implementing the carriers liability's directive, within the scope |

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| related to the land carriers, the date of entry into force is 1 May 2004 |
| PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive): Chapter 12 (Art. 135 to 140, Art. 165) |
| REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: Journal of Laws of 2006, No 234, item 1694 as amended (consolidated text) |
| LEGAL NATURE (indicate a cross in the correct box): |
| <input checked="" type="checkbox"/> LEGISLATIVE: |
| <input type="checkbox"/> REGULATION: |
| <input type="checkbox"/> CIRCULAR or INSTRUCTIONS: |

Q.1.B.

List the others norms of transposition by order of importance of their legal nature (first laws, secondly regulations; thirdly circulars or instructions):

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)

*Please use one table per norm and **duplicate** as much as necessary*

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|--|
| TITLE: Code of Administrative Procedure ¹ |
| DATE: 14 June 1960 |
| NUMBER: ----- |
| DATE OF ENTRY INTO FORCE: 1 January 1961 |
| PROVISIONS CONCERNED : (for example if the norm is not devoted only to the transposition of the concerned directive) |
| REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: Journal of Laws of 2000, No 98, item 1071 as amended (consolidated text) |
| LEGAL NATURE (indicate a cross in the right box): |
| <input checked="" type="checkbox"/> LEGISLATIVE |
| <input type="checkbox"/> REGULATION |
| <input type="checkbox"/> CIRCULAR OR INSTRUCTIONS |

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|--|
| TITLE: Law on Procedure at Administrative Courts ² |
| DATE: 30 August 2002 |
| NUMBER: ----- |
| DATE OF ENTRY INTO FORCE: 1 January 2004 |
| PROVISIONS CONCERNED : (for example if the norm is not devoted only to the transposition of the concerned directive) |

¹ Although the Code of Administrative Procedure cannot be described as norm of transposition of the Directive on carriers' liability, it should be pointed out that all procedural provisions are contained in the Code, unless the Act on Aliens provides otherwise (the Act on Aliens, Art. 7 (1)).

² Although the Law on Procedure at Administrative Courts cannot be described as a norm of transposition of this Directive, it should be pointed out that it applies if an appeal to an administrative court is lodged.

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| REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: Journal of Laws of 2002, No 153, item 1270 as amended |
| LEGAL NATURE (indicate a cross in the right box): |
| <input checked="" type="checkbox"/> LEGISLATIVE |
| <input type="checkbox"/> REGULATION |
| <input type="checkbox"/> CIRCULAR OR INSTRUCTIONS |

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|--|
| TITLE: Constitution of the Republic of Poland |
| DATE: 2 April 1997 |
| NUMBER: ----- |
| DATE OF ENTRY INTO FORCE: 17 October 1997 |
| PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive): Art. 89, Art. 91 |
| REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: Journal of Laws of 1997, No. 78, item 483 as amended |
| LEGAL NATURE (indicate a cross in the right box): |
| <input checked="" type="checkbox"/> LEGISLATIVE |
| <input type="checkbox"/> REGULATION |
| <input type="checkbox"/> CIRCULAR OR INSTRUCTIONS |

Q.2. THIS QUESTION IS IN PRINCIPLE ONLY FOR FEDERAL OR ASSIMILATED MEMBER STATES LIKE AUSTRIA, BELGIUM, GERMANY, ITALY, SPAIN

Q.2.A. Explain which level of government is competent to adopt the norms of transposition.

Please include your answer in the tables below

| |
|--|
| LEGISLATIVE RULES |
| COMPETENCES OF THE FEDERAL/CENTRAL LEVEL: |
| COMPETENCES OF THE COMPONENTS: |
| EXPLANATIONS IF NECESSARY: |

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|--|
| REGULATIONS |
| COMPETENCES OF THE FEDERAL/CENTRAL LEVEL: |
| COMPETENCES OF THE COMPONENTS: |
| EXPLANATIONS IF NECESSARY: |

| |
|--|
| CIRCULAR OR INSTRUCTIONS |
| COMPETENCES OF THE FEDERAL/CENTRAL LEVEL: |
| COMPETENCES OF THE COMPONENTS: |
| EXPLANATIONS IF NECESSARY: |

Q.2.B. In case, explain if the federal structure and the distribution of competences between the different levels pose any problem or difficulty regarding the transposition and/or the implementation of the directive.

Q.3. Explain which authorities are competent for the practical implementation of the norm of transposition by taking the decisions in individual cases.

Please use one table per competence concerned and duplicate it if necessary

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|--|---|
| COMPETENCE CONCERNED: | imposing administrative penalties in respect to carriers |
| CENTRAL MINISTRY OF: | Minister of Interior and Administration |
| DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY: | ----- |
| OTHER LEVEL OF ADMINISTRATION: | relevant voivod |
| IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister) | Voivods are local representatives of government (Poland is divided into 16 regions – voivodships) and as such they act under the control and supervision of the Prime Minister and other ministers. |

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|--|--|
| COMPETENCE CONCERNED: | appellate authority from decisions concerning administrative penalties |
| CENTRAL MINISTRY OF: | Minister of Interior and Administration |
| DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY: | ----- |
| OTHER LEVEL OF ADMINISTRATION: | Head of the Office for Aliens |
| IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister) | the Head of the Office for Aliens is independent organ of administration. Although the Minister of Interior and Administration has the general competence to coordinate, control and supervise its activities and give binding orders and guidelines, they cannot concern decisions taken in individual cases. |

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| COMPETENCE CONCERNED: | judicial review of the administrative decisions |
| CENTRAL | ----- |

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|--|--|
| MINISTRY OF: | |
| DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY: | ----- |
| OTHER LEVEL OF ADMINISTRATION: | administrative courts |
| IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister) | Administrative judicial procedure consists of two instances. Administrative courts are not entitled to make decisions on the merits of a case. |

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| COMPETENCE CONCERNED: | ensuring that the carriers fulfil their obligations under Art. 2 and 3 of the Directive |
| CENTRAL MINISTRY OF: | Minister of Interior and Administration |
| DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY: | ----- |
| OTHER LEVEL OF ADMINISTRATION: | competent commanding officer of the Border Guard checkpoint |
| IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister) | |

| | |
|--|---|
| COMPETENCE CONCERNED: | appellate authority from decisions rendered by the commanding officers of the Border Guard checkpoint |
| CENTRAL MINISTRY OF: | Minister of Interior and Administration |
| DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY: | ----- |
| OTHER LEVEL OF ADMINISTRATION: | Commandant-in-Chief of the Border Guard |
| IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister) | Commandant-in-Chief of the Border Guard is a central organ of administration, responsible for the border protection and the control of border traffic. It is subordinated to the Ministry of Interior and Administration. |

independent of the
competent minister)

Q.4. A. Has the main regulation foreseen explicitly by the main norm of transposition already been adopted or not:

YES

NO³

Q.4.B. If the main norm(s) of transposition foresees the adoption of one or several regulations, indicate if they have all been adopted:

YES

NO

If NO, please indicate the missing text(s) in the table below

Please use one line per missing text and duplicate it if necessary

| |
|--|
| MISSING TEXTS |
| <i>INDICATE HERE THE MISSING TEXTS</i> |

Add if necessary some explanations (specify in particular if the missing texts are at least under preparation or foreseen in the very near future):

³ None regulation concerning the Directive on Carriers Liability has been foreseen by the Act on Aliens.

SECOND PART

2. INDIVIDUAL PROVISIONS OF THE DIRECTIVE

Q.5. Necessary steps to ensure that the obligation of carriers to return third country nationals (Art. 26 (1)(a) of the Schengen Convention) applies when entry is refused to a third country national in transit (see Art. 2, which is a mandatory provision)

Q.5.A. Has the existing legislation providing for a carrier obligation to return been amended? *(Please keep in mind that this question is about explicit changes, not about a mere change in the interpretation of already existing legislation. The term "Legislation" includes regulations in connexion with this question)*

Yes

No

Q.5.B. If yes, please specify

Carriers' obligations have been effectively used in practice since they were introduced to the Polish legal system by the Act on Aliens of 1997.

Under provision of that Act, a carrier who had brought an alien by aircraft or a sea-going vessel and such an alien was not permitted to enter the territory of Poland, was obliged to ensure, without unjustified delay, the departure of the alien (Art. 68(1) of the 1997 Act on Aliens). The carrier had to cover the expenses of the departure only if the alien did not have sufficient resources to pay for it.

Currently carriers' obligations are regulated in Chapter 12 of the Act on Aliens of 2003 (hereafter referred as: AA). Provisions of the AA have significantly changed the previous regulations in order to comply with the EU standards.

First of all, the previous regulation was devoted exclusively to third country nationals who have been refused entry to the territory of Poland (Art. 68(1) of the 1997 Act on Aliens). New regulations, that entered into force - with respect to sea and air carriers on 1 September 2003, and with regard to land carriers on 1 May 2004 - concern also the aliens in transit who have been refused an entry by the authorities of the country of destination or other transit country, or a carrier which was to take him to his country of destination refused to take him on board (Art. 136(1)(2) AA).

Furthermore, since 1 May 2004 (date of the accession of the Republic of Poland into the EU) carrier's obligations apply not only to a carrier who brought an alien by sea or by air, but also to a land carrier. To be precise, Art. 135(2) AA states that this obligation applies also to international carriers transporting groups overland by coach, with the exception of border traffic.

Q.5.C. Have administrative practices been changed?

Yes

No

Q.5.D. If yes, please specify

Q.6. Necessary measures to oblige carriers which are unable to effect the return of a third country national whose entry is refused to find means of onward transportation and to bear the costs thereof or assume responsibility for the costs (see Art. 3, which is a mandatory provision)

Q.6.A. Have legislative provisions stipulating the obligations or responsibilities of carriers been adopted?

Yes

No

Q.6.B. If yes, please specify

According to Art. 136(2) AA, if the carrier is unable to effect the return of a third country national whose entry is refused, it shall be obliged to find means of transportation and to bear the cost thereof in order to ensure the alien's departure without delay from the territory of the Republic of Poland. Furthermore, if an alien is obliged to stay in the indicate place till the date of leaving the territory of Poland, the carrier shall cover the costs of the alien's stay (Art. 137(2) AA). However, this obligation is limited to the situations when the alien does not meet conditions for entry. In all other cases, these costs shall be covered by the State Treasury.

Q.6.C. Have administrative measures of control and enforcement of the carrier obligations under Art. 2 and 3 been taken? If so, please specify and describe control and supervision measures and enforcement sanctions unless described under Q. 10.

No explicit measures of control and enforcement relative to the carriers' obligations have been introduced in the Polish law when implementing the Directive. Carriers' compliance with these obligations is controlled in accordance with rules governing the conduct of the border control (Regulation of the Minister of Interior and Administration on of 15 December 2006 on the border control carrying out by the Border Guard officers [Journal of Laws 2006, No. 238, item 1729]).

In general, if, during the passport control, it turns that an alien does not have required documents, the Border Guard officers are entitled to address the

request on imposing the sanction to the relevant authority. According to Art. 139(3) AA the voivod competent with respect to the seat of the requesting authority shall impose the administrative fine at the request of the commanding officer of the Border Guard checkpoint, in which the alien was refused entry.

Q.7. Penalties

Q.7.A. Have maximum or minimum penalties applicable to carriers under Art. 26(2) and (3) of the Schengen Convention been introduced in legislation? (see Art. 4, which provides for minimum amounts to be foreseen, but gives the Member States the freedom to adopt even stricter provisions)

Yes (please provide exact amounts below)

- Maximum Amount (in Euro for each person carried): 5000 Euro
- Minimum Amount (in Euro for each person carried): 3000 Euro
- Maximum Amount if penalty is imposed as a lump sum irrespective of the number of persons carried (in Euro): 500 000 Euro

In case the amounts are provided in another currency than Euro, please calculate the equivalent on the basis of the exchange rate table in annex⁴ if applicable. If the table does not contain information on your national currency, please calculate the equivalent in Euro on the basis of the recent exchange rate and provide the amount in your national currency in addition.

No

Q.7.B. How is the provision of Art. 4(2) (“without prejudice to Member States’ obligations”) interpreted in your country?

NB: The wording of Art. 4 (2) is ambiguous and may therefore lead to different interpretations. This problem may be more or less virulent and the different language versions of the directive. Art. 4 (2) may be interpreted as indicating that if a Member State is obliged not to refuse entry to persons seeking international protection, financial sanctions must not be imposed upon carriers who have transported these refugees, but it may as well be interpreted to the contrary way as indicating that carrier obligations apply regardless of an asylum seeker’s entitlement to a temporary residence right during the asylum procedure or regardless of recognition as an asylum seeker. Please

⁴ Rate of Exchange published in the Official Journal on 10 August 2001.

make clear which interpretation is applied in your Member State or if the provision is interpreted even differently.

According to Art. 135(1) AA the carrier who brought an alien to the border by air, sea or land, shall be obliged to undertake the activities necessary to ensure, that the alien who intends to enter into the territory of Poland possesses a travel document and a visa, if required. The sanction is imposed on carrier if he does not comply with this duty.

There is no explicit rule in Polish legislation on persons seeking international protection with regard to carrier's obligation. Consequently, it should be assessed that carrier's obligation applies regardless of the situations of an alien concerned. Another words, the financial penalty is imposed on the carrier irrespective of an alien's entitlement to international protection.

However, it has to be emphasised that there is no contradiction between carriers' obligations on the one hand and the obligations of the Republic of Poland in cases where an alien seeks international protection, on the other.

Relevant provisions concerning the granting international protection in Poland are contained in the Act on granting protection to aliens within the territory of the Republic of Poland of 13 June 2003 (Journal of Laws of 2003, No. 128, item 1176 as amended). Furthermore, it must be mentioned that ratified international agreements become a part of the domestic legal system and may be applied directly (Art. 91 of the Constitution of the Republic of Poland of 2 April 1997).

Q.8. Have other measures like immobilisation, seizure and confiscation been adopted or retained in your country? *(see Art. 5, which is an optional provision and gives the Member States the freedom to adopt additional provisions with regard to sanctions)*

Yes

No

Q.9. Does your Member State apply a policy according to which carriers will not be subject to sanctions if they can prove that they have complied with "best practices", a "memorandum of understanding between the transport industry and the administration", "handbooks of due diligence" or other codes of conduct? *(This possibility is not explicitly foreseen in the directive but is a big issue in the discussions about the system of carriers liability)*

Yes

No

If yes, please specify!

According to information provided by the administration's officers, if a carrier can prove that has acted with due diligence (i.e. it has undertaken all necessary steps to check if an alien is allowed to enter into the territory of Poland), it is taken into consideration when deciding about the amount of penalty imposed. Still, there is no possibility of abstaining from imposing the administrative fine.

Q.10. Measures of Defence and Appeal (see Art. 6, which is a mandatory provision. Please pay attention to the fact that Art. 6 requires "effective rights of defence and appeal" and make clear if any practical problems hinder the effectiveness of system of appeal in your Member State)

Q.10.A. If proceedings are brought against carriers with a view to imposing penalties, are carriers entitled to the following defence or appeal measures (Art. 6)?

Administrative appeal rights

Judicial appeal rights

Q.10.B. Measures of defence and/or appeal have...

suspensive effect with regard to administrative appeal

suspensive effect with regard to judicial appeal

no suspensive effect

Q.10.C. If there is no suspensive effect, how is effectiveness of defence and appeal ensured?

THIRD PART

3. IMPACT OF THE DIRECTIVE ON NATIONAL LAW

Q.11. Did the transposition of the Directive make the rules related to carrier obligations to return third country nationals become from the point of view of carriers concerned more favourable or less favourable regarding the evolution of internal law (for example because of abolition or introduction of more favourable provisions, more restrictive conditions or amendments)? Make also a comparison with the standard of the Directive in the last column of the table below.

Please use one box per object and duplicate it if necessary

| OBLIGATIONS OF CARRIERS TO RETURN THIRD COUNTRY NATIONALS WHEN ENTRY IS REFUSED TO A THIRD COUNTRY NATIONAL IN TRANSIT | | EVALUATION REGARDING THE EVOLUTION OF INTERNAL LAW | EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE |
|---|---|---|---|
| No such obligation exists under previous regulations | Relevant obligation of carries introduced into Polish law; With respect to sea and air carriers since 1 September 2003 and with respect to land carriers since 1 May 2004. | <ul style="list-style-type: none"> • <i>Less favourable than previous internal rules</i> | Complete this box by keeping the right appreciation and deleting the other one: <ul style="list-style-type: none"> • <i>In line with the Directive</i> |

Q.12. From your point of view, did the transposition of the directive imply other interesting changes for the carriers concerned regarding other elements than the ones mentioned in the previous question. Make also a comparison with the standard of the directive in the last column of the table below

Please use one box per object and duplicate it if necessary

| OBJECT | EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW | EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE |
|---|---|--|
| Amount of the administration penalty imposed on carriers | | |

| | | | |
|--|--|--|---|
| According to 1997 AA, the administrative penalty should not exceed 10 000 zloty (about 2500 Euro) for each person carried. | After implementation of the Directive the administrative penalty shall not be less than 3000 to 5000 Euro for each person carried. | Complete this box by keeping the right appreciation and deleting the two others: <ul style="list-style-type: none"> • <i>Less favourable than previous internal rules</i> | Complete this box by keeping the right appreciation and deleting the other one: <ul style="list-style-type: none"> • <i>In line with the directive</i> |
|--|--|--|---|

Q.13.A. Mention if there is a general tendency to just copy the provisions of the directive into national legislation without redrafting or adaptation them to national circumstances.

NO

YES

Q.13.B. If yes, please indicate if this general tendency may or may not create problems (for example difficulties of implementation, risk that a provision remains unapplied).

NO

YES

Q.13.C. If yes, give some of examples:

Q.13.D. If only some provisions of the directive have been copied and if this may create any problem, please quote them and explain the problem.

Q.14. Quote *interesting* decisions of jurisprudence related to the directive, its **transposition or implementation** (so this question concerns in principle decisions later than the directive, but previous ones might be quoted if relevant). Quote in particular decisions of supreme Courts; limit yourself to the appeal Courts and ignore the first resort if there are too many decisions at this level, unless there is a certain jurisprudence made of a group of decisions.

Please use one box per decision and duplicate it if necessary

| | | | |
|-----------------------------------|---------------------|--|-----------------------------------|
| DECISION OF SUPREME COURTS | <u>DATE:</u> | <u>REFERENCE OF PUBLICATIONS:</u> | <u>SUMMARY OF CONTENT:</u> |
| DECISION OF APPEAL COURTS | <u>DATE:</u> | <u>REFERENCE OF PUBLICATIONS:</u> | <u>SUMMARY OF CONTENT:</u> |

| DECISION(S) IN FIRST RESORT | <u>DATE:</u> | <u>REFERENCE OF PUBLICATIONS:</u> | <u>SUMMARY OF CONTENT:</u> |
|--|---------------------|--|-----------------------------------|
|--|---------------------|--|-----------------------------------|

ANY SUPPLEMENTARY COMMENT ABOUT THE TREND OF THE JURISPRUDENCE:

Q.15. Specify if there are or not problems with the translation of the text of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated.

There are no problems with the translation of the directive

There are some problems with the translation of (indicate the number of the articles concerned) of the directive.

Explain the difficulties that this could create:

4. ANY OTHER INTERESTING ELEMENT

Q.16. Following your personal point of view, mention from the point of view of third country nationals and/or from the Member State any interesting or innovative practice in your Member State

Please use one table per practice and duplicate it if necessary

| OBJECT OF THE PRACTICE | EXPLANATIONS |
|-------------------------------|---------------------|
| | |

Q.17. Please add here any other interesting element in your Member State which you did not had the occasion to mention in your previous answers

It is worth to mention how the carriers' obligations are used in practice.

The data below has been presented in the Information on the Results of Control concerning the realization by the administration tasks on protection of aliens in connection with the access of Poland to the European Union⁵ prepared by the Supreme Chamber of Control (Najwyższa Izba Kontroli).

⁵ Informacja o wynikach kontroli realizacji przez administrację rządową zadań związanych z ochroną cudzoziemców w kontekście przystąpienia Polski do Unii Europejskiej [Information on the Results of Control concerning the Realization by the Administration Tasks on Protection of Aliens in connection with the Access of Poland to the European Union], Supreme Chamber of Control, Public Administration Department; KAP – 41005/04, No. 136/2005/P/04/005/KAP, pp. 54-55.

Data provided concern the period between 1 September 2003 (the date of entering into force of the Act on Aliens of 13 June 2003) and 30 June 2004. Unfortunately, no data on later periods are available.

During these eight months, voivods issued 281 decisions imposing the administrative fines on the requests of the commanding officers of the Border Guard checkpoint, in which the alien was refused entry. All the decisions involved air carriers. Usually, the minimum penalty was imposed (i.e. 3000 Euro).

It should be also mentioned that in 11 voivodships there have not been situations when the aliens did not have relevant documents and were refused entry in the territory of Poland.

Furthermore, as it has been noted by the relevant authorities, the rise of the penalties has resulted in the greater diligence of the carriers. Consequently, the number of decisions imposing penalties is considerably smaller (for example: in the first half of 2004 the Masovian Voivod (Wojewoda Mazowiecki) had issued 215 decisions imposing penalties while in 2005-2007 there has been only 32 such a decisions)