CHAPTER 6

Carrier Sanctions in a System of Measures

This book departs from the notion that the law should be observed in action and not (just) in books; that regulations on carrier sanctions have to be contextualised and discussed in the broader context of migration processes, the rationale behind the policy, the changing character of borders and the regulatory environment of this policy. Chapters 3, 4 and 5 have discussed the legal framework of the carrier sanctions and carriers' liability policies in the Netherlands, the UK and the EU: the law in books. The aim of this chapter is to look at carrier sanctions policies from a broader perspective.

Carriers have become an important and structural part of European countries' immigration control strategies. The Dutch and British governments have also become increasingly dependent on carriers' performance of their control tasks. This makes it important that they perform these controls diligently. To encourage them to perform their duties, the British and Dutch governments have developed legislation making them responsible for carrying out checks on their passengers and for forwarding passenger data to the immigration authorities. Through this legislation, carriers are liable to sanctions if they do not comply. In addition, these countries have developed practices which supplement the obligations and financial sanctions for carriers. These measures are not always covered by legislation but may have a great impact on the way the carrier sanctions policies work in practice. The aim of this chapter is to examine these ‘contiguous’ measures.1

6.1 Stimulating Compliance: Training and Information

One of the measures underpinning the carrier sanctions policy is the provision of training and information to carriers on how to perform their tasks. As described in paragraph 3.3.1, Dutch authorities want carrier personnel to perform certain minimal checks to ascertain whether the person who presents the document matches it, and whether it is false or has been falsified, although the level of knowledge required by the Dutch government and what a necessary check is, has remained somewhat unclear.

1 See for a discussion of these ‘contiguous’ measures also Scholten & Minderhoud, 2008.
In the UK, the level of knowledge required by carrier staff is reflected in the ‘reasonably apparent test’ as described in paragraph 4.6.2. Both the Dutch and British immigration authorities thus require a level of knowledge by the carrier for performing checks on travel documentation. However, carriers’ core business is providing transportation and, connected to that, selling seats, offering a good balance in service, speed and security. The obligations in the carrier sanctions policies force carriers to also become experts in immigration regulations, identity documents, passports, visas, falsifications, etc. (Scholten & Terlouw, 2014). To encourage carriers to check passenger documentation thoroughly, both the Dutch and British governments provide them with information and training.

6.1.1 The Netherlands

In the Netherlands, training on travel documentation focuses, as does the liability, on air carriers. The Dutch government provides training to airline staff on document requirements and on the recognition of forged documents and imposters in two ways. Training abroad is provided by KMar personnel of the National Documents Bureau, the KMar centre of expertise on documents, or by Immigration Liaison officers (ILO) deployed by the Netherlands in third countries.

Based on the number of undocumented arrivals and on perceived trends in immigration routes, the KMar draws up a list each year to decide at which airports they will provide training. Training sessions can also be arranged at the airlines’ request. KLM holds a special position in requesting training. By signing a special agreement with the Dutch government (see Chapter 7 for a detailed discussion on this agreement), KLM has committed itself to drawing up training programmes for its staff and to keeping the level of knowledge of its personnel up-to-date and at a high level. The same agreement establishes a responsibility – ‘when necessary and considering possibilities’ – for the State Secretary to arrange training on the identification of false and forged documents and to make officials available when KLM requests training. The IND and other organisations can also request document training by the KMar. On average, 16 training sessions are run annually by the KMar at airports abroad (‘outstations’).

The ILOs can run training sessions in their designated region as they think necessary. Whether the Dutch ILOs do in fact provide a lot of training to airlines

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2 Expertise Centrum Identiteitsfraude & Documenten, ecid.
3 Kamerstukken II 1999/00, 19 637, Annex to no. 502 (Memorandum of Understanding).
4 Interview with a KMar respondent from the Border control division at Schiphol Airport (20.11.2008).