In document 5730/00 FRONT 3 COMIX 108 the Portuguese Presidency introduced the topic of responsibility for stowaways, with the aim of harmonising the pertinent border procedures.

After analysis of the replies to the questionnaire attached to that document, the following picture emerges:

The main view is that ships' captains must bear responsibility at various levels:

- the captain must inform the port authorities as soon as a stowaway is discovered;
- the captain must keep the stowaway on board if the latter is refused entry and repatriation is inevitable;
- responsibility for the stowaway's safety on board.
Replies from the Member States vary concerning:

- how the case is dealt with once the stowaway reaches port;
- the procedures used to prevent the stowaway from disappearing overboard;
- application of sanctions and fines;
- where the stowaway should stay if seeking political asylum.

Given that stowaways are one of the most frequently mentioned problems in the context of maritime borders of the European Union and whereas illegal immigration by sea is a worldwide phenomenon which it is vital to prevent and to combat;

As replies to the questionnaire have shown that there is a common approach to various aspects of the stowaway problem, but whereas it is not reflected in a standard modus operandi;

Given the Common Manual does not contain provisions enabling harmonisation of procedures on the stowaway problem, apart from point 3.4.3.4.;

Inasmuch as the international legal instruments for tackling this problem are insufficient or not in force, namely the Brussels Convention of 10 October 1957, which has never entered into force as it has only been ratified by 7 of the 10 States required, and the Convention on Facilitation of International Maritime Traffic, only points 2.7.6. and 2.7.6.1. of which cover the issue;

Given that the absence of provisions in Community law and in the national law of many States hampers and impedes the adoption of preventive, operational and punitive measures in this area;
Given, moreover, that the EU Member States consulted (with the exception of those which chose not to commit themselves on this subject for geographical reasons and because it did not apply to their countries, as they have no seaport traffic), take the view that the stowaway phenomenon necessitates administrative, judicial and operational measures.

The Portuguese Presidency of the Working Party on Frontiers proposes that work continue with a view to the Member States' border authorities adopting standard procedures on stowaways, by:

- adopting a common definition of a stowaway and of the international area of a port, since those concepts had operational implications;

- adopting a model for information exchange between ports on stowaways, setting up an efficient network for monitoring ships carrying stowaways and putting in at various EU ports;

- developing computer software accessible to all European ports on ships carrying stowaways and on data concerning illegal immigration by sea, to serve as a valuable analytical tool, with a view to taking measures at EU level;

- adopting sanctions and penalties for the transport of stowaways to EU ports;

- adopting provisions on liability for costs deriving from involvement in cases of stowaways (applications for asylum/repatriation, etc.);

- adopting a standard form making it possible to document the stowaway, on the basis of the terms of the recommendation in point 2.7.6.1. of the Convention on Facilitation of International Maritime Traffic;

- adopting a standard report form to be filled in by the ship's captain, containing information on the identity of the stowaway and where he boarded ship, with a view to implementation of readmission agreements and application of the Dublin Convention.
Any agreements and procedures adopted are to be included in the Common Manual on checks at external borders.

With the aim of expediting the work, the Portuguese Presidency of the Working Party on Frontiers proposes the following definitions for discussion regarding the proposed measures:
Definition of a stowaway:

"A stowaway shall mean a person who illegally boards a ship in an attempt to be transported, unknown to and without the consent of the shipowner and the crew, who is found on board when the ship has left the port, who does not engage in paid activity and who is considered a stowaway by the ship's captain, who shall immediately notify the authorities."

Agreed definition of an international area of a port:

""International area of a port" shall mean an area between the points of embarkation and disembarkation where the border authorities are located."

Adoption of a model for information exchange between ports on stowaways could be based on the EISICS system, since not all EU Member States are parties thereto.

It is proposed that the following fields inter alia be included in developing software to be made available to all European ports on ships involved in the transport of stowaways and on data on illegal transport by sea:

- the ship's technical data sheet;
- the crew's rota;
- the method used by the stowaway;
- statistics.

The adoption of sanctions for carrying stowaways to EU ports, in the following cases:

- a fine if the captain fails to inform the border authorities that there is a stowaway on board;
- a fine for repeated cases of stowaways being carried in the same ship or in ships belonging to the same owner;
- a fine in the case of disappearance overboard of stowaways who were the responsibility of and under the guard of the captain and requirement of a bank guarantee to cover repatriation costs;
– a fine and seizure of the ship when stowaways are cast overboard;

– prosecution for aiding illegal immigration when there is proof of complicity of the captain or crew in allowing stowaways on board and illegally introducing them into the territory of an EU Member State.

**Adoption of the following measures concerning liability for costs:**

– it will be for the shipowner or his representative to pay all costs incurred in repatriating the stowaway (food, medical care and escort);

– it will be for the shipowner or his representative to cover all costs incurred for any political asylum application made by a stowaway in respect of food, medical expenses, interpreters' fees, lodging and repatriation (should the application be refused);

– the shipowner or his representative will have to take out a bank guarantee to cover the cost of repatriation in the event of the stowaway applying for political asylum and the application being refused;

– the shipowner or his representative will be liable for the cost of any special security that he may deem necessary and consonant with his or her responsibility for the stowaway's custody and detention on board.