



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 30 June 2000 (12.07)
(OR. fr)**

9896/00

LIMITE

MIGR 51

NOTE

from : incoming French Presidency
to : Working Party on Migration and Expulsion

Subject : Draft initiative by the French Republic for the adoption of a Council Directive on mutual recognition of decisions concerning expulsion of third-country nationals

Delegations will find attached the above draft initiative.

EXPLANATORY MEMORANDUM

1. GENERAL PRESENTATION

1.1. Since the entry into force of the Treaty of Amsterdam, asylum and immigration matters come within the Community's sphere of responsibility under the new Title IV of the amended Treaty establishing the European Community (TEC). Article 63 of the TEC specifies the measures which the Council is to adopt in the asylum and immigration field within five years after the entry into force of the Treaty of Amsterdam. The Council is thus called upon to adopt measures on conditions of entry and residence and on illegal immigration and illegal residence.

1.2. Meeting in Tampere on 15 and 16 October 1999, the European Council expressed its determination to develop the European Union as an area of freedom, security and justice by making full use of the possibilities offered by the Treaty of Amsterdam and agreed on a number of policy guidelines and priorities which will speedily make this area a reality. The Council accordingly reaffirmed the objective of establishing a common policy on asylum and migration.

That objective means that, given a policy designed to ensure fair treatment of lawfully present third-country nationals, European Union territory cannot become a sanctuary for those against whom an expulsion order has been issued by a Member State.

1.3. The purpose of the proposed Directive is to assist in more effective enforcement of expulsion orders by establishing a system of mutual recognition of expulsion decisions by Member States. The aim is that, where such an order has been issued by one Member State, another Member State should automatically be able to enforce it.

- 1.4. The inclusion in the Treaty establishing the European Community of the new Title IV on visas, asylum, immigration and other policies related to free movement of persons establishes Community powers in those areas. However, such powers have to be exercised in accordance with Article 5 of the EC Treaty, i.e. if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community. The proposed Directive fulfils those criteria.
- 1.5. The establishment of an area of freedom, security and justice involves the adoption of common immigration policy rules. The specific aim of this initiative is to make it possible for one Member State to enforce an expulsion order issued by another Member State.
- 1.6. The form of Community action should be as simple as possible, while enabling the objective of the initiative to be achieved and its implementation facilitated. With that in mind, the legal instrument chosen is a Directive, which serves to lay down broad principles, while leaving to the Member States to which it is addressed the choice of the form and methods best suited to implementing those principles under their own legal system and in their domestic setting. The proposed Directive leaves it to Member States to carry out expulsion as provided in their own legislation.

2. PRESENTATION OF THE ARTICLES

Article 1

Article 1 lays down the purpose of the Directive, which is to make possible the automatic enforcement by one Member State of an expulsion order issued by an administrative authority in another Member State.

Article 2

This article lays down the category of persons covered, i.e. anyone above the age of majority who is not a national of any of the Member States of the Union.

Article 3

This article spells out the two possible cases of expulsion:

- (a) expulsion based on a threat to public policy. The first subparagraph requires the order to be enforceable, based on a serious present threat and issued in accordance with the European Convention on Human Rights;
- (b) expulsion based on failure to comply with national regulations on the entry or residence of aliens. In this case, the order cannot be enforced by a Member State unless the person is unlawfully present within its territory.

Article 4

This article requires a Member State intending to carry out an expulsion order to ascertain that it remains enforceable.

It also requires a Member State intending to give effect to expulsion first to consider the situation of the person concerned, as provided by the relevant international instruments and, where appropriate, by its national legislation.

Article 5

This article requires compliance with the principle that foreign nationals must have a remedy available against the order issued by the Member State intending to expel them. Such a remedy takes the form laid down in that State's legislation.

The article stipulates the procedure to be followed, according to whether the remedy is suspensive in effect or otherwise.

Article 6

This article makes provision for protection of personal data and data security by reference to existing rules on the subject, i.e. Directive 95/46/EC of 24 October 1995 concerning data protection.

Article 7

This article makes provision for transposal into national law of the measures required for implementation of the Directive and in particular the time limit for doing so.

It requires Member States to inform the Commission of such measures.

Draft initiative by the French Republic for the adoption of a

COUNCIL DIRECTIVE

on mutual recognition of decisions concerning expulsion of third-country nationals

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 63(3) thereof,

Having regard to the initiative by the French Republic,

Having regard to the Opinion of the European Parliament,

Whereas:

- (1) Article 63(3) of the Treaty establishing the European Community stipulates that the Council is to adopt measures on immigration policy within areas comprising conditions of entry and residence as well as illegal immigration and illegal residence.
- (2) Meeting in Tampere on 15 and 16 October 1999, the European Council reaffirmed its resolve to create an area of freedom, security and justice. For that purpose, a common European policy on asylum and migration should aim at both fair treatment of third-country nationals and better management of migration flows.

- (3) The need to ensure greater effectiveness in enforcing expulsion orders and better cooperation between Member States entails mutual recognition of expulsion decisions.
- (4) Orders for the expulsion of individuals have to be adopted in accordance with fundamental rights, as safeguarded by the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, in particular Articles 3 and 8 thereof, and the Geneva Convention relating to the Status of Refugees of 28 July 1951 and as they result from the constitutional principles common to the Member States.
- (5) In accordance with the principles of subsidiarity and proportionality, as set out in Article 5 of the Treaty, the objective of the proposed action, namely cooperation between Member States on expulsion of aliens, cannot be sufficiently achieved by the Member States and can therefore, by reason of the effects of the action, be better achieved by the Community. This Directive is confined to the minimum required in order to achieve that objective and does not go beyond what is necessary to that end,

HAS ADOPTED THIS DIRECTIVE:

Article 1

The purpose of this Directive is to make possible the enforcement of an expulsion order issued by an administrative authority in one Member State, hereinafter referred to as the "issuing State", against a third-country national present within the territory of another Member State, hereinafter referred to as the "enforcing State". The third-country national shall be expelled as laid down by this Directive and subject to Article 4.

Article 2

For the purposes of this Directive, "third-country national" shall mean anyone above the age of majority who is not a national of any of the Member States of the European Union.

Article 3

A third-country national as referred to in Article 1 shall be:

- (a) in the case of an expulsion order based on a threat to public policy or public security or to national security:
- one who has been sentenced by the issuing State to a non-suspended penalty involving deprivation of liberty of at least one year;
 - one in respect of whom there are serious grounds for believing that he has committed serious criminal offences or in respect of whom there is clear evidence of an intention to commit such offences within the territory of a Member State.

Possession of a residence permit shall not prevent the carrying out of an enforcement order issued under this subparagraph. That order must be:

- based on a serious present threat;
- consistent with the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950;

- (b) one who has had imposed on him an expulsion order based on failure to comply with national regulations on the entry or residence of aliens.

In the cases referred to in both (a) and (b) above, the order must not have been rescinded or suspended.

Article 4

If the enforcing State has no information as to the continued enforceability of the expulsion order, it shall ascertain from the issuing State that the order remains enforceable.

The enforcing State shall first consider the situation of the person concerned under the relevant international instruments and under national rules applicable.

Article 5

The third-country national concerned must have a remedy available against the decision taken by the enforcing State, as laid down by that State's legislation.

Where, under the enforcing State's legislation, such remedy is not suspensive in effect, that State shall carry out the order and inform the issuing State accordingly.

Where, under the enforcing State's legislation, such remedy is suspensive in effect, the order shall not be carried out by that State until all available remedies have been exhausted and the issuing State's order upheld. The enforcing State shall inform the issuing State of the enforcement of the order.

Article 6

Protection of personal data and data security shall be ensured in accordance with national legislation adopted pursuant to Directive 95/46/EC of 24 October 1995 on the protection of individuals with regard to the processing of person data and on the free movement of such data.

Article 7

Member States shall bring into force the measures necessary to comply with this Directive by [...]. They shall forthwith inform the Commission thereof.

