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REPORT

on the initiative of the French Republic for adoption of a Council directive concerning the harmonisation of penalties imposed on carriers transporting into the territory of the Member States third-country nationals lacking the documents necessary for admission
(14074/2000 – C5-0005/2001 – 2000/0822(CNS))

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Rapporteur: Timothy Kirkhope

Symbols for procedures

*	Consultation procedure *majority of the votes cast*
**I	Cooperation procedure (first reading) *majority of the votes cast*
**II	Cooperation procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***	Assent procedure *majority of Parliament's component Members except in cases covered by Articles 105, 107, 161 and 300 of the EC Treaty and Article 7 of the EU Treaty*
***I	Codecision procedure (first reading) *majority of the votes cast*
***II	Codecision procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***III	Codecision procedure (third reading) *majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission)

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PROCEDURAL PAGE

By letter of 12 September 2000 the Council consulted Parliament, pursuant to Article 67 of the EC Treaty, on the initiative of the French Republic with a view to the adoption of a Council directive concerning the harmonisation of financial penalties imposed on carriers transporting into the territory of the Member States third-country nationals lacking the documents necessary for admission (10701/2000 - 2000/0822(CNS)).

At the sitting of 2 October 2000 the President of Parliament announced that she had referred this initiative to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible (C5-0470/2000).

By letter of 11 January 2001 the Council consulted Parliament, pursuant to Article 67 of the EC Treaty, on the initiative of the French Republic for adoption of a Council directive concerning the harmonisation of penalties imposed on carriers transporting into the territory of the Member States third-country nationals lacking the documents necessary for admission (14074/2000 - 2000/0822(CNS)). As the new text of the draft directive reflects the latest state of play as regards the work conducted to date by the Council, it replaces the initial Council text (see paragraph 1).

At the sitting of 18 January 2001 the President of Parliament announced that she had referred this initiative to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible (C5-0005/2001).

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs had appointed Timothy Kirkhope rapporteur at its meeting of 10 October 2000.

The committee considered the initiative of the French Republic and draft report at its meetings of 22-23 November 2000, 16 January, 5-6 February and 26-27 February 2001.

At the last meeting it adopted the draft legislative resolution by 16 votes to 15, with no abstentions.

The following were present for the vote: Graham R. Watson, chairman; Robert J.E. Evans and Bernd Posselt, vice-chairmen; Timothy Kirkhope, rapporteur; Charlotte Cederschiöld, Carmen Cerdeira Morterero (for Michael Cashman), Ozan Ceyhun, Carlos Coelho, Thierry Cornillet, Gérard M.J. Deprez, Giuseppe Di Lello Finuoli, Giorgos Dimitrakopoulos (for Mary Elizabeth Banotti), Marialiese Flemming (for Enrico Ferri pursuant to Rule 153(2)), Pernille Frahm, Vitaliano Gemelli (for Rocco Buttiglione pursuant to Rule 153(2)), Jorge Salvador Hernández Mollar, Margot Keßler, Timothy Kirkhope, Jean Lambert (for Alima Boumediene-Thiery), Baroness Sarah Ludford, Hartmut Nassauer, Elena Ornella Paciotti, Hubert Pirker, Reinhard Rack (for Eva Klamt pursuant to Rule 153(2)), Heide Rühle (for Patsy Sörensen), Ingo Schmitt (for Marcello Dell'Utri), Charles Tannock (for Daniel J. Hannan pursuant to Rule 153(2)), Anna Terrón i Cusí, Maurizio Turco, Christian Ulrik von Boetticher, Jan-Kees Wiebenga.

The report was tabled on 27 February 2001.

The deadline for tabling amendments will be indicated in the draft agenda.

LEGISLATIVE PROPOSAL

Initiative of the French Republic for adoption of a Council directive concerning the harmonisation of penalties imposed on carriers transporting into the territory of the Member States third-country nationals lacking the documents necessary for admission (14074/2000 – C5-0005/2001 – 2000/0822(CNS))

The initiative is amended as follows:

Text proposed by the French Republic[1]	Amendments by Parliament
(Amendment 1) Recital 10a (new)	
	This directive builds on the Schengen acquis in accordance with the Protocol integrating the Schengen acquis into the framework of the European Union.
Justification:	
The integration of the Schengen acquis into the framework of the European Union permits going beyond the actual scope of the 1990 Convention so that the directive brings some 'added Community value' to it.	
(Amendment 2) Article 1	
The aim of this Directive is to supplement Article 26 of the Agreement implementing the Schengen Convention of 14 June 1985, signed at Schengen on 19 June 1990 and to define the implementing conditions thereof.	The aim of this Directive is to supplement Article 26 of the Agreement implementing the Schengen Convention of 14 June 1985, signed at Schengen on 19 June 1990 and to define***, following the Protocol integrating the Schengen acquis into the framework of the European Union,*** the implementing conditions thereof.
Justification:	
See previous justification.	

[1] OJ C not yet published

(Amendment 3)
Article 2(2), second subparagraph

Furthermore, if immediate onward transportation is not possible, the carrier shall ***take charge*** **of** the third-country national who has been refused entry.	Furthermore, if immediate onward transportation is not possible, the carrier shall ***inform the police and hand over to the authorities responsibility for*** the third-country national who has been refused entry.

Justification:

If immediate onward transportation is not possible, it is not for the carrier but rather for the police to take charge of the passenger.

(Amendment 4)
Article 3

Member States shall take the necessary measures to ensure that the penalties imposed on carriers ***under Article 26(2) and (3) of the Schengen Convention*** are dissuasive, ***effective and proportionate*** and that: ***(a) either the maximum amount of the financial penalties thus imposed is not less than EUR 5 000 for each person carried,*** ***(b) or*** the minimum amount of these penalties is not less than EUR ***3*** 000 for each person carried, ***(c) or the maximum amount of the penalty imposed as a lump sum for each infringement is not less that EUR 500 000.***	Member States shall take the necessary measures to ensure that the penalties imposed on carriers ***who fail to respect their obligations*** are dissuasive, and that the minimum amount of these penalties is not less than EUR ***5*** 000 for each person carried***.***

Justification:

In place of the very different penalties at present imposed by Member States and to show a common and coherent attitude against illegal immigration, a minimum deterrent penalty of EUR 5000 should be imposed on carriers who do not respect their obligations. Furthermore, the two other alternative penalties proposed in Article 3 are not only irrelevant but contradictory to the principle of a minimum amount penalty explicitly mentioned in recital 1.

(Amendment 5)
Article 3, new paragraph

Such penalties shall not apply where :

- a third-country national seeks asylum immediately after arriving on the territory of the State of destination.

- the person carried is granted refugee status or leave to remain under a subsidiary form of protection

- the person is admitted to the asylum determination procedure.

Justification:

In order to safeguard the institution of asylum, carriers who transport foreigners who request asylum after their arrival and whose requests are subsequently turned down must be exempt from penalties. If a carrier is required to assess the motives of an asylum-seeker, this will adversely affect the latter's rights and mean that the carrier wrongly takes on the role which is proper to the State in asylum procedures, for the State alone is responsible for examining requests for asylum.

With regard to manifestly unwarranted requests for asylum by foreigners transported without the relevant documents, States may lay down other mechanisms which do not involve transferring to carriers responsibility for making prior checks on the motives for seeking asylum.

Carriers' personnel cannot be expected to decide which passengers have a valid claim for protection. Given the length of procedures, a carrier may expect to wait years to be refunded a fine already levied. Waiver rather than refund is fairer on carriers as well as applicants, and may also put pressure on administrations to make decisions more quickly.

Faced with a would-be asylum-seeker with inadequate documentation, the carrier would err on the side of caution and refuse to carry such a person, leading, in effect, to refoulement.

(Amendment 6)
Article 6a (new)

Carriers' obligations to return third-country nationals shall not prevent application of the means of defence and

	legal guarantees which are provided for in the legislation of the State concerned and of which third-country nationals who have been denied entry may avail themselves.

Justification:

National legislation contains legal guarantees and means of defence in the case of repatriation procedures, and these cannot be rendered ineffective by virtue of a carrier's obligation to return the third-country nationals concerned.

(Amendment 7)
Article 8

This Directive shall enter into force ***30 days*** after its publication in the Official Journal of the European Communities.	This Directive shall enter into force ***12 months*** after its publication in the Official Journal of the European Communities.

Justification:

Having regard to the legislative changes most Member States have to undertake to comply with this directive, a minimum of 12 months for implementation is required.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the initiative of the French Republic for adoption of a Council directive concerning the harmonisation of penalties imposed on carriers transporting into the territory of the Member States third-country nationals lacking the documents necessary for admission
(14074/2000 – C5-0005/2001 – 2000/0822(CNS))

(Consultation procedure)

The European Parliament,

– having regard to the initiative of the French Republic (14074/2000[1]),

– having regard to Articles 61(a) and 63(3)(b) of the EC Treaty,

– having been consulted by the Council pursuant to Article 67 of the EC Treaty (C5-0005/2001),

– having regard to Rule 67 of its Rules of Procedure,

– having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0069/2001),

1. Approves the initiative of the French Republic as amended;

2. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;

3. Asks to be consulted again if the Council intends to amend the initiative of the French Republic substantially;

4. Instructs its President to forward its position to the Council and Commission and the government of the Republic of France.

[1] OJ C not yet published

EXPLANATORY STATEMENT

It is to be regretted that the new text presented by the Swedish Presidency does not go as far as the initial text of the French initiative. It is confined to improving the situation in only a very limited way within the actual scope of Article 26 of the Schengen Convention, although, pursuant to the Protocol integrating the Schengen *acquis* into the framework of the European Union, a far more significant step forward could have been taken.

1. Provisions too limited in scope

The directive applies only to air and sea carriers and transportation by coach, with the exception of local border traffic.

However, if the objective is to improve effectiveness, international rail traffic should be included within the scope of the directive, given that a large number of immigrants from third States use this means of transport and many cases of illegal entry have, for example, been discovered via Eurostar. There should be no major obstacle to rail companies carrying out checks on travel documents, at least in cases where it is only possible to travel if seats are reserved in advance.

It is inconsistent to continue, in accordance with Article 26(1)(b), to exempt carriers by land from the obligation to verify travel documents.

2. Insufficiently precise and in some cases excessive obligations

a) Substance of the obligation to check documents

It seems essential to specify that the obligation upon the carrier entails checking that the third-country nationals have the required documents and checking their apparent validity and authenticity, without this obligation extending beyond checking for obviously forged documents.

Staff of carriers cannot be expected to have the same qualifications and experience as police officers working in immigration control.

b) Obligation in respect of accommodation

The obligation for the carrier to take charge of the accommodation of the passenger if immediate onward transportation is not possible is excessive.

It is not up to carriers to take the place of the police authorities and detain people. This would not only exceed their responsibilities but would also be contrary to the law.

3. Need for penalties with a greater deterrent effect

Member States' legislation lays down penalties for carriers transporting passengers who do not have the necessary documents. However, these penalties vary considerably from one Member State to another (for example, from BEF 3 000 per person in Belgium to FRF 10 000 in France and GBP 2 000 in the United Kingdom).

In order to combat illegal immigration more effectively, it therefore seems essential to provide, without alternatives, contrary to Article 3, for a minimum financial penalty the amount of which, at EUR 5 000, would be capable of having a sufficiently deterrent effect.