

SN 3159/01

LIMITE

**Draft discussion document for a policy debate
on a ban on hooligans entering and/or leaving a country
and similar measures**

Preamble

Having regard to the European Parliament's Resolution of 24 April 1996 on hooliganism and the free movement of football supporters, in which it is noted that the widespread problem of hooliganism and violence at and around football matches, particularly international fixtures, is a cross-border problem which should be tackled at Community level ¹;

¹ "Resolution of 24 April 1996 on hooliganism and the free movement of football supporters", European Parliament meeting documents, A4-0124/96.

Having regard to Council of Europe Recommendation T-RV/99/3 on the identification and treatment of offenders and the exchange of intelligence in the context of the European Football Championships (EURO 2000), in which it is recommended that the Parties introduce, within the limits of their respective constitutional provisions, preventative measures to impede fans who are known to be violent from leaving their countries of residence and/or entering the territories of the organising countries;

Having regard to the replies given by the European Commission to written questions put in July 2000 on European travel bans on football hooligans travelling abroad¹ on the one hand and the seizure of passports of suspected football hooligans by the German authorities² on the other, in which the Commission expressly states that it is prepared to encourage initiatives taken by States to incorporate in their legislation provisions that make it possible to ban football hooligans travelling to matches abroad;

Having regard to the report drawn up in December 2000 assessing the international police cooperation on the occasion of Euro 2000, which received financial support under the common programme for the exchange and training of, and cooperation between, Union law enforcement authorities (OISIN), in which it is recommended that potential troublemakers be prevented from travelling to the country in which a football match is to take place;

Having regard to the conclusions reached at the meeting of hooliganism experts at The Hague on 13 and 14 December 2000, in which it is noted that it would be desirable from a political point of view for the European Union to encourage those countries faced with hooliganism to take appropriate measures to prevent hooligans from leaving their countries of residence;

¹ Written Question E-2318/00 put to the Commission by Margrietus van den Berg(PSE) on 11 July 2000, *Official Journal of the European Communities*, 2001/C 89 E/202.

² Written Question E-2459/00 put to the Commission by Charles Tannock (PPE-DE) on 24 July 2000, *Official Journal of the European Communities*, 2001/C 89 E/222.

Having regard to the conclusions reached at the international seminar in Brussels on 20 and 21 March 2001 on vandalism linked with football, in which the countries taking part hoped that, in the event of bans on hooligans entering and/or leaving a country, a political discussion would be followed by the preparation of a practical position at European level;

Having regard to the conclusions reached at the international seminar on the prevention and combating of the violence linked with football held in Brussels on 22 and 23 May 2001, at which experts representing the Member States and the candidate countries taking part and the European institutions discussed, amended and approved this text;

Having regard to the positive results achieved by Germany and England since the incorporation into their national law of measures under which their hooligans may be banned from leaving the country in the event of an international match being played abroad;

Whereas experience has unfortunately shown that measures taken at national level are not always sufficient to check hooliganism, as troublemakers do not in fact hesitate to travel abroad to commit their misdeeds;

Whereas it has therefore seemed appropriate to consider in depth, at European level, the legal possibilities, in the context of international tournaments, for preventing hooligans recognised as such in their countries of residence from either leaving their countries or entering the country in which a tournament is to take place;

Whereas the purpose of this note is to consider the legal options that are available at European level for the achievement of that objective;

Whereas to that end this note analyses the following two measures from the legal point of view:

1. the imposition of a ban on travelling, on the one hand, and
2. the introduction of checks at the borders of the country in which a match is to be played, on the other hand.

I. Imposition of a ban on travelling

a. *The principle*

The purpose of this measure is to prevent hooligans from leaving their countries of residence when an international event is taking place abroad in order to prevent their committing any public-order offences.

This measure conflicts with the principle of the freedom of movement of persons recognised by European law. It follows, however, from the analysis of that right that it can be imposed on hooligans provided that:

it can be inferred from their previous behaviour that they represent a real, serious danger to public order **and** the fundamental principles of European law are observed, namely the principles of the protection of the general interest, of proportionality, of non-discrimination and of respect for the right to a fair hearing.

b. *The ban on travelling at European level*

At present only Germany and England have adopted such rules. There can be no doubt, however, that if all European countries incorporated such rules into their legislation it would be possible to reduce hooliganism at that level significantly.

In that way countries confronted with hooliganism at national level would prevent their known violent citizens from going to another country where a risk situation existed. Countries that did not have much or any hooliganism would avoid being confronted with violent individuals in the event of an international event taking place within their territories.

In practice, each Member State's national rules could provide for the imposition of an individual travelling ban (combined with an international stadium ban or not) without any other measure.

To be effective, a travelling ban ought to be combined with an obligation to report to an appropriate police station at precise times specified in the ban decision, with or without an obligation to surrender identity or travel documents for a specified period. It goes without saying that these restrictions may be adapted in the light of individual circumstances at the discretion of the authorities.

These measures must comply with the principles listed in section I(a).

c. Conclusion

There is an urgent need for the adoption of an instrument at European level to encourage the Member States to legislate on the subject of travelling bans. The following options could be considered:

- 1. Title IV of the Treaty establishing the European Community or Title VI of the Treaty on European Union;**
- 2. enhanced cooperation between those Member States that want to go further in this field.**

II. Introduction of checks at the borders of the country in which a match is to be played

a. *Introduction* (Relationship between the ban on travelling and the introduction of border checks)

Most instances of hooliganism do not occur at stadiums but elsewhere.

If a stadium ban is imposed, the person concerned will merely be refused admission to the stadium, but may be present in the immediate neighbourhood.

In order to prevent the presence of undesirable individuals who might disturb public order or take part in disturbing it, a travelling ban must be considered.

Whether the travelling ban is combined with an obligation to report to a police station and/or surrender identity or travel documents or not, it would be advisable to have entry checks within the territory of the country which is organising the event in order to ensure the effectiveness of the measure. In fact, the person concerned could flout the travelling ban and not comply with the related obligations.

A travelling ban ought therefore to be reinforced by the introduction of checks at the borders of the country in which an international event is to take place. That would require machinery for the exchange of information on persons who are subject to such measures, so that checks could be carried out. The exchange of information on travelling bans should be carried out in accordance with the relevant national and international laws on the protection of data.

b. Border checks within Schengen territory: the general principle and exceptions

The general principle governing the crossing of borders within Schengen territory is set out in Article 2 of the Schengen Convention. Paragraphs 2 and 3 of that Article provide, however, for two exceptions under which checks can be carried out for specific purposes.

c. Introduction of border checks on the basis of Article 2(2) of the Schengen Convention

c.1. Principle

The Contracting Parties to the Schengen Convention can introduce border checks when public policy or national security so require, subject to the fulfilment of certain conditions.

The short-term introduction of border checks with a view to maintaining public policy at the time of a specific event can be effected on that basis. The question whether, under that Article, border checks can be introduced for international tournaments in general is quite another question.

In accordance with the decision of the Schengen Executive Committee of 20 December 1995 on the procedure for applying Article 2(2) of the Schengen Convention (OJ L 239, 22.9.2000, p. 133 *et seq.*), the general objective of the measures taken under the Schengen Convention is to avoid recourse to Article 2(2). The reintroduction of checks must remain an exceptional measure. The notification of the reintroduction of checks at internal borders must include information concerning the causes, extent and duration of the planned decision.

In conclusion, and in order to remain within the limits imposed by that Article, it would appear that that Article ought to be applied only in the following two cases:

1. in the context of tournaments;
2. in the context of high-risk international matches and on a purely short-term basis, the decisive criterion being the risk of the match assessed on the basis of the police information in the possession of the police forces.

c.2. What checks to introduce?

Article 2(2) of the Schengen Convention permits the introduction of border checks which are appropriate to the situation.

That Article allows States to assess the situation and take measures on the basis of their national legislation.

d. Introduction of checks on the basis of Article 2(3) of the Schengen Convention

The introduction of border checks on the basis of Article 2(2), as an exception to the general principle of the free crossing of internal borders, requires the completion of the procedure laid down.

An alternative to that procedure may be found in Article 2(3) of the Schengen Convention, which expressly provides that the abolition of checks on persons at internal borders shall not affect the exercise of police powers throughout a Contracting Party's territory by the competent authorities under that Party's law, or the requirement to hold, carry and produce permits and documents provided for in that Party's law.

In certain countries specific powers to check, restricted to geographical areas along internal frontiers, have been granted to police forces.

Such checks would make it possible to arrest persons subject to travelling bans (which would require the exchange of information at international level) or persons not in possession of identity or travel documents.

III. Questions

So that the proceedings may continue at expert level with the benefit of guidelines, the Council ought to be invited to adopt positions on the following questions of principle:

1. Is it appropriate, at European level, for States to incorporate in their national legislation, in the field of security when football matches are being organised, provisions making it possible to restrict the free movement of individuals whose previous behaviour might lead one to believe that they pose a real and serious threat to public order?
2. If so, what practical form could such measures take?
 1. introduction of the possibility of imposing travelling bans on violent fans (possibly combined with international stadium bans)?
 - " Should a travelling ban be combined with the obligation to report to an appropriate police station at precise times laid down in the ban decision?
 - " Should a travelling ban be combined with an obligation to surrender one's identity papers/travel documents at the police station?

2. the re-establishment of internal border checks on the basis of Article 2.2. of the Schengen Convention?
 3. the incorporation in national legislation of provisions permitting operation on the basis of Article 2.3. of the Schengen Convention?
3. Does the effectiveness of these measures require the conclusion of an instrument binding on all the Member States?