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COUNCIL OF THE EUROPEAN UNION

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REV 1

LIMITE

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COMIX 537

Subject: 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 not in possession of the documents necessary for admission

COUNCIL DIRECTIVE (EC) No /2000

of

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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 61(a) and 63(3)(b) thereof,

Having regard to the initiative of the French Republic [1],

Having regard to the Opinion of the European Parliament [2],

Whereas:

(1) The Treaty establishing the European Community lays down in Articles 61(a) and 63(3)(b) that the Council shall adopt, inter alia, flanking measures relating to the free movement of persons, and, more specifically, to illegal immigration and illegal residence, including repatriation of illegal residents.

[1] OJ C ...
[2] OJ C ...

(2) In order to combat illegal immigration effectively, it is essential that all the Member States introduce provisions laying down the obligations of carriers transporting foreign nationals into the territory of the Member States. In addition, in order to ensure the full effectiveness of this objective, the financial penalties currently provided for by the Member States should be harmonised by establishing a minimum amount for cases where carriers fail to meet their obligations.

(3) It is essential that the existence of such provisions should not prejudice the exercise of the right to asylum. With this in mind, it is important that Member States should not apply the penalties which they are required to introduce under this Directive if the third-country national is admitted to the territory for asylum purposes.

(4) The freedom of the Member States to retain or introduce additional obligations for carriers should not be affected.

(5) As soon as it decides to reintroduce checks at its borders, under the conditions laid down in Article 2(2) of the Convention implementing the Schengen Agreement of 14 June 1985, signed at Schengen on 19 June 1990 [1], a Member State must be able to implement the provisions of this Directive at its national borders.

(6) This Directive builds on the Schengen acquis, in accordance with the Protocol integrating the Schengen acquis into the framework of the European Union.

[1] OJ C ... not yet published.

HAS ADOPTED THIS DIRECTIVE:

Article 1

The aim of this Directive is to approximate the legislative, regulatory and administrative provisions of the Member States with regard to the imposition of financial penalties on carriers who fail to meet their obligation to check that third-country nationals whom they transport into the territory of the Member States are in possession of the travel documents and, where appropriate, the visas required by the regulations applicable to them by virtue of their nationality.

Article 2

For the purposes of this Directive the following definitions shall apply:

"third-country national" means any person who is not a national of a Member State of the European Community, Iceland or Norway;

"carrier" means any air or sea carrier, as well as carriers transporting groups by coach over cross-border international links, with the exception of local border traffic.

Article 3

1. If a third-country national is refused entry on crossing the external border of one of the Member States owing to lack of the travel documents and, where appropriate, the visas referred to in Article 1, the carrier who brought him by air, sea or land shall be obliged to take charge of him immediately and return him to:

   - the State of origin;
   - the third State which issued the travel document with which he travelled; or
   - any other State where his admission is guaranteed.

2. The measures referred to in paragraph 1 shall also apply when entry is refused to a third-country national in transit if:

   - the carrier who was to take him to his country of destination refuses to take him on board;

   - or the authorities of the State of destination have refused him entry and have sent him back to the State through which he transited.

3. If the carrier is unable to effect the return of the third-country national in question, he shall be obliged to find means of onward transportation immediately and to bear the cost thereof.

   Furthermore, if immediate onward transportation is not possible, the carrier shall take charge of the third-country national who has been refused entry.

Article 4

1. Member States shall provide in their national law for financial penalties to be imposed on carriers bringing into the territory of the Member States third-country nationals who are not in possession of the travel documents and, where appropriate, the visas required by the regulations applicable to them by virtue of their nationality.

2. The penalties referred to in the first paragraph must be dissuasive. The minimum amount of such penalties shall be EUR 2 000 for each person carried.

3. Paragraphs 1 and 2 shall not apply if the third-country national is admitted to the territory for asylum purposes.

Article 5

This Directive shall not prevent Member States from adopting or retaining, for carriers who do not comply with the obligations referred to in Article 1, other measures involving more stringent financial penalties or penalties of another kind such as immobilisation or seizure of the vehicle or temporary suspension or withdrawal of the operating licence.

Article 6

As soon as it decides to apply the provisions of Article 2(2) of the Convention implementing the Schengen Agreement of 14 June 1985, signed at Schengen on 19 June 1990 [1], a Member State may make the measures adopted under this Directive applicable to the crossing of its internal borders to which that decision applies.

[1] OJ C ... not yet published.

Article 7

1. Member States shall bring into force the measures necessary to comply with this Directive not later than 18 months following the date of its adoption. They shall forthwith inform the Commission thereof.

2. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

3. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 8

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

Article 9

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President