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**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 4 September 2000
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LIMITE

**FRONT 42
COMIX 589**

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject : Initiative of the French Republic with a view to the adoption of 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

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,

¹ OJ C ...

² OJ C ...

Whereas:

- (1) 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.
- (2) 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.
- (3) The freedom of the Member States to retain or introduce additional obligations for carriers should not be affected.
- (4) 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 should be able to make the measures adopted under this Directive applicable at its internal borders.
- (5) This Directive builds on the Schengen acquis, in accordance with the Protocol integrating the Schengen acquis into the framework of the European Union.

HAS ADOPTED THIS DIRECTIVE:

¹ OJ C ... not yet published.

Article 1

The aim of this Directive is to approximate the laws, regulations 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 rules 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:

(a) the State of origin;

(b) the third State which issued the travel document with which he travelled; or

(c) 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:

(a) the carrier who was to take him to his country of destination refuses to take him on board;

(b) 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 rules 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, a Member State may make the measures adopted under this Directive applicable to the crossing of its internal borders to which that decision applies.

Article 7

1. Member States shall take the necessary measures to comply with this Directive not later than⁰. 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.

* 18 months following the date of its adoption.

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 day 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

**10701/00
ADD 1**

LIMITE

**FRONT 42
COMIX 589**

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
– Explanatory memorandum

Delegations will find attached the explanatory memorandum concerning the above initiative.

EXPLANATORY MEMORANDUM

1. GENERAL

1.1. The proposed Directive is prompted by the determination to contribute towards implementing a consistent policy to combat illegal immigration at European level:

This policy cannot be confined to taking measures which apply exclusively to illegals. Effective action must also, and above all else, be taken against the carriers and means flanking, or even encouraging, this phenomenon. Making carriers face up to their responsibilities constitutes one of the essential lines of force of this policy.

However, implementation of this policy must result in a common attitude on the part of the Member States, firstly because it is essential that the European Union should show a united front in its fight against illegal immigration, and secondly in the interests of the system's effectiveness. The existence of disparate situations in the various Member States would lead to distortions of competition in terms of competitiveness. This would particularly be the case for air transport.

1.2. By making all issues relating to visas, asylum, immigration and all policies linked to the free movement of persons Community matters in the new Title IV of the Treaty establishing the European Community, the entry into force of the Amsterdam Treaty enables the European Union to acquire the instruments needed to achieve this objective:

- In the national context, most Member States have already taken measures to sanction carriers transporting foreign nationals not in possession of the necessary travel documents.
- Similarly, Article 26 of the SCHENGEN Convention has introduced, among the flanking measures for the establishment of an area of free movement, the obligation for the States Parties to make provision in their legal systems for the nature of the obligations upon carriers and the existence of penalties if they do not comply with those obligations.
- Hence, the purpose of this text is not to call into question the general rationale of that system, but to increase its effectiveness. This is why this text is largely built on the principles adopted

in the SCHENGEN Convention, to which most of the Member States have acceded.

- The choice of a directive makes it possible to show the determination of the Member States to act in concert, while at the same time enabling them to define detailed implementing arrangements which are compatible with their respective legal systems. The introduction of a minimum amount for penalties forms part of the same objective of adopting arrangements at European level that are both effective and uniform. On the other hand, it does not prevent Member States from providing for more stringent measures.

2. PRESENTATION OF THE ARTICLES

ARTICLE 1:

This first Article defines the aim of the text, namely the obligation on the Member States to provide for the imposition of financial penalties on carriers who fail to meet their obligation to check that third-country nationals whom they transport are in possession of the travel documents and, where appropriate, the visas required.

ARTICLE 2:

This Article defines the scope of the Directive with regard to the concepts of third-country nationals and of carriers.

ARTICLE 3:

This Article lays down the obligation for carriers to take charge of the return of the foreign nationals they have transported when entry to the territory has been refused because of the absence of the travel documents and, where appropriate, the visas required.

The Article also defines the conditions and arrangements for implementing that obligation.

ARTICLE 4:

This Article obliges the Member States to provide in their national law, in accordance with arrangements to be defined by them, for penalties to be imposed on the carriers concerned when transporting foreign nationals not in possession of the necessary documents.

It provides for an exemption concerning foreign nationals admitted to the territory for asylum purposes.

To reinforce the common determination of the Member States effectively to dissuade carriers who do not assume their obligations, this Article provides for a minimum amount of such penalties set at EUR 2000, which each Member State may increase, however.

ARTICLE 5:

The purpose of this draft Directive is to determine minimum arrangements applicable in all Member States and not totally to replace the measures taken by each of them to face carriers with their responsibilities.

This Article therefore makes it possible for each Member State to take the measures it deems appropriate. The immobilisation or seizure of the vehicle or withdrawal of the operating licence are therefore cited merely as examples, and do not rule out any other measures which may exist or be taken.

ARTICLE 6:

Article 2(2) of the SCHENGEN Convention enables each Member State which is a party to it to reintroduce national border controls during a limited period and after consulting its partners, save in an emergency, where public order or national security so require.

Article 6 enables this measure to be combined with the possibility for each Member State to implement the provisions of this Directive at its own borders.

ARTICLE 7:

This Article lays down the time limits and conditions for implementing this Directive.

ARTICLE 8:

This Article specifies the date of entry into force of the Directive.