

# **Third-country nationals: recognition of decisions on expulsion, compensation of financial imbalances (Directive 2001/40/EC)**

2003/0019(CNS) - 23/02/2004 - Final act

**PURPOSE** : to set out the rules on the payment of compensation where there are financial imbalances resulting from the expulsion of third-country nationals. **LEGISLATIVE ACT** : Council Decision 2004/191/EC setting out the criteria and practical arrangements for the compensation of the financial imbalances resulting from the application of Directive 2001/40/EC on the mutual recognition of decisions on the expulsion of third-country nationals. **CONTENT** : This Decision lays down the appropriate criteria and practical arrangements for the bilateral compensation of Member States in cases where the application of Directive 2001/40/EC results in financial imbalances. This will happen where expulsion decisions, despite the efforts made by the enforcing Member State, cannot be effected at the expense of the third country national concerned or of a third party. The Decision provides that the issuing Member State must compensate the enforcing Member State for such financial imbalances. The enforcing Member State will provide the issuing Member State with general information about the indicative costs of the removal operations. The reimbursement will take place at the request of the enforcing Member State on the basis of the minimum actual costs and on the basis of the following principles: - transport costs : these include the actual costs for flight tickets up to the amount of the official IATA tariff for the respective flight at the time of enforcement. The actual costs for land or maritime transport by car, train or boat can be claimed on the basis of a second-class train or boat ticket for the respective distance at the time of enforcement; - administrative costs : these include the actual costs for visa fees and the fees for the issuing of return travel documents (laissez-passer); - mission allowances per diem for the escorts : these are to be determined in accordance with the applicable national legislation and/or practice; - accommodation costs for the escorts : these include actual costs for these persons' stay in a transit area of a third country and for their strictly necessary short stay for the implementation of their mission in the country of origin. For the purpose of reimbursement, the number of escorts must not exceed two persons per returnee, unless, on the basis of the assessment of the enforcing Member State and in agreement with the issuing Member State, more escorts are required; - accommodation costs for the returnee : these include the actual costs for the returnee's stay in an appropriate facility in accordance with the applicable national legislation and/or practice of the enforcing Member State. A maximum period of three months of stay will be reimbursed. Where the returnee's stay is expected to last longer than three months, the enforcing Member State and the issuing Member State must agree to the additional costs; - medical costs : these include the actual costs for the provision of medical treatment to the returnee and the escorts in emergency cases, including necessary hospitalisation expenses. Where necessary, the enforcing Member State may consult the issuing Member State and agree on additional costs. This clause permits that for instance, charter flights, which exceed the defined ceiling, can be subject for reimbursement when the member States concerned agree. Provisions are also set out for the procedure that must be followed by Member States when submitting and processing claims for reimbursement. The Decision limits reimbursement to enforcement measures carried out within three years of an expulsion decision being issued in order to define the time of the responsibility of the issuing Member State. To ensure that any reimbursement requests are made promptly, this Decision allows for the rejection of any reimbursement requests submitted more than one year after the enforcement. Reimbursement cannot be claimed for the enforcement of expulsion decisions, issued more than four years prior to their enforcement. The requests are channelled through national contact points in order to identify the competent authority or responsible body for payment. The national contact points ensure the orderly delivery of the request and inform the enforcing authority about the responsible body for payment. Payments must be made within a maximum of three months from the acceptance of the payment by the national contact point of the issuing Member State. Notifications of payment and motivations for refusals will also be forwarded to the national contact points in order to enable national

contact points to comply with the reporting obligations. Lastly, the Decision obliges the national contact points of Member States to register and report annually to the Commission the total number of forced returns, the number of enforcement measures made under the articles of Directive 2001/40/EC and the number of expulsion decisions which could be recognised and enforced by other Member States. ENTRY INTO FORCE : 28 February 2004.