

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

2003/0019(CNS) - 03/02/2003 - Legislative proposal

PURPOSE : to present a proposal for a Council Decision setting out the criteria and practical arrangements for the compensation of the financial imbalances resulting from the application of Council Directive 2001/40/EC on the mutual recognition of decisions on the expulsions of third country nationals.

CONTENT : Directive 2001/40/EC was adopted on 28 May 2001 (please refer to the procedure reference CNS/2000/0819) to make possible the recognition of an expulsion decision issued by a competent authority of another Member State. It underlined the need to ensure greater effectiveness in enforcing expulsion decisions and better co-operation between Member States, including the mutual recognition of expulsion decisions. The application of Council Directive 2001/40/EC may result in financial imbalances where expulsion decisions cannot be effected at the expense of the third country national concerned. Member States shall, therefore, compensate each other for any financial imbalances, which may result from such mutual recognition. To that end, Article 7 of the Directive requests the Council to adopt appropriate criteria and practical arrangements. Therefore, it is the purpose of the proposed Council Decision to introduce the required mechanism for the bilateral compensation of financial imbalances between Member States. The core principle of this Decision is that the issuing Member State should reimburse the enforcing Member State on the basis of the actual costs. Preliminary discussions in the Council highlighted the need for a set of guiding principles both in relation to expenditure during the enforcement as well as in relation to the actual procedure of reimbursement. Reimbursements would be necessary in relation to three types of costs incurred: - transport costs for the returnee and up to two escorts; - administrative costs such as fees for issuing visas and return travel documents; - accommodation costs during the enforcement either in a transit area of a third country or in the country of origin. In principle, these elements represent an exhaustive list of recoverable costs in order to define a clear ceiling for reimbursement in order to keep costs reasonable, comparable and balanced. Member states can also agree on a bilateral basis to reimburse costs exceeding the minimum costs or to reimburse other 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. It establishes a transparent procedure for legal certainty and clarity. It 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. 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. Notifications of payment and motivations for refusals shall also be forwarded to the national contact points in order to enable national contact points to comply with the reporting obligations. Lastly, the proposal 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.