


Procedure file

Basic information		
CNS - Consultation procedure Directive	2000/0822(CNS)	Procedure completed
Combating illegal immigration: financial penalties imposed on carriers. Initiative France		
Subject 7.10.08 Migration policy 7.40 Judicial cooperation		

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	LIBE Citizens' Freedoms and Rights, Justice and Home Affairs	PPE-DE KIRKHOPE Timothy	10/10/2000
Council of the European Union	Council configuration	Meeting	Date
	Transport, Telecommunications and Energy	2364	28/06/2001
	Justice and Home Affairs (JHA)	2350	28/05/2001
	Justice and Home Affairs (JHA)	2314	30/11/2000
European Commission	Commission DG Justice and Consumers	Commissioner	

Key events			
04/09/2000	Initial legislative proposal published	10701/2000	Summary
02/10/2000	Committee referral announced in Parliament		
29/11/2000	Legislative proposal published	14074/2000	Summary
30/11/2000	Debate in Council	2314	Summary
27/02/2001	Vote in committee		Summary
27/02/2001	Committee report tabled for plenary, 1st reading/single reading	A5-0069/2001	
13/03/2001	Debate in Parliament		
13/03/2001	Decision by Parliament	T5-0122/2001	Summary
28/06/2001	Act adopted by Council after consultation of Parliament		
28/06/2001	End of procedure in Parliament		

10/07/2001

Final act published in Official Journal

Technical information

Procedure reference	2000/0822(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Directive
Legal basis	EC Treaty (after Amsterdam) EC 061-
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/5/13633

Documentation gateway

Initial legislative proposal	10701/2000 OJ C 269 20.09.2000, p. 0008	04/09/2000	CSL	Summary
Legislative proposal	14074/2000	29/11/2000	CSL	Summary
Committee report tabled for plenary, 1st reading/single reading	A5-0069/2001	27/02/2001	EP	
Text adopted by Parliament, 1st reading/single reading	T5-0122/2001 OJ C 343 05.12.2001, p. 0021-0081	13/03/2001	EP	Summary

Additional information

European Commission	EUR-Lex
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Final act

Directive 2001/51 OJ L 187 10.07.2001, p. 0045 Summary

Combating illegal immigration: financial penalties imposed on carriers. Initiative France

PURPOSE : to harmonise the financial penalties imposed on carriers of third country nationals without travel documents or visas on the territory of the European Union. CONTENT : the draft proposal (French initiative), aims to combat illegal immigration by providing measures to Member States which set out the obligations of carriers of foreign nationals on the Member States' territory. To this effect, it provides for the harmonisation of financial penalties currently provided by the Member States, by establishing a minimum amount in the case of violation of these obligations. This amount is fixed at EUR 2000 per stowaway. The carriers concerned are sea and air carriers as well as coaches carrying out international cross-border links with the exception of local border traffic. It is provided that the carrier who allows the entry of the third-country national on to the territory of a Member State without travel documents or without a visa, shall take responsibility for this person and return them to the Member State where they came from or to a Member State where their admission shall be guaranteed. Similar measures are provided for third country nationals in transit. If the carrier is not able to ensure the return of the stowaway in question, his redirection by another means shall be provided, the costs of which shall be incurred by the carrier. The provisions provided in the draft directive shall not in any case be prejudicial to the exercise of the right to asylum. As a consequence, the Member States shall not apply penalties when the non-Community national concerned is admitted on the territory for reasons of asylum. The Member States shall be authorised to support or to introduce additional measures for carriers if they wish (including confiscation of the vehicle, temporary suspension or retracting of the right to operate). Lastly, if by applying the Schengen Convention, a Member State decides to re-establish border controls, it should be able to apply the measures provided by the draft directive at its internal borders. It should also be added that the draft directive is noted in the extension of the Schengen Acquis, in accordance with the protocol integrating the Schengen Acquis.?

Combating illegal immigration: financial penalties imposed on carriers. Initiative France

A new proposal of the text of the French Initiative was proposed to the Union delegations to take account of a certain number of new elements and in particular the concerns expressed by Sweden, Belgium and the Netherlands in relation to this text. These elements relate in particular

to: - the respect of the practices of the Member States when the person is being carried submits an asylum application or is admitted to the territory of a Member State (concern expressed in particular by Belgium and Sweden); - the financial penalties per stowaway, that being EUR 5000 (Dutch concern); - the commitment of Sweden to provide provisions, bearing in mind that there is no legislation in this country which imposes fines to carriers of illegal immigrants. In the meantime, the country confirms its intention to continue the negotiations with the view to reaching an agreement. This new text reflects the latest state of play within the Council and lays down the proposal on which the Parliament shall be duly consulted. ?

Combating illegal immigration: financial penalties imposed on carriers. Initiative France

The Council held an exchange of views on outstanding issues as regards a draft Directive on the harmonisation of penalties imposed on carriers transporting into the territory of the Member States third-country nationals lacking the documents necessary for their admission. At the end of these discussions, and given the reservations expressed by three delegations, the Council agreed to return this issue to the Permanent Representatives Committee so that it could work out alternative wording which might be satisfactory to all the delegations. The reservations entered by the three delegations mentioned above related to the financial penalties, and particularly the sum of EUR 5000 per stowaway proposed by the Directive, respect for the practices of the Member States when the person being carried submits an asylum application or is admitted to the territory of a Member State, and a question of a legal nature for one Member State whose legal system does not contain provisions imposing fines on carriers.?

Combating illegal immigration: financial penalties imposed on carriers. Initiative France

The committee adopted the report by Timothy KIRKHOPE (EPP-ED, UK) amending the proposal under the consultation procedure. The committee wanted fines to be waived if a third-country national sought asylum immediately after arrival, was granted refugee status or a subsidiary form of protection or was admitted to the asylum determination procedure. The committee rejected the proposal that the carrier should take charge of the person if immediate onward transportation was impossible, arguing that in such cases the carrier should inform the police and hand over responsibility to the authorities. To show a common and coherent attitude against illegal immigration, the committee wanted a minimum penalty of EUR 5000 to be imposed on carriers who failed to respect their obligations. It rejected the two other alternative penalties provided for in the proposal, arguing that they were irrelevant and also contradictory to the principle of a minimum penalty explicitly mentioned in the first recital of the proposal. The committee also felt that the requirement for carriers to return third-country nationals should not prevent the latter making use of the means of defence and legal guarantees provided for in the legislation of the Member State concerned. Lastly, the committee said the directive should not enter into force within 30 days of its publication, but only after 12 months, to allow the Member States time to make the necessary changes to their legislation. ?

Combating illegal immigration: financial penalties imposed on carriers. Initiative France

The European Parliament adopted the non-binding resolution drafted by Mr Timothy KIRKHOPE (EPP/ED, UK) which rejects the French Initiative on the harmonisation of penalties on carriers transporting third country nationals into the EU. By 463 votes in favour, 26 against and 8 abstentions it asked the French Republic to withdraw the initiative and in co-operation with the Commission to reach agreement on developing a Community-wide immigration policy. (Please refer to the previous text).?

Combating illegal immigration: financial penalties imposed on carriers. Initiative France

PURPOSE : to harmonise the penalties imposed on carriers transporting foreign nationals into the territory of the Member States.
COMMUNITY MEASURE : Council Directive 2001/51/EC supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement. **CONTENT :** the Directive, stemming from a French initiative, aims to combat illegal immigration effectively by obliging Member States to introduce provisions laying down the obligations of carriers transporting foreign nationals into the territory of the Member States. Member States shall take the necessary steps to ensure that the obligation of carriers to return third country nationals provided for in the provisions of Article 26(1)(a) of the Schengen Convention shall also apply when entry is refused to a third-country national in transit if: - the carrier which 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 Member State through which he transited. Member States shall also take the necessary measures to oblige carriers which are unable to effect the return of a third-country national whose entry is refused to find means of onward transportation immediately and to bear the cost thereof, if immediate onward transportation is not possible, to assume responsibility for the costs of the stay and return of the third-country national in question. Moreover, Member States shall take the necessary measures to ensure that the penalties applicable to carriers under the provisions of the Schengen Convention are dissuasive, effective and proportionate and that: - either the maximum amount of the applicable financial penalties is not less than EUR 5000 or equivalent national currency at the rate of exchange on 10 August 2001, for each person carried, or; - the minimum amount of the applicable financial penalties is not less than EUR 3000 or equivalent national currency at the rate of exchange on 10 August 2001, for each person carried, or - the maximum amount of the penalty imposed as a lump sum for each infringement is not less than EUR 500 000 or equivalent national currency rate of exchange on 10 August 2001, irrespective of the number of persons carried. Lastly, the Directive shall not prevent Member States from adopting or retaining, for carriers which do not comply with the obligations arising from the provision of Article 26(2) and (3) of the Schengen Convention and Article 2 of this Directive, other measures involving penalties of another kind, such as immobilisation, seizure and confiscation of the means of transport and, or temporary suspension or withdrawal of the operating licence. Member States shall take the necessary measures to comply with this Directive not later than 11 February 2003. **ENTRY INTO FORCE :** this Directive shall enter into force 9 August 2001.?