

COUNCIL DIRECTIVE 2001/51/EC**of 28 June 2001****supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 61(a) and Article 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) 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 a greater effectiveness of this objective, the financial penalties currently provided for by the Member States for cases where carriers fail to meet their control obligations should be harmonised to the extent possible, taking into account the differences in legal systems and practices between the Member States.
- (2) This measure is among the general provisions aimed at curbing migratory flows and combating illegal immigration.
- (3) Application of this Directive is without prejudice to the obligations resulting from the Geneva Convention relating to the Status of Refugees of 28 July 1951, as amended by the New York Protocol of 31 January 1967.
- (4) The freedom of the Member States to retain or introduce additional measures or penalties for carriers, whether referred to in this Directive or not, should not be affected.
- (5) Member States should ensure that in any proceedings brought against carriers which may result in the application of penalties, the rights of defence and the right of appeal against such decisions can be exercised effectively.
- (6) This Directive builds on the Schengen acquis, in accordance with the Protocol integrating it into the framework of the European Union, as laid down by Annex A to Council Decision 1999/435/EC of 20 May 1999 concerning the definition of the Schengen acquis for the purpose of determining, in conformity with the relevant provisions of the Treaty establishing the European Community and the Treaty on European Union, the

legal basis for each of the provisions or decisions which constitute the *acquis* ⁽³⁾.

- (7) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and the Treaty establishing the European Community, the United Kingdom gave notice, by letter of 25 October 2000, of its wish to take part in the adoption and application of this Directive.
- (8) Pursuant to Article 1 of the aforementioned Protocol, Ireland is not participating in the adoption of this Directive. Consequently and without prejudice to Article 4 of the aforementioned Protocol, the provisions of this Directive do not apply to Ireland.
- (9) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark is not participating in the adoption of this Directive, and is therefore not bound by it or subject to its application. Given that this instrument aims to build upon the Schengen *acquis* under the provisions of Title IV of the Treaty establishing the European Community, in accordance with Article 5 of the above-mentioned Protocol, Denmark shall decide within a period of 6 months after the Council has adopted this Directive whether it will implement it in its national law.
- (10) As regards the Republic of Iceland and the Kingdom of Norway, this Directive constitutes a development of the Schengen *acquis* within the meaning of the Agreement concluded on 18 May 1999 by the Council of the European Union and those two States concerning the latter's association with the implementation, application and development of the Schengen *acquis* ⁽⁴⁾,

HAS ADOPTED THIS DIRECTIVE:

Article 1

The aim of this Directive is to supplement the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985, signed at Schengen on 19 June 1990 ⁽⁵⁾ (hereinafter referred to as 'the Schengen Convention') and to define certain conditions with respect to their implementation.

⁽¹⁾ OJ C 269, 20.9.2000, p. 8.

⁽²⁾ Opinion delivered on 13 March 2001 (not yet published in the Official Journal).

⁽³⁾ OJ L 176, 10.7.1999, p. 1.

⁽⁴⁾ OJ L 176, 10.7.1999, p. 3.

⁽⁵⁾ OJ L 239, 22.9.2000, p. 1.

Article 2

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:

- (a) the carrier which 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 Member State through which he transited.

Article 3

Member States shall 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, or, 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.

Article 4

1. Member States shall take the necessary measures to ensure that the penalties applicable to carriers under the provisions of Article 26(2) and (3) of the Schengen Convention are dissuasive, effective and proportionate and that:

- (a) either the maximum amount of the applicable financial penalties is not less than EUR 5 000 or equivalent national currency at the rate of exchange published in the Official Journal on 10 August 2001, for each person carried, or
- (b) the minimum amount of these penalties is not less than EUR 3 000 or equivalent national currency at the rate of exchange published in the Official Journal on 10 August 2001, for each person carried, or
- (c) 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 at the rate of exchange published in the Official Journal on 10 August 2001, irrespective of the number of persons carried.

2. Paragraph 1 is without prejudice to Member States' obligations in cases where a third country national seeks international protection.

Article 5

This Directive shall not prevent Member States from adopting or retaining, for carriers which do not comply with the obligations arising from the provisions of Article 26(2) and (3) of the Schengen Convention and of Article 2 of this Directive, other measures involving penalties of another kind, such as immobilisation, seizure and confiscation of the means of transport, or temporary suspension or withdrawal of the operating licence.

Article 6

Member States shall ensure that their laws, regulations and administrative provisions stipulate that carriers against which proceedings are brought with a view to imposing penalties have effective rights of defence and appeal.

Article 7

1. Member States shall take the necessary measures to comply with this Directive not later than 11 February 2003. 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 the main provisions of national law which they adopt in the field covered by this Directive to the Commission.

Article 8

This Directive shall enter into force 30 days after its publication in the *Official Journal of the European Communities*.

Article 9

This Directive is addressed to the Member States in accordance with the Treaty establishing the European Community.

Done at Luxembourg, 28 June 2001.

For the Council

The President

B. ROSENGREN