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 abovementioned 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 lattter'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.