COUNCIL DIRECTIVE 2001/40/EC
of 28 May 2001
on the mutual recognition of decisions on the expulsion of third country nationals

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 63(3) thereof,

Having regard to the initiative of the French Republic [1],

Having regard to the opinion of the European Parliament [2],

Whereas:

(1) The Treaty stipulates that the Council is to adopt measures on immigration policy within areas comprising conditions of entry and residence as well as illegal immigration and illegal residence.

(2) The Tampere European Council on 15 and 16 October 1999 reaffirmed its resolve to create an area of freedom, security and justice. For that purpose, a common European policy on asylum and migration should aim both at fair treatment of third country nationals and better management of migration flows.

(3) The need to ensure greater effectiveness in enforcing expulsion decisions and better cooperation between Member States entails mutual recognition of expulsion decisions.

(4) Decisions on the expulsion of third country nationals have to be adopted in accordance with fundamental rights, as safeguarded by the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, in particular Articles 3 and 8 thereof, and the Geneva Convention relating to the Status of Refugees of 28 July 1951 and as they result from the constitutional principles common to the Member States.

(5) In accordance with the principle of subsidiarity, the objective of the proposed action, namely cooperation between Member States on expulsion of third country nationals, cannot be sufficiently achieved by the Member States and can therefore, by reason of the effects of the envisaged action, be better achieved by the Community. This Directive does not go beyond what is necessary to achieve that objective.

(6) 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 has given notice by letter of 18 October 2000 of its wish to take part in the adoption and application of this Directive.

(7) 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 Directive 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 will decide within a period of six months after the Council has adopted this Directive whether it will transpose this decision into its national law.

(8) 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 between the Council of the European Union and those two States. As a result of the procedures laid down in the agreement, the rights and obligations arising from this Directive should also apply to those two States and in relations between those two States and the Member States of the European Community to which this Directive is addressed,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. Without prejudice to the obligations arising from Article 23 and to the application of Article 96 of the Convention implementing the Schengen Agreement of 14 June 1985, signed at Schengen on 19 June 1990, hereinafter referred to as the 'Schengen Convention', the purpose of this Directive is to make possible the recognition of an expulsion decision issued by a competent authority in one Member State, hereinafter referred to as the 'issuing Member State', against a third country national present within the territory of another Member State, hereinafter referred to as the 'enforcing Member State'.

2. Any decision taken pursuant to paragraph 1 shall be implemented according to the applicable legislation of the enforcing Member State.

3. This Directive shall not apply to family members of citizens of the Union who have exercised their right of free movement.

[1] OJ C 243, 24.8.2000, p. 1.
[2] Opinion delivered on 13 March 2001 (not yet published in the Official Journal).