

**COUNCIL DECISION**  
**of 23 February 2004**

**setting out the criteria and practical arrangements for the compensation of the financial imbalances  
resulting from the application of Directive 2001/40/EC on the mutual recognition of decisions on  
the expulsion of third-country nationals**

(2004/191/EC)

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 proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

- (1) 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. These objectives were confirmed by the Laeken European Council on 14 and 15 December 2001 and the Seville European Council on 21 and 22 June 2002. The need to fight against illegal immigration, including taking appropriate measures to promote the return of illegal residents, was particularly emphasised.
- (2) The application of Directive 2001/40/EC <sup>(1)</sup> may result in financial imbalances where expulsion decisions, despite the efforts made by the enforcing Member State, cannot be effected at the expense of the third country national concerned or of a third party. Appropriate criteria and practical arrangements for the bilateral compensation of Member States should therefore be adopted.
- (3) This Decision should also constitute the basis for establishing the criteria and practical arrangements required for the implementation of the provisions of Article 24 of the Schengen Convention.
- (4) Since the objective of the proposed action, namely financial burden-sharing for cooperation between Member States on expulsion of third-country nationals in the case of mutual recognition of expulsion decisions cannot be sufficiently achieved by the Member States and can therefore, by reason of the effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In

accordance with the principle of proportionality, as set out in that Article, this Decision does not go beyond what is necessary in order to achieve that objective.

- (5) This Decision respects the fundamental rights and observes the principles reflected in particular in the Charter of Fundamental Rights of the European Union. In particular this Decision seeks to ensure full respect for human dignity in the event of expulsion and removal, as reflected in Articles 1, 18 and 19 of the Charter.
- (6) 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 taking part in the adoption of this Decision, and is not bound by it or subject to its application. Given that this Decision builds upon the Schengen acquis under the provisions of Title IV of Part Three of the Treaty establishing the European Community to the extent that it applies to third-country nationals who do not fulfil or who no longer fulfil the conditions for a short stay applicable within the territory of a Member State by virtue of the provisions of the Schengen acquis, Denmark will, in accordance with Article 5 of the said Protocol, decide within a period of six months after the Council has adopted this Decision whether it will implement it in its national law.
- (7) As regards Iceland and Norway, this Decision constitutes a development of the Schengen acquis within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen acquis <sup>(2)</sup>, to the extent that it applies to third-country nationals who do not fulfil or who no longer fulfil the conditions for a short stay applicable within the territory of a Member State by virtue of the provisions of the Schengen acquis, which fall within the area referred to in Article 1, point C, of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement <sup>(3)</sup>.

<sup>(1)</sup> OJ L 149, 2.6.2001, p. 34.

<sup>(2)</sup> OJ L 176, 10.7.1999, p. 36.

<sup>(3)</sup> OJ L 176, 10.7.1999, p. 31.

- (8) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on the European Union and to the Treaty establishing the European Community, the United Kingdom has notified its wish to take part in the adoption and application of this Decision. To the extent that this Decision also implements the provisions of Article 24 of the Schengen Convention, in accordance with Article 7 of Directive 2001/40/EC, it does not affect the United Kingdom.
- (9) In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on the European Union and to the Treaty establishing the European Community, and without prejudice to Article 4 of the said Protocol, Ireland is not taking part in the adoption and application of this Decision and is not bound by it or subject to its application.
- (10) This Directive constitutes an act building on the Schengen acquis or otherwise related to it within the meaning of Article 3(2) of the 2003 Act of Accession,
- (b) administrative costs. These include the actual costs for visa fees and the fees for the issuing of return travel documents (laissez-passer);
- (c) mission allowances per diem for the escorts. These are to be determined in accordance with the applicable national legislation and/or practice;
- (d) accommodation costs for the escorts. These include actual costs for these persons' stay in a transit area of a third country and for their strictly necessary short stay for the implementation of their mission in the country of origin. For the purpose of reimbursement, the number of escorts shall not exceed two persons per returnee, unless, on the basis of the assessment of the enforcing Member State and in agreement with the issuing Member State, more escorts are required;
- (e) accommodation costs for the returnee. These include the actual costs for the returnee's stay in an appropriate facility in accordance with the applicable national legislation and/or practice of the enforcing Member State. A maximum period of three months of stay shall be reimbursed. Where the returnee's stay is expected to last longer than three months, the enforcing Member State and the issuing Member State shall agree to the additional costs;
- (f) medical costs. These include the actual costs for the provision of medical treatment to the returnee and the escorts in emergency cases, including necessary hospitalisation expenses.

HAS ADOPTED THIS DECISION:

#### *Article 1*

This Decision sets out appropriate criteria and practical arrangements for the compensation of the financial imbalances which may result from the application of Directive 2001/40/EC where expulsion cannot be effected at the expense of the national(s) of the third country concerned.

#### *Article 2*

1. The issuing Member State shall compensate the enforcing Member State for financial imbalances, which may result from the application of Directive 2001/40/EC where expulsion cannot be effected at the expense of the national(s) of the third country concerned.

The enforcing Member State shall provide the issuing Member State with general information about the indicative costs of the removal operations.

2. The reimbursement shall take place at the request of the enforcing Member State on the basis of the minimum actual costs and on the basis of the following principles:

- (a) transport costs. These include the actual costs for flight tickets up to the amount of the official IATA tariff for the respective flight at the time of enforcement. The actual costs for land or maritime transport by car, train or boat can be claimed on the basis of a second class train or boat ticket for the respective distance at the time of enforcement;

Where necessary, the enforcing Member State shall consult the issuing Member State and agree on costs exceeding those set out in this paragraph or on additional costs.

#### *Article 3*

1. Reimbursement requests shall be made in writing and shall be accompanied by documentary proof of the recoverable costs.

2. Requests for reimbursement can only be made for expulsion decisions, which are issued after this Decision takes effect.

Reimbursement cannot be claimed for the enforcement of expulsion decisions, issued more than four years prior to their enforcement.

3. Requests for reimbursement submitted more than one year after the enforcement has taken place may be rejected.

4. Each Member State shall establish a national contact point for the implementation of this Decision and communicate the relevant data to the other Member States.

Any request for reimbursement shall be sent by the national contact point of the enforcing Member State to the national contact point of the issuing Member State, which shall inform the national contact point of the enforcing Member State of the receipt of the request.

5. Within a maximum of three months the national contact point of the issuing Member State shall communicate to the national contact point of the enforcing Member State the acceptance or the refusal of the request. Such a communication shall be in writing, stating the reasons in case of refusal.

6. Payments shall be made within a maximum of three months from the acceptance of the payment by the national contact point of the issuing Member State.

7. The national contact points of the enforcing Member State and of the issuing Member State shall be informed of payments and of refusals to reimburse.

*Article 4*

1. In order to monitor the smooth implementation of this Decision as well as of the Directive 2001/40/EC, each national contact point shall regularly provide information concerning in particular: the total number of enforcement measures taken under Directive 2001/40/EC which were reimbursed in accordance to this Decision and the total number of refusals to reimburse together with the reasons for such refusals.

2. Such information may also include recommendations with a view to improving the criteria and practical arrangements of this Decision.

*Article 5*

This Decision shall take effect on the day following that of its publication in the *Official Journal of the European Union*.

*Article 6*

This Decision is addressed to the Member States.

Done at Brussels, 23 February 2004.

*For the Council*  
*The President*  
B. COWEN