Third-country nationals: decisions on expulsion, mutual recognition. Initiative France

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PURPOSE: French initiative with a view to adopting a Council Directive on mutual recognition of decisions on the expulsion of third country nationals. CONTENT: The Treaty on European Union 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. The European Council, meeting in Tampere, in 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. The need to ensure greater effectiveness in enforcing expulsion decisions and better cooperation between Member States entails mutual recognition of expulsion decisions. Decisions for the expulsion of third country national have to be adopted in accordance with fundamental rights, as safeguarded by the 1950 European Convention for the Protection of Human Rights and Fuundamental Freedoms (in particular Article 3 and 8) and the 1951 Geneva Convention on the Status of Refugees, and as they result from the constitutional principles common to the Member States. In accordance with the principles of subsidiarity and proportionality, the objective of the proposed action, namely cooperation between Member States on expulsion of third country national, cannot be sufficiently achieved by the Member States and therefore, by reason of the effects of the action, be better achieved by the Community. This draft Directive does not go beyond what is necessary to achieve that objective. The main provisions of the proposed Directive are as follows: - to make possible the enforcement of an expulsion decision issued by a competent authority in one Member State against a third country national present within the territory of another Member State; - definitions are provided for 'third country national', 'expulsion decision', and 'enforcement measure'; - specification of the cases when an expulsion can be carried out (e.g. a serious and present threat to public policy or public security or to national security, or failure to comply with national regulations on the entry or residence of aliens); - where the enforcing Member State has no information as to the continued enforceability of the expulsion decision, it shall ascertain from the issuing Member State that the decision remains enforceable. The enforcing Member State shall first examine the situation of the person concerned under the relevant international instruments and under the national rules applicable; - the third country national concerned must be able to bring proceedings for a remedy against the enforcement measure under the conditions laid down by the enforcing Member State's legislation. Where, under the enforcing Member State's legislation, such remedy is not suspensive in effect, that State shall carry out the enforcement measure and inform the issuing Member State accordingly. Where, under the enforcing Member State's legislation, such remedy is suspensive in effect, the enforcementmeasure shall not be carried out until all remedies have been exhausted and the issuing State's enforcement measureupheld; - protection of personal data and data security shall be ensured in accordance with national legislation adopted pursuant to Council and Parliament Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data.