

EUROPEAN PARLIAMENT

1999



2004

Session document

FINAL
A5-0065/2001

27 February 2001

REPORT

on the initiative of the French Republic with a view to adopting a Council directive on mutual recognition of decisions on the expulsion of third country nationals
(13968/2000 – C5-0004/2001 – 2000/0819(CNS))

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Rapporteur: Hartmut Nassauer

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

CONTENTS

	Page
PROCEDURAL PAGE	4
LEGISLATIVE PROPOSAL	6
DRAFT LEGISLATIVE RESOLUTION.....	6
EXPLANATORY STATEMENT	7
OPINION OF THE COMMITTEE ON PETITIONS	8

PROCEDURAL PAGE

By letter of 27 July 2000 the Council consulted Parliament, pursuant to Article 67 of the EC Treaty, on the initiative of the French Republic with a view to adopting a Council directive on mutual recognition of decisions on the expulsion of third country nationals (10130/2000 - 2000/0819 (CNS)).

At the sitting of 4 September 2000 the President of Parliament announced that she had referred this initiative to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible (C5-0398/2000).

At the sitting of 27 October 2000 the President of Parliament announced that she had also referred the proposal to the Committee on Petitions for its opinion.

On 7 November 2000 the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs decided to request the opinion of the Committee on Legal Affairs and the Internal Market on the legal basis pursuant to Rule 63(2) of the Rules of Procedure.

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs appointed Hartmut Nassauer rapporteur at its meeting of 14 September 2000.

It considered the initiative of the French Republic and the draft report at its meetings of 11 October, 7 November and 5 December 2000.

At the last of those meetings meeting it adopted the draft legislative resolution to reject the initiative unanimously.

The report was tabled on 11 December 2000 (A5-0394/2000) with the opinions of the Committee on Petitions and the Committee on Legal Affairs and the Internal Market attached.

By letter of 11 January 2001 the Council consulted Parliament, pursuant to Article 67 of the EC Treaty, on the amended initiative of the French Republic with a view to adopting a Council directive on mutual recognition of decisions on the expulsion of third country nationals (13968/2000 – 2000/0819 (CNS)).

At the sitting of 18 January 2001 the President of Parliament announced that she had referred this amended initiative to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible and to the Committee on Petitions for its opinion (C5-0004/2001).

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs considered the amended initiative of the French Republic and the draft report at its meetings of 23 January and 27 February 2001.

At the latter meeting it adopted the draft legislative resolution unanimously.

The following were present for the vote: Graham R. Watson, (chairman), Robert J.E. Evans and Bernd Posselt, (vice-chairmen), Hartmut Nassauer, (rapporteur), Christian Ulrik von Boetticher, Charlotte Cederschiöld, Carmen Cerdeira Morterero (for Adeline Hazan), Ozan Ceyhun, Carlos Coelho, Thierry Cornillet, Gérard M.J. Deprez, Giorgos Dimitrakopoulos (for Mary Elizabeth Banotti), Francesco Fiori (for Enrico Ferri pursuant to Rule 153(2)), Pernille

Frahm, Vitaliano Gemelli (for Rocco Buttiglione pursuant to Rule 153(2)), Jorge Salvador Hernández Mollar, Margot Keßler, Timothy Kirkhope, Jean Lambert (for Alima Boumediene-Thiery), Baroness Sarah Ludford, Elena Ornella Paciotti, Hubert Pirker, Heide Rühle (for Patsy Sørensen pursuant to Rule 153(2)), Ingo Schmitt (for Eva Klamt), Charles Tannock (for Daniel J. Hannan pursuant to Rule 153(2)), Anna Terrón i Cusí, Maurizio Turco (for Marco Cappato) and Jan-Kees Wiebenga.

By letter of 5 February 2001 the Committee on Petitions confirmed the opinion already delivered as applicable to the new text of the initiative.

The report was tabled on 27 February 2001.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

LEGISLATIVE PROPOSAL

Initiative of the French Republic with a view to adopting a Council directive on mutual recognition of decisions on the expulsion of third country nationals (13968/2000 – C5-0004/2001 – 2000/0819(CNS))

The initiative is rejected.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the initiative of the French Republic with a view to adopting a Council directive on mutual recognition of decisions on the expulsion of third country nationals (13968/2000 – C5-0004/2001 – 2000/0819(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the initiative of the French Republic (10130/2000¹),
 - having regard to the amended initiative of the French Republic (13968/2000²),
 - having regard to Article 63(3) of the EC Treaty,
 - having been consulted by the Council pursuant to Article 67 of the EC Treaty (C5-0004/2001),
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs and the opinion of the Committee on Petitions (A5-0065/2001),
1. Rejects the initiative of the French Republic;
 2. Asks the French Republic to withdraw its initiative;
 3. Instructs its President to forward its position to the Council, the Commission and Government of the French Republic.

¹ OJ C 243, 24.8.2000, p. 1.

² Not yet published in the OJ.

EXPLANATORY STATEMENT

1. The version of the draft directive which has now been tabled differs in many details from the initiative of the French Republic which was published in the Official Journal of the European Communities on 24 August 2000 (OJ C 243, p. 1). The new version of the draft text appears to have been thoroughly revised and fine-tuned in legal and linguistic terms, and there is consequently a marked improvement in its legislative quality. The initiative's objective, the mutual recognition of decisions on expulsion, remains unchanged.

2. Brief assessment of the changes

- 2.1 In the report which was adopted unanimously on 5 December 2000 the committee rejected the draft text, despite approving the legal objective pursued by the initiative, owing to the lack of a legal basis in the European treaties, and criticised the fact that the substantive scope of the directive was limited to administrative decisions by the competent authorities, and thus would not apply to decisions by administrative courts.
- 2.2 The new version of the draft text, which is welcome as far as its legal drafting is concerned, has not made any changes either to the legal basis or to the substantive scope, as regards its limitation to administrative decisions.
- 2.3 Following renewed debate the committee therefore maintains its previous stance. It once again emphatically points out that the legal objective of mutual recognition of expulsion decisions is unreservedly endorsed. The committee is convinced, however, that the problem can be solved only by making use of the powers laid down in Article 63(3)(b) to adopt a directive on the repatriation of illegal residents. The committee takes the view that the French initiative risks failing to achieve its practical goal owing to administrative courts becoming involved in challenges to expulsion decisions or even owing to the lack of a legal basis for such a decision being challenged.

3. Conclusion

The committee maintains its recommendation to reject the initiative of the French Republic and to call on the French Republic to withdraw this initiative.

28 November 2000

OPINION OF THE COMMITTEE ON PETITIONS

for the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

on the initiative of the French Republic with a view to adopting a Council Directive on mutual recognition of decisions on the expulsion of third country nationals
(10130/2000 – C5-0398/2000 – 13968/2000 – C5-0004/2001 - 2000/0819 (CNS))

Draftsman: Luciana Sbarbati

PROCEDURE

At its meeting of 9 October 2000 the Committee on Petitions appointed Luciana Sbarbati draftsman.

It considered the draft opinion at its meeting of 27 and 28 November 2000.

At the latter meeting it adopted the following conclusions by 8 votes to 1, with 1 abstention.

The following were present for the vote: Roy Perry, acting chairman and first vice-chairman; Proinsias De Rossa, second vice-chairman; Luciana Sbarbati, third vice-chairman and rapporteur; Herbert Bösch, Felipe Camisón Asensio, Laura González Álvarez, Jean Lambert, Ioannis Marinos, Véronique Mathieu, María Sornosa Martínez.

SHORT JUSTIFICATION

1. The aim of the directive

The purpose of the directive is to allow the enforcement of national administrative expulsion measures against third-country nationals even where the latter have meanwhile moved to another Member State. The adoption of the directive and its present wording might appear defensible at first sight since they would serve to prevent unchecked movement between Member States of third-country nationals who are the subject of expulsion decisions. This would also appear, again at first sight, to be in line with the conclusions of the Tampere European Council (October 1999) aimed at better migration management. However, a more careful examination of the text and its legal basis, and of the political and media background to the immigration debate and the launching of measures to deal with it in the EU Member States, shows up the total ambiguity of this proposal, its imprecise nature, the haste with which it has been prepared and its legal lacunae.

If the Community genuinely wishes to establish an area of **freedom, security and justice**, the measures taken must be two-way measures and not simply form part of a **security** policy in the context of which foreigners – who are seen as a real or potential danger – cannot enjoy genuinely guaranteed **freedoms**; in short, **justice** must be more than just an empty word. Sometimes one has just the opposite impression: that, consciously or unconsciously, the use of refined, efficient legal instruments is turning the societies we live in into **societies of exclusion and expulsion** in both the literal and the metaphorical sense.

2. The Committee on Petitions hears many accounts of human distress

The Committee on Petitions is open to petitions from citizens even when they are third-country nationals, and in reading the many petitions from non-Community citizens threatened with or subjected to expulsion it has heard at first hand of the painful and tragic human situations which these men, women and children encounter when they enter the well-guarded territory of the Community and for one reason or another run into problems with the authorities. These human insights – of which one should never lose sight when dealing with the problem of immigration – do not, however, prevent us from analysing the legal and political aspects of this complex subject in a more neutral way as well. Everyone knows that there are two different strands of opinion in the Community, which are fuelled by the media and are difficult to separate out: on the one hand, there is the realisation that a sometimes extremely serious demographic deficit will soon make massive recourse to immigration inevitable if we are to prevent the economic, social and human decline of our ageing European continent. Contrasting with this view, which sees immigration as a challenge but also an opportunity, is the other strand of opinion, the view of all those *‘who harbour fears and fantasies about the barbarian hordes coming to exploit our prosperity and destroy our civilisation and culture’*. The two attitudes intersect or conflict, depending on the circumstances, the country involved and its political situation: *‘Shouldn’t we encourage certain immigrants on the grounds of the religion they profess and, conversely, exclude others because they belong to a particular religious group?’* These alternatives are currently a subject of public debate in one of our own Member States. In another country one can hear arguments along the lines of: *‘Should this country be taking in immigrants and shouldn’t our culture be the culture of reference (Leitkultur) for everyone?’* In yet another country we hear people asking: *‘Shouldn’t the places where refugees and immigrants faced with expulsion be*

kept be run by private companies for profit? Others will remember the shift from debate to action that took place in a small village in one Member State in the summer of 2000, when the enraged inhabitants pursued illegal immigrants for days on end. And we could give many more examples ...

3. Omissions and shortcomings of the directive

The main shortcoming of the directive is that instead of introducing an overall set of European rules on immigration (covering various aspects such as asylum policy, visas, free movement, combating illegal immigration – and the “slave-traders” who profit from it –, legalisation policy, integration policy and reception arrangements), we are witnessing attempts to use Community law as an instrument to *extend* the use of national laws on expulsion into the sphere of the other Member States.

While it is up to the lawyers to pinpoint the defects of this directive, may we nevertheless be permitted to mention a number of doubts which have occurred to this committee and some questions we ask ourselves with regard to the legal coherence and the very basis of the directive.

- ✓ Why use only Article 163 of the EC Treaty as the legal basis, and not articles from the Treaty on European Union?
- ✓ What about those expulsion measures which are the subject of legal appeals that have not yet run their full course? Must expulsion measures be implemented even if the courts have delivered rulings to the opposite effect?
- ✓ Can the State in which the foreigner facing expulsion is resident not take steps to determine whether or not such expulsion violates the Community Charter of Fundamental Rights, the European Convention on Human Rights or the Geneva Convention on the Status of Refugees?
- ✓ Can the State in which the person facing expulsion is resident refuse to implement it in certain cases? Can it grant the person political refugee status instead?
- ✓ Are we not running the risk of the harshest and most restrictive law, applied judicially and fiscally, eventually coming to be applied uniformly throughout the Union on the basis of the unwritten law of Gresham according to which bad laws drives out good?

4. Places of retention or detention?

May we be allowed, on the strength of the sad privilege enjoyed by this committee of having direct access to testimonies of human distress, to make brief mention here of the **places of retention** where candidates for expulsion and asylum seekers are dumped? By a terminological shift that does more justice to reality and is less hypocritical, they should be called **places of detention**. But, unlike our prisons, these places are governed by neither laws nor rules. By a supreme irony, the 1998 immigration law of one Member State says that aliens should be housed in places providing *conditions comparable to those of a hotel*. While in another Member State – where NGOs and lawyers are denied access – there is talk of the possibility of putting these places in the hands of private companies. Shall we one day see a situation where these ‘camps’ are given two or three stars, like hotels?

It is a fine edifice that we are helping to construct here, this ‘fortress Europe’ which can be entered only with difficulty, almost only by stealth, in fact, and whose drawbridge opens only

outwards, for the purpose of expelling undesirables! What picture are we giving to the rest of the world of those humanitarian, universalist values we acquired and proclaimed after so many political and social wrangles, and which were to be crowned and completed by the European Charter of Fundamental Rights? Those same values that prompted the President of the Parliamentary Assembly of the Council of Europe, Lord Russell-Johnston, to declare in his inaugural address that *Humanity has no nationality*.

5. An undesirable initiative that must be rejected

The policy of ‘zero immigration’ and the reduction of the right of asylum (often in violation of international conventions) encourage clandestine immigration, which is not only more open to exploitation, but also violates the law. Experience has shown that even in respect of a normal immigrant guilty of breaking any kind of law the authorities are more inclined (as a result of a kind of *crimen faciei*) to consider that a *serious and actual threat to public order and national security* has taken place – which is referred to in Article 3 of the directive – and which leads to the application of expulsion measures.

This committee takes the view that all immigration laws should be proposed by the Commission, which historically has held this power and is able to exercise it responsibly, bearing in mind overall coherence and the Community structure of which it is the institutional guardian. This would avoid the regrettable impression that initiatives emanating from States holding the Presidency are dealt with on an ad hoc basis, and that Parliament has to set itself up as a political, legal and moral judge, and reject the legislation proposed. This, however, is what your draftsman is proposing, supported by the opinion of the political group coordinators and by the very wise words spoken before the Committee on Petitions by **Mr Nassauer**, rapporteur for the Committee on Citizens’ Freedoms and Rights, the committee responsible.

CONCLUSIONS

The Committee on Petitions, on the basis of the following considerations:

- having regard to the many petitions sent to the European Parliament by non-Community citizens threatened with, or facing, expulsion measures,
- whereas the Union must draw up a set of measures on immigration to take account of its demographic decline and ageing population,
- mindful of the European Charter of Fundamental Rights, and recalling its decision of 14 November 2000 on this subject, (A5-0325/2000),
- whereas the Union intends to, and must, remain an area of freedom, security and justice,
- whereas expulsion measures must be framed in Community law and form part of a coherent set of legally proper and politically acceptable provisions which does not concentrate on the repressive aspect alone,
- whereas third-country nationals facing expulsion are kept in places of detention, often in subhuman conditions,
- recalling the Commission’s power of legislative initiative,
- considering the French Republic’s initiative to be inappropriate at the political as well as the legal, cultural and human levels,

AMENDMENTS

Calls on the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Initiative of the French Republic ¹

Amendments by Parliament

(Amendment 1)

Draft legislative resolution, paragraph 1

[The European Parliament]

Rejects the initiative of the French Republic.

Justification:

The vast majority of committee members take the view that the European Parliament should reject the French government's proposal for a directive, because, for political, legal, cultural and human reasons, they consider it to be unacceptable.

(Amendment 2)

Draft legislative resolution, paragraph 2

[The European Parliament]

Calls on the French Republic to withdraw its initiative.

Justification:

The vast majority of committee members take the view that the French Government should withdraw its initiative, since all immigration-related issues need to be considered as part of a comprehensive approach, on the basis of a European Commission initiative.

¹ OJ C 243, 24.8.2000