

Immigration
and Asylum Law of the EU :
current debates

Actualité
du droit européen
de l'immigration
et de l'asile

UNDER THE SUPERVISION OF/SOUS LA DIRECTION DE

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EXTRAIT

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**The Transposition of the Council Directive
on Carrier Sanctions
The Decree-Law 34/2003**

1. - THE TRANSPOSITION ACT

The 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 was transposed into Portuguese law by Decree-Law no. 34/2003, dated 25 February ⁽⁴⁾.

This is a Decree-Law, which was adopted by the Government, availing itself of a legislative authorisation granted by the Assembly of the Republic (*Assembleia da República* - The Portuguese Parliament) in Law no. 22/2002, dated 21 August ⁽⁵⁾.

Since imposing penalties on carriers falls within the legislative powers of the Assembly, the transposition of this Directive could take on the form of either a Law or a government decree-law should the Government avail itself of a legislative authorisation from the Assembly in accordance with the provisions of Article 165(d) of the Constitution. Pursuant to Article 1 of Law no. 22/2002, the Assembly gave the Government authorisation to amend the conditions of entry, stay, and expulsion of third-country nationals from national territory (Immigration Act). Furthermore, within the scope of the Directive, the Assembly authorises the Government to extend carriers' liability to cases of refusal of entry of third-country nationals in transit and to increase the value of fines.

On the basis of this legislative authorisation, the Government approved Decree-Law no. 34/2003, which, in addition to bringing in deep-seated changes to the Immigration Act, transposed Council Directive 2001/51/EC of 28 June 2001 (carrier sanctions), Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence and Council framework Decision 2002/946/JHA on the strengthening of penal framework to prevent the facilitation of unauthorised entry transit and residence, into Portuguese law.

⁽⁴⁾ Published in the official journal (*Diário da República*, I Série-A, no. 47, dated 25 February 2003, p. 1338.

⁽⁵⁾ *Diário da República*, I Série-A, no. 192, dated 21 August 2002, p. 5904.