



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 3 July 2003 (11.07)
(OR. it)**

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LIMITE

**MIGR 62
COMIX 413**

NOTE

from : Presidency
to : Working Party on Migration and Expulsion

Subject : Draft initiative of the Italian Republic for a Council Decision on the shared organisation of joint flights for group removals of third-country nationals illegally present in the territory of two or more Member States

1. Introduction

The Presidency considers that the legal basis required for the organisation of joint flights for group removals of third-country nationals illegally present in the territory of two or more Member States, as a repatriation measure, is provided by Article 63(3)(b) of the Treaty establishing the European Community.

Such an initiative, moreover, meets the need to implement the Return Action Programme, which, among measures for improving operational cooperation between Member States, recommends that they should share removal capacities by organising joint flights for the return of illegally resident third-country nationals.

2. Proposal

We accordingly propose the adoption of a draft Decision:

- requiring each Member States to designate an authority competent to organise joint flights;
- defining the goal pursued;
- defining the purely administrative procedures to be followed prior to the flight;
- referring to the manual drawn up by a special committee, which Member States would have to comply with when arranging joint flights for group removals of third-country nationals illegally present in the territory of two or more Member States.

INITIATIVE FOR A COUNCIL DECISION

of

on the organisation of joint flights
for group removals of third-country nationals
illegally present in the territory of two or more Member States

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the initiative of the Italian Republic,

Having regard to the Opinion of the European Parliament,

Whereas:

- (1) The comprehensive plan to combat illegal immigration and trafficking of human beings, adopted on 28 February 2002, emphasises, among other things, that:
 - (a) readmission and return policy is an integral and vital component of the fight against illegal immigration;
 - (b) it is necessary to highlight a number of practical measures that should be considered for implementation, including the establishment of a joint approach/cooperation between Member States for the purposes of implementing return measures;
 - (c) a Community return policy should be based on two elements: common principles and common measures;
 - (d) accordingly, it would be a good idea to analyse the possibility of adopting measures in accordance with Article 63(3)(b) of the Treaty establishing the European Community to implement common standards for return procedures.

- (2) The plan for the management of the external borders of the European Union, approved by the Council on 13 June 2002, provides for rational repatriation operations as one of the measures and actions for the integrated management of the external borders of the Member States of the European Union.
- (3) The Return Action Programme, approved by the Council on 28 and 29 November 2002, recommends – as one of the measures and actions with regard to improved operational cooperation among Member States – that the return of illegally resident third-country nationals should be made as efficient as possible by sharing existing capacities for such returns.
- (4) Member States are to implement this Decision with due respect for human rights and fundamental freedoms, and in particular for the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, the United Nations Convention against torture and other cruel, inhuman or degrading treatment or punishment of 10 December 1984, the Geneva Convention of 28 July 1951 and the New York Protocol thereto of 31 January 1967, relating to the Status of Refugees, the Convention on the Rights of the Child of 20 November 1989, and the Charter of Fundamental Rights of 13-14 October 2000.
- (5) 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 Decision, and is therefore not bound by it or subject to its application. Given that this Decision aims to build upon the Schengen acquis under the provisions of Title IV of Part Three of the Treaty establishing the European Community, Denmark, in accordance with Article 5 of the abovementioned Protocol, is to decide within a period of 6 months after the Council has adopted this Decision, whether it will implement it in its national law or not.

- (6) As regards the Republic of Iceland and the Kingdom of Norway, this Decision 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 Decision 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 Decision is addressed.
- (7) 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, these Member States are not taking part in the adoption of this Decision and therefore, subject to Article 4 of that Protocol, are not bound by it or subject to its application,

HAS ADOPTED THIS DECISION:

Article 1

Purpose

The purpose of this Decision is to rationalise operations for group removals of third-country nationals against whom the appropriate measures have been taken by two or more Member States, through the organisation of joint flights.

Article 2

Definitions

For the purposes of this Decision:

- (a) "third-country national" means any person who is not a national of a Member State of the European Union, the Republic of Iceland or the Kingdom of Norway;
- (b) "national authority" means the authority in each Member State which is responsible for organising flights for group removals of third-country nationals illegally present on the territory of that State;

- (c) "joint flight" means the flight of the aircraft of the natural or legal person responsible for carrying, whether commercially or for official purposes, third-country nationals against whom removal measures have been taken by two or more Member States;
- (d) "escort" means the personnel of two or more Member States responsible for accompanying third-country nationals on a joint flight, including persons responsible for medical care and interpreters.

Article 3
Designation of national authorities responsible
for organising joint flights

Each Member State shall designate within its competent national authorities an authority responsible for organising joint flights for group removals of third-country nationals against whom measures have been taken for their removal from national territory.

Article 4
Tasks of national authorities responsible
for organising joint flights

An authority designated pursuant to Article 3 shall:

- inform the other Member States in good time whenever joint flights are organised, indicating the number of seats available on board the plane used;
- notify the authority of the Member State organising the flight whether or not it wishes to participate in the joint flight;
- having contacted the authorities of the other Member States, arrange a preliminary meeting with representatives of the participating Member States;

- establish the organisational details, the procedures to be followed and the numbers of third-country nationals and escort personnel, including medical staff and interpreters, to be carried on the joint flight;
- identify the air carrier to be used for the joint operation for the return/removal of third-country nationals;
- obtain the necessary authorisation for the joint flight from the competent authorities of the third country for which the flight is bound;
- establish with the selected carrier the cost of the return operation (chartering of the aircraft, catering, ancillary costs) and determine how costs are to be shared among the Member States taking part in the joint flight, dealing directly with those concerned;
- appoint the leader of the escort for the joint flight.

Article 5

Obligations of the carrier

The national authority of the Member State organising the joint flight for the removal of third-country nationals illegally present in the territory of the Member States shall ensure that the air carrier selected:

- (a) submits the relevant flight plan, having obtained authorisation for the aircraft to land in the third countries of destination and to fly over the other States along the aircraft's flight path, and, where appropriate, authorisation to land in or to transit through another Member State;
- (b) ensures that that during boarding, flight and landing the cabin crew (captain and crew) will provide the necessary assistance to the third-country nationals and the escort personnel on the flight.

Article 6
Decisions on escort personnel

Members States' competent authorities shall first of all assess the level of risk attaching to the operation. The nature and number of the staff to be deployed shall be determined on the basis of that assessment; specially trained personnel shall be used.

The following information shall be obtained before such flights are organised:

- whether the third-country national concerned has a criminal record, with particular reference to the type of offence that the person has committed, if any;
- third-country nationals' behaviour while detained in the facilities provided for under national law prior to removal or otherwise during the time spent with the competent national agencies pending adoption of the removal measures (aggressive, rebellious or violent behaviour, etc.).

In addition, a careful appraisal shall be made of any third-country nationals on board who may seriously disrupt the flight, and arrangements must be made for an appropriate escort capable of dealing with violent behaviour which could endanger flight safety.

Article 7
Monitoring implementation

Member States shall take the necessary steps to appoint their representatives to participate in the proceedings of a special committee tasked with monitoring implementation of this Decision.

Article 8
Entry into force

This Decision shall enter into force on the thirtieth day following that of its publication in the Official Journal of the European Communities.

Article 9
Addressees

This Decision is addressed to the Member States.

Done at Brussels,

For the Council
The President
