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Subject: Draft Recommendation regarding transit for the purposes of
expulsion
(No. prev. doc.: WGI 1110)

ANNEX

DRAFT RECOMMENDATION

regarding transit for the purposes of expulsion

The Ministers responsible for Immigration,

CONSIDERING Member States' practices with regard to transit for the purposes of expulsion;

WHEREAS those practices should be more closely aligned with a view to their harmonization;

WHEREAS the measures to be applied must meet the requirements of speed, efficiency and economy,

RECOMMEND application of the following guidelines:

I.

For the purposes of this Recommendation, "transit" means the passage of a person who is not a national of a Member State through the territory or through the transit zone of a port or an airport of a Member State.

II.

A Member State which has decided to expel a third-country national:

- to a third country, should as a rule do so without the alien passing through the territory of another Member State;
- to another Member State, should as a rule do so without the alien passing through the territory of a third Member State.

III.

1. Where particular reasons so warrant, in particular reasons of efficiency, speed and economy, a Member State may request another Member State to authorize the entry into its territory and transit through that territory of a third-country national who is subject to expulsion. ⁽¹⁾
2. Before submitting such a request, the State which has taken the expulsion measure will ascertain that in normal circumstances the continuation of the journey of the person expelled and his admission into the country of destination are assured.
3. The State to which such a request is addressed will comply with it subject to the cases detailed at VI.

(1) Statement re III:

"The reasons of efficiency, speed and economy referred to in point III cover inter alia the constraints resulting from the geographical situation of the Grand Duchy of Luxembourg."

IV.

The State taking the expulsion measure will notify the transit State whether the person being expelled needs to be escorted.

The transit State may:

- authorize the State which has taken the expulsion measure to provide the escort itself;
- or decide to provide the escort itself;
- or decide to provide the escort in collaboration with the State which has taken the expulsion measure.

V.

1. The request for transit for the purposes of expulsion should contain information relating to:

- the identity of the alien being expelled;
- the State of final destination;
- the nature and date of the expulsion decision; the authority which took the decision;
- the evidence for believing that the alien is admissible into the country of final destination or into the second transit country;

- the travel documents or other personal documents in the possession of the person concerned;
 - the identity of the body making the request;
 - the conditions relating to passage through the requested State (schedule, route, means of transport, etc.);
 - the need for an escort and the escort arrangements.
2. The request for transit for the purposes of expulsion should be addressed as soon as possible to the authorities responsible for expulsion in accordance with the relevant internal law of the requested State, and they should reply promptly.
 3. The transit state may request information, in particular regarding the necessity of transit.

VI.

Cases in which transit for the purposes of expulsion may be refused:

- where, in the case of transit overland, the alien constitutes a threat to the public order, national security and international relations of the transit State;
- where the information referred to at V.3 is considered unsatisfactory.

X.

A Member State intending to conduct negotiations with another Member State or with a third country on transit for the purposes of expulsion will inform the other Member States thereof in good time.

XI.

This Recommendation does not affect the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 or those of the Convention relating to the Status of Refugees.

It does not affect the provisions of international conventions currently in force on extradition and extradition in transit.

It may not have the effect of substituting transit for the purposes of expulsion for extradition and transit extradition procedures.
