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SEMDOC

Statewatch European Documentation &
Monitoring Centre on justice and home
affairs in the European Union

PO Box 1516, London N16 0EW, UK
tel: 0181 802 1882 (00 44 181 802 1882)
fax: 0181 880 1727 (00 44 181 880 1727)

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NOTE

from: the General Secretariat

to: CIREFI

Subject: Organized flights of asylum-seekers - Survey of replies

Delegations will find hereafter a survey of the replies received to the questionnaire on Member States' experience with organized flights of asylum-seekers (see documents 10575/97 CIREFI 40 CIREA 71 and 11544/97 CIREFI 50 CIREA 74 and ADD 1 and ADD 2). The Irish delegation has not as yet replied.

ORGANIZED FLIGHTS OF ASYLUM-SEEKERS

1. Incidents reported

The vast majority of Member States (B, GR, E, F, I, L, A, P, FIN, S) do not report any incidents involving organized flights of asylum-seekers.

In recent years, flights exclusively or predominantly carrying asylum-seekers have occasionally in four Member States. Denmark reports two such flights in 1992, Germany four flights since 1989, the Netherlands one flight in 1997 and the United Kingdom two flights since 1990. The Netherlands and Austria also report flights from which a large group of passengers applied for asylum (two such incidents, for example, occurred in the Netherlands in 1997).

Germany, the Netherlands and the United Kingdom also report that on a number of occasions they averted the arrival of large groups of people believed to be asylum seekers. In the case of Germany, a prohibition order prevented a flight of asylum-seekers

from landing in Frankfurt/Main (the flight landed in Amsterdam). In the case of the United Kingdom, two proposed flights were cancelled by the operator, after intervention by the competent authorities, following information that the flights were organized by asylum-seekers.

Of the nine flights of asylum-seekers that landed in Member States, two (reported by Denmark) involved fairly small charter planes carrying 13 persons, whereas all the others concerned larger aircraft carrying between 89 and 193 persons.

The flights were operated by the following airlines or charter companies: unnamed Turkish company (code TC); Adria Airways; Aeroflot; Polis Airlines; Turkmenistan Akhal Air Company/Turkmenistan Airlines (on one occasion, asylum-seekers used this airline to fly on from a transit country, after leaving the country of origin on an Air Lanka flight); ZAS Airlines (subsidiary of Egypt Air); Air Zory (Turkish airline). The two flights cancelled further to United Kingdom intervention were planned by Air Zory and Samara Airlines. The flights involving the arrival of large groups of asylum-seekers were operated by Balkan Air and Uzbekistan Airlines or, generally, by airlines from Southeast Europe and the CIS, as well as - in one case - by Alitalia.

The asylum-seekers who arrived on these flights were predominantly Turkish, Sri Lankan and Iraqi nationals. A large number of the Turkish and Iraqi asylum-seekers claimed to be Kurds. Sri Lankans usually turned out to be Tamils. A breakdown can be found below.

	Turks	Sri Lankans	Iraqis	Other
Denmark	0	0	26	0
Germany	244	89	0	155*
Netherlands	0	173	0	0
United Kingdom	89	0	156	0

* Includes 7 Syrians, 8 Lebanese, 18 stateless persons, as well as 122 persons arriving from Yerevan (Armenia), whose nationality is not indicated in the reply.

The above figures refer to flights carrying predominantly or exclusively asylum-seekers.

In addition, the Netherlands mentions two incidents involving flights carrying, respectively, 21 Sri Lankan and 20 Iraqi asylum-seekers.

As a rule, all these asylum-seekers travelled undocumented, or with forged passports or with passports tampered with by having pages removed. Occasionally, passports were found during a search of the aircraft.

No details are given concerning the outcome of the asylum procedures following the incidents, except for the incident reported by the Netherlands, involving the arrival of 173 Tamil asylum-seekers; in this case, of all the applicants that presented themselves for the procedure (less than half), only 3 did not have their applications ruled manifestly unfounded.

2. Measures taken with respect to the incidents

- (a) *Holding off disembarking.* Only in one instance, in Denmark, were the asylum-seekers temporarily prohibited from leaving the plane.
- (b) *Keeping aircraft off the gate.* In a number of instances, the aircraft was kept at a distance from the gate, and cordoned off or ordered to a position on the apron, to facilitate the relevant police checks.
- (c) *Preventing asylum applications.* Passengers were never prevented from lodging asylum applications. All applications were considered according to normal procedures.
- (d) *Impounding of aircraft.* Although in a number of instances Member States imposed a temporary ban on taking off for police purposes, attempts to impound the aircraft were always unsuccessful. The Member States involved generally agree that they have no legal basis for impounding aircraft under the circumstances, and note that enforcement measures resulting in the temporary arrest of the aircraft can only be applied under strict conditions.

Among the Member States that do not report any incident, Belgium and Luxembourg took a position on the above-mentioned measures. Belgium has indicated that, should an incident occur on its territory, it could expedite the treatment of the asylum applications and detain the aircraft, even for a first offence, subject to the agreement of the competent Minister, where it is patently clear that the carrier was transporting illegal immigrants. Luxembourg, by contrast, states that it could not take any of these measures, which in its view would run counter to asylum law.

Other measures taken with respect to the incidents reported include:

- (a) *Prosecution of captain.* In Denmark, on one occasion the captain was charged with facilitating illegal immigration; no details are given on the follow-up to this charge.
- (b) *Penalties to carriers.* In the United Kingdom, on two occasions penalties incurred under the Carriers Liability Act were levied on the carrier (totalling £312,000 and £178,000, respectively); in one instance, the airline was successfully prosecuted by the Department of Transport for operating without a permit.
- (c) *Mission to country where the flight originated.* The Netherlands refers to a Netherlands-United Kingdom mission to Turkmenistan, in response to the Turkmenistan Airlines case. This mission aimed to look into how such an occurrence could have come about, agree on arrangements with the authorities to prevent such situations in future and train staff of Turkmenistan Airlines and the Turkmen authorities.

3. Suggestions to deal with the problem

- (a) *Police alert procedure.* Denmark introduced a procedure whereby air-traffic control immediately alerts the police of unidentified planes requesting permission to land at Copenhagen airport. Denmark deems that this procedure has proved its value both in enabling illegal immigration facilitators to be caught, and as a deterrent to the smuggling of asylum-seekers into Denmark. The Netherlands is discussing internally the possibility of notifying domestic bodies of the impending arrival of a large group of asylum-seekers.

(b) *Promoting cooperation by carriers.*

- (i) *Informing carriers of duties and responsibilities.* In the Netherlands, as from 20 October 1997, the duty of care imposed on carriers is being spelt out in greater detail. Carriers are required to take every measure to ensure that they do not carry improperly documented passengers (as regards fines, see (d) below). In addition, carriers departing from certain high-risk airports and seaports are required to make a copy of all passengers' travel documents. The list of such departure points is flexible and can be adjusted as circumstances change. There are at present 20 high-risk airports listed. ⁽¹⁾

As far as Belgium is concerned, where an incident has occurred in one or more Member States, the airline involved (or the authorities of the country concerned, as appropriate) is informed that in such a case administrative fines would be imposed, which are immediately payable, and the aircraft may even be detained immediately at the carrier's expense and risk.

- (ii) *Training and advice of airline staff.* Germany and the Netherlands favour the organization of courses to train, in particular, airline handling staff in recognizing the necessary travel documents and in so-called "profiling" ⁽²⁾. The Netherlands refers, for example, to contacts with the Turkmen authorities aimed at training of Turkmenistan Airlines staff.

- (iii) *Improving communication with carriers.* Germany considers that the conclusion of procedural agreements in this context (memoranda of understanding) - could open up additional information paths. SITA could be used as a rapid communication network.

- (c) *Preventing impending arrivals.* Germany and the United Kingdom warn carriers of possible financial penalties, where sufficient concrete information is available on imminent breaches of the relevant legal provisions, in particular on passengers' documentation. For this purpose, in the United Kingdom permit applications for doubtful charter flights are scrutinized in advance. It is recalled that in these two

⁽¹⁾ The Netherlands guidelines for carriers are included in document 12329/97 CIREFI 57.

⁽²⁾ It is recalled that the Joint Position of 25 October 1996 on pre-frontier assistance and training assignments (OJ No. L 281 of 31.10 1996, p.1) provides for the joint organization of training assignments for airline staff.

Member States intervention with the carrier resulted on a few occasions in the cancelling of the flight (see above).

- (d) *Sanctions to carriers.* A number of Member States (Belgium, Germany, Netherlands, Austria, United Kingdom) impose sanctions to carriers in the case of infringement of immigration rules. ⁽¹⁾

Belgium makes rigorous application of Article 74/4a of its Aliens Law of 15 December 1980, involving the possibility of immediate imposition, and immediate demand for payment, of administrative fines, and all possible steps to prevent the aeroplane departing. Furthermore, in the event of such an incident, a complaint will be filed with the International Air Transport authorities about the conduct of the airline concerned and, following representations to the Belgian air transport authorities (*Vliegwezen*), the airline will be denied the right to land in Belgium or even to overfly its airspace.

In Austria, if an asylum-seeker does not have sufficient documentation, the airline can be fined up to ATS 20,000 (ECU 1,445) per person.

In the Netherlands, if an airline has failed to take the necessary measures as regards passengers' documentation, a fine of NGL 5,000 may be incurred for each improperly documented passenger brought in, or a 6-month prison sentence imposed.

In the United Kingdom, penalties may be levied on the carrier under the Carriers Liability Act, and the airline may be prosecuted by the Department of Transport for operating without a permit.

- (e) *Cooperation with third countries.* Belgium, Germany, France, the Netherlands and Austria propose the setting up of forms of cooperation with the countries where such flights originate.

⁽¹⁾ For more details on this subject, see document 12329/97 CIREFI 57.

- (i) *Training and advice of border control staff.* This form of cooperation, proposed by Germany and the Netherlands, could be useful, in particular, at departure or transit airports which may pose problems⁽¹⁾. Such training, as well as other forms of cooperation, was discussed, for example, at a meeting with the Turkmen authorities during a Netherlands-United Kingdom mission to Turkmenistan (see above). Austria also proposes improving information in the States of origin, pre-boarding checks and inspections at gates and on board.
- (ii) *Other information.* Belgium suggests informing the authorities of the country concerned of the consequences of an incident.
- (f) *Expediting asylum procedures.* In Belgium, all the parties concerned have drawn up a joint scenario regarding the measures to be taken in order to deal with possible asylum applications as rapidly as possible and to detain all persons at the border for the time needed to process their applications. Meanwhile steps will be taken to prevent the aircraft departing.
- (g) *Entry visas.* Austria has observed that, in general, when compulsory entry visas were introduced for citizens of potential States of origin, there was a decline in the group arrival of asylum-seekers.
- (h) *Cooperation within the EU.*
- (i) *Early-warning system.* Germany, France and the Netherlands suggest setting up a system for immediate exchange of relevant intelligence between Member States which are possible destinations. The Netherlands considers that the Council Secretariat could play a role in this system. France suggests that liaison officers in third countries could be used to obtain such information, and that this mechanism could prevent such flights, as well as the boarding of the passengers. Belgium proposes that, where the organization of such a flight is notified, or even suspected,

⁽¹⁾ It is recalled that the above-mentioned Joint Position of 25 October 1996 provides for the joint organization of assistance assignments at third-country airports, to provide assistance to officers responsible for checks.

Member States should inform each other immediately via special contact points (using urgent fax messages).

- (ii) *Instant-reaction task force.* In the view of the Netherlands, it might be worth considering the establishment of such a task force to deal with emergencies.
- (iii) *Exchange of information on incidents.* Belgium and Portugal advocate exchange of information between Member States. Belgium suggests that, following each incident, the next CIREFI meeting to be held should discuss what it involved and how it was handled. In this respect, the Netherlands recalls that it immediately reported to CIREFI the incident that occurred in Amsterdam. ⁽¹⁾ It also refers to bilateral talks held with Germany and the United Kingdom in this matter.
- (iv) *Concerted action.* Belgium suggests that joint consideration should be given to how such incidents can be handled and avoided in the future.
- (i) *Information of other international organizations.* The possibility of informing the relevant international organizations that a large group is believed to be on its way to Western Europe is being discussed internally in the Netherlands. The organizations concerned could be the ECAC (European Civil Aviation Conference) and the Schengen Secretariat (which will in turn inform Schengen partners). The Netherlands recalls that it reported to the relevant Schengen working parties the incident that occurred in Amsterdam. Furthermore, Belgium referred to the possibility of filing a complaint with the International Air Transport authorities (see (d) above).

It should finally be noted that the Border Control Division of the Netherlands Immigration and Naturalization Service is currently working on an extensive scenario for action to be taken in such circumstances.

⁽¹⁾ In addition, the General Secretariat recalls that, further to tabling an initiative in this matter within the framework of CFSP, the Netherlands also reported this incident to the Asylum Working Party with experts on migration matters at its meeting of 19 and 20 March 1997. At this meeting, the Working Party invited comments from delegations. One delegation submitted written comments. The relevant information and comments were then presented at a joint meeting of the Asia/Oceania Working Party with members of the Migration Working Party, held on 9 April 1997 within the framework of the inter-pillar exercise on the question of readmission problems with certain third countries.