

**14205/03**

**LIMITE**

**MIGR 92  
COMIX 656**

**NOTE**

---

from : the Presidency  
to : Mixed Committee at Ministerial level

---

Subject : Initiative of the Italian Republic with a view to adopting a Council Decision on the organisation of joint flights for removals, from the territory of two or more Member States, of third-country nationals who are the subjects of individual removal orders

---

1. This draft Decision is an Initiative officially submitted by the Italian Republic to the Council on 5 August 2003. The Permanent Representatives Committee at its meeting on 11 September 2002 took note of this Initiative and decided to proceed to its publication in the Official Journal of the European Union, C series.

The purpose of this Initiative is to set rules for the organisation of joint flights for removals, from the territory of two or more Member States, of third-country nationals who are the subjects of individual removal orders. This involves, in particular, the identification of the specific tasks that have to be accomplished by the authorities that the organising and the participating Member States have to appoint to this effect, as well as of the common tasks.

2. The text of the draft Decision has been considered by the competent Council bodies, which reached agreement on the Articles as well as on the Annex, which was not contained in the original Italian Initiative. The non-binding Common Guidelines on security provisions for joint removals by air which are inserted as Annex to the draft Decision have been developed and agreed in the framework of a specific committee established by the Commission.

At its meeting on 30 October 2003 the **Mixed Committee at the Level of Senior Officials** confirmed the agreement on the text of the draft Decision as set out in the Annex to this Note.

3. The **Mixed Committee at Ministerial Level** is invited to define a general approach on this draft Decision, with a view to its formal adoption once the European Parliament will have rendered its opinion and the two delegations which maintain Parliamentary reservations (**F** and **NL**) will have lifted them.

---

**Initiative of the Italian Republic with a view to adopting a Council Decision on the organisation of joint flights for removals, from the territory of two or more Member States, of third-country nationals who are the subjects of individual removal orders**

**Article 1**

**Purpose**

The purpose of this Decision is to co-ordinate joint removals by air, from two or more Member States, of third-country nationals who are the subjects of individual removal orders (hereinafter referred to as "third-country nationals").

**Article 2**

Definitions

For the purpose 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 of the organising Member State" means the authority of each Member State, which is responsible for the organisation of joint flights;
- (c) "national authority of the participating Member State" means the authority of the Member State that participates in joint flights organised by the national authority referred to in point (b);
- (d) "joint flight" and "flight" means the transport of the third-country nationals carried out by the air carrier for the purpose stated;
- (e) "removal operations" and "joint removals by air" means all the activities which are necessary to return the third-country nationals concerned, including the transport on joint flights;

- (f) “escort(s)” means the security personnel responsible for accompanying third-country nationals on a joint flight and the persons in charge for medical care and interpreters.

### **Article 3**

#### **National authority**

Each Member State shall appoint the national authority responsible for organising and/or participating in joint flights and communicate the relevant information to the other Member States.

### **Article 4**

#### **Tasks of the organising Member State**

1. Where a Member State decides to organise a flight for the removal of third-country nationals which is open to the participation of the other Member States, it shall inform the national authorities of those Member States.
2. The national authority of the organising Member State shall adopt the necessary measures to ensure that the joint flight is conducted properly. In particular, it shall:
  - (a) select the air carrier and determine with the selected air carrier all the relevant costs of the flight and assume the relevant contractual obligations as well as ensure that it takes all measures necessary for carrying out the flight, including providing the appropriate assistance to the third-country nationals and to the escorts;
  - (b) request and receive, from the third-countries of transit and destination, the authorisations which are required for the implementation of the joint flight;
  - (c) make use of the contacts and make the appropriate arrangements for the organisation of the joint flight with the participating Member States;

- (d) define the operational details and the procedures and determine, in agreement with the participating Member States, the number of the escorts which is appropriate in relation to the number of third country nationals to be removed;
- (e) conclude all the appropriate financial arrangements with the participating Member States.

## **Article 5**

### **Tasks of the participating Member State**

Where a Member State decides to participate in a joint flight, it shall:

- (a) inform the national authority of the organising Member State of its intention to participate in the joint flight, specifying the number of third-country nationals to be removed;
- (b) provide a sufficient number of escorts for each third-country national to be removed. If the escorts are provided only by the organising Member State, each participating Member State shall ensure the presence of at least two representatives on board. These representatives, who shall have the same status as the escorts, shall be in charge of handing over the third-country nationals for whom they are responsible to the authorities of the country of destination.

## **Article 6**

### **Common tasks**

The organising and each participating Member States shall:

- (a) ensure that each third-country national and escort concerned hold valid travel documents and any other necessary additional documents, such as entry and/or transit visas, certificates or records;

- (b) inform, as soon as possible, their diplomatic and consular representations in the third-countries of transit and destination about the joint flight, in order to obtain necessary assistance.

## **Article 7**

### **Final clause**

In carrying out the joint removals by air, Member States shall take into account the Common Guidelines on security provisions for joint removals by air set out in the Annex.

## **Article 8**

### **Entry into force**

This Decision shall enter into force on the 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*

# Common guidelines on security provisions for joint removals by air

## 1. Pre-return phase

### *1.1 Requirements for returnees*

#### *1.1.1. Legal situation*

Joint charter flights are organised for illegal residents, who are persons who do not, or no longer, fulfil the conditions for entry to, presence in, or residence on the territory of the Member State of the European Union. Each participating Member State shall ensure that the legal situation of each of their returnees allows for removal.

#### 1.1.2. Medical condition and record

Each participating Member State shall ensure that their returnees are in an appropriate state of health, which allows legally and factually for a safe removal by air. Medical records shall be provided for returnees with a known medical disposition or where medical treatment is required. These medical records shall include the results of medical examinations, a diagnosis and the specification of possibly needed medication to allow for necessary medical measures. Multilingual versions of medical records shall be provided, if the accompanying medical staff is not able to properly understand the original language. Participating Member States are encouraged to use common standardised forms for medical records or fit-for-fly declarations. Participating States shall inform the organising Member State in advance of the operation of any medical condition which would have a bearing on the removability of a returnee. The organising Member State shall reserve the right to refuse access to the flight to any returnee with a medical condition which would mean that their return was not compatible with the principles of safety and dignity.

### *1.1.3. Documentation*

Each participating Member State shall ensure that for each returnee valid travel documents and other necessary additional documents, certificates or records are available. The authorised person shall keep the documentation until arrival in the country of destination.

It is the responsibility of the participating States to ensure that escorts and officials have entry visas where necessary for the country (ies) of transit and destination of the joint charter.

### *1.1.4. Notifications*

The organising Member State shall ensure that the airlines, - where applicable - the transit states, and the country of destination are notified and consulted about the removal operation duly in advance.

## **1.2 Requirements for escorts**

### *1.2.1. Escorts from the organising Member State*

Where the organising Member State provides the escorts for all the returnees, each participating Member State shall assign at least two representatives on board the aircraft; they shall be in charge of handing over their returnees to the local authorities in the destination country.

### *1.2.2. Escorts from all the participating Member States :*

Where the organising State is only in charge of the returnees from its own country, the other participating Member States shall provide escorts for their own returnees. In such cases, the participation of the various national units requires mutual agreement on the security rules as set out in these guidelines or in other agreements between Member States and prior consultation on any other details of the operation.

### *1.2.3. Use of private escorts*

When a participating Member State makes use of private escorts, the authorities of this Member State shall provide for at least one official representative on board of the flight.



#### *1.2.4. Skills and training of escorts*

The escorts assigned on board the common charter flights shall have received special training in order to carry out these missions; they will be provided with the necessary medical support depending on the mission.

It is preferable that the escorts used for joint charter flights are familiar with the removal standards of the other participating Member State. Member States are encouraged, therefore, exchanging information on their respective training courses for escorts and offering training courses to escorts from other Member States.

#### *1.2.5. Code of conduct for escorts*

The escorts shall not be armed. They may wear civilian dress. The dress shall have a distinctive emblem for identification purposes. Other duly accredited accompanying staff shall also wear a distinctive emblem.

The members of the escort shall be strategically positioned in the aircraft in order to provide the best safety. Moreover, they shall be seated with the returnees for whom they have responsibility.

#### *1.2.6. Arrangements regarding the number of escorts*

The number of escorts shall be determined on a case-by-case basis following an analysis of the potential risks and mutual consultation. It is recommendable in most cases that they are at least equivalent to the number of returnees on board. A back-up unit shall be available for support, where necessary (e.g. in cases of long distance destinations).

## **2. Pre-departure phase in departure or stopover airports**

### ***2.1 Transportation to the airport and stay in the airport***

- In principle, the group of escorts and the returnees should be at the airport at least three hours before departure.
- Returnees should be briefed regarding the enforcement of their removal and advised that it is in their interest to fully co-operate with the escorts. It should be made clear that any disruptive behaviour will not be tolerated and will not lead to the aborting of the removal operation.
- The organising Member State shall provide a secure area at the departure airport in order to ensure a discrete gathering and safe boarding of the returnees. This area shall also secure the

arrival of the aircraft of any other Member State, who is transporting returnees to join the common charter flight.

- If the chartered flight has to stopover at an airport of another Member State for the collection of returnees, it is the responsibility of this Member States to provide for a secure area at the airport.
- The representatives of the participating Member State shall hand over the returnees to officials of the Member State of the present location, who will usually be from the organising Member State. They shall indicate, if need be, those of the returnees who have expressed their intention not to board the aircraft and in particular those who need special attention due to their physical or psychological condition.
- The Member State of the present location of the removal operation performs any sovereign power (e.g. coercive measures). The powers of the escorts of other participating Member States are limited to self-defence. In addition, in the absence of law enforcement officers from the Member State of the present location, or for the purpose of supporting the law-enforcement officers, the escorts may use reasonable and proportionate action in response to an immediate and serious risk to prevent the returnee from escaping, causing injury to himself or to a third party, or damage to property.

## ***2.2 Check-in, boarding and security check before take-off***

- The escorts of the Member State of the present location are responsible for checking in and for assisting in passing control areas.
- All returnees shall undergo a meticulous security search before they board the flight. All objects that could be a threat to the safety of individuals and to the security of the flight shall be seized and placed in the luggage hold.
- The returnee's luggage shall not be placed in the passengers' cabin. All luggage placed in the hold shall undergo a security check and be labelled with the owner's name. Anything that is considered as dangerous according to the rules of ICAO shall be removed from luggage.

- Money and valuable objects shall be placed in a transparent covering labelled with the owner's name. The returnees shall be informed about the procedure regarding objects and money that have been put aside.
- The organising Member State shall determine for each removal operation the authorised maximum weight of luggage for each returnee.
- All returnees shall be boarded onto the common flight by personnel of the Member State of the present location and, where appropriate, assisted by the escorts for the removal operation.

### **3. In-flight procedure**

#### ***3.1 Security measures on board of the aircraft***

- The head of operation of the organising Member State shall define an overall security and surveillance plan to be implemented on board of the aircraft (movements within the cabin, meals, etc.). Escorts of all participating Member States have to be informed about the security and surveillance plan before the beginning of the operation.
- In cases where returnees are of various nationalities, they shall be seated in the passengers' cabin according to the Member State responsible for effecting their removal and their final destinations.
- Seatbelts shall be kept fastened throughout the entire duration of the flight.
- In case of a major incident on board (i.e. disruptive behaviour likely to jeopardise the completion of the operation or the safety of those on board the flight), the head of operation of the organising Member State, in close liaison with or under instruction of the flight captain, is in charge of the operational command in order to restore order.

### ***3.2 Use of coercive measures***

- Coercive measures shall be implemented with due respect to the individual rights of the returnees.
- Coercion may be used on individuals who refuse or resist the removal. All coercive measures shall be proportional and shall not exceed reasonable force. The dignity and physical integrity of the returnee shall be maintained. As a consequence, in case of doubt, the removal operation including the implementation of legal coercion based on the resistance and dangerousness of the returnee, shall be stopped following the principle "no removal at all cost".
- Any coercive measures should not compromise or threaten the ability of the returnee to breathe normally. In case of the use of coercive force it shall be ensured that the chest of the returnee remains in upright position and that nothing affects his or her chest in order to maintain normal respiratory function.
- The immobilisation of resisting returnees may be achieved by means of restraints that will not endanger their dignity and physical integrity.
- All participating Member States shall agree on a list of authorised restraints in advance of the removal operation. The use of sedatives to facilitate the removal is forbidden without prejudice to emergency measures to ensure flight security.
- All escorts shall be informed and aware about the authorised and forbidden restraints.
- Restrained returnees shall remain under constant surveillance throughout the flight.
- The decision to temporarily remove means of restraint shall be made by the head or deputy-head of the mission.

### ***3.3 Medical personnel and interpreters***

- At least one medical doctor should be present on a joint charter flight.
- The doctor shall have access to any relevant medical records of the returnees and shall be informed about returnees with particular medical dispositions before departure. So far unknown medical dispositions, which are discovered immediately before departure and may affect the enforcement of the removal, should be assessed with the responsible authorities.

- Only the doctor may, after a precise medical diagnosis has been made, administer medications to the returnees. Medicine required by a returnee during the course of the flight shall be held on board.
- Each returnee shall be in the position to address the doctor or the escorts directly, or via an interpreter in a language in which he or she can express him- or herself.
- The organising Member States ensures that appropriate medical and language staff is available for the removal operation.

### **3.4 Documentation and monitoring of removal operation**

#### *3.4.1. Recording and observers from third parties*

Any video- and / or audio-recording or the monitoring by third-party observers on joint charter flights is subject to prior agreement between participating Member States.

#### *3.4.2. Internal mission reports*

Participating Member States shall exchange their internal mission reports on the joint removal operation, if a common report is not to be prepared. This is particularly important if the operation has failed. All mission reports are strictly confidential and for internal use only. Mission reports shall include statements on incidents, coercive and medical measures, if any have taken place.

#### *3.4.3. Media coverage*

Participating Member States shall agree before the operation, the nature and timing of publicity (if any) to be given to the charter operation. Information about the operation will normally be issued after its completion. Publication of photographs or personal details of the escorts is to be avoided.

#### 4. Transit phase

The Directive on assistance in cases of transit for the purposes of removal by air of 2003 (OJ L 22 of 2003) is applicable during the transit in a Member State.

#### 5. Arrival phase

- The organising Member State is responsible for contacting the authorities of the destination country; other participating Member States shall be involved in this process.
- The head of operation of the organising Member State is the spokesperson to establish first contact with the local authorities upon arrival, unless another spokesperson has been determined among participating Member States prior to arrival.
- Each participating Member State shall hand over its own returnees to the authorities of the destination country, with their luggage and any items that were seized prior to boarding. The lead representatives of each participating Member State will be responsible for handing-over the returnees to the local authorities upon arrival. The escorts will not normally leave the aircraft.
- Where appropriate and feasible, participating Member States should invite consular staff, immigration liaison officers or advance parties of the Member States to facilitate the hand-over of the returnees to the local authorities as far as this is consistent with national practices and procedure.
- The returnees shall be free of handcuffs or any other restraint when handed over to the local authorities.
- The hand-over of returnees shall take place outside the aircraft (either at the bottom of the gangway or in adequate premises of the airport, as considered appropriate). As far as possible the local authorities shall be prevented to come on board the aircraft.
- The time spent in the airport of destination should be kept to a minimum.
- It is the responsibility of individual participating Member States to have in place contingency arrangements for escorts and officials (and returnees whose readmission has not been permitted) in the event that the departure of the aircraft is delayed following disembarkation of the returnees. These arrangements should include the provision of overnight accommodation, if necessary.

## 6. Failure of the removal operation

- In the event that the authorities of the destination country refuse entry to the territory, or the removal operation has to be aborted for other reasons, each participating Member State shall take responsibility, at its own costs, for the return of its returnees to its territory.
-