



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 27 June 2002 (04.07)
(OR. de)**

10386/02

LIMITE

MIGR 60

NOTE

from :	German delegation
to :	Delegations
Subject :	Initiative of the Federal Republic of Germany for a Council Directive on assistance in cases of transit for the purposes of expulsion by air

On 12 April 1999 the German delegation submitted a proposal for a Joint Action to enhance assistance in cases of transit for the purposes of expulsion by air (7264/99 MIGR 19). The aim was to step up practical cooperation between Member States' authorities and achieve uniform procedural rules on transit for the purposes of expulsion.

Owing to the entry into force of the Treaty of Amsterdam on 1 May 1999, the initiative needed to be drawn up on a new legal basis. Delegations will find attached a revised proposal.

The substantive rules remain essentially unchanged.

COUNCIL DIRECTIVE (EC) No .../2001

of

on assistance in cases of transit for the purposes of expulsion by air

THE COUNCIL OF THE EUROPEAN UNION

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

Having regard to the initiative of the Federal Republic of Germany,

Having regard to the Opinion of the European Parliament,

Whereas:

- (1) Under Article 63(3)(b) of the Treaty establishing the European Community, the Council adopts measures on immigration policy within the areas of illegal immigration and illegal residence, including repatriation of illegal residents.
- (2) Reference is made to the Council Recommendation of 22 December 1995 on concerted action and cooperation in carrying out expulsion measures, and to the Decision of the Schengen Executive Committee of 21 April 1998 on cooperation between the contracting parties in returning third-country aliens by air.

- (3) The sovereignty of the Member States and the on-board powers of the pilot responsible under the Chicago Convention of the International Civil Aviation Organisation (ICAO) and under national law – particularly with regard to the use of direct force against aliens resisting expulsion – shall remain unaffected.
- (4) Mutual assistance for the purposes of expulsion serves the common objective of ending the illegal residence of third country nationals who are the subject of expulsion orders. Rules binding on all the Member States also contribute to legal certainty.
- (5) Application of this Directive is without prejudice to the obligations resulting from the Geneva Convention relating to the Status of Refugees of 28 July 1951, as amended by the New York Protocol of 31 January 1967,

HAS ADOPTED THIS DIRECTIVE:

Article 1

- (1) For the purposes of this Directive "third-country alien" means a person who is not a national of a Member State of the European Union.
- (2) For the purposes of this Directive "escort" shall mean all persons responsible for accompanying the third-country alien, including persons responsible for medical care and interpreters.
- (3) For the purposes of this Directive "transit" shall mean the period during which the third-country alien and, if necessary, the escort are required to remain in the national or international areas of the airport of the requested Member State for the purposes of expulsion by air.

Article 2

- (1) The requested Member State shall ensure the transit of third-country aliens in accordance with the provisions of this Directive.
- (2) An application for transit shall not be made, or shall be refused, if in the State of destination or another transit State the third-country alien faces the threat of inhumane or humiliating treatment, torture or the death penalty, or if his life or liberty would be at risk by reason of his race, religion, nationality, membership of a particular social group or political conviction.
- (3) Transit may also be refused if criminal charges would have to be brought against the third-country alien in the requested State.
- (4) Further grounds for refusal shall be if transit through other States or reception by the State of destination cannot be guaranteed.
- (5) Transit authorisations may be revoked by the requested Member State in respect of the requesting Member State if circumstances within the meaning of paragraphs 2 to 4 above subsequently occur or come to light, justifying a refusal of transit.
- (6) The requested Member State shall inform the requesting Member State forthwith of the refusal or revocation of a transit authorisation under paragraphs 2 to 5 as well as of any other reason why transit is not possible, and shall provide an explanation of the reasons.

Article 3

- (1) The requesting Member State shall undertake to take back the third-country alien forthwith if the transit authorisation is refused or revoked under Article 2 (2) to (5) or if transit is not possible for any other reason and the requested Member State has informed the requesting Member State thereof in accordance with Article 2(6). The first sentence shall likewise apply if the third-country alien entered the requested Member State illegally.
- (2) The requested Member State shall effect the return of the third-country alien to the requesting Member State in the cases referred to in paragraph 1. The escort from the requesting Member State accompanying the third-country alien shall be involved in the decision-making of the requested Member State on the continuation or termination of transit.
- (3) If the third-country alien is returned, the requesting Member State shall bear the costs incurred.

Article 4

- (1) The requested Member State shall, in accordance with its law, ensure all assistance measures necessary for the safe departure of the third-country alien following the landing and opening of the aircraft doors. This relates to the following assistance measures in particular:
 1. meeting the third-country alien at the aircraft and escorting him on the territory of the transit airport, in particular to his connecting flight;
 2. placing the third-country alien in an enclosed transit area or in a detention room;
 3. using legitimate force to prevent or end any attempt by the third-country alien to resist transit;
 4. providing emergency medical care to the third-country alien and his escort;
 5. providing sustenance for the third-country alien and escort.

- (2) The competent authorities of the requested Member State shall decide the nature and extent of the assistance afforded under paragraph 1. The escort shall, if possible, be involved in the decision-making.
- (3) The costs of services provided under paragraphs 1 to 4 shall be borne by the requested Member State. The costs of services provided under paragraph 1, point 5, shall be borne by the requesting Member State.

Article 5

- (1) The request for transit and the associated assistance within the meaning of Article 4 shall be made in writing by the competent national authorities of the requesting Member State and shall reach the requested Member State as early as possible, and in any case no later than two working days before transit. The two-day rule may, however, be waived in particularly urgent and duly justified cases. The requested Member State shall inform the requesting Member State forthwith of its decision. Transit may not be commenced without the approval of the requested Member State.
- (2) The Member States shall each appoint a central authority to which requests under paragraph 1 are to be sent.
- (3) For the purposes of dealing with the request under paragraph 1, the following information should be forwarded to the requested Member State:
 1. the personal details of the third-country alien (surname, first name, place and date of birth, sex and nationality);
 2. number, validity and type of travel document;
 3. State of destination and, where appropriate, other transit States,
 4. place and time of arrival of the third-country alien in the requested Member State and flight number;
 5. place and time of onward flight and flight number, where this differs from point 4;

6. Notification of
 - a) special preventive measures,
 - b) the need for police escort,
 - c) the need for the provision of medical care,
 - d) contagious notifiable diseases,
 - e) previous unsuccessful attempts at expulsion and the reasons for their failure;
 7. the number of national escorts and – where available – their personal details.
- (4) The standard form annexed hereto containing the information under paragraphs 3 and 6 shall be used for requesting and authorising transit.
- (5) An authorisation of transit shall at the same time confer exemption from visa requirements.
- (6) The request shall always contain a statement that, at the time the request was made, no grounds for refusal under Article 2(2) to (4) were known to the requesting Member State.
- (7) The central authorities of the Member States shall provide each other with the telephone numbers of airport immigration officers who can be contacted at any time during the transit operation.
- (8) In the case of unescorted expulsion operations, the competent national authorities of the requesting Member State shall provide the national authorities of the requested Member State with the information specified in paragraph 3, points 1 to 5, and paragraph 6, and with the seat number of the third-country alien as it appears on the passenger list. The cabin crew of the aircraft shall also be appropriately informed. The requested Member State shall take suitable steps to effect the onward flight to another transit State or the State of destination and shall inform the requesting Member State of the place and time of the third-country alien's departure from the territory of the European Union.

Article 6

This Directive shall be without prejudice to the Geneva Convention relating to the status of refugees, the Dublin Convention or international conventions on the extradition of persons.

Article 7

- (1) Member States shall take the necessary measures to comply with this Directive not later than..... They shall forthwith inform the Commission thereof.
- (2) When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.
- (3) Member States shall communicate the main provisions of national law which they adopt in the field covered by this Directive to the Commission.

Article 8

This Directive shall enter into force 30 days after its publication in the Official Journal of the European Communities.

Article 9

This Directive is addressed to the Member States in accordance with the Treaty establishing the European Community.

Done at Brussels,

For the Council
The President

Transit request
for the purposes of expulsion by air

(in accordance with Article 5(1) and (4) of Council Directive (EC) No /2002 of.....)

(Requesting unit)	Place/Date:
Authority:	Telephone/Fax:
Address:	Name of officer:
	Signature:

(Requested unit)
Authority:
Address:

General information on person whom the transit request concerns

Request	Surname	First name	m/f	Date of birth	Place of birth	Nationality	Travel document No/Type/Validity
1							
2							
3							

Flight details

Flight No	From	Departure date	Time	To	Arrival Date	Time

Particular information:

Is an escort by the security forces of the requesting State required?	<input type="checkbox"/> yes	<input type="checkbox"/> no	Names: _____ _____ _____
Is a police escort required at the airport	<input type="checkbox"/> yes	<input type="checkbox"/> no	
Is medical care required?	<input type="checkbox"/> yes	<input type="checkbox"/> no	If so, specify: _____ _____ _____
Contagious notifiable diseases?	<input type="checkbox"/> yes	<input type="checkbox"/> no	If so, specify: _____ _____ _____
Previous unsuccessful attempts at expulsion?	<input type="checkbox"/> yes	<input type="checkbox"/> no	If so, state reasons: _____ _____ _____

Further comments

_____ _____ _____

N.B: At the time the request was made, no grounds for refusal under Article 2(2) to (4) of Council Directive (EC) No /2002 of were known.

Decision of the requested unit

The request is granted	<input type="checkbox"/>
The request is not granted	<input type="checkbox"/>
<u>Grounds:</u>	_____ _____ _____
(Name / Signature / Date)	