



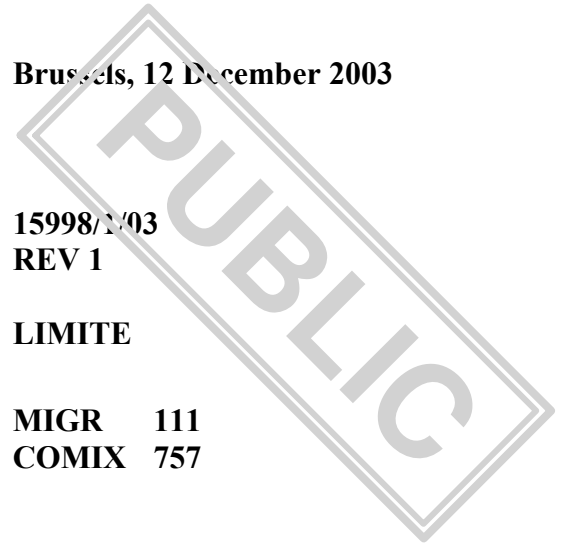
**COUNCIL OF
THE EUROPEAN UNION**

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"I/A" NOTE

from : the Presidency
to : Permanent Representatives Committee / Council

Subject : Draft Council Conclusions on assistance in cases of short-term transit by land or sea through the territory of another Member State in the course of effecting a removal order adopted by a Member State against a third-country national in the framework of the operational cooperation among Member States

1. The above draft Conclusions, submitted by the Presidency, have been extensively considered by the Working Party on Migration and Expulsion at its meetings on 14 November and 4 December 2003. The draft Conclusions have also been examined by the Strategic Committee on Immigration, Frontiers and Asylum at its meeting on 10 December 2003. Delegations recorded agreement on the text of the Draft conclusions which is attached to this Note.
2. The Permanent Representatives Committee is invited to confirm the agreement reached and to suggest that the Council approves the attached conclusions at one of its forthcoming meetings.

Draft Council conclusions

on

assistance in cases of short-term transit by land or sea through the territory of another Member State in the course of effecting a removal order adopted by a Member State against a third-country national in the framework of the operational cooperation among Member States

I. Noting that:

- The Council Recommendation of 22 December 1995 on concerted action and cooperation in carrying out removal measures¹ and the Decision of the Executive Committee of 21 April 1998 on cooperation between the Contracting Parties in returning third-country nationals by air (SCH/Com-ex (98) 10)² already address the need for cooperation between Member States in the field of removal by air of third-country nationals.
- It is necessary to strengthen mutual support and assistance among Member States in implementing return and readmission measures in cases of transit by air, sea and land, taking into account the objectives defined by the Comprehensive Plan to combat illegal immigration and trafficking in human beings in the European Union³, approved by the Council on 28 February 2002, and by the Plan for the management of the external borders of the European Union approved by the Council on 13 June 2002, which were confirmed by the Return Action Programme approved by the Council on 28 November 2002.
- With a view to implementing the above instruments, Council Directive 2003/.../EC on assistance in cases of transit for the purposes of removal by air has laid down specific rules in this area,

¹ OJ C 5, 10.1.1996, p. 3.

² OJ L 239, 22.9.2000, p. 193.

³ OJ C 142, 14.6.2002, p. 23.

II. The Council considers that:

- (1) It is important to complement the framework established by Council Directive 2003/.../EC on assistance in cases of transit for the purposes of removal by air, which has laid down specific rules in this area, by strengthening operational cooperation among the national authorities of the Member States, including cases of short-term transit through the territory of other Member States. The notion of transit through the territory should be interpreted widely, covering transit by land, via all the appropriate means of transport, and transfer via seaports of the Member States using regular sealinks.
- (2) In all circumstances, a Member State should have recourse to transit through the territory of another Member State only in exceptional cases, where the removal of the persons concerned from its territory via a direct or transit flight, which remains the main means for removal, or via direct regular sea-links, is not possible or is more difficult from the organisational point of view.
- (3) The transit through the territory may prove to be very useful in cases where removal of a third country national may be more efficiently and rapidly implemented by transporting the persons concerned to the airport or seaport of a neighbouring Member State, where there is an immediate direct connection with the country of destination. Moreover, transit through the territory of another Member State may also help to avoid lengthy and difficult administrative procedures in cases of transit through the territory of third countries, such as the request and granting of authorisation for transit. These difficulties may also arise if there are bilateral agreements between the Member State which is implementing the removal and these third countries.

III. For these reasons the Council encourages Member States to make arrangements to facilitate short-term transit through their territory.

Where a Member State decides to have recourse to transit through the territory of another Member State, which should be in all cases with an escort by staff of the implementing Member State, the transit operations cannot be implemented without prior consent from the Member State where the transit would take place.

The Member State which is implementing the transit operations (hereinafter referred to as the “requesting Member State”) should make and maintain appropriate contacts with the competent authorities of the Member State through which the transit is planned to take place (hereinafter referred to as the “requested Member State”) during the organisation phase of the transit operations as well as during its implementation and after its completion. In particular, the requesting Member State should communicate the details concerning the time and place of the transit operations.

The requesting Member State should be responsible for the completion of the transit operations, until the arrival of the person concerned in the country of destination, and its escorts should under all circumstances comply with the legislation of the requested Member State.

The costs of the transit operations should be compensated among Member States on the basis of appropriate financial arrangements, which may take into account, in particular, the criteria defined in Community legislation in the area of return of third country nationals.

The transit operation should be implemented in full compliance with international obligations and in particular those arising 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, from international conventions on human rights and fundamental freedoms and from international conventions on the extradition of persons.

IV. With a view to facilitating transit operations, the Council encourages the requested Member States to consider providing the following assistance measures:

- (a) escorts to assist the transit operations, in accordance with their national legislation.
- (b) accommodation and sustenance, where necessary, to the third-country nationals concerned and to the escorts, as well as emergency medical assistance and assistance in the event of incidents.
