

EUROPEAN PARLIAMENT

1999



2004

Session document

FINAL
A5-0104/2003

26 March 2003

REPORT

on the initiative by the Federal Republic of Germany with a view to adopting a Council Directive on assistance in cases of transit for the purposes of removal by air
(14848/2002 – C5-0011/2003 – 2003/0801(CNS))

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Rapporteur: Timothy Kirkhope

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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PROCEDURAL PAGE

By letter of 20 January 2003 the Council consulted Parliament, pursuant to Article 67 of the EC Treaty, on the initiative by the Federal Republic of Germany with a view to adopting a Council Directive on assistance in cases of transit for the purposes of removal by air (14848/2002 – 2003/0801(CNS)).

At the sitting of 29 January 2003 the President of Parliament announced that he had referred the initiative to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible (C5-0011/2003).

The committee appointed Timothy Kirkhope rapporteur at its meeting of 18 February 2003.

It considered the initiative by the Federal Republic of Germany and draft report at its meetings of 18 February 2003, 19 March 2003 and 25 March 2003.

At the latter meeting it adopted the draft legislative resolution by 21 votes to 10, with 0 abstentions.

The following were present for the vote: Jorge Salvador Hernández Mollar (chairman), Johanna L.A. Boogerd-Quaak and Giacomo Santini (vice-chairmen), Timothy Kirkhope (rapporteur), Mary Elizabeth Banotti, Christian Ulrik von Boetticher, Alima Boumediene-Thiery, Kathalijne Maria Buitenweg (for Pierre Jonckheer), Mogens N.J. Camre (for Roberta Angelilli), Marco Cappato (for Mario Borghezio), Charlotte Cederschiöld, Carmen Cerdeira Morterero, Ozan Ceyhun, Carlos Coelho, Thierry Cornillet, Gérard M.J. Deprez, Giuseppe Di Lello Finuoli, Margot Keßler, Eva Klamt, Alain Krivine (for Ole Krarup), Lucio Manisco (for Fodé Sylla), Claude Moraes (for Sérgio Sousa Pinto), Marcelino Oreja Arburúa, Elena Ornella Paciotti, Paolo Pastorelli (for Hubert Pirker), Martine Roure, Heide Rühle, Olle Schmidt (for Baroness Sarah Ludford), Ilka Schröder, Patsy Sörensen, Joke Swiebel, Anna Terrón i Cusí and Maurizio Turco.

The report was tabled on 26 March 2003.

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the initiative by the Federal Republic of Germany with a view to adopting a Council Directive on assistance in cases of transit for the purposes of removal by air (14848/2002 – C5-0011/2003 – 2003/0801(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the initiative by the Federal Republic of Germany (14848/2002)¹,
 - having regard to Article 63(3) (b) of the EC Treaty,
 - having regard to Article 67 of the EC Treaty, pursuant to which the Council consulted Parliament (C5-0011/2003),
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0104/2003),
1. Approves the initiative by the Federal Republic of Germany as amended;
 2. Calls on the Council to amend the text accordingly;
 3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 4. Calls on the Council to consult Parliament again if it intends to amend the initiative by the Federal Republic of Germany substantially;
 5. Instructs its President to forward its position to the Council and Commission, and the government of the Federal Republic of Germany.

¹ OJ C 4 E, 9.1.2003, p. 4.

Amendment 1

Recital 4

(4) The sovereignty of the Member States – particularly with regard to the use of direct force against *aliens* resisting removal – are to remain unaffected.

(4) The sovereignty of the Member States – particularly with regard to the use of direct force against ***unlawfully resident third country nationals*** resisting removal – are to remain unaffected.

Justification

It is not appropriate to refer to third country nationals as "aliens".

Amendment 2

Article 5, paragraph 1, point f)

(f) receiving, keeping and forwarding travel documents, particularly in the case of unescorted removals, and

(f) receiving, keeping *secure* and forwarding ***to the competent authorities in the country of destination*** travel documents, particularly in the case of unescorted removals, and

Justification

This amendment seeks to clarify the role of the requested Member State.

Amendment 3

Article 5, paragraph 1, point h) (new)

(h) informing the airline departing from the requested Member State.

Justification

Information should also be provided to the airline concerned.

Amendment 4
Article 5, paragraph 3

3. Escorts shall have no sovereign powers on the territory of the requested Member State. ***Measures taken in the context of the general rights to self-defence and to emergency action in accordance with the legislation of the requested Member State shall remain unaffected.*** Escorts shall not carry weapons during transit and shall identify themselves by means of service passports at the request of the requested Member State.

3. Escorts shall have no sovereign powers on the territory of the requested Member State. ***Escorts may take measures necessary for*** self-defence and emergency action in accordance with the legislation of the requested Member State. Escorts shall not carry weapons during transit and shall identify themselves by means of service passports at the request of the requested Member State.

Justification

This amendment seeks to make the text clearer.

EXPLANATORY STATEMENT

The rapporteur welcomes this German initiative for a Council Directive on assistance in cases of transit for the purposes of removal by air. This initiative seeks to improve the existing cooperation between Member States for the effective implementation of expulsion decisions. The Council took a first step in this direction in its Recommendation of 22 December 1995 on concerted action and cooperation in carrying out removal measures.¹

The rapporteur agrees that as far as possible expulsion decisions should be carried out using direct flights, but he is also aware that circumstances may not permit the use of a direct flight, for example, where direct flights are not available or are not appropriate from an economic viewpoint. To facilitate cooperation between Member States, it is necessary to establish the arrangements and assistance to be provided where the implementation of expulsion measures involve a transit in other EU Member States.²

The proposed Directive seeks to establish the cases in which transit should not be requested and/or transit may be refused or revoked. It also seeks to reconcile the various interests involved, including:

- the interest of the State which adopted the expulsion decision in ensuring a fast and efficient removal;
- the interest of the State of transit of ensuring safe and secure transport; and
- the interest of the person being removed in receiving adequate conditions during transit, including if necessary emergency medical care.

The rapporteur is proposing a small number of amendments which aim to ensure the safe transit of travel documents, that appropriate information is provided to the airline concerned and to clarify the ability of escorts to take measures for self-defence and in an emergency.

The rapporteur considers that this proposal is balanced and that it respects the sovereignty of Member States and provides sufficient safeguards. He considers that it is the responsibility of the Member State taking the expulsion decision to examine issues such as non-refoulement and therefore that it is not necessary for the State providing transit to re-examine these issues.

¹ OJ C5, 10.1.1996, p.3.

² A separate Commission proposal deals with the compensation to be paid (COM(2003) 49).

MINORITY OPINION

pursuant to Rule 161(3) of the Rules of Procedure
Ilka Schröder

Now that 'Fortress Europe' has largely closed its external borders, the Council, Commission and Parliament are increasingly seeking to attack migrants living inside the EU. The efficient deportation of people criminalised as 'illegal', where possible without resistance, is the real objective of this initiative. A large majority in the European Parliament is in favour of this project, even though it is no secret that deportations are taking place from Europe to countries where murder, torture and inhuman treatment are not just a threat but bitter reality. It is also no secret that, again and again, people being deported die because of the actions of security staff. In this situation, organising the machinery of deportation even more efficiently is nothing other than the pure cynicism of a racist policy which places state interests above people's interest in a better life.

We do not support this majority. Instead, we are demanding a total halt to deportations, the immediate release of all people being detained pending deportation and a permanent right to remain for all people in Europe.

In memory of Aamir Ageeb, Kola Bankole, Khaled Abuzarifa, Marcus Omofuma, Samson Chukwu, Sémira Adamu, Naimah Hadjar, Ricardo Barrientos, Mariam Getu Hagos and all the others.