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(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 29 April 2004

on the organisation of joint flights for removals from the territory of two or more Member States, of third-country nationals who are subjects of individual removal orders

(2004/573/EC)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the initiative of the Italian Republic ⁽¹⁾,

Whereas:

- (1) The comprehensive plan to combat illegal immigration and trafficking of human beings in the European Union ⁽²⁾, approved by the Council on 28 February 2002, which built upon the Communication of 15 November 2001 from the Commission to the Council and to the European Parliament on a common policy on illegal immigration states that readmission and return policy is an integral and vital component of the fight against illegal immigration. To that end, the Comprehensive Plan emphasises the necessity of highlighting a number of practical measures, including the establishment of a joint approach and cooperation between Member States with regard to the implementation of return measures. Common standards should therefore be adopted for return procedures.
- (2) The plan for the management of the external borders of the European Union, approved by the Council on 13 June 2002, which built upon the Communication of 7 May 2002 from the Commission to the Council and the European Parliament 'Towards integrated management of the external borders of the Member States of the European Union', provides for rational repatriation operations as one of the measures and actions for the integrated management of the external borders of the Member States of the European Union.
- (3) The Return Action Programme, approved by the Council on 28 November 2002, which built upon the Commission Green Paper of 10 April 2002 on a Community

return policy on illegal residents, as well as on the Communication of 14 October 2002 from the Commission to the European Parliament and to the Council on a Community return policy on illegal residents recommends, as one of the measures and actions with regard to improved operational cooperation among Member States, that the return of third-country nationals illegally resident in a Member State should be made as efficient as possible by sharing existing capacities for organising joint flights.

- (4) It is important to avoid a vacuum of the Community in the field of the organisation of joint flights.
- (5) As from 1 May 2004 the Council can no longer act on an initiative of a Member State.
- (6) The Council has exhausted all the possibilities to obtain in time the opinion of the European Parliament.
- (7) Under these exceptional circumstances the Decision should be adopted without the opinion of the European Parliament.
- (8) Member States are to implement this Decision with due respect for human rights and fundamental freedoms, and in particular for the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, the United Nations Convention against torture and other cruel, inhuman or degrading treatment or punishment of 10 December 1984, the Geneva Convention of 28 July 1951 and the New York Protocol thereto of 31 January 1967, relating to the status of refugees, the Convention on the rights of the child of 20 November 1989, and the Charter of fundamental rights of the European Union of 18 December 2000 ⁽³⁾.

⁽¹⁾ OJ C 223, 19.9.2003, p. 3.

⁽²⁾ OJ C 142, 14.6.2002, p. 23.

⁽³⁾ OJ C 364, 18.12.2000, p. 1.

- (9) This Decision should apply without prejudice to the relevant international instruments in the area of removal by air, such as Annex 9 to the 1944 Chicago Convention on International Civil Aviation (ICAO) and the relevant documents of the European Civil Aviation Conference (ECAC).
- (10) The non-binding Common Guidelines on security provisions for joint removals by air should provide useful guidance in the implementation of this Decision.
- (11) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark is not taking part in the adoption of this Decision, and is not bound by it or subject to its application. However, given that this Decision builds upon the Schengen *acquis* under the provisions of Title IV of Part Three of the Treaty establishing the European Community, Denmark, in accordance with Article 5 of the said Protocol, is to decide within a period of six months after the Council has adopted this Decision, whether it will implement it in its national law.
- (12) As regards the Republic of Iceland and the Kingdom of Norway, this Decision constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded on 18 May 1999 between the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis* ⁽¹⁾, which fall within the area referred to in Article 1, point C of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement ⁽²⁾. As a result of the procedures laid down in the said Agreement, the rights and obligations arising from this Decision should also apply to those two States and in relations between those two States and the Member States of the European Community to which this Decision is addressed.
- (13) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on the European Union and to the Treaty establishing the European Community, these Member States have notified their wish to take part in the adoption and application of this Decision,

HAS ADOPTED THIS DECISION:

Article 1

Purpose

The purpose of this Decision is to coordinate joint removals by air, from two or more Member States, of third-country

nationals who are 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) 'organising Member State', means a Member State, which is responsible for the organisation of joint flights;
- (c) 'participating Member State', means a Member State which participates in joint flights organised by an organising Member State;
- (d) 'joint flight', means the transport of third-country nationals carried out by an air carrier selected for that purpose;
- (e) 'removal operations' and 'joint removals by air', mean all the activities which are necessary to return the third-country nationals concerned, including 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 of 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

- Where a Member State decides to organise a joint 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.
- 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:
 - select the air carrier and determine with the selected air carrier all the relevant costs of the joint flight, assume the relevant contractual obligations and ensure that it takes all the measures necessary for carrying out the joint flight, including providing the appropriate assistance to the third-country nationals and to the escorts;

⁽¹⁾ OJ L 176, 10.7.1999, p. 36.

⁽²⁾ OJ L 176, 10.7.1999, p. 31.

- (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 contacts and make the appropriate arrangements for the organisation of the joint flight with the participating Member States.
- (d) define the operational details and 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 it decides to participate in a joint flight, a participating Member State 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 to be provided solely 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 Member State and each participating Member State shall:

- (a) ensure that each third-country national and the escorts 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 of the arrangements concerning the joint flight, in order to obtain necessary assistance.

Article 7

Final clause

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

Article 8

Entry into force

This Decision shall take effect from the day following that of its publication in the *Official Journal of the European Union*.

Article 9

Addressees

This Decision is addressed to the Member States in accordance with the Treaty.

Done at Luxembourg, 29 April 2004.

For the Council

The President

M. McDOWELL

ANNEX

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 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 a Member State of the European Union. The organising Member State and each participating Member State shall ensure that the legal situation of each of the returnees for which they are responsible allows for removal.

1.1.2. *Medical condition and medical records*

The organising Member State and each participating Member State shall ensure that the returnees for whom they are responsible 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 understand properly the original language. Organising and participating Member States are encouraged to use common standardised forms for medical records or fit-for-fly declarations. Participating Member States shall inform the organising Member State in advance of a removal 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 a joint 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*

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

It is the responsibility of the organising Member State and each participating State to ensure that escorts and representatives have entry visas where necessary for the country(ies) of transit and destination of the joint flight.

1.1.4. *Notifications*

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

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 to be present on board the aircraft; they shall be in charge of handing over the returnees for whom they are responsible to the local authorities in the country of destination.

1.2.2. *Escorts from participating Member States*

Where the organising Member State intends to take charge solely of the returnees from its own country, the participating Member States shall provide escorts for the returnees, for whom they are responsible. In such cases, the participation of the various national units requires mutual agreement between the organising Member State and the participating Member States on the security rules as set out in these Common Guidelines or in other agreements between Member States and there shall be prior consultation on any other details of the operation.

1.2.3. *Use of private-sector escorts*

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

1.2.4. *Skills and training of escorts*

Escorts assigned on board the joint flights shall have received prior special training in order to carry out these missions; they must be provided with the necessary medical support depending on the mission.

Escorts used for joint flights should preferably be familiar with the removal standards of the organising Member State and the participating Member States. Member States are encouraged, therefore, to exchange information on their respective training courses for escorts and to offer 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, which 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 optimum 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 following mutual consultation. It is recommended 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**

As regards transportation to and stay in the airport the following shall apply:

- (a) in principle, the escorts and the returnees should be at the airport at least three hours before departure;
- (b) returnees should be briefed regarding the enforcement of their removal and advised that it is in their interest to cooperate fully 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;
- (c) 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, which is transporting returnees to join the joint flight;
- (d) if a joint flight has to stop over at an airport of another Member State for the collection of returnees, it is the responsibility of that Member State to provide for a secure area at the airport;
- (e) the representatives of the participating Member State shall hand over the returnees, for whom they are responsible, to officials of the Member State of the present location, who will usually be from the organising Member State. The representatives of the participating Member States shall indicate, if need be, which of the returnees have expressed their intention not to board the aircraft and in particular which of them need special attention due to their physical or psychological condition;
- (f) the Member State of the present location of the removal operation is responsible for the performance of any sovereign power (e.g. coercive measures). The powers of the escorts from 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 take reasonable and proportionate action in response to an immediate and serious risk in order 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 arrangements as regards check-in, boarding and security checking before take-off shall be as follows:

- (a) the escorts of the Member State of the present location are responsible for checking in and for assisting in passing control areas;
- (b) all returnees shall undergo a meticulous security search before they board a joint flight. All objects that could be a threat to the safety of individuals and to the security of the joint flight shall be seized and placed in the luggage hold;
- (c) '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 the International Civil Aviation Organisation (ICAO) shall be removed from luggage;
- (d) 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;
- (e) for each removal operation the organising Member State shall determine the maximum authorised weight of luggage for each returnee;
- (f) All returnees shall be boarded onto the joint 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 the aircraft

During the flight the following security measures on board the aircraft shall apply:

- (a) the head of the removal operation of the organising Member State shall define an overall security and surveillance plan to be implemented on board the aircraft (movements within the cabin, meals, etc.). All escorts must be informed about the security and surveillance plan before the beginning of a removal operation;
- (b) in cases where returnees are of different nationalities, they shall be seated in the passengers' cabin according to the Member State responsible for effecting their removal and according to their final destinations;
- (c) seatbelts shall be kept fastened throughout the entire duration of the flight;
- (d) in the event 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, shall be in charge of the operational command to restore order.

3.2. Use of coercive measures

Coercive measures shall be used as follows:

- (a) coercive measures shall be implemented with due respect to the individual rights of the returnees;
- (b) coercion may be used on individuals who refuse or resist 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';
- (c) any coercive measures should not compromise or threaten the ability of the returnee to breathe normally. In the event that coercive force is used, 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;
- (d) the immobilisation of resisting returnees may be achieved by means of restraints that will not endanger their dignity and physical integrity;
- (e) the organising Member State and each participating Member State 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;
- (f) all escorts shall be informed and made aware of the authorised and forbidden restraints;

- (g) restrained returnees shall remain under constant surveillance throughout the flight;
- (h) the decision temporarily to remove a means of restraint shall be made by the head or deputy-head of the removal operation.

3.3. Medical personnel and interpreters

The arrangements with regard to medical personnel and interpreters shall be as follows:

- (a) at least one medical doctor should be present on a joint flight;
- (b) the doctor shall have access to any relevant medical records of the returnees and shall be informed before departure about returnees with particular medical dispositions. Previously unknown medical dispositions, which are discovered immediately before departure and which may affect the enforcement of the removal, should be assessed with the responsible authorities;
- (c) only a doctor may, after a precise medical diagnosis has been made, administer medication to the returnees. Medicine required by a returnee during the course of the flight shall be held on board;
- (d) each returnee shall be able 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;
- (e) the organising Member States shall ensure that appropriate medical and language staff are 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 monitoring by third-party observers on joint flights shall be subject to prior agreement between the organising Member State and the participating Member States.

3.4.2. Internal reports on the removal operation

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

3.4.3. Media coverage

The organising and participating Member States shall agree before a removal operation on the nature and timing of publicity (if any) to be given to the removal operation. Information about the removal operation will normally be issued only after its completion. Publication of photographs or personal details of the escorts is to be avoided.

4. TRANSIT PHASE

Council Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by air ⁽¹⁾ shall apply during transit in a Member State.

5. ARRIVAL PHASE

On arrival:

- (a) the organising Member State shall be responsible for contacting the authorities of the country of destination; participating Member States shall be involved in this process;
- (b) the head of the removal operation of the organising Member State shall be the spokesperson to establish first contact with the local authorities upon arrival, unless another spokesperson has been determined among the organising and participating Member States prior to arrival;
- (c) the organising Member State and each participating Member State shall hand over the returnees, for whom they are responsible, to the authorities of the country of destination, with their luggage and any items that were seized prior to boarding. The lead representatives of the organising and participating Member States will be responsible for handing over the returnees to the local authorities upon arrival. The escorts will not normally leave the aircraft;

⁽¹⁾ OJ L 321, 6.12.2003, p. 26.

- (d) where appropriate and feasible, the organising and participating Member States should invite consular staff, immigration liaison officers or advance parties of the Member States concerned to facilitate the handover of the returnees to the local authorities insofar as this is consistent with national practices and procedure;
- (e) the returnees shall be free of handcuffs or any other restraint when handed over to the local authorities;
- (f) the handover 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 from coming on board the aircraft;
- (g) the time spent at the airport of destination should be kept to a minimum;
- (h) it is the responsibility of the organising Member State and each participating Member State to have in place contingency arrangements for escorts and representatives (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 country of destination refuse entry to the territory, or the removal operation has to be aborted for other reasons, the organising Member State and each participating Member State shall take responsibility, at its own cost, for the return of the returnees, for whom they are responsible, to their respective territories.
