Third-countries nationals: removal by air, assistance in cases of transit. Initiative Germany

2003/0801(CNS) - 25/11/2003 - Final act

PURPOSE : to define measures on assistance between the competent authorities at Member State airports of transit with regard to unescorted and escorted removals by air. LEGISLATIVE ACT : Council Directive 2003/110/EC on assistance in cases of transit for the purposes of removal by air. CONTENT : the Council adopted the Directive on assistance in cases of transit for the purposes of removal by air. The objective of this Directive is to create a set of rules aimed at facilitating the transit of persons subject to removal in an airport of a Member State other than the Member State which has adopted and implemented the removal decision. To that purpose it defines under which conditions the transit operations may take place and indicates what measures of assistance the requested Member State should provide. The Directive stipulates that a Member State wishing to return a third-country national by air shall examine whether it is possible to use a direct flight to the country of destination. If a Member State wishing to return a third-country national cannot for reasonable practical circumstances use a direct flight to the country of destination, it can request transit by air via another Member State. An application for transit by air shall in principle not be made if the removal measure requires a change of airport on the territory of the requested Member State. The requested Member State may refuse transit by air if: - the third-country national under national legislation in the requested Member State is charged with criminal offences or is wanted for the carrying out of a sentence; - transit through other States or admission by the country of destination is not feasible; - the removal measure requires a change of airport on the territory of the requested Member State; - the requested assistance is impossible at a particular moment for practical reasons, or - the third-country national will be a threat to public policy, public security, public health or to the international relations of the requested Member State. The request for escorted or unescorted transit by air and the associated assistance measures under Article 5(1) shall be made in writing by the requesting Member State. It shall reach the requested Member State as early as possible, and in any case no later than two days before the transit. This time limit may be waived in particularly urgent and duly justified cases. The requested Member State shall inform the requesting Member State forthwith of its decision within two days. This time limit may be extended in duly justified cases by a maximum of 48 hours. Transit by air shall not be started without the approval of the requested Member State. Where no reply is provided by the requested Member State within the deadline referred to in the first subparagraph, the transit operations may be started by means of a notification by the requesting Member State. Member States may provide on the basis of bilateral or multilateral agreements or arrangements that the transit operations may be started by means of a notification by the requesting Member State. Member States shall notify the Commission regarding the agreements or arrangements referred to in the third subparagraph.The Commission shall regularly report to the Council on such agreements and arrangements. The central authorities shall appoint contact points for all the relevant airports of transit who can be contacted throughout the transit operations. The requesting Member State shall take appropriate arrangements to ensure that the transit operation takes place in the shortest possible time. The transit operation shall take place at a maximum within 24 hours. The requested Member State, subject to mutual consultations with the requesting Member State within available means and in compliance with relevant international standards, shall provide all the assistance measures necessary from landing and the opening of the aircraft doors until it is ensured that the third-country national has left. However, mutual consultations are not required in specific cases mentioned in this Directive. Assistance measures are as follows: - meeting the third-country national at the aircraft and escorting him/her within the confines of the transit airport, in particular to his/her connecting flight; - providing emergency medical care to the third-country national and, if necessary, his /her escort; - providing sustenance for the third-country national and, if necessary, his/her escort; - receiving, keeping and forwarding travel documents, particularly in the case of unescorted removals; - in cases of unescorted transit, informing the requesting Member State of the place and time of departure of the third-country national from the territory of the Member State concerned; - informing the requesting

Member State if any serious incidents took place during the transit of the third-country national. The requested Member State may, in accordance with its national law: - place and accommodate the third-country nationals in a secure facility; - use legitimate means to prevent or end any attempt by the third-country national to resist the transit. It should be stated that this Directive shall be without prejudice to the obligations 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. In addition, the Decision of the Executive Committee of 21 April 1998 on cooperation between the Contracting Parties in returning foreign nationals by air (SCH/Com-ex (98) 10) shall be repealed. ENTRY INTO FORCE : 6 December 2003. IMPLEMENTATION : 6 December 2005.