Third-country nationals: joint flights for removals of illegal emigrants. Initiative Italy

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The present Italian initiative, proposed on 9 September 2003 was subject to a new examination by the delegations. At its meeting on 30 October 2003 the Mixed Committee at the Level of Senior Officials revised the proposed text and confirmed the agreement on the new text of the draft Decision on the organisation of joint flights for removals, from the territory of two or more Member States, of third-country nationals who are the subjects of individual removal orders. The new elements of the draft Decision are as follows: - the purpose of the draft Decision is to co-ordinate joint removals (as opposed to rationalising them); - the new draft Decision sets out the tasks to be carried out by the national authorities designated to organise joint flights for removals; - Tasks of the organising Member State are outlined : where a Member State decides to organise a 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 flight and assume the relevant contractual obligations as well as ensure that it takes all measures necessary for carrying out the flight, including providing the appropriate assistance to the third-country nationals and to the escorts; request and receive, from the third-countries of transit and destination, the authorisations which are required for the implementation of the joint flight; make use of the contacts and make the appropriate arrangements for the organisation of the joint flight with the participating Member States; define the operational details and the 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; conclude all the appropriate financial arrangements with the participating Member States; - Tasks of the participating Member States : where a Member State decides to participate in a joint flight, it shall 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. It shall also provide a sufficient number of escorts for each third-country national to be removed. If the escorts are provided only 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; - Common tasks are also provided : the organising and each participating Member States shall: ensure that each third-country national and escort concerned hold valid travel documents and any other necessary additional documents, such as entry and/or transit visas, certificates or records; inform, as soon as possible, their diplomatic and consular representations in the third countries of transit and destination about the jointflight, in order to obtain necessary assistance. The new draft Decision also provides a new Annex which was not contained in the original Italian Initiative. The non-binding Common Guidelines on security provisions for joint removals by air which are inserted as Annex to the draft Decision have been developed and agreed in the framework of a specific committee established by the Commission. These common guidelines concern the following issues: - Pre-return phase : this includes certain requirements for returnees such as their legal situation; medical condition and records (each participating Member State shall ensure that their returnees are in an appropriate state of health, which allows legally and factually for a safe removal by air); documentation (each participating Member State shall ensure that for each returnee valid travel documents and other necessary additional documents, certificates or records are available); notifications (the organising Member State shall ensure that the airlines, - where applicable - the transit states, and the country of destination are notified and consulted about the removal operation duly in advance); - Pre-departure phase in departure or stopover airports - those who require transportation to the airport and stay in the airport: in principle, the group of escorts and the returnees should be at the airport at least three hours before departure. 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, who is transporting returnees to join the common charter flight; - If the chartered flight has to stopover at an airport of another Member State for the collection of returnees, it is the responsibility of this Member States to provide for a secure area at the airport. The Member State of the present location of the removal operation performs any sovereign power (e.g. coercive measures). The powers of the escorts of 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 use reasonable and proportionate action in response to an immediate and serious risk to prevent the returnee from escaping, causing injury to himself or to a third party, or damage to property. Moreover, the escorts of the Member State of the present location are responsible for checking in and for assisting in passing control areas. All returnees shall be boarded onto the common flight by personnel of the Member State of the present location and, where appropriate, assisted by the escorts for the removal operation; - In-flight procedure - Security measures on board of the aircraft : the use of coercive measures shall be implemented with due respect to the individual rights of the returnees. Coercion may be used on individuals who refuse or resist the 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 removalat all cost". All participating Member States 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. - Medical personnel and interpreters : at least one medical doctor should be present on a joint charter flight. As regards the documentation and monitoring of removal operations, the draft states that any video- and / or audio-recording or the monitoring by third-party observers on joint charter flights is subject to prior agreement between participating Member States. Participating Member States shall exchange their internal mission reports on the joint removal operation, if a common report is not to be prepared. Participating Member States shall agree before the operation, the nature and timing of publicity (if any) to be given to the charter operation. Information about the operation will normally be issued after its completion. Publication of photographs or personal details of the escorts is to be avoided. - Arrival phase : the organising Member State is responsible for contacting the authorities of the destination country; other participating Member States shall be involved in this process. It is the responsibility of individual participating Member States to have in place contingency arrangements for escorts and officials (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. - Failure of the removal operation : in the event that the authorities of the destination country refuse entry to the territory, or the removal operation has to be aborted for other reasons, each participating Member State shall take responsibility, at its own costs, for the return of its returnees to its territory. The Mixed Committee at Ministerial Level is invited to define a general approach on this draft Decision, with a view to its formal adoption once the European Parliament will have rendered its opinion and the two delegations (France and the Netherlands) which maintain Parliamentary reservations will have lifted them.