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

2003/0801(CNS) - 10/12/2002 - Legislative proposal

PURPOSE : to present the German initiative with a view to adopting a Council Directive on assistance on cases of transit for the purposes of removal by air. CONTENT : this initiative is presented keeping in mind the Council recommendation of 22 December 1995 on concerted action and cooperation in carrying out removal measures and to the Decision of the Schengen Executive Committee of 21 April 1998 on cooperation between the contracting parties in returning third-country nationals by air. Mutual assistance for the purposes of removal takes into consideration the common objective of ending the illegal residence of third-country nations who are the subject of removal orders. Rules binding on all the Member States contribute furthermore to legal certainty and standardisation of procedures. Removal by air is increasingly gaining in importance for the purpose of terminating the residence of third-country nationals. Despite the efforts of the Members States to give priority to using direct flights, it may be necessary, from an economic viewpoint or insufficient availability of direct flights to use flight connections via airports of transit of other Member States. More specifically, the Directive shall cover measures enabling the competent authorities a European Union airports of transit to assist with unescorted and escorted removals. In cases in which removal to a transit State or State of destination is unsuccessful, requested Member State shall also assist with the readmission of the third-country national to the requesting State under this Directive. It should be made clear that, for the purposes of this Directive, the definition of a "third-country national" shall mean any person who is not a national of a Member States of the EU, the Republic of Iceland or the Kingdom of Norway. The requested Member States (the Member State via whose airport of transit the transit is to be effected) shall assist the transit of third-country nationals to be removed in accordance with the provisions of this Directive. The requesting Member State (the one which enforces a removal order in respect of a third-country national and requests transit via the airport of another Member State) shall give priority to examining whether removal to the State of destination using a direct flight is possible. An application for transit shall in principle not be made if the measure for removal requires a change of airport on the territory of a Member States. On the other hand, an application shall not be made, or may be refused, if in the State of destination or another transit State the third-country national faces the threat of inhumane or humiliating treatment, torture or the death penalty, or of his life or liberty would be at the risk by reason of this race, religion, nationality, membership and a particular social group or political conviction. Transit may be refused if certain charges would have to be brought against the third-country national, transit through other States or admission by the State of destination cannot be guaranteed or if it was impossible for organisational reasons. The requesting Member States shall undertake to readmit the third-country national is the transit authorisation was refused or revoked, the third-country national entered the requestedMember States without authorisation during transit, removal of the third-country national to another transit State or to the State of destination was unsuccessful or lastly transit is not possible for another reason. The requested Member State shall effect the return of the third-country national to the requesting Member State in the cases mentioned above and the it shall be the requesting Member States who shall bear the costs incurred in returning the third-country national. It is clearly pointed out that it shall be the requested Member State who shall take assistance measures necessary from landing and the opening of the aircraft doors until is it ensured that the third-country national has left. This relates to various assistance measures such as meeting the third-country national at the airport, placing in a detention room, provide emergency medical care, etc. As regards the costs of services, these shall be borne by the requesting Member States. The remaining costs shall be borne by the requested Member State. It should also be noted that this draft Directive shall be without prejudice to the obligations arising from the Geneva Convention relating to the status of refugees from the Convention determining the State responsible for examining applications.