Basic information

2003/0821(CNS) CNS - Consultation procedure Decision	Procedure lapsed or withdrawn
Third-country nationals: joint flights for removals of illegal emigrants. Initiative Italy **Subject** 7.10.08 Migration policy	

Key players

Council of the European Union

Council configuration	Meetings	Date
General Affairs	2596	2004-07-12
Justice and Home Affairs (JHA)	2579	2004-04-29
Justice and Home Affairs (JHA)	2538	2003-11-06

Key events

Date	Event	Reference	Summary
09/09/2003	Initial legislative proposal published	12025/2003	Summary
22/09/2003	Committee referral announced in Parliament		
31/10/2003	Decision by Parliament	14205/2003	Summary
31/10/2003	Legislative proposal published	14205/2003	Summary
06/11/2003	Debate in Council		
19/02/2004	Vote in committee		Summary
19/02/2004	Committee report tabled for plenary, 1st reading/single reading	A5-0091/2004	
31/03/2004	Debate in Parliament		Summary
20/04/2004	Debate in Parliament		Summary
29/04/2004	Act adopted by Council after consultation of Parliament		
12/07/2004	Resolution/conclusions adopted by Council		Summary
06/08/2004	Final act published in Official Journal		
06/08/2004	Additional information		Summary
15/09/2004	Committee referral announced in Parliament		

Technical information

Procedure reference	2003/0821(CNS)

Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Decision
Legal basis	EC Treaty (after Amsterdam) EC 063-p3
Stage reached in procedure	Procedure lapsed or withdrawn
Committee dossier	LIBE/6/21046 LIBE/5/20105

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee report tabled for plenary, 1st reading/single reading		A5-0091/2004	19/02/2004	

Council of the EU

Document type	Reference	Date	Summary
Document attached to the procedure	11769/2003	08/08/2003	Summary
Initial legislative proposal	12025/2003 OJ C 223 19.09.2003, p. 0003-0005	09/09/2003	Summary
Legislative proposal	14205/2003 OJ C 223 19.09.2004, p. 0003-0005	31/10/2003	Summary

Additional information

Source	Document	Date
European Commission	EUR-Lex	

Final act

Decision 2004/0573
OJ L 261 06.08.2004, p. 0028-0035 Summary

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

2003/0821(CNS) - 09/09/2003 - Initial legislative proposal

PURPOSE : to rationalise operations for removals of third-country nationals who are the subject of removal orders taken by two or more Member States, through the organisation of joint flights. PROPOSED ACT : Council Decision, Initiative of the Italian Presidency. CONTENT : since the entry into force of the Treaty of Amsterdam, immigration and asylum issues have fallen within the competence of the European Community under Title IV of

the Treaty establishing the European Community. The comprehensive plan to combat illegal immigration and trafficking in human beings, adopted on 28 February 2002, emphasises, among other things, that readmission and return policy is an integral and vital component of the fight against illegal immigration and states that a Community return policy needs to be based on common principles and common measures. The return action programme, approved by the Council on 28 and 29 November 2002, recommends that the return of illegally resident third-country nationals should be made as efficient as possible by sharing existing capacities for such returns. Consequently, the Italian Presidency has presented an initiative aiming to organise of joint flights for removals of third-country nationals illegally present in the territory of two or more Member States. In this respect, each Member State shall designate a competent authority with a view to organising these flights. The national authorities shall adopt the measures necessary to ensure that joint flights are conducted properly. In particular they shall: - inform the other Member States in good time whenever joint flights are organised, indicating the number of seats available on board the plane used; - notify the national authority organising the flight whether or not they wish to participate in the joint flight; - having contacted the other national authorities, arrange a preliminary meeting with representatives of the participating Member States, where this is necessary for the organisation of the joint flights; - establish the organisational details, the procedures to be followed and the numbers of third-country nationals, who are the subject of removal orders, and escort personnel, including medical staff and interpreters, to be carried on the joint flight; - identify the air carrier to be used for the joint operation for the removal of the said third-country nationals; - obtain the necessary authorisation for the joint flight from the competent authorities of the third country for which the flight is bound; - establish with the selected carrier the cost of the return operation, indicating expenditure arising from the chartering of the aircraft, catering, and any additional costs, and determine how costs are to be shared among the Member States taking part in the joint flight, dealing directly with those concerned; - appoint the leader of the escort for the joint flight; - ensure that the air carrier selected submits the relevant flight plan, having obtained the necessary flyover, landing and, where required, transit authorisations, and that it provides assistance to the said third-country nationals and the escortpersonnel on the flight throughout the entire transport operation. The national authorities shall obtain the following information before such flights are organised: - whether the third-country national concerned has a criminal record, with particular reference to the type of offence that the person has committed, if any; - third-country nationals' behaviour while detained in facilities provided for under the respective national legislation before removal or otherwise during the time spent pending adoption of the removal orders (for example, aggressive, rebellious or violent behaviour). Once the information has been obtained, the national authorities shall assess the level of risk attaching to the operation. On the basis of that assessment the nature and number of the staff to be deployed shall be determined, using personnel specially trained in advance. In the case of any third-country nationals on board who may seriously disrupt the flight, arrangements shall be made for an appropriate escort service capable of dealing with violent behaviour which could endanger the safety of the flight itself.

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

2003/0821(CNS) - 29/04/2004 - Final act

PURPOSE: the organisation of joint flights for the removal of illegal immigrants

LEGISLATIVE ACT: Council Decision 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.

CONTENT: The purpose of this Council Decision is to co-ordinate joint removals by air, from two or more Member States, of third-country nationals who are the subject of individual removal orders. In order to enact the objective’s of the Decision, the following measures have been provided for:

- Joint flights must be conducted properly and in accordance with the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, the United National Convention against torture and other cruel, inhumane or degrading treatment or punishment, the 1951 Geneva Convention on the status of refugees, the Convention on the rights of the child and the Charter of fundamental rights of the European Union.

- For the sake of clarity and consistency a number of related terms have been defined. They are: third-country national, organising Member State, participating Member State, joint flight, removal operations, joint removals by air and escorts.

- Member States should appoint a national authority responsible for organising and/or participating in joint flights.

- In cases where a Member State decides to organise a joint flight for the removal of third-country nationals it shall inform the national authority of the other Member State. The national authority of the organising Member State will adopt the necessary measure ensuring that the joint flight is conducted properly. It will also be responsible for practical measures such as selecting the air carrier as well as related costs and relevant contractual obligations. In addition, the national authority shall request and receive information from the third-countries of transit and destination, the authorisations required for the implementation of the joint flight and make the appropriate arrangements for the organisation of the joint flight with the participating Member State.

- The participating Member State will be responsible for specifying the number of third country nationals, which need to be removed and provide a sufficient number of escorts for each third-country national to be removed.

- Under common arrangements each participating Member State must ensure that each third-country national and the escorts hold valid documents and inform their diplomatic and consular representations in the third-countries of transit and destination of the arrangements concerning the joint flight.

- Attached to the Decision, in Annex form, are Common Guidelines on security provisions for joint removals. These common guidelines concern, requirements for returnees, requirements for escorts, transportation to the airport and stay at the airport, check-in, boarding and security check before take-off, security measures on board the aircraft, use of coercive measures, medical personnel and interpreter and lastly documentation and monitoring of removal operations.

Denmark will not be participating in the adoption of this Decision. The United Kingdom and Ireland will be participating as will the Republic of Iceland and the Kingdom of Norway.

ENTRY INTO FORCE: 7 August 2004

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

2003/0821(CNS) - 31/10/2003 - Legislative proposal

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.

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

2003/0821(CNS) - 08/08/2003 - Document attached to the procedure

In a note sent to the delegations by the Italian Presidency, Italy sets out an explanatory memorandum of its initiative aiming to describe the objectives of the draft decision as well as a series of specific observations concerning the articles of the initiative. The purpose of this Decision is to rationalise operations for removals of third-country nationals who are the subject of removal orders taken by two or more Member States, through the organisation of joint flights. The Italian Presidency reinserts its initiative in the wider context of asylum and immigration questions and attaches the proposal to the comprehensive plan to combat illegal immigration and trafficking in human beings, adopted on 28 February 2002. It emphasises, among other things, that readmission and return policy is an integral and vital component of the fight against illegal immigration and states that a Community return policy needs to be based on common principles and common measures. The plan for the management of the external borders of the Member States of the European Union, approved by the Council on 13 June 2002, provides for rational repatriation operations. The return action programme, approved by the Council on 28 and 29 November 2002, recommends that the return of illegally resident third-country nationals should be made as efficient as possible by sharing existing capacities for such returns.

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

2003/0821(CNS) - 12/07/2004

The Council adopted the following conclusions on giving practical effect to the draft Council 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 subject of individual removal orders. It notes that the use of joint flights is an effective and humane way to return persons illegally resident in the territory of EU Member States to third countries, in full respect of applicable international and Community instruments. It recalls that joint flights already take place among some Member States as a means of sharing costs, making better use of resources and demonstrating common action in the fight against illegal immigration.

In addition, the Council urges:

–an increase in the use of joint flights as a means of demonstrating the commitment of the EU in relation to joint action on returns; increasing the rate of returns from the EU; and making more effective use of resources. In particular, recognising the practical difficulties of organising common removal operations, the Council encourages Member States in close geographic proximity to organise and share return flights where such collaboration would bring about economies of scale or otherwise confer mutual benefits on participants;

–those Member States currently organising joint flights or planning to organise joint removal operations to consider inviting participation of other Member States in line with the procedures set out in the above draft Council Decision. In particular, the Council encourages Member States with existing expertise in this area to share this experience with the new Member States and those with little previous experience in the area of joint return operations;

–those Member States with extensive experience of joint flights to share their knowledge and experience with other Member States through all the appropriate EU fora. In particular, where Member States have established formal guidelines and practical rules in this area, they are invited to bring them to the attention of the appropriate EU fora, in particular to upload existing documentation in the section on return of the ICONET system.

Lastly, the Council calls on the Commission:

–to develop the new ICONET system to make it available as a secure facility for Member States to communicate with each other and share information about the organisation of joint removal operations;

–to consider the possibility of Community funding for joint flights and the further development of best practices in this area; and

- to explore with Member States ways for the Border Management Agency to provide the necessary assistance for organising joint flights. The support of the Immigration Liaison Officers (ILO) network, where appropriate and in accordance with Member States' national functions for ILOs, might also be explored.

The Member States are called upon to report regularly to the Council and to the Commission on joint flights carried out by them and to share the information and experience for the benefit of all Member States.