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REPORT

on the initiative of the Italian Republic with a view to adopting a 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 subjects of individual removal orders

(12025/2003 – C5-0440/2003 and 14205/2003 – C5-0582/2003 – 2003/0821(CNS))

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Rapporteur: Adeline Hazan

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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PROCEDURAL PAGE

By letter of 18 September 2003, the Council consulted Parliament, pursuant to Article 67 of the EC Treaty, on the initiative of the Italian Republic with a view to adopting a Council Decision on the organisation of joint flights for removals of third-country nationals illegally present in the territory of two or more Member States (12025/2003 – 2003/0821(CNS)).

At the sitting of 22 September 2003 the President of Parliament announced that he had referred the initiative to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible (C5-0440/2003).

By letter of 27 November 2003, the Council forwarded to Parliament a new text on 'Common guidelines on security provisions for joint removals by air' (14205/2003 – 2003/0821(CNS)).

At the sitting of 3 December 2003 the President of Parliament announced that he had referred this text to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible (C5-0582/2003).

The committee had appointed Adeline Hazan rapporteur at its meeting of 2 December 2003.

It considered the initiative of the Italian Republic and the draft report at its meetings of 25 November 2003 and 22 January and 19 February 2004.

At the last meeting it adopted the draft legislative resolution by 30 votes to 1.

The following were present for the vote: Jorge Salvador Hernández Mollar (chairman), Robert J.E. Evans (vice-chairman), Johanna L.A. Boogerd-Quaak (vice-chairwoman), Adeline Hazan (rapporteur), Mary Elizabeth Banotti, Kathalijne Maria Buitenweg (for Alima Boumediene-Thiery), Michael Cashman, Carmen Cerdeira Morterero, Gérard M.J. Deprez, Koenraad Dillen, Marie-Thérèse Hermange (for Thierry Cornillet), Sylvia-Yvonne Kaufmann (for Giuseppe Di Lello Finuoli), Margot Keßler, Timothy Kirkhope, Eva Klamt, Ole Krarup, Lucio Manisco (for Fodé Sylla), Luís Marinho (for Sérgio Sousa Pinto), Marjo Matikainen-Kallström (for Charlotte Cederschiöld), Erik Meijer (for Ilka Schröder pursuant to Rule 153(2)), Elena Ornella Paciotti, Paolo Pastorelli (for Giacomo Santini), Hubert Pirker, Bernd Posselt, Olle Schmidt (for Bill Newton Dunn), Ole Sørensen (for Baroness Ludford), Patsy Sørensen, Joke Swiebel, Anna Terrón i Cusí, Maurizio Turco and Christian Ulrik von Boetticher.

The report was tabled on 23 February 2004.

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the initiative of the Italian Republic with a view to adopting a 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 subjects of individual removal orders (12025/2003 – C5-0440/2003 and 14205/2003 – C5-0582/2003 – 2003/0821(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the initiative of the Italian Republic (12025/2003)¹,
 - having regard to the annex to the initiative, entitled 'Common guidelines on security provisions for joint removals by air' (14205/2003)²,
 - having regard to Article 63(3)(b) of the EC Treaty,
 - having regard to Article 67 of the EC Treaty, pursuant to which the Council consulted Parliament (C5-0440/2003 and C5-0582/2003),
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0091/2004),
1. Rejects the initiative of the Italian Republic;
 2. Calls on the Italian Republic to withdraw its initiative;
 3. Instructs its President to forward its position to the Council, the Commission and the Government of the Italian Republic.

¹ OJ C 223, 19.9.2003, p. 3.

² Not yet published in OJ.

EXPLANATORY STATEMENT

Context and objectives of the initiative

In September 2003, the Council consulted Parliament on an initiative submitted by the Italian Republic concerning the organisation of joint flights for removals of third-country nationals illegally present in the territory of two or more Member States.

The adoption of measures of this type - whose desirability will be the subject of comment below - has already been mentioned in several documents, such as the Comprehensive plan to combat illegal immigration and trafficking of human beings in the European Union¹, the Plan for the management of the external borders of the European Union² and the Return Action Programme³.

The Plan to combat illegal immigration states, for example, that return policy is a vital component in the fight against illegal immigration, that the Community's return policy should be based on common principles and measures and that more particularly progress must be made towards closer collaboration on the issues of transit and readmission⁴.

Similarly, the Plan for the management of the external borders provides for the organisation of rational return operations, stating that needs for joint return operations should be evaluated and standard security measures developed particularly for return by air⁵. In addition, Member States are called upon to reach agreement on mutual assistance with transit for the purpose of carrying out return and readmission measures.

Lastly, the Return Action Programme specifically provides for the organisation of joint return operations. The document observes that 'removing illegal residents using charter flights usually proves expensive for Member States' and that 'Member States could therefore enforce returns more efficiently by organising joint operations where relevant in order to share existing capacities on charter flights', provided that adequate transit arrangements had been established⁶.

Thus the Italian initiative fills in the details of the measures proposed in these documents, its purpose being '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 second version of the initiative defines: the tasks of the organising Member State, which notably include selecting the air carrier, determining the costs, obtaining the authorisations required for the implementation of the joint flight and defining the operational details; the tasks of participating Member States, which mainly concern providing escorts; common tasks, which consist of ensuring that the persons transported hold valid travel documents and seeking to obtain the necessary assistance from the diplomatic and consular authorities. The revised version also includes 'Common guidelines on security provisions for joint removals by air' which take the form of a non-binding annex.

¹ OJ C 142, 14.6.2002.

² Doc. 10019/02 approved by the JHA Council on 13 June 2002.

³ Doc. 14673/02 of 25 November 2002.

⁴ Points 69, 71 and 74.

⁵ Point 74.

⁶ Return Action Programme, point 36.

Your rapporteur recalls that the European Parliament has already had occasion to deliver opinions several times on initiatives dealing with similar subject-matter. In 2000 it was consulted on the initiative of the French Republic with a view to the adoption of a Council directive on the mutual recognition of decisions on the expulsion of third-country nationals, and in 2001 on an amended version of the same initiative. The two reports concerning them (Nassauer reports) rejected the initiative of the French Republic. While endorsing the objectives of the French initiative, the EP considered the proposed legal basis - Article 63(3) of the EC Treaty - to be invalid.

The directive was nevertheless adopted and became Directive 2001/40/EC of 28 May 2001¹. As the directive included an article providing for a system of compensation for any financial imbalances which might arise from the mutual recognition of expulsion decisions, a proposal for a Council decision concerning such a system was drafted, which the EP considered in connection with the Oreja report. Again, while endorsing the substance and political objective of the proposal, Parliament rejected it because it lacked an appropriate legal basis.

It may lastly be noted that the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs was recently consulted on an initiative submitted by the Federal Republic of Germany concerning assistance in cases of transit for the purposes of removal by air. The proposal for a directive was initially adopted in committee² but rejected by the European Parliament at the sitting of April 2003 and referred back to committee following the adoption of a series of amendments which were contrary to the general tenor of the report drafted by our committee under the aegis of Mr Kirkhope. Plenary finally approved the second version of the Kirkhope report³ in September 2003, with an amendment based on the European Convention on Human Rights and the Charter of Fundamental Rights of the EU, with the aim of preventing any assistance with transit in the case of collective expulsions or any expulsion to a country where fundamental rights are not respected.

Position of the rapporteur

Your rapporteur would firstly underline her disappointment at the course taken by cooperation with the Council regarding such a sensitive and controversial issue. While Parliament was awaiting the revised version of the Italian initiative before delivering an opinion - important changes having been made to the first version - the Council reached political agreement on the substance of the proposal. When Parliament delivers an opinion under the consultation procedure as required by Article 67 of the EC Treaty, the consultation exercise is as a rule already a pure formality, but under such circumstances consultation becomes completely superfluous. This being so, Parliament can only conclude that its role is not being taken seriously, which suggests that difficulties are likely to arise if codecision becomes applicable.

Your rapporteur also takes the opportunity to mention the problems which generally arise with initiatives submitted by Member States; as the latter do not possess the expertise of the Commission regarding the drafting of European legislation, it would be difficult for them to submit proposals as solid and coherent as those which come directly from the Commission. In this case, the Commission has had to modify numerous aspects of the basic initiative, so that

¹ OJ L 149, 2.6.2001, p. 34.

² A5-0104/2003.

³ A5-0291/2003.

one might ask whether it would not have been preferable to entrust the task of drafting the measure to the Commission in the first place.

The second version of the initiative forwarded to Parliament contains a set of provisions which are of vital importance under the title, 'Common guidelines'. These notably concern the state of health of returnees, a code of conduct applicable to escorts and the use of coercive measures. It is to be welcomed that, the second time around, the idea has occurred to the drafters of including in the text rules, particularly to maintain 'the dignity and physical integrity of the returnee': the Commission had already announced in a communication of June 2003 that it was preparing, 'in close cooperation with the Member States, draft guidelines on security provisions for removals by air, which are crucial in order to safeguard a smooth and safe return of the persons concerned'¹. However, it is absolutely unacceptable, in the opinion of the rapporteur, that such provisions should figure in a mere annex which is in no way binding.

It must also be regretted that none of the provisions of the annex provides for the operations to be monitored by organisations such as the Red Cross. This lack of monitoring can only be interpreted as an expression of a desire on the part of the authors of the initiative to reduce the impact of repatriation operations in order not to arouse opposition.

Generally speaking, your rapporteur considers that, by adopting a specific decision which places the seal of approval on the existence of charter flights for purposes of expulsion, the European Union would dangerously damage its image and run the risk of turning itself into a 'Fortress Europe'. Organising group returns would help to make the very principle of expulsion a matter of routine, and there is a danger that this will lead to greater use of expedited procedures for consideration of asylum applications and to less careful consideration of appeals, in order to save money when organising such joint flights. In this context a paradoxical aspect of the Member States' action may be noted: while they are unable to reach agreement on the procedures for recognition of the status of refugee, they have no difficulty in agreeing on those for the return of applicants whose case has been dismissed.

On this subject, the EP has recently regretted that 'the last JHA Council did not reach an agreement on a common European asylum policy despite the deadline set by the European Council' and insisted on 'action (...) based on high protection requirements'². In the opinion of your rapporteur, this should be the first step: it is important to display consistency by drawing up a common asylum policy *before* introducing a common policy on aid with return.

Your rapporteur would also warn against providing Community funding for this measure, since this could not be deemed to have any added value for the European Union; it would merely allow Member States to make budget savings without having to make any further commitment to common policies seeking to establish an area of freedom, security and justice.

¹ Communication from the Commission to the European Parliament and the Council in view of the European Council of Thessaloniki on the development of a common policy on illegal immigration, smuggling and trafficking of human beings, external borders and the return of illegal residents, COM(2003) 323, 3.6.2003, point 2.3.

² Resolution of the European Parliament on the Council and Commission statements on the preparation of the European Council in Brussels on 12-13 December 2003, point 18.

In conclusion, your rapporteur considers that collective returns are a deplorable practice, which should be resorted to only by way of exception. Institutionalising them at Community level would inevitably render them more numerous and frequent. She also considers that the aim of economising on budget expenditure will inevitably result in an erosion of the guarantees attendant on the consideration of applications. Unlike the Commission, in whose view 'the development of this practice would not only have financial advantages, but the signal effect would be higher as well'¹, your rapporteur is convinced that this 'signal' would be perceived as a humiliation. The same determination and capacity for cohesion which the Member States have displayed here could usefully be brought to bear on more positive projects, and that is what your rapporteur would like to see. It is essential to analyse in detail the causes of illegal immigration and ways of remedying them, rather than assigning priority to the repressive aspect of asylum and immigration policies. So long as economic disparities and differences in the degree of democracy between North and South remain as great as they are, no repressive policy will dissuade candidates for exile from going abroad, particularly to Europe, in search of a better life.

For all these reasons, your rapporteur urges Members to reject the initiative submitted by the Italian Republic.

¹ Communication from the Commission to the Council and the European Parliament on a Community return policy on illegal immigrants, COM(2002) 564, point 2.2.9.