"A" ITEM NOTE

from: Permanent Representatives Committee
to: COUNCIL

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Subject: Draft Council Recommendation on concerted action and cooperation in carrying out expulsion measures

At its meeting on 14 November the Permanent Representatives Committee agreed on the draft Recommendation set out below.

The Council is therefore invited to approve the draft Recommendation which will then be finalized by the Legal/Linguistic Experts before its formal adoption and publication in the Official Journal of the European Communities.
DRAFT COUNCIL RECOMMENDATION ON CONCERTED ACTION AND COOPERATION IN CARRYING OUT EXPULSION MEASURES

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Recommendation of the Ministers of the Member States of the European Communities, responsible for immigration of 30 November 1992 regarding transit for the purposes of expulsion and the addendum thereto of 2 June 1993,

Whereas Article K.1(3)(c) of the Treaty on European Union stipulates that combating unauthorized immigration, residence and work by nationals of third countries on the territory of Member States are matters of common interest;

Whereas the Council has already adopted specific measures to secure better control of migratory flows and to prevent third-country nationals entering Member States' territory unauthorized and remaining there illegally;

Whereas expulsion measures in respect of third-country nationals whose presence is unauthorized cannot be carried out owing to the absence of travel or identity documents;

Whereas in order to achieve the effective carrying-out of expulsion measures, recommendations addressed to the Member States of the European Union and aimed at better coordination of those measures should be adopted at Council level;

Whereas the provisions of this Recommendation are without prejudice to the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 or to the Geneva Convention of 28 July 1951 relating to the Status of Refugees as amended by the New York Protocol of 31 January 1967,
HEREBY RECOMMENDS MEMBER STATES' GOVERNMENTS:

to apply the principles set out below:

with a view to cooperation in the procurement of the necessary documentation

1. to implement specific mechanisms to improve the procurement of the necessary documentation from the consular authorities of the third State to which third-country nationals are to be expelled when they lack travel or identity documents.

2. where Member States experience repeated difficulties with certain third States in the matter of procuring documentation:
   (a) to make a particular effort to arrange for persons to be expelled to be identified by the consular authorities;
   (b) to issue repeated invitations to consular authorities to visit centres in which third-country nationals are being held, where appropriate, in order to identify them for the purpose of providing documentation;
   (c) to urge the same authorities to issue travel documents with a period of validity sufficient for expulsion to be carried out.

3. in the first instance to make use of the provisions on presumption of nationality of the standard readmission agreement adopted by the Council on 30 November 1994.

4. to issue, where it is not possible to obtain the necessary travel documents by using the above means, the standard travel document adopted by the Council on 30 November 1994.
with a view to cooperation in carrying out transit for expulsion purposes

5. to cooperate to facilitate transit for expulsion purposes when the decision has been adopted by another Member State on the basis of the principles set out herein:

(a) In accordance with the Ministers' Recommendation of 30 November 1992 regarding transit for the purposes of expulsion and the addendum thereto of 1 and 2 June 1993, which are annexed hereto, any Member State may, at the request of another Member State, authorize the transit of a third-country national across its territory for expulsion purposes.

(b) The Member State requesting the transit shall notify the requested State whether it considers it essential for the person being expelled to have an escort.

(c) The requested State shall be free to decide on the transit procedures; whether the escort is to be provided by the Member State which decided on the expulsion, whether it will provide the escort itself during transit or whether escort during transit will be arranged jointly with the State which decided on the expulsion.

(d) In the case of unescorted transit, the State which adopted the expulsion measure may, giving sufficient notice, request the State which has authorized transit to take the necessary measures in order to ensure departure to the place of destination.

(e) In the event of a third-country national's refusal to embark in the transit State, the Member States concerned may consider, in accordance with their laws and lest expulsion prove impossible to carry out, the possibility of availing themselves of or seeking to establish the appropriate legal machinery for enforcing expulsion.

(f) The transit Member State may return the third-country national to the territory of the State which adopted the expulsion measure if the expulsion measure cannot be carried out for any reason whatsoever.
(g) Member States may determine bilaterally the circumstances in which it may be possible to forego the refunding of costs on a case-by-case basis and replace it with an annual settlement of expenses occasioned by expulsion operations at either party's request.

with a view to concerted action in carrying out expulsions

6. to carry out expulsions, in appropriate instances, as a concerted effort with other Member States on the basis of the following principles:

(a) the Member State which adopts the expulsion measure shall assume responsibility for carrying out measures for the expulsion of a third-country national it has itself adopted and shall use the resources available on the air transport market or, if necessary, resources it has organized itself.

(b) The Member State which adopts the expulsion measure may request cooperation from another Member State to locate seats available to carry out the expulsion by air.

(c) The Member State whose cooperation has been requested for carrying out an expulsion measure by air shall be entitled to refuse to allow expulsion to be carried out from its territory.

(d) With a view to coordinating the carrying-out of expulsion measures, each Member State shall inform other Member States which authority in its territory shall be responsible for:

- centralizing information on seats available on flights for expulsion purposes;

- contacting the competent authorities in the other Member States with a view to using seats available on flights;

- requesting authorization from other Member States to use seats available on flights departing from them;
- exchanging information with the authorities in other Member States in relation to carrying out expulsions by air.

with a view to monitoring the implementation of this Recommendation

The Council shall regularly review the progress achieved in relation to the practical application of the cooperation and concerted action measures covered by this Recommendation.
RECOMMENDATION
concerning transit for the purposes of expulsion
(approved by the Ministers on 30 November 1992)

CONSIDERING Member States' practices regarding transit for the purposes of expulsion;

WHEREAS it is appropriate to standardize such practices with a view to their harmonization;

WHEREAS the measures to be applied should meet the criteria of speed, efficiency and economy,

RECOMMEND that the following guidelines be applied:

I.

For the purposes of this Recommendation, "transit" means the transit of a person who is not a national of a Member State through the territory or the transit zone of a port or airport of a Member State.
II.

A Member State which has decided to expel a third-country national

- to a third country should in principle do so without the person transiting through the territory of another Member State;

- to another Member State should in principle do so without the person transiting through the territory of a third Member State.

III.

1. Where there are special reasons to justify this and, in particular, in the interests of efficiency, speed and economy, Member States may ask another Member State to authorize entry into its territory or transit through its territory of third-country nationals who are the subject of an expulsion measure. (1)

2. The State which has adopted the expulsion measure shall prove, before such a request is made, that the expellee's right to continue his journey and to enter the country of destination are guaranteed in the normal way.

3. The State to which the request is made shall deal with it without prejudice to the cases referred to in section VI.

(1) Statement re section III:

"Reasons of efficiency, speed and economy as referred to in section III will include, inter alia, obligations resulting from the geographical situation of the Grand Duchy of Luxembourg."
IV.

The State taking the expulsion measure shall notify the transit State whether the person being expelled needs to be escorted. The transit State may:

- authorize the State which adopted the expulsion measure to provide the escort itself;
- decide to provide the escort itself, or
- decide to provide the escort in cooperation with the State which adopted the expulsion measure.

V.

1. Requests for transit for purposes of expulsion must include information concerning:

- the identity of the third-country national being expelled;
- the State of final destination;
- the nature and date of the expulsion decision, and the authority which took the decision;
- factors enabling a judgment to be made as to whether the third-country national can be admitted to the country of final destination or the second transit country;
the travel documents or other personal documents in the possession of the person concerned;

- the identification of the department making the request;

- the conditions of transit through the requested State (timetable, route, means of transport, etc.);

- whether an escort is required, and the details thereof.

2. Requests for transit for expulsion purposes must be submitted as soon as possible in accordance with the domestic legislation of the requested State to the authorities responsible for expulsion, who must reply to the request at the earliest opportunity.

3. The transit State may request information, particularly concerning the need for transit.

VI.

Cases in which transit for expulsion purposes may be refused:

- where the third-country national who is the subject of a request for overland transit constitutes a threat to public order, national security or the international relations of the transit State;

- where the information referred to in section V(3) is not considered satisfactory.
VII.

If for some reason the expulsion measure cannot be carried out, the State through which transit is to take place may return the expellee, without any formalities, to the territory of the requesting State.

VIII.

Payment of costs

Where expulsion cannot be carried out at the expense of the third-country national or a third party, the requesting State shall be liable for:

- travel and other expenses, including escort costs, up until the departure from the territory of the Member State of transit of a third-country national whose transit has been authorized;

- the costs involved in any return.

IX.

These recommendations shall not preclude closer cooperation between two or more Member States.
Member States which propose to conduct negotiations with another Member State or with a third State on transit for purposes of expulsion shall inform the other Member States in due time.


This Recommendation shall not contravene the provisions of international conventions currently in force concerning extradition and extradition in transit.

This Recommendation shall not replace extradition and transit extradition procedures by the transit procedure for expulsion purposes.
ADDENDUM

to the Recommendation concerning transit for the purposes of expulsion

(approved by the Ministers on 1 and 2 June 1993)

1. With a view to meeting the criteria of efficiency, speed and economy in connection with transit for purposes of expulsion a distinction may be made between the different expulsion measures, by air, sea or land, applied by the Member States.

2. Expulsion by air accompanied by transit through the transit zone of an airport should be excluded from the provisions requiring an entry and transit authorization (see section III of the Recommendation), so that in such cases it will be sufficient to notify the country of transit.

3. Notification of transit for expulsion purposes by air should contain the information required for transit requests indicated in section V of the Recommendation.

4. In the case of expulsion by land or sea, requests for and notifications of entry into the territory of a State or transit through that State shall be addressed to a central contact body designated by the transit State, in accordance with the recommendations set out in the Recommendation.

If, in the case of expulsion by air, the transit State does not grant permission, that information must be communicated to the requesting State within 24 hours of the notification of transit.

5. Member States shall draw up a joint list of contact bodies.

In the case of expulsion by air, it would be desirable to contact directly the competent official(s) of the transit airport concerned or, in accordance with national procedures, any other competent official, provided that the 24-hour rule is observed (see point 4 above).