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DIRECTIVE 2003/110 ASSISTANCE FOR TRANSIT SYNTHESIS REPORT by KAY HAILBRONNER & MARKUS PEEK

STUDY ON THE "CONFORMITY CHECKING OF THE TRANSPOSITION BY MEMBER STATES OF 10 EC DIRECTIVES IN THE SECTOR OF ASYLUM AND IMMIGRATION" DONE FOR DG JLS OF THE EUROPEAN COMMISSION END 2007(CONTRACT JLS/B4/2006/03)

A Network coordinated by the Institute for European Studies
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of the / de l'Université Libre de Bruxelles

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SYNTHESIS REPORT
OF THE IMPLEMENTATION OF THE DIRECTIVE ON ASSISTANCE IN CASES OF TRANSIT FOR PURPOSES OF REMOVAL BY AIR (DIR. 2003/110/EC OF 23 NOVEMBER 2003)

Last Update: 17 December 2007

Kay Hailbronner
Professor, Dr. jur., Director of the Center for International and European Law on Immigration and Asylum

and

Markus Peek
Ass. iur., Researcher

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This synthesis report would obviously not exist without the 27 National Reports on which it is based. These National Reports were prepared on the basis of a standard questionnaire. Experts from each of the 27 Member States elaborated these reports in their capacity as National Rapporteurs (see the list of national rapporteurs in annex) and discussed the content of the draft synthesis report during a meeting which was held in Budapest in October 2007. They deserve special thanks for all their work, in particular for their patient and precious contributions, clarifications and support during the process of drafting this synthesis report. The authors of this report can perfectly measure their efforts, having exchanged myriads of emails with all of them since the beginning of this study only 11 months ago. The National Coordinators deserve credit for safeguarding smooth communication between the different work units involved in this project.

Special thanks go to the General Coordination Team at the Free University of Brussels. This team composed of Philippe DE BRUYCKER, Coordinator of the Odysseus Academic Network, and Laurence DEBAUCHE did an incredible job on this project and carried out an enormously patient and careful work when checking and revising the consistency of the Synthesis Report with all the National Reports and Tables of Correspondence. Their energetic and persistent support throughout all stages of this project cannot be overestimated. Further thanks go to Nicole BOSMANS, administrative secretary of the Odysseus Network for her extraordinary efficiency and kind assistance, and to Elona BOKSHI, responsible for the electronic database which forms the core of the final product.

The Odysseus Academic Network wants to warmly thank NGOs in the 27 Member States for their important contribution to this study. Their support helped the National Rapporteurs to gather the necessary factual information about the implementation of the directive in practice. The same is true for various public agencies, the relevant ministries and other public authorities which also contributed largely to the National Reports and were often ready to provide the National Rapporteurs with additional information on short notice.

Finally, the fruitful and productive exchange with the other Thematic Coordination Teams was an important element to finalize this report. The steady and friendly but critical communication with all of them helped to develop an exhaustive analysis.

II. LIST OF NATIONAL RAPPORTEURS

MEMBER STATES	NATIONAL RAPPORTEURS	EMAIL ADDRESS
Austria	Rudolf Feik	rudolf.feik@sbg.ac.at
Belgium	Marie-Claire Foblets	marie-claire.foblets@ant.kuleuven.ac.be
Belgium	Dirk Van Heule	dirk.vanheule@ua.ac.be
Bulgaria	Valeria Ilareva	valeria.ilareva@gmail.com
Cyprus	Nicolas IOANNOU	nickfl50@hotmail.com
Czech Republic	Julie Exnerova	julie.exnerova@gmail.com
Denmark	Ulla Iben Jensen	ullaiben@hotmail.com
Estonia	Anne Adamson	anne.adamson@sorainen.ee
Finland	Kristina Stenman	krstenma@abo.fi
France	Henri Labayle	henri.labayle@univ-pau.fr
Germany	Markus Peek	markus.peek@uni-konstanz.de
Greece	Agis Chrysafidis	apchrys@yahoo.com
Hungary	Judith Toth	skula@juris.u-szeged.hu
Ireland	John Handoll	john.handoll@williamfry.ie
Italy	Emanuela Canetta	emanuela.canetta@unimi.it
Latvia	Kristine Kruma	kristine.kruma@rgsl.edu.lv
Lithuania	Emanuelis Mituzas	emanuelis.mituzas@gmail.com
Luxembourg	Audrey Bertolotti	audrey.bertolotti@barreau.lu
Malta	Gabriella Pace	gpace01@um.edu.mt
Malta	Caroline Brincat	carolinebrincat@mail.global.net.mt
Netherlands	Thomas Spijkerboer	T.P.Spijkerboer@rechten.vu.nl
Netherlands	Bram Van Melle	e.vanmelle@rechten.vu.nl
Poland	Barbara Mikolajczyk	mikolaj@us.edu.pl
Portugal	Cristina Crisostomo	ccrisostomo@netcabo.pt
Romania	Daniela Deteseanu	daniela.deteseanu@bpa.ro
Slovakia	Miroslava Snirerova	snirerova@lawclinic.sk
Slovenia	Sasa Zagorc	sasa.zagorc@pf.uni-lj.si
Spain	Emiliano Coso	egcoso@der.upcomillas.es
Spain	Jose Maria Huidobro	jmrhuidobro@der.upcomillas.es
Sweden	Jennie Magnusson	jennie.magnusson.847@student.lu.se
United Kingdom	Valsamis Mitsilegas	v.mitsilegas@qmul.ac.uk

III. GENERAL INTRODUCTION TO THE STUDY

by

Philippe DE BRUYCKER
debruyck@ulb.ac.be
General Coordinator of the study

1. PRESENTATION OF THE STUDY

The study contains different types of reports:

1. Two hundred seventy **National Reports** about the implementation of each of the 10 directives in each of the 27 Member States.

2. Ten **Synthesis Reports** for each of the 10 directives about their implementation in the 27 Member States. The abbreviated names used in the study for the 10 directives concerned by this report are:

- Family reunification
- Long-term residents
- Temporary protection
- Reception conditions
- Victims of trafficking
- Qualification
- Assistance for transit
- Carriers Liability
- Facilitation of unauthorised entry and stay
- Mutual recognition (of expulsion)

Those two kinds of reports are all accompanied by a summary.

Each National report is accompanied by a **National Summary Datasheet**. This Summary underlines the most serious problems related to the transposition of the concerned directive in the concerned Member State. Moreover, translations of the most problematic national provisions have been included in this National Summary Datasheet as requested by the Commission.

Each Synthesis Report is accompanied by a **Summary Datasheet** which underlines the most important conclusions and the main problems related to the transposition of the concerned Directive in the 27 Member States. It contains also some recommendations addressed to the Commission.

There are also 27 **Executive Summaries** about the implementation of the 10 directives in each of the Member States.

Apart of the reports, the **Tables of Correspondence** are very important tools to check the transposition of the directives by Member States. One table has been prepared about the implementation of each of the 10 directives in each of the 27 Member States. They have been included in each National Summary Datasheet. It gives a precise overview of the transposition of each provision (sometimes even of each sentence) of the concerned directive: the state of transposition (has actually the provision or not been transposed?), the legal situation (in case

of transposition, is there or not a legal problem?) and a reference to the national provisions of transposition. Footnotes giving brief explanations have also been included in the tables. The reader who wants to have more information can easily find in column 2 of the tables a reference to the number of the question to consult the national report. Guidelines explain how the national rapporteurs were asked to complete the table and how they had to understand each mention proposed in the table.

The paper version of the reports is accompanied by a website. Apart from an electronic version of all the reports, the website gives also access to the full text of the national rules of transposition.

2. METHODOLOGY OF THE STUDY

The study has been done in the framework of the *"Odysseus" Academic Network for Legal Studies on Immigration and Asylum in Europe* by a very large team of persons organised as following:

1. The 120 national rapporteurs in charge of the national reports and tables in each Member State for one or several directives. A lot of the rapporteurs are members of the Odysseus Academic Network, but the Network has at this occasion been extended to other persons because of the very large scope of the study and the considerable amount of work to be done;

2. The 27 national coordinators in charge of ensuring progress of the work at national level and responsible for the drafting of the Executive Summary per Member State;

3. The six thematic coordination teams in charge of the synthesis reports per directive:
    - Prof. Kees Groenendijck assisted by Ricky Van Oers, Roel Fernhout and Dominique Van Dam in the Netherlands for Long-term residents as well as by Prof. Cristina Gortazar and Maria-José Castano from Madrid in Spain for certain aspects;
    - Prof. Kay Hailbronner assisted by Markus Peek, Simone Alt, Cordelia Carlitz and Georg Jochum in Germany for Assistance in cases of transit for removal, Mutual recognition of expulsion decisions, Carrier sanctions and Facilitation of unauthorised entry and residence;
    - Prof. Henri Labayle assisted by Yves Pascouau in France for Family reunification;
    - Prof. Gregor Noll assisted by Markus Gunneflo in Sweden for Temporary protection and Residence permits for victims of trafficking;
    - Prof. Thomas Spijkerboer assisted by Hemme Battjes and Bram Van Melle in The Netherlands for the part on Qualification of refugees and subsidiary protection & Prof. Jens Vedsted-Hansen assisted by Jesper Lindholm in Denmark for the part on Rights of refugees and of persons under subsidiary protection.

4. The General Coordination team in charge of the overall coordination, methodology and contacts with the Commission as well as for the update of

the synthesis report on reception conditions previously done by the Odysseus Academic Network in 2006. Prof. Philippe De Bruycker based in Belgium was therefore assisted by Laurence De Bauche (researcher), Elona Bokshi (manager of the website and also in charge of gathering national rules of transposition) and Nicole Bosmans (administrative and financial secretariat).

The authors are indicated at the beginning of each report with their email address in order to allow the Commission to contact them easily in case of need. The General Coordinator wants to thank warmly all the persons who were involved in this enormous study for their work and in particular their patience because of the many versions of the reports that we exchanged through thousands of emails.

Four meetings were organised: a kick-off and an intermediate meeting with the general and thematic coordination teams, a meeting with the general coordinator and all the researchers assisting the thematic coordinators and a final plenary meeting including almost all national rapporteurs were drafts for the synthesis reports have been discussed.

NGOs were asked to contribute on a voluntary basis by completing the questionnaires or at least part of it. The Member States were given the possibility to comment about the draft national reports (without the table of correspondence). We got only a limited number of contributions and reactions.

The Commission has been closely associated to the study. It was in particular consulted at the beginning on the projects for questionnaires and for tables of correspondence.

All member States are covered by the study, including those not bound by several directives upon the request of the Commission which asked to be informed about the developments in those Member States in comparison with Community law. The reports and tables of correspondence have been completed as if those States were bound by the concerned directives.

3. EVALUATION OF THE RESPECT OF COMMUNITY LAW

The study is about the transposition of 10 directives by Member States. More precisely, it covers extensively the legal measures adopted by the Member States to transpose those directives. As the process of transposition was not finished in some Member States, the authors decided to take into consideration the projects of national norms of transposition when they were accessible. It is important to note that those projects have been analysed like if they had been adopted as standing, which means that subsequent changes at national level are not covered by the study. The cut-off date for the national rapporteurs is in general 1st October; later developments have only been taken into consideration whenever possible.

The practical implementation of the directives is covered as much as it has been possible to do so. The study came indeed early as the directives have just or even not yet been transposed, so that implementation by Member States is just starting and in particular that the jurisprudence available was very limited. The fact that no practical problems are mentioned does not mean that there are none, but that the rapporteurs have not been informed of their existence.

Explanations are given in the 10 synthesis reports about the transposition of the concerned directive. Fore the mandatory provisions which have not been transposed or pose a problem, the explanations are followed by boxes listing the Member States in order to help the Commission to draw clear conclusions and make the report easy to read. They have been built

upon the basis of the tables of correspondence included in the national summary datasheets for each directive and Member State. The guidelines given to national rapporteurs to assess the situation in their Member State are reproduced with the tables to help the reader to understand the methodology.

Some important remarks about the way the transposition of directives was assessed have to be made. The research team had to find a way between different priorities: firstly and obviously, the jurisprudence of the Court of Justice which has strict requirements regarding legal certainty and is even quite rigid on some points. Secondly, pragmatism which leads to check if the directives are effectively applied in practice with less attention given to certain aspects of pure legal transposition. The coordinators tried to find a reasonable middle way between these two approaches and agreed together with DG JLS upon the following elements:

- Administrative circulars of Member States have been considered as formal means of transposition. As much as they are binding for the administrative agents in charge of individual cases, they indeed ensure that the directive is implemented in practice despite they might not be considered sufficient to fulfil the requirements of the Court of Justice regarding an adequate legal transposition. They are nevertheless mentioned in the tables of correspondence separately from laws and regulations.

- Pre-existing norms of transposition meaning laws, regulations and circulars which were adopted before the concerned directive and so obviously not to ensure its formal transposition, have been considered as a mean of transposition. Their content may indeed reflect the provisions of the directives in internal law. This is not in line with the jurisprudence of the Court which has considered that "legislation in force cannot in any way be regarded as ensuring transposition of the directive, which, in article 23(1), second subparagraph, expressly requires the Member States to adopt provisions containing a reference to that directive or accompanied by such a reference" (Commission v. Germany, Case C-137/96 of 27 November 1997). All the ten directives covered by the study contain such an inter-connexion clause. A rigid application of this jurisprudence to our study would have led us to conclude that there is no transposition even when pre-existing rules ensure the implementation of the directive. In line with the approach of DG JLS to assess not only the formal transposition but also the application in practice of the directives, we have not done so and considered pre-existing national rules as a mean of transposition. They are nevertheless mentioned in the table of correspondence as pre-existing law, regulation or circular not under the item "Yes formally" but "Yes otherwise" together with general principles of internal law which the Court has accepted to consider under certain condition as a mean of transposition (Commission v. Germany, Case C-29/84 of 23 may 1985).

Despite the fact that we agreed with the Commission about these choices, the authors of this study considered necessary to make them explicit as they might seem inadequate from a purely legal point of view. Moreover, they have also decided to present in the tables of correspondence these possibilities separately from the classical ones. The Commission will so be perfectly informed about the situation regarding the transposition of the directives in the Member States. The transparency of the information given in the tables will allow it to take a final position which could depart from the choices done at the beginning of this study.

Finally, the provisions about human rights appearing here and there in the ten directives require some explanations. The obligation for Member States to formally transpose provisions

like for instance article 20 §4 of the Qualification directive[1], article 15 §4 of the directive on temporary protection[2] or article 3, §2 of the directive on mutual recognition of expulsion decisions[3], gave raise to long discussions between all the rapporteurs involved in the study. It has been impossible to convince the group of 130 lawyers involved in this study to take a common position about the necessity to transpose or not that kind of provisions. The General Coordinator of this study decided in this context to leave the national rapporteurs free to express their own opinion in their report and table. This means that divergent views might be expressed on the same point by the national rapporteurs. This situation reflects the fact that the lawyers involved in the study face obviously very different situations and react sometimes in relation with the context of their Member State by considering that reminding human rights is either superfluous because they are generally respected, either necessary because they care about possible violations.

From a strictly legal point of view, it appears that all the provisions cannot be considered in the same way. Some articles have an added value and are more than repetitions of human rights provisions, like article 10 of the directive on permits for victims of trafficking which after a first clause on the best interests of the child requires specifically an adaptation of the procedure and of the reflection period to the child, or article 17 of the directive on family reunification which refers to the jurisprudence of the European Court of Human Rights on the right to family life and specifies its scope. Others may be considered as redundant with international treaties like article 20 §4 of the Qualification directive or article 15 §4 of the directive on temporary protection. One may consider superfluous to transpose such a provision in the case of Member States which have ratified the Convention on the right of the child and ensure its implementation, for instance by recognising it a direct effect. More in general it appears that references to human rights in secondary legislation require more attention and that their legal value needs to be clarified (see recommendation on this point below).

[1] « *The best interest of the child shall be a primary consideration for Member States when implementing the provisions of this chapter that involve minors* ».
[2] « *When applying this article, the Member States shall take into consideration the best interests of the child* ».
[3] « *Member States shall apply this directive with due respect for human rights and fundamental freedoms*».

4. RECOMMENDATIONS ABOUT THE EVALUATION OF THE IMPLEMENTATION OF DIRECTIVES

This part contains some general recommendations to the Commission about the way of checking transposition of directives by Member States (specific recommendations about the 10 directives are included in the Summary Datasheet of each synthesis report per directive). The following three recommendations are based on the experience acquired during this study covering 10 directives in 27 Member States.

- **Oblige the EU institutions to include tables of correspondence in the final provisions of any directive adopted**

It is clear that the method of checking the implementation of directives still needs to be improved. The increase of the number of Member States and of working languages makes it more and more difficult to check seriously the way they are legally transposed.

There is an absolute need to request the Member States to prepare a table of correspondence (also called concordance or correlation tables) indicating the national norms of transposition for each provision of a directive. The Member States which have prepared the transposition are the best authority to identify precisely these norms of transposition. Leaving it to the Commission or asking external experts to do this part of the job can be considered to large extend as a waste of time and resources. The Member States should be asked only to indicate the rules of transposition and of course not to evaluate its correctness. Even the NIF electronic database of the Commission used by the Member States to notify the rules of transposition is therefore not sufficient. It does not indicate precisely the national norm of transposition for each provision of the directives which might remain difficult to identify in very long national rules. Moreover, Member States send sometimes not only the norms of transposition as some directives require them to communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by the directive. If such a more or less standard provision has been included to allow the Commission to understand the general context of the transposition, it makes the search of the precise norm of transposition more difficult as some Member States transmit a lot of texts.

Remarkably, only one of the 10 directives under analysis contains a provision obliging the Member States to prepare a table of correspondence: following article 4 §2 of the directive on the facilitation of unauthorised entry, transit and residence, "*The Member States shall communicate to the Commission the text of the main provisions of their national law which they adopt in the field covered by this directive**, together with a table showing how the provisions of this directive correspond to the national provisions adopted**. The Commission shall inform the other Member States thereof*". The reasons explaining why only this directive contains such a requirement are not clear. This directive is the result of a State initiative, namely France. The other instruments proposed during the same period by France regarding carrier sanctions and mutual recognition of expulsion decisions do not contain such a clause. The same is true for the Commission's proposals at the origin of the other directives analysed.

There is a strong and urgent need to request such a table from Member States when they transpose a directive. The Commission should intensify its efforts undertaken since five years so that the European institutions are obliged to include such a clause in any directive adopted as envisaged in its Communication on "A Europe for results: applying Community law"[4].

[4] COM(2007)502 of 5 Septembre 2007.

- **Have a more in-depth debate about the choice of the right instrument instead of favouring directives**

A reflection on the type of instruments of secondary law to be used could also be fruitful. For instance, it seems that a Council decision would have been more appropriate than a directive to regulate the issue of assistance in cases of transit for the purposes of removal by air.

More important, directives should not be automatically chosen for reasons of subsidiarity or proportionality. One may wonder if they are not good reasons for choosing in certain cases a regulation instead of a directive, for example for the qualification of refugees and persons under subsidiary protection in order to ensure a more consistent implementation of the definitions of persons to be protected in the EU by the Member States.

- **Clarify the sense of including human rights references in secondary legislation in view of the future binding effect of the EU Charter on human rights**

As underlined above, many references to human rights have been included in directives adopted in the field of immigration and asylum. Their legal value is doubtful when they only repeat or refer to International or European provisions on human rights. As they may create long discussions during the transposition process by Member States about their need to be transposed and can even create confusion about the precise origin of the concerned human right, they could be omitted and included if relevant in the preamble of the instrument. The need to clarify this point will increase with the entry into force of the new Lisbon Treaty transforming the EU Charter of human rights into a legally binding instrument.

IV. SUMMARY DATASHEET AND RECOMMENDATIONS

1. MEMBER STATES COVERED AND NOT COVERED BY THE SYNTHESIS REPORT

In principle, all Member States are covered by the synthesis report. However, it was not possible to gather all the necessary information for all Member States. This problem is most serious for Spain, which is not fully covered in parts 3 – 5 of the report. Some questions might have remained unanswered for other Member States as well. This is in particular true for Austria and Denmark. These lacks of information are mainly due to the fact that the concerned Member States have not explicitly transposed the directive or have only transposed it partly. All cases of missing or incomplete information are mentioned in the synthesis report.

2. MEMBER STATES BOUND AND NOT BOUND BY THE DIRECTIVE

Ireland and the UK are not bound by the directive. Denmark is not bound to the Directive as regards European Law obligations; it is however obliged to transpose the directive by international law as Denmark is state party to the Schengen Treaty and therefore has to implement measures within the scope of this treaty. The transit directive is considered to be a development within the Schengen framework.
The 12 new Member States are, however, not exempt from the obligation to transpose the Directive within the given timeframe. The second annex to the protocol on the accession of Bulgaria and Romania to the EU stipulates explicitly the obligation to transpose. The accession treaties with the ten other acceding states have been concluded prior to the adoption of the directive. Hence, the obligation to transpose results directly from Art. 3 of the Accession Act[5] which stipulates that further acts of the Schengen acquis which may be adopted before the date of accession, shall be binding on and applicable in the new Member States from the date of accession. This assessment is repeated in para. 12 of the preamble to the directive.

3. STATE OF TRANSPOSITION OF THE DIRECTIVE

Number of Member States which have transposed the directive: **23**

Comment: This bright number must not veil the actual problems with the transposition of the directive. Some Member States have just adopted one general norm of transposition which authorizes the authorities in a very general way to assist in transit operations whereas more concrete provisions on the actual proceedings, the competences towards the deportee and provisions on financial compensation are lacking.

Number of Member States which have **NOT AT ALL** transposed the Directive: **2**

Number of Member States where the process of transposition is pending: 0

[5] O.J. No. L 236/33 of 23 September 2003

Number of Member States which are **NOT BOUND** by the directive and have therefore not adopted any norms of transposition: **2**

MEMBER STATES	STATE OF TRANSPOSITION
AUSTRIA	- TRANSPOSED
BELGIUM	- NOT TRANSPOSED
BULGARIA	- TRANSPOSED
CYPRUS	- TRANSPOSED
CZECH REPUBLIC	- TRANSPOSED
DENMARK	- TRANSPOSED
ESTONIA	- TRANSPOSED
FINLAND	- TRANSPOSED
FRANCE	- TRANSPOSED
GERMANY	- TRANSPOSED
GREECE	- TRANSPOSED
HUNGARY	- TRANSPOSED
IRELAND	- NOT BOUND BY THE DIRECTIVE
ITALY	- TRANSPOSED
LATVIA	- TRANSPOSED
LITHUANIA	- TRANSPOSED
LUXEMBOURG	- TRANSPOSED

MALTA	- TRANSPOSED
NETHERLANDS	- TRANSPOSED
POLAND	- TRANSPOSED
PORTUGAL	- TRANSPOSED
ROMANIA	- TRANSPOSED
SLOVAKIA	- TRANSPOSED
SLOVENIA	- TRANSPOSED
SPAIN	- NOT TRANSPOSED
SWEDEN	- TRANSPOSED
UK	- NOT BOUND BY THE DIRECTIVE

4. TYPES OF TRANSPOSITION OF THE DIRECTIVE

For the transit directive it is difficult to say what type of transposition is actually required by the directive. Since the directive is almost exclusively about the facilitation of administrative cooperation between Member States, it does not bestow any rights on individuals who needed to be informed about their legal situation. Only Art. 7 might be considered as limiting individuals' rights by defining the competences of the escorts to use force against the third-country national.

It is still an unanswered question in the jurisdiction of the ECJ to what extent Member States are obliged to transpose provisions which are sometimes called "ancillary provisions"[6], which means that they do not widen or restrict individual rights or do at least protect the legal interests of individuals but serve only an intra-administrative purpose. The arguments, which have been brought forward by the ECJ to reason the transposition requirements as regards provisions concerning individual rights, do not necessarily require transposition by legislative act or regulation as regards "ancillary provisions". The fact that many Member States rely mainly on administrative instructions or circulars does therefore not automatically imply an infringement of the directive.

This obvious uncertainty about what is required to transpose the directive in a sufficient way has lead to wide variety of different techniques of transposition.

[6] Cf. Sacha Prechal, Directives in EC Law, 2nd Ed., pp. 44 ff.

The most radical approach is to be found in Belgium where legislative or regulative transposition is not considered necessary at all while the directive is directly applied in practice. There is also no transposition at all in Spain; however, we did neither receive any information on implementation in practice nor the statement that explicit transposition was considered superfluous.
Only one Member State (The Netherlands) relies only on circulars in order to implement[7] the directive. It is, however, a common approach[8] to transpose only the mere possibility to support and execute transit operations in legislative rules and leave the procedural details to administrative instructions and circulars.

5. EVALUATION OF THE NUMBER OF PROBLEMS (QUANTITATIVE approach based on the national tables of correspondence and not related to the seriousness of the problems)

As already stated above, the range of the obligation to transpose is unclear for this directive. The quantitative analysis provided in this section must therefore be read only as a purely mathematical result. The numbers refer to the total number of mandatory and specific provisions listed in the Table of Correspondence.

a) No provisions transposed
The most problematic countries from a quantitative point of view are obviously Belgium and Spain where no transposition at all has taken place, meaning that 0 of 10 provisions are transposed.

b) Member States with a very high number of not or not sufficiently transposed provisions (more than 7)
This group includes Austria, Denmark, and Germany (alphabetical order).It must however be noted that these Member States follow the above mentioned approach of adopting just one basic legislative provision on the possibility of transit operation and leave the implementation to administrative rules which are often not available. This does not completely invalidate the assessment but should mitigate possible conclusions.
The absence of legislative rules has however led to a substantial lack of information especially in Austria and Denmark.

c) Member States with a significant number of not or not sufficiently transposed provisions (4 - 7)
This group includes Bulgaria, Hungary, Latvia, The Netherlands, and Romania.

[7] One might argue whether this technique can be called „transposition“, so we use the term „implementation“ in this context.
[8] This way of transposition was chosen most clearly by Austria, but the Czech Republic, Denmark, Germany, Latvia, Malta, Slovenia, and Sweden seem to have a similar approach. The same is true to a lower extent for Finland.

d) Member States with a low number of not or not sufficiently transposed provisions (1 – 3)
This group includes Cyprus, the Czech Republic, Estonia, Finland, France, Greece, Italy, Lithuania, Luxembourg, Slovakia, and Sweden.

e) Member States which have transposed all 10 provisions without any problems
This group includes Malta, Portugal and Slovenia.

The mathematical findings in the documentation above do not contain any reliable information about the seriousness of the mentioned problems nor do they reflect the effectiveness of the practical implementation in the mentioned Member States. It should also be kept in mind that practical problems of the implementation are only covered to the extent that the national rapporteur concerned gained the relevant knowledge. It is therefore well possible that there are serious practical problems in the Member States which appear to be unproblematic in the documentation, whereas the practical implementation might work well in Member States which appear show serious flaws as regards transposition of the directive. Although this is to some extent true for all 10 directives evaluated in this study, these reservations are of particular importance as regards the transit directive because it is unclear to what extent legislative or regulative transposition is required.

6. EVALUATION OF THE SERIOUSNESS OF PROBLEMS (QUALITATIVE approach based on the national summary datasheets and VERTICAL approach as it envisages the situation per Member State)

a) Member States which did technically not transpose the directive
As mentioned above, **Belgium** and **Spain** did not transpose the directive. Although Belgium claims that the directive is nevertheless applied in practice[9], this case of "implementation without transposition" gives raise to serious concerns. First of all the directive itself demands transposition in Art 10; a requirement which goes clearly beyond mere implementation in practice. Moreover, some of the provisions in the directive need a clear legal basis in national law to safeguard the actual implementation. This is most clearly true for Art. 7 (1) which is aimed at restricting the deportee's legal position by transferring power to the escorting personnel to ensure the enforcement of the removal. Furthermore, the directive demands to assign a central authority with specific competences. It is hard to imagine how this could be achieved without any legal – not necessarily legislative – basis. However, the details of administrative cooperation as specified in Art. 3 and Art. 4 (1-4) may well be implemented without an act of transposition but by using the form provided for in the annex to the directive. It is nevertheless an unsolved problem to what extent even those provisions need to be transposed[10].

[9] There is no such information about Spain.
[10] See above, Ch. 4

b) Member States where transposition shows serious gaps

Since it is not very clear to what extent Member States are obliged to transpose the provisions of the directive into their national law, the evaluation is difficult to make. We did not carry out an exhaustive study about the practice in the Member States, hence we cannot tell how effectively the directive is actually implemented in the Member States. The evaluation of transposition can therefore only be based on the degree of legal certainty and clarity of transposition.

This degree of legal certainty and clarity is obviously lower if a Member States transposes only the core of the directive into national law but leaves the procedural details to administrative practice. It is **Austria** which gives raise to the most serious concerns in this matter. Even though there is a legislative norm which enables the competent authorities to support and assist transit operations, this norm is not directly aimed at transposing the directive but was introduced to create the legal framework for bilateral readmission agreements which include inter alia provisions on transit operations. These provisions might well serve as a basis to implement transit operations under the directive; however it is very doubtful whether they can be considered as sufficient transposition of the directive. Implementation of the directive in Austria is therefore rather a matter of concrete administrative practice than of legal transposition.

There are also some concerns about Germany and Italy for two different reasons: In **Germany**, the directive is transposed only by one central norm in the aliens act. Different from Austria, this provision is a real norm of transposition; however, it is rather basic and does not include the procedural details as described in the directive. Moreover, there are no clear and precise administrative instructions about the procedure. The concrete mechanism of administrative implementation is therefore mainly a matter of practice. It may be assumed that the directive itself is used as a guideline. The direct application of the directive is however not in line with the overall concept of directives as legal instruments which require transposition into national law to become applicable.

Italy, by contrast, has transposed the directive in a rather detailed way by legislative decree. Whereas most of these norms of transposition reflect the directive in an adequate way, three of the directive provisions which we consider most important are transposed in a rather problematic or incomplete way. Art. 7 is one of these provisions as it touches not only state sovereignty by authorising foreign escorts to take emergency action against the third-country national on the territory of the transit state but also defines and limits the competences of the authorities to enforce the removal against the will of the deportee. Moreover, the determination of contact points is not clearly done in the Italian provisions. There are very similar concerns about the way **Bulgaria** transposed these provisions.

Finally, there is **The Netherlands**, which is the only Member State which has transposed the directive exclusively by administrative instructions. This would normally give raise to concerns about the legal certainty of the transposition. However, the aliens circular, which contains the relevant provisions on transit assistance, is a published legal document. Therefore, the problems, although existing, should not be overestimated[11].

[11] Cf. ECJ, Case C-339/87 (Comm. v. Netherlands), paragraph 6 ff.

c) Member States with singular but important problems

The following Member States show singular problems with the transposition of provisions which appear to be of particular importance as the determination of authorities (Art. 4 (5)) or the definition and limitation of competences of escorts and law-enforcement officers in Art. 7 (1): Czech Republic, Denmark[12], The Netherlands, Slovakia, Sweden (in alphabetical order).

7. TYPES OF PROBLEMS (HORIZONTAL approach throughout all the Member States)

There are two main issues which appear to be problematic in several Member States. Some Member States seem to understand **Art. 4 (5)** in a way that it only requires them to determine a **contact point** for every single transit operation but not to create the institution of such a contact point in general. This is most clearly true for Italy but the legal situation is very similar in Luxembourg.
Secondly, many Member States did not transpose **Art. 7 (1)** in a way that would allow **foreign escorts** to step beyond the boundaries of self-defence. Foreign escorts might therefore run the risk of criminal prosecution in these countries if they take action against the third country national which is beyond the limits of self-defence but within the limits of Art. 7 (1). This problem appears in the following Member States: Austria, Belgium, Czech Republic, Denmark[13], Germany, Hungary, Italy, The Netherlands, Slovakia and Sweden.

8. IMPACT OF THE DIRECTIVE ON THE MEMBER STATES

It seems that the impact of the directive on the national law of the Member States is rather limited. On the one hand the directive seems to reflect the good practice between the administrations of the Member States and codifies a procedure which had already been well established. On the other hand, this background might have lead some Member States to the assumption that no further transposition is necessary or that it might be sufficient to adopt only one basic provision and to further rely on the pre-existing practice. As already described above, this assumption is rather doubtful.
From a strictly positivist point of view, the impact of the directive was most striking in those countries which transposed the directive en bloc by adopting a legal act which transposed the directive more or less literally into national law or by including a new chapter in the aliens act with the same content. Although the practical implementation of the directive is mostly beyond the scope of this study, the critical question should be asked to what extent the implementation of the directive in practice reflects the legal situation. The numbers of assisted or requested transit operations in countries like

[12] The case of Denmark is slightly different as Denmark is not obliged to transpose the directive under European law; it is however legally bound to it by international law. The international law obligation leaves Denmark more leeway to choose the method of implementation. It is nevertheless doubtful if the legal situation in Denmark ensures full implementation of the directive.
[13] The information about Denmark is incomplete on this issue. Moreover, the case of Denmark is slightly different as Denmark is not obliged to transpose the directive under European law; it is however legally bound to it by international law. Nevertheless, it seems to be unlikely that there is a sufficient basis for competences of foreign escorts in Denmark.

Austria, Belgium or Germany show that the effectiveness of implementation in practice does not necessarily correspond with the degree of actual transposition.

9. RECOMMENDATIONS TO THE EUROPEAN COMMISSION

There are two issues which give reason to think about possible amendments.

a) Legal instruments to establish cooperation mechanisms

The first issue is the very general question if the legislative instrument of the directive is suitable for the purpose of structuring the administrative cooperation between national authorities. In the past, the Community often chose another approach when it came to administrative cooperation. E.g., the mechanism for determining the Member State to examine an asylum application was established by regulation[14]. The same is true for the Schengen Borders Code[15]. The national reports show that many Member States treat the transit directive in practice like a regulation by applying it directly even though a directive is by its nature not directly applicable. It is remarkable that this unforeseen direct application does not lead to major problems with the actual implementation. It must of course be considered that the Community is obliged under Art. 5 of the Treaty to choose the legal instrument which leaves the Member States as much freedom as possible and restrict their leeway for implementation only to the extent which is necessary to achieve the intended purpose. It must however be noted that besides the Member States which apply the directive directly – completely or in parts – there is also a group of Member States which have transposed the directive more or less word by word. This is of course a viable way of transposition; it does however show that the conceptual difference between directive and regulation does not lead to any considerable consequences. Hence, we would like to raise the question whether similar instruments should better be adopted in the form of a regulation in the future.

b) Competences of foreign escorts in the transit state

The second issue is related to the first one. Since many Member States did not see a need for transposition for many provisions of the directive, we see the situation that there is a practice without a clear legal basis. We consider this problem most striking as for the relationship between the escorts and the domestic law-enforcement authorities during the transit operation. The concept of the directive is not entirely clear in this respect. Whereas the preamble emphasizes the national sovereignty of the Member States, Art. 7 (1) stipulates that escorts shall have competences which beyond the limits of self-defence. Since many Member States have not adopted a provision which would govern the escorts' competences exhaustively and unanimously, it is difficult to identify the escorts' leeway for action in these Member States. We therefore recommend finding a common understanding about this provision among the Member States. This could e.g. be done by a council decision.

[14] Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, O.J. No. L 50/1 of 25 Feb 2003

[15] Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code); O.J. No. L 105/1 of 13 April 2006.

Finally, we realized that there is an uncertainty in the Member States about the legal situation for escorts in the other Member States. Hence, the Member States have problems with providing their escorting personnel with sufficient information about their competences during the transit operation. We therefore recommend creating a system of information sharing on this matter. This could be done by collecting the relevant provisions (with translations) in a handbook to be distributed among the involved national authorities or by including this information in the network which has been established by Council Decision 2006/688/EC[16].

10. ANY OTHER INTERESTING PARTICULARITY TO BE MENTIONED ABOUT THE TRANSPOSITION AND THE IMPLEMENTATION OF THE DIRECTIVE IN THE MEMBER STATES

a) Sources of Information

It is important to keep in mind that the national reports and thus also the synthesis report show pictures that are determinate by the information which the national authorities provided. Unlike for the other directives, there is hardly any information available from outside the executive. There is no jurisdiction on any issue regulated by the directive and NGOs are not at all involved in the process of removal via a transit state. Therefore, no national rapporteur could discuss the point of view of persons or organisations outside the public administration.
Consequently, the degree of detail in the 27 national reports varies, which is due to the fact that some national rapporteurs were provided more exhaustively with details than others by the national authorities.

b) Practice of Reimbursement

Art. 5 (6) of the directive provides for reimbursement. Hereinafter, the requesting state is obliged to compensate the requested state for certain assistance measures provided during the transit operation. In practice, however, it seems that this provision is only of a very limited relevance. Especially some of the most important (in terms of numbers of persons transited) transit states as Belgium, France, Germany and The Netherlands refrain from demanding reimbursement from the requesting Member States and do, in principle, not pay any compensation when acting as a requesting Member State.
Although this concept is contrary to the concept of the directive, we do not consider it an infringement as long as Member States come to the mutual understanding that they refrain from reimbursement. From a purely practical point of view, this concept may avoid bureaucracy. It does of course give an advantage to those Member States which are due to their geographic situation or the limited capacity of their international airport not acting as transit states. However, as applications for transit may only be made under rather restrictive prerequisites, the actual financial imbalance will presumably be negligible.

[16] O.J. No. L 283/40 of 14 Oct 2006.

V. EUROPEAN SYNTHESIS OF THE NATIONAL REPORTS

1. Introduction

Directive 2003/110/EC on Assistance in Cases of Transit for Purposes of Removal by Air includes some particularities which make the evaluation of its transposition and implementation harder than that of other directives. The main reason for these difficulties is that the directive intends to facilitate administrative cooperation between member states (MS). It does not primarily aim at providing for any rights or duties for individuals and it does not set specific standards to safeguard basic freedoms.

1.1. Minimum Requirements for Transposition

The character of the directive raises the question to what degree a transposition of the individual provisions is required. Given the fact that the directive does not bestow any rights on individuals it is doubtful whether the doctrine of the ECJ applies which generally requires Member States to transpose directive provisions into national law. This requirement of explicit transposition can be based based on two considerations:

Firstly, MS have the obligation under the directive to communicate the measures they have taken to implement the directive to the Commission (cf. Art. 10). If the legislation in a MS is already in line with the substance of the directive and administrative practice is also conform with the requirements of the directive, MS could inform the Commission about this situation and quote the relevant pre-existing norms which safeguard the conformity with the directive[17]. With regard to the communication requirement it appears also well possible to transpose the directive solely by administrative instructions which are not open to the public but could be communicated to the Commission.

Secondly and more importantly, the explicit transposition should secure that individuals upon whom the directive bestows individual rights are aware of their legal position. Transposition must therefore a legal situation which is clear and certain[18]. This consideration clearly requires transposition by legislative or regulative instruments which are to be published. However, as the Directive 2003/110/EC does not provide for any individual rights but only for instruments of international cooperation of national administrations, this consideration does not support the concept of explicit transposition by legislative or administrative means as regards Directive 2003/110/EC.

However, even though the general considerations, which support the concept of explicit transposition in general, are not applicable to Directive 2003/110/EC, the directive requires in Art. 10 (1) almost mechanically that the MS need to refer explicitly to the directive when adopting norms of transposition, be it in the norms themselves or in the official journal, where the norms are published. This requirement, however doubtful it may appear, clearly rules out the possibility of transposing the directive solely by administrative circulars and/or instructions. Since these instruments are usually not published but for internal use only, an explicit reference to the directive in terms of Art. 10 (1) would not make much sense. Moreover, the directive seems to assume as a matter of fact that the norms of transposition are published as it mentions the alternative possibility to refer to the directive either in the norm itself or in a note to the publication.

[17] ECJ, Case C-365/93 (Comm. v. Greece) paragraph 9; Case C-96/95 (Comm. v. Germany), paragraph 35; Case 217/97 (Comm. v. Germany), paragraph 31
[18] ECJ, Case 29/84 (Comm. v. Germany), paragraph 23

One may well ask whether a directive was the appropriate instrument to establish common rules on assistance in cases of transit[19]. Nevertheless, with regard to Art. 10 (1) a MS is not free to rely solely on administrative practice without adopting any legal instruments which demonstrate that the provisions of the directive are applied on its territory. Considering the exceptional character of the directive, it is on the other hand not adequate to interpret Art. 10 in a way that, without further reasoning, relies on the strict requirements of the ECJ for transposition of directives in general. Even Art. 10 (2) seems to reflect the distinct content of the directive when limiting the obligation of MS to communicate to the Commission the text of the norms of transposition to the core norms. This exceptional provision which is only to be found in few other directives[20] supports the view that not all provisions of the directive require explicit transposition if the conformity of administrative practice is safeguarded.

1.2. Difficulties to gather relevant information

As individual rights and freedoms of citizens are not the subject of the directive, legislators in many MS did not see the necessity to transpose the directive by legislative means. Transposition is therefore in many MS done by administrative circulars and/or instructions, which are often not public. Furthermore, NGOs are hardly ever concerned with transit operations and proved therefore unable to provide any substantial input. Hence, national rapporteurs were highly dependent on the willingness of authorities to cooperate. This willingness was not at hand in Spain where authorities completely refused to provide any information despite several interventions by the general coordination of this study who have addressed not only the competent Spanish authorities but also the permanent representative of the Kingdom of Spain in Brussels. As these efforts had all been in vain and no norms of transposition exist, Spain is covered only rudimentarily in the chapters 3-5 of this European Synthesis Report.

Although such problems did not occur to the same extent in other MS, there might be some gaps in the answers to individual questions due to missing information in other reports. This applies in particular to the reports from Austria and Denmark. Such lacks of information are indicated in the following explanations.

Finally, the evaluation of the legal situation of the two Member States which are not bound by the directive proved to be difficult in the absence of published legal acts. These Member States are therefore covered in a separate part at the end of this synthesis report in a less extensive way.

[19] See the Summary Datasheet on this issue.
[20] So in Art. 8 (2) of Directive 2001/40/EC on the Mutual Recognition of Expulsion Decisions.

2. National Legal Basis and Competent Authorities

2.1. Norms of Transposition (Q.1; Q.4)

Q.1.A. Identify the MAIN (because of its content) norm(s) of transposition and indicate its legal nature
Q.1.B. List the others norms of transposition by order of importance of their legal nature (first laws, secondly regulations; thirdly circulars or instructions):
Q.4.A. Has the main regulation foreseen explicitly by the main norm of transposition already been adopted or not:
Q.4.B. If the main norm(s) of transposition foresee(s) the adoption of one or several regulations, indicate if they have all been adopted:

2.1.1. Integration into pre-existing law or transposition en-bloc

The MS can be divided into three groups: Those who have transposed the directive en bloc, forming a separate piece of law or a chapter in their aliens legislation, those who have integrated the provisions of the directive into pre-existing legislation and those who have not transposed it at all.

The first group includes most but not only new MS (Bulgaria, Cyprus, Estonia, France, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, and Slovenia). Some MS have amended their pre-existing legislation with regard to the requirements of the directive. The relevant provisions are therefore scattered among different legal documents (Austria, Denmark, Finland, Germany, Hungary, Sweden). One MS has integrated parts of the directive into its pre-existing legislation and adopted the remainder in a separate piece of law (Czech Republic).

The grouping of the afore mentioned MS is however not identical with the extent to which MS have simply copied the provisions of the directive. E.g., the Netherlands, even though they have transposed the provisions en bloc, have not just copied them but reworded their substance and adapted it to the domestic necessities. On the other hand, Hungary mainly copied the provisions but did not transform them into a single act but included them in different pieces of law according to their context.

The two MS not bound by the directive (UK and Ireland) have also not transposed it. Furthermore, two bound MS have also failed to transpose the directive up to now (Belgium, Spain).

2.1.2. Transposition by legislative act, regulation or administrative rules

Keeping in mind that the directive is about administrative cooperation only, it is arguable whether it has to be transposed by legislative acts and regulations (which are to be published) or if a transposition by mere administrative rules can be considered as sufficient.

MS tackle this problem in quite diverse ways:

Some MS did not transpose the directive at all despite the fact that they are bound by it. This concerns Belgium and Spain, with Belgium claiming that its administrative practice is perfectly in line with the substance of the directive.

Other MS have adopted a legislative provision which serves as legal basis for regulations and administrative instructions. This legislative provision is very general but makes clear that transit measures are supported. The procedural details and the determination of administrative competences are however reserved to low ranking legal instruments. This way of transposition was chosen most clearly by Austria, but the Czech Republic, Denmark, Germany, Latvia, Malta, Slovenia, and Sweden seem to have a similar approach. The same is true to a lower extent for Finland and Hungary.

The Netherlands transposed the whole directive only by means of administrative circulars without any explicit legislative basis providing for the possibility of transit operations in general.

France, Lithuania and Luxembourg transposed the directive mainly by regulation.

The remaining MS (Bulgaria, Cyprus, Estonia, Greece, Italy, Malta, Poland, Portugal, Romania, and Slovakia) transposed the provisions of the directive entirely or to a larger part by legislative acts.

2.1.3 Legal Instruments of Implementation (Regulations, Circulars and Instructions)

MS which chose to include only basic rules on transit operations in their legislation usually rely on regulation and/or circulars and instructions to secure the practical implementation of the directive but also to transpose the provisions of the directive which govern the procedural details of administrative cooperation.

In most states the changes in domestic law have been adopted completely. It is only Bulgaria and France where the implementing legal instruments have not yet been completely adopted. In Bulgaria, one implementing regulation needs to be adopted. The French rapporteur mentions two bylaws which are not yet adopted.

2.1.4 State of Transposition

In 21 MS the process of transposition is completed with regard to the legislative and regulative framework. In 2 MS (France, Romania) the directive has been partly transposed with rather minor points still missing. In Belgium and Spain, there is not even a project of transposition yet. Belgium claims, however, that its administrative practice is in line with the directive. As the administrative practice is partly governed by bilateral or multilateral agreements, the concrete administrative cooperation may be subject to more elaborate rules which are to be laid down in such agreements. For Spain there is no such statement on the practice. Spain has however concluded bilateral readmission agreements with ten Member States which are at least partly in line with the Directive.

In Bulgaria, Finland, Germany and Portugal the transposition of the directive into national law has taken place only recently.

In Luxembourg, a pending bill will abrogate the existing norms of transposition soon. Art. 127 of the new law (as foreseen in the bill) will however be verbatim the same as the existing Art. 14 (2). Therefore the evaluation in the following synthesis report will by and large remain applicable to the future legal situation in Luxembourg.

The report reflects the legal situation as of 1 October 2007 which has been determined as the cut-off date to elaborate the national reports.

2.2. Situation in Federal Member States (Q.2)

Q.2. THIS QUESTION IS IN PRINCIPLE ONLY FOR FEDERAL OR ASSIMILATED MEMBER STATES LIKE AUSTRIA, BELGIUM, GERMANY, ITALY, SPAIN

Q.2.A. Explain which level of government is competent to adopt the norms of transposition.

Q.2.B. In case, explain if the federal structure and the distribution of competences between the different levels pose any problem or difficulty regarding the transposition and/or the implementation of the directive.

In all the five Federal MS the federal level is competent to adopt the necessary norms of transposition. No rapporteur has indicated that the federal structure leads to problems with regard to transposition and/or implementation of the directive.

2.3. Implementing Authorities (Q.3)

Q.3. Explain which authorities are competent for the practical implementation of the norm of transposition by taking the decisions in individual cases.

2.3.1. Requesting assistance from other MS and processing requests by other MS

The procedure of requesting assistance from and granting it to other MS is a centralized competence in all MS. The only exception is Finland where requests from other MS are processed by the border guard unit at the concerned airport, which in most cases will be Vantaa Airport in Helsinki.

In some MS it is the (federal) ministry of the interior/home affairs which is competent for processing the cooperation with other MS in transit issues. This applies to Austria, Belgium, Bulgaria, Cyprus, France, and Malta. In Luxembourg, the Ministry of Foreign Affairs and Immigration is competent. In most other MS, central police authorities or border police authorities are in charge of processing the requests (Czech Republic, Denmark, Estonia, Finland – see above, Germany, Greece, Italy, Latvia, Lithuania, The Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, and Sweden). These authorities are subordinated to the ministry of the interior/home affairs, or to the ministry of justice (Netherlands) or the ministry of refugee, immigration and integration affairs (Denmark). The Swedish national police board acts as an independent body. In Hungary, the Central Immigration Authority, which is subordinated to the ministry of the interior and the ministry of justice, is competent.

2.3.2. Providing assistance during a transit operation

Assistance measures on the ground, such as escorting of the third country national, providing food and medical treatment, are in all MS provided by state and border police authorities. Bulgaria lacks an implementing regulation to clearly determine the competence.

3. Analysis of the content of the norms of transposition

3.1. Preconditions for Requests and Denials, Art. 3 Para. 1-3 (Q.5, Q.6)

Q.5. Conditions ("reasonable practical circumstances", cf. Art. 3(2)) under which a Member State considers to request transit by air via another Member State
Q.5.A. Have the conditions under which your Member State may request transit by air via another Member State been laid down in law/administrative regulations?
Q.5.B. If no specific rules were adopted, what are the criteria for an ad-hoc determination under Art. 3(2)?

Q.6 Refusal of transit: Have refusal reasons as described in Art. 3(3) been…
Q.6.A. transposed in national law? If so, please specify details.
Q.6.B. transposed in administrative rules? If so, please specify details.
Q.6.C. No explicit transposition; according to what criteria apply authorities refusal reasons in practice?

3.1.1 Criteria for requests

Requests for assistance in transit matters are made on an ad-hoc basis with no or only very basic explicitly codified guidelines.

- No codified rules at all

  There are no codified rules on criteria for submitting a request in **Austria, Belgium, and Germany**. In these countries, the competent authorities decide on a pure ad-hoc basis. Even though information on the actual decision making is scarce, it seems to be a general consensus that a request should in principle only be made if no direct flight is available. It is, however, unclear under which circumstances MS are ready to make an exception from this general rule. German authorities consider i.a. rather pragmatic aspects, e.g. availability of transport capacities, economic aspects, existing contracts with carriers and the acceptance of carriers. Austrian authorities apply Art. 3 of the directive directly.
  In absence of codified rules there is no information available about the practice in **Spain**.

- Reasonable practical circumstances-clause

  Other MS, such as Cyprus, Lithuania, Luxembourg, Malta, The Netherlands, Poland, Portugal and Sweden, have adopted the criteria of reasonable practical circumstances without further specifying it. **Italy** is the only MS which has adopted some more detailed provisions including the need for a preliminary assessment whether the transit operation can be carried out without any impediments neither in the transit nor in the state of destination. Italian rules further include an explicit non-refoulement clause. It might be worth to notice that Italian law just mentions "reasonable circumstances" without referring to "practical" aspects. Bulgarian law provides for an implementation regulation to further specify the reasonable practical circumstances. This regulation has, however, not been adopted yet.

- Direct flight-rule

  Many MS have explicitly adopted the criterion that a request should in principle only be made if no direct flight is available (Bulgaria, Czech Republic, Denmark, Estonia, Finland, France, Hungary, Italy, Lithuania, Luxembourg, Malta, The Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Sweden). Only few of them have specified under which circumstances a request can be made even though there is a direct flight. **Slovak**

law stipulates that a request might be submitted if the direct flight cannot be executed for serious reasons. Administrative instructions in **Slovenia** stipulate that a request can be made if the direct flight is not feasible for reasons of bad weather conditions or cancellation of flights.
There is no detailed information about the situation in **Cyprus** where it is decided ad hoc whether an application should be submitted. It is therefore unclear if such applications might also be submitted if there is a direct flight which appears however to be unsuitable for the removal.

- No change of airport

The concept of the directive that a transit operation should not take place if it requires a change of airport has been transposed into the domestic law of most MS (Bulgaria, Czech Republic, Denmark, Estonia, Finland, France, Hungary, Italy, Latvia, Luxembourg, Malta, The Netherlands, Portugal, and Sweden). Whereas some MS exclude the change of airport completely (Bulgaria, Estonia, France, Latvia, Lithuania, Portugal), rules in the **Czech Republic, Denmark, Finland, Italy and Sweden** stipulate that a change of airport during the transit operation shall be avoided. This more flexible approach is, however, in line with the directive ("shall in principle not be made"). The **Latvian** norm of transposition lacks clarity and gives the competent authorities too much discretion because neither the direct flight priority is mentioned nor the exemption for reasonable practical circumstances. In **Poland**, there is just a provision on the question of refusal if Poland is the requested state and the transit operation requires a change of airport in Poland, which gives Polish authorities the discretion (not the obligation) to refuse assistance. In absence of such a provision for Poland as a requesting state, it might be assumed that Poland might itself - in exceptional cases - ask for assistance even if the transit operation involves two airports in the transit state. This is also the legal situation in **Slovakia** and **Slovenia**.
Romanian law does not include the one-airport-principle at all.
There is no detailed information about the situation in **Cyprus** where it is decided ad hoc whether an application should be submitted. It is therefore unclear if such applications might also be submitted under exceptional circumstances if the transit operation requires a change of airport in the requested MS.

It is arguable to what extent MS have to specify the criteria they apply before sending a request for assistance in a transit operation. We consider it necessary to establish the direct flight priority in domestic law and the principle that a change of airport should be avoided. However, the provision that an exemption from the direct flight principle should only be made for "reasonable practical circumstances" does not substantially reduce the MS' discretion. It is therefore not considered an infringement if a MS does not transpose this criterion explicitly or did not further specify it.

3.1.2. Criteria for refusal

The vast majority of states have adopted detailed criteria for refusal of a request by another MS as stipulated in the directive. There are different views on whether a MS is obliged to explicitly include the refusal reason of non-refoulement (cf. Art. 8). The author of this report takes the view that it cannot be considered as an infringement of the directive if this reason for refusal is not transposed. This is based on two reasons: Firstly, we understand Art. 3 (3) as an exhaustive catalogue. Therefore, we consider it an infringement of the directive only if a MS allows additional refusal reasons. The absence of a particular refusal reason does consequently not lead to an infringement. Secondly and decisively, we understand the

reference to the Geneva Convention as a declaratory one due to the fact that the directive has obviously no power to derogate international law obligations of the MS. This priority of international law obligations is not only an integral part of international law doctrine but also explicitly stated in No. 7 of the preamble to the directive and in Art. 8 of the directive itself. Since all MS are also state parties to the Geneva Convention, their international law obligation to respect the non-refoulement principle prevails irrespective the concrete norm of transposition.

- States without codified criteria in domestic law

  It is only **Belgium and Germany**, where authorities decide on an ad-hoc basis. Even though, no criteria are explicitly laid down, in practice authorities use criteria, which are similar to those stipulated in Art. 3 (3) of the directive.

  Germany will e.g. refuse to assist a transit operation if a national search warrant is issued against the third country national. Among the most common refusal reasons are furthermore practical reasons like the time for changing planes being less than one hour or the connecting flight not being available. Some bilateral agreements Germany has concluded with MS also include an explicit non-refoulement clause. Belgium refuses its approval if the third country national constitutes a threat to public order and security, e.g. if he/she might resist the removal violently. Belgium also applies a quota of not more than five assisted transit operations per day. If this quota is exhausted, requests will be refused. In urgent cases, however, exceptions might be negotiated on an individual basis.

  Austria did not transpose the catalogue of Art. 3 (3) into domestic law either. However, Austrian Aliens Law provides for bilateral agreements to be concluded on transit operations. This provision stipulates that bilateral agreements must include the catalogue of Art. 3 (3). It might therefore be assumed that the criteria of Art. 3 (3) are applied outside of bilateral agreements as well, even though the Austrian governments considers the catalogue as facultative.

  Although **Spain** has not adopted any rules to transpose the directive, the criteria under the bilateral agreements on readmission are basically the same. However, they are only applicable between the state parties. Furthermore, the criteria are not in line with the directive as they do include the refusal reason that transit may be refused if the deportee can be accused or condemned by a criminal court in the country of destination.

- States with criteria laid down in legislation/regulation

  Most states, which have included criteria for refusal in their legislation or in regulations (Bulgaria, Cyprus, Czech Republic, Estonia, France, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Romania, Slovakia and Sweden), have stuck to the reasons provided in Art. 3 (3). It is, however, not always a simple translation of Art. 3 (3) of the Directive. **France** has for instance adopted refusal reasons in different provisions of a decree. The substance of Art. 3 (3) remains, however, untouched. Two small MS have abstained from transposing Art. 3 (3) lit. c, which appears consequent as there is only one airport on their territory.

  Italy further specifies the refusal reason of Art. 3 (3) lit. a and limits its applicability to certain criminal offences and preconditions[21]. Lit. d is not literally transposed by not

[21] Transit may be refused if the third country national was caught red-handed, if the crime he is charged with is related to drugs, violation of sexual freedom, facilitation of unauthorized entry, transit and residence in Italy or

explicitly repeating the wording "for practical reasons". However, this criterion in Art. 3 (3) lit. d is so wide and unspecified that it does not lead to a substantial limitation of the refusal reason. Therefore, the incomplete transposition in Italian law does not lead to a substantial change. The same applies to lit. e: Italian law does not mention the criteria "public health" and "international relations". These criteria might be regarded as part of the public policy and security criterion.

Lithuanian law provides for an additional refusal reason which seems to stem from an incorrect adaptation of Art. 3 (3) lit. b). The provision allows refusal if transit through or admission to the Republic of Lithuania is not feasible. As this criterion is not only very broad but does also clearly exceed the refusal reasons of Art. 3 (3), Lithuanian law is not in line with the directive here but constitutes a violation.

- States with criteria laid down in administrative rules (instructions/circulars)

  Finland, The Netherlands and Slovenia did not include refusal reasons in their domestic legislation but included them in administrative instructions or circulars. The administrative instructions in Finland just refer to Art. 3 (3) of the directive, whereas the Dutch and Slovenian rules are literal transpositions of the catalogue given in the directive.

In absence of legislative rules or regulations there is no detailed information available on the practice in **Denmark**. Internal administrative rules might govern the reasons for refusal, they are, however, not accessible.

Article 3(2), Q.5	
No transposition	Austria, Belgium, Germany
Legal Problem	Bulgaria, Latvia, Romania, Spain
Practical Problem	--

Article 3(3), Q.6	
No transposition	Austria, Belgium, Germany, Spain
Legal Problem	Lithuania
Practical Problem	--
No information available	Denmark

3.2. Procedural Aspects of Handling Requests for Assistance, Art. 3 Para. 4-6, Art. 4 (Q.6.D, Q.7, Q.8)

Q.6.D. Does the note of refusal or revocation include reasons?

Q.7. Have procedures or rules been established to comply with…
Q.7.A. the information obligation by the requested Member State under Art. 3(4)?
Q.7.B. the obligation to inform the requesting Member State of a refusal or revocation of a transit by air authorization under Art. 3(6)?

Q.8. Request procedures for escorted or unescorted assistance measures (Art. 4):

---

elsewhere, recruitment and/or exploitation linked to prostitution or exploitation of minors for criminal activities or, generally, if measures limiting his personal freedom are already in place.

Have legislative or administrative measures been taken or are such measures in place to ensure…

Q.8.A. the compliance of the obligation to observe the time limits provided for under Art. 4(1)?

Q.8.B. the compliance with the obligation to submit information under Art. 4(3) and (4)?

Q.8.C. the compliance with the obligation to appoint a central authority (Art. 4(5) subpara. 1) and appointment of contact points (Art. 4(5) subpara. 2)?

Q.8.D. If any of the previous questions has been answered with *No*, please specify how the observance of procedural or organizational requirements may otherwise be ensured.

3.2.1 Information Requirement of the Requested MS

If the requested MS refuses to assist a transit operation via its domestic airports, it has to inform the requesting MS forthwith about the refusal and its reasons (Art. 3 (6)). In cases of refusal based on Art. 3 (3) lit. d, the requested MS has to suggest an alternative date to carry out the transit operation (Art. 3 (4)).

- States without explicit rules

  Belgium, Cyprus and Germany have not codified the information obligation but claim that their administrative practice is in line with the requirements of the directive.

- States with codified rules on information requirements

  With the exception of **Austria and Denmark**, all other MS have adopted rules that provide for a requirement to inform the requesting MS about the refusal. In the Czech Republic, Finland, The Netherlands and Slovenia the requirement is laid down in administrative instructions/circulars, all other MS have adopted legislation or regulations.

  However, in some cases these rules do not exhaustively transpose the directive. In **Latvia, Lithuania and Romania** domestic law does not require to provide the requesting MS with the reasons of a refusal. **Polish** provisions on information requirements do not explicitly mention the case of revocation; however, the obligation to inform about a revocation is stipulated in a separate provision. With regard to Art. 3 (4) Latvian domestic law lacks the requirement that the alternative date must be as close as possible to the originally requested one. And, finally, the administrative instructions for **The Netherlands** do not explicitly stipulate that the requesting MS must be informed about that new date; however, from a systematic point of view it becomes clear that this information must be communicated as the provision would make no sense otherwise.

  In some MS lacking rules on the actual implementation of the information requirement lead to concerns about the impact of the legislation on the practice (**Bulgaria, Greece, Luxembourg**). As this assumption is rather vague and not founded by practical experience (e.g. that authorities would not rely on the applicable law), this is not considered as a problem in the ToC.

- Other states

  Austria has not adopted any legislation or regulations on the information requirement. There might be administrative rules, which are, however, not published and not accessible. The practice is in line with the directive as the provisions of the directive are applied directly and the form included in the annex to the directive is used.

Denmark and **Spain** have concluded some bilateral agreements that include the information requirement. There is, however, no information available about the practice, neither under the agreements nor outside.

3.2.2 Procedure of Submitting and Answering a Request

The time limit of 2 days or 48 hours has been transposed by all MS except **Austria, Belgium** and **Spain**, however, often only in administrative instructions. **Estonia and France** did not transpose the requirement of submitting the request "as early as possible" but only a minimum period of 48 hours prior to the transit operation. Austrian authorities rely directly on the directive.

There is no information available about the situation in **Denmark** besides the fact that some bilateral agreements provide for similar time limits.

The state of transposition looks very much alike as regards the information obligation in Art. 4 (3). Besides Austria and Belgium, only **Bulgaria and Romania** have not transposed this provision (Romanian law provides for a regulation to govern this issue which has, however, not yet been published in the Romanian Official Journal). There is again no information available about the situation in **Denmark** besides the fact that some bilateral agreements provide for similar time limits.

For both provisions, there is the concern about insufficient implementation into practice in **Luxembourg** due to lacking administrative measures. As this concern is rather general and did to our knowledge not lead to any deficiencies in practice yet, it is not considered a problem in terms of this study.

3.2.3 Establishment of Central Authority and Contact Points

Generally spoken, there are hardly any serious problems with the determination of these competences in the MS. The chosen approach is diverse, though, and there are some concerns about the implementation in practice in some MS. **France** has not yet adopted the necessary bylaw which is to appoint a central authority and contact points (cf. Q.4.B). The same is true for **The Netherlands**, where only a plan about the distribution of competences in this matter exists.

- Central Authority

Few MS have determined the Central Ministry of the Interior (Slovakia[22]) or of Foreign Affairs (Luxembourg) as Central Authority. In Cyprus it is the director of the migration department in the Ministry of the Interior who has been appointed as central authority. The central authority in Malta is the principal immigration officer, who is directly subordinated to the Ministry of Justice and Home Affairs. In **Belgium**, no central authority has been formally appointed, however, in practice the aliens office (subordinated to the Federal Public Service of the Interior) fulfils this task. **Bulgarian** Law refers rather vaguely to the "organs of the Ministry of the Interior", but does not explicitly appoint a central authority as provided for in the directive. There is no published legal document appointing a central authority in **Austria**, however, under some bilateral agreements the Federal Ministry of the Interior acts as central authority. In practice, the Federal Ministry fulfils this function in relations with all MS.

The majority of MS have chosen to appoint police and border guard authorities as central authorities in terms of Art. 4 (5) of the directive. In most cases, it is the Central Head Office of the border guard or state police forces (Czech Republic, Estonia, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Poland, Portugal, Romania, Slovenia, Sweden), However, in some MS, it is the police or border guard unit at the major airport of the country, so in **Finland** and in **The Netherlands**. In the latter country, the central authority has not yet been formally appointed by amending the relevant administrative circular, although an implementation plan provides for the royal military police unit at Schiphol airport as central authority.

There is no reliable information available about the distribution of competences in **Denmark**. It might, however, be assumed that the immigration department within the Danish National Police acts as central authority as they hold the principal responsibility for the deportation of third country nationals by aircraft.

For **Spain**, there is no central authority which had been generally appointed for transit issues. The mentioned readmission agreements provide however for similar authorities.

- Contact Points

The directive is not entirely clear on the question if such contact points shall be established as an institution in the Member States or if it is sufficient to determine a contact point for each individual transit operation. There are two reasons why we consider it necessary to formally appoint these contact points. Firstly, the directive does not make a difference in its wording between the establishment of a central authority and the establishment of contact points which indicates that both must be institutionalized. Secondly, the annexed form for communication between the involved authorities does not hold a line to determine the contact point which is available during the transit operation. Hence, it is necessary that the requesting Member State already knows about these contact points.

As regards contact points it is rather difficult to give an exhaustive overview on the situation in the MS. In most cases, the police/border guard units at the relevant international airports have been appointed as contact points (So in Austria, Cyprus, Czech Republic, Finland, Germany, Latvia, Lithuania, Poland, Portugal, Romania, Slovakia, Slovenia and Sweden). However this has often been done by internal organizational acts, which are not publicly accessible. Thus, it might be assumed that the same is true for MS, which have appointed a central authority even if national reports do not provide any information about contact points

[22] The actual implementation of the proceedings preparing a transit operation is, however, on the bureau of border and aliens police.

or just report about the practical situation (**Belgium, Estonia, Greece, Hungary, Luxembourg, Spain**).

In **The Netherlands** the Head of Checkpoint at Schiphol serves as contact point in practice; it has, however, not yet been formally appointed by law. **Italian** law lacks clarity on this point due to a problem with the Italian version of the Directive. It seems that contact points need to be specified for each transit operation individually. In practice, the representatives of the central directorate for immigration and border police at the airports act as contact points.

Article 3(4), Q.7.A	
No transposition	Austria, Belgium, Cyprus, Germany
Legal Problem	Latvia, The Netherlands, Spain
Practical Problem	--
No information available	Denmark

Article 3(6), Q.6.D ; Q.7.B	
No transposition	Austria, Belgium, Cyprus, Germany
Legal Problem	Latvia, Lithuania, Romania , Spain
Practical Problem	--
No information available	Denmark

Article 4 (5), Q.8.C	
No transposition	Austria, Belgium, Bulgaria, France, The Netherlands, Spain
Legal Problem	Estonia, Greece, Hungary, Italy, Luxembourg
Practical Problem	--
No information available	Denmark

3.3. Notification Procedure Through Bilateral and Multilateral Agreements, Art. 4 Para. 2 Subpara. 3-4 (Q.9)

Q.9. Bilateral or multilateral agreements to facilitate transit operations
Q.9.A. Has your Member State concluded any bilateral or multilateral agreements or arrangements under Art. 4(2) subpara. 3?
Q.9.B. If yes, please specify with which Member States such agreements or arrangements exist and provide further details, using the table below.

Up to now, no bilateral/multilateral agreements have been concluded by any MS which would allow starting transit measures by mere notification. Although, most Member States have concluded readmission agreements which regulate inter alia transit issues, none of these agreements are concluded under Art. 4 (2) subpara. 3.
Some MS have however adopted a provision which explicitly provides for such agreements (France, Portugal).

Article 4 (2) subpara. 3-4, Q.9	
Without object	All Member States

3.4. Readmission Obligations, Art. 6 (Q.10)

Q.10. Readmission obligations
Have legislative or administrative measures been taken to ensure compliance with…
Q.10.A. the obligation of the requesting Member State to ensure that third country nationals are readmitted under the conditions of Art. 6
Q.10.B. the obligation of the requested Member State to assist with the readmission of the third country national under Art. 6(2)

3.4.1 Obligation of the requesting MS to readmit

The obligation to readmit any third country national whose deportation via another MS failed is transposed in almost all MS. Most MS chose implementation by legislative act (Bulgaria, Cyprus, Estonia, Finland, Germany, Greece, Italy, Poland, Portugal, Romania, Slovakia, Slovenia and Sweden), regulation (France, Latvia, Lithuania, Luxembourg, and Malta) or a combination of both (Hungary). The transposition in the Czech Republic and The Netherlands relies only on administrative rules.

The administrative rules used in the **Czech Republic** do not transpose the subsidiary clause of Art. 6 (1) lit. d (transit by air is not possible for another reason). The practice seems, however, to be in line with the directive. It seems that general readmission rules and regular readmission agreements – where concluded – apply in such cases and thus the absence does not cause problems in practice.

The provision in **Hungary** lacks legal clarity. It is not sure whether the obligation to readmit has been transposed for cases of interrupted transit.

The only MS without any rules of transposition is again **Belgium**, however, no problems seem to occur in practice. **Denmark and Austria** have also not explicitly transposed their obligation to readmit third country nationals under the conditions mentioned in Art. 6 (1). In bilateral agreements they have concluded with other MS they acknowledged this obligation.

The rapporteur for **Spain** mentions that, although there are readmission obligations under bilateral agreements, those obligations do not meet the standards of the directive. There is no information available how the readmission is handled in the last three states in practice, in particular in relation with MS outside such agreements.

3.4.2 Obligation of the requested MS to assist with readmission

The obligation of the requested MS to assist the requesting MS during the readmission process lacks explicit transposition in a considerable number of MS (Belgium, Cyprus, Estonia, France, Germany, The Netherlands, Romania and Sweden). **Romania**'s legislation just provides for a general obligation to assist the requesting state in transit matters, which might be considered a sufficient transposition as readmission is still within the scope of the directive and therefore falls under this obligation to assist. **Belgium, Germany and The Netherlands** claim that despite a lacking transposition the practice is in line with the directive. There is no such information about **France** where the obligation to assist in readmission matters has not been transposed.

In **Latvia**, the norm of transposition does not clearly stipulate a legal obligation to provide assistance. As a matter of fact, Latvian authorities seem to provide the necessary assistance as Latvia's domestic legislation stipulates that the authorities shall ask the requesting state for reimbursement i.a. for assisting readmission procedures.

The situation in **Finland** is difficult to assess. Without any explicit obligation in domestic law, an obligation of Finnish authorities to assist the requesting MS with the readmission of a third-country national can only be derived from a general reference in administrative instructions that the directive is to be applied. Since the obligation to assist in Art. 6 (2) is rather unspecific, this might be considered as sufficient.

The situation is rather unclear in **Austria, Denmark and Spain**. Although there is no explicit transposition, at least in relation with some MS the obligation might be included in bilateral agreements. There is however no detailed information available about the practice, neither under such agreements nor outside.

Article 6 (1), Q.10.A	
No transposition	Belgium
Legal Problem	Austria, Czech Republic, Denmark, Hungary, Spain
Practical Problem	--

Article 6 (2), Q.10.B	
No transposition	Austria, Belgium, Cyprus, Estonia, France, Germany, The Netherlands, Sweden
Legal Problem	Latvia, Romania, Denmark, Spain
Practical Problem	--

3.5. Rules for Escorts, Art. 7 (Q.11, Q.12)

Q.11 Escorting personnel – rules of the requesting Member State
When escorting personnel is sent by your Member State in a transit operation, have legislative and/or administrative measures *(specify)* **been taken to ensure that…**

Q.11.A. their powers are limited to self-defence and that the escorts under the conditions of Art. 7(1) may only take reasonable and proportionate action?
Q.11.B. the escorts comply with the legislation of the requested Member State?
Q.11.C. that escorts wear civilian clothes and do not carry weapons?
Q.11.D. that they carry means of appropriate identification and the authorization for the transit operation under Art. 7(2)?

Q.12. Escorting personnel – rules of the requested Member State
Escorting personnel is sent by another Member State in a transit operation: does the legislation in your Member State as a requested Member State ensure that …
Q.12.A. powers and duties of the escorts are determined according to Art. 7(1)?
Q.12.B. if no, are general rules or principles applicable to powers of escorts of the requesting Member State under Art. 7(1)?

3.5.1. Rules of the requesting MS

A MS sending escorts abroad in order to carry out a transit operation needs to safeguard that the personnel in the operation fulfil their duties in accordance with Art. 7 of the directive. Whereas the practice does not lead to major concerns in any MS, the legal transposition is not yet ensured in all MS. The legal instruments chosen are quite diverse. In particular Art. 7 (1) subpara. 1 has not been explicitly transposed in many MS because it includes principles like the reservation to reasonable and proportionate action and the limitation to self-defence which are considered as general principles of law by which the escorting staff are bound anyway (**Bulgaria, Romania, Slovenia**). However, as unreasonable or disproportionate action by escorts may lead to sanctions, Romanian law would normally require that the limits of their powers are exhaustively described in the authorising norm to enable the concerned official to realize the exact range of his competences without referring to general principles. In the other two MS the lack of an explicit reference to the principles of reasonableness and proportionality is however not considered as a legal problem in the ToCs[23].

In **Italy**, the condition that escorts may only intervene in "response to an immediate and serious risk" is not transposed. There is also no provision to safeguard that escorts carry means of appropriate identification. The latter shortcoming will probably not lead to major difficulties in practice though.

Sweden has not fully transposed Art. 7 (1) by explicit rules. Swedish authorities consider it as a matter of good practices that escorts comply with the legislation of the requested MS but no specific legislative instruments are in force to secure this practice. Since the range of rights of the escorts abroad is determined by the requested MS, such an established practice of the requesting MS is considered as sufficient. Art. 7 (2) has been completely transposed in Sweden, although the situation is rather difficult given that two different authorities may escort in a transit operation. Therefore, the rules of Art. 7 (2) have – at least partly – been transposed twice in Sweden.

The rapporteur from **Slovakia** mentions that the relevant norm in domestic legislation transposes the requirements of Art. 7 only partly. It seems that there is no specific norm of transposition but that only the general norms on the rights and duties of Slovak police officers apply.

[23] The assessment of a legal problem in the Bulgarian ToC is based on another consideration.

There are no norms of transposition in **Austria and Belgium** . There might be administrative instructions on this issue in Austria which are not public and had not been disclosed to the National Rapporteur. The legislation provides for the general possibility of Austrian police forces acting abroad; there are however no detailed provisions on their rights and duties which would reflect the limitations of Art. 7 of the directive. In **Belgium**, a non-binding code of conduct for escorts has been set up, which does, however, not entirely reflect the directive. Nevertheless, the requirements of the directive are respected in practice.

All other MS (except maybe Spain) have exhaustively transposed Art. 7 into domestic law (except **Italy and Romania** where there is no or just an incomplete provision for the escorts' obligation to provide means of appropriate identification). The **Bulgarian** norm of transposition shows some ambiguities which are, however, not considered to be very serious as they may be solved by a directive-oriented interpretation. In **Hungary and Slovenia**, there are no legislative or administrative rules which safeguard that the escorts comply with the foreign legislation – a principle which might however be considered as self-evident.

There is again a serious problem of lacking information as regards **Spain**: Although there is no explicit transposition, at least in relation with some MS the escorts' duties are determined in bilateral agreements. There is however no detailed information available about the practice, neither under such agreements nor outside.

3.5.2. Rules of the requested MS

The rules of the directive on escorts sent by the requesting MS into a transit operation pose special problems. Art. 7 (1) provides not only for a right to self-defence, which is almost self-evident, but also for limited official powers for the foreign escorts on the territory of the transited MS. These competences clearly exceed the limits of self-defence (cf. Art. 7 (1) 2nd sentence: "In addition") but are limited to the situations described in Art. 7 (1), 2nd sentence. This competence of foreign escorts was not included in the initial proposal for the directive; it was even explicitly excluded[24]. However, during the negotiations of this directive a turnaround took place, which might have been influenced by the initiative of Italy for a directive for assistance in cases of (land) transit, which provided for official rights for foreign escorts on the territory of the transit state[25]. The relevant wording of this initiative is already very similar to that of Art. 7 (1).

As the requirements of Art. 7 (1), 2nd sentence touch state sovereignty by implying a transfer of powers to foreign officials, the transposition of this provision into national law needs to be evaluated extremely carefully.

First of all, it must be stated that almost all national rapporteurs provided substantial information about the legal regime which governs the competences of foreign escorts.

The MS have either explicitly transposed Art. 7 (1) into their national legal system by adopting specific provisions for escorting personnel sent by another MS (Cyprus, Czech Republic, Estonia, Finland, France, Greece, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Slovak Republic, and Slovenia), apply general legal rules or principles to escorts (Belgium, Denmark, Germany, Sweden) or use a combination of both (Bulgaria, Romania, Slovenia). In **Hungary**, it is unclear whether the existing rules on the escort procedure during a transit operation are applicable to foreign escorts.

[24] Art. 5 (3) Initiative of the Federal Republic of Germany, O.J. of 9 January 2003, No. C 4, p. 4
[25] Art. 9 (2) Initiative of the Italian Republic, O.J. of 19 September 2003, No. C 223 p. 5

The application of general principles is worth to have a closer look at as it poses particular problems with regard to the above mentioned assumptions:

In **Bulgaria**, the norm of transposition gives the escorts a wider leeway for taking action, saying that "the escorts have the right to assist the organs of the Ministry of the Interior to prevent the escape of the foreigner, a self-inflicted injury, an injury to a third party, or damage to property". This leeway is even wider if the Bulgarian officers are unable to realize their powers. In these cases, the Bulgarian norm of transposition stipulates that "the escorts who accompany the foreigner are obliged to take the necessary action to prevent the circumstances under Para. 2 (as quoted above) from happening (…); in these cases the persons accompanying the foreigner are obliged to comply with the legislation of the Republic of Bulgaria". This transposition raises some concerns as it does neither explicitly transpose the threshold of an "immediate and serious risk" as precondition for taking action nor mention the limitation to reasonable and proportionate action. While the latter limitation is safeguarded by general legal principles, this cannot be said for the former criterion.

The **Romanian** norm of transposition lacks the limitation to reasonable and proportionate action. Again, this principle is a general rule of administrative law and an explicit transposition can therefore be considered as not required by the directive. However, as unreasonable or disproportionate action may lead to sanctions, Romanian law would normally require that the limits for official powers are exhaustively described in the authorising norm to enable the concerned official to realize the exact range of his competences without referring to general principles.

The concerned legislation in **Italy** stipulates that escorts may take only reasonable and proportionate action and have to comply with Italian law. However, it does not transpose the limitation to situations of an immediate and serious risk that the deportee acts as described in Art. 7 (1). One might well ask whether the requested MS is free to widen the limitations of the use of force by escorts from the requesting MS and give them more competences than required by the directive. With regard to Art. 7 (1) subpara. 2 this should be considered possible because this provision would make no sense if the limitations under national law were always the same as those provided for in the directive. Moreover, the directive aims at facilitating transit operations and does therefore not hinder the MS to agree upon closer forms of cooperation. However, the relevant Italian norm is also unclear in its scope as it is hard to determine whether escorts may also act to support domestic law enforcement officers. This might be concluded *a maiore ad minus* as the competence of foreign escorts to act in absence of domestic officers is clearly granted; such a conclusion is however not unambiguous.

MS which did not explicitly transpose Art. 7 (1) as regards the powers of foreign escorts on their territory seem to restrict the escorts' powers to self-defence and do not allow them to support the domestic officers during the transit operation or react in absence of domestic officers. This is explicitly stated by the **German** rapporteur ("completely passive role of the foreign escorts") and the **Swedish** rapporteur ("the Swedish legislation does not give the foreign escort any official power") but must also be assumed for **Belgium, Denmark** and **Slovakia** as no norms exist which would allow the foreign escorts to execute any official powers on Belgian, Danish or Slovak territory. This approach is problematic for two reasons: Firstly, it does not give the foreign escort any official power, contrary to what the directive provides for (see above), and secondly, the foreign escorts are left in a rather unclear legal situation as regards their right to self-defence or defence of others under the relevant criminal code. Therefore, the legal situation in Belgium, Denmark, Germany, Slovakia and Sweden cannot be considered as being in line with the directive even though it is safeguarded that foreign escorts do not execute more official powers than provided for in Art. 7 (1). However, the concept of the directive to allow foreign escorts under certain circumstances to execute limited official powers on the territory of another MS is not transposed. The Danish rapporteur assumes however that foreign escorts have the competences as described in Art. 7

(1). She refers to the instructions which are given to Danish escorts who take part in a transit operation abroad and explains that these instructions apply mutatis mutandis to foreign escorts on Danish airports. This consequence is however doubtful. To our mind such an analogy is not possible as the competences of the escorts towards the third country national must be clearly determined.

The situation is slightly different in **Hungary**. There are rules for the transit procedure through Hungarian airports. It is however unclear whether these rules are applicable to foreign escorts. Consequently, it cannot be said for sure that foreign escorts may execute official powers as stipulated in the directive. The reason for this ambiguous situation seems to be that Hungarian authorities carry out the complete transit operation; a situation which is similar to the one in Germany, see above. Therefore, the need for a more explicit regulation for foreign escorts was not considered necessary.

The norm of transposition in **The Netherlands** fails to transpose Art. 7 (1) exhaustively as it only refers to general principles of self-defence but not to the situation that the escort supports the authorities in the requested MS by taking reasonable and proportionate action under the circumstances described in Art. 7 (1). According to these provisions, foreign escorts must not execute any official powers on Dutch territory.

The norm of transposition in **Poland** allows the foreign escorts to support the domestic law-enforcement officers during the transit operation. It lacks however an authorisation for emergency action in case of the absence of the domestic officers.

In the **Czech Republic**, the competences of foreign escorts are just included in internal administrative circulars. Even though such circulars are respected as a means of transposition in the context of this study, it is very doubtful whether such circulars can originally create a competence to intervene for foreign escorts. In addition, the information on these circulars is only based on a statement by the national authorities. The circulars themselves are, however, classified documents and have not been disclosed to the national rapporteur.

There are no specific norms of transposition in **Austria**, and no information is available about the situation in practice. It is to assume that the situation is equally problematic as in the three other MS without any explicit norms of transposition. The rapporteur however mentions that there are provisions which allow foreign police forces to act on the Austrian territory under certain circumstances. These provisions require, however, that such cross-border activities are part of international law obligations. Although obligations under European law are considered "international law obligations" in the Austrian legal terminology, it is doubtful whether a provision in a directive is a sufficient legal basis, given that directives cannot be applied directly and are binding on the Member States only insofar as they create an obligation to transpose and implement the individual provisions.

For **Spain**, there is again no reliable information about the practice. Some readmission agreements seem to determine the competences of the foreign escorts in line with the directive. There is however no information about internal circulars, especially with regard to transit operations outside the bilateral agreements.

Article 7, Q.11.A-D	
No transposition	Austria, Belgium
Legal Problem	Bulgaria, Hungary, Italy, Romania, Slovakia, Spain
Practical Problem	--

Article 7, Q.12.A-B

No transposition	Austria, Belgium, Denmark, Germany , Slovakia, Sweden
Legal Problem	Bulgaria, Czech Republic, Hungary, Italy, The Netherlands, Poland, Romania, Spain
Practical Problem	--

3.6. Reimbursement, Art. 5 Para. 6 (Q.13)

Q.13. Financial compensation under Art. 5 (6)
Q.13.A. Have rules been adopted or administrative arrangements been concluded with regard to financial compensation?
Q.13.B. If yes, please specify.
Q.13.C. Is reimbursement rather seen as an option or as the general rule?

The reimbursement issue might lead to some conflicts in the implementation of the directive as the MS follow a quite diverse approach. The vast majority of MS transposed Art. 5 (6) of the directive in a more or less direct way and therefore consider reimbursement for any service provided during the transit operation the general rule (Bulgaria, Cyprus, Czech Republic, Estonia, Greece, Hungary, Italy, Lithuania, Luxembourg, Malta, Poland, Portugal, Romania, and Slovakia). However, most of the important transit states, i.e. states with a major hub on their territory did either not transpose Art. 5 (6) (Belgium, Germany, The Netherlands and Sweden) or adopted a norm which stipulates as a general rule that no reimbursement takes place (France). **Latvia** has adopted a regulation which enables the border guard to conclude reimbursement agreements. These agreements are no general and abstract rules for an unlimited number of transit cases but rather ad-hoc arrangements. According to the national rapporteur, no such agreements have yet been concluded although Latvia assisted in several transit cases. This lets reimbursement appear as an option although the concerned provision does not provide for discretional power. Whereas there is no information about the reimbursement practice in **Sweden**, **Belgium** considers reimbursement as a mere option, and **Germany, The Netherlands and France** will ask the requesting MS only in exceptional cases. Vice versa, these MS will presumably not accept to reimburse a requested MS. Germany claims that it requires a strict concept of reciprocity and will therefore not waive the costs for transit assistance if the requesting MS uses to ask Germany for reimbursement. This concept of abstaining from reimbursement is clearly not the one of the directive. However, it cannot be considered an infringement if a MS does not make use of its claim to reimbursement but waives the costs. The requesting MS must however not refuse to reimburse the requested MS if the latter asks for it. Since reimbursement is not categorically excluded by the legislation of any MS, an infringement of the directive cannot be assessed. This concept of non-reimbursement may become the prevailing one throughout the Union as it is pursued by some of the major transit states. An indication for such a changing attitude towards reimbursement is the statement of **Slovenia**, which, although it has transposed Art. 5 (6) almost literally, considers reimbursement only as an option and does usually not ask co-operating countries for reimbursement. From the perspective of the requesting MS, **Luxembourg** has made a similar observation and states that it has never been asked for reimbursement by another MS. It is therefore very unlikely that Luxembourg will ask for reimbursement, should it ever be asked to assist in a transit operation.

A special situation exists in **Austria** where a norm exists which provides for bilateral agreements to govern reimbursement issues. However, such agreements do not exist with all MS but only with 16. All of these agreements include rules on reimbursement which leads to the assumption that reimbursement is considered the general rule in Austria.

Finland has not transposed Art. 5 (6) but adopted a norm which refers to the directive in general and makes it directly applicable. As the obligation to reimburse does not require any specific procedural rules, this is considered sufficient transposition. The **Bulgarian** norm of transposition is applicable only if Bulgaria is the requested MS, however, in practice Bulgaria accepts its own duty to reimburse any other MS for transit costs.

In **Hungary**, the method of calculation of assistance costs is not transparent, which might lead to problems in practice. A similar problem is reported by the **Latvian** rapporteur.

Denmark has not adopted any general provisions on reimbursement. There are, however, rules on reimbursement in bilateral agreements with four MS, which provide for reimbursement as the general rule. As these – pre-existing – agreements do not cover all MS and are not based on a more general provision in the legislation which provides for such agreements, Denmark has not transposed Art. 5 (6) in relation with most MS. This does, however, not exclude that there is a practice of reimbursement in individual cases.

Spain has concluded bilateral readmission agreements which include inter alia rules on reimbursement for transit assistance measures. It may therefore be assumed that reimbursement is considered the general rule. There is however no reliable information about the practice under or outside these agreements.

Article 5 (6), Q.13.A-C	
No transposition	Belgium, Germany, The Netherlands, Sweden
Legal Problem	Austria, Bulgaria, Denmark, Spain
Practical Problem	Hungary, Latvia

4. Impact of the Directive

4.1. Statistical Information (Q.14)

Q.14. Statistical information on the practical application of the Directive

Q.14.A. Did your Member State ask another Member State to assist in cases of transit since the directive has been adopted?
Q.14.B. If yes, how often did this happen (if numbers available)?
Q.14.C. Did your Member State assist in cases of transit since the directive has been adopted?
Q.14.D. If yes, how often did this happen (if numbers available)?

The information on the implementation of the directive in practice is unfortunately fragmentary, be it because numbers of transit cases are not documented in some MS, be it because national authorities did not disclose the figures. No information at all is available about Bulgaria, France, The Netherlands, Portugal and Romania. Some MS confirmed that they were acting as requesting and requested MS but were not able to present any exact numbers (Czech Republic: more requests received than sent, Denmark: very few cases, Finland: appr. 30 requests sent and 30 received per year, Greece: appr. 50 requests sent in 2006 but none received[26], Italy: no numbers available, Slovenia: very few cases since the adoption of norms of transposition, Spain: no numbers available, Sweden: appr. 1'150 requests sent, no information about received requests). Hungary is acting only as requested MS in a very few cases without being able to present exact numbers. The same is true for Latvia with estimated 15 received requests in 2006, whereas Luxembourg did not receive any requests but sent a few.

Some MS did neither send requests nor receive any (Cyprus, Lithuania, Malta)

Among the remaining MS, which provided detailed information about transit activities, Germany is by far the most active state, which assisted in 3'542 transit cases in 2006 and sent 2'785 requests for assistance in the same year. It must however be assumed that the numbers in France and The Netherlands are similarly high as both countries have major hubs on their territory (Paris – Charles de Gaulle and Amsterdam – Schiphol). This assumption is corroborated by the fact that Belgium reports a relatively high number of received requests (1'551 in 2006, which lead to 660 successful transit operations through Belgian airports, no exact numbers about sent requests). The available numbers in the other MS are considerably lower (Austria: 628 requests sent in 2006, 50 cases of assistance; Estonia: 18 requests sent in 2006, no cases of assistance; Luxembourg: 224 requests sent between January 1, 2006 and August 22, 2007, no cases of assistance; Poland: 51 requests sent in 2006, 239 cases of assistance; Slovakia: 10 requests sent in the first half of 2007, no cases of assistance).

	A	BE	BG	CY	CZ	DK	EE	FIN	F	GE	GR	H	IT	LV	LT	LU	MT	NL	PL	PT	RO	SK	SV	SP	SE
Sent	+	+	nia	-	+	+	+	+	nia	+	+	-	+	-	-	+	-	nia	+	nia	nia	+	+	+	+
Assistance provided	+	+	nia	-	+	+	-	+	nia	+	-	+	+	+	-	-	-	nia	+	nia	nia	-	+	+	+

\+ = reported cases
\- = no reported cases
nia = no information available

4.2. Tendency to Copy the Provisions of the Directive (Q.15)

[26] National rapporteur mentions that the numbers provided by the competent ministry might be not very reliable.

Q.15.A. Mention if there is a general tendency to just copy the provisions of the directive into national legislation without redrafting or adapting them to national circumstances.

Q.15.B. If yes, please indicate if this general tendency may or not create problems (for example difficulties of implementation, risk that a provision remains unapplied).

Q.15.C. If yes, give some examples:

Q.15.D. If only some provisions of the directive have been copied and if this may create any problem, please quote them and explain the problem.

In 16 MS the provisions of the directive have been copied, among them all MS which acceded to the EU in 2004 or later (Bulgaria, Cyprus, Czech Republic, Estonia, France, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Romania, Slovakia, and Slovenia). However, only four MS indicate that this might create problems (**Estonia, Hungary, Luxembourg, and Romania**). The Estonian rapporteur raises the concern that some provisions might remain unapplied as the implementation is made difficult by the legal technique of transposition. The Hungarian and the Luxembourgian rapporteurs support this view by saying that some provisions in the "national copy" of the directive lack precision and are therefore hard to apply. In Romania the rules on escorts are ambiguous as the national norms of transposition might refer to both Romanian escorts sent abroad and foreign escorts coming to Romania.

	A	BE	BG	CY	CZ	DK	EE	FIN	F	GE	GR	H	IT	LV	LT	LU	MT	NL	PL	PT	RO	SK	SV	SE
Copy	-	-	+	+	+	-	+	-	+	-	+	+	+	+	+	+	+	-	+	-	+	+	+	-
Problems	na	na	-	-	-	na	+	na	-	na	-	+	-	-	-	+	-	na	-	na	+	-	-	na

\+ = Yes
\- = No
na = not applicable

4.3. Problems with the Translation (Q.17)

Q.17. Specify if there are or not problems with the translation of the text of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated.

According to the national reports, the translation of the directive does not lead to major difficulties. Only the reports from **Estonia, Germany, Italy and The Netherlands** raise minor concerns. Especially the Estonian translation contains some inaccuracies, which do, however, not lead to major problems in practice. The same applies to the only inaccuracy mentioned by the German rapporteur.

The Italian translation of Art. 4(5) of the directive is not clear: it seems that contact points have to be named for each transit operation on a case by case basis. The Italian translation of Art. 7 (1) is inaccurate and leads to a narrower understanding of the escorts' competences to support the local law enforcement officers. This problematic translation is reflected in the norm of transposition which is ambiguous as well.

The Dutch translation of Art. 3 (4) is incomplete as it does not include the obligation to inform the requesting MS about a new date for the transit operation to take place but stipulates only the obligation to fix such a date. This will, presumably, not lead to major difficulties in practice as it is self-evident that such a new date must be communicated to the requesting MS if the provision should make any sense.

Even though it is not mentioned in one of the national reports, it might be worth to notice that the meaning of Art. 7 (1) subpara. 1 of the directive slightly differs in some language versions. Whereas the German and also the English versions give the escorts the power to intervene only if there is a risk that the third-country national tries to escape and thereby injures himself, a third party, or causes damage to property, the Danish, Dutch, French, Italian, Spanish and Portuguese versions follow a wider approach. These versions allow the escorts to intervene to prevent the TCN from escaping, injuring himself or others, or damaging property. It might be interesting to scrutinize how the provision is translated into the remaining languages, which the author of this report is unable to read.

4.4. Jurisprudence (Q.16)

Q.16: Quote *interesting* decisions of jurisprudence related to the directive, its transposition or implementation

As the directive does not provide for any individual rights, there is no jurisprudence in any MS.

4.5. Other Interesting Elements (Q.18, Q.19)

Q.18. Following your personal point of view, mention from the point of view of the concerned Member States any interesting or innovative practice in your Member State

Q.19. Please add here any other interesting element in your Member State which you did not had the occasion to mention in your previous answers

It is hard to assess to what extent the directive is implemented in practice. In particular for smaller MS, the practical impacts of the directive are marginal, as there are hardly any transit cases. Moreover, NGOs are not concerned with the implementation of this directive as the transit operation usually lasts only a very short period of time. During the transit, NGOs do not establish any contact with the third-country national and are therefore unable to report about the practice. It is therefore worth to mention that **Hungary** has established the office of an ombudsman who pays particular attention to the modalities of airport transit in recent times.

Belgium has established special rules on removals and repatriations, which had been elaborated by an expert commission and which include i.a. a ban on metal handcuffs and tranquilizers. These rules apply for transit operations through a Belgian airport from the moment the deportee disembarks the plane. They are, however, not legally binding but only recommendations. Therefore, violations are not sanctioned but may support a claim for damages.

The norm transposing Art. 5 (2) of the directive in **France** does not provide for mutual consultations as regards the provision of assistance by French authorities but allows the minister of the interior to determine these measures autonomously. Consequently, the exception with regard to point b) (Emergency medical treatment) is not transposed and point b) does not only provide for emergency medical treatment but for medical treatment in general. These divergent provisions lead to an infringement of Art. 5 (2) of the directive.

The main provision which is aimed at transposing the directive in **Germany** has a wider scope than the directive as it does not only cover removals by air but also transit operations overland.

5. Member States not bound by the Directive (Ireland and the UK)

Ireland and the UK did not make use of their possibility to opt in. Hence, they are not bound by the directive. There is nevertheless a practice of transit operations from and via these MS. It proved however difficult to gather reliable information from national authorities about this practice and its legal basis. Especially the report about the situation the UK shows therefore some gaps with regard to procedural details, which seem to be determined case by case on an ad-hoc basis.

As regards Ireland, the information issue is a critical one, too, although the Garda National Immigration Bureau has made clear that Ireland actively participates in transit operations and provided some information on this practice.

5.1. National Legal Basis and Competent Authorities (Q.1 – Q.4)

There are no norms of transposition in a technical sense in the UK and Ireland. When preparing a transit operation, Irish authorities apply the directive directly. However, as Ireland has only acted as requesting state yet, not all the provisions are actually applied in practice.

The rapporteur for the UK emphasizes even stronger that the UK decides in transit matters without being bound by the directive. Cooperation in transit matters seems to be considered exclusively as a matter of good practices and long-lasting bilateral cooperation.

Transit operations are implemented by the Garda National Immigration Bureau (GNIB) in Ireland, which is an independent body responsible for the policing aspects of immigration policy. In the UK, the Borders and Immigration Agency (BIA), which is part of the Home Office, is responsible for the organisation of transit operations.

5.2. Analysis of the content of corresponding norms (Q.5 – Q.13)

As both countries are not bound by the directive, it is impossible to call any legal provisions within the scope of the directive norms of transposition. There are corresponding norms though which reflect the requirements of the directive. In absence of such norms, an evaluation of the actual practice is done to the extent possible.

5.2.1. Preconditions for Requests and Denials, Art. 3 Para. 1-3 (Q.5, Q.6)

Decisions are taken on an ad-hoc basis without any set rules in Ireland and the UK. As a matter of administrative practice, **Ireland** does not ask another MS for assisting a transit operation if direct flights are available. Furthermore, Irish authorities use the directive as guideline for the administrative cooperation with other MS. The issue of refusal has no practical relevance as Ireland has not yet been asked to assist a transit operation through an Irish airport.

In absence of any legal rules in the **UK** there is no information available about the criteria for applications used in practice either. It is to assume that decisions are taken on an ad-hoc basis and that criteria are similar to those used in the directive, given that the "partner state" in most transit operations will be bound by the directive and apply its criteria in relation with the UK as well. It is however interesting that the UK requires that the deportees are escorted when it comes to a decision about an application from another MS. The UK also requests issues such as deportee violence or medical concerns. A risk for public order and safety is to be avoided.

5.2.2. Procedural Aspects of Handling Requests for Assistance, Art. 3 Para. 4-6, Art. 4 (Q.6.D, Q.7, Q.8)

As **Ireland** uses the form provided in the annex to the directive, it might be regarded as safeguarded that all the necessary and required information is communicated to the other MS, although there are no specific administrative rules to govern this issue. The time limits are respected in administrative practice. A central authority and contact points have been appointed in Ireland and the relevant information was communicated to the Migration and Expulsion Committee.

There is however no such information about the UK.

5.2.3. Notification Procedure Through Bilateral and Multilateral Agreements, Art. 4 Para. 2, Subpara. 3-4 (Q.9)

Neither Ireland nor the UK has concluded any international agreement in accordance with Art. 4 Para. 2, Subpara. 3-4.

5.2.4. Readmission Obligations, Art. 6 (Q.10)

In administrative practice, **Ireland** complies with the requirements of the directive to readmit third-country nationals if a transit operation failed. Due to lacking practice, no such statement can be made about assistance measures towards requesting MS. It is to assume though that Ireland would provide the necessary assistance.

There is no information available about the situation in the **UK.**

5.2.5. Rules for Escorts, Art. 7 (Q.11, Q.12)

Ireland has adopted administrative instructions which meet the requirements of the directive for Irish escorts in transit operations. As these instructions are not published, this information is based on statements given by the Garda National Immigration Bureau.

There are, however, no explicit rules on the competences of foreign escorts. Thus, they do not have more executive powers than any ordinary citizen in Ireland and may act only on the directions of Irish police officers.

The situation in the **UK** is difficult to assess. When the UK is the requesting state, a particularity lies in the fact that private contractors are frequently commissioned with escorting tasks. According to the Immigration and Asylum Act, all escorts need a special certification which defines their powers and duties during a transit operation. The exact wording of these certificates is however not available. An evaluation of its compatibility with the directive is therefore not possible.

The UK seems to follow another policy than all other Member States as for the escorting on domestic airports: Whereas the usual policy throughout the Union provides for domestic law-enforcement officers to escort the deportees during the sojourn on the airport concerned, it is the foreign escorts which accompany the deportee and are responsible for the operation. UK removal guidelines apply to foreign escorts which operate on the territory of the UK during a transit operation. They define inter alia which mechanical restraints are permitted during a removal. Their exact wording has however not been shared with the rapporteur. Consequently, it is impossible to tell whether these guidelines are in line with the directive in all details.

5.2.6. Reimbursement, Art. 5 Para. 6 (Q.13)

There are no set rules on reimbursement in Ireland and the UK. **Ireland** reports that it has never been asked for reimbursement by another MS. It is therefore unlikely that Ireland would ever ask any other MS for reimbursement, should it ever assist in a future transit operation.

The practice seems to be different in the **UK**. According to a statement by the Home Office, costs of transit operations are shared between the involved countries. It is however not known how this cost-sharing works in practice and who defines the exact cost quota.

5.3. Impact of the Directive and Other Interesting Elements

Ireland has acted as a requesting MS in 162 cases in 2006 but has not received any requests. This might change in the foreseeable future with the enlargement of Dublin airport.

The **UK** is frequently used as a transit state. There are no statistics about the exact numbers of transit operations which are carried mainly via the airports of London Heathrow and London Gatwick. The Home Office estimates that it receives about three or four requests by other MS in an average week. This number is relatively low compared with other MS like Germany or Belgium, especially when considering the high capacity of British airports.

As **Ireland** is not formally bound by the directive and thus has not transposed it, there are obviously no direct impacts on national legislation. However the fact that Ireland has asked other MS for assistance in transit operations in a considerable number of cases, the directive influences the administrative cooperation with these MS. Irish authorities therefore rely on the directive although they are not legally bound by it. It is remarkable that this direct application of an instrument which was aimed to be transposed into national law works without major difficulties. Irish authorities explicitly say that they do not see any practical need for implementation measures but consider the directive as a sufficient guideline for administrative practice.

The information about the practice in the **UK** is too scarce to allow any conclusion about the factual impact of the directive on the domestic implementation of transit operations.