



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 30 June 2000 (17.07)  
(OR. fr)**

**9892/00**

**LIMITE**

**DROIPEN 23  
MIGR 50**

**COVER NOTE**

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from : Mr Pierre VIMONT, Ambassador , Permanent Representation of France  
date of receipt : 19 June 2000  
to : Mr Javier Solana, Secretary-General of the Council of the European Union

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Subject : Communication from the French Republic  
– Initiative of the French Republic with a view to the adoption of a framework  
Decision on strengthening the penal framework for preventing the facilitation  
of unauthorised entry and residence

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Sir,

Pursuant to Article 34(2) of the Treaty on European Union, I enclose a proposal from the Government of the French Republic for the adoption by the Council of a framework Decision on strengthening the penal framework for preventing the facilitation of unauthorised entry and residence.<sup>1</sup>

I should be most obliged if you would instruct that it be published in the Official Journal, pursuant to Article 17 of the Council's Rules of Procedure, and forwarded to the European Parliament for its Opinion.

(Complimentary close)

Pierre VIMONT

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<sup>1</sup> The explanatory note on the initiative is set out in ADD 1 to this document.

## **FRAMEWORK DECISION**

### **ON STRENGTHENING THE PENAL FRAMEWORK FOR PREVENTING THE FACILITATION OF UNAUTHORISED ENTRY AND RESIDENCE**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 29, 31(e) and 34(2)(b) thereof,

Having regard to the initiative submitted by the French Republic,

Having regard to the Opinion of the European Parliament,

Whereas:

1. The Treaty on European Union lays down that one of the objectives entrusted to the Union is to combat trafficking in human beings by approximating, as far as necessary, rules on criminal matters in the Member States. The priority accorded to such action was stressed at the TAMPERE European Council.
2. In this framework, measures should be taken to combat the assistance given to illegal immigration, whether in connection with unauthorised crossing of the border in the strict sense or for the purpose of sustaining networks that exploit human beings.
3. To that end it is essential to approximate existing legal frameworks in relation to the definition of offences, penalties laid down, exemption from liability or aggravating circumstances.
4. It is likewise essential not to confine possible actions to natural persons only and to provide for measures relating to the liability of legal persons.

5. This Decision will supplement recommendations such as that of 22 December 1995 on harmonising means of combating illegal immigration and illegal employment and improving the relevant means of control, that of 27 September 1996 on combating the illegal employment of third-country nationals, as well as the Joint Action of 24 February 1997 to combat trafficking in human beings and sexual exploitation of children, without prejudice of course to measures which have been or will be taken in the framework of Title VI of the Treaty establishing the European Community,

HAS ADOPTED THIS FRAMEWORK DECISION:

**Article 1**

(General offence)

Each Member State shall take the measures necessary to ensure that the act of facilitating intentionally, by providing direct or indirect assistance, the unauthorised entry, movement or residence in its territory of an alien who is not a national of a Member State of the European Union is regarded as an offence.

**Article 2**

(Participation, instigation and attempt)

Each Member State shall take the measures necessary to ensure that participation in, instigation of or an attempt to commit the offence referred to in Article 1 are punishable.

### **Article 3**

(Exemption from liability)

Each Member State may exempt from criminal prosecution for the offence referred to in Article 1 persons whose link to the alien who has benefited from the assistance referred to in these same Articles is as follows:

- a relative in the ascending or descending line, brothers and sisters and their spouses;
- his spouse or the person who is known to cohabit with him.

### **Article 4**

(Penalties)

Each Member State shall take the measures necessary to ensure that the offences referred to in Articles 1 and 2 are punishable by effective, proportionate and dissuasive criminal penalties including, for offences committed in the circumstances laid down in Article 5, custodial sentences which may entail extradition and, where appropriate, other penalties such as:

- confiscation of the means of transport used to commit the offence;
- a prohibition on practising directly or through an intermediary the occupational activity in the exercise of which the offence was committed;
- a deportation order if the convicted person is not a national of a Member State of the European Union.

## **Article 5**

(Aggravating circumstances)

Each Member State shall take the measures necessary to ensure that the appropriate penalties laid down in Article 4 are increased if one of the conditions listed below is fulfilled:

- the offence has been committed by a person belonging to a criminal organisation within the meaning of the Joint Action of 21 December 1998 on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union;
- the purpose of the offence is trafficking in human beings and sexual exploitation of children as defined by the Joint Action of 24 February 1997 concerning action to combat trafficking in human beings and sexual exploitation of children;
- the purpose of the offence is to allow the alien to work in contravention of the rules governing the employment of aliens in the Member State in question.

## **Article 6**

(Liability of legal persons)

1. Each Member State shall take the measures necessary to ensure that legal persons can be held liable for the offences referred to in Articles 1 and 2 committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:
  - a power of representation of the legal person, or
  - authority to take decisions on behalf of the legal person, or

– authority to exercise control within the legal person,

as well as for involvement as accessories or instigators in the commission or attempted commission of such offences.

2. Apart from the cases already provided for in paragraph 1, each Member State shall take the measures necessary to ensure that a legal person can be held liable where the lack of supervision or control by a person referred to in paragraph 1 has made possible the commission of an offence referred to in Articles 1 and 2 for the benefit of that legal person by a person under its authority.
3. Liability of a legal person under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are involved as perpetrators, instigators or accessories in the offences referred to in Articles 1 and 2.

### Article 7

(Penalties for legal persons)

1. Each Member State shall take the measures necessary to ensure that a legal person held liable pursuant to Article 6(1) is punishable by effective, proportionate and dissuasive penalties, which shall include criminal or non-criminal fines and may include other penalties such as:
  - (a) exclusion from entitlement to public benefits or aid;
  - (b) temporary or permanent disqualification from the practice of commercial activities;
  - (c) placing under judicial supervision;
  - (d) a judicial winding-up order.

2. Each Member State shall take the measures necessary to ensure that a legal person held liable pursuant to Article 6(2) is punishable by effective, proportionate and dissuasive penalties or measures.

## **Article 8**

### (Jurisdiction)

1. Each Member State shall take the measures necessary to establish its jurisdiction with regard to the offence referred to in Article 1 where the offence has been committed:
  - (a) in whole or in part within its territory, or
  - (b) by one of its nationals.
2. Any Member State may limit its jurisdiction to the offence referred to in paragraph 1(a). A Member State which does not apply this limitation may nevertheless decide that the offence referred to in paragraph 1(b) is within its jurisdiction only under specific circumstances or conditions.
3. Each Member State shall inform the Council Secretariat if it decides to apply paragraph 2, where appropriate with an indication of the specific circumstances or conditions in which the decision applies.

## Article 9

(Entry into force)

This framework Decision shall enter into force on the day of its publication in the Official Journal of the European Communities.

Done at

For the Council  
The President

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