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REPORT

1. on the initiative of the French Republic with a view to the adoption of a Council Directive defining the facilitation of unauthorised entry, movement and residence (10675/2000 – C5-0427/2000 – 2000/0821(CNS))
2. on the initiative of the French Republic with a view to the adoption of a Council Framework Decision on the strengthening of the penal framework to prevent the facilitation of unauthorised entry and residence (10676/2000 – C5-0426/2000 – 2000/0820(CNS))

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

Rapporteur: Ozan Ceyhun

Symbols for procedures

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

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

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PROCEDURAL PAGE

By letter of 8 August 2000 the Council consulted Parliament, pursuant to Article 67 of the EC Treaty, on the initiative of the French Republic with a view to the adoption of a Council Directive defining the facilitation of unauthorised entry, movement and residence and, pursuant to Article 39(3) of the EU Treaty, on the initiative of the French Republic with a view to the adoption of a Council Framework Decision on the strengthening of the penal framework to prevent the facilitation of unauthorised entry and residence (10675/2000 - 2000/0821(CNS) and 10676/2000 - 2000/0820(CNS)).

At the sitting of 4 September 2000 the President of Parliament announced that she had referred these initiatives to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible (C5-0427/2000 - C5-0426/2000).

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs had appointed Ozan Ceyhun rapporteur at its meeting of 29 August 2000.

It considered the initiative of the French Republic and the draft report at its meetings of 18/19 September, 10-12 October and 23/24 October 2000.

At the last meeting it adopted the first draft legislative resolution by 30 votes to 4, with 1 abstention, and the second draft legislative resolution by 19 votes to 14, with 2 abstentions.

The following were present for the vote: Graham R. Watson (chairman), Robert J.E. Evans and Bernd Posselt (vice-chairmen), Ozan Ceyhun (rapporteur), Alima Boumediene-Thiery, Rocco Buttiglione, Marco Cappato, Michael Cashman, Charlotte Cederschiöld, Carmen Cerdeira Morterero (for Adeline Hazan), Carlos Coelho, Thierry Cornillet, Gérard M.J. Deprez, Giorgos Dimitrakopoulos (for Mary Elizabeth Banotti), Olivier Duhamel (for Gerhard Schmid), Pernille Frahm, Evelyne Gebhardt (for Sérgio Sousa Pinto), Bertel Haarder (for Jan-Kees Wiebenga), Jorge Salvador Hernández Mollar, Anna Karamanou, Margot Keßler, Timothy Kirkhope, Ewa Klamt, Alain Krivine (for Giuseppe Di Lello Finuoli), Baroness Sarah Ludford, Lucio Manisco (for Fodé Sylla), Arie M. Oostlander (for Daniel J. Hannan), Elena Ornella Paciotti, Hubert Pirker, Martin Schulz, Patsy Sørensen, Joke Swiebel, Anna Terrón i Cusí, Maurizio Turco (for Frank Vanhecke) and Gianni Vattimo.

The report was tabled on 25 October 2000.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

LEGISLATIVE PROPOSAL

1. Initiative of the French Republic with a view to the adoption of a Council Directive defining the facilitation of unauthorised entry, movement and residence (10675/2000 – C5-0427/2000 – 2000/0821(CNS))

The initiative is amended as follows:

Text proposed by the French Republic¹

Amendments by Parliament

(Amendment 1)

Recital 2

(2) The Treaty establishing the European Community *provides* for the gradual creation of an area of freedom, security and justice, which *means*, inter alia, *that* illegal immigration *must be combated*.

(2) The Treaty establishing the European Community *and the Treaty on European Union provide* for the gradual creation of an area of freedom, security and justice, which *includes*, inter alia, *the implementation of a common immigration and asylum policy covering family reunion, the right of residence and an integration policy, as well as the combating of* illegal immigration.

Justification:

The Union can only successfully control illegal immigration within the framework of a comprehensive immigration policy. Without a common immigration and asylum policy which takes account not only of the persons concerned but also of the socio-economic interests of the Member States, any measure will be doomed to failure.

(Amendment 2)

Recital 2a (new)

(2a) In this connection it is particularly important to lay the foundations of a common asylum and immigration policy, to settle a common asylum procedure and, in addition, to improve the legal status of refugees.

¹ OJ C 253, 4.9.2000, p.1.

Justification:

Refugees and persons refused political asylum are an important group of ‘illegal immigrants’ in the Union. For this reason a common asylum policy covering everything from asylum procedure to social security benefits is particularly important.

(Amendment 3)
Recital 2b (new)

(2b) It is important to strengthen institutional cooperation between the Member States so as not to hamper efforts to combat trafficking in human beings and the sexual exploitation of children as the result of differences in jurisdiction and the large number of authorities involved.

Justification:

A large number of authorities in the Member States deal with the issue of illegal immigration. Even at national level problems arise in the treatment of refugees and illegal immigrants. European cooperation should be coordinated at institutional level.

(Amendment 4)
Recital 2c (new)

(2c) It is necessary to gain support for the common measures from the countries applying for accession, and the Union’s accession strategy should be adjusted accordingly.

Justification:

The candidates for accession are faced with the same problems as the Union Member States. For this reason it is advisable to include cooperation in the accession strategy at this time.

(Amendment 5)
Recital 2d (new)

(2d) Efforts must be made to ensure that the applicant countries implement the common measures and the Union's strategy must be adapted accordingly.

Justification:

This is merely a change to the wording which is intended to make the text more forceful.

(Amendment 6)
Recital 3

(3) Consequently measures should be taken to combat the aiding of 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) Consequently measures should be taken to combat the aiding of illegal immigration, ***for purposes of direct and indirect gain***, whether in connection with unauthorised crossing of the border in the strict sense or for the purpose of sustaining networks that exploit human beings.

Justification:

It is essential to distinguish between disinterested humanitarian aiding of illegal immigration and the aiding of illegal immigration by members of criminal networks for purposes of gain as, moreover, laid down in Article 27 of the Schengen Convention.

It must be made clear that the beneficiaries of illegal immigration can be both direct, active ones (such as those who organise and take part in the transport of illegal immigrants) and passive, indirect ones, such as those who profit financially from the work of illegal immigrants.

(Amendment 7)
Recital 6

(6) These instruments will thus 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

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on combating the illegal employment of third-country nationals, as well as Joint Action 97/154/JHA of 24 February 1997 to combat trafficking in human beings and sexual exploitation of children without prejudice to measures which have been, or will be, taken in the framework of Title IV of the Treaty establishing the European Community.

on combating the illegal employment of third-country nationals, as well as Joint Action 97/154/JHA of 24 February 1997 to combat trafficking in human beings and sexual exploitation of children without prejudice to measures which have been, or will be, taken in the framework of Title IV of the Treaty establishing the European Community. ***Under no circumstances may these instruments affect the rights and guarantees which protect aliens who seek refuge under the 1951 UN Convention on Refugees.***

Justification:

The means and ends of this measure must not undermine the obligations accepted by the countries signatory to the 1951 Geneva Convention as regards asylum-seekers entering an EU Member State. The purpose of such measures must never be to dissuade asylum-seekers from exercising their legitimate right to seek the protection of a signatory state, since this would constitute an infringement of the 1951 Geneva Convention.

(Amendment 8)

Article 1

General offence

Each Member State shall take the measures necessary to ensure that the act of facilitating intentionally, by aiding directly or indirectly, 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.

Each Member State shall take the measures necessary to ensure that the act of facilitating intentionally ***for purposes of direct or indirect gain***, by aiding directly or indirectly, 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.

Justification:

This article does not reflect very precisely the legislation required of the Member States. The combating of trafficking in illegal immigrants for purposes of gain must not be confused with humanitarian aid to enable people to flee their country. For this reason it is important to include in the definition the distinguishing criterion of 'gain' usually contained in the laws of the Member States.

It should also be made clear that such gain should be either direct or indirect, depending on the nature of the activities, direct financial gain being that derived from the direct organisation of and participation in the offences in question, whilst indirect financial gain is that derived from

the work done by immigrants.

(Amendment 9)

Article 2

Participation, instigation and attempt

Each Member State shall take the measures necessary to ensure that participation, as an accomplice or instigator, in the offence referred to in Article 1 shall be considered to be an offence, as shall also the attempt to commit such an offence.

Each Member State shall take the measures necessary to ensure that participation, as an accomplice or instigator, in the offence referred to in Article 1 shall be considered to be an offence, as shall also the attempt to commit such an offence. ***Aliens whose illegal entry is assisted by this offence shall not be prosecuted as parties to that offence.***

Justification:

A clear distinction should be made between unauthorised entry and the act of aiding unauthorised entry. Many illegal immigrants are refugees who are granted political asylum in the Union after entering it. For this reason they should be immune from prosecution in connection with trafficking in illegal immigrants. This might make it easier for such persons to give evidence as witnesses, such evidence being indispensable in order effectively to combat trafficking in illegal immigrants.

(Amendment 10)

Article 2a (new)

Responsibility of the employer

Each Member State shall adopt the measures necessary to ensure that effective, proportionate and dissuasive administrative and/or criminal penalties are imposed on any employer who employs illegal workers and any person who, for financial gain, facilitates illegal employment or illegal trafficking in labour.

Justification:

Pursuant to the Council's recommendations of 22 December 1995 and 27 September 1996 on combating the illegal employment of nationals from third countries, this proposed new article encourages the Member States to punish employers who employ illegal labour.

(Amendment 11)

Article 4

Exemption, second paragraph (new)

Associations, organisations or other legal persons acting for humanitarian reasons shall be immune from criminal prosecution.

Justification:

This amendment is based on the concern to exempt from any criminal prosecution both the normal aid given by close relatives of the immigrant and the aid given by humanitarian organisations.

(Amendment 12)

Article 4, second subparagraph (new)

Legally recognised organisations and associations whose aims include defending, protecting and promoting aliens who are not nationals of an EU Member State shall not be held liable in respect of the aid referred to in Articles 1 and 2 when they act out of humanitarian reasons.

Justification:

The purpose of this amendment is to exempt from any kind of punishment both the aid naturally provided by the immigrant's relatives and aid offered by humanitarian organisations. Since there is exemption from liability there is no need for a penalty procedure, and this is more in accordance with the purpose which this article is intended to serve.

(Amendment 13)

Article 5a (new)

The Member States shall make compensatory payments to the EU countries and regions which, on account of their geographical situation and nature, are

*particularly affected by illegal immigration.
The Commission shall create a budget
heading for this purpose and shall devise a
procedure for compensatory payments.*

Justification:

On account of their geographical nature (e.g. a long coastline), some of the Member States are more seriously affected by illegal immigration and they therefore shoulder much of the burden imposed by the EU's common policy. Compensatory payments will strengthen EU solidarity in this area too.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the initiative of the French Republic with a view to the adoption of a Council Directive defining the facilitation of unauthorised entry, movement and residence (10675/2000 – C5-0427/2000 – 2000/0821(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the initiative of the French Republic (10675/2000¹),
 - having regard to Article 61(a) and Article 63(3)(b) of the EC Treaty,
 - having been consulted by the Council pursuant to Article 67 of the EC Treaty (C5-0427/2000),
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0315/2000),
1. Approves the initiative by the French Republic as amended;
 2. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;
 3. Asks to be consulted again if the Council intends to amend the initiative of the French Republic substantially;
 4. Instructs its President to forward its position to the Council and Commission and to the Government of the French Republic.

¹ OJ C 253, 4.9.2000, p. 1.

LEGISLATIVE PROPOSAL

2. Initiative of the French Republic with a view to the adoption of a Council Framework Decision on the strengthening of the penal framework to prevent the facilitation of unauthorised entry and residence (10676/2000 – C5-0426/2000 – 2000/0820(CNS))

The initiative is amended as follows:

Text proposed by the French Republic¹

Amendments by Parliament

(Amendment 1) Recital 5

(5) This Framework Decision thus supplements 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 Joint Action 97/154/JHA of 24 February 1997 to combat trafficking in human beings and sexual exploitation of children, without prejudice to measures which have been, or will be, taken in the framework of Title IV of the Treaty establishing the European Community.

(5) This Framework Decision thus supplements 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 Joint Action 97/154/JHA of 24 February 1997 to combat trafficking in human beings and sexual exploitation of children, without prejudice to measures which have been, or will be, taken in the framework of Title IV of the Treaty establishing the European Community. ***It shall take due account of the obligations accepted by the EU Member States which have signed the 1951 Convention on the Protection of Refugees. Under no circumstances may it infringe the rights and guarantees granted to asylum-seekers who decide to seek the protection of an EU Member State.***

Justification:

It is immensely important that the Framework Decision should not in any way affect the provision of asylum and refuge since, in all the EU Member States, such provision represents one of the basic means of protecting the rights of persons fleeing their country for one of the reasons specified in the 1951 Geneva Convention.

¹ OJ C 253, 4.9.2000, p. 6.

(Amendment 2)
Article 1, first paragraph

Penalties

Each Member State shall take the measures necessary to ensure that the offences defined by Directive 2000/.../EC are punishable by effective, proportionate and dissuasive criminal penalties including, for offences committed in the circumstances laid down in Article 2, custodial sentences which may entail extradition and, where appropriate, **other** penalties such as:

Penalties

Each Member State shall take the measures necessary to ensure that the offences defined by Directive 2000/.../EC are punishable by effective, proportionate and dissuasive criminal penalties including, for offences committed in the circumstances laid down in Article 2, custodial sentences which may entail extradition and, where appropriate, **additional** penalties such as:

Justification:

The imposition of a custodial sentence does not imply that any subsequent penalties should be exclusive; they may be additional.

(Amendment 3)
Article 1, first indent

- confiscation of the means of transport used to commit the offence,

- confiscation of the means of transport used to commit the **punished** offence,

Justification:

If an action is not regarded prior to commission as an offence and is not punished, no additional penalty can be attached to it.

(Amendment 4)
Article 1, second indent

- a **prohibition on** practising directly or through an intermediary the occupational activity in the exercise of which the offence was committed,

- a **temporary disqualification from** practising directly or through an intermediary the **regulated** occupational activity in the exercise of which the **punished** offence was committed,

Justification:

Penalties must be proportionate and balanced and the punishment must be made to fit the crime.

(Amendment 5)

Article 1, second paragraph (new)

Each Member State shall adopt the measures necessary to ensure that effective, proportionate and dissuasive administrative or criminal penalties are imposed on any employer who employs illegal workers and any person who, for financial gain, facilitates illegal employment or illegal trafficking in labour.

Justification:

Pursuant to the Council's recommendations of 22 December 1995 and 27 September 1996 on combating the illegal employment of nationals from third countries, this proposed new article encourages the Member States to punish employers who employ illegal labour.

(Amendment 6)

Article 3(3a) (new)

The legal persons referred to in this Article, and also their agents, representatives and employees, shall not be held liable for the commission of an offence defined by Directive 2000/.../EC in cases where aliens who are not nationals of an EU Member State and who have been transported to an EU Member State wish to seek the protection provided under the 1951 Geneva Convention on the Protection of Refugees.

Justification:

Carriers cannot in any way be held liable for transporting persons who request asylum

immediately upon arrival within the territory of a Member State, since we would otherwise be requiring them to prevent asylum-seekers from travelling and from requesting the protection provided under the 1951 Geneva Convention. Furthermore, carriers have neither the ability nor the authority to assess the admissibility of an application for asylum and hence under no circumstances can they be directly or indirectly persuaded to carry out an assessment of suitability. Sanctions must be proportionate and balanced and the punishment must be made to fit the crime.

(Amendment 7)
Article 3(3b) (new)

The legal persons referred to in this Article, and also their agents, representatives and employees, shall not be held liable in cases involving legally recognised non-profit-making organisations and associations whose aims include defending, protecting and promoting aliens who are not nationals of an EU Member State and whose activities are motivated by humanitarian considerations.

Justification:

Exemption from liability implies that no penalty procedure exists and is more in accordance with the purpose which such exemption is intended to serve with regard to humanitarian organisations involved in non-profit-making tasks and activities which are not intended to encourage the traffic in, or exploitation of, foreigners.

(Amendment 8)
Article 4(1), first paragraph

1. Each Member State shall take the measures necessary to ensure that a legal person held liable pursuant to Article 3(1) is punishable by effective, proportionate and dissuasive penalties, which shall include criminal or non-criminal fines and may include ***other*** penalties such as:

1. Each Member State shall take the measures necessary to ensure that a legal person held liable pursuant to Article 3(1) is punishable by effective, proportionate and dissuasive penalties, which shall include criminal or non-criminal fines and may include ***additional*** penalties such as:

Justification:

The penalties listed in this article should always be additional to the main penalty. There is no reason why they should be mutually exclusive.

(Amendment 9)
Article 4(1)(b)

(b) temporary **or permanent** disqualification
from the practice of commercial activities;

(b) temporary disqualification from the
practice of commercial activities;

Justification:

The words 'or permanent' should be deleted in order to make the punishment fit the crime.

(Amendment 10)
Article 5a (new)

The Member States shall pay compensation to the countries and regions of the Union particularly affected by illegal immigration owing to their geographical situation and other characteristics. The Commission shall create a budget line for this purpose and shall draw up a procedure for paying compensation.

Justification:

Some of the Member States are more heavily affected by illegal immigration owing to their geography, for example the fact of having a long coastline. For this reason they bear a heavy burden under the Union's common policy. Compensation payments would strengthen solidarity in the Union in this field too.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the initiative of the French Republic with a view to the adoption of a Council Framework Decision on the strengthening of the penal framework to prevent the facilitation of unauthorised entry and residence (10676/2000 – C5-0426/2000 – 2000/0820(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the initiative of the French Republic (10676/2000¹)
 - having regard to Article 34(2)(b) and Articles 29 and 31(e) of the EU Treaty,
 - having been consulted by the Council pursuant to Article 39(1) of the EU Treaty (C5-0426/2000),
 - having regard to Rules 106 and 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0315/2000),
1. Approves the initiative of the French Republic as amended;
 2. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;
 3. Asks to be consulted again if the Council intends to modify the initiative of the French Republic substantially;
 4. Instructs its President to forward its position to the Council and Commission and to the Government of the French Republic.

¹ OJ C 253, 4.9.2000, p. 6.

EXPLANATORY STATEMENT

The two proposals being considered concern the definition and prevention of the aiding of illegal immigration. These proposals raise problems of substance and procedure which lead us to submit a single report and to put forward a certain number of amendments.

I. Appraisal of the legal basis of the proposals

1. Two legal bases

One of the two proposals following from the initiatives of the French Presidency comes under the first pillar and the other under the third pillar.

The proposal for a Council Directive aims to define the facilitation of unauthorised entry, movement and residence and is based on Articles 61(a) and 63(3)(b) of the EC Treaty which give the Community jurisdiction to implement a common immigration policy.

The proposal for a framework decision aims to strengthen the penal framework to prevent the facilitation of unauthorised entry and residence and is based on Articles 29, 31(e) and 34(2)(b) of the EU Treaty which concern police and judicial cooperation in criminal matters.

2. A single report

It would have been preferable to combine these two proposals and base them on the same legal bases, those of the first pillar, in other words Articles 61 and 63 of the EC Treaty which govern the implementation of a common immigration policy.

Jurisdiction should stem above all from the nature and objective of the action or actions envisaged. However, the definition of the aiding of illegal immigration and the strengthening of the penal framework to prevent it correspond to the intention expressed in Title IV of the first pillar that a common immigration policy should be adopted within five years after the entry into force of the Treaty of Amsterdam.

The solution chosen by the Council has the effect of artificially dividing a single subject. In addition, this choice has the disadvantage of putting one strand of the measures envisaged, that connected with the penal framework, under the intergovernmental procedure, thus depriving the EP of any power of co-decision in this matter once the period of five years has elapsed (Article 67(2)).

Of course, in the immediate future the EP's power is only consultative with regard to these issues, whether they come within the first or the third pillar, so that the legal implications are not major. It would however be appropriate to recall these legal aspects and to deal with the two proposals in a single report with a view to consistency.

II. General appraisal of the substance of the proposals

The two proposals under consideration concern only the issue of the penalties for aiding illegal immigration. Even in this small field, these proposals do not offer sufficiently realistic solutions.

1. A differentiated immigration and refugee policy

Owing to the current world-wide migration movements, the European Union is facing new challenges which must be dealt with by means of comprehensive policies. This means on the one hand creating an effective, fair system of protection for refugees and, on the other, adopting measures governing the entry, residence and establishment of migrants received on a temporary or long-term basis or members of their families.

A common immigration and asylum policy for the Member States can only be efficient if it is comprehensive and covers all essential means of obtaining admittance. It must be socially acceptable and adapted to the demographic, economic and humanitarian requirements of the Member States. Employment factors must be taken into account in particular.

In all industrial countries the number of people living there without residence permits is on the increase. Harsher legislation and increased border controls have only a minimal effect on unauthorised immigration.

Who are these people? Closer analysis reveals not only the reasons for this phenomenon, but also the living conditions of the people concerned.

- (a) Persons refused asylum form a major group. They are frightened of being deported to their countries of origin and go underground. They often come within the scope of the Geneva Convention on the Status of Refugees but their application for political asylum in the Member States is refused, so they decide to become illegal immigrants.
- (b) Members of the families of immigrants and refugees who do not obtain a visa or whose applications for family reunion are refused or are delayed for a very long time also decide to become illegal immigrants.
- (c) Often they are refugees who prefer to become illegal immigrants after entering the Union because their applications for political asylum are unlikely to be successful and they do not therefore wish to be caught by the authorities.
- (d) Women who are the victims of traffickers in human beings form another important group. Most of them come into the EU on a tourist visa. As soon as they are on European soil their passports are taken away from them by their pimps or the brothel owners. They live on the brothel premises and hardly dare venture outdoors. They do not even have any health care.
- (e) An important group is also of course people who enter the EU to take up employment. Some of these people are placed by agencies, but often they come of their own accord. They can be described as present-day slaves because they are completely dependent on their employers. Since they have no social protection they are exploited to the utmost.

Repeated campaigns in the Member States to persuade illegal immigrants to have their status legalised show very clearly that the 'illegal status' of these people is often caused by the lack of a differentiated immigration and asylum policy. Instead of repeated campaigns of this kind, the Member States should draw up an immigration policy adapted to the needs of those concerned.

2. The often dramatic circumstances surrounding illegal immigration

The circumstances surrounding illegal immigration are very often dramatic, whether entry into or residence in the Union is involved.

(a) The dramatic circumstances surrounding the entry of illegal immigrants

The tragedy at Dover last June revealed, if there were any need, the dramatic circumstances in which illegal immigration takes place. On a daily basis every year hundreds of illegal immigrants die whilst attempting to enter the territory of the Union illegally, mostly the victims of smugglers or traffickers in human beings acting for purposes of gain.

(b) The unacceptable conditions in which illegal immigrants live

Once they have entered the territory of the Union at the risk of their lives, illegal immigrants very often suffer intolerable living conditions. If they are not imprisoned like criminals, they are kept in detention centres, cut off from the outside world or even, to avoid being deported, forced to go on hunger strikes at the risk of their health.

Recently, in its resolution of 6 June 2000¹, the EP condemned this situation and urged the Commission and the Council to take appropriate measures to remedy it.

We must of course vigorously combat networks trading in human beings. On the other hand, individual situations require an understanding and balanced approach. This essential distinction is lacking in the two texts under consideration.

3. A more purposeful definition of the offence

The proposal for a directive does not fulfil the need to make a distinction between the highly reprehensible activities of organised networks trading in human beings and 'humanitarian' aid given in good faith by natural or legal persons which it would be unfair to incriminate (for example, aid given by the churches or associations to help immigrants residing in the country illegally).

This is the purpose of the proposed amendments, the aim of which is to target the offence more precisely by specifying that the essential nature of the offence is the profit motive of the smugglers, as has already been pointed out in Article 27 of the Schengen Convention. It is essential to make a distinction between disinterested aid given by natural or legal persons which must be immune from prosecution and that given by criminal networks which must, on the contrary, be firmly punished.

4. A more appropriate penal framework

¹ European Parliament resolution on illegal immigration and the discovery of 58 bodies of illegal immigrants in Dover (B5-0596, 0598, 0603 and 0606/2000)

With regard to the strengthening of the penal framework to prevent the facilitation of illegal immigration, this would also be improved by being better adapted to the conduct constituting the offence.

Thus, in Article 2, although there is no doubt that the circumstances mentioned in the first two indents (belonging to a criminal organisation and trafficking in human beings) must constitute aggravating circumstances, on the other hand the specific liability of employers of illegal immigrants should be penalised in a third indent or, better still, in a separate article. Knowing the difficulties faced by illegal immigrants in order to survive, illegal workers themselves should not in any circumstances be prosecuted on that account.

In addition, the liability of legal persons concealing networks trafficking in and exploiting human beings provided for in Article 3 of the framework decision could usefully be increased.

5. Better legal and substantive coordination of the initiatives

The Council Framework Decision on the strengthening of the penal framework to prevent the facilitation of unauthorised entry and residence does not, in its present version, fulfil all these requirements. For the following reasons it would be advisable for the Council to revise it:

- (a) The legal basis of this initiative of the French Presidency raises problems which cannot be resolved even by dividing the initiative into a 'definition' laid down in a proposal for a directive and a 'penal framework' to be adopted by means of a framework decision. The initiative might be more consistent from the legal and substantive point of view if had been drawn up on the basis of Article 63 of the Treaty. The inconsistency is also brought home by the decision of the French Presidency with regard to the 'mutual recognition of decisions on the expulsion of third country nationals' (TO6939 – CNS00819-101030/00-C5-0398/00). In the case of the latter initiative which means giving more extensive powers to the Member States and also affects jurisdiction, the French Presidency decided in favour of a directive based on Article 63(3) of the Treaty. Your rapporteur takes the view that a framework decision on the criminal prosecution of trafficking in human beings and the sexual exploitation of children is very urgent and ought to be drawn up under the third pillar but that provisions governing 'the facilitation of unauthorised entry' and all its legal aspects should be laid down within the framework of Article 63.
- (b) From the substantive point of view as well there are inconsistencies arising from the questionable legal basis. Provisions on various aspects of this initiative were already laid down in the Schengen Convention and are now being transferred to the first pillar. Splitting the initiative into two legal bases is more likely to make coordination between the Member States and at Union level difficult. What is required in this field is, on the contrary, an initiative which clarifies the problems of jurisdiction, since coordination problems already exist at national level.
- (c) The Commission has announced that it will present a proposal for a directive on these issues in the next few months. It was clear from the Commission's statements in the committee that it had already considered the matter more deeply and that the main features of the measure had already been worked out. It would be advisable to wait for this initiative so that Parliament can adopt a definite position on it.

Conclusions

To be effective, the judicious strengthening of the penal framework to prevent the facilitation of illegal immigration should be accompanied by increased police and judicial cooperation within both Europol and Eurojust.

Finally, these penal measures are only one aspect of a general European policy on immigration which is still sadly lacking. It will only be possible to control illegal immigration effectively if judicial cooperation aiming at making the same offences punishable is established in the third countries of origin of illegal immigrants and the countries through which they travel. Information campaigns on the risks of illegal immigration should also be carried out in these countries .

In addition, the European Union must as a matter of urgency adopt a European policy on immigration promoting legal immigration into its territory and ensuring that legal immigrants, whose important contribution to the European economy must be stressed, are genuinely assimilated.