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**COUNCIL OF THE EUROPEAN UNION**

**Brussels, 3 August 2000 (OR. fr)**

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**LIMITE**

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MIGR 60
COMIX 591

**LEGISLATIVE ACTS AND OTHER INSTRUMENTS**

Subject : 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 authorised entry and residence

**COUNCIL FRAMEWORK DECISION .../.../JHA**

**of**

on the strengthening of the penal framework to prevent 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 Directive 2000/.../EC defining the facilitation of unauthorised entry, movement and residence [1],

[1] See draft on p. of this Official Journal.

Having regard to the initiative of 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 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) To that end it is essential to approximate existing legal frameworks, which means, on the one hand, the precise and effective definition of the offence which is the subject of Directive 2000/.../EC and on the other hand, harmonisation of the penalties laid down, of exemption from liability and of aggravating circumstances, which is the subject of this Framework Decision.

(4) It is likewise essential not to confine possible actions to natural persons only but to provide for measures relating to the liability of legal persons.

(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 [1], that of 27 September 1996 on combating the illegal employment of third-country nationals [2], as well as Joint Action 97/154/JHA of 24 February 1997 to combat trafficking in human beings and sexual exploitation of children [3], without prejudice to measures which have been, or will be, taken in the framework of Title IV of the Treaty establishing the European Community.

(6) These Framework Decision is a development of the Schengen acquis as defined in the Schengen Protocol,

HAS ADOPTED THIS DIRECTIVE:

Article 1

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:

– confiscation of the means of transport used to commit the offence;

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1 OJ C 5, 10.1.1996, p. 1.
2 OJ C 304, 14.10.1996, p. 1.
3 OJ L 63, 4.3.1997, p. 2.

– 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 2

Aggravating circumstances

Each Member State shall take the measures necessary to ensure that the appropriate penalties laid down in Article 1 are increased if one of the conditions listed below is fulfilled:

– the offence was committed by a person belonging to a criminal organisation within the meaning of Joint Action 98/733/JHA of 21 December 1998 on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union [1];

– the purpose of the offence is trafficking in human beings and sexual exploitation of children as defined by Joint Action 97/154/JHA;

– 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.

[1] OJ L 351, 29.12.1998, p. 1.

Article 3

Liability of legal persons

1. Each Member State shall take the measures necessary to ensure legal persons may be held liable for the offences defined by Directive 2000/.../EEC and committed, possibly in the circumstances laid down in Article 2 of this Framework Decision, 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

– an authority to take decisions on behalf of the legal person, or

– an 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. Without prejudice to the cases provided for in paragraph 1, each Member State shall take the measures necessary to ensure that a legal person may 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 defined by Directive 2000/.../EC, possibly in the circumstances laid down in Article 2 of this Framework Directive, for the benefit of that legal person by a person under its authority.

3. Liability of a legal person under Directive 2000/.../EC on account of offences committed, possibly in the circumstances laid down in Article 2 of this Framework Directive, shall not exclude criminal proceedings against natural persons who are involved as perpetrators, instigators or accessories in the offences referred to in this paragraph.

Article 4

Penalties for legal persons

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:

(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 3(2) is punishable by effective, proportionate and dissuasive penalties or measures.

Article 5

Jurisdiction

1. Each Member State shall take the measures necessary to establish its jurisdiction with regard to the offence defined by Directive 2000/.../EC and committed, possibly in the circumstances laid down in Article 2 of this Framework Decision:

(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 Secretary-General of the Council if it decides to apply paragraph 2, where appropriate with an indication of the specific circumstances or conditions in which its decision applies.

Article 6

Implementation

1. Member States shall adopt the measures necessary to comply with the provisions of this Framework Decision before 1 November 2001.

2. Before 1 November 2001, Member States shall communicate to the General Secretariat of the Council and to the Commission the texts of the provisions transposing into their national law the obligations imposed on them by this Framework Decision. On the basis of that information and a written report by the Commission, the Council shall, no later than 30 May 2002, check the extent to which Member States have taken the measures necessary to comply with this Framework Decision.

Article 7

Effective date

This Framework Decision shall take effect on the day of its publication in the Official Journal of the European Communities.

Done at

For the Council

The President