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**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 28 July 2000 (01.08)
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LIMITE

**DROIPEN 35
MIGR 62
COMIX 594**

NOTE

from :	French delegation
to :	Coreper
No. prev. doc. :	10676/00 DROIPEN 32 MIGR 6
Subject :	Initiative on the part of the French Republic with a view to the adoption of a Framework Decision on the strengthening of the penal framework to prevent the facilitation of unauthorised entry and residence

Delegations will find attached an explanatory note concerning the proposal from the French Republic for the adoption of a Framework Decision on the strengthening of the penal framework to prevent the facilitation of unauthorised entry and residence, as set out in 10676/00 DROIPEN 32 MIGR 6.

DRAFT FRAMEWORK DECISION ON THE STRENGTHENING OF THE PENAL
FRAMEWORK TO PREVENT THE FACILITATION OF UNAUTHORISED ENTRY AND
RESIDENCE

STATEMENT OF REASONS

1. GENERAL

- 1.1. The proposed text aims to assist in combating illegal immigration, not merely by taking the measures required against illegally resident aliens, but particularly by effectively penalising the individuals and institutions who create and profit from the phenomenon.

That is why it is necessary to combat the facilitation of illegal immigration, whether this is merely assistance provided in crossing borders or whether it is connected to other forms of exploitation of human beings such as prostitution, exploitation of children or undeclared work.

The European Union must demonstrate a common political will in the face of this phenomenon. Thus the proposed text is part of the extension of the objectives defined by Member States at the Tampere European Council, which are given in paragraph 48 of the Presidency Conclusions, of strengthening the penal framework in order more effectively to combat trafficking in human beings. The Santa Maria da Feira European Council of 19 and 20 June 2000 called for the Tampere conclusions to be taken forward urgently in this area.

- 1.2. The objective of this text is to deepen and harmonise measures taken nationally or in the Schengen framework.

- Nationally, most States have already taken measures to penalise the facilitation of illegal immigration.

- In addition, Article 27 of the Schengen Convention created, as a measure to accompany the setting-up of an area of free movement, an obligation for the States which were parties to the Convention to lay down penalties for any person facilitating illegal entry or residence.
- However, it now seems necessary to define the offence in question more precisely and more effectively. For that reason a draft Directive along those lines is being proposed in parallel to this instrument.
- The purpose of this Decision is therefore, on the basis of the aforementioned instrument, to ensure that the implementation of the penalties follows criteria common to all Member States.
- Insofar as criminal penalties are involved, the text comes within the legal framework of Title VI of the Treaty on European Union.

2. PRESENTATION OF THE ARTICLES

ARTICLE 1 (Penalties)

On the basis of Directive, which defines the offence in question, this Article obliges Member States to lay down effective, proportionate and dissuasive penalties for persons who deliberately, directly or indirectly, facilitate the entry, movement or unauthorised residence within their territories of foreigners who are not nationals of any Member State of the European Union. These penalties must include custodial sentences which may entail extradition if aggravating circumstances, as listed in Article 2, obtain. Other penalties may be provided for, such as confiscation of the means of transport used to commit the offence, a prohibition on practising the occupational activity in the exercise of which the offence was committed, and a deportation order if the convicted person is not a national of a Member State of the European Union.

ARTICLE 2
(Aggravating circumstances)

This Article obliges Member States to increase the penalties laid down in Article 1 in three sets of circumstances associated with the offence defined by Directive being committed:

- in the context of a criminal organisation within the meaning of the Joint Action of 21 December 1998;
- with the purpose of supplying networks for trafficking in human beings or illegal employment networks.

ARTICLE 3
(Liability of legal persons)

This Article obliges States to ensure that legal persons can be held liable for the offences defined by Directive and in Article 2 of this Decision.

ARTICLE 4
(Penalties for legal persons)

This Article defines the penalties that may be imposed on legal persons found to be liable for offences defined by Directive and in Article 2 of this Decision.

ARTICLE 5
(Jurisdiction)

This Article is intended to define the conditions in which States must establish their jurisdiction with regard to the actions defined by Directive and in Article 2 of this Decision.

ARTICLE 6
(Implementation)

This Article reproduces, with adaptations, the enacting terms of the Council Framework Decision on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro of 29 May 2000. It fixes a relatively early date for transposition in view of the political priority given to this instrument. It is the same as that adopted for the Directive defining the offences.

ARTICLE 7
(Entry into force)

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