

Procedure file

Basic information		
CNS - Consultation procedure Decision	2000/0820(CNS)	Procedure completed
Combating illegal immigration: penal framework to prevent the offences. Framework Decision. Initiative France		
Subject 7.10.08 Migration policy 7.40 Judicial cooperation		

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	LIBE Citizens' Freedoms and Rights, Justice and Home Affairs	V/ALE CEYHUN Ozan	29/08/2000
	Committee for opinion	Rapporteur for opinion	Appointed
	JURI Legal Affairs and Internal Market	ELDR WALLIS Diana	17/10/2000
Council of the European Union	Council configuration	Meeting	Date
	Justice and Home Affairs (JHA)	2469	28/11/2002
	Justice and Home Affairs (JHA)	2350	28/05/2001
	Justice and Home Affairs (JHA)	2337	15/03/2001
	Justice and Home Affairs (JHA)	2314	30/11/2000

Key events			
03/08/2000	Legislative proposal published	10676/2000	Summary
04/09/2000	Committee referral announced in Parliament		
23/10/2000	Vote in committee		Summary
23/10/2000	Committee report tabled for plenary, 1st reading/single reading	A5-0315/2000	
30/11/2000	Debate in Council	2314	Summary
14/02/2001	Debate in Parliament		
15/02/2001	Decision by Parliament	T5-0088/2001	Summary
15/03/2001	Debate in Council	2337	Summary
28/11/2002	Act adopted by Council after consultation		

	of Parliament		
28/11/2002	End of procedure in Parliament		
05/12/2002	Final act published in Official Journal		

Technical information

Procedure reference	2000/0820(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Decision
Legal basis	Treaty on the European Union (after Amsterdam) M 029; Treaty on the European Union (after Amsterdam) M 031-; Treaty on the European Union (after Amsterdam) M 034-p2b
Stage reached in procedure	Procedure completed

Documentation gateway

Document attached to the procedure	10712/2000	28/07/2000	CSL	Summary
Legislative proposal	10676/2000 OJ C 253 04.09.2000, p. 0006	03/08/2000	CSL	Summary
Committee report tabled for plenary, 1st reading/single reading	A5-0315/2000 OJ C 223 08.08.2001, p. 0005	23/10/2000	EP	
Text adopted by Parliament, 1st reading/single reading	T5-0088/2001 OJ C 276 01.10.2001, p. 0244-0158	15/02/2001	EP	Summary
Document attached to the procedure	SEC(2006)1591	06/12/2006	EC	
Follow-up document	COM(2006)0770	06/12/2006	EC	Summary
Follow-up document	SWD(2017)0117	22/03/2017	EC	
Follow-up document	SWD(2017)0120	22/03/2017	EC	

Additional information

European Commission	EUR-Lex
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Final act

Justice and Home Affairs act 2002/946 OJ L 328 05.12.2002, p. 0001-0003 Summary
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Combating illegal immigration: penal framework to prevent the offences. Framework Decision. Initiative France

On 28/07/2000, the French delegation sent an explanatory note to COREPER concerning its proposal for the adoption of a Framework Decision on the strengthening of the penal framework to prevent the facilitation of unauthorised entry and residence. Essentially, 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. The objective of the text is to deepen and harmonise measures taken nationally or in the Schengen framework.?

Combating illegal immigration: penal framework to prevent the offences. Framework Decision.

Initiative France

PURPOSE: French Presidency initiative in regard to the strengthening of the penal framework to prevent the facilitation of unauthorised entry and residence. **CONTENT:** The objective of the proposed Council Decision is to provide a framework by means of which measures can 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. 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 the proposed Directive defining the facilitation of unauthorised entry, movement and residence, and, on the other hand, the harmonisation of the penalties laid down, of exemption from liability and of aggravating circumstances, which is the subject of this Framework Decision. It is also essential not to confine possible actions to natural persons only but to provide for measures relating to the liability of legal persons. This Framework Decision is a development of the Schengen acquis as defined in the Schengen Protocol. The main provisions of the proposed Framework Decision are as follows: 1. Member States will be required to take measures necessary to ensure that the offences defined by the proposed Directive on the facilitation of unauthorised entry, movement and residence are punishable by effective, proportionate and dissuasive criminal penalties including 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. 2. The abovementioned penalties would be increased if one of the following conditions is met: - the offence was committed by a person belonging to a criminal organisation within the meaning of Joint Action 98/733/JHA on making it a criminal offence to participate in a criminal organisation in the Member States of the EU; - 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. 3. Legal persons may be held liable for the offences defined in the proposed Directive and 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, 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. A legal person held liable is punishable by effective, proportionate and dissuasive penalties, which shall include criminal or non-criminal fines and may include other penalties such as exclusion from entitlement to public benefits or aids, temporary or permanent disqualification from the practice of commercial activities, placing under judicial supervision or a judicial winding-up order. 4. Each Member State needs to take measures to establish its jurisdiction with regard to the offence in whole or in part within its territory, or by one of its nationals.?

Combating illegal immigration: penal framework to prevent the offences. Framework Decision. Initiative France

The Council held an exchange of views on a draft Framework Decision on the strengthening of the penal framework to prevent the facilitation of unauthorised entry and residence and a draft Directive defining the facilitation of unauthorised entry, movement and residence. The exchange of views showed that a large majority of delegations could accept that, in the most serious cases, the minimum sentence should be eight years imprisonment. However, the question of whether financial gain should be an essential element of the offence did not meet a unanimous response. The Permanent Representatives Committee will resume work on the basis of an improved version of the humanitarian clause as requested by Belgium, in order to work out a formula which responds to the views expressed by Ministers. As regards the Swedish reservation on the grounds that its legislation does not contain penal sanctions for the facilitation of unauthorised entry and residence, the Swedish delegation announced that there was an intention to re-examine this question shortly at national level.?

Combating illegal immigration: penal framework to prevent the offences. Framework Decision. Initiative France

By 249 votes against 189 with 33 abstentions, Parliament rejected the entire text of the French initiative on strengthening the penal framework to prevent the aiding of unauthorised entry and residence. All the amendments had been approved but the Parliament decided to reject the entire text even as modified by the amendments. To recall, the report by Mr Ozan CEYHUN (Greens/ALE, D) states that the draft decision respects the obligations accepted by the Member States which have signed the 1951 Geneva Convention relating to the status of Refugees. Furthermore, the report states that 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. The report also states that legal persons and also their agents representatives and employees shall not be held liable for the commission of an offence in cases where aliens who are not nationals of a Member State and who have been transported to a Member State wishing to seek the protection provided under the 1951 Convention on the status of Refugees. The above mentioned persons shall not be 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 a Member State and who act out of humanitarian reasons. Lastly, the report requests a budget line for compensatory payments to the countries and regions of the Union which, on account of their geographical situation and other characteristics, are particularly affected by illegal immigration. By 411 votes in favour and 26 against with 30 abstentions Parliament then decided to send the rejection on to Council. The Council is not obliged to follow Parliament's view and is free to adopt both initiatives.?

Combating illegal immigration: penal framework to prevent the offences. Framework Decision. Initiative France

The Council held a detailed debate on a Draft Council Framework Decision on the strengthening of the penal framework to prevent the facilitation of unauthorised entry and residence. It was agreed that work should be continued on the draft instrument with a view to reaching political agreement at the May JHA Council. Consensus was reached on the question of making the offence of facilitating unauthorised entry

and residence as defined in the Directive extraditable. However, two questions remain open, namely : the inclusion of a humanitarian clause and the exact scope of such a clause, and the minimum maximum sentence which shall apply in aggravating circumstances. Concerning this last point, it was concluded by the Presidency that certain compromise proposals made (a six year minimum maximum sentence and a declaration by those Member States intending to provide for a 10 year maximum sentence) should be further examined. ?

Combating illegal immigration: penal framework to prevent the offences. Framework Decision. Initiative France

PURPOSE : to strengthen of the penal framework to prevent the facilitation of unauthorised entry, transit and residence. **COMMUNITY MEASURE :** Council framework Decision 2002/946/JHA. **CONTENT :** the Council adopted the Framework decision on the strengthening of penal framework to prevent the facilitation of unauthorised entry transit and residence. One of the objectives of the European Union is to provide citizens with a high level of safety within an area of freedom, security and justice by developing common action among the Member States in the fields of police and judicial cooperation in criminal matters. In this framework, measures should be taken to combat the aiding of illegal immigration both in connection with unauthorised crossing of the border in the strict sense and for the purpose of sustaining networks which exploit human beings. To that end it is essential to approximate existing legal provisions, in particular, on the one hand, the precise definition of the infringement in question and the cases of exemption, which is the subject of Council Directive 2002/90/EC defining the facilitation of unauthorised entry, transit and residence (refer to CNS/2000/0821) and, on the other hand, minimum rules for penalties, liability of legal persons and jurisdiction, which is the subject of this framework Decision. 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. This framework Decision supplements other instruments adopted in order to combat illegal immigration, illegal employment, trafficking in human beings and the sexual exploitation of children. As regards penalties, the Framework Decision stipulates that each Member State shall take the measures necessary to ensure that the infringements defined in Directive 2002/90/EC are punishable by effective, proportionate and dissuasive criminal penalties which may entail extradition. Where appropriate, the criminal penalties may be accompanied by the following measures: - 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, - deportation. Each Member State shall take the measures necessary to ensure that, when committed for financial gain, the infringements are punishable by custodial sentences with a maximum sentence of not less than 8 years where they are committed in any of the following circumstances: - the offence was committed as an activity of a criminal organisation as defined in Joint Action 98/733/JHA, - the offence was committed while endangering the lives of the persons who are the subject of the offence. If imperative to preserve the coherence of the national penalty system, the actions shall be punishable by custodial sentences with a maximum sentence of not less than 6 years, provided that it is among the most severe maximum sentences available for crimes of comparable gravity. Concerning the liability of legal persons each Member State shall take the measures necessary to ensure that legal persons can be held liable for the above infringements and which are 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, - an authority to take decisions on behalf of the legal person, or - an authority to exercise control within the legal person. Apart from the cases already provided for, each Member State shall take the necessary measures to ensure that a legal person can be held liable where the lack of supervision or control by a person has made possible the commission of the infringements for the benefit of that legal person by a person under its authority. Liability of a legal person shall not exclude criminal proceedings against natural persons who are perpetrators or instigators of or accessories in the offences. Regarding sanctions for legal persons, each Member State shall take the measures necessary to ensure that a legal person held liable is punishable by effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions such as: - exclusion from entitlement to public benefits or aid; - temporary or permanent disqualification from the practice of commercial activities; - placing under judicial supervision; - a judicial winding-up order. In addition, each Member State shall take the measures necessary to establish its jurisdiction with regard to the infringements and committed - in whole or in part within its territory; - by one of its nationals, or - for the benefit of a legal person established in the territory of that Member State. As far as the international law on refugees is concerned, this framework Decision shall apply without prejudice to the protection afforded refugees and asylum seekers in accordance with international law on refugees or other international instruments relating to human rights. Concerning the communication of information between the Member States, the Framework Decision states that if a Member State is informed of infringements referred to above which are in breach of the law on the entry and residence of aliens of another Member State, it shall inform the latter accordingly. Any Member State which requests another Member State to prosecute, on the grounds of a breach of its own laws on the entry and residence of aliens, infringements must specify, by means of an official report or a certificate from the competent authorities, the provisions of its law which have been breached. **ENTRY INTO FORCE :** 5 December 2002. **DATE OF TRANSPOSITION :** 5 December 2004. **TERRITORIAL APPLICATION :** the framework Decision shall apply to Gibraltar; Iceland and Norway as it constitutes a development of the Schengen acquis in the meaning of the Agreement concluded by these two countries. Great Britain and Ireland have also decided to participate in the framework Decision in accordance with Article 5 of the Protocol integrating Schengen in the framework of the European Union.?

Combating illegal immigration: penal framework to prevent the offences. Framework Decision. Initiative France

This report has been prepared by the Commission in accordance with Article 9 of Council Framework Decision on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence. The specific purpose of the report is to establish the measures, taken by the Member States, to comply with the Framework Decision.

The value of this report, therefore, depends very much on the input of the Member States. Although the deadline for Member State submission was 5 December 2007, by end March 2006 the Commission had received no information from: Austria, Cyprus, Greece, Luxembourg and Portugal. Further, the information submitted by: Estonia, Malta, Spain and Sweden, was either of a preliminary nature only or else was not specific enough for a thorough analysis. As a result, the Commission notes that this report is based on incomplete information.

To recall, the purpose of the Decision is to approximate the laws of the Member States in order to combat illegal immigration by strengthening the penal framework. Within this context the report examines the Decision's provisions relating to: Penalties; Liability and sanctions against legal persons; Jurisdiction; Extradition and prosecution; International law on refugees; Communication of information between the Member States; and Territorial application.

The report finds that:

- whilst the majority of Member States have penalties relating to illegal transit and residence, these penalties vary considerably. As a result, an EU harmonising instrument may be necessary in order to rectify current discrepancies;
- the different definitions of i) human trafficking and ii) migrant smuggling complicates the correct implementation of the Decision;
- in the absence of statistical information on illegal immigration and the practical impact of this Decision on immigration, a more practice-oriented evaluation by the Commission of the two framework Decisions will need to take place in 2006/07;
- these two Directives, following ECJ case C-176/03, may need to be merged into a single Directive; and
- the Commission will propose, in the first half of 2007, binding rules on sanctions for employers who employ illegally staying third-country nationals.

On a final point, the Commission stresses the importance of maintaining a harmonious relationship between the relevant provisions of criminal law and the protection of refugees and asylum seekers. Further, the Commission continues to underline the importance it attaches to co-operation and the continued need for Member States to exchange information on illegal immigration with one another.