

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

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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.