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

2000/0820(CNS) - 28/11/2002 - Final act

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.