

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

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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.