


Basic information	
<b>2000/0821(CNS)</b>  CNS - Consultation procedure Directive	Procedure completed
Combating illegal immigration: facilitation of unauthorised entry, movement and residence. Initiative France  <b>Subject</b>  7.10.08 Migration policy 7.40 Judicial cooperation	

Key players			
European Parliament	<b>Committee responsible</b>	<b>Rapporteur</b>	<b>Appointed</b>
	<div>LIBE</div> Citizens' Freedoms and Rights, Justice and Home Affairs	CEYHUN Ozan (V/ALE)	29/08/2000
Council of the European Union	<b>Council configuration</b>	<b>Meetings</b>	<b>Date</b>
	Justice and Home Affairs (JHA)	2469	2002-11-28
	Justice and Home Affairs (JHA)	2337	2001-03-15
	Justice and Home Affairs (JHA)	2350	2001-05-28

Key events			
Date	Event	Reference	Summary
03/08/2000	Legislative proposal published	10675/2000	<a href="#">Summary</a>
04/09/2000	Committee referral announced in Parliament		
23/10/2000	Vote in committee		<a href="#">Summary</a>
23/10/2000	Committee report tabled for plenary, 1st reading/single reading	A5-0315/2000	
14/02/2001	Debate in Parliament		
15/02/2001	Decision by Parliament	T5-0087/2001	<a href="#">Summary</a>
15/03/2001	Debate in Council		<a href="#">Summary</a>
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
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<b>Procedure reference</b>	2000/0821(CNS)
<b>Procedure type</b>	CNS - Consultation procedure
<b>Procedure subtype</b>	Legislation
<b>Legislative instrument</b>	Directive
<b>Legal basis</b>	EC Treaty (after Amsterdam) EC 063-p3b EC Treaty (after Amsterdam) EC 061-
<b>Stage reached in procedure</b>	Procedure completed
<b>Committee dossier</b>	LIBE/5/13587

Documentation gateway				
European Parliament				
Document type	Committee	Reference	Date	Summary
Committee report tabled for plenary, 1st reading/single reading		A5-0315/2000 OJ C 223 08.08.2001, p. 0005	23/10/2000	
Text adopted by Parliament, 1st reading/single reading		T5-0087/2001 OJ C 276 01.10.2001, p. 0244-0158	15/02/2001	Summary
Council of the EU				
Document type	Reference		Date	Summary
Document attached to the procedure	10711/2000		28/07/2000	Summary
Legislative proposal	10675/2000 OJ C 253 04.09.2000, p. 0001		03/08/2000	Summary
European Commission				
Document type	Reference		Date	Summary
Follow-up document	SWD(2017)0117		22/03/2017	
Follow-up document	SWD(2017)0120		22/03/2017	

Additional information		
Source	Document	Date
European Commission	EUR-Lex	

Final act	
<a href="#">Directive 2002/0090</a> <a href="#">OJ L 328 05.12.2002, p. 0017-0018</a>	Summary

# Combating illegal immigration: facilitation of unauthorised entry, movement and residence. Initiative France

2000/0821(CNS) - 03/08/2000 - Legislative proposal

**PURPOSE:** French initiative with a view to the adoption of a Council Directive defining the facilitation of unauthorised entry, movement and residence.

**CONTENT:** One of the objectives of the Union laid down in the Treaty on European Union is to combat trafficking in human beings by approximating, as far as necessary, rules on criminal matters in the Member States. The Treaty provides for the gradual creation of an area of freedom, security and justice, which means, among other things, that illegal immigration must be combatted. Consequently, measures should 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 considered essential to approximate existing legal frameworks, which means, on the one hand, the precise and effective definition of the offence in question, which is the subject of this proposed Directive, and, on the other hand, harmonisation of the penalties laid down, of cases of exemption or, on the contrary, of aggravating circumstances, which is the subject of a draft Council Framework Decision on the strengthening of the penal framework to prevent the facilitation of unauthorised entry and residence. The purpose of this Directive is to provide a better definition of the facilitation of illegal immigration and thus to render more effective the implementation of the Framework Decision on the strengthening of the penal framework in order to prevent the facilitation of unauthorised entry and residence. The main provisions of the draft Directive are: - Member States must take the necessary measures to ensure that the act of facilitating intentionally, by aiding directly or indirectly, the unauthorised entry, movement or residence in its territory of an alien who is not a national of an EU Member State is regarded as an offence; - Member States must take measures to ensure that participation, as an accomplice or instigator, in the facilitation of illegal immigration be considered to be an offence, as shall also the attempt to commit such an offence, and that such offences are punishable by effective, proportionate and dissuasive penalties; - Each Member State may exempt from criminal prosecution certain persons whose link to the alien who has benefited from the aiding (i.e. a relative in the ascending or descending line, brothers and sisters and their spouses, his spouse or the person known to cohabit with him).

# Combating illegal immigration: facilitation of unauthorised entry, movement and residence. Initiative France

2000/0821(CNS) - 28/11/2002 - Final act

**PURPOSE :** to define the facilitation of unauthorised entry, transit and residence.

**COMMUNITY MEASURE :** Council Directive 2002/90/EC.

**CONTENT :** the Council adopted a Directive defining the facilitation of unauthorised entry, transit and residence and a Framework Decision on the strengthening of the penal framework to prevent the facilitation of unauthorised entry transit and residence (refer to CNS/2000/0821).

The purpose of the Directive is to provide a definition of the facilitation of illegal immigration and consequently to render more effective the implementation of framework Decision 2002/946/JHA in order to prevent that offence. The Directive as well as the Framework Decision supplement other instruments adopted in order to combat illegal immigration, illegal employment, trafficking in human beings and the sexual exploitation of children.

As regards the general infringements, the Directive stipulates that each Member State shall adopt appropriate sanctions on:

- a) any person who intentionally assists a person who is not a national of a Member State to enter, or transit across, the territory of a Member State in breach of the laws of the State concerned on the entry or transit of aliens;
- b) any person who, for financial gain, intentionally assists a person who is not a national of a Member State to reside within the territory of a Member State in breach of the laws of the State concerned on the residence of aliens.

Any Member State may decide not to impose sanctions with regard to the behaviour defined above by applying its national law and practice for cases where the aim of the behaviour is to provide humanitarian assistance to the person concerned.

Concerning instigation, participation and attempt, each Member State shall take the measures necessary to ensure that the sanctions referred to above are also applicable to any person who:

- a) is the instigator of,
- b) is an accomplice in, or
- c) attempts to commit an infringement.

**ENTRY INTO FORCE :** 5 December 2002.

**DATE OF TRANSPOSITION :** 5 December 2004.

# Combating illegal immigration: facilitation of unauthorised entry, movement and residence. Initiative France

2000/0821(CNS) - 15/02/2001 - Text adopted by Parliament, 1st reading/single reading

By 242 votes against 203 and by 31 abstentions Parliament rejected the entire text of the French initiative on defining what constitutes 'aiding' of unauthorised entry, movement and residence. After all amendments by the Committee on Citizens' Freedoms and Rights had been approved with two other amendments by the ELDR group, a majority of MEPs for differing reasons decided to reject the entire text even as modified by the amendments. It proceeded to send the rejection of the French initiative on to Council by 447 votes in favour, 14 against and 16 abstentions. To recall, the report by Mr Ozan CEYHUN (Greens/ALE, D) specifies the implementation of a common immigration and asylum policy covering family reunion, the right of residence and an integration policy, as well as the combating of illegal immigration. It states that it is particularly important to lay the foundations of a common immigration and asylum policy, to establish a common asylum procedure and, in addition, to improve the legal status of refugees. It is also important to strengthen institutional cooperation between the Member States in this context. Furthermore, the report requests that the draft initiative should primarily aim to combat organised trafficking of illegal immigrants and should neither affect the rights of aliens to seek asylum in the European Union nor imply the automatic criminalisation of unauthorised entry. The report also specifies that it is necessary to involve the candidate countries in implementing common measures defined by the Union in this field. It requests in particular the creation of a budget line for compensatory payments for Member States particularly affected by illegal immigration because of their geographical situation and other characteristics. In addition, it also calls on Member States not to prosecute individuals, organisations and associations whose aims include defending, protecting and promoting aliens who are not nationals of a Member State when they act within the framework of this directive and out of humanitarian reasons. Lastly, 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: facilitation of unauthorised entry, movement and residence. Initiative France**

2000/0821(CNS) - 15/03/2001

The Council held a detailed debate on a Draft Council Directive defining the facilitation of unauthorised entry, movement and residence. It was agreed that work should be continued on the draft instruments 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: facilitation of unauthorised entry, movement and residence. Initiative France**

2000/0821(CNS) - 28/07/2000 - Document attached to the procedure

This text provides an explanation concerning the French proposal with a view to the adoption of a Directive defining the facilitation of unauthorised entry, movement and residence. The purpose of the Directive which aims to assist in combating illegal immigration not merely by taking the measures required against illegally resident aliens, but particularly 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: - nationally most Member 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 facilitation illegal entry or residence; - it should be ensured that henceforth the implementation of the penalties follows criteria common to all Member States; - it is essential first, however, to define the offence in question both more precisely and more effectively - the purpose of this instrument. The document then goes on to present each of the articles: - general offence; - participation, instigation and attempt; - penalties; - exemption from liability; - implementation; and - entry into force.