



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 27 March 2002

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LIMITE

**DROIPEN 19
MIGR 23
COMIX 213**

NOTE

from :	Secretariat
to :	Working Party on Substantive Criminal Law
No. prev. doc. :	10704/01 DROIPEN 63 MIGR 65 COMIX 510 11015/01 DROIPEN 70 MIGR 64 COMIX 551
Subject :	Draft Council Directive defining the facilitation of unauthorised entry, transit and residence Draft Council Framework decision on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence

The two texts on the above subjects have been edited by the legal linguists for the purpose of their adoption.

The edited version of the draft Council Directive defining the facilitation of unauthorised entry, transit and residence is set out in document 10704/01 DROIPEN 63 MIGR 65 COMIX 510.

The edited version of the draft Council Framework Decision on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence is set out in document 11015/01 DROIPEN 70 MIGR 64 COMIX 551.

In the light of Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen acquis, an appropriate recital on Ireland's position needs to be added in the two instruments. The Legal Service of the Council has looked into this matter and has at the same time examined the recitals in the two texts on the position of the United Kingdom and Norway and Iceland and the recital in the Directive on the position of Denmark.

The revised text proposed by the Legal Service is set out in Annex I (the recitals of the draft Directive) and Annex II (the recitals of the draft Framework Decision). It is noted that the recitals other than those concerned with the positions of the United Kingdom, Ireland, Denmark, Iceland and Norway have not been changed.

Revised recitals to the draft Council Directive defining the facilitation of unauthorised entry, transit and residence

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 61(a) and 63(3)(b) thereof,

Having regard to the initiative of the French Republic¹,

Having regard to the Opinion of the European Parliament,

Whereas:

- (1) One of the objectives of the European Union is the gradual creation of an area of freedom, security and justice, which means, inter alia, that illegal immigration must be combated.
- (2) Consequently, 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.

¹ OJ C 253, 4.9.2000, p. 1.

- (3) 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 this Directive and, on the other hand, minimum rules for penalties, liability of legal persons and jurisdiction, which is the subject of Council Framework Decision .../.../JHA on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence.
- (4) The purpose of this Directive is to provide a definition of the facilitation of illegal immigration and consequently to render more effective the implementation of the Framework Decision in order to prevent that offence.
- (5) This Directive supplements other instruments adopted in order to combat illegal immigration, illegal employment, trafficking in human beings and the sexual exploitation of children.
- (6) As regards Iceland and Norway, this Directive constitutes a development of provisions of the Schengen acquis within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen acquis¹, which fall within the area referred to in Article 1, point E of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement².

¹ OJ L 176, 10.7.1999, p. 36.

² OJ L 176, 10.7.1999, p. 31.

- (7) The United Kingdom is taking part in this Directive, in accordance with Article 5 of the Protocol integrating the Schengen acquis into the framework of the European Union annexed to the Treaty on European Union and to the Treaty establishing the European Community, and Article 8(2) of Council Decision 2000/365/EC of 29 May 2000, concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis¹.
- (8) Ireland is taking part in this Directive in accordance with Article 5 of the Protocol integrating the Schengen acquis into the framework of the European Union annexed to the Treaty on European Union and to the Treaty establishing the European Community, and Article 6(2) of Council Decision 2002/192/EC of 28 February 2002, concerning Ireland's request to take part in some of the provisions of the Schengen acquis².
- (9) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application. Given that this Directive builds upon the Schengen acquis under the provisions of Title IV of Part Three of the Treaty establishing the European Community, Denmark shall, in accordance with Article 5 of the said Protocol, decide within a period of six months after the Council has adopted this Directive whether it will implement it in its national law.

¹ OJ L 131, 1.6.2000, p. 43.

² OJ L 64, 7.3.2002, p. 20.

Revised recitals to the draft Framework decision on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Union, and in particular Articles 29, 31(e) and 34(2)(b) thereof,

Having regard to the initiative of the French Republic¹,

Having regard to the Opinion of the European Parliament,

Whereas:

- (1) 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.
- (2) 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.

¹ OJ C 253, 4.9.2000, p. 6.

- (3) 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 2001/ /EC of ... defining the facilitation of unauthorised entry, transit and residence¹ and, on the other hand, minimum rules for penalties, liability of legal persons and jurisdiction, which is the subject of this Framework Decision.
- (4) 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.
- (5) 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.
- (6) As regards Iceland and Norway, this Framework Decision constitutes a development of provisions of the Schengen acquis within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen acquis¹, which fall within the area referred to in Article 1, point E of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement².

¹ OJ L 176, 10.7.1999, p. 36.

² OJ L 176, 10.7.1999, p. 31.

- (7) The United Kingdom is taking part in this Framework Decision, in accordance with Article 5 of the Protocol integrating the Schengen acquis into the framework of the European Union annexed to the Treaty on European Union and to the Treaty establishing the European Community, and Article 8(2) of Council Decision 2000/365/EC of 29 May 2000, concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis¹.
- (8) Ireland is taking part in this Framework Decision in accordance with Article 5 of the Protocol integrating the Schengen acquis into the framework of the European Union annexed to the Treaty on European Union and to the Treaty establishing the European Community, and Article 6(2) of Council Decision 2002/192/EC of 28 February 2002, concerning Ireland's request to take part.
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¹ OJ L 131, 1.6.2000, p. 43.