



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 7 October 2002 (10.10)  
(OR. fr)**

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REV 2**

**DROIPEN 45  
MIGR 61  
COMIX 430**

**"A" ITEM NOTE**

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from : Secretariat  
to : Council

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Nos prev. docs: 10704/01 DROIPEN 63 MIGR 65 COMIX 510  
11015/01 DROIPEN 70 MIGR 64 COMIX 551  
7555/02 DROIPEN 19 MIGR 23 COMIX 213

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Subject: Adoption in the official languages of  
– a Council Directive defining the facilitation of unauthorised entry, transit and residence, and  
– a Council Framework Decision on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence

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1. In July 2000 the French Republic submitted a draft Council Directive defining the facilitation of unauthorised entry, transit and residence <sup>1</sup> and a draft Council Framework Decision on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence <sup>2</sup>.

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<sup>1</sup> 10675/00 DROIPEN 31 MIGR 59 COMIX 590 and 10711/00 DROIPEN 34 MIGR 61 COMIX 593. OJ C 253, 4.9.2000, p. 1.

<sup>2</sup> 10676/00 DROIPEN 32 MIGR 60 COMIX 591 and 10712/00 DROIPEN 35 MIGR 62 COMIX 594. OJ C 253, 4.9.2000, p. 6.

2. The European Parliament gave its Opinion on the proposals on 15 February 2001.<sup>1</sup>
3. At its meeting on 29 May 2001, the Mixed Committee at Ministerial Level adopted a general approach regarding the draft Directive and the draft Framework Decision, subject to parliamentary scrutiny reservations by the Swedish and United Kingdom delegations on the two drafts and a parliamentary scrutiny reservation by the Danish delegation on the draft Framework Decision.<sup>2</sup>
4. The draft instruments have been edited by the Working Party of Legal/Linguistic Experts in accordance with the usual procedure. The edited texts are set out in 11910/02 DROIPEN 60 MIGR 79 COMIX 504 (Directive) and 11909/02 DROIPEN 59 MIGR 78 COMIX 503 + COR 1 (Framework Decision).
5. The parliamentary scrutiny reservations referred to under point 3 have been lifted.
6. Coreper agreed at its meeting on 3 October 2002 to ask the Council to:
  - adopt the Directive set out in 11910/02 DROIPEN 60 MIGR 79 COMIX 504 by unanimity<sup>3</sup>,
  - adopt the Framework Decision set out in 11909/02 DROIPEN 59 MIGR 78 COMIX 503 + COR 1 by unanimity, and
  - enter the statements set out in the Annex to the present note in the minutes of the Council.

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<sup>1</sup> OJ C 276, 1.10.2001, p. 244.

<sup>2</sup> 9403/01 DROIPEN 51 MIGR 50 COMIX 423 and 10075/01 DROIPEN 54 MIGR 51 COMIX 457 + COR 1(en).

<sup>3</sup> Denmark does not take part in the adoption. See recital 8 of the Directive.

**Draft statements for inclusion in the minutes of the Council at the adoption of the Directive defining the facilitation of unauthorised entry, transit and residence and the Framework Decision on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence**

1. Statement by the Council

"The Council has approved the texts of the Council Directive and Framework Decision on the penal framework to prevent the facilitation of unauthorised entry and residence of aliens.

Facilitation nowadays takes the serious form of illegal immigration networks which deceive those who have recourse to them and place them in very dangerous situations, as was dramatically demonstrated by the deaths in Dover in June 2000. Such networks are now inextricably linked with organised crime.

Taking into account the fact that Member States always have the option of applying a more severe penalty than is specified in the texts adopted and aware that the leaders of illegal immigration networks are criminals who cause serious harm to others, the United Kingdom, France and Luxembourg undertake to implement measures in their national law laying down, for the conduct referred to in Article 1(3) of the Framework Decision, a maximum penalty of at least ten years' imprisonment."

2. Statement by the Commission

"Given the importance of stepping up the fight against this form of crime without delay, the Commission is in favour of the adoption of sanctions at national level in cases of breach of Community rules intended to prevent unauthorised entry, movement and residence.

The Commission takes the view, however, that the Framework Decision is not the appropriate legal instrument by which to require Member States to introduce such sanctions and considers that its adoption cannot constitute a precedent. The Commission believes that the Community has competence to require the Member States to impose sanctions at national level, including penal sanctions where appropriate, where this is necessary to achieve a Community objective, under the powers conferred on it for the purpose of achieving the aims set out in Article 2 of the Treaty establishing the European Community."

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