

II

(Preparatory Acts)

COUNCIL

Initiative of the French Republic with a view to the adoption of a Council Directive defining the facilitation of unauthorised entry, movement and residence

(2000/C 253/01)

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 Council Decision 1999/436/EC of 20 May 1999 determining the legal basis for each of the provisions or decisions constituting the Schengen *acquis* ⁽¹⁾;

Having regard to the initiative of the French Republic;

Having regard to the opinion of the European Parliament,

Whereas:

- (1) The Treaty on European Union lays down that one of the objectives entrusted to the Union is to combat trafficking in human beings by approximating, as far as necessary, rules on criminal matters in the Member States. The priority accorded to such action was stressed at the Tampere European Council.
- (2) The Treaty establishing the European Community provides for the gradual creation of an area of freedom, security and justice, which means, *inter alia*, that illegal immigration must be combated.
- (3) 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.

⁽¹⁾ OJ L 176, 10.7.1999, p. 17.

- (4) To that end it is 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 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 the draft Council Framework Decision .../.../EC of ... on the strengthening of the penal framework to preventing the facilitation of unauthorised entry and residence ⁽²⁾.

- (5) The purpose of this Directive, which is based on Title IV of the Treaty establishing the European Community, is to provide a better definition of the facilitation of illegal immigration and consequently to render more effective the implementation of Framework Decision .../.../EC on the strengthening of the penal framework in order to prevent the facilitation of unauthorised entry and residence.

- (6) These instruments will thus supplement recommendations such as that of 22 December 1995 on harmonising means of combating illegal immigration and illegal employment and improving the relevant means of control ⁽³⁾, that of 27 September 1996 on combating the illegal employment of third-country nationals ⁽⁴⁾, as well as Joint Action 97/154/JHA of 24 February 1997 to combat trafficking in human beings and sexual exploitation of children ⁽⁵⁾ without prejudice to measures which have been, or will be, taken in the framework of Title IV of the Treaty establishing the European Community.

- (7) This Directive is a development of the Schengen *acquis* as defined in the Schengen Protocol,

⁽²⁾ See p. 6 of this Official Journal.

⁽³⁾ OJ C 5, 10.1.1996, p. 1.

⁽⁴⁾ OJ C 304, 14.10.1996, p. 1.

⁽⁵⁾ OJ L 63, 4.3.1997, p. 2.

HAS ADOPTED THIS DIRECTIVE:

— his spouse or the person who is known to cohabit with him.

Article 1

General offence

Each Member State shall take the measures necessary 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 a Member State of the European Union is regarded as an offence.

Article 2

Participation, instigation and attempt

Each Member State shall take the measures necessary to ensure that participation, as an accomplice or instigator, in the offence referred to in Article 1 shall be considered to be an offence, as shall also the attempt to commit such an offence.

Article 3

Penalties

Each Member State shall take the measures necessary to ensure that the offences referred to in Articles 1 and 2 are punishable by effective, proportionate and dissuasive penalties.

Article 4

Exemption

Each Member State may exempt from criminal prosecution, for the offences referred to in Articles 1 and 2, persons whose link to the alien who has benefited from the aiding referred to in these same Articles is as follows:

— a relative in the ascending or descending line, brothers and sisters and their spouses,

Article 5

Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 1 November 2001. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive together with a table showing how the provisions of this Directive correspond to the national provisions adopted. The Commission shall inform the other Member States thereof.

Article 6

Entry into force

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

Article 7

Addressees

This Directive is addressed to the Member States.

Done at ...

For the Council
The President

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