

# EUROPEAN PARLIAMENT

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**A5-0095/2004**

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## **REPORT**

on the proposal for a Council Framework Decision laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of drug trafficking  
(15102/2/2003 – C5-0618/2003 – 2001/0114(CNS))

(Renewed consultation)

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Rapporteur: Arie M. Oostlander

### ***Symbols for procedures***

- \* Consultation procedure  
*majority of the votes cast*
- \*\*I Cooperation procedure (first reading)  
*majority of the votes cast*
- \*\*II Cooperation procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\* Assent procedure  
*majority of Parliament's component Members except in cases  
covered by Articles 105, 107, 161 and 300 of the EC Treaty and  
Article 7 of the EU Treaty*
- \*\*\*I Codecision procedure (first reading)  
*majority of the votes cast*
- \*\*\*II Codecision procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\*III Codecision procedure (third reading)  
*majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission)

### ***Amendments to a legislative text***

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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## PROCEDURAL PAGE

At the sitting of 25 April 2002 the Parliament adopted its position on the Commission proposal with a view to the adoption of a Council Framework Decision laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking (COM(2001) 259 – 2001/114(CNS)).

By letter of 9 December 2003 the Council consulted the Parliament again, under Articles 31(e), 34(2)(b) and 39(1) of the EU Treaty, on the proposal for a Council decision on the Draft Framework Decision laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of drug trafficking (15102/2/2003).

At the sitting of 15 December 2003 the President of Parliament announced that he had referred the Council text to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible (C5-0618/2003).

The committee had appointed Arie M. Oostlander rapporteur at its meeting of 11 July 2001.

It considered the Council text and draft report at its meetings of 21 January and 19 February 2004.

At the latter meeting it adopted the draft legislative resolution by 20 votes to 2, with 2 abstentions.

The following were present for the vote: Jorge Salvador Hernández Mollar (chairman), Johanna L.A. Boogerd-Quaak (vice-chairman), Giacomo Santini (vice-chairman), Arie M. Oostlander (rapporteur), Mary Elizabeth Banotti, Kathalijne Maria Buitenweg (for Alima Boumediene-Thiery), Michael Cashman, Carmen Cerdeira Morterero, Gérard M.J. Deprez, Adeline Hazan, Marie-Thérèse Hermange (for Charlotte Cederschiöld), Margot Keßler, Timothy Kirkhope, Eva Klamt, Luís Marinho (for Sérgio Sousa Pinto), Marjo Matikainen-Kallström (for Thierry Cornillet), Elena Ornella Paciotti, Paolo Pastorelli (for Marcelino Oreja Arburúa), Hubert Pirker, Bernd Posselt, Olle Schmidt (for Baroness Ludford), Joke Swiebel, Anna Terrón i Cusí and Maurizio Turco.

The report was tabled on 23 February 2004.

## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a Council Framework Decision laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of drug trafficking (15102/2/2003 – C5-0618/2003 – 2001/0114(CNS))**

**(Consultation procedure)**

*The European Parliament,*

- having regard to the Council draft (15102/2/2003)<sup>1</sup>,
  - having regard to the Commission proposal to the Council (COM(2001) 259)<sup>2</sup>,
  - having regard to its position of 25 April 2002<sup>3</sup>,
  - having regard to Articles 31(e) and 34(2)(b) of the EU Treaty,
  - having been reconsulted by the Council pursuant to Article 39(1) of the EU Treaty, (C5-0618/2003),
  - having regard to Rules 106, 67 and 71(3) of its Rules of Procedure,
  - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0095/2004),
1. Approves the proposal for a Council framework decision to combat illicit drug trafficking as agreed by the Council and notes that this Framework Decision marks a decisive step towards judicial cooperation in criminal matters;
  2. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
  3. Asks the Commission to continue to work and to make new proposals for the creation of a common judicial space in criminal matters;
  4. Instructs its President to forward this resolution to the Council and Commission.

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<sup>1</sup> Not yet published in OJ.

<sup>2</sup> OJ C 270 , 25.9.2001, p. 144.

<sup>3</sup> OJ C 131E, 5.6.2003, p. 15.

## EXPLANATORY STATEMENT

### Short History

At the end of May 2001, the Commission approved the proposal for a Framework Decision to combat illicit drug trafficking. More than two years later, an unexpected agreement has been reached within the Council. Not without difficulties, the Parliament adopted a consultation report on this Framework Decision which was initially referred back to the committee and two compromise amendments (regarding the scope and the sanctions) had to be found. Finally, the Parliament was able to deliver its opinion in April 2002 (after seven months of discussions).

In the meantime, the Council was unable to progress and it became clear that the Dutch had important reservations on the text. The Italian presidency however was able to reach an agreement last November. The text is before some national parliaments (the Netherlands, Ireland, Sweden and Denmark) and the European Parliament.

The final adoption of the Framework Decision will in any case give a psychological boost to the European Union and its judicial co-operation in criminal matters. It shows it is possible to agree on a text. The European Arrest Warrant could obviously be used to enforce the framework decision once it has been implemented.

### The content of the text

The whole text as proposed by the Commission has changed. The Commission wanted to propose stricter *definitions* than those laid down in the UN conventions on the fight against drugs, but the Council reduced the definition to those in the conventions (Article 1.1). All types of trafficking, cultivation and sales will be penalised; i.e. production, processing, sales, transport, distribution, cultivation (of opium, cocaine and cannabis), possession, and also purchase where the objective is one of the prohibited activities (Article 2.1). Although implicitly included in the original text, the agreed text clearly asks for the production of synthetic drug precursors to be condemned if they are produced with the aim of processing drugs.

Drug-related activities exclusively for personal consumption as defined by national law are not in the field of application of this framework decision (Article 2.2). This was one of Parliament's main amendments and actually responds to the subsidiarity principle. Legally, it means that if Member States wish, they can penalise personal consumption but they will not be obliged to do so by this framework decision.

The activities as described will be punished by criminal penalties of a maximum of at least one to three years' imprisonment but Member States can set higher sanctions if they wish (Article 4.1).

When large quantities are involved or the drugs are particularly dangerous to health, the sanctions will be a criminal penalty of a maximum of at least five to 10 years of imprisonment

(Article 4.2), while those committed by criminal organisations will be of a maximum of at least 10 years (Article 4.3). Obviously, the European Arrest Warrant could be used here.

It is not clear what quantity of what kinds of drugs can be described as small or serious trafficking. Of course, it is not the EU's task to set up a detailed penal code, but the jurisprudence can be expected to be quite different among the Member States.

*Incentives, aid or attempts* to commit one of these infringements will also be punished (Article 3). Article 3.2 is important as cases of attempts to offer or prepare drugs should be punished at the same level as the acts. However, legal co-operation and extradition will not be obligatory. It is said that this formulation helped to facilitate the agreement with the Netherlands.

It is regrettable that there are no *aggravating circumstances* in the text. The Parliament strongly recommended that it should stay in the text. It is not clear why the Council took it out but it is possible that it wants to keep the judges hands free to decide.

Strangely enough, the Council keeps *mitigating circumstances* even though the list is poor (Article 5). A majority in the Parliament voted to take out mitigating circumstances for the reason that not all Member States know mitigating circumstances in their penal code. This argument was strongly rebuffed by the Commission in its opinion on the adopted texts by the Parliament.

### **The Dutch exception and its consequences**

The Dutch determination to be able to continue to allow the possession of small quantities of soft drugs and for such drugs to be sold in “coffee shops” was one of the main problems to resolve in order to reach a final agreement. Though the sale and possession of drugs is prohibited in the Netherlands, courts never prosecute small amounts of drugs. In theory, this framework decision does not ask any Member State to change its drug policy and the Netherlands could continue to tolerate the coffee shops. Nevertheless, the Netherlands is expected to increase the penalties imposed for the sale of small quantities from 1 month to 1 year, but tolerance may continue. The Council and the Commission firmly stated the subsidiarity principle should be applied here.

Nonetheless, the Netherlands seems ready to make its legislation tougher, since the Dutch Justice Minister confirmed that his government hoped the coffee shops would restrict its sale to residents. In a statement the Council declared its intention to dissuade the phenomenon of drug tourism.

### **The Parliament's reconsultation report**

Though legally it is possible in this report to bring amendments to the Council's text, it is unlikely that the Council will change a word in what it took this institution 18 months to agree on unanimously. Therefore it is politically wiser to accept the framework decision as agreed bearing in mind it is a first small but very decisive step towards the creation of a common judicial space.

On the substance too, the Parliament should agree on the proposed text by the Council as the two major compromise amendments (on the scope and the sanctions) are recognised in the text. Moreover, it is clear that this framework decision does not ask Member States to change their drug policy.



19 February 2004

## **MINORITY OPINION**

by Maurizio Turco, Marco Cappato and Ilka Schröder

The Proposal for a Council framework decision on illicit drug trafficking not only addresses the issue of drugs trafficking as stated in its title, but goes far beyond by abusively criminalising all acts linked to illicit drugs, with the only exception being the vaguely defined “personal consumption”. Minor drugs law offences that are indirectly linked to personal consumption - such as passing a joint to a friend - are assimilated to “drug trafficking”, while penalties are harmonised and custodial sentences are imposed, in order to apply the European Arrest Warrant to these newly established “Euro-crimes”. The EP amendments at first reading, completely ignored by the Council, that we re-tabled in committee for the second reading, - which aim to limit the scope of the framework directive to international illegal drug trafficking in application of the subsidiarity principle - have been rejected. The counterproductive result of the approval of this framework decision, apart from the humiliation of the EP in front of the Council, is the strengthening of the international prohibitionist regime, the rise in the profits of drugs traffickers, and the corruption of institutions, along with the repression of drugs users.