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SECOND REPORT

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 – C5-0359/2001 – 2001/0114(CNS))

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.

CONTENTS

	Page
PROCEDURAL PAGE	4
LEGISLATIVE PROPOSAL	6
DRAFT LEGISLATIVE RESOLUTION	18
MINORITY OPINION 1	19
MINORITY OPINION 2	20

PROCEDURAL PAGE

By letter of 26 July 2001 the Council consulted Parliament, pursuant to Article 39(1) of the EC Treaty 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 – 2001/0114(CNS)).

At the sitting of 3 September 2001 the President of Parliament announced that she had referred this proposal to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible (C5-0359/2001).

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs had appointed Arie M. Oostlander rapporteur at its meeting of 11 July 2001.

It considered the Commission proposal and the draft report at its meetings of 11 September 2001, 15 October 2001, 20 November 2001 and 18 December 2001.

At the last meeting it adopted the draft legislative resolution by 17 votes to 16, with 2 abstentions.

The following were present for the vote: Graham R. Watson, chairman; Robert J.E. Evans, vice-chairman; Arie M. Oostlander, rapporteur; Niall Andrews, Mary Elizabeth Banotti, Hans Blokland (for Ole Krarup), Christian Ulrik von Boetticher, Kathalijne Maria Buitenweg (for Alima Boumediene-Thiery), Marco Cappato, Charlotte Cederschiöld, Carlos Coelho, Thierry Cornillet, Gérard M.J. Deprez, Giuseppe Di Lello Finuoli, Francesco Fiori (for Marcello Dell'Utri, pursuant to Rule 153(2)), Glyn Ford (for Michael Cashman), Anna Karamanou, Margot Keßler, Timothy Kirkhope, Alain Krivine (for Pernille Frahm), Baroness Sarah Ludford, Minerva Melpomeni Malliori (for Martin Schulz), Emilia Franziska Müller (for Bernd Posselt, pursuant to Rule 153(2)), Hartmut Nassauer, Elena Ornella Paciotti, Neil Parish (for Jorge Salvador Hernández Mollar, pursuant to Rule 153(2)), Paolo Pastorelli, Hubert Pirker, Martine Roure (for Adeline Hazan), Giacomo Santini (for Enrico Ferri, pursuant to Rule 153(2)), Jürgen Schröder (for Eva Klamt, pursuant to Rule 153(2)), Patsy Sørensen, Joke Swiebel, Fodé Sylla, Anna Terrón I Cusí and Gianni Vattimo.

The report was tabled on 19 December 2001 (A5-0460/2001).

At the sitting of 5 February 2002 the report was referred back to committee pursuant to Rule 68(3) of the Rules of Procedure.

At its meeting of 19 February 2002 the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs confirmed the appointment of Arie M. Oostlander as rapporteur.

The committee examined the draft second report at its meetings of 19 March 2002 and 18 April 2002.

At the last meeting the committee adopted the draft legislative resolution by 36 votes to 6, with no abstentions.

The following were present for the vote: Ana Palacio Vallelersundi, chairman; Lousewies van der Laan and Giacomo Santini, vice-chairmen; Arie M. Oostlander, rapporteur; Roberta Angelilli, Maria Berger (for Martin Schulz), Hans Blokland (for Ole Krarup pursuant to Rule 153(2)), Christian Ulrik von Boetticher, Alima Boumediene-Thiery, Kathalijne Maria Buitenweg (for Heide Rühle), Marco Cappato (for Mario Borghezio), Michael Cashman, Carmen Cerdeira Morterero, Ozan Ceyhun, Carlos Coelho, Thierry Cornillet, Gérard M.J. Deprez, Francesco Fiori (for Marcello Dell'Utri pursuant to Rule 153(2)), Pernille Frahm (for Giuseppe Di Lello Finuoli pursuant to Rule 153(2)), Jorge Salvador Hernández Mollar, Pierre Jonckheer, Margot Keßler, Eva Klamt, Jean Lambert (for Patsy Sörensen), Baroness Sarah Ludford, Hartmut Nassauer, William Francis Newton Dunn, Elena Ornella Paciotti, Paolo Pastorelli (for Bernd Posselt), Hubert Pirker, Martine Roure, Gerhard Schmid, Olle Schmidt (for Francesco Rutelli), Ilka Schröder, Sérgio Sousa Pinto, The Earl of Stockton (for The Lord Bethell), Joke Swiebel, Anna Terrón i Cusí, Maurizio Turco, Gianni Vattimo (for Valter Veltroni), Christos Zacharakis (for Charlotte Cederschiöld) and Olga Zrihen Zaari (for Robert J.E. Evans).

The second report was tabled on 18 April 2002.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

LEGISLATIVE PROPOSAL

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 – C5-0359/2001 – 2001/0114(CNS))

The proposal is amended as follows:

Text proposed by the Commission¹

Amendments by Parliament

Amendment 1 Recital 2

(2) The need for legislative action to tackle illicit drug trafficking has been recognised in particular in the Action Plan of the Council and the Commission, adopted by the Justice and Home Affairs Council in Vienna on 3 December 1998, on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice²; the conclusions of the Tampere European Council of 15 and 16 October 1999, in particular point 48 thereof, the European Union's Drugs Strategy (2000-2004) adopted at the Helsinki European Council from 10 to 12 December 1999 and the European Union's Action Plan on Drugs (2000-2004) endorsed by the European Council in Santa Maria da Feira on 19 and 20 June 2000.

(2) The need for legislative action to tackle illicit drug trafficking has been recognised in particular in the Action Plan of the Council and the Commission, adopted by the Justice and Home Affairs Council in Vienna on 3 December 1998, on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice²; the conclusions of the Tampere European Council of 15 and 16 October 1999, in particular point 48 thereof, the European Union's Drugs Strategy (2000-2004) adopted at the Helsinki European Council from 10 to 12 December 1999 and the European Union's Action Plan to Combat Drugs (2000-2004) endorsed by the European Council in Santa Maria da Feira on 19 and 20 June 2000. ***In its resolution of 19 November 1999 on a European Union Action Plan to Combat Drugs (2000-2004)*³, the European Parliament made various references to the link between crime and drug trafficking and called for legislative action to be taken to combat illicit drug trafficking.**

¹ OJ C 270, 25.9.2001, p. 144.

² OJ C 19, 23.1.1999, p. 1.

³ OJ C 189, 7.7.2000, p. 256.

Justification

Only that resolution relates to the action plan. Although other, older resolutions are of interest, too, it is not as appropriate to refer to them here (the resolution on the work of the Committee of Inquiry into Drug Trafficking¹, and the resolution on a European Union action plan to combat drugs (1995 to 1999)²). They prove that Parliament has been striving for years for a solution on how to combat illicit drug trafficking.

Amendment 2 Recital 2 a (new)

(2a) In view of the health risks, European Union drugs policy must focus on prevention. Tackling illicit drug trafficking can only be a component of this general drugs policy.

Justification

Prevention is, and must remain, the basis of European Union drugs policy. That is also clearly stated in the resolution on the action plan (A5-0063/1999).

Amendment 3 Recital 2 b (new)

(2b) Repression must be targeted not on drug addicts themselves, but on drug traffickers and the criminal and terrorist organisations which derive funds from trafficking in order to finance their illegal activities.

¹ B3-0668/92, OJ C 150, 13.5.1992, p. 41.

² A4-0136/95, OJ C 166, 3.7.1995, p. 82-116.

Justification

There has been an unprecedented boom in drug trafficking, chiefly since the end of the Cold War, to finance criminal and terrorist organisations' activities. The issue has been very much relevant since 11 September, too. Tackling trafficking will cut off those organisations' flow of funds. It is pointless to exact retribution from addicts and small-scale dealers. This is more in line with the subsidiarity and proportionality principle.

Amendment 4 Recital 6

(6) It is necessary, ***on the one hand***, to provide for more severe penalties when certain circumstances accompany the illicit drug trafficking and make it an even greater threat to society, for example when trafficking is carried out by a criminal organisation. ***On the other hand, provision should be made for reducing the penalties when the offender has supplied the competent authorities with valuable information, in particular by helping to identify drug-dealing networks.***

(6) It is necessary to provide for more severe penalties when certain circumstances accompany the illicit drug trafficking and make it an even greater threat to society, for example when trafficking is carried out by a criminal organisation.

Justification

With regard to mitigating circumstances, it is desirable to confine the provisions to what is laid down in the legislation of the Member States.

Amendment 5 Recital 7

(7) It is necessary to take measures to enable the confiscation of the proceeds of the offences referred to in this framework decision.

(7) It is necessary to take measures to enable the confiscation of the ***instrumentalities, proceeds and advantages*** of the offences referred to in this framework decision. ***Member States should take the necessary measures to ensure that confiscation of proceeds also***

serves to increase budgets for programmes for prevention and for the rehabilitation of drug users and for programmes to support their families.

Justification

The instrumentalities and advantages associated with the offence should also be confiscated together with the proceeds. The insertion of the second sentence is intended to make up for the social harm caused by illicit drug trafficking to some extent. In addition, it reiterates the basic notion of drugs policy in the European Union: prevention. Parliament has pressed for this, too (A5-0063/99).

Amendment 6
Recital 8 a (new)

(8a) It is also essential to cooperate with the competent international bodies in cases of illicit international drug trafficking beyond the borders of the Member States of the European Union.

Justification

Most drug trafficking occurs along corridors which go beyond the Member States' borders; there is therefore a need for international cooperation.

Amendment 7
Recital 9

(9) Measures should also be foreseen for the purposes of cooperation between Member States with a view to ensuring effective action against illicit drug trafficking.

(9) Measures should also be foreseen for the purposes of ***systematic and effective*** cooperation between Member States with a view to ensuring effective action against illicit ***organised international*** drug trafficking. ***In this context, Europol and Eurojust, as bodies firstly for police and secondly for judicial cooperation, must be recognised and become fully operational. Greater operability requires a stronger legal basis, particularly so as to ensure control by the European Parliament and***

full jurisdiction for the Court of Justice of the European Communities.

Justification

Democratic control by the European Parliament and the Court of Justice is all the more necessary when it comes to assigning operational powers to Europol.

Amendment 8
Recital 9 a (new)

(9a) It is necessary for the Member States to achieve a minimum consensus on the admissibility of the various investigative methods, resulting in a binding instrument ensuring minimum safeguards with regard to procedural law.

Justification

Judicial cooperation should not result in harmonisation from the bottom upwards with regard to respect for procedural safeguards in the European Union.

Amendment 9
Article 1, paragraph 1

1. "illicit drug trafficking" means the act, without authorisation, of selling and marketing as well as, for profit, of cultivating, producing, manufacturing, importing, exporting, distributing, offering, transporting or sending or, for the purpose of transferring for profit, of receiving, acquiring and possessing drugs;

1. "illicit drug trafficking" means the act, without authorisation ***and irrespective of the medium of communication***, of selling and marketing as well as, for profit, of cultivating, producing, manufacturing, importing, exporting, distributing, offering, transporting or sending or, for the purpose of transferring for profit, of receiving, acquiring and possessing drugs;

Justification

There is a need for a specific reference to the medium of communication since this makes it clear that all the activities set out in paragraph 1 are prohibited over the Internet.

Amendment 10
Recital 1a (new)

Purpose of this framework decision

This framework decision relates to tackling serious and/or international illegal drug trafficking.

Justification

This amendment clarifies the scope of this framework decision.

Amendment 11
Article 3

Member States shall take the necessary measures to make incitement to commit, aiding and abetting or attempting to commit the offence referred to in Article 2 a criminal offence.

Member States shall take the necessary measures to make incitement, ***irrespective of the medium of communication***, to commit, aiding and abetting or attempting to commit the offence referred to in Article 2 a criminal offence.

Justification

A specific reference to communication media is necessary in order to make it clear that Internet trafficking is prohibited, too.

Amendment 12
Article 4, paragraph 1a (new)

The degree of seriousness shall be assessed on the basis of a number of factors such as the scale of the trafficking, its frequency, the type of narcotic drugs involved, according to health risks, or the amount of money made from the trafficking.

Justification

This amendment clarifies article 4.1 on the penalties.

Amendment 13
Article 4, paragraph 3

3. Member States shall provide for the possibility of imposing fines in addition to ***or as an alternative to*** custodial sentences.

3. Member States shall provide for the possibility of imposing fines in addition to custodial sentences ***and alternative penalties.***

Justification

This is more suitable for serious crime.

Amendment 14
Article 4, paragraph 3a (new)

The proceeds from the measures set out in paragraphs 2 and 3 of this Article shall be used for prevention, addict rehabilitation, and family support programmes.

Justification

Obviously, the social damage inflicted by illicit drug trafficking must be repaired in some way. The amendment also emphasises that the basic principle of Union drug policy is prevention.

Amendment 15

Article 5, paragraph 1, introduction

1. Without prejudice to any other aggravating circumstances defined in their national legislation, Member States shall provide for the following aggravating circumstances in respect of the offences referred to in Articles 2 and 3.

1. Without prejudice to any other aggravating circumstances defined in their national legislation, Member States shall provide, ***in a manner compatible with their own law***, for the following aggravating circumstances in respect of the offences referred to in Articles 2 and 3.

Justification

The aggravating circumstances described in this article are very general; for example the national definitions of violence or minors differ considerably, each having its own traditional and historical background.

Amendment 16

Article 5, paragraph 1 (a) – (f)

(a) the offender has an important role in the organisation of the drug trafficking, or the offence was committed by a criminal organisation;

(b) the offence involves violence or the use of weapons;

(c) the offence involves minors or persons who are unable to exercise their free will;

(d) the offence was committed in or near schools, youth clubs and leisure centres, or institutions for the treatment and rehabilitation of drug addicts;

(a) the offender has an important role in the organisation of the drug trafficking, or the offence was committed by a criminal organisation ***or in order to finance a terrorist organisation***;

(b) the offence involves violence or the use of weapons;

(c) the offender has been convicted of one or more similar offences by a final judgement in a Member State of the Union.

(d) the offence involves minors or persons who are unable to exercise their free will;

(e) the offence was committed in or near schools, youth clubs and leisure centres, or institutions for the treatment and rehabilitation of drug addicts;

(e) the offender is a doctor, pharmacist, court official, police officer, customs officer, prison officer, probation officer, teacher, instructor or works in an educational establishment and abused this position to commit the offence;

(f) the offender has been convicted of one or more similar offences by a final judgement in a Member State of the Union.

(f) the offender has misused his or her position or engaged in moral, psychological and/or physical duress in order to commit the offence;

Justification

Financing of terrorist organisations should be regarded as an aggravating circumstance. Point (f) is moved to (c) for a more logical sequence. Courts should be given leeway for interpretation, and not limited to a list which is likely to be interpreted as exhaustive.

Amendment 17
Article 6

Without prejudice to any other mitigating circumstances defined in their national legislation, Member States shall take the necessary measures to ensure that the penalties referred to in Article 4 can be reduced if the offender has supplied the competent authorities with valuable information for the enquiry or the collection of evidence about the identity of other offenders, or has helped to identify drug-dealing networks.

Delete

Justification

With regard to mitigating circumstances, it is desirable to confine the provisions to what is laid down in the legislation of the Member States.

Amendment 18
Article 7, paragraph 1 (b)

(b) an authority to take decisions on *behalf*

(b) an authority to take decisions on the legal

of the legal *person*, or

person's account, or

Justification

In the event of direct representation of a legal person, the amendment provides scope for taking decisions on his account rather than on his behalf.

Amendment 19
Article 8 (f)

(f) the confiscation of property that *was* the *object* of the offence and the proceeds and advantages derived directly or indirectly from the offence.

(f) the confiscation of *the instrumentalities and* property that *were* the *objects* of the offence and the proceeds and advantages derived directly or indirectly from the offence.

Justification

The instrumentalities and advantages associated with the offence should also be confiscated together with the proceeds.

Amendment 20
Article 9, paragraph 1(b)

(b) the offender is one of their nationals;

(b) the offender is one of their nationals *or is permanently or temporarily resident on their territory*;

Justification

The jurisdiction of each Member State should not be confined to the nationals of the particular Member State but should be extended to include residents of that State.

Amendment 21
Article 10, paragraph 2

2. If several Member States have

2. If several Member States have

jurisdiction over an offence referred to in Article 2 or 3, they shall consult one another with a view to co-ordinating their action and, where appropriate, to bringing a prosecution. ***They shall make full use of judicial cooperation and other mechanisms.***

jurisdiction over an offence referred to in Article 2 or 3, they shall ***be required to*** consult one another with a view to co-ordinating their action and, where appropriate, to bringing a prosecution. ***That coordination shall take place through all available cooperation mechanisms, both police-related and judicial.***

Justification

Requiring Member States to cooperate effectively is necessary in order to achieve results (see also Amendment 21). Reference is made to Europol and Eurojust in the recitals whereas that is more difficult in the purview. This would extend to the European arrest warrant (if adopted).

Amendment 22 Article 11, paragraph 1

1. Member States shall take the necessary measures to comply with this framework decision by 30 June 2003 at the latest.

They shall immediately send the Commission ***and the General Secretariat of the Council*** the text of the provisions transposing the obligations imposed upon them by this framework decision.

1. Member States shall take the necessary measures to comply with this framework decision by 30 June 2003 at the latest.

They shall immediately send the Commission the text of the provisions transposing the obligations imposed upon them by this framework decision.

Justification

In line with the provisions of the Treaty of Amsterdam transferring certain powers from the third to the first pillar, it is proper for the Commission to be responsible for implementation, thus obviating the need for a shadow organisation to be set up within the Council. Furthermore, the Commission would forward its evaluation to Parliament and the Council (see paragraph 3 of the article).

Amendment 23 Article 11, paragraph 3

3. On the basis of the information referred to in paragraphs 1 and 2, the Commission shall draw up a report evaluating the application

3. On the basis of the information referred to in paragraphs 1 and 2, the Commission shall draw up a report evaluating the application

of the provisions of this framework decision by the Member States for the first time by 30 June 2007 at the latest, and every *five* years thereafter. This report shall be sent to the European Parliament and to the Council, where necessary accompanied by proposals for the amendment of this framework decision.

of the provisions of this framework decision by the Member States for the first time by 30 June 2007 at the latest, and every *three* years thereafter. This report shall be sent to the European Parliament and to the Council, where necessary accompanied by proposals for the amendment of this framework decision.

Justification

The five years which the Commission proposes is too long a period for the report.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution 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 – C5-0359/2001 – 2001/0114(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal (COM(2001) 259)¹,
 - having been consulted by the Council pursuant to Article 39(1) of the Treaty on European Union (C5-0359/2001),
 - having regard to Rules 106 and 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0460/2001),
 - having regard to the second report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0123/2002),
1. Approves the Commission proposal as amended;
 2. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;
 3. Asks to be consulted again if the Council intends to amend the Commission proposal substantially;
 4. Instructs its President to forward its position to the Council and Commission.

MINORITY OPINION 1

¹ OJ C 270, 25.9.2001, p. 144.

by Maurizio Turco

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 – C5-0359/2001 – 2001/0114(CNS))

As a result of prohibition, what was originally a small-scale phenomenon has now grown to massive proportions.

As a result of prohibition, thousands of people die from overdoses and transmissible diseases, especially Aids.

As a result of prohibition, organised crime has been able, at no expense to itself, to secure a monopoly on the production and distribution of prohibited drugs.

As a result of prohibition, thousands of young people are sent to gaol, which means that prisons are full of innocent people, police forces are distracted from other duties and the courts are kept from their task of prosecuting criminals.

It needs to be made quite clear that the drugs which move freely around the world and which are associated with dirty money and mafias, corruption and Aids, are prohibited drugs.

We need to assume political responsibility rather than seek moral self-absolution, to acknowledge that prohibition has failed and to devise new policies designed to remedy the damage caused in particular by prohibition.

The purpose of my vote is to indicate that I distance myself categorically from those who, for ethical or *Realpolitik* reasons of varying validity, currently condemn millions of often young and very young people to clandestine practices, who effectively encourage crime, who severely test the ability of entire countries and geographical areas to protect themselves from corruption, and who perpetuate the existence of drugs empires based on intolerant religious or military regimes.

MINORITY OPINION 2

by Marco Cappato

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 – C5-0359/2001 – 2001/0114(CNS))

My colleague Chris Davies was arrested in Stockport on 15 December 2001 after reporting himself to be in possession of cannabis. The same thing happened to me on 20 December 2001. In Italy, 40 anti-prohibition militants are on trial for having passed on cannabis free of charge. For the same offence committed on two different occasions the radical leader Marco Pannella was acquitted on 12 February 2002 and sentenced the following day. Although he reported himself for cannabis possession in Stockport, he was not arrested. The purpose of our non-violent action is to draw attention to the scandal of ridiculous laws which lead to violence and death, which nurture mafias, which are unenforceable in real life and which are often not enforced – out of a sense of responsibility – by those (policemen and magistrates) who are supposed to do so. As regards the anti-prohibitionist reform which is needed in the interests of freedom, the responsibility of the individual, civil rights and democracy, the Oostlander report represents an attempt at a prohibitionist counter-reform and a first step towards committing all European governments to prohibitionism camouflaged by the need to harmonise penal law, in the absence of any democratic control whatsoever. For this reason I have voted against the Oostlander report and the Commission proposal and I call on my colleagues to do likewise.