

Combating illicit drug trafficking: criminal acts and penalties, minimum provisions. Framework Decision

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The Commission presents a report on the implementation of Framework Decision 2004/757/JHA which sets out to establish minimum rules relating to the constituent elements of the offences of illicit trafficking in drugs and precursors, so as to allow a common approach at EU level to the fight against such trafficking.

The effectiveness of the efforts made depends essentially on the harmonisation of the national measures implementing the Framework Decision. The Commission notes that six Member States did not comply with their obligation to transmit information, and are not covered in the report. These are Cyprus, Spain, Greece, Italy, Malta and the United Kingdom. It also remarks on gaps regarding information from Member States regarding transposition of the legislation.

The report carries out an analysis of national implementing measures and notes the following:

Crimes linked to trafficking in drugs and precursors (Article 2): with regard to crimes linked to trafficking in drugs, the report notes that seven Member States have ambiguous legislation which does not guarantee full application of the Framework Decision in a sufficiently clear manner. With regard to crimes linked to trafficking in precursors, both Denmark and France stated that trafficking in precursors is not covered in their criminal law, but can fall within the offences of drug trafficking or aiding and abetting drug trafficking. The Commission has serious doubts about the compliance of these systems, particularly with respect to Article 3 on incitement. The Commission's fear is that the absence of a separate offence of precursor trafficking will prevent this trafficking from being properly recorded, particularly with respect to attempt, incitement and aiding and abetting.

Penalties (Article 4): with regard to **standard offences**, the legislation of five Member States raises problems of interpretation, owing largely to a lack of information. In 12 Member States penalties are more than twice the range proposed by the Framework Decision, meaning that there are maximum penalties of six years or more or even life imprisonment. On the whole, legislative disparities between the Member States seem to remain unchanged. At the same time, maximum sentences are meaningful only in the context of proceedings actually initiated and penalties actually imposed by the courts. A comparison of judicial practice in each Member State would enable an assessment of the extent to which the objective of aligning national systems has been achieved in practice. In this context, the complexity of the Dutch system and the controversies relating to coffee shops merit particular attention. The Commission concludes that all the national legislation of which it has been informed is formally compliant, but expresses regret at the heterogeneous nature of this legislation and has concerns regarding its practical application.

Operation and effects on judicial cooperation: the difficulty of studying the operation of the Framework Decision and its effects on judicial cooperation lies primarily in the collection of data on judicial practice in the Member States. The Commission has relied on information from Eurojust and the European Judicial Network (EJN).

- **Eurojust's input:** from 2004 to 2008, Eurojust recorded 771 drug trafficking cases, which showed a significant increase from 77 cases in 2004 to 207 in 2007. Drug cases account for 20% of the

cases handled by Eurojust between 2004 and 2008. It is interesting to note that of 151 drug trafficking cases associated with one or more other crimes, 65 involved participation in a criminal organisation. The report shows that there has been a clear increase in judicial cooperation on drug trafficking between Member States through Eurojust since 2004. However, it is at this stage impossible to distinguish how the Framework Decision has affected such cooperation, or to measure its impact. This question was the focus of the questionnaire to the EJM.

- **Input of the EJM:** the contact points of the EJM in ten Member States replied to the Commission's questionnaire. The general impression given by their data is that although specialists are familiar with the Framework Decision, they regard its importance as minor, because it has not resulted in many changes to national legislation. The question of the Framework Decision's effect on cooperation remains open, because the Framework Decision does not concern judicial cooperation directly, and because no Member State seems to have a centralised system enabling it to measure trends in judicial cooperation in drug trafficking cases. The replies often point to a degree of uncertainty amongst specialists, for example in Finland, France and Portugal.

Conclusion: the report concludes that implementation of the Framework Decision has not been completely satisfactory. While the majority of Member States already had a number of the provisions in place, a number have also demonstrated – often in sketchy answers – that they have not always amended their existing legislation where the Framework Decision required it. Six Member States provided no information whatsoever. There has thus been little progress in the alignment of national measures in the fight against drug trafficking. The weak impact of the Framework Decision is confirmed by the EJM's input. It is difficult to establish a link between the Framework Decision and the progress in judicial cooperation described by Eurojust. The Commission consequently invites those Member States which have submitted no information, or incomplete information, to comply with their obligations under the Framework Decision.