

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

2001/0114(CNS) - 26/11/2003 - Amended legislative proposal for reconsultation

The Council, taking note of the Parliamentary scrutiny reservations by the Irish, Danish, Swedish and Netherlands delegations, has reached an agreement on the framework-decision laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of drug trafficking. The approved text provides a new definition of penalties and the reports on the implementation of the framework decision. Furthermore, in the light of the fact that the Commissions' original proposal has undergone substantial changes as a result of the negotiations, the Coreper/Council is invited to agree to reconsult the European Parliament on the draft Framework Decision. Amendments are as follows: 1) Concerning the penalties : each Member State shall take the necessary measures to ensure that the following intentional conduct when committed without right is punishable: - the production, manufacture, extraction, preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of drugs; - the cultivation of opium poppy, coca bush or cannabis plant; - the possession or purchase of drugs with a view to conducting one of the activities listed in above; - the manufacture, transport or distribution of precursors, knowing that they are to be used in or for the illicit production or manufacture of drugs. The conduct shall not be included in the scope of this Framework Decision when it is committed by its perpetrators exclusively for their own personal consumption as defined by national law. By virtue of the principle of subsidiarity, European Union action should focus on the most serious types of drug offence. The exclusion of certain types of behaviour as regards personal consumption from the scope of the Framework Decision does not constitute a Council guideline on how Member States should deal with these other cases in their national legislation. 2) Penalties provided for by the Member States should be effective, proportionate and dissuasive, and include custodial sentences. To determine the level of penalties, factual elements such as the quantities and the type of drugs trafficked, and whether the offence was committed within the framework of a criminal organisation should be taken into account. Member States should be allowed to make provision for reducing the penalties when the offender has supplied the competent authorities with valuable information. 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 Amsterdam Treaty on an area of freedom, security and justice, 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) endorsed by 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.