Fight against drugs : suppression by customs administrations of illicit trafficking on the high seas. Initiative Spain

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PURPOSE : to present the Initiative of the Kingdom of Spain with a view to adopting a Council Act establishing, in accordance with Article 34 of the Treaty on European Union, the Convention on the suppression by customs administrations of illicit drug trafficking on the high seas. CONTENT : the draft Convention would supplement and reinforce application of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances concluded in Vienna on 20 December 1988 and also the cooperation at sea established on the basis of the Convention on Mutual Assistance between Customs Administration of 18 December 1997, known as the Naples II Convention. The objective of the initiative is to provide the Member States with a Convention that strengthens cooperation between the European Union's customs administrations in the fight against illicit trafficking in narcotic drugs and psychotropic substances by extending the possibilities for immediate action on the high seas in emergencies, without prior authorisation, against one Member State's vessels, on the part of naval units of the competent authority of another Member State, for which prior authorisation is required at present. In action at sea there can be various different scenarios, of which the three most likely to result in the capture of a vessel by a Member State are: a) a suspect vessel is flying the same flag as the country taking action, in which case the action will be taken in accordance with national law; b) the suspect vessel is flying a foreign flag, in which case it is pursued from the waters within the jurisdiction of one Member State and then on the high seas or into the waters of another Member State: - in the first case the pursuit can continue and result in capture, under Article 111 of the United Nations Convention on the Law of the Sea of 10 December 1982; - in the second case it can do so as well under the Naples II Convention when it enters into force; c) the location and pursuit take place on the high seas, and the only possibility of capture at present is with the authorisation of the flag State, under the Vienna Convention. The procedure for obtaining prior authorisation to take action on the high seas against a vessel flying the flag of another State is laid down in Article 17 of the aforementioned Vienna Convention. Depending on which authority or authorities have been designated to grant the authorisation referred to in the aforementioned article in each State and on its internal organisation, it may take a long time to obtain permission to board a vessel flying the flag of another State on the high seas, bearing in mind that operations against drugs trafficking at sea are normally carried out at night (or at the weekend) and that any delay in obtaining authorisation may result in the failure of the operation. The proposed Convention would allow action to be taken on the high seas against a vessel flying another Member State's flag when there are suspicions that it is carrying out illicit trafficking in narcotic drugs, without its being necessary to obtain the prior authorisation of the flag State. The purpose of this draft initiative is to strengthen cooperationbetween the customs administrations in combating drug trafficking by giving vessels of the competent authorities of a Member State greater scope to take immediate action without prior authorisation against vessels from another Member State in emergencies, where currently it is not possible to take action without prior authorisation outside territorial waters. Concerning the offence, each Member State shall adopt the measures necessary to classify as an offence in its national law, and penalise, offences on board vessels or by means of any other craft or floating medium not excluded from the scope of this Convention, involving the possession for distribution, transport, transhipment, storage, sale, manufacture or processing of narcotic drugs or psychotropic substances as defined in the relevant international instruments. It should be noted that warships and official non-commercial public service vessels shall be excluded from the scope of this Convention. As regards the issue of the right of representation, the draft initiative stipulates that where there are good grounds to suspect that an offence has been committed, each Member State shall allow the other Member States a right of representation, which shall give legitimacy to action taken by ships or aircraft belonging to their respective customs administrations against vessels from another Member State.

In exercising the right of representation, official ships or aircraft may give pursuit, stop and board the vessel, examine documents, identify and question the persons on board and inspect the vessel and, should their suspicions be confirmed, seize the drugs, detain the persons alleged to be responsible and escort the vessel to the nearest or most suitable port where it shall be detained prior to being returned, informing - beforehand if possible or immediately afterwards - the State whose flag was being flown by the vessel. Where action has been taken, due account shall be taken of the need not to endanger the safety of life at sea or the security of the vessel and cargo, or to prejudice the commercial and legal interests of the flag State or the commercial interests of third parties. In any case, should the action have been taken without adequate grounds for carrying out the operation, the Member State which carried it out shall be held responsible for damage and losses incurred unless the action was taken at the request of the flag State. A vessel's period of detention shall be reduced to the absolute minimum and the vessel returned to the flag State or given the right to free passage as soon as possible. Persons detained shall be guaranteed the same rights as those enjoyed by nationals, especially the right to have an interpreter and be assisted by a lawyer. Concerning the financial implications of the initiative, they will be nil as no expenditure is required over and above that on the present activities of the customs authorities of the Member States in the fight against illicit trafficking in narcotic drugs.