

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

2001/0114(CNS) - 25/10/2004 - Final act

PURPOSE : to lay down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking.

LEGISLATIVE ACT : Council Framework Decision 2004/757/JHA.

CONTENT : this Decision provides that 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 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 described above will not be included in the scope of the 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, EU action should focus on the most serious types of drug offence. The Decision states that 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.

With regard to penalties, the Decision provides as follows:

- Member States must ensure that the offences referred to above are punishable by criminal penalties of a maximum of at least between one and three years of imprisonment;
- this is increased to a maximum of at least between 5 and 10 years of imprisonment in certain prescribed circumstances, such as if the offence involves large quantities of drugs;
- there is a maximum of at least 10 years of deprivation of liberty, where the offence was committed within the framework of a criminal organisation as defined in Joint Action 98/733/JHA;
- Member States are allowed to make provision for reducing the penalties when the offender has supplied the competent authorities with valuable information;
- there are provisions enabling Member States to take measures to enable the confiscation of the proceeds of the offences referred to in the Framework Decision;

- Measures must be taken to ensure that legal persons can be held liable for the criminal offences referred to by this Framework Decision which are committed for their benefit.

ENTRY INTO FORCE : 12/11/2004.