Fight against organised crime. Framework Decision

2005/0003(CNS) - 19/01/2005 - Legislative proposal

PURPOSE : to improve the fight against organised crime.

PROPOSED ACT : Council Framework Decision.

CONTENT : the EU has taken the lead in the fight against organised crime since the Treaty of Amsterdam and the Amsterdam European Council of 16 and 17 June 1997, which adopted the first action plan to combat organised crime. In 1998, the Council adopted a Joint Action on participation in a criminal organization. However, it is now necessary to provide the Union with a more powerful and ambitious instrument to approximate more closely Member States' criminal legislation and improve cooperation in order to combat organised crime more effectively, inter alia by harmonizing the minimum thresholds of criminal penalties.

Moreover, as was stated in the Hague programme, the citizens of Europe rightly expect the European Union to take a more effective, joint approach to cross-border problems such as organised crime. With the adoption of a legislative proposal and a strategy document the European Commission has done precisely that and stepped up the fight against crime, be it organised or unorganised.

This particular proposal for a Council Framework Decision aims at harmonizing the definition of what constitutes a criminal organisation. Such an organisation is understood to be a structured association of at least two persons who, for material gain, commit serious crimes punishable with at least four years of imprisonment, such as trafficking in weapons, drugs or human beings, economic crimes or money laundering.

It also proposes to punish leaders of such organisations with an imprisonment of at least ten years and participation, including supportive activities for the organisation, with five years of imprisonment.

The proposal also envisages lowering of the sentence of those members of criminal organisation who cooperate with the authorities with a view to avoiding criminal activities to take place or assist in identifying and bringing to justice other offenders.

The proposal also stipulates that Member States must cooperate and consult each other to coordinate

their action and decide which Member State will prosecute the alleged offenders.

As regards the protection of and assistance to victims, the proposal highlights that EU attaches particular importance to protecting and assisting victims. In cases involving organised crime, and in particular trafficking in human beings, provision must be made to ensure that a complaint or statement by the victim is not necessary for initiating prosecution. There are many cases where victims are afraid of reprisals by mafia-type organisations against themselves or their families.

Lastly, it should be noted that the new text also takes account of parameters that have changed since 1998:

- the Treaty of Amsterdam, which succeeded the Maastricht Treaty, introduced new types of legal instruments, more effective than the "joint action"; the framework decision is now the proper instrument for approximating criminal law in the Union in this area;

- the United Nations Convention against Transnational Organised Crime, known as the "Palermo Convention", now provides an international framework which details the offences connected with participation in an organised criminal group; the Convention was approved by the European Community on 21 May 2004;

- Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism is a reference point which must be taken into account; it defines a "terrorist group" on the basis of the definition of "criminal organisation" in Joint Action 1998/733/JHA, but it is a more comprehensive instrument.