Basic information

2003/0816(CNS) CNS - Consultation procedure JHA act	Procedure lapsed or withdrawn
Fight against drugs : suppression by customs administrations of illicit trafficking on the high seas. Initiative Spain **Subject** 7.30.02 Customs cooperation 7.30.30.04 Action to combat drugs and drug-trafficking	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
LIBE Citizens' Freedoms and Rights, Justice and Home Affairs	MATIKAINEN-KALLSTRÖM Marjo (PPE-DE)	09/07/2003

Committee for opinion	Rapporteur for opinion	Appointed
JURI Legal Affairs and Internal Market	The committee decided not to give an opinion.	22/01/2004

Council of the European Union

European Commission

Commission DG	Commissioner
Justice and Consumers	FRATTINI Franco

Key events

Date	Event	Reference	Summary
04/02/2002	Legislative proposal published	05382/2002	Summary
05/06/2003	Committee referral announced in Parliament		
19/02/2004	Vote in committee		Summary
19/02/2004	Committee report tabled for plenary, 1st reading/single reading	A5-0100/2004	
09/03/2004	Decision by Parliament	T5-0134/2004	Summary

Technical information

Procedure reference	2003/0816(CNS)

Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	JHA act
Legal basis	EC Treaty (after Amsterdam) EC 034-p1
Stage reached in procedure	Procedure lapsed or withdrawn
Committee dossier	LIBE/5/19642

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee report tabled for plenary, 1st reading/single reading		A5-0100/2004	19/02/2004	
Text adopted by Parliament, 1st reading/single reading		T5-0134/2004 OJ C 102 28.04.2004, p. 0029-0124 E	09/03/2004	Summary

Council of the EU

Document type	Reference	Date	Summary
Document attached to the procedure	05563/2002	23/01/2002	Summary
Legislative proposal	05382/2002 OJ C 045 19.02.2002, p. 0008-0012	04/02/2002	Summary

Additional information

Source	Document	Date
European Commission	EUR-Lex	

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

2003/0816(CNS) - 23/01/2002 - Document attached to the procedure

This document consists of the accompanying memorandum relating to the initiative by the Kingdom of Spain on the conclusion of a Convention on the suppression by customs administrations of illicit drugs trafficking on the high seas. Firstly, it should be stated that the fight against illicit drugs trafficking is a matter of the greatest concern to the Member States of the European Union. In recent years there has been an increase in drugs seizures by customs at sea since smuggling organisations are using that route to bring drugs, principally cocaine and hashish, to the European Union market. To deal with that threat rapid, coordinated action on the part of customs is essential. This initiative involves the conclusion of a Convention on the basis of Article 34 of the Treaty on European Union on the suppression by customs administrations of illicit drugs trafficking on the high seas. That 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. The Convention proposed 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. It must be borne in mind that special cooperation between European Union Member States is regulated, on land and within their respective territorial seas, so that officials of one Member State can in certain cases take action within the territory of another Member State without prior authorisation. In view of the objective of the act proposed, which will in a sense entail the renunciation of jurisdiction over a vessel (and its crew) in favour of another Member State when there are well-founded suspicions that it is involved in illicit trafficking in drugs, the form considered most appropriate is a convention, which would have to be ratified by the Member States, whereby it would acquire sufficient binding force. As regards the proposed legal basis, the text states that since the fight against illicit trafficking in narcotic drugs is a matter within the jurisdiction of the Member States, the initiative is based on Title VI of the Treaty on European Union (Provisions on police and judicial cooperation in criminal matters).

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

2003/0816(CNS) - 04/02/2002 - Legislative proposal

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.

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

2003/0816(CNS) - 09/03/2004 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted a resolution drafted by Marjo MATIKAINEN-KALLSTROM (EPP-ED, FIN) making some amendments to the Spanish proposal. (Please see the document dated 19/02/04.) Parliament emphasised the need to establish operational cooperation between the competent

law enforcement authorities of the Member States, including police, customs and other specialised services, aimed at combating crime committed on the high seas, on vessels flying the flag of a Member State or without nationality. Therefore, the purpose of the Convention is described as the promotion, facilitation and establishment of operational cooperation and mutual assistance between the competent authorities of the Member States in relation to the prevention, detection, investigation and prosecution of the offences described, committed on the high seas on vessels flying the flag of a Member State or without nationality. The full list of offences inserted by Parliament is as follows: - illicit trafficking in narcotic drugs and psychotropic substances; - illicit trafficking in substances listed in tables I and II of the United Nations Convention Against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances and intended for the illicit production of drugs (precursor substances); - illicit trafficking in weapons, components thereof, munitions and explosives; - illicit trafficking in cultural goods, including antiques and works of art; - illicit trafficking in hazardous and toxic waste; - illicit trafficking in nuclear materials and materials and equipment intended for the production of nuclear, biological and chemical weapons; - illicit cross-border trade in goods subject to taxation; - trafficking in human beings, and illicit trafficking in immigrants; - trafficking in stolen vehicles; - illicit trade in human organs and tissue or hormonal substances; - counterfeiting and piracy of products; - kidnapping, illegal restraint of persons and vessels and hostage-taking. Parliament also stated that the intervening State must make good any loss, injury or damage incurred by the natural or legal persons as a result of negligence or mistakes attributable to it during the course of the action taken. Finally, the European Court of Justice will have jurisdiction to rule on any dispute between Member States and the Commission regarding the interpretation or the application of the Convention.