



Council of EU: Draft Framework Decision

laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of drug trafficking

(visit www.ecad.net/report.html to read the full text of the Framework decision)

"The Council declares that:

Drug trafficking is a heinous crime, which the Council is determined to fight with all possible means. The Council condemns all forms of drug trafficking and sees this Framework Decision as a first and very important step in the intensified fight against drug trafficking.

The Council underlines the importance of taking a strong stance against drug trafficking at all levels and emphasises the need for a trans-national and coherent approach in combating drug trafficking. In this connection, the Council also stresses the interrelation existing between legislation of all Member States and stresses the importance of dissuading the phenomenon of *drug tourism*."

The Council of the European Union,

Having regard to the Treaty on European Union, and in particular Article 31(e) and Article 34(2)(b) thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the Euro-

pean Parliament,

Whereas:

(1) Illicit drug trafficking poses a threat to health, safety and the quality of life of citizens of the European Union, and to the legal economy, stability and security of the Member States

(2) 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.

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Conference hopes to re-awake donor nations

More than 100 international experts and 50 specialists of drugs from Afghanistan gathered in Kabul on February 9, 2004 to discuss the country's burgeoning narcotics industry. This conference (*Independent Digital*) is thought to be the first time such a high-level meeting has been held to tackle the drugs trade in the country.

The United Nations warned last year that opium production was spreading like a cancer in Afghanistan, with the country producing three quarters of the world's illicit opium, from which heroin is made. The UN Office on Drugs and Crime (UNODC) estimates that Afghan opium production last year hit 3,600 tonnes, a six percent rise on last year. Surveys show a further increase is likely this year.

★ ECAD NEWS

Speaking at the conference, President Hamid Karzai said (*Reuters*) his government was determined to wipe out the trade but was hampered by a lack of resources. Afghan government's weakness in the provinces and violence and insecurity by a resurgent Taliban guerrillas and rival pro-government commanders have helped the trade flourish. Insufficient international funding is playing into the hands of terrorists using drugs to finance their activities, the country's president says.

"We face critical decisions," said UNODC executive director Antonio Maria Costa. "If we don't start translating counter-narcotics commitment into lower levels of production, we run the risk of opium economy undermining all that has been achieved in creating a democratic new Afghanistan."

★ ECAD CONFERENCE

11th Mayors' Conference Fighting Against Drugs – A Family Issue?

Hosted by the municipality of Aglantzia, Cyprus
May 20-21, 2004

Final Programme will be sent out in March 2004
For more information www.ecad.net



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(3) It is necessary to adopt minimum rules relating to the constituent elements of the offences of illicit trafficking in drugs and precursors which will allow a common approach at Union level to the fight against such trafficking.

(4) 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.

(5) 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.

(6) Member States should be allowed to make provision for reducing the penalties when the offender has supplied the competent authorities with valuable information.

(7) It is necessary to take measures to enable the confiscation of the proceeds of the offences referred to in this Framework Decision.

(8) Measures should be taken to ensure that legal persons can be held liable for the criminal offences referred to by this act which are committed for their benefit.

(9) The effectiveness of the efforts made to tackle illicit drug trafficking depends essentially on the harmonisation of the national measures implementing this Framework Decision,

Has decided as follows:

ARTICLE 1

Definitions

For the purposes of this Framework Decision:

1. "drugs" shall mean any of the substances covered by the United Nations Conventions (...)
2. "precursors" shall mean any substance scheduled in the Community legislation giving effect to the obligations deriving from Article 12 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20 December 1988;
3. "legal person" shall mean any legal entity having such status under the applicable national law, except for States or other public bodies acting in the exercise of their sovereign rights and for public international organisations.

ARTICLE 2

Crimes linked to trafficking in drugs and precursors

1. Each Member State shall take the necessary measures to ensure that the following intentional conduct when committed without right is punishable:
 - (a) 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;

- (b) the cultivation of opium poppy, coca bush or cannabis plant;
- (c) the possession or purchase of drugs with a view to conducting one of the activities listed in (a) above;
- (d) the manufacture, transport or distribution of precursors, knowing that they are to be used in or for the illicit production or manufacture of drugs .

2. The conduct described in paragraph 1 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.

ARTICLE 3

Incitement, aiding and abetting and attempt

1. Each Member State shall take the necessary measures to make incitement to commit, aiding and abetting or attempting one of the offences referred to in Article 2 (a) criminal offence.
2. A Member State may exempt from criminal liability the attempt to offer or prepare drugs referred to in Article 2(1)(a) and the attempt to possess drugs referred to in Article 2(1)(c).

ARTICLE 4

Penalties

1. Each Member State shall take the measures necessary to ensure that the offences defined in Articles 2 and 3 are punishable by effective, proportionate and dissuasive criminal penalties.

Each Member State shall take the necessary measures to ensure that the offences referred to in Article 2 are punishable by criminal penalties of a maximum of at least between 1 and 3 years of imprisonment.

2. Each Member State shall take the necessary measures to ensure that the offences referred to in Article 2(1)(a), (b) and (c) are punishable by criminal penalties of a maximum of at least between 5 and 10 years of imprisonment in each of the following circumstances:

- (a) the offence involves large quantities of drugs;
- (b) the offence either involves those drugs which cause the most harm to health, or has resulted in significant damage to the health of a number of persons.

3. Each Member State shall take the necessary measures to ensure that the offences referred to in paragraph 2 are punishable by criminal penalties of 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 of 21 December 1998.

4. Each Member State shall take the necessary measures to ensure that the offences referred to in Article 2(1)(d) are punishable by criminal penalties of a maximum of at least between 5 and 10 years of deprivation of liberty, where the offence was committed within ...

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...the framework of a criminal organisation as defined in Joint Action 98/733/JHA of 21 December 1998, and the precursors are intended to be used in or for the production or manufacture of drugs under the circumstances referred to in paragraphs 2(a) or (b).

5. Without prejudice to the rights of victims and of other bona fide third parties, each Member State shall take the necessary measures to enable the confiscation of substances which are the object of offences referred to in Articles 2 and 3, instrumentalities used or intended to be used for these offences and proceeds from these offences or the confiscation of property the value of which corresponds to that of such proceeds, substances or instrumentalities.

The terms "confiscation", "instrumentalities", "proceeds" and "property" shall have the same meaning as in Article 1 of the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.

ARTICLE 5

Particular circumstances

Notwithstanding Article 4, each Member State may take the necessary measures to ensure that the penalties referred to in Article 4 may be reduced if the offender:

- (a) renounces criminal activity relating to trafficking in drugs and precursors and
- (b) provides the administrative or judicial authorities with information which they would not otherwise have been able to obtain, helping them to:
 - (i) prevent or mitigate the effects of the offence,
 - (ii) identify or bring to justice the other offenders,
 - (iii) find evidence or
 - (iv) prevent further offences referred to in Articles 2 and 3.

ARTICLE 6

Liability of legal persons

1. Each Member State shall take the necessary measures to ensure that legal persons can be held liable for any of the criminal offences referred to in Articles 2 and 3 committed for their benefit by any person, acting either individually or as a member of an organ of the legal person in question, who has a leading position within the legal person, based on one of the following:

- (a) a power of representation of the legal person;
- (b) an authority to take decisions on behalf of the legal person;
- (c) an authority to exercise control within the legal person.

2. Apart from the cases already provided for in paragraph 1, each Member State shall take the necessary measures to ensure that legal persons can be held liable where the lack of supervision or control by a person referred to in paragraph 1 has made possible the commission of any of the offences referred to in Articles 2 and 3 for the benefit of that legal person by a person under its authority.

3. Liability of legal persons under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, instigators or accessories in any of the offences referred to in Articles 2 and 3.

ARTICLE 7

Sanctions for legal persons

1. Member States shall take the measures necessary to ensure that a legal person held liable pursuant to Article 6 (1) is punishable by effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions, such as:

- (a) exclusion from entitlement to tax relief or other benefits or public aid;
- (b) temporary or permanent disqualification from the pursuit of commercial activities;
- (c) placing under judicial supervision;
- (d) a judicial winding-up order;
- (e) temporary or permanent closure of establishments used for committing the offence;
- (f) in accordance with Article 4 (5), the confiscation of substances which are the object of offences referred to in Articles 2 and 3, instrumentalities used or intended to be used for these offences and proceeds from these offences or the confiscation of property the value of which corresponds to that of such proceeds, substances or instrumentalities.

2. Each Member State shall take the measures necessary to ensure that a legal person held liable pursuant to Article 6 (2) is punishable by effective, proportionate and dissuasive sanctions or measures.

ARTICLE 8

Jurisdiction and prosecution

1. Each Member State shall take the necessary measures to establish its jurisdiction over the offences referred to in Articles 2 and 3 where:

- (a) the offence is committed in whole or in part within its territory;
- (b) the offender is one of its nationals; or
- (c) the offence is committed for the benefit of a legal person established in the territory of that Member State.

2. A Member State may decide that it will not apply, or that it will apply only in specific cases or circumstances, the jurisdiction rules set out in paragraphs 1(b) and 1(c) where the offence is committed outside its territory.

3. A Member State which, under its laws, does not extradite its own nationals shall take the necessary measures to establish its jurisdiction over and to prosecute, where appropriate, an offence referred to in Articles 2 and 3 when it is committed by one of its own nationals outside its territory.

4. Member States shall inform the General Secretariat of the Council and the Commission when they decide to apply paragraph 2, where appropriate with an indication of the specific cases or circumstances in which the decision applies.

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The millionth Mercedes Benz Sprinter minivan to the Lithuanian AIDS Centre

On December 17, 2003, the keys of the millionth Mercedes Benz Sprinter minivan were handed over to the Lithuanian AIDS Centre's "Social Integration Programme for Girls at Risk". This donation was initiated by the World Childhood Foundation established by Her Majesty Queen Silvia of Sweden.

Mr Matthias Kleinert, Vice-President of the Daimler Chrysler Company, came to Lithuania specially to hand over the keys of

the new minivan.

It will be used by a Drop-in centre for girls at risk. This centre is part of the *Social Integration Programme*. At this centre the girls can get qualified psychological, social and medical help.

Establishing of this Drop-in became possible thanks to the support from the World Childhood Foundation along with the Ori-flame Cosmetics company in Lithuania.

Needle exchange programmes versus HIV counselling

The European journal of Public Health

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pp. 252-258

Legal access to needles and syringes/ needle exchange programmes versus HIV counselling and testing to prevent transmission of HIV among intravenous drug users.

A comparative study of Denmark, Norway and Sweden

Background: Countries have adopted different strategies to prevent the transmission of HIV among intravenous drug users. Legal access to needles and syringes/needle exchange programmes as part of such a strategy has been heavily debated. HIV counselling and testing has also been part of prevention strategies. The objective of this study was to discuss the effectiveness of legal access to needles and syringes/ needle exchange programmes versus HIV counselling and testing among intravenous drug users (IDUs) as part of HIV prevention strategies. Methods: Differences in HIV prevention strategies in Denmark, Norway and Sweden among IDUs are described. Outcome vari-

ables of effectiveness were HIV incidence rates over time. These were estimated by back calculation methods from 1980 through 1996, using data from the national HIV and AIDS registers. Results: A comparison of HIV prevention strategies in Denmark, Norway and Sweden suggests that a high level of HIV counselling and testing might be more effective than legal access to needles and syringes/needle exchange programmes. Sweden and Norway, with higher levels of HIV counselling and testing, have had significantly lower incidence rates of HIV among IDUs than Denmark where there was legal access to needles and syringes and a lower level of HIV counselling and testing. In Sweden there was no legal access to drug injection equipment.

Conclusion: Promotion and accessibility of HIV counselling and testing among intravenous drug users should be considered in countries where such a strategy is not adopted or has low priority.

*Our European societies have experimented and evaluated both tolerance and intolerance to illicit drug use and drug abuse. It is our reflection upon this which guides us towards non-use. This in regard to our **cities'** well being.*



ECAD is Europe's leading organisation promoting a drug free Europe and representing millions of European citizens. Drug dealing and drug abuse cause enormous problems in Europe. Nations and their citizens are affected by the consequences of drug abuse. ECAD member cities work to develop initiatives and efforts against drug abuse supporting the United Nations Conventions which oppose legalisation and promote policies to eradicate drug abuse worldwide. Has your city joined ECAD?

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ARTICLE 9

Implementation and reports

1. Member States shall take the necessary measures to comply with this Framework Decision by at the latest...

2. By the same deadline, Member States shall forward to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision. The Commission shall, by at the latest..., submit a report to the European Parliament and to the Council on the functioning of the implementation of the Framework Decision, including its effects on judicial co-operation in the field of illicit drug trafficking. Following this report, the Council shall assess, by at the latest..., whether Member States have taken the necessary measures to comply with this Framework Decision.



ARTICLE 10

Territorial application

This Framework Decision shall apply to Gibraltar.



ARTICLE 11

Entry into force

This Framework Decision shall enter into force on the day following that of its publication in the Official Journal of the European Communities.



HOPE'S NURSERY

He said – Why do you go thru it all?
She said – If you know the shorter way, show me.

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