

Procedure file

Basic information		
CNS - Consultation procedure Decision	2001/0114(CNS)	Procedure completed
Combating illicit drug trafficking: criminal acts and penalties, minimum provisions. Framework Decision		
Amended by 2013/0304(COD)		
Subject 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		11/07/2001
		PPE-DE OOSTLANDER Arie M.	
	Former committee responsible		
	LIBE Citizens' Freedoms and Rights, Justice and Home Affairs		11/07/2001
		PPE-DE OOSTLANDER Arie M.	
	LIBE Citizens' Freedoms and Rights, Justice and Home Affairs		11/07/2001
		PPE-DE OOSTLANDER Arie M.	
Council of the European Union	Council configuration	Meeting	Date
	Justice and Home Affairs (JHA)	2613	25/10/2004
	Justice and Home Affairs (JHA)	2469	28/11/2002
	Justice and Home Affairs (JHA)	2455	14/10/2002
	Justice and Home Affairs (JHA)	2436	13/06/2002
European Commission	Commission DG	Commissioner	
	Justice and Consumers		

Key events			
23/05/2001	Legislative proposal published	COM(2001)0259	Summary
03/09/2001	Committee referral announced in Parliament		
18/12/2001	Vote in committee		Summary
18/12/2001	Committee report tabled for plenary, 1st reading/single reading	A5-0460/2001	

04/02/2002	Debate in Parliament		
05/02/2002	Decision by Parliament	T5-0029/2002	Summary
05/02/2002	Report referred back to committee		
18/04/2002	Vote in committee		Summary
18/04/2002	Committee report tabled for plenary, 1st reading/single reading	A5-0123/2002	
25/04/2002	Decision by Parliament	T5-0195/2002	Summary
13/06/2002	Debate in Council	2436	
14/10/2002	Debate in Council	2455	
28/11/2002	Debate in Council	2469	Summary
26/11/2003	Amended legislative proposal for reconsultation published	15102/2/2003	Summary
09/12/2003	Formal reconsultation of Parliament		
09/02/2004	Vote in committee		Summary
09/02/2004	Committee report tabled for plenary, reconsultation	A5-0095/2004	
08/03/2004	Debate in Parliament		
09/03/2004	Decision by Parliament	T5-0150/2004	Summary
25/10/2004	Act adopted by Council after consultation of Parliament		
25/10/2004	End of procedure in Parliament		
11/11/2004	Final act published in Official Journal		

Technical information

Procedure reference	2001/0114(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Decision
	Amended by 2013/0304(COD)
Legal basis	Treaty on the European Union (after Amsterdam) M 034-p2; Treaty on the European Union (after Amsterdam) M 031
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/5/14926; LIBE/5/20515; LIBE/5/16028

Documentation gateway

Legislative proposal	COM(2001)0259 OJ C 270 25.09.2001, p. 0144 E	23/05/2001	EC	Summary
Committee report tabled for plenary, 1st reading/single reading	A5-0460/2001	18/12/2001	EP	
Text adopted by Parliament, partial vote at 1st	T5-0029/2002	05/02/2002	EP	Summary

reading/single reading		OJ C 284 21.11.2002, p. 0023-0094 E			
Committee report tabled for plenary, 1st reading/single reading		A5-0123/2002	18/04/2002	EP	
Text adopted by Parliament, 1st reading/single reading		T5-0195/2002 OJ C 131 05.06.2003, p. 0015-0098 E	25/04/2002	EP	Summary
Amended legislative proposal for reconsultation		15102/2/2003	26/11/2003	CSL	Summary
Committee final report tabled for plenary, reconsultation		A5-0095/2004	09/02/2004	EP	
Text adopted by Parliament after reconsultation		T5-0150/2004 OJ C 102 28.04.2004, p. 0034-0479 E	09/03/2004	EP	Summary
Follow-up document		COM(2009)0669	11/12/2009	EC	Summary
Follow-up document		SEC(2009)1661	11/12/2009	EC	Summary
Follow-up document		COM(2022)0251	01/06/2022	EC	

Additional information

European Commission

[EUR-Lex](#)

Final act

Justice and Home Affairs act 2004/757
[OJ L 335 11.11.2004, p. 0008-0011](#) Summary

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

PURPOSE: To develop harmonised measures laying down minimum provisions for criminal acts and penalties in the field of illicit drug trafficking. **CONTENT:** Given the international nature of drug trafficking, Member States have awarded the European Union some authority over coordinating a comprehensive drugs policy. Four main elements to date have guided Community action in this field: - Reduction in demand; - Reduction in supply; - International co-ordination; and - Co-ordination at national and EU level. More recent EU anti-drugs policy, formulated in "The European Union's Action Plan on Drugs 2000-2004", calls for greater harmonisation of definitions and penalties for illicit drug trafficking. The Action Plan explicitly calls on the Commission to draw up measures aimed at realising the objectives set out above. The Commission has decided to propose this framework decision in order to lay down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking. The need to adopt a common and clearly-defined approach to the problem of illicit drug trafficking should also be seen in the context of the future enlargement of the European Union. Lastly, the aims of this framework decision cannot be achieved by the Member States, given the transnational dimension of the offence, and can therefore best be attained by the European Union, in accordance with the principles of subsidiarity and proportionality.?

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

The committee narrowly adopted the report by Arie OOSTLANDER (EPP-ED, NL) amending the proposal under the consultation procedure so as to tighten up some of the provisions. For example, it wanted the definition of "illicit drug trafficking" in the proposal to make it clear that marketing drugs via the Internet was also prohibited. As regards penalties, while the Commission proposal provided that drug trafficking could be punishable by fines in addition to or as an alternative to prison sentences, the committee felt that fines should be imposed only in addition to prison sentences. Any proceeds from fines or confiscations should be used for prevention, addict rehabilitation and family support programmes. The committee also wanted it to be stipulated that Member States could apply stricter penalties than the minimum level of 5 years mentioned in the proposal for serious cases. On the subject of aggravating circumstances, the committee opposed the idea of an exhaustive list of professional groups who would be held guilty of this offence, believing this should be left to the discretion of the courts. Instead of a detailed list, MEPs wanted a more general provision that it should be deemed an aggravating circumstance if the offender had misused his or her position or had engaged in moral, psychological or physical duress. The committee also wanted the motive of financing a terrorist organisation to be added to the list of aggravating circumstances mentioned in the proposal. As regards mitigating circumstances, the committee added situations where the offender had acted under physical, psychological or moral duress, and displayed willingness to cooperate with the authorities, and where the offender was a minor or a person unable to exercise his or her free will. Lastly, the committee felt

that the jurisdiction of a Member State should not be confined to that State's own nationals but should be extended to include permanent or temporary residents. ?

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

The European Parliament rejected the report by Mr Arie M. OOSTLANDER (EPP-ED, NL). Parliament voted 228 for, 247 against and 58 abstentions. It was referred back to committee. The Socialist, the Greens and most of the Liberals voted against the report.?

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

The committee adopted the second report by Arie OOSTLANDER (EPP-ED, NL) amending the proposed framework decision under the consultation procedure. (The first report was rejected by the plenary in February 2002 - please see previous summaries). The committee added a new article clarifying the scope of the proposal, which stated that the aim of the framework decision was to combat serious and/or international drug trafficking. Moreover, instead of stipulating that Member States were free to apply stricter penalties for serious cases, as stated in its first report, the committee proposed a new clause on penalties which said that the degree of seriousness of an offence would be determined according to various factors, such as the scale and frequency of trafficking, the degree of risk to human health from the type of drug concerned or the amount of money derived from the trafficking. The committee also reiterated many of the points made in its first report, on such issues as marketing drugs via the Internet, fines and alternative penalties, the use of proceeds from fines or confiscations, extending the jurisdiction of a Member State to include permanent or temporary residents, the need for courts to be given the necessary leeway for deciding on those to be held guilty of aggravating circumstances and the need to include the financing of terrorist organisations in the list of aggravating circumstances. As regards mitigating circumstances, the second report differed from the first in that this time the committee deleted the relevant article in the proposal, arguing that no other provisions should be added to what was already laid down in Member States' legislation. In a new recital the committee also referred to the need to ensure minimum safeguards with regard to procedural law. ?

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

The European Parliament adopted, without debate, the report by Mr Arie OOSTLANDER (EPP-ED, NL). Parliament also stipulates that in view of the health risks, European Union drugs policy should focus on prevention. Tackling illicit drugs trafficking can only be a component of this general drugs policy. Repression should be targeted not at drug users themselves, but at drug traffickers and the criminal and terrorist organisations which derive funds from trafficking in order to finance their illegal activities. Parliament includes an amendment which states that Member States should take the necessary measures to ensure that confiscation of proceeds also serves to increase budgets for programmes for prevention and for the rehabilitation of drug users and for programmes to support their families. It is also essential to co-operate with the competent international bodies in cases of illicit international drug trafficking beyond the border of the Member States. Systematic and effective co-operation between Member States is needed therefore in this context Europol and Eurojust should be recognised and become fully operational. Greater operability required a stronger legal basis, particularly so as to ensure control by the European Parliament and full jurisdiction for the Court of Justice of the European Communities. Parliament also referred to the need for Member States to achieve a minimum consensus on the admissibility of the various investigative methods, resulting in a binding instrument ensuring minimum safeguards with regard procedural law. Finally, the European Parliament decided that the Commission shall draw up a report evaluating the application of the provisions of this framework decision by the Member State for the first time by 30 June 2007 at the latest, and every three years thereafter (as opposed to every five years as initially stated).?

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

The Council continued its examination of the proposal for a Framework Decision on minimum provisions on the constituent elements of criminal acts and penalties in the field of drug trafficking. The Council focused again its examination on the issue of penalties (Article 4 of the proposal) and noted that the compromise text tabled by the Presidency, while broadly welcomed, was not accepted by a small number of delegations.?

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

The Council, taking note of the Parliamentary scrutiny reservations by the Irish, Danish, Swedish and Netherlands delegations, has reached an agreement on the framework-decision laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of drug trafficking. The approved text provides a new definition of penalties and the reports on the implementation of the framework decision. Furthermore, in the light of the fact that the Commission's original proposal has undergone substantial changes as a result of the negotiations, the Coreper/Council is invited to agree to reconsult the European Parliament on the draft Framework Decision. Amendments are as follows: 1) Concerning the penalties : 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 in 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 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. 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. 2) 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. Member States should be allowed to make provision for reducing the penalties when the offender has supplied the competent authorities with valuable information. 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.?

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

The committee adopted the report by Arie OOSTLANDER (EPP-ED, NL) approving the proposed framework decision without amendment under the consultation procedure.?

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

The European Parliament adopted a resolution drafted by Arie OOSTLANDER (EPP-ED, NL) approving the draft Framework Decision subject to just one amendment. This stated that the aim of the Framework Decision is to tackle serious and/or international illegal drug trafficking.?

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

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.

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

The Commission presents a report on the implementation of Framework Decision 2004/757/JHA which sets out to establish minimum rules relating to the constituent elements of the offences of illicit trafficking in drugs and precursors, so as to allow a common approach at EU level to the fight against such trafficking.

The effectiveness of the efforts made depends essentially on the harmonisation of the national measures implementing the Framework Decision. The Commission notes that six Member States did not comply with their obligation to transmit information, and are not covered in the report. These are Cyprus, Spain, Greece, Italy, Malta and the United Kingdom. It also remarks on gaps regarding information from Member States regarding transposition of the legislation.

The report carries out an analysis of national implementing measures and notes the following:

Crimes linked to trafficking in drugs and precursors (Article 2): with regard to crimes linked to trafficking in drugs, the report notes that seven Member States have ambiguous legislation which does not guarantee full application of the Framework Decision in a sufficiently clear manner. With regard to crimes linked to trafficking in precursors, both Denmark and France stated that trafficking in precursors is not covered in their criminal law, but can fall within the offences of drug trafficking or aiding and abetting drug trafficking. The Commission has serious doubts about the compliance of these systems, particularly with respect to Article 3 on incitement. The Commission's fear is that the absence of a separate offence of precursor trafficking will prevent this trafficking from being properly recorded, particularly with respect to attempt, incitement and aiding and abetting.

Penalties (Article 4): with regard to standard offences, the legislation of five Member States raises problems of interpretation, owing largely to a lack of information. In 12 Member States penalties are more than twice the range proposed by the Framework Decision, meaning that there are maximum penalties of six years or more or even life imprisonment. On the whole, legislative disparities between the Member States seem to remain unchanged. At the same time, maximum sentences are meaningful only in the context of proceedings actually initiated and penalties actually imposed by the courts. A comparison of judicial practice in each Member State would enable an assessment of the extent to which the objective of aligning national systems has been achieved in practice. In this context, the complexity of the Dutch system and the controversies relating to coffee shops merit particular attention. The Commission concludes that all the national legislation of which it has been informed is formally compliant, but expresses regret at the heterogeneous nature of this legislation and has concerns regarding its practical application.

Operation and effects on judicial cooperation: the difficulty of studying the operation of the Framework Decision and its effects on judicial cooperation lies primarily in the collection of data on judicial practice in the Member States. The Commission has relied on information from Eurojust and the European Judicial Network (EJN).

- Eurojust's input: from 2004 to 2008, Eurojust recorded 771 drug trafficking cases, which showed a significant increase from 77 cases in 2004 to 207 in 2007. Drug cases account for 20% of the cases handled by Eurojust between 2004 and 2008. It is interesting to note that of 151 drug trafficking cases associated with one or more other crimes, 65 involved participation in a criminal organisation. The report shows that there has been a clear increase in judicial cooperation on drug trafficking between Member States through Eurojust since 2004. However, it is at this stage impossible to distinguish how the Framework Decision has affected such cooperation, or to measure its impact. This question was the focus of the questionnaire to the EJN.
- Input of the EJN: the contact points of the EJN in ten Member States replied to the Commission's questionnaire. The general impression given by their data is that although specialists are familiar with the Framework Decision, they regard its importance as minor, because it has not resulted in many changes to national legislation. The question of the Framework Decision's effect on cooperation remains open, because the Framework Decision does not concern judicial cooperation directly, and because no Member State seems to have a centralised system enabling it to measure trends in judicial cooperation in drug trafficking cases. The replies often point to a degree of uncertainty amongst specialists, for example in Finland, France and Portugal.

Conclusion: the report concludes that implementation of the Framework Decision has not been completely satisfactory. While the majority of Member States already had a number of the provisions in place, a number have also demonstrated ? often in sketchy answers ? that they have not always amended their existing legislation where the Framework Decision required it. Six Member States provided no information whatsoever. There has thus been little progress in the alignment of national measures in the fight against drug trafficking. The weak impact of the Framework Decision is confirmed by the EJN's input. It is difficult to establish a link between the Framework Decision and the progress in judicial cooperation described by Eurojust. The Commission consequently invites those Member States which have submitted no information, or incomplete information, to comply with their obligations under the Framework Decision.

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

This working document from the Commission services accompanies the Commission's report on [the implementation of Framework Decision 2004/757/JHA laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking](#). The latter sets out to establish minimum rules relating to the constituent elements of the offences of illicit trafficking in drugs and precursors, so as to allow a common approach at European Union level to the fight against such trafficking. The effectiveness of the efforts made depends essentially on the harmonisation of the national measures implementing the Framework Decision.

In accordance with Article 9 the Commission presents a report on the operation of the Framework Decision, including its operation and effects on international judicial cooperation. The Annex gives a detailed analysis on which the conclusions of the report are based.