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REPORT

on the Commission proposal with a view to the adoption of a Council framework decision laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking (COM(2001) 259 – C5-0359/2001 – 2001/0114(CNS))

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Rapporteur: Arie M. Oostlander

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

CONTENTS

	Page
PROCEDURAL PAGE	4
LEGISLATIVE PROPOSAL.....	5
DRAFT LEGISLATIVE RESOLUTION	18
EXPLANATORY STATEMENT.....	19

PROCEDURAL PAGE

By letter of 26 July 2001 the Council consulted Parliament, pursuant to Article 39(1) of the EC Treaty on the Commission proposal with a view to the adoption of a Council framework decision laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking (COM(2001) 259 – 2001/0114(CNS)).

At the sitting of 3 September 2001 the President of Parliament announced that she had referred this proposal to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible (C5-0359/2001).

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs had appointed Arie M. Oostlander rapporteur at its meeting of 11 July 2001.

It considered the Commission proposal and the draft report at its meetings of 11 September 2001, 15 October 2001, 20 November 2001 and 18 December 2001.

At the last meeting it adopted the draft legislative resolution by 17 votes to 16, with 2 abstentions.

The following were present for the vote: Graham R. Watson, chairman; Robert J.E. Evans, vice-chairman; Arie M. Oostlander, rapporteur; Niall Andrews, Mary Elizabeth Banotti, Hans Blokland (for Ole Krarup), Christian Ulrik von Boetticher, Kathalijne Maria Buitenweg (for Alima Boumediene-Thiery), Marco Cappato, Charlotte Cederschiöld, Carlos Coelho, Thierry Cornillet, Gérard M.J. Deprez, Giuseppe Di Lello Finuoli, Francesco Fiori (for Marcello Dell'Utri, pursuant to Rule 153(2)), Glyn Ford (for Michael Cashman), Anna Karamanou, Margot Keßler, Timothy Kirkhope, Alain Krivine (for Pernille Frahm), Baroness Sarah Ludford, Minerva Melpomeni Malliori (for Martin Schulz), Emilia Franziska Müller (for Bernd Posselt, pursuant to Rule 153(2)), Hartmut Nassauer, Elena Ornella Paciotti, Neil Parish (for Jorge Salvador Hernández Mollar, pursuant to Rule 153(2)), Paolo Pastorelli, Hubert Pirker, Martine Roure (for Adeline Hazan), Giacomo Santini (for Enrico Ferri, pursuant to Rule 153(2)), Jürgen Schröder (for Eva Klamt, pursuant to Rule 153(2)), Patsy Sørensen, Joke Swiebel, Fodé Sylla, Anna Terrón I Cusí and Gianni Vattimo.

The report was tabled on 19 December 2001.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

LEGISLATIVE PROPOSAL

Commission proposal with a view to the adoption of a Council framework decision laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking (COM(2001) 259 – C5-0359/2001 – 2001/0114(CNS))

The proposal is amended as follows:

Text proposed by the Commission¹

Amendments by Parliament

Amendment 1 Recital 2

(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 Treaty of Amsterdam on an area of freedom, security and justice²; 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) adopted at 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.

(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 Treaty of Amsterdam on an area of freedom, security and justice²; 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) adopted at the Helsinki European Council from 10 to 12 December 1999 and the European Union's Action Plan to Combat Drugs (2000-2004) endorsed by the European Council in Santa Maria da Feira on 19 and 20 June 2000. ***In its resolution of 19 November 1999 on a European Union Action Plan to Combat Drugs (2000-2004)³, the European Parliament made various references to the link between crime and drug trafficking and called for legislative action to be taken to combat illicit drug trafficking.***

¹ Not yet published in the OJ.

² OJ C 19, 23.1.1999, p. 1.

³ OJ C 189, 7.7.2000, p. 256.

Justification

Only that resolution relates to the action plan. Although other, older resolutions are of interest, too, it is not as appropriate to refer to them here (the resolution on the work of the Committee of Inquiry into Drug Trafficking¹, and the resolution on a European Union action plan to combat drugs (1995 to 1999)²). They prove that Parliament has been striving for years for a solution on how to combat illicit drug trafficking.

Amendment 2 Recital 2 a (new)

(2a) In view of the health risks, European Union drugs policy must focus on prevention. Tackling illicit drug trafficking can only be a component of this general drugs policy.

Justification

Prevention is, and must remain, the basis of European Union drugs policy. That is also clearly stated in the resolution on the action plan (A5-0063/1999).

Amendment 3 Recital 2 b (new)

(2b) Repression must be targeted not on drug addicts themselves, but on drug traffickers and the criminal and terrorist organisations which derive funds from trafficking in order to finance their illegal activities.

Justification

There has been an unprecedented boom in drug trafficking, chiefly since the end of the Cold

¹ B3-0668/92, OJ C 150, 13.5.1992, p. 41.

² A4-0136/95, OJ C 166, 3.7.1995, p. 116.

War, to finance criminal and terrorist organisations' activities. The issue has been very much relevant since 11 September, too. Tackling trafficking will cut off those organisations' flow of funds It is pointless to exact retribution from addicts and small-scale dealers. This is more in line with the subsidiarity and proportionality principle.

Amendment 4
Recital 6

(6) It is necessary, on the one hand, to provide for more severe penalties when certain circumstances accompany the illicit drug trafficking and make it an even greater threat to society, for example when trafficking is carried out by a criminal organisation. On the other hand, provision should be made for reducing the penalties when the *offender has* supplied the competent authorities with valuable information, in particular by helping to identify drug-dealing networks.

(6) It is necessary, on the one hand, to provide for more severe penalties when certain ***aggravating*** circumstances accompany the illicit drug trafficking and make it an even greater threat to society, for example when trafficking is carried out by a criminal organisation. On the other hand, provision should be made for reducing the penalties when ***there are mitigating circumstances such as*** the ***offender's having*** supplied the competent authorities with valuable information, in particular by helping to identify ***criminal*** drug-dealing networks.

Justification

Specific reference is made to aggravating or mitigating circumstances in Articles 5 and 6 respectively. It should also be made clear that it is in the case of serious forms of criminal drug-dealing networks that mitigating circumstances apply.

Amendment 5
Recital 7

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

(7) It is necessary to take measures to enable the confiscation of the ***instrumentalities, proceeds and advantages*** of the offences referred to in this framework decision. ***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.***

Justification

The instrumentalities and advantages associated with the offence should also be confiscated together with the proceeds. The insertion of the second sentence is intended to make up for the social harm caused by illicit drug trafficking to some extent. In addition, it reiterates the basic notion of drugs policy in the European Union: prevention. Parliament has pressed for this, too (A5-0063/99).

Amendment 6 Recital 8 a (new)

(8a) It is also essential to cooperate with the competent international bodies in cases of illicit international drug trafficking beyond the borders of the Member States of the European Union.

Justification

Most drug trafficking occurs along corridors which go beyond the Member States' borders; there is therefore a need for international cooperation.

Amendment 7 Recital 9

(9) Measures ***should also be*** foreseen for the purposes of cooperation between Member States with a view to ensuring effective action against illicit drug trafficking.

(9) Measures ***such as the establishment of joint investigation teams are*** foreseen for the purpose of ***systematic and effective*** cooperation between Member States with a view to ensuring effective action against ***serious international crimes such as*** illicit drug trafficking. ***In this context, Europol and Eurojust, as bodies firstly for police and secondly for judicial cooperation, must be recognised and become fully operational. Greater operability requires 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.***

Justification

In fact there already exist measures for the purpose of cooperation such as the recently adopted report on Joint Investigation Teams. Those teams should be set up in particular to combat international, organised crime such as illicit drug trafficking. Democratic control by the European Parliament and the Court of Justice is all the more necessary when it comes to assigning operational powers to Europol.

Amendment 8 Recital 9 a (new)

(9a) It is necessary for the Member States to achieve a minimum consensus on the admissibility of the various investigative methods.

Justification

In the spirit of judicial cooperation, such encouragement is useful. At European level, there must be a frank debate about key prosecution witnesses, undercover agents and incitements, leading to recommendations or framework decisions. This issue is a litmus test for agreement on conceptions of the rule of law.

Amendment 9 Recital 11

(11) The effectiveness of the efforts made to tackle illicit drug trafficking depends ***essentially*** on the harmonisation of the national measures implementing this framework decision.

(11) The effectiveness of the efforts made to tackle illicit drug trafficking depends, ***on the one hand***, on the harmonisation of the national measures implementing this framework decision ***and, on the other, on the respect shown by Member States for the European mechanisms available to combat illicit drug trafficking.***

Justification

Member States sorely need to be called on to cooperate effectively in practice.

Amendment 10
Article 1, paragraph 1

1. "illicit drug trafficking" means the act, without authorisation, of selling and marketing as well as, for profit, of cultivating, producing, manufacturing, importing, exporting, distributing, offering, transporting or sending or, for the purpose of transferring for profit, of receiving, acquiring and possessing drugs;

1. "illicit drug trafficking" means the act, without authorisation **and irrespective of the medium of communication**, of selling and marketing as well as, for profit, of cultivating, producing, manufacturing, importing, exporting, distributing, offering, transporting or sending or, for the purpose of transferring for profit, of receiving, acquiring and possessing drugs;

Justification

There is a need for a specific reference to the medium of communication since this makes it clear that all the activities set out in paragraph 1 are prohibited over the Internet.

Amendment 11
Article 3

Member States shall take the necessary measures to make incitement to commit, aiding and abetting or attempting to commit the offence referred to in Article 2 a criminal offence.

Member States shall take the necessary measures to make incitement, **irrespective of the medium of communication**, to commit, aiding and abetting or attempting to commit the offence referred to in Article 2 a criminal offence.

Justification

A specific reference to communication media is necessary in order to make it clear that Internet trafficking is prohibited, too.

Amendment 12
Article 4, paragraph 1

1. Member States shall take the necessary measures to ensure that the offences referred to in Articles 2 and 3 are punishable by effective, proportionate and dissuasive penalties, including custodial sentences with a maximum term of imprisonment of no less than five years in serious cases.

1. Member States shall take the necessary measures to ensure that the offences referred to in Articles 2 and 3 are punishable by effective, proportionate and dissuasive penalties, including custodial sentences with a maximum term of imprisonment of no less than five years in serious cases. ***This leaves all freedom to each Member State to decide upon far higher maximum penalties.***

Justification

Serves to clarify that Member States can apply stricter penalties than the minimum level of five years for the maximum term of imprisonment, as the concept 'minimum maximum penalties' can sometimes be confusing.

Amendment 13
Article 4, paragraph 3

3. Member States shall provide for the possibility of imposing fines in addition to ***or as an alternative to*** custodial sentences.

3. Member States shall provide for the possibility of imposing fines in addition to custodial sentences ***and alternative penalties.***

Justification

This is more suitable for serious crime.

Amendment 14
Article 4, paragraph 3 a (new)

The proceeds from the measures set out in paragraphs 2 and 3 of this Article shall be used for prevention, addict rehabilitation, and family support programmes.

Justification

Obviously, the social damage inflicted by illicit drug trafficking must be repaired in some way. The amendment also emphasises that the basic principle of Union drug policy is prevention.

Amendment 15

Article 5, paragraph 1, introduction

1. Without prejudice to any other aggravating circumstances defined in their national legislation, Member States shall provide for the following aggravating circumstances in respect of the offences referred to in Articles 2 and 3.

1. Without prejudice to any other aggravating circumstances defined in their national legislation, Member States shall provide, ***in a manner compatible with their own law***, for the following aggravating circumstances in respect of the offences referred to in Articles 2 and 3.

Justification

The aggravating circumstances described in this article are very general; for example the national definitions of violence or minors differ considerably, each having its own traditional and historical background.

Amendment 16

Article 5, paragraphs (a) – (f)

(a) the offender has an important role in the organisation of the drug trafficking, or the offence was committed by a criminal organisation;

(b) the offence involves violence or the use of weapons;

(c) the offence involves minors or persons who are unable to exercise their free will;

(d) the offence was committed in or near schools, youth clubs and leisure centres, or institutions for the treatment and rehabilitation of drug addicts;

(a) the offender has an important role in the organisation of the drug trafficking, or the offence was committed by a criminal organisation ***or in order to finance a terrorist organisation***;

(b) the offence involves violence or the use of weapons;

(c) the offender has been convicted of one or more similar offences by a final judgment in a Member State of the Union.

(d) the offence involves minors or persons who are unable to exercise their free will;

(e) the offence was committed in or near schools, youth clubs and leisure centres, or institutions for the treatment and rehabilitation of drug addicts;

(e) the offender is a doctor, pharmacist, court official, police officer, customs officer, prison officer, probation officer, teacher, instructor or works in an educational establishment and abused this position to commit the offence;

(f) the offender has been convicted of one or more similar offences by a final judgment in a Member State of the Union.

(f) the offender has misused his or her position or engaged in moral, psychological and/or physical duress in order to commit the offence;

Justification

Financing of terrorist organisations should be regarded as an aggravating circumstance. Point (f) is moved to (c) for a more logical sequence. Courts should be given leeway for interpretation, and not limited to a list which risks being interpreted as exhaustive.

Amendment 17 Article 6

Without prejudice to any other mitigating circumstances defined in their national legislation, Member States shall take the necessary measures to ensure that the penalties referred to in Article 4 can be reduced if the offender has supplied the competent authorities with valuable information for the enquiry or the collection of evidence about the identity of other offenders, *or* has helped to identify drug-dealing networks.

Without prejudice to any other mitigating circumstances defined in their national legislation, Member States shall take the necessary measures to ensure that the penalties referred to in Article 4 can be reduced if the offender:

- (a) is a minor or person who is unable to exercise their free will,*
- (b) has supplied the competent authorities with valuable information for the enquiry or the collection of evidence about the identity of other offenders,*
- (c) has helped to identify drug-dealing networks, or*
- (d) acted under physical, psychological or moral duress and cooperates with the competent authorities during the investigation.*

Justification

Not only key prosecution witnesses and informers - though that is not what they are termed - but also individuals who have acted under duress must come under this article. That implies that they cooperate with the competent authorities during investigations. Mitigating circumstances should include the fact that the offender is a minor or person who is unable to exercise their free will.

Amendment 18 Article 7, paragraph 1

Member States shall take the necessary measures to ensure that legal persons can be held liable for the criminal offences referred to in Articles 2 and 3 where those offences are committed for their benefit by any person acting individually or as a member of an organ of the legal person in question who has:

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

Member States shall take the necessary measures to ensure that legal persons can be held liable for the criminal offences referred to in Articles 2 and 3 where those offences are committed for their benefit by any person acting individually or as a member of an organ of the legal person in question who has:

- (a) a power of representation of the legal person, or
- (b) an authority to take decisions on the legal *person's account*, or
- (c) an authority to exercise control within the legal person.

Justification

In the event of direct representation of a legal person, the amendment provides scope for taking decisions on his account rather than on his behalf.

Amendment 19 Article 8(f)

(f) the confiscation of property that *was* the *object* of the offence and the proceeds and advantages derived directly or indirectly from the offence.

(f) the confiscation of *the instrumentalities and* property that *were* the *objects* of the offence and the proceeds and advantages derived directly or indirectly from the offence.

Justification

The instrumentalities and advantages associated with the offence should also be confiscated together with the proceeds.

Amendment 20
Article 9, paragraph 1(b)

(b) the offender is one of their nationals;

(b) the offender is one of their nationals ***or is permanently or temporarily resident on their territory;***

Justification

The jurisdiction of each Member State should not be confined to the nationals of the particular Member State but should be extended to include residents of that State.

Amendment 21
Article 10, paragraph 1

1. In accordance with the conventions, bilateral and multilateral agreements and other arrangements in force, the Member States shall lend each other every possible assistance in the procedures relating to the offences referred to in Articles 2 and 3.

1. In accordance with the conventions, bilateral and multilateral agreements and other arrangements in force, the Member States shall ***be required to*** lend each other every possible assistance in the procedures relating to the offences referred to in Articles 2 and 3.

Justification

Somewhat tougher wording is appropriate here.

Amendment 22
Article 10, paragraph 2

2. If several Member States have jurisdiction over an offence referred to in Article 2 or 3, they shall consult one another with a view to coordinating their action and, where appropriate, to bringing a prosecution. ***They shall make full use of judicial cooperation and other mechanisms.***

2. If several Member States have jurisdiction over an offence referred to in Article 2 or 3, they shall ***be required to*** consult one another with a view to coordinating their action and, where appropriate, to bringing a prosecution. ***That coordination shall take place through all available cooperation mechanisms, both police-related and judicial.***

Justification

Requiring Member States to cooperate effectively is necessary in order to achieve results (see also Amendment 21). Reference is made to Europol and Eurojust in the recitals whereas that is more difficult in the purview. This would extend to the European arrest warrant (if adopted).

Amendment 23
Article 11, paragraph 1

1. Member States shall take the necessary measures to comply with this framework decision by 30 June 2003 at the latest.

They shall immediately send the Commission ***and the General Secretariat of the Council*** the text of the provisions transposing the obligations imposed upon them by this framework decision.

1. Member States shall take the necessary measures to comply with this framework decision by 30 June 2003 at the latest.

They shall immediately send the Commission the text of the provisions transposing the obligations imposed upon them by this framework decision.

Justification

In line with the provisions of the Treaty of Amsterdam transferring certain powers from the third to the first pillar, it is proper for the Commission to be responsible for implementation, thus obviating the need for a shadow organisation to be set up within the Council. Furthermore, the Commission would forward its evaluation to Parliament and the Council (see paragraph 3 of the article).

Amendment 24
Article 11, paragraph 3

3. On the basis of the information referred to in paragraphs 1 and 2, the Commission shall draw up a report evaluating the application of the provisions of this framework decision by the Member States for the first time by 30 June 2007 at the latest, and every *five* years thereafter. This report shall be sent to the European Parliament and to the Council, where necessary accompanied by proposals for the amendment of this framework decision.

3. On the basis of the information referred to in paragraphs 1 and 2, the Commission shall draw up a report evaluating the application of the provisions of this framework decision by the Member States for the first time by 30 June 2007 at the latest, and every *three* years thereafter. This report shall be sent to the European Parliament and to the Council, where necessary accompanied by proposals for the amendment of this framework decision.

Justification

The five years which the Commission proposes is too long a period for the report.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the Commission proposal with a view to the adoption of a Council decision laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking (COM(2001) 259 – C5-0359/2001 – 2001/0114(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal (COM(2001) 259)¹,
 - having been consulted by the Council pursuant to Article 39(1) of the Treaty on European Union (C5-0359/2001),
 - having regard to Rules 106 and 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0460/2001),
1. Approves the Commission proposal as amended;
 2. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;
 3. Asks to be consulted again if the Council intends to amend the Commission proposal substantially;
 4. Instructs its President to forward its position to the Council and Commission.

¹ Not yet published in the Official Journal.

EXPLANATORY STATEMENT

General context

This proposal for a framework decision follows on from Article 29 of the Treaty of Amsterdam. According to that article, combating illicit drug trafficking is one of the objectives to be realised in order to establish an area of freedom, security and justice. Article 31(e) seeks common action on judicial cooperation in criminal matters, and calls for minimum rules on penalties in the field of illicit drug trafficking. The proposal is based on a standard text which the Commission has worded in such a way as to enable the Council to adopt it without too many difficulties.

The Treaty acknowledges that illicit drug trafficking must be tackled, but the proposal for a framework provides no added value; rather, it codifies the lowest common denominator between Member States' existing legislation.

The proposal for a framework decision should be set in a broader context (Amendments 1, 2 and 3). A criminal law based approach is a component of overall drugs policy. Prevention and therapy are other significant components, as previously set out in the action plan. Overemphasising one approach may have unwanted effects. Neglecting the judicial approach in favour of the other may jeopardise public order and security. A one-sided criminal law approach may make it impossible to offer therapies. It is policymakers' task to do the best possible justice to all three aspects.

Four major problems and proposed amendments

The problem of a definition (Article 1, Amendment 10)

The EU has in particular a task to fulfil in combating large-scale international drug trafficking. Only here can the EU offer genuine added value, acting in accordance with the subsidiarity and proportionality principles. That does not mean that the amendments are confined to cross-border trafficking; on the contrary.

The problem of penalties (Recital 7, Article 4, Amendments 5, 13 and 16)

In serious cases, the maximum penalty ought to be at least five years' imprisonment. In itself that is not a great deal: several Member States impose much longer prison terms. Alternative penalties (such as forcible detoxification) ought also to be imposable, but only as additional penalties. Furthermore, penalties under the civil law ought to be made possible. However, the legal basis for this is weak and it is hard to incorporate such penalties into a criminal law text. Social and personal harm can be very extensive, and it must be possible to tackle drug dealers on this. This problem is covered to some extent by the amendment making reference to an earlier Parliament policy stance (Amendment 5). Nonetheless, this must be researched further (also in relation to other issues, such as the environment etc.).

The problem of cooperation between Member States (Recital 9, Article 10, Amendments 7, 21 and 22)

This is particularly poorly provided for in the proposal. Experience shows that this is the greatest problem. There are various cooperation mechanisms at EU level. The competent authorities are required to cooperate. Europol's and Eurojust's acknowledged important role must be fully complied with. Without effective and operational cooperation, this framework decision will be of no practical consequence.

The admissibility of investigative methods

The amendments concerning aggravating and mitigating circumstances (recital 6, Articles 5 and 6, Amendments 4, 15, 16 and 17) are clear enough. A European framework decision need not go into details which are actually at the discretion of the courts.

Article 6 does not primarily concern 'mitigating circumstances'. The heading obscures the actual point: the use of key prosecution, or Crown, witnesses. As Article 3 (on incitement) also overlaps with investigative methods, it would be clearer if the issue as such were addressed. The Member States ought to be able to achieve a minimum consensus which accords with the nature of the rule of law.

The other amendments make the wording more stringent. Lastly, Amendment 23 prevents the transfer of powers from the third pillar to the first pillar, provided for in the Treaty of Amsterdam, from being thwarted, on the basis of this draft, by the establishment of a shadow organisation within the Council.

Shortcomings in the text which are not yet removable

This text, including the associated amendments, is hardly a contribution towards solving the problem of illicit drug trafficking. However, it is pointless to reject the proposal for a framework decision. Acceptance means that there will be a text which can subsequently be 'beefed up'. Parliament can derive no pleasure, however, from what is merely the codification, at EU level, of existing national measures on criminal acts within illicit drug trafficking; but the Treaty on European Union calls for measures concerning illicit drug trafficking, so as to establish an area of freedom, security and justice. Anyone involved in illicit drug trafficking will be anything but discomfited by this draft.

Secondly, the text will produce side effects, Article 3 of the proposal being a good case in point. Incitement is often regarded as the best method of arresting criminals. However, this method is expressly condemned. How is Article 6 on mitigating circumstances to be taken? It points to key prosecution, or Crown, witnesses without overtly naming them. If, though, this is to be regulated at EU level, such witnesses must, *mutatis mutandis*, be protected. The issue needs to be addressed more broadly, actually, in particular as regards investigative methods (hence new recital 9a in Amendment 8). It would be helpful if the Commission gave some thought to this and produced a memorandum on investigative methods and cooperation between Member States. In the process, the prospect of enlargement must be borne in mind at all times.

Lastly, the inclusion of civil law penalties in the text has been found to be legally problematic,

though, from a political perspective, addressing the issue is desirable. The recently published Green Paper on compensation for victims (COM(2001) 536 final) forms the basis for discussion which may lead to specific legislation.

Decision

The text submitted makes little or no contribution towards strengthening the mechanisms for combating international drug trafficking - itself a shameful observation. The amendments attempt to improve and tighten up the draft. The real work has yet to be done, however, in particular going beyond the lowest common denominator of national legislation, addressing investigative methods and adding civil law penalties. The feeble consensus on minimum maximum prison terms ensures easy acceptance by the Council, but at the expense of policy objectives. Citizens' security is still no match for the unwillingness of 15 independent 'investigators' to cooperate.

