



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 8 November 2002

13918/02

**Interinstitutional File:
2001/0114 (CNS)**

LIMITE

**DROIPEN 79
CORDROGUE 93**

OUTCOME OF PROCEEDINGS

of : Council

on : 14 and 15 October 2002

No. prev. doc. : 10321/1/02 DROIPEN 42 CORDROGUE 47 REV 1 + ADD 1

No. Cion prop. : COM(2001) 259 final (10372/01 DROIPEN 60 CORDROGUE 45 COMIX 494)

Subject : Proposal for a Council Framework Decision laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of drug trafficking

The Council examined the draft Framework Decision laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of drug trafficking at its meeting on 14 and 15 October 2002 on the basis of 10321/1/02 DROIPEN 42 CORDROGUE 47 REV 1 + ADD 1.

The proposal made by the Presidency set out under point II.2 of the document was not acceptable to the French and Swedish delegations.

The Presidency made in the light of the discussions the amended proposal set out in the Annex for the purpose of further discussions.

Presidency proposal

1. Article 4 is worded as follows:

"Article 4**Penalties**

1. Each Member State shall take the necessary measures to ensure that the conduct referred to in Articles 2 and 3 is punishable by effective, proportionate and dissuasive penalties, which may entail deprivation of liberty, and which do not because of the penalty level exclude extradition, surrender and mutual legal assistance in accordance with the applicable instruments on international cooperation, including those on mutual recognition such as the Framework Decision on the European arrest warrant and the surrender procedures between Member states and the 2000 Convention on mutual assistance in criminal matters between the Member States of the European Union and its Protocol.

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. (...)

4. 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.

4a. 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 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."

2. The Council makes the following declaration:

“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 stresses the importance of ensuring that legislation relating to drug trafficking in one Member State does not undermine legislation relating to drug trafficking in other Member States.

Furthermore, the Council finds it imperative that Member States intensify operational co-operation both multilaterally and bilaterally since this is a vital element in the fight against drug trafficking. In order to ensure the continued efficiency of this co-operation Member States shall report to the General Secretariat of the Council on the nature and results of their bilateral co-operation every two years."
