

# EUROPEAN PARLIAMENT

1999



2004

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

REVISED  
**2003/2015(INI)**

10 February 2003

## **DRAFT REPORT**

including a proposal for a recommendation of the European Parliament to the Council  
on the reform of the Conventions on drugs  
(2003/2015(INI))

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

Rapporteur: Kathalijne Maria Buitenweg



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## PROCEDURAL PAGE

At the sitting of 13 January 2003 the President of Parliament announced that he had referred the proposal for a recommendation on the reform of the Conventions on drugs, tabled pursuant to Rule 49 of the Rules of Procedure, to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible.

At its meeting of 21 February 2003, Committee on Citizens' Freedoms and Rights, Justice and Home Affairs decided to draw up a report on this topic and appointed Kathalijne Maria Buitenweg rapporteur (2003/2015(INI)).

The committee/It considered the draft report at its meeting(s) of ... .

At the latter/last meeting it adopted the motion for a resolution by ... votes to ..., with ... abstention(s)/unanimously.

The following were present for the vote: ... chairman/acting chairman; ... and ..., vice-chairman/vice-chairmen; ..., rapporteur; ..., ... (for ...), ... (for ... pursuant to Rule 153(2)), ... and ... .

The report was tabled on ....

## PROPOSAL FOR A RECOMMENDATION

### **Recommendation of the European Parliament to the Council on the reform of the Conventions on drugs (2003/2015(INI))**

*The European Parliament,*

- having regard to the proposal for a recommendation to the Council, tabled by Marco Cappato and 108 other signatories (B5-0541/2002),
  - having regard to Rule 49 of its Rules of Procedure, taken in conjunction with Rule .....,
  - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0000/2003),
- A. having regard to the 1961 UN Single Convention on Narcotic Drugs, the 1971 UN Convention on Psychotropic Substances and the 1988 UN Convention against illicit traffic in narcotic drugs and psychotropic substances,
  - B. whereas, on 16 and 17 April 2003 in Vienna, a Ministerial Conference of the UN Member States which are signatory to those Conventions will assess the progress achieved and the difficulties encountered in meeting the goals and targets set out in the Political Declaration adopted by the General Assembly at its twentieth special session in 1998,
  - C. whereas, in that Political Declaration, two target dates were set: 2003 for, *inter alia*, the establishment of new or enhanced drug-demand reduction strategies and 2008 for the elimination of, or significant reduction in, the illicit manufacture, marketing and trafficking of the substances listed in the Conventions,
  - D. whereas the EU will be represented at that Conference by individual Member States as well as by a separate delegation,
  - E. whereas damage reduction, treatment of drug addicts and reduction of drug-related crime are among the central goals of the EU Drugs Strategy for the period 2000-2004,
  - F. whereas the Council is in the process of adopting a recommendation to the Member States on the 'prevention and reduction of risks associated with drug dependence',
  - G. whereas drug abuse causes considerable health and social damage,
  - H. whereas the overwhelming majority of crimes and offences committed in the EU consist of drug-related petty crime and organised crime connected with drugs,
  - I. whereas the growing profits that criminal organisations make from trading in illicit substances, profits which are subsequently reinvested not only in other criminal activities but also in legal financial and economic circuits, have reached such a level that the criminal organisations involved wield considerable political, economic and financial power,

- J. whereas it can be argued that some experiments that have been successful in reducing both the negative health impact and the level of petty crime, such as the provision of drug addicts with methadone or heroin and programmes that aim to protect young people from greater harm, such as the testing of Ecstasy pills, are in breach of the UN Conventions,
- K. whereas the European Monitoring Centre for Drugs and Drug Addiction concludes that the tendency of law enforcement authorities to give low priority to the prosecution of individual drug-use or possession of illegal drugs for personal consumption is confirmed by new measures towards the decriminalisation or non-prosecution of drug-use offences implemented in some Member States,
- L. whereas there is no evidence to show that the policies pursued on the basis of the UN Conventions on drugs are effective in reducing the supply of and demand for drugs, health risks and drug-related crime,
- M. whereas the UN Conventions on drugs provide mechanisms for amendment, reservations, reclassification and/or repeal,
1. Shares the views of the UN that there is an urgent need to reduce the damage caused by drug abuse and the crime connected therewith;
  2. Notes that the UN Ministerial Conference, to be held on 16 and 17 April 2003 in Vienna, constitutes an important forum in which current drug policies may be evaluated and reaffirmed, reservations expressed and any need for change discussed;
  3. Welcomes the fact that, on the basis of the studies undertaken by the European Monitoring Centre for Drugs and Drug Addiction, the effectiveness of alternative damage-reduction strategies is now recognised at EU level;
  4. Notes that the implementation of these alternative strategies is inevitably limited by constraints imposed by the UN Conventions, which are based on the logic of eradicating drug abuse by prohibiting drugs;
  5. Notes that the UN Conventions on drugs include provisions for changes to be made, in particular the reclassification of the substances listed and the amendment of the text itself, and that they also provide mechanisms for reservations and termination;
  6. Urges the European Union representatives attending the UN Ministerial Conference in Vienna on 16 and 17 April 2003 to call on the competent authorities of the UN to carry out a detailed evaluation of the effectiveness of the implementation of the Conventions, with particular regard to a reduction in:
    - the supply of and the demand for illicit drugs,
    - health and social damage,
    - drug-related petty crime and organised crime;
  7. Urges the European Union representatives to propose that a UN Conference be held in 2004 at which the findings of the evaluation requested may be debated;

8. Insists that, should the findings of that Conference support this view, procedures for the amendment of the 1961 and 1971 Conventions and for the repeal of the 1988 Convention must be considered;
9. Requests, further, that immediate action be taken to correct the current major inconsistency whereby the cannabis plant - containing at most 3% of the principal element - is listed in Table IV of the 1961 Convention alongside the most dangerous substances such as heroin, while its principal element itself at 100%, tetrahydrocannabinol (THC), is simply listed alongside psychotropic substances;
10. Instructs its President to forward this recommendation to the Council and to the Commission, for information, to the Member States and to the United Nations.

## EXPLANATORY STATEMENT

On 16-17 April 2003, the ministerial segment of the Economic and Social Council of the United Nations will meet in Vienna. Another meeting is already planned for 2008. These meetings coincide with the two target dates for achieving goals agreed upon by the General Assembly in 1998.

2003 was established as target date for new or enhanced drug demand reduction strategies and programmes set up in close collaboration with public health, social welfare and law enforcement authorities. It is also the deadline for national legislation and programmes giving effect to the Action Plan against Illicit Manufacture, Trafficking and Abuse of Amphetamine-type Stimulants and their Precursors, adopted at the General Assembly in 1998. Moreover, States that have not yet done so, are requested to adopt by the year 2003 national money-laundering legislation and programmes in accordance with relevant provisions of the United Nations Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, as well as the measures for countering money-laundering, adopted at the session in 1998.

The second target date is 2008. At this date, the States aim to have eliminated, or at least significantly reduced, the illicit manufacture, marketing and trafficking of substances listed in the Conventions.

Therefore, the conference in April 2003 can be seen as an important occasion, where current policies can be reaffirmed, or changes and reservations should be expressed and proposed.

The European Union will be represented by an official delegation, hopefully composed by members of the three Institutions. It is in this framework that the European Parliament has decided to express its opinion on some of the aspects debated in Vienna.

### Three UN conventions

At the international level, drug policies are determined by three United Nations Conventions: the Single Convention on narcotic drugs of 1953, the Convention on psychotropic substances of 1971 and the Vienna Convention against the illicit traffic of narcotic substances of 1988.

The Single Convention on narcotic drugs of 1953 states that the *"possession, use, trade in, distribution, import, export, manufacture and the production of drugs is exclusively limited to medical and scientific purposes"*.

To achieve this result the Parties to this Convention have established guiding principles, the implementation of which is entrusted to international control organs.

Essentially, the text provides for two complementary forms of intervention and control: the first, which is of a preventative nature concerns the licit, scientific and medical market; the second, of a repressive nature, concerns illicit traffic, drug abuse and drug addiction.



Control of the licit market is based on a set of national and international preventive measures, which apply to substances classified as narcotic drugs (art. 2 and 3). These measures oblige the States to provide to the control organs - the Commission on Narcotic Drugs of the Economic and Social Council and the International Narcotics Control Board (art. 5 to 18) - estimates of national drug requirements (art. 19), production statistics (art. 20) and regular reports to inform them of the situation in their country.

Control of illicit traffic should, according to the 1961 Single Convention, begin by controlling cultivation. The illicit production of the opium poppy, coca leaf and cannabis is the major source of drug traffic. Unable to intervene at the source, international law hopes to discourage it by repressive measures aimed at dissuading drug traffickers. Three provisions to this effect are set out in the Single Convention: a recommendation to the States that serious offences in matters of drug trafficking are liable to "adequate" punishment (art. 36), a measure relating to the confiscation of seized substances (art. 37) and measures for international penal assistance and cooperation, particularly in matters of extradition (art. 35). This cooperation was pushed further in the Vienna Convention of 1988 against the illicit traffic of narcotic drugs and psychotropic substances. This in fact strengthens the severity of the previous provisions concerning extradition (art. 6), as well as international mutual judicial assistance (art. 7), repressive procedures (art. 8) and the provisions relating to illicit cultivation (art. 14), whilst instituting a specific procedure for finding drug traffickers, via controlled deliveries (art. 11), and arguably create new international crimes such as incitement.

The 1971 Convention, which closely resembles the Single Convention, establishes an international control which is clearly less rigorous for the so-called "psychotropic" substances, generally produced by the pharmaceutical industry. The similarity of the drafting of both texts therefore allows the amendments proposed to the Single Convention to be transposed, *mutatis mutandis*, to the 1971 Convention.

The 1988 Convention is most controversial. It supplements and strengthens the earlier Conventions. The 1961 and 1971 Conventions aim to limit the use of 'narcotic' and 'psychotropic' drugs to medical and/or scientific purposes. They require parties to create 'punishable offences' to control the use of certain drugs, placing controls on manufacture, production, cultivation, importation, purchase or possession. The 1988 Convention goes further. It requires parties to establish breaches of its terms as criminal offences under their domestic law, including the possession, purchase and cultivation of illicit drugs for personal

In local, regional, national and European discussions on the effectiveness and the consequences of the current policies towards drugs, the United Nations conventions are often referred to as reasons why changes are not possible. However, these conventions are drafted and ratified by the member States, and these Member States are also in the position to propose amendments and/or to repeal the conventions.

At the following conference, two important issues should be debated:  
an initiative for an evaluation of the effectiveness of the three UN conventions and the methods chosen to fight the problems of drug abuse  
the desirability of amending the Single Convention on Narcotic Drugs of 1961, in order to rationalise the classification of the substances that are listed.

## EVALUATION

There is probably a world-wide consensus on the urgent need to reduce the amount of harm caused by drugs. However, there is much debate whether the methods chosen, being mainly measures to reduce the illicit supply and the demand for drugs, are effective. It could be proposed to organise a conference of the United Nations in 2004 in order to evaluate the effect of the UN conventions on drugs and, when appropriate, to draw lessons for the future.

Such an evaluation should provide an accurate understanding of the effectiveness of the UN Conventions as regards in particular:

- the reduction of both the spreading and the demand of illicit drugs
- their social and health-related consequences especially on harm-reduction strategy,
- the drug-related criminality, both petty crime and the organized criminal networks, with their consequences on the entire society including decision-making process, economy and finance.

## MODIFYING THE UN CONVENTIONS

The parallel existence of the Single Convention and the 1971 Convention have led to certain illogical effects such as the fact that a plant (cannabis) containing at most 3% of a principle element is dealt with more severely than the pure substance at 100% (tétrahydrocannabinol or THC). To put this right, a reclassification of certain substances is required.

The reclassification of certain substances from the Single Convention and its possible reclassification in the Vienna Convention do only change the provisions on use and not the provisions and prohibition on cultivation (art. 26 and 28 of the Single Convention). The prohibition of the cultivation of plants cannot be abolished merely by a reclassification. The removal of this control could only be done by amending the treaty. This restriction, peculiar to cultivated plants internationally controlled, somewhat diminishes the interest of the reclassification technique for natural cultivated drugs.

Article 47 of the Single Convention provides for the possibility of the contracting Parties requesting that the Convention be modified through the amendment procedure.. Most interesting for improving the convention in the short term is the article for reclassification (article 3).

### 1. The technique of reclassifications in article 3.

The technique of reclassification in article 3 of the Single Convention is interesting since it allows one to change both the list of classified substances and the regime accompanying them. Furthermore, it can be used at any time, at the initiative of any contracting Party, and it has the advantage of attacking one of the most debatable aspects of the international control: the classification of **narcotic drugs** in the schedules of the Single Convention.

Let us recall that the Convention sets out over a hundred substances classified into four schedules, arranged as follows:

- **Schedule I**: it includes opiates, both natural (opium) and semi-synthetic (morphine, heroin), derivatives of coca (cocaine) and cannabis (hashish), as well as numerous synthetic

substances (pethidine, methadone,...),

- **Schedule II:** it includes substances used for medical purposes and requiring a less rigid control in view of the lesser risk of abuse. It includes a natural opiate (codeine) and synthetic substances (propiram, dextropropoxyphene).

- **Schedule III:** it is the schedule of exemptions. It excludes a series of pharmaceutical preparations made from substances not entailing abuse or ill effects. Such is the case for certain powders and liquids with a low dosage of opium.

- **Schedule IV:** it includes some drugs from Schedule I that are considered to have particularly dangerous properties and an extremely limited therapeutic value. It includes opiates both semi-synthetic (heroin, desomorphine) or synthetic (Ketobemidone, etorphine), as well as cannabis and cannabis resin.

These schedules show that the main criterion for the classification of a substance is its medical use. In view of the principle according to which the only licit uses is those for medical or scientific purposes (art. 4), plants or substances deprived of this purpose are automatically considered as particularly dangerous. Such is the case for cannabis and cannabis resin which are classified with heroin in group IV for the sole reason that they lack therapeutic value. A reason which is in any event disputable, since cannabis could have numerous medical uses.

One of the most fundamental challenges to this system of classification concerns the different treatment of narcotic drugs and psychotropic substances. Historically this is a result of the refusal (by almost one vote, during the preparatory discussions of the Single Convention) to classify barbiturates with internationally controlled substances.

This refusal is indeed partially at the origin of the Convention on psychotropic substances adopted in Vienna in 1971. This Convention was requested by developing countries, which did not understand the difference between natural psychotropic substances (opium, coca, cannabis) and synthetic psychotropic substances from the pharmaceutical industry (amphetamines, barbiturates, hallucinogens...). Thus, for example, although barbiturates, amphetamines and synthetic hallucinogens (LSD 25, PHP, MBA, NDMA...) are clearly more powerful and addictive than cannabis or the coca leaf, they were not at that time subject to any international control. The unfairness of the situation therefore leads the UN to bring psychotropic substances within the scope of control.

**Psychotropic substances** are today classified by the Vienna Convention (art. 1) into four schedules:

- **Schedule I:** it includes dangerous drugs creating a serious risk to public health, and whose therapeutic value is doubtful or nil. It includes synthetic hallucinogenics (LSD 25, DMT) and tetrahydrocannabinol (THC).

- **Schedule II:** it includes stimulants of the amphetamine type, of limited therapeutic value, as well as some analgesics such as phencyclidine, which is of no therapeutic value to man.

- **Schedule III:** it includes barbiturate products with fast or average effects, which have been the object of serious abuse even though useful therapeutically.

- **Schedule IV:** it includes hypnotics, tranquilizers (benzodiazepine) and analgesics, which engender an appreciable dependence, but are mainly, used in therapy.

This classification repeats the criteria of therapeutic value, but in fact is more or less based on whether a substance belongs to one of the four pharmacological groups: hallucinogens (Schedule I), amphetamines (Schedule II), barbiturates (Schedule III), tranquilizers (Schedule IV).

It is striking to note that a comparison of the classifications of narcotic drugs and psychotropic substances does not in the least coincide with the health and social danger posed by the products concerned. Substances that only engender a slight dependence are classified amongst narcotic drugs whereas highly addictive substances are classified amongst psychotropic substances. Therefore, one is surprised to learn that in international law, LSD, mescaline, psilocine and other synthetic hallucinogenics DMT, STP... are not narcotic drugs, but psychotropic substances. Better yet, whereas the cannabis plant is classified amongst the most dangerous narcotic drugs, its principal element, tetrahydrocannabinol or THC is only a psychotropic substance. It is difficult to explain how a plant containing at the most 3% of a principal element is dealt with more severely than the pure substance at 100%.

Therefore, it would be useful to attempt to reorganize these schedules by using the reclassification procedure for a certain number of narcotic substances. This enables one to transfer them from one schedule to another, to reclassify them as a psychotropic substance, or by purely and simply deleting them from the list of internationally controlled substances.

The rules concerning proposing changes to the schedules of the 1961 Convention are provided for in Article 3 which defines the conditions for modifying the scope of international control. The United States have already once followed this path, when it proposed to reclassify dextropropoxyphene.

Apart from the above-mentioned techniques (reclassification and amendment), the Conventions themselves also contain provisions for reservations (which is only possible at the time of signature, ratification or accession) and denunciation, which can be used at any time.

# EUROPEAN PARLIAMENT

1999



2004

*Session document*

23 December 2002

B5-0541/2002

## **PROPOSAL FOR A RECOMMENDATION**

pursuant to Rule 49(1) of the Rules of Procedure

by Marco Cappato, Chris Davies, Daniel Marc Cohn-Bendit, Pernille Frahm, José María Mendiluce Pereiro, Danielle Auroi, Fausto Bertinotti, Emma Bonino, Alima Boumediene-Thiery, Theodorus J.J. Bouwman, Hiltrud Breyer, André Brie, Kathalijne Maria Buitenweg, António Campos, Paulo Casaca, Michael Cashman, Giorgio Celli, Carmen Cerdeira Morterero, Nicholas Clegg, Dorette Corbey, Armando Cossutta, Gianfranco Dell'Alba, Benedetto Della Vedova, Olivier Dupuis, Alexander de Roo, Jan Dhaene, Rosa M. Díez González, Giuseppe Di Lello Finuoli, Manuel António dos Santos, Andrew Nicholas Duff, Raina A. Mercedes Echerer, Giovanni Claudio Fava, Hélène Flautre, Marco Formentini, Geneviève Fraisse, Monica Frassoni, Fiorella Ghilardotti, Laura González Álvarez, Koldo Gorostiaga Atxalandabaso, Adeline Hazan, Renzo Imbeni, Marie Anne Isler Béguin, Pierre Jonckheer, Ole Krarup, Alain Krivine, Joost Lagendijk, Jean Lambert, Paul A.A.J.G. Lannoye, Alain Lipietz, Caroline Lucas, Baroness Sarah Ludford, Jules Maaten, Neil MacCormick, Nelly Maes, Lucio Manisco, Helmuth Markov, Patricia McKenna, Luís Marinho, Pedro Maset Campos, Claudio Martelli, Hans-Peter Martin, Miquel Mayol i Raynal, Erik Meijer, Emilio Menéndez del Valle, Reinhold Messner, Jorge Moreira da Silva, Pasqualina Napolitano, Gérard

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on the reform of the Conventions on drugs

**Recommendation on the reform of the conventions on drugs**

*The European Parliament,*

- A. whereas international policies on drugs derive from the UN Conventions of 1961, 1971 and 1988 and whereas these Conventions prohibit the production, trafficking, selling and consumption for ends other than medical or scientific ones of a whole range of substances,
- B. whereas, despite massive deployment of police and other resources to implement the UN Conventions, production and consumption of, and trafficking in, prohibited substances have increased exponentially over the past 30 years, representing what can only be described as a failure, which the police and judicial authorities also recognise as such,

**Prevention and treatment**

whereas:

- abuse of narcotics and psychotropic substances, particularly by young people, is a serious problem on a global scale,
- all the developed nations are seeking better ways of controlling the abuse of narcotics and psychotropic substances,
- the long history of prohibition has clearly demonstrated that relying mainly on action taken by the State through criminal law and the police has only a marginal effect in controlling the abuse of narcotics and psychotropic substances,
- there is strong evidence to suggest that effective treatment programmes can be successfully developed without State constraints, allowing the broadest possible experimentation in the unending search to improve our ability to assist the victims of narcotic and psychotropic substance abuse,

**Production and trafficking**

whereas:

- the vast majority of narcotics and psychotropic substances move freely around the world despite prohibitionist laws,
- the growing profits that criminal organisations make from trading in illegal substances, which are reinvested in criminal activities or legal financial circuits, have reached such a level that the foundations of legal institutions and constitutional governments are being undermined by them,
- the profitability of trading in illicit substances can only lead to a rise in the number of countries involved in drug production and generate massive investment in developing and producing new synthetic drugs,

- the main effect of deploying vast resources to curb trafficking in illegal substances has been a rise in their price (criminal tariff) which is of benefit only to organised crime networks,

### **Social and health-related effects and use**

whereas:

- users of illegal substances do not usually have access to reliable information on the composition and effects of narcotics and psychotropic substances, and are therefore exposed to risks (including death by overdose and transmission of the HIV/AIDS virus) which are far greater than the dangers of the substances themselves,
- the clandestine nature of illegal substance use is often an insurmountable obstacle to the work of prevention and the provision of assistance by the State and private organisations; current policies thus condemn users to living on the margins of society, in permanent contact with the world of organised crime,
- organised crime operates in a way that causes the number of users to increase rapidly, encouraging them to move from relatively inoffensive substances, such as cannabis derivatives, to so-called hard drugs,
- great economic need and the enormous pressure from organised crime lead users of illicit substances to become dealers themselves, which increases drug abuse still further,

### **Legal and penal aspects**

whereas:

- the application of repressive laws on drugs inevitably puts intolerable pressure on national and international legal and penal systems, to such an extent that a growing number of the people now in prison are there for crimes directly or indirectly linked to narcotics and psychotropic substances,
- the implementation of current drug policy has led to the introduction into national legislation of laws that restrict individual freedom and civil liberties,

whereas the viability of current policies and the search for alternative solutions are currently under consideration in a growing number of countries,

1. Contends that the policy of prohibiting drugs, based on the UN Conventions of 1961, 1971 and 1988, is the true cause of the increasing damage that the production of, trafficking in, and sale and use of illegal substances are inflicting on whole sectors of society, on the economy and on public institutions, eroding the health, freedom and life of individuals;
2. Strongly urges the Council and the EU Member States to take account of the positive results achieved in a number of countries by putting in place policies based on damage and risk reduction (particularly using substitution treatment), decriminalising the use of



certain substances, partially decriminalising the sale of cannabis and its derivatives and making heroin available under medical supervision;

3. Calls on the Council and the EU Member States to take measures to make the fight against organised crime and trafficking in narcotics and psychotropic substances more effective, by establishing a system of legal control and regulation of the production, sale and use of currently illegal substances;
4. Calls on the Council and the EU Member States to begin a process of revising the UN Conventions on the occasion of the conference for the mid-term review of UN drug policies to be held in Vienna in April 2003, with the aim of repealing or amending the 1961 and 1971 Conventions with a view to reclassifying substances and legalise the use of drugs for purposes other than medical or scientific ones, and to repealing the 1988 Convention.