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REPORT

on the proposal for a Council Framework Decision on the fight against
organised crime
(COM(2005)0006 – C6-0061/2005 – 2005/0003(CNS))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Bill Newton Dunn

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.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a Council Framework Decision
on the fight against organised crime
(COM(2005)0006 – C6-0061/2005 – 2005/0003(CNS))**

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal (COM(2005)0006)¹,
 - having regard to Article 34(2)(b) of the EU Treaty,
 - having regard to Article 39(1) of the EU Treaty, pursuant to which the Council consulted Parliament (C6-0061/2005),
 - having regard to Rules 93 and 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinions of the Committee on Foreign Affairs and the Committee on Legal Affairs and the Internal Market (A6-0277/2005),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
 3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 4. Calls on the Council to consult Parliament again if it intends to amend the Commission proposal substantially;
 5. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

Amendment 1 Recital 3

(3) Point 3.3.2 of the The Hague Programme states that the approximation of substantive criminal law serves the same purposes and

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¹ OJ C ... / Not yet published in OJ.

concerns areas of particular serious crime with cross border dimensions and that priority should be given to areas of crime that are specifically mentioned in the treaties. The definition of offences relating to participation in a criminal organisation should therefore be approximated in all the Member States. Moreover, penalties corresponding to the seriousness of these offences should be envisaged against natural and legal persons who committed them or are responsible for their commission.

concerns areas of particular serious crime with cross border dimensions and that priority should be given to areas of crime that are specifically mentioned in the treaties. The definition of offences relating to participation in a criminal organisation should therefore be approximated in all the Member States. ***The Member States are also free, however, to classify other groups of persons as criminal organisations, e.g. groups whose purpose is not that of financial or other material gain or which commit offences punishable by deprivation of liberty or a detention order of a maximum of less than four years.*** Moreover, penalties corresponding to the seriousness of these offences should be envisaged against natural and legal persons who committed them or are responsible for their commission.

Justification

The framework decision lays down minimum conditions. But the Member States are, of course, free to go beyond these minima when defining what constitutes a criminal organisation.

Amendment 2 Recital 4

(4) Provision should be made for a specific offence of ‘directing a criminal organisation’, with provisions to facilitate cooperation between the judicial authorities and coordination of their action via Eurojust.

(4) Provision should be made for a specific offence of ‘***promoting, setting up, organising or*** directing a criminal organisation’, with provisions to facilitate cooperation between the judicial authorities and coordination of their action via Eurojust.

Amendment 3 Recital 4 a (new)

(4a) Subject to the adoption of a third-pillar data protection instrument, cooperation between Interpol and Europol should be developed with a view

to information being shared for the purpose of investigating transnational organised crime.

Justification

The relationship between EuroPol and InterPol is not clearly defined and there is overlap. Each has assets that should be shared to effectively combat transnational organised crimes, in particular with a view to information sharing and subject to the third pillar data protection instrument that the European Parliament has been asking for and which the Commission has promised to propose before the end of the year.

Amendment 4
Recital 4 b (new)

(4b) Subject to the adoption of the Framework Decision on the European Evidence Warrant for obtaining objects, documents and data for use in proceedings in criminal matters, Member States should facilitate the mutual recognition of evidence obtained against the perpetrators of transnational organised crime.

Justification

The mutual recognition of evidence is a cornerstone in improving the combating of international organised crimes. The European Evidence Warrant must therefore be adopted and implemented as soon as possible.

Amendment 5
Recital 5 a (new)

(5a) Given that the development and structuring of highly efficient and mobile international criminal networks slows down investigations, and in order to provide a more appropriate response to this phenomenon and to increase the effectiveness of cooperation between Member States, it would be useful to think about ways of promoting coordinated initiatives at Member State level to develop appropriate instruments such as special

inquiry and infiltration methods and techniques, as well as rules on informers, which already exist in some Member States.

Amendment 6
Recital 6 a (new)

(6a) This Framework Decision is expected to provide a basis for persuading third countries to introduce similar regulations. The Member States should set an example by giving strong proof of their determination.

Justification

Lack of the EU legislation on fight against organised crime puts EU in a difficult position in discussions with international partners. Having this Framework Council Decision in place will give EU stronger basis for encouraging third countries to adopt similar legislation.

Amendment 7
Recital 7 a (new)

(7a) Criminal organisations cross the internal frontiers of the European Union with impunity and considerable benefit to themselves, while police officers, their powers being limited to their home Member State only, cannot (except in certain short-term situations). Accordingly, there is a pressing need to create a European Union police force in order to combat organised crime on level terms.

Justification

For as long as law enforcement officers are not given equivalent powers to fight the international organised criminal gangs on equal terms, the Union's citizens will continue to be exploited through trafficking of drugs and of human beings, and through many other types of serious crimes.

Amendment 8
Recital 8

(8) This Framework Decision respects ***the*** fundamental rights ***and principles*** recognised by the Charter of Fundamental

(8) This Framework Decision respects fundamental rights ***as guaranteed by the European Convention for the Protection of***

Rights of the European Union, and in particular Articles 6 and 49 thereof,

Human Rights and Fundamental Freedoms and as they emerge from the constitutional traditions common to the Member States as principles of Community law. The Union observes the principles recognised by Article 6(2) of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union, notably Chapter VI thereof. Nothing in this Framework Decision may be interpreted as being intended to reduce or restrict fundamental rights or freedoms such as the right to strike, freedom of assembly, of association or of expression, including the right of everyone to form and to join trade unions with others for the protection of his or her interests and the related right to demonstrate.

Justification

The importance to respect fundamental rights in the context of the fight against organised crime should be clearly underlined in this part of the Framework Decision. This formulation is identical to the one used in the Council Framework Decision on combating terrorism of 13 June 2002.

Amendment 9 Article 1, paragraph 1

For the purposes of this Framework Decision, ‘criminal organisation’ means a structured association, ***established over a period of time***, of more than two persons, acting in concert with a view to committing offences which are punishable by deprivation of liberty or a detention order of a maximum of at least four years or a more serious penalty in order to obtain, directly or indirectly, a financial or other material benefit.

For the purposes of this Framework Decision, ‘criminal organisation’ means a structured association of more than two persons, acting in concert with a view to committing offences which are punishable by deprivation of liberty or a detention order of a maximum of at least four years or a more serious penalty in order to obtain, directly or indirectly, a financial or other material benefit.

Justification

The requirement for an organisation to have been established over a period of time should

not be seen as an essential criterion for defining this offence, as there may be cases where criminal organisations have only recently been established. Furthermore, as the provision is general and vague, it would create doubts about the period of time necessary. Lastly, it would entail an excessive burden of proof.

Amendment 10
Article 1, paragraph 2

‘Structured association’ means an association that is not randomly formed for the immediate commission of ***an offence*** and that does not need to have formally defined roles for its members, continuity of its membership or a ***developed*** structure.

‘Structured association’ means an association that is not randomly formed for the immediate commission of ***one or more offences acting in concert*** and that does not need to have formally defined roles for its members, continuity of its membership or a ***hierarchical*** structure.

Justification

The structuring of a criminal organisation is something very different from persons merely acting in concert to commit an offence and a distinction should be drawn between these two circumstances.

It would seem more appropriate to place the emphasis on the absence of a hierarchical structure rather than on how developed the structure of a criminal organisation may be, which may be difficult to determine.

Amendment 11
Article 1 a (new)

Article 1a

Prevention and crime control

Member States shall ensure that Europol’s role as a criminal intelligence body is strengthened to allow it to fulfil its task of providing Member States with information and intelligence leading to more effective results in preventing and combating organised crime.

Justification

The support and cooperation of citizens, duly informed about different types of crime and its far-reaching consequences, is essential to ensure the effectiveness of the fight against

organised crime.

The prevention and control of organised crime require global cooperation and should be based on the principles of transparency and democratic control.

Amendment 12
Article 2, point (a)

(a) the fact of directing a criminal organisation;

(a) the fact of ***promoting, setting up, organising or*** directing a criminal organisation;

Amendment 13
Article 2, point (b)

(b) conduct by any person who, with intent and with knowledge of either the aim and general activity of the organisation or its intention to commit the offences in question, actively takes part in the organisation's criminal activities, including the provision of information or material means, the recruitment of new members and all forms of financing of its activities, knowing that such participation will contribute to the achievement of the organisation's criminal activities.

(b) conduct by any person who, with intent and with knowledge of either the aim and general activity of the organisation or its intention to commit the offences in question, actively takes part in the organisation's criminal activities, including the provision of information or material means, ***incitement to commit criminal activities***, the recruitment of new members and all forms of financing of its activities, knowing that such participation will contribute to the achievement of the organisation's criminal activities.

Justification

The incitement to criminal activities, in particular among young and consequently easily influenced people, should be strongly condemned.

Amendment 14
Article 2, paragraph 1 a (new)

This Framework Decision shall not affect the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union.

Justification

The obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union. This formulation, as it is the case of the Council Framework Decision on combating terrorism of 13 June 2002, should be included in the operative part of the text, rather than in the recital's.

Amendment 15

Article 3, paragraph 2 a (new)

2a. Each Member State shall take the necessary measures to ensure that, in addition to the penalties laid down in paragraphs 1 and 2, persons found guilty of offences as referred to in Article 2 may also be made subject to penalties such as:

(a) the seizure of articles which were used or intended to be used to commit the offence concerned and articles which are the reward, proceeds or profit thereof or which constitute the object thereof;

(b) confiscation of goods, the instruments and products stemming from the commission of the offence concerned;

(c) destruction of goods;

(d) publication of judicial decisions;

(e) temporary or permanent disqualification from pursuing a professional or business activity;

(f) disqualification from and ineligibility for political and public office.

Amendment 16

Article 3, paragraph 2 b (new)

2b. Each Member State shall take the necessary measures to ensure that the offences referred to in Article 2 are punishable by custodial sentences more severe than those provided for in paragraph

1 of this Article where:

(a) the aim of the criminal organisation is terrorism;

(b) the criminal organisation organises trafficking in human beings;

(c) the criminal organisation is of the mafia type, i.e. uses the forces of intimidation, the bonds of association and the resulting subjugation and code of silence to commit crimes, to acquire directly or indirectly the power to manage or control economic activities, licences, authorisations, public contracts and services, to gain unfair profit or advantage for itself, to impede or obstruct the free exercise of the right to vote, or to procure votes for its members or for others in elections.

Amendment 17

Article 3, paragraph 2 c (new)

2c. The Member States shall ensure that the profits of organised crime may be confiscated or destroyed.

Justification

Profits and goods which are the fruit of organised crime must not be used for illegal or other purposes.

Amendment 18

Article 4, point (a)

(a) renounces criminal activity, and

(a) renounces criminal activity,
demonstrates the will to be reintegrated into society, and

Justification

It is essential to avoid the risk of recidivism, and the renouncement of criminal activities should be followed by the reinsertion of an individual into society in the presumption that he fully assumes the rights and obligations of citizen.

Amendment 19
Article 4, point (b), indent 1

– prevent or mitigate the effects of the offence;

– prevent, **end** or mitigate the effects of the offence;

Justification

This provides a more precise definition of the scope of the cooperation.

Amendment 20
Article 4, point (b), indent 2

– **identify or bring to justice the other offenders;**

– **allow the identification or capture of those responsible for offences as referred to in Article 2;**

Justification

This provides a more precise definition of the scope of the cooperation.

Amendment 21
Article 4, point (b), indent 3

– find evidence;

– find evidence **relating to the offences referred to in Article 2;**

Justification

It is worth clarifying that the evidence may relate to the offence of belonging to a criminal organisation as well as offences relating to participation in it.

Amendment 22
Article 4, point (b), indent 5

– prevent further offences referred to in **Article 2** being committed.

– prevent further offences referred to in **Article 2** being committed.

Justification

It is worth clarifying that the evidence may relate to the offence of belonging to a criminal organisation as well as offences relating to participation in it.

Amendment 23
Article 5, title

Liability of legal persons

(Does not affect English version)

Amendment 24
Article 5, paragraph 1, introductory wording

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

(1) Each Member State shall take the necessary measures to ensure that legal persons can be held liable for any of the offences referred to in Article 2 ***for the commission of which the organisation was established***, committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on one of the following:

Justification

It is worth stipulating that the liability of legal persons should be extended to cover all offences referred to in Article 2. Furthermore, in establishing the liability of legal persons, reference should be made both to the offence of belonging to a criminal organisation and to the offences committed by it.

Amendment 25
Article 5, paragraph 1, point (a)

(a) a power of representation of the legal person;

(a) a power of representation of the legal person, ***including a de facto power***;

Amendment 26
Article 5, paragraph 1, point (b)

(b) an authority to take decisions on behalf of the legal person;

(b) an authority to take decisions on behalf of the legal person, ***including a de facto authority***;

Amendment 27
Article 5, paragraph 3

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

3. Liability of legal persons under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators of any of the offences referred to in Article 2 ***for the commission of which the organisation was established***.

Justification

It is worth clarifying that the evidence may relate to the offence of belonging to a criminal organisation as well as offences relating to participation in it.

Amendment 28
Article 6, point (b)

(b) temporary or permanent disqualification from the practice of ***commercial*** activities;

(b) temporary or permanent disqualification from the practice of ***business*** activities;

Justification

The concept of business activities is much wider than that of commercial activities and includes, for example, industrial, agricultural, banking and financial activities, etc.

Amendment 29
Article 6, point (e a) (new)

(ea) the seizure of articles and instruments which were used or intended

to be used to commit the offences referred to in Article 2 e and articles which are the reward, proceeds or profit thereof or which constitute the object thereof.

Justification

Confiscating goods, instruments and proceeds from offences is one of the most effective ways of effectively combating crime as it removes the financial basis of their criminal activities.

Amendment 30 Article 6, point (e b) (new)

(eb) destruction of goods;

Amendment 31 Article 6, point (e c) (new)

(ec) publication of judicial decisions.

Amendment 32 Article 7, paragraphs 2 and 3

When an offence referred to in Article 2 falls within the jurisdiction of more than one Member State and when any one of the States concerned can validly prosecute on the basis of the same facts, the Member States concerned shall cooperate in order to decide which of them will prosecute the offenders with the aim, if possible, of centralising proceedings in a single Member State. To this end, the Member States shall, if necessary, have recourse to the services of Eurojust.

Sequential account shall be taken of the following factors:

- (a) the Member State in whose territory the acts were committed;
- (b) the Member State of ***which the offender***

When an offence referred to in Article 2 falls within the jurisdiction of more than one Member State and when any one of the States concerned can validly prosecute on the basis of the same facts, the Member States concerned shall cooperate in order to decide which of them will prosecute the offenders with the aim, if possible, of centralising proceedings in a single Member State. To this end, the Member States shall, if necessary, have recourse to the services of Eurojust. ***If the Member States do not reach a joint decision within two months, Eurojust shall decide.***

Sequential account shall be taken of the following factors:

- (a) the Member State in whose territory the acts were committed;
- (b) the Member State of ***origin of the***

is a national or resident;

(c) the Member State of *origin of the victims*;

(d) the Member State in whose territory the offender was found.

victims;

(c) the Member State of *which the offender is a national or resident*;

(d) the Member State in whose territory the offender was found.

Justification

Any delay in criminal investigations resulting from jurisdiction disputes must be avoided at all costs. The Member States must agree upon who is to carry out the criminal investigation, and the list of determining factors is very useful for this purpose. It must, however, be made clear what is to happen if the Member States fail to come to an agreement.

The order of the determining factors must be changed. It is of significantly greater importance for the Member State of origin of the victims to carry out an investigation than for the Member State of origin of the perpetrators.

Amendment 33

Article 7, paragraph 3, point (d a) new

(da) the Member State which first brought the criminal proceedings.

Justification

This provision is intended to resolve any disputes over jurisdiction between different Member State authorities.

Amendment 34

Article 8, paragraph 1

1. Member States shall ensure that investigations into, or prosecution of, offences covered by this Framework Decision are not dependent on a report or accusation made by a person subjected to the offence, at least if the acts were committed in the territory of the Member State.

1. Member States shall ensure that investigations into, or prosecution of, offences covered by this Framework Decision are ***conducted in the most efficient way with full respect for human rights and*** not dependent on a report or accusation made by a person subjected to the offence, at least if the acts were committed in the territory of the Member State.

Justification

The investigations should be conducted in a most efficient way while granting full respect of human rights.

Amendment 35
Article 8, paragraph 2

2. In addition to the measures laid down in Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings, each Member State shall, if necessary, take all measures possible to ensure appropriate assistance for **victims'** families.

2. In addition to the measures laid down in Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings, each Member State shall, if necessary, take all measures possible to ensure appropriate **protection and** assistance for **victims and their** families.

Justification

The importance to respect fundamental rights in the context of the fight against organised crime should be clearly underlined in this part of the Framework Decision. This formulation is identical to the one used in the Council Framework Decision on combating terrorism of 13 June 2002.

Amendment 36
Article 8 a (new)

Article 8a

***Serious and Organised Crime Unit and
Asset Recovery Unit***

***Each Member State shall establish a
Serious and Organised Crime Unit and an
Asset Recovery Unit, to ensure
coordination at national level and to act
as a single contact point.***

Justification

It is important to ensure proper and simplified coordination and to hit the criminals in the pockets where it hurt the most. Based on recent and successful introduction of such units in the UK and Ireland, Member States ought to consider setting up similar units.

Amendment 37
Article 8 b (new)

Article 8b

***Protection of witnesses and police
informants***

Each Member State shall adopt the necessary measures to ensure that persons who supply information useful for the prevention, uncovering and/or punishment of crimes committed by criminal organisations, whether they are witnesses or perpetrators of crimes that fall within the scope of Article 4, are adequately protected against the risks of retaliation, threats or direct intimidation targeting themselves or their relatives.

Amendment 38
Article 8 c (new)

Article 8c

International cooperation

The Member States shall take the necessary measures to ensure international cooperation, inter alia by forming joint investigation teams.

Amendment 39
Article 10, paragraph 1 a (new)

1a. Member States shall collect statistics on the offences referred to in Article 2 and shall forward those statistics to the Commission, which shall draw up harmonised and comparable statistics as from 2006.

Justification

Without proper statistics that are coherent and comparable, the Union is not in a position to effectively deal with or quantify the problem of organised crime.

Amendment 40 Article 10, paragraph 2

2. The Member States shall transmit to the General Secretariat of the Council and to the Commission, by [...] at the latest, the provisions transposing into their national law the obligations imposed on them by this Framework Decision. The Council, acting on the basis of a report established on the basis of this information and a written report transmitted by the Commission, shall, by [...] at the latest, assess the extent to which Member States have taken the necessary measures to comply with this Framework Decision.

2. The Member States shall transmit to the General Secretariat of the Council and to the Commission, by [...] at the latest, the provisions transposing into their national law the obligations imposed on them by this Framework Decision. The ***European Parliament and the Council***, acting on the basis of a report established on the basis of this information and a written report transmitted by the Commission ***to the European Parliament and the Council***, shall, by [...] at the latest, assess the extent to which Member States have taken the necessary measures to comply with this Framework Decision.

Justification

Both co-legislative bodies should be equally involved.

EXPLANATORY STATEMENT

International Organised Crime is huge, and growing. If it were a country, it would be the fourth largest economy in the world.

The public knows little about it. Local police forces in each member state are supervised democratically so the public is aware of local successes and failures. But there is no democratic oversight or control of international crime-fighting at European or world level.

Local crime is fuelled by international crime. For example, it is estimated that each kilo of heroin sold in our streets causes over two hundred street muggings or house-burglaries.

Who are the international criminal gangs? They are based mainly outside the EU in places where law enforcement is weak and opportunity for corruption is strong - such as Russia, eastern Europe, central Asia, China, Nigeria, Brazil. Anywhere where there are clever people without opportunities for legitimate employment. They target where the money is, which is inside the EU and inside the USA.

Their principal activities are:

- a. drugs - importing heroin from Afghanistan, and cocaine from Columbia, and exporting Ecstasy from Europe.
- b. smuggling counterfeit goods which are made cheaply and are of low quality - such as CDs and DVDs, imitation jeans and perfumes, but also fake condoms, aircraft parts, car brakes, medicines, baby-foods and much more. These undermine honest EU workers' jobs and oblige taxpayers to pay extra to compensate for what is lost.
- c. identity theft, mainly on the internet, persuading gullible Europeans to voluntarily reveal their bank details, or social security numbers, to enable the thieves to steal their money
- d. trafficking of women for prostitution, children for paedophilia, and illegal immigrants into the EU
- e. currency counterfeiting
- f. violent theft of luxury cars for sale in eastern Europe
- g. smuggling of cigarettes and alcohol because of very different local taxes
- h. money-laundering to conceal the criminal origins of money - such as the Mafia buying banks in Latvia before EU Enlargement, and the IRA seeking to buy a Bulgarian bank before that state joins the EU.

Some terrorist groups use organised crime to finance their political activities. The Madrid bombers sold fake CDs and DVDs to help finance their activities.

How is the European Union fighting against the organised criminal gangs ? The answer is : probably badly, but we are not being told so we do not know. The member states do not know either because there are no standard statistics across the EU to record and reveal the overall extent of organised crime. Nobody has a clear overall picture.

In the EU, our internal borders are open. For businessmen and individual travellers this a huge advantage. So it is for criminals. But Europe's law enforcement agencies are all national, their officers cannot cross frontiers, and their efforts are therefore limited.

The EU has EuroPol. It is our intelligence-coordinating centre at The Hague in the Netherlands. However, its officers do not have power of arrest and EuroPol does not have power to compel any national agency to take action. It was left leaderless by the bickering Council of Ministers for several months in 2004-5. EuroPol is an EU agency but its budget is inter-governmental, so EU citizens have no control or even insight over its spending and resources.

There is also InterPol, at Lyon in France. This is a policemen's club entirely financed by contributions from police forces around the world. It has no officers who can make arrests either. The relationship between EuroPol and InterPol is not clearly defined and there is overlap. Each has assets that cannot be shared with the other agency because national governments have rules which impede cooperation.

The EU has an even worse problem. It is simple 'lack of trust'. Just as the Americans discovered after '9/11', that the CIA and the FBI were not cooperating but were behaving as rivals, so the same phenomenon exists in Europe but on a greater scale.

Inside member states there is lack of trust between separate local police forces. Information is power, and owners of information are reluctant to share it.

Across EU internal borders, the lack of trust is much greater. What little cross-border police cooperation there is done on the basis of personal contacts. There is no EU centre where the contact numbers and names for police in all 25 member states can be quickly obtained. The EU Directive to enable Joint Investigation Teams has still not come into effect because not all member states have ratified it into their own law. The European Arrest Warrant has still not been ratified by Italy.

Why do national leaders, who know most about the problem because they control national police forces, do so little to fight organised international crime? Psychologically it is because they want to win national elections, not European elections. They keep their police resources for combating crimes within their own state, even though international crimes fuel local crimes. They win few votes from their public for diverting scarce police resources to fight international crime elsewhere because the public does not know the extent of organised international crime.

Europe's voters need to know the true picture – of the surprising extent and sophistication of organised criminal gangs, and of the failure of EU member states to agree on action and powers at EU level. Perhaps only the European Parliament can press for the necessary transparency, for an end to national bickering, and for action at EU level before it is too late.

A fundamental question. Are the police supposed to be agents of governments or protectors of the public? Those who believe the latter should press for more transparency and for democratic control at EU level.

Notes on particular Articles:

Article 1: The sense of the LIBE committee is that this Article is necessary, although the UK

government has communicated that it believes that it is not necessary because it would have to create new offences in UK law

New Article 8B Admissibility of Evidence

Agreement needs to be reached about what evidence is admissible in courts - for example, evidence against criminals from intercepts obtained from telephone tapping or from the UK's worldwide listening centre at Cheltenham, the GCHQ (Government Communications Headquarters) cannot be used in UK courts.

New Article 8D New Agencies

The UK, which has over eighty separate police forces, is creating one central SOCA (Serious & Organised Crime Agency) to coordinate the fight against the criminals. It is known as the UK's new FBI. Other member states should take steps to coordinate their internal agencies' work. The Republic of Ireland was the first to create an Assets Recovery Bureau, which can seize the assets of accused criminals. Hitting the criminals in the pocket hurts them most. Other member states should follow the Irish example.

1.9.2005

OPINION OF THE COMMITTEE ON FOREIGN AFFAIRS

for the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a Council Framework Decision on the fight against organised crime
(COM(2005)0006 – C6-0061/2005 – 2005/0003(CNS))

Draftsperson: Anna Elzbieta Fotyga

SHORT JUSTIFICATION

The level of organised crime in the EU is increasing and poses serious threats to society. Organised criminal groups are generally not confined by national borders, and take advantage of the free movement of money, goods, personnel and services across the EU. These groups are strengthening their international criminal contacts and targeting the social and business structure of European society, for example through money laundering, drug trafficking and economic crime. They seek to influence and hamper the work of law enforcement and the judicial system. This requires a stronger, concerted response at the national and European levels which responds to the evolving, multifaceted character of the phenomenon.

The Commission's proposal for a Framework Decision on the fight against organised crime constitutes a step forward towards closer cooperation among Member States and a common approach, inter alia by harmonising the minimum thresholds of criminal penalties (the definition of offences and penalties), and introducing some provisions to facilitate cooperation between the judicial authorities of the Member States.

The draftsperson welcomes the intention of improving the efficiency of the fight against organised crime, which undoubtedly poses a threat to society and tends to undermine our democratic values. In this context, the draftsperson wishes to stress the importance of prevention and increased effectiveness of crime control, while maintaining full respect for fundamental human rights. Special attention should be paid to appropriate protection of victims. The importance of strengthening international cooperation in the framework of existing instruments and fora should also be stressed.

AMENDMENTS

The Committee on Foreign Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission¹

Amendments by Parliament

Amendment 1
Recital 6 a (new)

(6a) This Framework Decision is expected to provide a basis for persuading third countries to introduce similar regulations. The Member States should set an example by giving strong proof of their determination.

Justification

Lack of the EU legislation on fight against organised crime puts EU in a difficult position in discussions with international partners. Having this Framework Council Decision in place will give EU stronger basis for encouraging third countries to adopt similar legislation.

Amendment 2
Recital 8

(8) This Framework Decision respects ***the*** fundamental rights ***and principles*** recognised by the Charter of Fundamental Rights of the European Union, and in particular Articles 6 and 49 thereof,

(8) This Framework Decision respects fundamental rights ***as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they emerge from the constitutional traditions common to the Member States as principles of Community law. The Union observes the principles recognised by Article 6(2) of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union, notably Chapter VI thereof. Nothing in this Framework Decision may be interpreted as being intended to reduce or restrict fundamental rights or freedoms such as the right to***

¹ Not yet published in OJ.

strike, freedom of assembly, of association or of expression, including the right of everyone to form and to join trade unions with others for the protection of his or her interests and the related right to demonstrate.

Justification

The importance to respect fundamental rights in the context of the fight against organised crime should be clearly underlined in this part of the Framework Decision. This formulation is identical to the one used in the Council Framework Decision on combating terrorism of 13 June 2002.

Amendment 3 Article 1 a (new)

Article 1a

Prevention and crime control

1. Each Member State shall take all necessary measures, in accordance with its own legal traditions and available means, to improve the prevention of crime.

In this connection, the following measures are highly recommended:

- increasing public awareness of the extent and nature of criminal activities across Europe and the threats which they pose to the integrity of individuals and the welfare of the Member States;

- promoting the exchange of best practices among Member States. The Community should provide financial assistance to support the information and awareness-raising campaign.

2. Member States shall ensure that Europol's role as an organ for criminal intelligence is strengthened in order to fulfil its task of providing Member States with information and intelligence leading to most effective results in preventing and combating organised crime.

Justification

The support and cooperation of citizens, duly informed about different types of crime and its far-reaching consequences, is essential to ensure the effectiveness of the fight against organised crime.

The prevention and control of organised crime require global cooperation and should be based on the principles of transparency and democratic control.

Amendment 4 Article 2 , paragraph 1 a (new)

This Framework Decision shall not have the effect of altering the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union.

Justification

The obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union. This formulation, as it is the case of the Council Framework Decision on combating terrorism of 13 June 2002, should be included in the operative part of the text, rather than in the recital's.

Amendment 5 Article 2, point (b)

(b) conduct by any person who, with intent and with knowledge of either the aim and general activity of the organisation or its intention to commit the offences in question, actively takes part in the organisation's criminal activities, including the provision of information or material means, the recruitment of new members and all forms of financing of its activities, knowing that such participation will contribute to the achievement of the organisation's criminal activities.

(b) conduct by any person who, with intent and with knowledge of either the aim and general activity of the organisation or its intention to commit the offences in question, actively takes part in the organisation's criminal activities, including the provision of information or material means, ***incitement to commit criminal activities***, the recruitment of new members and all forms of financing of its activities, knowing that such participation will contribute to the achievement of the organisation's criminal activities.

Justification

The incitement to criminal activities, in particular among young and consequently easily influenced people, should be strongly condemned.

Amendment 6
Article 4, point (a)

(a) renounces criminal activity, and

(a) renounces criminal activity,
demonstrates the will to be reintegrated into society, and

Justification

It is essential to avoid the risk of recidivism, and the renouncement of criminal activities should be followed by the reinsertion of an individual into society in the presumption that he fully assumes the rights and obligations of citizen.

Amendment 7
Article 8, paragraph 1

1. Member States shall ensure that investigations into, or prosecution of, offences covered by this Framework Decision are not dependent on a report or accusation made by a person subjected to the offence, at least if the acts were committed in the territory of the Member State.

1. Member States shall ensure that investigations into, or prosecution of, offences covered by this Framework Decision are ***conducted in the most efficient way with full respect for human rights and*** not dependent on a report or accusation made by a person subjected to the offence, at least if the acts were committed in the territory of the Member State.

Justification

The investigations should be conducted in a most efficient way while granting full respect of human rights.

Amendment 8
Article 8 , paragraph 2

2. In addition to the measures laid down in Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings, each Member State shall, if necessary, take all measures possible to ensure appropriate assistance for **victims'** families.

2. In addition to the measures laid down in Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings, each Member State shall, if necessary, take all measures possible to ensure appropriate **protection and** assistance for **victims and their** families.

Justification

The importance to respect fundamental rights in the context of the fight against organised crime should be clearly underlined in this part of the Framework Decision. This formulation is identical to the one used in the Council Framework Decision on combating terrorism of 13 June 2002.

PROCEDURE

Title	Proposal for a Council Framework decision on the fight against organised crime
References	COM(2005)0006 – C6-0061/2005 - 2005/0003(CNS)
Committee responsible	LIBE
Opinion by Date announced in plenary	AFET 12.4.2005
Enhanced cooperation – date announced in plenary	No
Draftswoman Date appointed	Anna Elzbieta Fotyga 30.3.2005
Discussed in committee	21.6.2005 29.8.2005
Date adopted	30.8.2005
Result of final vote	+ : 53 - : 2 0 : 1
Members present for the final vote	Angelika Beer, Panagiotis Beglitis, Monika Beňová, André Brie, Elmar Brok, Ryszard Czarnecki, Véronique De Keyser, Giorgos Dimitrakopoulos, Camiel Eurlings, Anna Elzbieta Fotyga, Ana Maria Gomes, Alfred Gomolka, Klaus Hänsch, Richard Howitt, Toomas Hendrik Ilves, Jelko Kacin, Ioannis Kasoulides, Helmut Kuhne, Joost Lagendijk, Vytautas Landsbergis, Cecilia Malmström, Emilio Menéndez del Valle, Francisco José Millán Mon, Pasqualina Napoletano, Baroness Nicholson of Winterbourne, Vural Öger, Cem Özdemir, Justas Vincas Paleckis, Alojz Peterle, Tobias Pflüger, João de Deus Pinheiro, Mirosław Mariusz Piotrowski, Paweł Bartłomiej Piskorski, Bernd Posselt, Raúl Romeva i Rueda, Libor Rouček, José Ignacio Salafranca Sánchez-Neyra, Jacek Emil Saryusz-Wolski, Gitte Seeberg, Marek Maciej Siwiec, Hannes Swoboda, István Szent-Iványi, Geoffrey Van Orden, Ari Vatanen, Luis Yañez-Barnuevo García, Josef Zieleniec.
Substitute(s) present for the final vote	Alexandra Dobolyi, Árpád Duka-Zólyomi, Carlo Fatuzzo, Giovanni Claudio Fava, Alexander Lambsdorff, Rihards Pīks, Aloyzas Sakalas, Inger Segelström, Alexander Stubb, Csaba Sándor Tabajdi.
Substitute(s) under Rule 178(2) present for the final vote	
Comments (data available in one language only)	

14.7.2005

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS

for the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a Council framework decision on the fight against organised crime
(COM(2005)0006 – C6-0061/2005 – 2005/0003(CNS))

Draftsman: Antonio Di Pietro

SHORT JUSTIFICATION

International organised crime represents a true scourge in the European Union.

In addition to the enormous profits derived from individual crimes committed (trafficking in drugs, weapons, human beings, etc.), criminal organisations operating in the Union's territory distort not only the free market and healthy competition, but also the very rules of civil co-existence.

In those areas where they are most firmly established, such organisations systematically invest and recycle huge amounts of capital in apparently legal economic activities, to the point where they influence the development of entire regions. Criminal organisations employ their capital or manpower in a wide variety of activities, from high finance to service companies, from waste disposal to building, and wherever there is any opportunity of acquiring substantial public funds. As a result of violence, corruption and extortion directed against legitimate business, the heavy costs of these illegal activities are borne by citizens whose quality of life is affected.

The Commission has rightly chosen the framework decision as an instrument for requiring the 25 Member States to approximate their criminal law provisions on the fight against organised crime, since at present the Member States' legal systems tackle this serious phenomenon in very different ways, and in some cases with dangerous loopholes.

The present proposal for a framework decision has therefore been confined to 11 articles designed to regulate basic concepts vital for combating organised crime, setting out common minimum standards to be incorporated into the respective national criminal laws of the Member States so as to provide for:

(1) a common definition of organised crime, together with specific cases of related offences;

- (2) minimum penalties for natural and legal persons guilty of such offences;
- (3) special rules for those who cooperate with the judicial process;
- (4) minimum procedural rules for defining jurisdiction and coordinating criminal measures among Member States.

Your draftsman believes that it is vital to legislate as simply and clearly as possible, thereby keeping to a minimum any possible interpretation difficulties or delays in transposition.

It is worth bearing in mind that these rules must be converted into specific instruments for justice operators and police forces, who require simple and effective methods in order to pursue their investigations and inquiries successfully.

In particular, taking a cue from existing legislation in Member States which, for historical and social reasons, were the first to tackle these problems in depth, your draftsman is proposing a number of amendments designed simply to make the text easier to use and apply in practice.

With regard to the definition of a criminal organisation, it is proposed to delete the requirement for the association to be *established over a period of time*, since this is not essential and above all would entail an excessive burden of proof that would hamper the carrying out of investigations. With the same end in view, it was also thought useful to include as one of the defining features of a criminal organisation its *hierarchical structure*, rather than the expression used by the Commission, a *developed structure*, which is a debatable concept, difficult to define.

With regard to other aspects, it was decided to include significant additions to the text in order to overcome a number of serious shortcomings.

For example, in Article 3 it was decided to include, above and beyond custodial sentences, penalties such as the seizure of assets and measures such as a temporary or permanent disqualification from pursuing an activity for persons belonging to a criminal organisation.

Lastly, in the interests of better and more effective coordination of penal measures between Member States, it is proposed that a specific provision be added to Article 7 to settle disputes over jurisdiction between the authorities of various Member States, by introducing a rule whereby, when criminal proceedings have been initiated by more than one Member State on the basis of the same facts, they should continue in the Member States where proceedings were first opened.

These specific suggestions are therefore designed to ensure that, after countless official declarations on the matter, steps can finally be taken in the 25 Member States, to achieve the necessary harmony between national criminal laws, without which this dangerous scourge afflicting our society can never be effectively eliminated.

AMENDMENTS

The Committee on Legal Affairs calls on the Committee on Civil Liberties, Justice and Home

Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission¹

Amendments by Parliament

Amendment 1
Article 1, first paragraph

For the purposes of this Framework Decision, ‘criminal organisation’ means a structured association, ***established over a period of time***, of more than two persons, acting in concert with a view to committing offences which are punishable by deprivation of liberty or a detention order of a maximum of at least four years or a more serious penalty in order to obtain, directly or indirectly, a financial or other material benefit.

For the purposes of this Framework Decision, ‘criminal organisation’ means a structured association of more than two persons, acting in concert with a view to committing offences which are punishable by deprivation of liberty or a detention order of a maximum of at least four years or a more serious penalty in order to obtain, directly or indirectly, a financial or other material benefit.

Justification

The requirement for an organisation to have been established over a period of time should not be seen as an essential criterion for defining this offence, as there may be cases where criminal organisations have only recently been established. Furthermore, as the provision is general and vague, it would create doubts about the period of time necessary. Lastly, it would entail an excessive burden of proof.

Amendment 2
Article 1, second paragraph

‘Structured association’ means an association that is not randomly formed for the immediate commission of ***an offence*** and that does not need to have formally defined roles for its members, continuity of its membership or a ***developed*** structure.

‘Structured association’ means an association that is not randomly formed for the immediate commission of ***one or more offences acting in concert*** and that does not need to have formally defined roles for its members, continuity of its membership or a ***hierarchical*** structure.

¹ Not yet published in OJ.

Justification

The structuring of a criminal organisation is something very different from persons merely acting in concert to commit an offence and a distinction should be drawn between these two circumstances.

It would seem more appropriate to place the emphasis on the absence of a hierarchical structure rather than on how developed the structure of a criminal organisation may be, which may be difficult to determine.

Amendment 3

Article 3, paragraph 2a (new)

2a. Each Member State shall take the necessary measures to ensure that, in addition to the penalties laid down in the previous paragraphs of this article, persons held liable for offences pursuant to Article 2 may also be subject to penalties such as:

(a) the seizure of articles which were used or intended to be used to commit the offence and articles which are the reward, proceeds or profit thereof or which constitute the object thereof;

(b) temporary or permanent disqualification from pursuing a professional or business activity;

(c) disqualification from and ineligibility for political and public offices.

Justification

In many cases, in addition to custodial sentences, penalties relating to assets or involving disqualification may be effective.

Amendment 4

Article 4, letter (b), opening phrase

(b) provides the administrative or judicial authorities with information ***which they would not otherwise have been able to***

(b) provides the administrative or judicial authorities with ***timely and exhaustive***

obtain, helping them to:

information *useful to:*

Justification

If information concerning an offence is to be genuinely useful to the investigating authorities, it must be timely and as complete as possible; it is also necessary to remove the need to prove in some way that it would be impossible for the authorities to obtain the same information by other means, something which seems illogical and difficult to demonstrate.

Amendment 5
Article 4, letter (b), first indent

– prevent or mitigate the effects of the offence;

– prevent, ***end*** or mitigate the effects of the offence;

Justification

This provides a more precise definition of the scope of the cooperation.

Amendment 6
Article 4, letter (b), second indent

– ***identify or bring to justice the other offenders;***

– ***allow the identification or capture of those responsible for offences referred to in Articles 1 and 2;***

Justification

This provides a more precise definition of the scope of the cooperation.

Amendment 7
Article 4, letter (b), third indent

– find evidence;

– find evidence ***relating to the offences referred to in Articles 1 and 2;***

Justification

It is worth clarifying that the evidence may relate to the offence of belonging to a criminal organisation as well as offences relating to participation in it.

Amendment 8
Article 4, letter (b), fifth indent

– prevent further offences referred to in **Article 2** being committed.

– prevent further offences referred to in **Articles 1 and 2** being committed.

Justification

It is worth clarifying that the evidence may relate to the offence of belonging to a criminal organisation as well as offences relating to participation in it.

Amendment 9
Article 5, title

Not applicable to the English text.

Amendment 10
Article 5, paragraph 1, opening phrase

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

(1) Each Member State shall take the necessary measures to ensure that legal persons can be held liable for any of the offences referred to in Article 2 ***and the offences referred to in Article 1, for the commission of which the organisation was established***, committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on one of the following:

Justification

It is worth stipulating that the liability of legal persons should be extended to cover all offences referred to in Article 2. Furthermore, in establishing the liability of legal persons, reference should be made both to the offence of belonging to a criminal organisation and to the offences committed by it.

Amendment 11
Article 5, paragraph 1, letter (a)

(a) a power of representation of the legal person;

(a) a power of representation of the legal person, ***including de facto representation***;

Justification

In many cases it is the position of the de facto administrator or representative which must be taken into consideration in order to extend criminal liability to the legal person.

Amendment 12
Article 5, paragraph 1, letter (b)

(b) an authority to take decisions on behalf of the legal person;

(b) an authority to take decisions, ***including de facto***, on behalf of the legal person;

Justification

In many cases decisions crucial for the legal person are taken not by the formal legal representative but by the de facto administrator or representative.

Amendment 13
Article 5, paragraph 3

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

(3) Liability of legal persons under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators of any of the offences referred to in Article 2 ***or the offences referred to in Article 1, for the commission***

of which the organisation was established..

Justification

It is worth clarifying that the evidence may relate to the offence of belonging to a criminal organisation as well as offences relating to participation in it.

Amendment 14
Article 6, letter (b)

(b) temporary or permanent disqualification
from the practice of **commercial** activities;

(b) temporary or permanent disqualification
from the practice of **business** activities;

Justification

The concept of business activities is much wider than that of commercial activities and includes, for example, industrial, agricultural, banking and financial activities, etc.

Amendment 15
Article 6, letter (e a) (new)

***(ea) the seizure of articles which were used
or intended to be used to commit the
offence and articles which are the reward,
proceeds or profit thereof or which
constitute the object thereof.***

Justification

Criminal penalties involving seizure of assets are useful in combating organised crime. For example, property registered in the name of a company used by the criminal organisation for its purposes.

Amendment 16
Article 7, third subparagraph, letter (d a) new

***(da) the Member State which first brought
the criminal proceedings.***

Justification

This provision is intended to resolve any disputes over jurisdiction between different Member State authorities.

PROCEDURE

Title	Proposal for a Council framework decision on the fight against organised crime
References	COM(2005)0006 – C6-0061/2005 – 2005/0003(CNS)
Committee responsible	LIBE
Committee asked for its opinion Date announced in plenary	JURI 12.4.2005
Enhanced cooperation	no
Drafts(wo)man Date appointed	Antonio Di Pietro 21.4.2005
Discussed in committee	20.6.0005 13.7.2005
Date amendments adopted	13.7.2005
Result of final vote	+: 19 –: 0 0: 0
Members present for the final vote	Maria Berger, Antonio Di Pietro, Monica Frassoni, Giuseppe Gargani, Piia-Noora Kauppi, Kurt Lechner, Klaus-Heiner Lehne, Katalin Lévai, Antonio López-Istúriz White, Antonio Masip Hidalgo, Hans-Peter Mayer, Viktória Mohácsi, Aloyzas Sakalas, Diana Wallis, Tadeusz Zwiefka
Substitutes present for the final vote	Evelin Lichtenberger, Arlene McCarthy, Manuel Medina Ortega, József Szájer
Substitutes under Rule 178(2) present for the final vote	

PROCEDURE

Title	Proposal for a Council Framework Decision on the fight against organised crime	
Procedure number	COM(2005)0006 - C6-0061/2005 - 2005/0003(CNS)	
Basis in Rules of Procedure	Rules 93 and 51	
Committee responsible Date authorisation announced in plenary	LIBE 12.4.2005	
Committee(s) asked for opinion(s) Date announced in plenary	AFET 12.4.2005	JURI 12.4.2005
Not delivering opinion(s) Date of decision		
Enhanced cooperation Date announced in plenary		
Motion(s) for resolution(s) included in report		
Rapporteur(s) Date appointed	Bill Newton Dunn 21.2.2005	
Previous rapporteur(s)		
Discussed in committee	12.7.2005	26.9.2005
Date adopted	26.9.2005	
Result of final vote	for: 34 against: 2 abstentions: 2	
Members present for the final vote	Alexander Nuno Alvaro, Edit Bauer, Johannes Blokland, Mihael Brejc, Kathalijne Maria Buitenweg, Giusto Catania, Jean-Marie Cavada, Charlotte Cederschiöld, Carlos Coelho, Agustín Díaz de Mera García Consuegra, Rosa Díez González, Antoine Duquesne, Kinga Gál, Livia Járóka, Ewa Klamt, Wolfgang Kreissl-Dörfler, Barbara Kudrycka, Stavros Lambrinidis, Henrik Lax, Sarah Ludford, Edith Mastenbroek, Jaime Mayor Oreja, Martine Roure, Antonio Tajani, Ioannis Varvitsiotis, Stefano Zappalà, Tatjana Ždanoka	
Substitutes present for the final vote	Frederika Brepoels, Panayiotis Demetriou, Gérard Deprez, Giovanni Claudio Fava, Sophia in 't Veld, Antonio Masip Hidalgo, Bill Newton Dunn, Herbert Reul, Marie-Line Reynaud, Kyriacos Triantaphyllides	
Substitutes under Rule 178(2) present for the final vote	Manuel Medina Ortega	
Date tabled – A6	28.9.2005	A6-0277/2005