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Committee on Legal Affairs

2005/0003(CNS)

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

PA_Leg

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

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

¹ Not yet published in OJ.

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.

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.

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 obtain, helping them to:***

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