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11 November 1997 A4-0359/97

REPORT

containing a proposal for a European Parliament recommendation to the Council
on the harmonization of the Member States' laws on drugs

Committee on Civil Liberties and Internal Affairs

Rapporteur: Mrs Hedy d'Ancona

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At the sitting of 11 November 1996 the President of Parliament announced that he had referred the proposal for a recommendation to the Council by Mrs Aglietta and 60 other Members on the harmonization of the Member States' laws on drugs (B4-1238/96) to the Committee on Civil Liberties and Internal Affairs as the committee responsible and the Committee on the Environment, Public Health and Consumer Protection for its opinion.

At its meeting of 3 December 1996 the committee considered the proposal for a recommendation and decided to draw up a report.

The Committee on Civil Liberties and Internal Affairs appointed Mrs Hedy d'Ancona rapporteur at its meeting of 3 December 1996.

At its meetings of 21 May, 30 June, 15 September, 9 October and 3 November 1997 the committee considered the draft report and adopted the proposal for a recommendation at the last meeting by 17 votes to 11, with 4 abstentions.

The following took part in the vote: d'Ancona, chairman and rapporteur; Reding, vice-chairman; Vinci, vice-chairman; Bontempi, Brinkhorst (for De Luca), Blokland (for Jean-Pierre), Cederschiöld, Cohn-Bendit (for Orlando), Colombo Svevo, De Coene (for Crawley), B. Donnelly (for De Esteban Martin), Deprez, Elliott, Fabre-Aubrespy (for Buffetaut), Gebhardt (for G. Schmid), Goerens, Le Gallou (for Le Chevallier), Lindeperg, Matikainen-Kallström (for Lucas Pires), Mohamed Ali, Nassauer, Oostlander (for Posselt), Pirker, Pradier, Roth, Schaffner, Schulz, Stewart-Clark, Terrón i Cusí, Van Lancker (for Ford), Wilson and Zimmermann.

The Committee on the Environment, Public Health and Consumer Protection decided on 17 December 1996 not to deliver an opinion.

The report was tabled on 10 November 1997.

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

A
PROPOSAL FOR A RECOMMENDATION

**Proposal for a European Parliament recommendation to the Council on the
harmonization of the Member States' laws on drugs**

The European Parliament,

- having regard to the proposal for a recommendation to the Council by Mrs Aglietta and 60 other Members on the harmonization of the Member States' laws on drugs (B4-1238/96),
- having regard to Article K.6 of the EU Treaty,
- having regard to Rule 46(3) of its Rules of Procedure,
- having regard to its resolution of 15 June 1995 on the communication from the Commission to the Council and the European Parliament on a European Union action plan to combat drugs (1995-1999)(),
- having regard to the Joint Action of 17 December 1996 concerning the approximation of the laws and practices of the Member States of the European Union to combat drug addiction and to prevent and combat illegal drug trafficking(),
- having regard to the world drug report drawn up by the UN International Drug Control Programme,
- having regard to the report of the Committee on Civil Liberties and Internal Affairs (A4-0359/97),

1. Puts to the Council the following recommendations:

(Recommendation 1)

Notes that the divergent approaches taken to the drugs problem are currently impeding the harmonization of laws and practices to combat drug and calls, therefore, on the Council to gear European drugs policy, both domestic and international, primarily to a tangible improvement in cooperation between Member States, regions and urban areas;

(Recommendation 2)

Calls on Member States to improve the extent of cooperation in drug matters at national, regional and urban level;

⁽¹⁾ OJ C 166, 3.7.1995, p. 116.

⁽²⁾ OJ L 342, 31.12.1996, p. 6.

(Recommendation 3)

Recognizing the need for pragmatism, calls on Member States to bring national laws into line with the way their laws are applied in practice;

(Recommendation 4)

Regards urban and regional policy experiments in the field of harm reduction, the reduction of demand for drugs and crime prevention as being of importance in finding new methods to curb the problems involving drugs;

(Recommendation 5)

Recognizes the importance of policy experiments in developing countries for finding new methods to reduce the problems involving drugs, including the participation of local communities in planning initiatives for the reduction of drugs consumption and drug-linked crop production;

(Recommendation 6)

Calls on the Council, in accordance with the programme of Community action on the prevention of drug dependence, to extend the powers of local and regional authorities to pursue their own policies on drugs, in accordance with the subsidiarity principle;

(Recommendation 7)

Calls on the Member States to do all in their power to ensure that the right to adequate medical treatment also applies without exception to those dependent on drugs;

(Recommendation 8)

Urges the Council to make more funds available for the prevention of the demand for drugs as well as for information and education, a harm-reduction policy and for improvement of the health and care facilities for those dependent on drugs;

(Recommendation 9)

Believes that, on the basis of Article 129 of the Draft Treaty of Amsterdam support may be given to treatment programmes which make it possible for hard drugs to be supplied on medical prescription and subject to the necessary checks;

(Recommendation 10)

Calls on the Council to make an independent assessment in the Member States of the results of policy measures in the framework of the UN conventions on drugs;

(Recommendation 11)

Calls for the European monitoring centre for drugs to present a number of indicators on the basis of which such an assessment can be made prior to the UN General Assembly on Drugs to be held in June 1998;

(Recommendation 12)

Calls on the Council at the UN General Assembly on Drugs to be held next June to promote a reform of the UN conventions of 1961, 1971 and 1988 such that the contracting parties are authorized to decriminalise the consumption of illegal drugs, to regulate the trade in cannabis and its derivatives and to permit the medical prescribing of methadone and heroin;

(Recommendation 13)

Calls on the Council to consider the possibility of including the countries of Central Europe and Cyprus in the REITOX network;

2. Instructs its President to forward this recommendation to the Council and, for information, to the Commission and the governments of the Member States.

B

EXPLANATORY STATEMENT

Introduction

In November 1996, at least 60 Members of the European Parliament signed a proposal for a recommendation on the harmonization of the Member States' laws on drugs. In December 1996, the Council adopted a Joint Action concerning the approximation of the laws and practices of the Member States of the European Union to combat drug addiction and to prevent and combat illegal drug trafficking.

Central to the proposal for a recommendation are the decriminalization of cannabis and the supply of drugs on medical prescription. The Council's Joint Action lays its emphasis on a reduction in illegal drug trafficking.

In principle, these views should be able to complement each other; it is possible to argue that combating illegal drug trafficking and decriminalizing cannabis can go hand-in-hand. However, that view is undermined by the Council's insistence in the Joint Action on strict compliance with the UN conventions on drugs. It is perhaps because of that fact that the proposal for a recommendation argues in favour a review of those international conventions on drugs.

This report considers whether it is possible to harmonize legislation and policy at present, given the divergence of views on drugs. In order to secure an answer to that question, we shall review developments taking place within the European Union in the field of drugs. The extent to which those developments are influenced by international agreements is another issue for debate. Finally, on the basis of the various findings, we shall propose a few guidelines for the future.

Developments in Europe

In recent years, not a single Council Presidency has run its course without the Heads of Government solemnly declaring that the problems involving drugs must be tackled effectively.

In practice, however, it seems more difficult to translate the political will into a consistent policy. The complex nature of the matter is part of the problem. The drugs issue involves not only the pursuit of profit, social impoverishment and marginalization but also curiosity, prosperity and fashionable trends.

The authorities are faced with the task of developing a consistent policy that takes account of such diversity. Measures in the fields of social welfare, public health and public order must be integrated with each other. That is not a simple undertaking even at national level, let alone when agreements have to be concluded between Member States. In 1989, a national drugs coordinator was appointed in each Member State with the task of promoting such a policy. The idea was that, in this way, contacts between the Member States could be better structured. Interministerial committees were also established for the implementation and coordination of various aspects of the drugs policy.

The basis for cooperation has been further strengthened since 1989. The Treaty of Maastricht provided a specific legal basis for the European Union to take action in the field of drugs. Article 129 of the EC Treaty lays down that the Community shall act to prevent drug

dependence, and Article K.1(4) of the TEU lays down that combating drug addiction is a matter of common interest. However, even a treaty provision as clearly expressed as that does not necessarily result in a straightforward policy. The official attitudes of the national governments are far too divergent for that. Some Member States take a total ban on drug consumption as their starting point, while others tend towards accepting drug use as a fact of life in today's society, the risks of which must be reduced as much as possible.

Despite this difference of opinion, a European policy is slowly but surely taking shape. In actual fact, most national governments seem in practice to be less strict than official policy guidelines would have us believe. There are indications from various quarters that a more pragmatic approach to the drugs problem is gaining ground within the European Union.

That is shown, for example, in a comparative study into drug laws which the European Commission had drawn up and published in 1996. That study demonstrates that there are more similarities than disparities in the way in which Member States apply national laws. Accordingly, the use of drugs is everywhere regarded primarily as a medical and social problem.

In addition, all the Member States have provisions for drug addicts to be given appropriate treatment rather than being simply locked up. Furthermore, the judicial authorities in most of the Member States have the power to decide on a case-by-case basis whether or not to prosecute offenders. Practice also demonstrates that priority is given everywhere in Europe to combating large-scale trafficking in hard drugs. In general, use of and dealing in small quantities of cannabis are largely ignored.

It is hardly surprising that the authorities establish priorities in the fight against drugs. Ever-increasing efforts to combat the trade in drugs have not resulted in any shortage on the market. That was also demonstrated in the recently published UN world report on drugs. According to the authors of that report, the drugs trade currently accounts for 8 per cent of total world trade, i.e. it is bigger than trade in iron and steel and as big as trade in textiles. In order to reduce the profit margins in heroin and cocaine, the authors of the report conclude that at least 75% of the drugs involved would have to be seized. The UN estimates that currently less than 30% are seized.

And although the figure relating to seizures is too small to have any real impact, the cost and the effort required to seize that 30% are inordinately high. Just take European prisons: about half of all the inmates are serving sentences in respect of drugs-related crimes. That is one of the reasons why a number of German Chief Commissioners of Police recently declared that alternatives would have to be found to the prosecution policy. In addition, they emphasized that the drugs problem would have to be tackled primarily as a public health issue.

The European Parliament, too, recognizes the limitations of detecting and combating drugs. Two years ago, in a resolution on combating drugs, the European Parliament said that a preponderantly repressive policy had not brought a solution to the drugs problem any closer. In addition, a majority of the Members of the European Parliament took the view that drugs policy would have to be targeted on prevention, not repression.

We can see the first signs of movement in that direction. The first annual report by the European Monitoring Centre for Drugs and Drug Addiction in Lisbon notes that the Member States are devoting more and more resources to drug prevention. And in the European context, too, more attention is being given to preventive policies. One example of this is the recent start on the programme of Community action on the prevention of drug dependence (1996-2000). In addition to recommendations concerning information and education, the programme includes a

number of far-reaching provisions. This makes it possible to apply for European funding for projects involving methadone and needle exchanges.

The impression that a pragmatic approach to the drugs problem is gaining ground is strengthened by the amendment to the article concerning public health made in the Treaty of Amsterdam. The amended Article 129 of the EC Treaty lays down that the Community shall complement the Member States' action in reducing drugs-related health damage, including information and prevention. That text provides a solid foundation for further European measures in the field of risk reduction.

Balance and harmonization

That is not to say that there has been a sea-change in European drugs policy. Opting for a pragmatic policy does not seem to have prevented the Council from taking measures of a more repressive hue as well. The official line is that the basis of the European drugs policy is the striking of a balance between reducing the demand for drugs and reducing the supply of drugs.

It is no easy matter to achieve such a balance while there are differences of opinion between Member States and even within one and the same Member State as to what is the best approach to the drugs problem. The complicated organizational structure constitutes another obstacle to the devising of a balanced policy. Take the European Commission. More than ten of its directorates-general are concerned with drugs. Or then again, take the Council. There, too, the subject is discussed in the most disparate groups. The need for an improvement in coordination became clear in early June of this year when the Council of Health Ministers met. The Ministers present asked to be involved more closely in decisions on drugs taken by the Council of Ministers of Justice and Home Affairs.

Given the diversity of views and the cumbersome structure of the European drugs policy, we can understand only too well that the Council needs a harmonized approach to the drugs issue. On the other hand, however, we must ask whether the Member States are willing and able to undertake such harmonization at present.

The Joint Action concerning the approximation of the laws and practices to combat drug addiction adopted by the Council in December 1996 should be able to lead us in that direction. But closer inspection shows that the text includes no single obligation on the Member States to harmonize their policies. Article 10 actually includes a provision which leaves it up to each Member State to determine its own policy to prevent or combat drug addiction and drug trafficking.

And what can we say about the Schengen Agreement? That lays down that the participating states must ensure that policies pursued at national level do not have any repercussions on countries which pursue a more restrictive policy. But Schengen does not lead to a harmonization of legislation in practice, either. The Final Act of the Agreement enshrines the right of governments to pursue a national policy on the prevention and combating of addiction. That Final Act allows individual countries to decide not to prosecute offenders in certain cases.

In addition to European agreements, the Member States are bound by UN conventions on drugs. Those conventions contain detailed lists of substances which are prohibited for all but medical uses. In addition, they contain agreements on combating money-laundering operations, on the confiscation of profits made from the drugs trade and on the controlled import of drugs. Here,

too, there is no automatic provision for the harmonization of laws and practices. Accordingly, the signatory states are free to make a distinction between various types of drugs if they so wish; where they do make such a distinction, they may enshrine that distinction in the national scale of penalties to be imposed upon offenders.

Harmonization of laws and practices is, therefore, currently no more than an informal project of the Council. And, for the time being, it will remain so. There is no point in discussing harmonization until the Member States have a common final objective in view and until they are in agreement as to what measures must be taken in order to attain that final objective. It is clear that the European Union is still a long way off from meeting those requirements.

Guidelines for the future

Given this situation, the Council should for the time being aim to set up practical cooperation projects. That view is supported by the European Commission. It implies that the national authorities have enough power under existing laws to reduce the supply of and demand for drugs and that the harmonization of laws would in practice achieve very little. The Commission takes the view that specific measures are necessary to ensure more rapid extradition of suspects, to combat the laundering of drugs money and to classify synthetic drugs.

In addition, the European drugs policy must allow more scope for experiments at local and regional level, since it is clear that the current policy is failing to tackle the problem successfully. The programme of Community action on the prevention of drug dependence already provides a suitable framework for that. That programme makes provision for a network of test areas in order to promote technical cooperation on ways and means of reducing the demand for drugs. In addition, the programme offers support for transfrontier exchange of grass-roots experiences acquired with the prevention policy at regional level.

Urban areas should be allowed more scope to pursue a specific drugs policy tailored to the local situation. That means, for example, that experiments involving the supply of heroin on medical prescription must not just be prohibited by national authorities out of hand. That notion is underpinned by the very positive results of a test in Switzerland where heroin was supplied on medical prescription.

Furthermore, national governments would be well advised to take the practical application of the drugs policy at local level as their starting point for further action. In this connection, we might think of practical measures designed to regulate dealing in and use of cannabis. Toleration of the use of and dealing in small amounts of cannabis results in practice in grey areas where local authorities have to bear the brunt of inconsistent action taken by the national authorities. In the recent past, the European Parliament rightly criticized the discrepancy between the official policy of national governments and the policy as it is applied in practice.

The drugs issue will benefit from the search for new ways of clarifying the problems. The increase in synthetic drugs demonstrates this once again. But it is difficult to prohibit those drugs because their chemical composition is continually changing. Furthermore, they are easy to manufacture, and that makes it even more difficult to combat their supply. Whether a ban on these substances is the best way forward will be discussed in Brussels in late November at a joint conference involving the Luxembourg Presidency, the European Commission and the European Parliament.

In international terms, the time is ripe for an open debate. The recent UN world report on drugs shows that the obstinacy which, in the past, stymied every debate on policy liberalization has made way for a more tolerant attitude. The authors of the report point out that the international conventions are not carved on tablets of stone. They can be altered if the political will exists to do so. Whether or not that will exists will be seen in June 1998 at a UN General Assembly on Drugs. At that Assembly, various strategies, methods and specific measures will be debated with a view to giving a fresh impetus to international cooperation on the drugs issue.

At that Assembly, the European Union should argue that the pragmatic policy it advocates is not incompatible with the spirit of the UN conventions on drugs. It should also call for greater scope for local experiments within the overall drugs policy. While problems involving drugs are increasing from year to year, no one benefits from strict requirements which frustrate any changes in policy. That view would also accommodate an independent assessment of the UN conventions on drugs with a view to ascertaining the extent to which those conventions thwart policy innovations. Two years ago, the European Parliament called for such an assessment to be carried out.

Local experiences and cooperative associations currently form the basis of a more straightforward European drugs policy. Attempts to achieve harmonization at central government level will also founder in the near future because they are based on inflexible attitudes and largely ignore the reality of the situation. It must be possible within Europe to use practical experience as the basis for the development of a number of Community policy options.

CORRIGENDUM

PROPOSAL FOR A RECOMMENDATION

pursuant to Rule 46(1) of the Rules of Procedure

by the following Members: AGLIETTA, AELVOET, D'ANCONA, BARROS MOURA, BARTHET-MAYER, van BLADEL, BERTINOTTI, BLOCH von BLOTTNITZ, BREYER, BONTEMPI, CACCAVALE, CASTAGNEDE,, CASTELLINA, CARNERO GONZALES, COHN-BENDIT, COLLI COMELLI, DELL'ALBA, DE LUCA, DIEZ DE RIVERA ICAZA, van DIJK, DUPUIS, DURY, EPHREMIDIS, FLORIO, FOUQUE, GHILARDOTTI, GONZALEZ TRIVINO, GUTIERREZ DIAZ, HAPPART, HORY, IMBENI, KOUCHNER, KREISSL-DÖRFLER, LALUMIERE, LEPPERRE-VERRIER, LINDEPERG, MAMERE, MANISCO, MARINUCCI, MENDILUCE PEREIRO, MOHAMED ALI, MULLER, ORLANDO, PAILLER, PETTINARI, PRADIER, RIPA di MEANA, ROTH, SAINTPIERRE, SCHROEDTER, SIERRA GONZALEZ, SOLTWEDEL-SCHÄFER, SORNOSA MARTINEZ, TAMINO, TAPIE, TAUBIRA-DELANNON, TONGUE, ULLMANN, VINCI, WEBER and WIERSMA

on the harmonization of the Member States' laws on drugs

B4-1238/96

Recommendation on the harmonization of the Member States' laws on drugsThe European Parliament,

- having regard to Rule 46(1) of the Rules of Procedure,
- A. whereas the Irish Presidency has included the fight against drug abuse as one of the priorities for the next half-year and whereas the European Council has reaffirmed the importance of completing a study on the harmonization of the Member States' laws,
- B. whereas drugs policies at international level are derived from the United Nations Conventions of 1961, 1971 and 1988, and whereas these conventions prohibit in particular the production, trafficking, sale and consumption of a whole range of substances other than for medical or scientific purposes,
- C. whereas, despite the considerable resources devoted to the application of such policies, the production and consumption of prohibited substances have increased exponentially over the last 30 years, which constitutes a genuine failure as police and prison authorities also recognize,
- D. whereas, in particular:

As regards production and trafficking

- the increasing profits which criminal organizations derive from trade in illegal substances and which are ploughed back into criminal activities or legal financial circuits have reached such magnitude that the foundations of legal bodies and constitutional government are being undermined, even in the EU Member States,
- the profitability of the trade in illegal substances can only lead to an increase in the number of countries involved in production and generate massive investment in research into, and the production of, new chemical drugs, within the European Union as well,
- the main effect of deploying high levels of resources to stem the traffic in illegal substances has merely been to increase the selling price (crime tariff) for the sole benefit of organized crime circles, given that over 90% of narcotics move freely around the world,

As regards social and health aspects and consumption

- consumers of illegal substances lack any information concerning the composition and effects thereof and are consequently exposed to risks (including, in particular, death as a result of an overdose and infection by

the AIDS virus) which far outstrip the dangerous nature of the substances themselves,

- the clandestine nature of the consumption of illegal substances is an often insurmountable obstacle to prevention work and the provision of assistance by public authorities and private organizations; current policies therefore condemn consumers to live on the edge of society, in permanent contact with the criminal underworld,
- organized crime acts in such a way that the number of consumers increases rapidly and they are encouraged to move on from relatively harmless substances such as cannabis and its derivatives to the consumption of so-called hard drugs,
- extreme financial need and pressure from the world of organized crime lead consumers of illegal substances to become dealers themselves, which increases drug use even further,

As regards legal and prison-related aspects

- the application of repressive drugs laws eventually places unbearable pressure on the legal and prison system to the extent that over half of those currently detained in the prisons of Europe are on trial for crimes directly or indirectly linked to drugs,
- the implementation of current drugs policies leads to the introduction into national law of rules which gradually restrict individual freedoms,

E. whereas the soundness of current policies and the search for alternative solutions are currently under consideration in an increasing number of the Member States' parliaments,

1. Maintains that the drug prohibition policy stemming from the UN Conventions of 1961, 1971 and 1988 is the actual cause of the increasing damage which the production, trafficking, sale and consumption of illegal substances inflict on whole sections of society, the economy and public institutions, thus undermining health, freedom and people's very lives;
2. Recommends that the Council and the Member States should ask the European Monitoring Centre for Drugs and Drug Addiction to assess the costs and benefits, from the social, health and economic points of view, of the policies conducted pursuant to the UN Conventions of 1961, 1971 and 1988;
3. Recommends the Council and the Member States to consider the positive results obtained from policies implemented in several Member States which involve risk reduction (in particular through the administration of substitute substances), the decriminalization of the consumption of certain substances, the partial decriminalization of the sale of cannabis and its derivatives and the controlled distribution of heroin;
4. Calls on the Council and the Member States to take the following action in order to make the fight against organized crime and drugs trafficking much more effective:

- (a) introduce new rules on the production, sale and use of cannabis and its derivatives;
 - (b) repeal the criminal penalties relating to the consumption of other illegal substances;
 - (c) establish a system for the public control of the supply of substances which are currently illegal, and also to allow such substances to be prescribed by doctors;
5. Instructs its President to forward this recommendation to the Council, the Commission and the governments and parliaments of the Member States.