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Committee on the Environment, Public Health and Food Safety

2013/0304(COD)

27.11.2013

DRAFT OPINION

of the Committee on the Environment, Public Health and Food Safety

for the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a directive of the European Parliament and of the Council amending Council Framework Decision 2004/757/JHA of 25 October 2004 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking, as regards the definition of drug
(COM(2013)0618 – C7-0271/2013 – 2013/0304(COD))

Rapporteur: Bogusław Sonik

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SHORT JUSTIFICATION

Illicit drug trafficking and drug abuse are major threats to the health and safety of individuals and to societies in the EU. Although consumption of substances controlled under the UN Conventions on drugs, such as cocaine, ecstasy or cannabis, seems to have stabilised in recent years, albeit at high levels, a new major challenge is to address new substances that emerge on the market at a rapid speed. New psychoactive substances, which have numerous uses in the industry, but which more importantly imitate the effects of controlled drugs and are often marketed as legal alternatives to them, as they are not subjected to similar control measures, are increasingly available in the Union, being consumed particularly by young people.

The risks that these new substances can pose, including severe health damage and death, have prompted national authorities to submit them to various restriction measures. However, such national restriction measures have limited effectiveness, since these substances can be moved freely within the internal market.

To effectively reduce the availability of these harmful new psychoactive substances, it is necessary that they are covered by criminal law provisions, as other illicit drugs.

Council Framework Decision 2004/757/JHA provides a common approach to the fight against illicit drug trafficking. It sets out minimum common rules on the definition of drug trafficking offences and sanctions to avoid problems arising in cooperation between the judicial authorities and law enforcement agencies of Member States, owing to the fact that the offence or offences in question are not punishable under the laws of both, the requesting and the requested State. However, due to the changing nature of the products, these provisions do not apply to new psychoactive substances.

It is, therefore, necessary to extend the scope of application of Framework Decision 2004/757/JHA to new psychoactive substances subjected to control measures. Hence, this proposal amends Framework Decision 2004/757/JHA in order to extend its scope to cover psychoactive substances presenting serious risks to health, safety and the society.

The proposal accompanies the proposal for a Regulation on new psychoactive substances. The two proposals are linked, so that new psychoactive substances that pose severe health, social and safety risks, and are therefore submitted to permanent market restriction under that Regulation, are also subjected to the criminal law provisions on illicit drug trafficking set by the Framework Decision 2004/757/JHA.

From a technical point of view, Framework Decision 2004/757/JHA is amended as follows: the term ‘drug’ as laid down in the Framework Decision, from now on, would be defined as:

- any of the substances covered by the 1961 United Nations Single Convention on Narcotic Drugs (as amended by the 1972 Protocol) and the 1971 United Nations Convention on Psychotropic Substances;
- any of the substances listed in the annex (lists the psychoactive substances which are considered to be “drugs” within the meaning of the proposed Directive);

- any new psychoactive substance posing severe health, social and safety risks, subjected to permanent market restriction on the basis of [Article 13(1) of Regulation (EU) No .../...on new psychoactive substances].

The measures relating to new psychoactive substances would be applicable 12 months after the entry into force of the permanent market restriction (there is a parallel proposal for a Regulation on new psychoactive substances).

With regard to health related issues, the rapporteur for opinion is of a view that:

Taking into consideration the growing scale of the problem, the fast changing nature of the new psychoactive substances, as well as the risks of trafficking within the internal market, the rapporteur welcomes the proposal to amend the existing Council Framework Decision 2004/757/JHA to respond to the current circumstances.

The increase in use of new psychoactive substances and, what follows, the increase in the number of cases of severe health damage and death caused by the use of new psychoactive substances in member states calls for an amendment of the definition of a drug as well as for implementation of market restrictions and criminalisation of substances categorised as causing the severe risk to health, safety and the society.

Keeping in mind the health risks caused by the new psychoactive substances, comparable to those posed by the substances listed under the UN Conventions; the rapporteur welcomes the proportionality of sanctions proposed in the new system.

With reference to the definition of a drug, the rapporteur is of an opinion that it shall include possible mixtures or solutions containing one or more of listed substances, especially taking into consideration the fast changing nature of the products and so called creativity within the market, appearing in constant changes to the formulas, in which case the effect of the substances on each other as well as on consumer's health may change.

AMENDMENTS

The Committee on the Environment, Public Health and Food Safety calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a directive

Recital 4

Text proposed by the Commission

(4) New psychoactive substances, which imitate the effects of substances scheduled under the UN Conventions, are emerging

Amendment

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frequently and are spreading fast in the Union. Certain new psychoactive substances pose severe health, social and safety risks, as ascertained by [Regulation (EU) No .../... on new psychoactive substances]. Under that Regulation, measures may be taken to prohibit the production, manufacture, making available on the market including importation to the Union, transport, and exportation from the Union of new psychoactive substances posing severe health, social and safety risks. To effectively reduce the availability of new psychoactive substances that pose severe risks to individuals and society, and to deter trafficking in those substances across the Union, as well as the involvement of criminal organisations, permanent market restriction measures adopted under that Regulation should be underpinned by criminal law provisions.

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Or. en

Amendment 2

Proposal for a directive

Recital 5

Text proposed by the Commission

(5) The new psychoactive substances subjected to permanent market restriction pursuant to [Regulation (EU) No .../... on new psychoactive substances] should, therefore, be covered by the Union criminal law provisions on illicit drug trafficking. This would also help streamline and clarify the Union legal framework, as the same criminal law provisions would apply to substances covered by the UN Conventions and to the most harmful new psychoactive substances. The definition of 'drug' in the

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Framework Decision 2004/757/JHA should, therefore, be amended.

Framework Decision 2004/757/JHA should, therefore, be amended *to respond to current circumstances*.

Or. en

Amendment 3

Proposal for a directive

Article 1 – paragraph 1

Framework Decision 2004/757/JHA

Article 1 – point 1

Text proposed by the Commission

(1) In Article 1, point 1 is replaced by the following:

"‘drug’ means:

(a) any of the substances covered by the 1961 United Nations Single Convention on Narcotic Drugs (as amended by the 1972 Protocol) and the 1971 United Nations Convention on Psychotropic Substances;

(b) any of the substances listed in the Annex;

(c) any new psychoactive substance posing severe health, social and safety risks, subjected to permanent market restriction on the basis of [Article 13(1) of Regulation (EU) No .../... on new psychoactive substances];"

Amendment

(1) In Article 1, point 1 is replaced by the following:

"‘drugs’: *shall mean any of the following substances*:

(a) any of the substances covered by the 1961 United Nations Single Convention on Narcotic Drugs (as amended by the 1972 Protocol) and the 1971 United Nations Convention on Psychotropic Substances;

(b) any of the substances listed in the Annex;

(c) any new psychoactive substance posing severe health, social and safety risks, subjected to permanent market restriction on the basis of [Article 13(1) of Regulation (EU) No .../... on new psychoactive substances];

(ca) any mixture or solution containing one or more substances listed in points (a), (b) and (c);"

Or. en