

P7_TA(2014)0454

Criminal acts and penalties in the field of illicit drug trafficking *I**

European Parliament legislative resolution of 17 April 2014 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))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2013)0618),
 - having regard to Article 294(2) and Article 83(1) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0271/2013),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the reasoned opinions submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the United Kingdom House of Commons and the United Kingdom House of Lords, asserting that the draft legislative act does not comply with the principle of subsidiarity,
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinion of the Committee on the Environment, Public Health and Food Safety (A7-0173/2014),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

P7_TC1-COD(2013)0304

Position of the European Parliament adopted at first reading on 17 April 2014 with a view to the adoption of Directive 2014/.../EU of the European Parliament and of the Council amending Council Framework Decision 2004/757/JHA 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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 83(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure¹,

¹ Position of the European Parliament of 17 April 2014.

Whereas:

(1) Council Framework Decision 2004/757/JHA¹ provides a common approach to the fight against illicit drug trafficking, which poses a threat to the health, safety and quality of life of citizens of the Union, and to the legal economy, stability and security of the Member States. It sets out minimum common rules on the definition of drug trafficking offences and sanctions, to avoid that problems may arise 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.

(1a) Setting out minimum common rules across the Union on the definition of drug trafficking offences and sanctions should ultimately contribute to the protection of public health and the reduction of harm related to drug trafficking and consumption.
[Am. 1]

¹ 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 (OJ L 335, 11.11.2004, p. 8).

- (2) Framework Decision 2004/757/JHA applies to 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 ('UN Conventions'), as well as to the synthetic drugs subjected to control across the Union pursuant to Joint Action 97/396/JHA¹, which pose public health risks comparable to those posed by the substances scheduled under the UN Conventions.
- (3) Framework Decision 2004/757/JHA should also apply to the substances subjected to control measures and criminal penalties pursuant to Council Decision 2005/387/JHA², which pose public health risks comparable to those posed by the substances scheduled under the UN Conventions.

¹ Joint Action 97/396/JHA of 16 June 1997 adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning the information exchange, risk assessment and the control of new synthetic drugs (OJ L 167, 25.6.1997, p. 1).

² Council Decision 2005/387/JHA of 10 May 2005 on the information exchange, risk-assessment and control of new psychoactive substances (OJ L 127, 20.5.2005, p. 32).

- (4) New psychoactive substances *such as products containing synthetic cannabinoid receptor agonists (CRAs)*, which imitate the effects of substances scheduled under the UN Conventions, are emerging frequently and are spreading fast in the Union. Certain new psychoactive substances pose severe *public* health, social and safety risks, as ascertained by Regulation (EU) No .../... of the European Parliament and of the Council¹*. 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, *often generating considerable profit from illicit drug trafficking*, permanent market restriction measures adopted under that Regulation should be underpinned by *proportionate* criminal law provisions, *aimed solely at producers, suppliers and distributors rather than individual consumers*. [Am. 2]
- (4a) *To effectively reduce the demand for new psychoactive substances that pose severe health, social and safety risks, dissemination of evidence-based, public health information and early warnings to consumers should be an integral part of an inclusive and participatory strategy to prevent and reduce harm*. [Am. 3]

¹ Regulation (EU) No .../... of the European Parliament and of the Council of ... [on new psychoactive substances] (OJ L...).

* OJ:...

- (5) ~~The~~ New psychoactive substances subjected to permanent market restriction pursuant to Regulation (EU) No .../... should, ***once they have been added to the Annex to Framework Decision 2004/757/JHA***, therefore, be covered by 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.~~ ***In order to add such substances to the Annex, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of amending the Annex and thereby the definition of 'drug' in Framework Decision 2004/757/JHA should, therefore, be amended. It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.***
- [Am. 4]

- (6) In order to swiftly address the emergence and spread of harmful new psychoactive substances in the Union, Member States should apply the provisions of Framework Decision 2004/757/JHA to new psychoactive substances ~~posing severe health, social and safety risks within twelve months from their submission~~ ***which have been subject to permanent market restriction under restrictions on account of the severe health, social and safety risks which they pose, pursuant to Regulation (EU) No .../... within 12 months of those new psychoactive substances being added to the Annex to that Framework Decision.*** [Am. 5]
- (6a) ***This Directive, in accordance with the provisions of Framework Decision 2004/757/JHA which it amends, does not make provision for the criminalisation of the possession of new psychoactive substances for personal use, without prejudice to the right of Member States to criminalise the possession of drugs for personal use at national level.*** [Am. 6]

- (6b) *The Commission should assess the impact of Framework Decision 2004/757/JHA on drug supply, including on the basis of information provided by Member States. For that purpose, Member States should provide detailed information on the distribution channels for psychoactive substances in their territory used for the supply of psychoactive substances intended for distribution in other Member States, such as specialised shops and online retailers, as well as on other characteristics of their respective drug markets. The European Monitoring Centre for Drugs and Drug Addiction should support the Member States in collecting and sharing accurate, comparable and reliable information and data on drug supply. [Am. 7]***
- (6c) *Member States should provide the Commission with data on various indicators of national law enforcement interventions within their territory, including dismantled drug production facilities, drug supply offences, national retail drug prices and forensic analyses of drug seizures. [Am. 8]***

- (7) Since the objective of this Directive, namely to extend the application of the Union criminal law provisions that apply to illicit drug trafficking to new psychoactive substances posing severe health, social and safety risks, cannot be sufficiently achieved by the Member States but can rather be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (8) This Directive respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union, and notably the right to an effective remedy and to a fair trial, the presumption of innocence and the right of defence, the right not to be tried or punished twice in criminal proceedings for the same criminal offence ~~and~~, the principles of legality and proportionality of criminal offences, ***the right of access to preventive healthcare and the right to benefit from medical treatment.*** [Am. 9]
- (8a) ***The Union and its Member States should further develop the Union approach based on fundamental rights, prevention, medical care and harm reduction, with the aim of helping drug users to overcome their addiction and at reducing the negative social, economic and public health impact of drugs.*** [Am. 10]

- (9) [In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, the United Kingdom and Ireland have notified their wish to take part in the adoption and application of this Directive.]

AND/OR

- (10) [In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, the United Kingdom and Ireland are not taking part in the adoption of this Directive and are not bound by it or subject to its application.]

- (11) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.
- (12) Framework Decision 2004/757/JHA should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Framework Decision 2004/757/JHA is amended as follows:

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

"1. 'drug' means: *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]~~ ***mixture or solution containing one or more substances listed under points (a) and (b);"***
[Am. 11]

(1a) *Article 2 is amended as follows:*

(a) *the introductory part of paragraph 1 is replaced by the following:*

"1. *Each Member State shall take the necessary measures to ensure that the following intentional conduct when committed without right as defined in national law is punishable:"*; [Am. 12]

(b)*paragraph 2 is replaced by the following:*

"2.*The conduct described in paragraph 1 shall not be included within the scope of this Framework Decision when committed for personal use as defined by national law."*;[Am. 13]

(1b) *The following Articles are inserted:*

"Article 8a

Delegation of power

The Commission shall be empowered to adopt delegated acts to amend the Annex to this Framework Decision, in particular to add to the Annex new psychoactive substances subjected to permanent market restriction on the basis of Article 13(1) of Regulation (EU) No .../... of the European Parliament and of the Council*. [Am. 15]

Article 8b

Exercise of delegation

- 1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.*
- 2. The power to adopt delegated acts referred to in Article 8a shall be conferred on the Commission for a period of ten years from ...⁺. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the ten year period. The delegation of power shall be tacitly extended for a further period of ten years, unless the European Parliament or the Council opposes such extension not later than three months before the end of that period.*
- 3. The delegation of powers referred to in Article 8a may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.*

⁺ OJ: Please insert the date of the entry into force of this Directive.

4. *As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.*
5. *A delegated act adopted pursuant to Article 8a shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council. [Am. 16]*

* *Regulation (EU) No .../... of the European Parliament and of the Council of ... [on new psychoactive substances] (OJ L...)." ;*

(2) In Article 9, the following paragraphs are added:

"3. In respect of new psychoactive substances ~~subjected to permanent market restriction on the basis of [Article 13(1) of Regulation (EU) No .../... on new psychoactive substances]~~ **added to the Annex to this Framework Decision**, Member States shall bring into force the laws, regulations and administrative provisions necessary to apply the provisions of this Framework Decision to these new psychoactive substances within twelve months after *the* entry into force of the ~~permanent market restriction~~ **amendment to the Annex**. They shall forthwith communicate to the Commission the text of those provisions. **[Am. 14]**

When Member States adopt those provisions, they shall contain a reference to this Framework Decision or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

4. By ...⁺ and every five years thereafter, the Commission shall assess the extent to which the Member States have taken the necessary measures to comply with this Framework Decision and publish a report.";

(3) An Annex, as set out in the Annex to this Directive, is added.

⁺ OJ: Please insert the date: five years after the entry into force of this Directive.

Article 2
Transposition

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ...⁺ at the latest. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

⁺ OJ: Please insert the date: 12 months after the entry into force of this Directive.

Article 3
Entry into force

This Directive shall enter into force on ...⁺.

Article 4
Addressees

This Directive is addressed to the Member States in accordance with the Treaties.

Done at ...,

For the European Parliament

For the Council

The President

The President

⁺ OJ: Please insert the date: the day of entry into force of Regulation (EU) No .../... [on new psychoactive substances].

ANNEX

"ANNEX

List of substances referred to in point (1)(b) of Article 1

- (a) P-Methylthioamphetamine or 4-Methylthioamphetamine, as referred to in Council Decision 1999/615/JHA¹.
- (b) Paramethoxymethylamphetamine or N-methyl-1-(4-methoxyphenyl)-2-aminopropane, as referred to in Council Decision 2002/188/JHA².
- (c) 2,5-dimethoxy-4-iodophenethylamine, 2,5-dimethoxy-4-ethylthiophenethylamine, 2,5-dimethoxy-4-(n)-propylthiophenethylamine and 2,4,5-trimethoxyamphetamine, as referred to in Council Decision 2003/847/JHA³.

¹ Council Decision 1999/615/JHA of 13 September 1999 defining 4-MTA as a new synthetic drug which is to be made subject to control measures and criminal penalties (OJ L 244, 16.9.1999, p.1).

² Council Decision 2002/188/JHA of 28 February 2002 concerning control measures and criminal sanctions in respect of the new synthetic drug PMMA (OJ L 63, 6.3.2002, p. 14).

³ Council Decision 2003/847/JHA of 27 November 2003 concerning control measures and criminal sanctions in respect of the new synthetic drugs 2C-I, 2C-T-2, 2C-T-7 and TMA-2 (OJ L 321, 6.12.2003, p. 64).

- (d) 1-benzylpiperazine or 1-benzyl-1,4-diazacyclohexane or N-benzylpiperazine or benzylpiperazine as referred to in Council Decision 2008/206/JHA¹.
- (e) 4-methylmethcathinone, as referred to in Council Decision 2010/759/EU².
- (f) 4-methylamphetamine, as referred to in Council Decision 2013/129/EU³.
- (g) 5-(2-aminopropyl)indole, as referred to in Council Implementing Decision 2013/496/EU⁴.

¹ Council Decision 2008/206/JHA of 3 March 2008 on defining 1-benzylpiperazine (BZP) as a new psychoactive substance which is to be made subject to control measures and criminal provisions (OJ L 63, 7.3.2008, p. 45).

² Council Decision 2010/759/EU of 2 December 2010 on submitting 4-methylmethcathinone (mephedrone) to control measures (OJ L 322, 8.12.2010, p. 44).

³ Council Decision 2013/129/EU of 7 March 2013 on subjecting 4-methylamphetamine to control measures (OJ L 72, 15.3.2013, p. 11).

⁴ Council Implementing Decision 2013/496/EU of 7 October 2013 on subjecting 5-(2-aminopropyl)indole to control measures (OJ L 272, 12.10.2013, p. 44).