



EUROPEAN PARLIAMENT

2009 - 2014

Committee on Civil Liberties, Justice and Home Affairs

2013/0304(COD)

28.1.2014

AMENDMENTS

7 - 22

Draft report

Teresa Jiménez-Becerril Barrio
(PE519.605v01-00)

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

Proposal for a directive
(COM(2013)0618 – C7-0271/2013 – 2013/0304(COD))

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Amendment 7
Anna Hedh

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

Amendment

(5) New psychoactive substances subjected to permanent market restriction pursuant to [Regulation (EU) No .../... on new psychoactive substances] should, ***once they have been added to the Annex to the Framework Decision 2004/757/JHA, therefore*** be covered by the Union criminal law on illicit drug trafficking. ***In order to add such substances in 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 the Framework Decision 2004/757/JHA. ***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.***

Or. en

Amendment 8
Anna Hedh

Proposal for a directive
Recital 6

Text proposed by the Commission

(6) In order to swiftly address the

Amendment

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emergence and spread of harmful new psychoactive substances in the Union, Member States should apply ***the provisions of the*** Framework Decision 2004/757/JHA ***to new psychoactive substances posing severe health, social and safety risks within twelve months from their submission*** to permanent market restriction under [Regulation (EU) No .../... on new psychoactive substances].

emergence and spread of harmful new psychoactive substances in the Union, Member States should apply, ***within 12 months of those new psychoactive substances being added to the Annex to*** Framework Decision 2004/757/JHA, ***the provisions of that Framework Decision ... to new psychoactive substances which have been subjected*** to permanent market restrictions pursuant to [Regulation (EU) No .../... on new psychoactive substances] ***on account of the severe health, social and safety risks which they pose.***

Or. en

Amendment 9
Kyriacos Triantaphyllides

Proposal for a directive
Recital 6 a (new)

Text proposed by the Commission

Amendment

(6a) Member States may introduce further specific measures that are deemed appropriate or necessary with regard to a new psychoactive substance, depending on the specific risks that the substance poses in their territories taking into account national circumstances and any social, economic, legal, administrative or other factor they may consider relevant.

Or. en

Amendment 10
Renate Weber

Proposal for a directive
Recital 8

Text proposed by the Commission

(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.

Amendment

(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, the principles of legality and proportionality of criminal offences, ***the right of access to preventive healthcare and the right to benefit from medical treatment.***

Or. en

Amendment 11
Renate Weber

Proposal for a directive
Recital 8 a (new)

Text proposed by the Commission

Amendment

(8a) The Union and its Member States should further develop the European 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 social, economic and public health negative impact of drugs. The Union and its Member States should review policies and laws providing for imprisonment and criminalization of drugs users, which lead to further marginalisation and stigmatization, as well as to an overload of the justice and prison systems.

Or. en

Amendment 12
Sophia in 't Veld

Proposal for a directive

Article 1 – paragraph 1 – point 1 a (new)
Framework Decision 2004/757/JHA
Article 2 – paragraph 1 – introductory part

Text proposed by the Commission

1. Each Member State shall take the necessary measures to ensure that the following intentional conduct when committed without right is punishable:

Amendment

(1a) In Article 2, 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.'

Or. en

Amendment 13
Renate Weber

Proposal for a directive

Article 1 – point 1 a (new)
Framework Decision 2004/757/JHA
Article 2 – paragraph 2

Text proposed by the Commission

2. The conduct described in paragraph 1 shall not be included in the scope of this Framework Decision when ***it is*** committed ***by its perpetrators exclusively*** for ***their own*** personal ***consumption*** as defined by national law.

Amendment

(1a) In Article 2, paragraph 2 is replaced by the following:

'2. The conducts described in paragraph 1 shall not be included in the scope of this Framework Decision when committed for personal ***use*** as defined by national law.'

Or. en

Amendment 14
Gianni Vattimo

Proposal for a directive
Article 1 – point 1 a (new)
Council Framework Decision 2004/757/JHA
Article 2-paragraph 3 (new)

Text proposed by the Commission

Amendment

(1a) In Article 2, the following paragraph is added after paragraph 2:

'3. Member States may exclude from the scope of this Framework Decision other conducts described in paragraph 1 on the basis of their national law.'

Or. en

Amendment 15
Kyriacos Triantaphyllides

Proposal for a directive
Article 1 – point 1 a (new)
Framework Decision 2004/757/JHA
Article 2-paragraph 3 (new)

Text proposed by the Commission

Amendment

(1a) In Article 2, the following paragraph is added after paragraph 2:

'3. Each Member State shall remove from its criminal law provisions any substance that is no longer subjected to permanent market restriction on the basis of Article 13(1) of the Regulation (EU) No .../... on new psychoactive substances.'

Or. en

Amendment 16
Renate Weber

Proposal for a directive
Article 1 – point 1 b (new)
Framework Decision 2004/757/JHA
Article 2-paragraph 3 (new)

Text proposed by the Commission

Amendment

(1b) In Article 2, the following paragraph is added after paragraph 2:

'3. Member States shall remove a substance from their criminal law provisions as soon as it is no longer subject to permanent market restrictions pursuant to Article 13(1) of the Regulation (EU) No .../... on new psychoactive substances.'

Or. en

Amendment 17
Sophia in 't Veld

Proposal for a directive
Article 1 – point 1 b (new)
Framework Decision 2004/757/JHA
Article 2-paragraph 2

Text proposed by the Commission

Amendment

(1b) In Article 2, paragraph 2 is replaced by the following:

2. The conduct described in paragraph 1 shall not be included in the scope of this Framework Decision when ***it is committed by its perpetrators exclusively for their own*** personal consumption as defined by national law.

'2. The conduct described in paragraph 1 shall not be included in the scope of this Framework Decision when they are enacted without economic gain, or in the view of personal consumption, or for medical reasons, as defined by national law.'

Or. en

Amendment 18
Sophia in 't Veld

Proposal for a directive
Article 1 – paragraph 1 – point 1 c (new)
Framework Decision 2004/757/JHA
Article 3

Text proposed by the Commission

Amendment

(1c) In Article 3 paragraphs 1 and 2 are replaced by the following:

1. Each Member State shall take the necessary measures to make incitement to commit, aiding and abetting or attempting one of the offences referred to in Article 2 a criminal offence.
2. A Member State may exempt from criminal liability *the attempt to offer or prepare drugs referred to in Article 2(1)(a) and the attempt to possess drugs referred to in Article 2(1)(c).*

1. Each Member State shall take the necessary measures to make incitement to commit, aiding and abetting or attempting one of the offences referred to in Article 2 ***paragraph 1*** a criminal offence.
2. A Member State may exempt from criminal liability, ***on the basis of its national law, the acts referred to in paragraph 1 and in any case incitement, aiding, abetting and attempt to commit acts excluded from the scope of this Framework Decision on the basis of Article 2, paragraph 2.***

Or. en

Amendment 19
Anna Hedh

Proposal for a directive
Article 1 – point 2
Framework Decision 2004/757/JHA
Article 9 – paragraph 3 (new)

Text proposed by the Commission

Amendment

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], Member States shall bring into force the laws, regulations and administrative provisions necessary to apply the provisions of this Framework

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], 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 **entry into force of the permanent market restriction**. They shall forthwith communicate to the Commission the text of those provisions.

Decision to these new psychoactive substances within twelve months after **the addition of those new psychoactive substances to the Annex**. They shall forthwith communicate to the Commission the text of those provisions.

Or. en

Amendment 20
Gianni Vattimo

Proposal for a directive

Article 1 – point 2

Framework Decision 2004/757/JHA

Article 9 – paragraph 4

Text proposed by the Commission

4. By [5 years after entry into force of this Directive and every 5 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.

Amendment

4. By [2 years after entry into force of this Directive and every 2 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, **which shall also contain an evaluation of the effectiveness of laws and policies, alternative approaches, international developments and if necessary, proposals for review of the Framework Decision.**

Or. en

Amendment 21
Anna Hedh

Proposal for a directive

Article 1 – point 2 a (new)

Framework Decision 2004/757/JHA

Article 9 a (new)

Text proposed by the Commission

Amendment

(2a) The following Article is added after

Article 9:

'Article 9a

Delegation of power

The Commission shall be empowered to adopt delegated acts to amend the Annex to the Framework Decision, in particular to add to the Annex new psychoactive substances subjected to permanent market restriction on the basis of Article 13(1) Regulation (EU) No .../... on new psychoactive substances.'

Or. en

Justification

The criminalisation of a new psychoactive substance cannot be considered as a mere implementing measure. Such criminalisation of a new psychoactive substance requires the relevant criminal law considerations to be taken into account. As this will change the criminal law of the Member States, a delegated act is necessary to add those substances to the Annex to the Framework Decision.

Amendment 22
Anna Hedh

Proposal for a directive

Article 1 – paragraph 1 – point 2 b (new)

Framework Decision 2004/757/JHA

Article 9 b (new)

Text proposed by the Commission

Amendment

(2b) The following Article is added after Article 9:

'Article 9b

Exercise of delegation

1. The power to adopt delegated acts according to Article 9a 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 9a shall be conferred

on the Commission for a period of ten years from [the entry into force of this Directive]. 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 powers 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 each period.

3. The delegation of powers referred to in Article 9a 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.

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 Article 9a shall enter into force only if no objection has been expressed either by the European Parliament or 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 the Council.'

Or. en

Justification

The criminalisation of a new psychoactive substance cannot be considered as a mere implementing measure. Such criminalisation of a new psychoactive substance requires the relevant criminal law considerations to be taken into account. As this will change the criminal law of the Member States, a delegated act is necessary to add those substances to the Annex to the Framework Decision.