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#### **INFORMATION NOTE**

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from: General Secretariat  
to: Permanent Representatives Committee/Council

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Subject: 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  
- Outcome of the European Parliament's first reading  
(Strasbourg, 14 to 17 April 2014)

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#### **I. INTRODUCTION**

The Rapporteur, Mrs Teresa JIMENEZ-BECERRIL BARRIO (EPP-ES), presented a report consisting of sixteen amendments (amendment 1-16) to the proposal for a Directive, on behalf of the Committee on Civil Liberties, Justice and Home Affairs. The ALDE political group tabled one further amendment (amendment 17).

#### **II. DEBATE**

No debate took place.

### **III. VOTE**

When it voted on 17 April 2014, the plenary adopted the sixteen amendments (amendments 1-16) in the report of the Committee on Civil Liberties, Justice and Home Affairs. No other amendment was adopted.

The Commission's proposal, as thus amended, and the legislative resolution constitute the Parliament's position at first reading. The text of the amendments adopted and the European Parliament's legislative resolution are set out in the Annex to this note

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## **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.

## Amendment 1

### Proposal for a directive Recital 1 a (new)

*Text proposed by the Commission*

*Amendment*

***(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.***

## Amendment 2

### Proposal for a directive Recital 4

*Text proposed by the Commission*

*Amendment*

(4) New psychoactive substances, 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 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.

(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 .../... 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, ***often generating considerable profit on illicit drug trafficking***, permanent market restriction measures adopted under that Regulation should be underpinned by ***proportional***

criminal law provisions, *aimed solely to producers, suppliers and distributors rather than individual consumers.*

### Amendment 3

#### Proposal for a directive

##### Recital 4 a (new)

*Text proposed by the Commission*

*Amendment*

*(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.*

### Amendment 4

#### Proposal for a directive

##### Recital 5

*Text proposed by the Commission*

*Amendment*

(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.*

(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 Framework Decision 2004/757/JHA, therefore* be covered by Union criminal law on illicit drug trafficking. *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 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*

## Amendment 5

### Proposal for a directive

#### Recital 6

*Text proposed by the Commission*

(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 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].

*Amendment*

(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 **which have been subjected** to permanent market **restrictions on account of the severe health, social and safety risks which they pose, pursuant to** [Regulation (EU) No .../... on new psychoactive substances] **within 12 months of those new psychoactive substances being added to the Annex to that Framework Decision.**

## Amendment 6

### Proposal for a directive

#### Recital 6 a (new)

*Text proposed by the Commission*

*Amendment*

**(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.**

## Amendment 7

### Proposal for a directive

#### Recital 6 b (new)

*Text proposed by the Commission*

*Amendment*

**(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.*

## **Amendment 8**

### **Proposal for a directive Recital 6 c (new)**

*Text proposed by the Commission*

*Amendment*

*(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.*

## **Amendment 9**

### **Proposal for a directive Recital 8**

*Text proposed by the Commission*

*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 **and** the principles of legality and

(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**

proportionality of criminal offences.

***right of access to preventive healthcare and the right to benefit from medical treatment.***

## **Amendment 10**

### **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 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.***

## **Amendment 11**

### **Proposal for a directive**

#### **Article 1 – point 1**

Framework Decision 2004/757/JHA

Article 1 – point 1

*Text proposed by the Commission*

*Amendment*

(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];"***

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

***"1. ‘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 ***mixture or solution containing one or more substances listed under points (a) and (b);"***



## Amendment 12

### Proposal for a directive

#### Article 1 – point 1 a (new)

Framework Decision 2004/757/JHA

Article 2 – paragraph 1 – introductory part

#### *Present text*

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.'

## Amendment 13

### Proposal for a directive

#### Article 1 – point 1 b (new)

Framework Decision 2004/757/JHA

Article 2 – paragraph 2

#### *Present text*

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*

***(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 committed for personal ***use*** as defined by national law.'

## Amendment 14

### Proposal for a directive

#### Article 1 – point 2

Framework Decision 2004/757/JHA

Article 9 – paragraph 3 – subparagraph 1

#### *Text proposed by the Commission*

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

#### *Amendment*

3. In respect of 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

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 entry into force of the amendment to the Annex***. They shall forthwith communicate to the Commission the text of those provisions.

## **Amendment 15**

### **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 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 .../... on new psychoactive substances.'***

## **Amendment 16**

### **Proposal for a directive**

#### **Article 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 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 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 this 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 to Article 9a 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.'***