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2013/0304 (COD)

**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to Article 294(6) of the Treaty on the Functioning of the European Union

concerning the

position of the Council on the adoption of a Directive of the European Parliament and of the Council amending Council Framework Decision 2004/757/JHA in order to include new psychoactive substances in the definition of 'drug' and repealing Council Decision 2005/387/JHA

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1. BACKGROUND

Date of transmission of the proposal to the European Parliament and to the Council 17.9.2013.
(document COM(2013) 618 final - 2013/0304 (COD):

Date of the opinion of the European Economic and Social Committee (OJ C 177, 11.6.2014, p. 52). 21.1.2014.

Date of the position of the European Parliament, first reading: 17.4.2014.

Date of transmission of the amended proposal N/A.

Date of the adoption of the position of the Council 25.9.2017.

2. OBJECTIVE OF THE PROPOSAL FROM THE COMMISSION

The Directive is part of a package of two legislative proposals on new psychoactive substances put forward by the Commission on 17 September 2013: a proposal for a Regulation on new psychoactive substances¹ and a Directive 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 drug².

The objective of the package was to reduce the availability of new psychoactive substances that pose risk through swifter, more effective action on Union level compared to the currently applicable system based on Council Decision 2005/387/JHA of 10 May 2005 on the information exchange, risk assessment and control of new psychoactive substances³.

¹ COM(2013) 619 final.

² COM(2013) 618 final.

³ OJ L 127, 10.5.2005, p. 32. The different policy options have been analysed in the impact assessment accompanying both proposals, SWD(2013) 319 final.

3. COMMENTS ON THE POSITION OF THE COUNCIL

Negotiations of this legislative package have been ongoing for more than four years. In the Council, during the examination of the proposals, Member States expressed doubts concerning the choice of Article 114 of the Treaty on the Functioning of the European Union (TFEU) as the legal basis for the proposed Regulation. To achieve the same objective of a swifter, more effective EU action on new psychoactive substances, the Permanent Representatives Committee (COREPER) therefore agreed on 6 April 2016⁴ to a new approach proposed by the Presidency.

In the context of this new approach, the concept of the 2013 Commission proposal for a Regulation on new psychoactive substances based on Article 114 TFEU was abandoned. The provisions of the 2013 Commission proposal for a Regulation on new psychoactive substances were included on the one hand into the text of the Directive amending Council Framework Decision 2004/757/JHA, and on the other hand into the text of a new proposal amending the founding Regulation of the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), Regulation 1920/2006, which the Commission was invited to present. The Commission adopted the proposal amending Regulation 1920/2006 as regards information exchange, early warning system and risk assessment procedure on new psychoactive substances on 29 August 2016⁵. The 2013 proposal on a Regulation on new psychoactive substances was withdrawn in the context of the Commission's Work Programme for 2017.

Political agreement on the package was reached between co-legislators at the trilogue meeting of 29 May 2017, and was endorsed by COREPER on 31 May 2017 and by the LIBE Committee on 8 June 2017.

In line with the new approach outlined above, the text of the Directive includes significant amendments to the 2013 Commission proposal for a Directive amending Council Framework Decision 2004/757/JHA of 25 October 2004. The Directive in particular now contains also provisions on the definition of new psychoactive substances and on swift EU-level decision making on new psychoactive substances. Substances which qualify as new psychoactive substances are listed in a new Annex to Framework Decision 2004/757/JHA which the Commission is empowered to amend by means of delegated acts in order to include new psychoactive substances in the definition of 'drug'. All substances listed in the Annex are covered by the criminal law provisions laid down in the Framework Decision, in line with its legal basis, Article 83(1) TFEU. The package, however, still meets the Commission's original objective to reduce the availability of new psychoactive substances that pose risk through swifter, more effective action on Union level compared to the currently applicable system.

4. CONCLUSION

The Commission fully supports the position of the Council as it still meets the Commission's original objective.

⁴ Summary record, Council document 7908/1/16 REV 1 of 27 May 2016.

⁵ COM(2016) 547 final.