

Minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking: definition of 'drug'

2013/0304(COD) - 17/09/2013 - Legislative proposal

PURPOSE: to amend Council Framework Decision 2004/757/JHA as regards the definition of the term “drug” in order to take into account new psychoactive substances.

PROPOSED ACT: Directive of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: 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 major challenge is to address new substances that emerge on the market** at a rapid speed.

New psychoactive substances, which imitate the effects of controlled drugs and **are often marketed as legal alternatives to them** because they are not subjected to similar control measures, and which have numerous uses in the industry, are increasingly available in the Union and consumed particularly by young people.

The risks that these new substances can pose 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 in 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.**

[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 that problems 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.

However, 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.

IMPACT ASSESSMENT: the Commission assessed the impacts of this proposal for an amendment to Framework Decision 2004/757/JHA in an impact assessment on new psychoactive substances. It concluded that harmful new psychoactive substances (those posing severe health, social and safety risks) should be subjected to criminal law provisions.

This represented part of the [preferred policy option](#), which foresees a graduated set of restriction measures that are proportionate to the level of risks posed by new psychoactive substances, and which do not cause obstacles to legitimate trade in the internal market.

LEGAL BASIS: Article 83(1) of the Treaty on the Functioning of the European Union (TFEU).

CONTENT: this proposal amends Framework Decision 2004/757/JHA in order to extend its scope to cover psychoactive substances presenting serious risks.

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 follows:

- 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;
- 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 (parallel proposal for a Regulation).

Review: within five years of the entry into force of this proposed Directive (and thereafter, every five years), 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.

Annex: the annex to the proposal lists the psychoactive substances which are considered to be “drugs” within the meaning of the proposed Directive.

BUDGETARY IMPLICATION: the proposal has no impact on the Union’s budget.