

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

2013/0304(COD) - 27/09/2017 - Commission communication on Council's position

The Commission presented a communication on 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.

The Commission recalled that in **2013**, it presented a package of **two legislative proposals** on new psychoactive substances:

- a proposal for a [Regulation](#) on new psychoactive substances;
- a [Directive](#) 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 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.

In the context of the **political agreement on the package reached at the trilogue meeting of 29 May 2017**, 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](#) ;
- 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**The 2013 proposal on a Regulation on new psychoactive substances was withdrawn** in the context of the Commission's Work Programme for 2017.

In line with the new approach, the **proposed Directive includes significant amendments to the 2013 Commission proposal** for a Directive amending Council Framework Decision 2004/757/JHA.

In particular:

- 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.

However, **the Commission fully supports the position of the Council** as it still meets the Commission's original objective which is 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.