

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

2013/0304(COD) - 15/11/2017 - Final act

PURPOSE: to extend the scope of the EU criminal law provisions applicable to drug trafficking to new psychoactive substances (NPS) posing serious risks to public health and, where applicable, to serious risks to society at Union level.

LEGISLATIVE ACT: Directive (EU) 2017/2103 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.

CONTENT: this Directive amends Council Framework [Decision 2004/757/JHA](#) in order to respond at Union level to the threat posed by new psychoactive substances (NPS) through swifter, more effective action on Union level compared to the currently applicable system set up by Council Decision 2005/387/JHA on the exchange of information, risk assessment and control of NPS.

Inclusion of NPS in the definition of 'drug': a drug is defined as a substance covered by the 1961 United Nations Single Convention on Narcotic Drugs, as amended by the 1972 Protocol, or by the 1971 United Nations Convention on Psychotropic Substances.

Substances that may be considered as new psychoactive substances are listed in a new annex to Framework Decision 2004/757/JHA which may be amended by delegated acts.

Procedure and criteria for including NPS in the definition of 'drug': on the basis of a risk assessment, the Commission shall adopt without undue delay a delegated act amending the Annex to the Framework Decision with a view to adding the NPS and to provide that the NPS poses serious risks to public health and, where applicable, to serious risks to society at Union level, and that it is or they are included in the definition of 'drug'.

When considering whether to adopt a delegated act, the Commission shall evaluate in particular:

- whether the extent or patterns of use of new psychoactive substance as well as its availability and potential for diffusion within the Union are significant, and whether the harm to health caused by the consumption of the new psychoactive substance, associated with its acute or chronic toxicity and abuse liability or dependence-producing potential, is life-threatening;
- whether the social harm caused by the new psychoactive substance to individuals and to society is severe, and, in particular, whether the impact of the new psychoactive substance on social functioning and public order is such as to disrupt public order, or cause violent or anti-social behaviour, resulting in harm to the user or to other persons or damage to property, or whether criminal activities, including organised crime, associated with the new psychoactive substance are systematic.

If, **within six weeks** of the date of receipt of the risk assessment report or the combined risk assessment report, the Commission considers that it is not necessary to adopt a delegated act to include the new psychoactive substance or substances in the definition of 'drug', it shall present a **report** to the European Parliament and to the Council explaining the reasons for not doing so.

The Directive provides for a period of **six months** from the entry into force of a delegated act amending the Annex for the implementation of national measures.

This Directive repeals Decision 2005/387/JHA.

The United Kingdom and Denmark are not bound by the Directive.

ENTRY INTO FORCE: 22.11.2017.

TRANSPOSITION: no later than 23.11.2018.

DELEGATED ACTS: the Commission may adopt delegated acts as regards amendments to the Annex to include new psychoactive substances in the definition of the term 'drugs'. The power to adopt such acts is conferred on the Commission for a period of **five years** (renewable) from 22 November 2017. The European Parliament or the Council shall have the right to oppose a delegated act within a period of two months (extendable two months) from the notification of the act.