

# Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Directive	Procedure completed 2013/0304(COD)
Minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking: definition of 'drug'  Amending JHA act 2004/757/JHA <a href="#">2001/0114(CNS)</a> Repealing Decision 2005/387/JHA <a href="#">2003/0215(CNS)</a> See also <a href="#">2013/0305(COD)</a>	
Subject 4.20.03 Drug addiction, alcoholism, smoking 7.30.30.04 Action to combat drugs and drug-trafficking	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	<b>LIBE</b> Civil Liberties, Justice and Home Affairs	PPE <a href="#">JIMÉNEZ-BECERRIL BARRIO Teresa</a>	04/11/2013
		Shadow rapporteur	
		S&D <a href="#">HEDH Anna</a>	
		Verts/ALE <a href="#">SCHLYTER Carl</a>	
		ECR <a href="#">KIRKHOPE Timothy</a>	
	Former committee responsible		
	<b>LIBE</b> Civil Liberties, Justice and Home Affairs	PPE <a href="#">JIMÉNEZ-BECERRIL BARRIO Teresa</a>	04/11/2013
	Former committee for opinion		
	<b>ENVI</b> Environment, Public Health and Food Safety	PPE <a href="#">SONIK Bogusław</a>	10/10/2013
Council of the European Union	Council configuration	Meeting	Date
	<a href="#">General Affairs</a>	<a href="#">3552</a>	20/06/2017
European Commission	Commission DG	Commissioner	
	<a href="#">Justice and Consumers</a>	REDING Viviane	

Key events			
17/09/2013	Legislative proposal published	COM(2013)0618	Summary
08/10/2013	Committee referral announced in Parliament, 1st reading		

10/03/2014	Vote in committee, 1st reading		
14/03/2014	Committee report tabled for plenary, 1st reading	<a href="#">A7-0173/2014</a>	Summary
17/04/2014	Results of vote in Parliament		
17/04/2014	Decision by Parliament, 1st reading	<a href="#">T7-0454/2014</a>	Summary
05/02/2015	Committee decision to open interinstitutional negotiations after 1st reading in Parliament		
08/06/2017	Approval in committee of the text agreed at early 2nd reading interinstitutional negotiations		
26/09/2017	Council position published	<a href="#">10537/1/2017</a>	Summary
05/10/2017	Committee referral announced in Parliament, 2nd reading		
19/10/2017	Vote in committee, 2nd reading		
23/10/2017	Debate in Parliament		
23/10/2017	Committee recommendation tabled for plenary, 2nd reading	<a href="#">A8-0317/2017</a>	Summary
24/10/2017	Decision by Parliament, 2nd reading	<a href="#">T8-0391/2017</a>	Summary
15/11/2017	Final act signed		
15/11/2017	End of procedure in Parliament		
21/11/2017	Final act published in Official Journal		

### Technical information

Procedure reference	2013/0304(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
	Amending JHA act 2004/757/JHA <a href="#">2001/0114(CNS)</a> Repealing Decision 2005/387/JHA <a href="#">2003/0215(CNS)</a> See also <a href="#">2013/0305(COD)</a>
Legal basis	Treaty on the Functioning of the EU TFEU 083-p1-a1
Other legal basis	Rules of Procedure EP 159
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/8/09271

### Documentation gateway

Legislative proposal		COM(2013)0618	17/09/2013	EC	Summary
Document attached to the procedure		SWD(2013)0319	17/09/2013	EC	
Document attached to the procedure		SWD(2013)0320	17/09/2013	EC	
Committee draft report		<a href="#">PE519.605</a>	19/12/2013	EP	

Economic and Social Committee: opinion, report		<a href="#">CES6166/2013</a>	21/01/2014	ESC	
Amendments tabled in committee		<a href="#">PE519.807</a>	28/01/2014	EP	
Committee opinion	ENVI	<a href="#">PE524.584</a>	31/01/2014	EP	
Committee report tabled for plenary, 1st reading/single reading		<a href="#">A7-0173/2014</a>	14/03/2014	EP	Summary
Text adopted by Parliament, 1st reading/single reading		<a href="#">T7-0454/2014</a>	17/04/2014	EP	Summary
Commission response to text adopted in plenary		<a href="#">SP(2014)471</a>	09/07/2014	EC	
Council statement on its position		<a href="#">11655/1/2017</a>	21/09/2017	CSL	
Council position		<a href="#">10537/1/2017</a>	26/09/2017	CSL	Summary
Commission communication on Council's position		<a href="#">COM(2017)0560</a>	27/09/2017	EC	Summary
Committee recommendation tabled for plenary, 2nd reading		<a href="#">A8-0317/2017</a>	23/10/2017	EP	Summary
Text adopted by Parliament, 2nd reading		<a href="#">T8-0391/2017</a>	24/10/2017	EP	Summary
Draft final act		<a href="#">00051/2017/LEX</a>	15/11/2017	CSL	

#### Additional information

National parliaments	<a href="#">IPEX</a>
European Commission	<a href="#">EUR-Lex</a>

#### Final act

<a href="#">Directive 2017/2103</a> <a href="#">OJ L 305 21.11.2017, p. 0012</a> Summary Final legislative act with provisions for delegated acts
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#### Delegated acts

<a href="#">2018/2989(DEA)</a>	Examination of delegated act
<a href="#">2020/2786(DEA)</a>	Examination of delegated act

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

**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 Unions budget.

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

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The Committee on Civil Liberties, Justice and Home Affairs adopted the report by Teresa JIMÉNEZ-BECERRIL BARRIO (EPP, ES) 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.

The committee recommended that Parliaments position in first reading following the ordinary legislative procedure should amend the Commission proposal as follows:

Addition of mixtures containing psychoactive substances in the definition of the term drug within the meaning of the draft directive: Members added mixture or solution containing one or more substances listed in the draft directive to substances considered as a drug within the meaning of the text.

Penalties: 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. Members added that the directive did 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.

Information: 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 EMCDDA should support the Member States in collecting and sharing accurate, comparable and reliable information and data on drug supply

At the same time, 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.

Delegated acts: the criminalisation of a new psychoactive substance could be considered as a mere implementing measure. It required the relevant criminal law considerations to be taken into account. Adding to the Annex new psychoactive substances (as in this directive) should be done through a delegated act.

The power to adopt delegated acts should apply both to amendments of the annexes of the original framework decision but also, by extension, to the definition of the term drug.

Entry into force: Member States should bring into force the laws, regulations and administrative provisions necessary to apply the provisions of the Framework Decision to these new psychoactive substances within twelve months after the entry into force of the amendment to the Annex.

An inclusive strategy in the fight against drugs: a new recital stated that, 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.

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

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The European Parliament adopted by 504 votes to 36, with 369 abstentions, a legislative resolution 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.

Parliament adopted its position at first reading following the ordinary legislative procedure. The main amendments adopted in plenary may be summarised as follows:

An inclusive strategy in the fight against drugs: Parliament stated that 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.

Fundamental rights and health care of drug users: 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.

Addition of mixtures containing psychoactive substances in the definition of the term drug within the meaning of the draft directive: Parliament added mixture or solution containing one or more substances listed in the draft directive to substances considered as a drug within the meaning of the text.

Penalties: 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. Parliament stated that the directive did 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. Criminal law provisions should be aimed solely to producers, suppliers and distributors.

Information: 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 EMCDDA should support the Member States in collecting and sharing accurate, comparable and reliable information and data on drug supply

At the same time, 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.

Delegated acts: the criminalisation of a new psychoactive substance could be considered as a mere implementing measure. It required the relevant criminal law considerations to be taken into account. Adding to the Annex new psychoactive substances (as in this directive) should be done through a delegated act.

The power to adopt delegated acts should apply both to amendments of the annexes of the original framework decision but also, by extension, to the definition of the term drug.

Entry into force: Member States should bring into force the laws, regulations and administrative provisions necessary to apply the provisions of the Framework Decision to these new psychoactive substances within twelve months after the entry into force of the amendment to the Annex.

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

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The Council adopted its position at first reading with a view to 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 'drugs' and repealing Council Decision 2005/387/JHA of the Council.

The objective of the proposed Directive is to reduce the availability of new psychoactive substances (NSPs) that pose risk through swifter, more effective action on Union level compared to the currently applicable system based on Council Decision 2005/387/JHA on the information

exchange, risk assessment and control of new psychoactive substances.

The main elements of the Council's position are as follows:

Definition of the term 'drugs': substances which may be considered as new psychoactive substances are listed in a new Annex to the Framework Decision 2004/757/JHA which may be amended by means of delegated acts.

Procedure and criteria for the inclusion of new psychoactive substances in the definition of the term 'drugs': based on a risk assessment, the Commission shall adopt, without delay, a delegated act amending the Annex to the Framework Decision in order to add the new psychoactive substance or substances to it and provide that the new psychoactive substance or substances pose severe public health risks and, where applicable, severe social risks at Union level.

When considering whether to adopt a delegated act, the Commission shall take into account:

- whether the extent or patterns of use of the new psychoactive substance and its availability and potential for diffusion within the Union are significant;
- whether the harm to health is considered life-threatening if the new psychoactive substance is likely to cause death or lethal injury, severe disease, severe physical or mental impairment or a significant spread of diseases;
- whether the social harm caused by the new psychoactive substance to individuals and to society is severe;
- whether criminal activities, including organised crime, associated with the new psychoactive substance are systematic, involve significant illicit profits or entail significant economic costs.

If the Commission considers that it is not necessary to adopt a delegated act to include the new psychoactive substance(s) in the definition of drug, it should explain its reasons in a report to Parliament and the Council.

Deadline for the implementation of national measures: the Council's position provides for a period of six months from the adoption of a delegated act for the implementation of national measures, so that all Member States have sufficient time to do so, given the diversity of legal systems.

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

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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.

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

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The Committee on Civil Liberties, Justice and Home Affairs adopted the recommendation for second reading in the report by Teresa

JIMÉNEZ-BECERRIL BARRIO (EPP, ES) on the Council position at first reading with a view to 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 committee recommended Parliament to approve the Council position at first reading without amendments.

As a reminder, the aim of the proposed directive is to address new psychoactive substances (NPS) at EU level which pose a risk, quicker and more effectively than under the current system.

In the short justification accompanying the recommendation, it is recalled that after four years of interinstitutional negotiations, the two colegislators finally reached an overall political agreement on the NPS package that incorporated the main points in the Parliaments negotiating mandate.

The Council position fully reflects the agreement reached in the context of the interinstitutional negotiations.

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

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The European Parliament approved, without a vote, a legislative resolution on the Council position at first reading with a view to 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.

In line with its Committee on Civil Liberties, Justice and Home Affairs, Parliament approved the Council position at first reading without amendment.

As a reminder, the aim of the proposed directive 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.

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

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**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.