

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.