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

2013/0304(COD) - 26/09/2017 - Council position

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 Councils 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.