



**COUNCIL OF
THE EUROPEAN UNION**



Council conclusions on new psychoactive substances

*3135th JUSTICE and HOME AFFAIRS Council meeting
Brussels, 13 and 14 December 2011*

The Council adopted the following conclusions:

"THE COUNCIL OF THE EUROPEAN UNION,

RECALLING

- Council Decision 2005/387/JHA on the information exchange, risk assessment and control of new psychoactive substances adopted on 10 May 2005¹;
- the EU Drugs Strategy 2005-2012, which underlines the need for a quick EU response in order to meet new challenges that occur during its implementation²;
- the EU Drugs Action Plan 2009-2012, in particular Action 69, which calls for the assessment of the functioning and, if necessary, amendment of the Council Decision 2005/387/JHA³;
- Council Conclusions on the Drugs Situation in Europe 2010 inviting the European Commission to undertake an assessment of the implementation of the Council Decision 2005/387/JHA and to address ways in which this Council Decision could enable the EU to tackle better new psychoactive substances in the future⁴;

¹ OJ L 127, 20.5.2005, pp 32-37.

² 15074/04 CORDROGUE 77 SAN 187 ENFOPOL 178 RELEX 564

³ OJ 2008/C 326/09

⁴ 5179/11 CORDROGUE 3

P R E S S

- the European Pact against synthetic drugs which invites the European Commission to consider the revision of the existing legislative framework on information exchange, risk assessment and control of new psychoactive substances⁵;
- The Commission report on the assessment of the functioning of Council Decision 2005/387/JHA⁶;
- the Commission Communication “*Towards a stronger European response to drugs*” which calls for a stronger EU legislation on new psychoactive substances⁷;
- Council conclusions on setting the EU’s priorities for the fight against organised crime between 2011 and 2013, which identify the need to “reduce the production and distribution in the EU of synthetic drugs, including new psychoactive substances” as an EU Crime Priority⁸.

UNDERLINING

- the fact that the market for new psychoactive substances⁹ has changed dramatically in the past three years and a record number of 41 new substances were reported in 2010, accounting for about one third of all new substances since 2005;
- that on the basis of the control mechanism laid down in the Council Decision 2005/387/JHA 2 substances have been subjected to the control measures and criminal sanctions so far¹⁰;
- that the increasing number of new and potentially harmful psychoactive substances, which are mainly sold over the internet and in specialised shops, pose a serious challenge to existing drug control mechanisms and potentially expose young people to new health risks;
- that experience shows that the speed with which these new psychoactive substances are launched on the market poses challenges to individual national responses and may result in displacing the problem to neighbouring countries;
- that the EU Early Warning System on new psychoactive substances implemented by the Member States, EMCDDA and Europol has established itself as a highly recognised information exchange mechanism among professionals in Europe. However, there is a need for these EU agencies to enhance their effort to rapidly and proactively monitor and assess the composition, distribution, marketing and related risks of these substances, both in the Member States and at the EU level;

⁵ 15544/11 JAI 740 COSI 82 CORDROGUE 66 ENFOPOL 360 CRIMORG 184 JAIEX 111 UD 261

⁶ COM (2011) 430 final

⁷ COM (2011) 689 final

⁸ 11050/11 JAI 396 COSI 46 ENFOPOL 184 CRIMORG 81 ENFOCUSTOM 52 PESC 718 RELEX 603

⁹ New psychoactive substances are conventionally defined as new narcotic drugs or psychotropic substances which may pose a threat to public health comparable to illicit drugs, and which emerged only recently on the market and are not banned. The large majority of these substances are synthetic.

¹⁰ BZP in 2008 (OJ L 63, 7.3.2008, p. 45–46) and mephedrone in 2010 (OJ L 322, 8.12.2010, p. 44–45)

- the necessity to ensure the protection of public health against the new threats posed by these substances, whilst avoiding the negative impact on the freedom of legal trade in industrial products and the development and availability of medicines.

WELCOMES

- the assessment of the functioning of Council Decision 2005/387/JHA on the information exchange, risk-assessment and control of new psychoactive substances submitted by the European Commission with the support of EMCDDA, its Scientific Committee, Europol and Member States which provided input through a survey. This assessment revealed that the instrument has clear added value as it provided Member States with important information on trends and developments. The risk assessment of substances is a good experience of pooling available knowledge and research;
- At the same time, the assessment concluded that existing EU legislation is no longer able to meet new challenges:
 - § It is not able to tackle the large increase in the numbers of new psychoactive substances on the market, because it addresses substances one by one, through a lengthy process,
 - § It is reactive, as substances submitted to control are quickly replaced with new ones with similar effects, often through small modifications of their chemical composition,
 - § It lacks options for control measures.

NOTES

- the Commission's intention indicated in the recently published Communication "*Towards a stronger European response to drugs*" to propose new EU legislation on new psychoactive substances, which would:
 - § enhance the monitoring and risk assessment of substances, by extending support for forensic analysis, toxicological, pharmacological and epidemiological studies,
 - § provide swifter and more sustainable answers to the emergence of these substances, possibly by exploring ways to address groups of substances, notwithstanding the need to determine scientifically the harmfulness to health of the individual substance,
 - § enable a faster response to the emergence of substances, possibly through temporary bans on substances that may pose immediate risks,
 - § better align laws in the field of drug control, product and food safety, consumer protection and medicines to cover the wide variety of substances that emerge.
- that Member States and the Commission should bear in mind that the new EU legislation has to:
 - § respect the division of competences between the EU and the Member States;

§ be in line with the principle of legal certainty, laid down in Article 7 paragraph 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms¹¹ and Article 49 of the Charter of Fundamental Rights of the European Union¹².

- the Commission's plans to present the proposals on new psychoactive substances at the same time with legislative proposals revising the Framework Decision 2004/757/JHA on drug trafficking offences and sanctions. The revision of these two legislative instruments should enable the EU to tackle more effectively the emergence of new psychoactive substances as well as providing a stronger response to new challenges related to drug trafficking.

INVITES THE COMMISSION

- to table in 2012 a legislative proposal on new psychoactive substances with a view to revising the Council Decision 2005/387/JHA on the basis of findings identified in the Commission's assessment and the following recommendations:
 - § the new instrument should effectively respond to emerging threats posed by new (potentially) harmful psychoactive substances being introduced into the EU market by closing gaps between drugs control and other types of legislation, including food or product safety and medicines legislation;
 - § as legislation alone will not provide the complete answer to this complex problem, to promote practical co-operation at EU level and with and between Member States, in particular regarding information exchange, risk assessment and responses, including prevention;
 - § an individual substance approach makes the instrument somewhat reactive; therefore ways to address groups of substances, that scientifically have been confirmed hazardous, including the possibility of a generic approach, should be examined;
 - § for substances that raise immediate concern, the Member States should be encouraged to take measures to develop temporary or fast-track procedures (e.g. temporary market restrictions on substances for the period of risk assessment);
 - § information exchange, research and risk assessment, with the EMCDDA as the leading body, should be further strengthened; EU-level procedures should be further streamlined, where possible;
 - § there is a need that the EMCDDA in close cooperation with the Member States use best practices and gained experiences for improving the monitoring of new psychoactive substances, covering also relevant substances not subject to control;
 - § methods to further enhance the exchange and cooperation between forensic and toxicological scientific institutes, which are responsible for providing analysis of new psychoactive substances, through the strengthening of the existing networks and different constellations, should be examined.

¹¹ <http://conventions.coe.int/treaty/en/treaties/html/005.htm>

¹² OJ 2000/C 364/01

INVITES THE MEMBER STATES AND THE COMMISSION, EUROPOL AND THE EMCDDA, AS APPROPRIATE

- to make appropriate use of existing EU financial programmes for implementing these proposals, without prejudice to the negotiations on the future financial framework;
 - to promote cooperation with private partners such as international transportation companies and to monitor and if appropriate suppress trade in harmful new psychoactive substances, in line with the EU rules on free movement of goods and services;
 - to promote dialogue and the exchange of information and sharing of best practice with third countries, responsible for producing and supplying new psychoactive substances;
 - to examine, through appropriate scientific methods (surveys), whether the increasing number of new psychoactive substances over the last few years has been accompanied by changes in the profile of users. For effective prevention strategies that are aimed at the target audience, it is essential to know whether the new psychoactive substances are primarily used by the known risk seeking groups or whether they have attracted other demographic groups that should be targeted instead."
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