



EUROPEAN COMMISSION
Impact Assessment Board

Brussels,
D(2012)

Opinion

Title

DG JUST - Proposal for a Regulation on the information exchange, risk assessment and restriction measures relating to new psycho-active substances and a Proposal for a Directive on bringing new psychoactive substances within the scope of criminal law

(resubmitted version of 4 October 2012)*

(A) Context

The rapid emergence and spread of new psychoactive substances in the internal market is one of the most challenging developments in EU drugs policy in recent years. The Council adopted in 1997 the EU Joint Action on new synthetic drugs. In 2005, this was replaced with the Council Decision 2005/387/JHA on the information exchange, risk assessment and control of new psychoactive substances. The Commission's assessment report (COM(2011) 430 final) on the functioning of the Council Decision concluded that it was a useful instrument for addressing new psychoactive substances at the EU level, but was inadequate for tackling this growing problem, and should therefore be revised. The Commission Communication "Towards a stronger European response to drugs" identified the spread of new psychoactive substances as one of the problems requiring a more sustainable response and set the ground for revising the existing instrument. In its Conclusions of December 2011, the Council requested the Commission to take further action to address new psychoactive substances and invited it to revise the Council Decision.

(B) Overall assessment

While the report has been improved in line with the Board's recommendations in its first opinion it should be further strengthened in some respects. First, the evidence base and argumentation as to why different approaches to regulating psychoactive substances in different Member States represent a significant problem should be developed further. Second, in order to aid the reader's understanding, the report should also better explain the scope and limitations of the proposed action at the outset. Third, the content of some of the options and the differences between them should be better described. Fourth, the report should also provide more information on how a temporary ban on a psychoactive substance would work in practice and in particular how it would be targeted only at 'recreational' use. It should also explain the relationship between the proposed new EU rules and the scope for Member States to continue to apply national measures.

(C) Main recommendations for improvements

(1) Improve the presentation of the problem. While the report now better explains the extent of divergent approaches across Member States, the evidence base and argumentation as to why this poses a significant problem should be developed further. In particular, the report places a lot of emphasis on the current system being an obstacle to legitimate trade in psychoactive substances, however the evidence base to support this should be further strengthened especially given that legitimate usage appears to represent only around a fifth of the substances notified through the current EU-level mechanism. Furthermore, while the report mentions that most production takes place outside of the EU, the scope and limitations of EU action could still be better explained at the outset.

(2) Better explain the policy options. While the overall presentation of the options has improved, the report would still benefit from a better explanation of the differences between the options, particularly the significance of the imposition of criminal versus administrative sanctions. The different views of Member States should be better integrated into the text. Given the complexity of the option choices and clusters, the report would benefit from a table or diagram clearly presenting all of the options under each cluster.

(3) Clarify the preferred option and better explain its effectiveness. The report should provide more information on how a temporary ban would work in practice and should clarify how it would be targeted at 'recreational' use only. It should also clarify the extent to which Member States' flexibility to apply national measures would continue under the new regime and the impact that this may have on the effectiveness of the preferred option. The report should indicate whether a Member State would be obliged to notify a psychoactive substance.

Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report.

(D) Procedure and presentation

The different views of the stakeholders (particularly Member States) should be still better reflected throughout the report.

(E) IAB scrutiny process

Reference number	2009/JUST/016
External expertise used	No
Date of IAB meeting	Written procedure The present opinion concerns a resubmitted draft IA report. The first opinion was issued on 4 May 2012