

National Assembly for Wales

Health and Social Care Committee

Inquiry into new psychoactive substances (“legal highs”)

Evidence from European Commission – LH AI 02

I would like to thank the Health and Social Affairs Committee at the National Assembly for Wales for its interest in the proposal for a Regulation of the European Parliament and of the Council on new psychoactive substances {COM(2013) 619 final} and in 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 {COM(2013) 618 final}.

I am very pleased to reply to your questions, hoping the answers will be useful in the framework of your inquiry into new psychoactive substances.

The proposal for a Regulation on new psychoactive substances aims to ensure that the health and safety of individuals are protected from harmful substances, and that trade in new psychoactive substances having industrial and commercial uses is not unduly hindered. For this purpose, it sets out proportionate rules for restricting the availability and movement of substances causing concern at the EU level.

The proposal for a Regulation is based on Article 114 of the Treaty on the Functioning of the European Union (TFEU), which allows the adoption of EU rules for the approximation of the provisions which have as their objective the establishment and functioning of the internal market. Article 114 TFEU is the most appropriate legal basis for this instrument because it would enable rapid and effective action across the EU to withdraw from the market harmful substances, while reducing obstacles to their trade for legitimate uses.

EU instruments based on Article 114 are applicable in all EU Member States, the Treaty does not foresee possibilities to opt out from their adoption and implementation.

The proposal for a Directive amending Council Framework Decision 2004/757/JHA as regards the definition of drug aims to extend the application of the Union criminal law provisions applicable to illicit drug trafficking to those new psychoactive substances that pose severe health, social and safety risks at the EU level.

The proposal for a Directive is based on Article 83(1) TFEU, which enables the adoption of minimum rules concerning the definition of criminal offences and sanctions in the area of illicit drug trafficking. We consider that Article 83(1) TFEU is the appropriate legal basis for this instrument, because EU action supported by criminal law provisions can effectively reduce the availability of harmful substances, posing severe risks, as well as deterring trafficking and reducing the involvement of criminal organisations in their production or distribution.

In accordance with Articles 1 and 2 of the Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on the European Union and to the TFEU, and without prejudice to Article 4 of that Protocol, the United Kingdom is not taking part in the adoption of the proposal for a Directive and will not be bound by or subject to its application.

Following their adoption in September 2013, the two proposals are under negotiation by the European Parliament and the Council of the European Union, which are co-responsible for adopting their final texts. We cannot prejudge the outcome of these negotiations.

On 17 April 2014, the European Parliament adopted two legislative resolutions (T7-0453/2014 and T7-0454/2014), in which it endorses the Commission's proposals for a more rapid and effective system on new psychoactive substances and it proposes further improvements.

Negotiations at the level of the Council are currently ongoing. The relevant Council Working Party started discussing the proposal for a Regulation in October 2013. The analysis of the proposal for a Directive has not started yet.

We hope that the European Parliament and the Council will reach agreement in the coming months, in order to provide the EU with a more effective system to address the rapid spread of new psychoactive substances.

I hope that these clarifications are helpful for the Health and Social Affairs Committee and I look forward to continuing our cooperation in the future.

Sincerely yours,