

Speaking Note for Minister Catherine Byrne, TD

New EU Directive on New Psychoactive substances

Joint Committee on Health Meeting 8 February 2017

I am here today to seek the Committee's approval to "opt-in" to the provisions of this Directive as provided for under Protocol 21 to the Lisbon Treaty.

Purpose of this Directive

This Directive on new psychoactive substances is part of a package reforming the legislation on new psychoactive substances. In short the purpose of this Directive is to add new psychoactive substances, often known as "head-shop drugs" or "legal highs", to the list of drugs subjected to criminal law provisions on illicit drug trafficking.

From a public health perspective this is a very important measure. New psychoactive substances pose significant public health and safety risks. In 2009 24 new substances were reported to the European Early Warning System. By 2015 this has increased to 98 bringing the total number of new substances monitored to more than 560 – with more than 400 (70%) of these detected in the last five years alone. The consequences for users are often fatal. In Ireland in 2014 (most recent figure which is available) there were 13 deaths resulting from new psychoactive substances.

The effect of the Directive for Ireland is that prohibited psychoactive substances will come under the standard criminal regime for dealing with drug trafficking under Irish law, the Misuse of Drugs Acts, 1977.

Under this legislation new psychoactive substances are controlled either by name or by generic definition (a precise definition of a group of substances which share the same compounds or molecular structure. This approach has served Ireland well and ensures a quick response to new emerging substances. While the substances are already illegal under Irish legislation the Directive will streamline and clarify the EU framework and will ensure a swifter better coordinated response at EU level for the benefit of all member states including Ireland.

As well as extending the criminal law provisions which currently apply to substances covered by the UN Conventions and to synthetic drugs to new psychoactive substances the Directive also includes a definition of new psychoactive substance, a provision to include new psychoactive substances in control measures and a provision which allows member states to maintain or introduce national control measures.

The Directive is part of a legislative package designed to improve the EU response to the rapid emergence of new psychoactive substances.

There is an accompanying Regulation designed to improve monitoring, early warning information exchange and risk assessment for new psychoactive substances. Taken together, the legislation will ensure a quicker response to the emergence of new psychoactive substances by EU Member States including Ireland.

The EU Council adopted its position on the package in December and negotiations with the European Parliament are expected to start shortly.

Opt-In under Protocol 21

Under Protocol 21, Ireland has the discretion to “opt-in” to measures relating to criminal justice cooperation on a case by case basis. Prior Oireachtas approval is required in accordance with Article 29 of the Constitution. As the legal basis used for this Directive, Article 83(1) is a Title 5 measure covering Freedom, Security and Justice, it is subject to this “opt-in” clause.

This is the first time my Department has managed an “opt-in” process under Protocol 21 and it is also the first time this Committee has had to consider such a request.

Under normal circumstances the process is handled by the Department of Justice and Equality. However as it is the Misuse of Drugs legislation, which falls under my Department, which will give effect to the Directive it was agreed between both Departments that my Department would take the lead.

The process therefore involves Motions being placed on the order Paper of both Houses of the Oireachtas either for debate or referral to the appropriate committee.

In this instance the Motions were referred to this Committee for consideration. If approved, the Directive is then referred back to the Houses of the Oireachtas with the recommendation to approve. Once approved formally by the Houses, the EU institutions are notified.

To conclude I am here today to ask you to approve Ireland’s “opt-in” to this very important public health measure. The Directive will allow for a more effective and efficient EU response to new psychoactive substances which appear on the EU market at an unprecedented pace and which pose a risk to public health and safety.