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**'I/A' ITEM NOTE**

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From: General Secretariat of the Council  
To: Permanent Representatives Committee (Part 2) / Council

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No. prev. doc.: 9567/17, 9957/17

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Subject: 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  
- Political agreement

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1. The market for new psychoactive substances (NPS) has changed dramatically in the past few years and NPS appear in the EU at unprecedented pace posing a risk to public health and safety<sup>1</sup>. Currently, Council Decision 2005/387/JHA<sup>2</sup> establishes the EU-wide system for dealing with NPS entering the European market.

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<sup>1</sup> 24 new substances were reported to the European Early Warning System in 2009, 41 in 2010, 49 in 2011, 73 in 2012, 81 in 2013, 101 in 2014 and 100 in 2015.

<sup>2</sup> Council Decision 2005/387/JHA of 10 May 2005 on the information exchange, risk-assessment and control of new psychoactive substances (OJ L 127, 20.5.2005, p. 32).

2. On 11 July 2011 the Commission submitted a report on the assessment of the functioning of Council Decision 2005/387/JHA concluding that, while Council Decision 2005/387/JHA was a useful instrument, it was not sufficient, considering the scale and complexity of the problem, and therefore required revision. Subsequently, the Council invited the Commission to table in 2012 a legislative proposal on NPS with a view to revising Council Decision 2005/387/JHA on the basis of findings identified in the Commission's assessment and some additional recommendations outlined in the Council conclusions<sup>3</sup>.

3. On 17 September 2013, the Commission tabled a proposal for a Regulation on New Psychoactive Substances (proposed NPS Regulation)<sup>4</sup> and a proposal for a Directive amending Framework Decision 2004/757/JHA (proposed NPS Directive)<sup>5</sup>. The proposed NPS Regulation has been examined by the Horizontal Working Party on Drugs (HDG) since October 2013.

4. COREPER decided on 27 May 2015 that the discussion on the proposal should no longer be pursued on the legal basis of Article 114 TFEU (related to the improvement of the functioning of the internal market), but on the new legal basis of Article 83(1) TFEU (criminal law) and mandated the HDG to resume its work on that basis including the examination of the possibility to include the temporary bans.

5. On 6 April 2016, there was a second COREPER discussion, during which the change of the legal basis to Article 83 TFEU in the form of a Directive was reiterated and Commission was invited to present a proposal on amending the founding Regulation of the European Monitoring Centre for Drugs and Drug addiction (EMCDDA), by introducing the provisions on the Early Warning System and risk analysis and assessment in this Regulation.

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<sup>3</sup> See doc 17730/11.

<sup>4</sup> See doc. 13857/13.

<sup>5</sup> See doc. 13865/13.

6. On 30 August 2016, the Commission presented such a proposal for a Regulation amending the EMCDDA Regulation (doc. 11520/16), which was further examined by the HDG at its meetings on 7 September 2016, 21-22 September 2016, 11-13 October 2016 and 9 November 2016, following which a few written consultations were launched.

7. Subsequently, given the extensive debates that have been held on these texts and the progress made, the Presidency obtained a General Approach on the draft NPS Regulation and the draft NPS Directive at the JHA Council meeting on 8-9 December 2016.

8. In January 2017, trilogues with the European Parliament and the European Commission were started on the NPS legislation. One of the outstanding issues in these negotiations was the use of implementing/delegated acts for including new psychoactive substances in the definition of drug.

9. The Presidency discussed the issue of implementing/delegated acts and the modalities of delegating power to the Commission at the COREPER meetings on 29 March 2017 and 10 May 2017. At the latter meeting, Member States decided to accept the use of delegated acts (through Option 2 as foreseen in the Inter-Institutional Agreement on Better Law-Making<sup>6</sup>) for securing, in return, all the major amendments introduced to the NPS legislation by the Council, including the six-months deadline for the implementation through national measures. The final draft texts of the NPS Regulation and NPS Directive, representing the provisional consensus reached at the technical meeting held on 27 April 2017, were also presented to the Member States and endorsed by COREPER on 10 May 2017.

10. This consensus on the NPS legislative package has been confirmed at the final trilogue on 29 May 2017. On 31 May, COREPER agreed to issue a letter to the Parliament outlining the text of the NPS Regulation, contained in doc. 9566/17. COREPER also confirmed the agreement reached on the draft NPS Directive, contained in doc. 9567/17.

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<sup>6</sup> Inter-Institutional Agreement on Better Law-making, OJ L 123/14, p. 13.

11. At its meeting on 8 June 2017, the LIBE Committee of the European Parliament voted on the text agreed in the trilogue. Subsequently, the Chair of the Permanent Representatives Committee received a letter from the Chair of the LIBE Committee indicating he would recommend to LIBE and Plenary, and subject to lawyer-linguist revision, to approve the agreement reached in the trilogue without amendments and outlining the text of the NPS Directive (doc. 9957/17).

**12. On this basis, COREPER is invited to advise the Council to adopt a Political agreement on the text of the NPS Directive, contained in doc. 9957/17.**