



**Informal meeting of the Justice and Home Affairs Ministers
Sopot
18-19 July 2011**

New challenges to EU anti-drug policy.

I. Introduction

Every hour an EU citizen dies of a drug overdose. There are as many as 8500 victims of drug overdose in the EU annually. For the first time in years, the number of drug-related deaths has been increasing. For every drug victim there are 20 to 25 individuals who have survived an overdose, some of who may still suffer from severe chronic health problems.

Drug-related crime does not stop at the EU's borders- it has a global reach. The manufacture of, and trafficking in, illicit drugs and precursors used for their production undermine the stability of "fragile states" where the drug business takes place. This fuels corruption, money laundering and weakens governance.

Last year, the Council adopted an approach that engages the EU in the prevention of cocaine and heroin threats. In the Presidency's opinion, it is high time to undertake necessary measures against another great threat, i.e. synthetic drugs.

II. Combating threats posed by existing and emerging synthetic drugs

Synthetic drugs pose a significant global problem. In the EU, Amphetamine-Type Stimulants continue to be among the most frequently used drugs. Synthetic drugs remain the second most popular type of drugs in the EU in terms of consumption.

Europe is the world's largest producer of amphetamine and one of the largest producers of MDMA¹. Amphetamine is distributed mainly to European and Middle Eastern markets. Ecstasy tablets are smuggled around the world. A new dangerous development is the barter of synthetic drugs in exchange of cocaine and heroine. It is in this way new markets for ATS are built up.

¹ 3,4-Methylenedioxymethamphetamine colloquially known as ecstasy.

The EU has a strong responsibility to combat the production of and trafficking in synthetic drugs, many of which are produced on its own territory. The synthetic drugs market is very flexible. Given the fact that synthetic drugs can be produced almost anywhere provided the necessary drug precursors are available, this part of the illicit market adapts rapidly to changes in demand and supply of different drugs. Recent forensic analyses have shown the extremely high dynamism of drugs markets and their ability to adapt to new challenges and circumstances. Moreover, the analyses indicate a strong correlation between the supply, demand, restrictions in availability of precursors, and actions taken by law enforcement authorities. Efforts made to reduce the supply of one category of drugs, results in organised crime groups shifting their focus, which in turn leads to an increase in the supply of another.

Moreover, based on the findings of the OCTA 2011 report, it is clear that the involvement of organised crime groups in the production and distribution of synthetic drugs is a major hazard to public order.

Chemical precursors used for the production of synthetic drugs are smuggled into the EU from different regions of the world. According to OCTA 2011², precursors in industrial quantities are diverted within the EU and obtained from regions such as the Former Soviet Union and the Western Balkans. Drugs produced in the EU are either distributed around the EU or smuggled into third countries. These illegal activities can only be effectively countered by the joint effort of EU Member States in close cooperation with third countries that are precursor producers and transit countries.

Furthermore, apart from the widely known and increasing threat posed by traditional synthetic drugs such, a new alarming phenomenon has appeared in this respect in recent years. A surge in popularity of new psychoactive substances, introduced into the market, the so-called *legal highs*, has proved a real challenge for Member States in recent years. The fact that they present unknown health risks adds further complexity to the issue of growing use of new psychoactive substances. As recently as 2010, Member States reported to the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) and Europol a record number of 41 new psychoactive substances.

These substances are a real challenge for the services responsible for the protection of public health and order because they are introduced into the market as legal

² Doc. 8709/11 JAI 217 COSI 19 CRIMORG 45 PESC 453 RELEX 355

substances available to a wide range of consumers. *Legal highs* on sale are frequently labeled with a “not for human consumption” sign. They are also purposefully falsely labelled as e.g. “bath salt”. Their status as legal substances could also make potential users wrongly believe that they are safe, since they are sold lawfully. However, the experiences of some Member States show that these substances can pose a serious threat to human health or even life. An example of an EU response to threats from this complex phenomenon is the Council Decision 2010/760/EU of 2 December 2010, regarding the submitting of 4-methylmethcathinone (mephedrone) for control measures.

The findings of the 2011 OCTA report confirm the increasing involvement of organised crime groups in the distribution of certain new psychoactive substances.

Taking into account the above-mentioned figures and need for the Member States to adopt a common approach to the challenges posed by synthetic drugs, including the emergence of new drugs, the Polish Presidency has undertaken the decision to table a draft European pact against synthetic drugs that will intensify the EU’s activities in this field, fulfilling the declaration contained in the 2010 Pact against heroine and cocaine.

III. Addressing new challenges to EU legislation on drugs

The issue of new psychoactive substances and its dynamics are further challenges that the Member States have to face in order to effectively protect the health and safety of their citizens. They need to ensure the protection of public health against the new threats posed by these substances, whilst avoiding the negative impact on the freedom of trade - this is of essential importance. We should remember that these substances are legal and produced in various forms. Identification of harmful ingredients and their prohibition need to be accompanied by monitoring and robust risk assessments. Current procedures provide producers with the possibility of introducing changes to the molecular structure of the product, transforming it into a legal substance.

Challenges posed by new synthetic drugs require the development of effective and rapid mechanisms of cooperation between the Member States. Experience shows that individual responses do not solve the problem. Owners of shops selling such substances move to countries where they do not face any legal constraints. It is therefore necessary to address this challenge together, at the EU level.

Therefore, we welcome the evaluation of the implementation of Council Decision 2005/387/JHA of 10 May 2005 on information exchange, risk-assessment and control of new psychoactive substances, presented by the European Commission in July 2011. This evaluation has revealed that the existing instrument of cooperation is no longer able to meet new challenges. It identifies a number of problems with the current instrument, hindering effective cooperation, e.g.:

- The instrument is not fit to tackle the large numbers of new psychoactive substances emerging on the market, because it addresses individual substances, through a lengthy process.
- The instrument is reactive: controlled substances are quickly replaced with new ones with similar effects following small modifications of their chemical composition.
- The response to the emergence of these substances is inadequate.

On the other hand, the case for addressing trafficking of illicit drugs together, at the EU level, is compelling. National answers to illicit drug trafficking are insufficient. Member States who take unilateral action may clamp down on the production of, or trafficking in, illicit drugs in their territory. By doing so they may improve their own drug situation temporarily, but it could affect drug problems in their neighbouring countries as traffickers would simply shift smuggling routes or change methods for transporting or concealing drugs. An intense exchange of intelligence and enhanced cooperation among law enforcement agencies is crucial for identifying new smuggling routes and concealment methods, in order to disrupt drug trafficking and dismantle organised crime networks.

Confronted with increasingly mobile, flexible and international synthetic drugs traffickers, the traditional methods of investigation are no longer sufficient. This is especially true as these criminal networks, given the increasing pressure of law enforcement, now also try to operate under the cover of a legitimate business. That is why concrete steps should be considered to improve prevention, detection and disruption of drugs criminal rings through financial investigation, the fight against money laundering, corruption and the confiscation of assets.

As profits from manufacturing and trafficking of illicit drugs are major incentives to engage in these criminal activities, the EU must step up its efforts to deprive drug trafficking networks of their material gains. The improvement of methods of confiscating drug traffickers' assets represents an effective way of tackling this scourge, in particular at times of tightening public budgets. This could reinforce the financing of cross-border drug cooperation. We look forward to the upcoming initiative

of the Commission to modernise and enhance the EU legal framework on confiscation of Criminal Assets.

The definition of drug trafficking offences has been approximated across EU by the Council Framework Decision 2004/757/JHA of 25 October 2004³. It also established minimum penalties and introduced liability of legal persons in this field. New developments and phenomena may provide ground for debating a change of this legal framework in the years to come.

IV. Other key activities in the area of the European drug policy in the second half of 2011

Regarding actions to be taken to develop European drug policy, the Polish presidency looks forward to the initial results of the external evaluation of the EU Drugs Strategy (2005 – 2012) and its Action Plans, that will be presented by the European Commission. Its results will be taken into account when addressing new fundamental challenges or when elaborating a new anti-drug strategy.

In October 2011, Warsaw will host participants of the EU – Eastern Europe Conference. The Polish Presidency hopes that this conference will give a new impetus to cooperation between anti-drug authorities of EU Member States and other participating countries.

Questions:

1. Do Ministers support the proposed course of action in order to effectively fight against organised crime involved in the illicit production and trafficking of synthetic drugs?
2. What are the greatest threats from new psychoactive substances? Do you agree that there is a need to undertake joint action to effectively combat these threats?
3. Do you agree that Council Decision 2005/387/JHA needs to be amended to effectively respond to emerging health threats posed by new psychoactive substances introduced into the EU market?

³ 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.