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**EUROPEAN LEGISLATIVE
VISION AND BASES OF
THE NATIONAL DRUG
STRATEGY 2022–2026**



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Introduction

In the complex content of activities to prevent and combat drug trafficking and illicit consumption, a very important component is related to European regulations in this field, which, together with the specifics of social policies, intervention management and penal policies, provide the basis for European and national drug strategies.

The effectiveness of the intervention of institutions and professionals in the fight against drugs fundamentally depends on the legislative and strategic bases established at European and national level. The activity of police and justice professionals, in order to prevent and combat *illicit drug trafficking*, is complemented by the activity of professionals in the field of preventing and combating *illicit drug use*, the consonant intervention of the social worker, psychologist, doctor and sociologist being crowned with success in a strategic, managerial and normative context very well built and permanently adjusted to the dynamics of social realities related to the drug situation. The common regulatory vision at European level is all the more important, in the context in which criminal activities related to drug trafficking and illicit consumption have an increasingly cross-border component.

Through the continuous expansion of its effects at international level, the phenomenon of drug trafficking and illicit consumption determines the adoption of a common, coherent vision of intervention through social policies and strategies, to a growing social problem at international level. "It is obvious that the internationalization of social problems, as well as modern possibilities of collaboration, require new responses adapted to actual situations" (Buzducea, 2010, p. 43).

Both prevention activities and those combating drug trafficking and illicit consumption require a common strategic and legislative vision, good interinstitutional coordination and multidisciplinary intervention, through which professionals' interventions can be streamlined in the increasingly complex problem that determines illicit drug use. Most of the times, social problems, identified in the field work of social workers, precede medical and psychological ones, determined by consumption and addiction. On the other hand, problematic elements of social or school conduct (especially in adolescents), identified by psychologists or school counsellors, also require the intervention of the social worker or doctor. Also, after therapeutic intervention to treat the user's addiction to illicit drugs, the user returns to the social environment, with all the pitfalls of returning to addictive behaviour. Thus, a permanent collaboration and coordination of the efforts of intervention of specialists in the field is required, and the conclusions drawn from their activity become important landmarks in the normative construction and especially in the social policies and strategies in the field of drugs.

The alarm signals regarding the disastrous effects of drug trafficking and illicit consumption, coming from the core of the practice of professionals in the field, tend towards a better visibility and valorisation within social or normative policies. Sometimes, however, they are counterbalanced with factors of social pressure or economic interest, which ignore the harmful effects of the scourge of drugs on individuals and society. "The WHO's approach, under the motto "the drug kills" as, in fact, the various and sporadic stances against drug use, remain singular voices, isolated in the form of bizarre and anachronistic islands, anacolute vestiges, surrounded and upset by the ocean of indifference, in which, not infrequently, the dizzying typhoon is aroused, which completes its sadistic work by placing the weakened body of the consumer, initially

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naïve, then toxicomaniac, on the autopsy table, thus replacing the ecstatic-hallucinatory pseudo-paradisiacal “kick” with the cruel reality” (Iftenie, Dermengiu, 2009, p. 320).

European social policies and the vision of the drugs strategy lay the foundations for effective regulation of drug control enhancing, especially in a context where regulations also cover the licit production and trade of psychotropic substances or precursors.

The European regulatory framework also provides the bases for institutional organization, prioritization of essential components of anti-drug activities, unique standards at European level, and a harmonization of activities related to demand or supply reduction, in the context of the need for the most efficient front to prevent and combat both drug trafficking and illicit consumption.

The guidelines established by the normative acts applicable worldwide (by adhering more and more states to their provisions) are considered, developed and matched with regional realities by the European normative acts in the antidrug field. It also takes into account both the particularities of drug trafficking and illicit consumption at European level, as well as the possibilities of establishing mechanisms for cooperation and synchronized action in preventing and combating this phenomenon at European Union level, mechanisms much more efficient (in the context of European administrative and functional compatibility) compared to systems deployed worldwide in the fight against drugs, for in their case, there are sometimes missynchronizations and disharmonies of the components of the mechanisms of action.

Taking over the principles established by previous international normative acts, the European normative acts transpose into the Community normative ensemble, the imperatives of common procedures, cooperation and permanent information between Member States, in a

Community context that allows their effective implementation in the activities to prevent and combat drug trafficking and illicit consumption. Permanent notifications and information between the states of the European Union also determine a continuous improvement of all means and techniques of intervention in the activity of preventing and combating drug trafficking and illicit consumption (including complex variants of substances with special regime and precursors), through a permanent exchange of experience and a continuous efficient adjustment of the activities to combat these crimes caused by the permanent novelties of the methods and techniques used to commit drug law offences.

European normative acts are presented and analysed in the light of the specifics of their evolution, both the basic framework version and the specificity of subsequent changes, determined by the dynamics of European social relations, by the evolution of vision and strategies in the field, as well as by the need to harmonize and update them by virtue of amending or adopting new normative acts, with which they must be correlated. The dynamic and permanent evolution of these elements, which have led to changes in European normative acts and strategies, have also directly influenced the permanent changes and updates of normative acts in national law, as well as of national strategies in the field of drugs. There is a permanent interdependence between regulations on preventing and combating drug trafficking and illicit consumption and the response to adapt and constantly update social policies and norms in relation to the social dynamics of this phenomenon. Actions to prevent, inform and raise awareness of the population are increasingly important, much more effective than those related to sanctioning regulatory intervention, in the context of increasing statistical indicators on drug trafficking and illicit consumption.

- **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**

The imperative social context that led to the adoption of this normative act, presented in its supporting preamble, is represented by all the implications of illicit drug trafficking, which is *a threat to the health, safety and quality of life of citizens of the European Union, as well as to the legal economy, stability and safety of the Member States*. Thus, the complex effects of illicit drug trafficking are captured, which cumulate affecting the physical and mental health of the population, with implications on the economy of states, as well as in terms of deviance, delinquency, crime and national security. It also invokes the need to adopt *minimum rules on the constituent elements of illicit drug trafficking offences and precursors that will allow a common approach at European Union level* in the field of combating illicit drug trafficking. The preamble also states that the penalties laid down by Member States should be *effective, proportionate and dissuasive and include custodial penalties*. In order to particularize the sanctions and individualize the punishment, the most important elements are considered to be *the quantities, the type of drugs trafficked, but also the situation in which the crime was committed within a criminal organization*. The provisions relating to criminal liability, confiscation and the need to harmonise the provisions and measures in this field across all the rules in force in the Member States of the European Union are mentioned as necessary.

The need to include as soon as possible the new incriminated substances in the annex-tables of normative acts, as well as the clarity of the specifications regarding the commission of the criminal act, also corresponds to the imperative of legality of criminalization, being necessary that “the actual act committed, which is to be qualified as a crime, fully corresponds to the description that the legislator makes in the incrimination norm” (Ciobanu, Bogdan, 2015, p. 47).

The definitions in this Framework Decision refer to terminology in international normative acts, which is already used in the signatory states (the most important being the Single Convention on Narcotic Drugs of 30 March 1961, the Convention on Psychotropic Substances of 21 February 1971, the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20 December 1988).

The acts committed without right and incriminated are:

a. production, manufacture, extraction, preparation, offering, marketing, distribution, sale, delivery under any conditions, brokering, dispatch, dispatch in transit, transport, import or export of drugs;

b. cultivation of opium poppy, coca shrub or cannabis;

c. possession or acquisition of drugs for the purpose of carrying out one of the activities referred to in point (a);

d. production, transport or distribution of precursors, knowing that they are to be used in or for the illicit production or manufacture of drugs’ (Article 2 of 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).

The Framework Decision underlines the relevance of guilt in the form of intent in relation to the commission of these criminal acts. “When the perpetrator does not know or misknows the action or inaction he or she performs, implicitly he or she no longer foresees what will follow, therefore, due to

the factual error regarding the action or inaction, there will be no guilt in the form of intention” (Pascu, et al., 2014, p. 125).

Where those impugned acts relate to own consumption, the Framework Decision considers them to be exceptions, referring to the domestic legislation of each State, which defines the concept of *own consumption*.

It also criminalises inciting, aiding or abetting or attempting drug law offences, again referring to the rules of national law of each European country.

As regards the specificity of sanctions, they must be effective, proportionate and dissuasive, and as regards their duration, depending on the social danger of the acts offences, they can range from criminal penalties involving deprivation of liberty of a maximum duration of at least one to three years, to criminal penalties involving deprivation of liberty of a maximum duration of at least five to ten years, in the following situations (referred to in Article 4(2) of 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):

- the offence involves large amounts of drugs;
- the offence involves drugs most harmful to health or the offence has caused serious harm to the health of several people.

Member States shall take all necessary measures to ensure that the offences referred to in paragraph 2 are punishable by criminal penalties involving deprivation of liberty of a maximum duration of at least 10 years if committed within the framework of a criminal organisation, and that the offences referred to in point (d) of Article 2(1) are punishable by criminal penalties involving deprivation of liberty of a maximum duration of at least five to 10 years if the offence was committed within the framework of a criminal organisation (Article 4(3) and (4) of Council Framework

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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).

Furthermore, without prejudice to the rights of victims and other bona fide third parties, “each Member State shall take the necessary measures to enable the substances which are the subject of the offences referred to in Articles 2 and 3, the instrumentalities used or intended to be used for the purpose of committing such offences and the proceeds from crime, to be confiscated, or property the value of which corresponds to that of those proceeds from crime, substances or means to be confiscated” (Article 4(5) of 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).

Member States may provide for a reduction of these penalties, in certain circumstances, where the offender renounces the criminal activity relating to trafficking in drugs and precursors and provides administrative or judicial authorities with information which they would not otherwise have been able to obtain, helping them to prevent or limit the effects of the offence, to identify or bring to justice the other offenders, find evidence of, or prevent further offences referred to, in Articles 2 and 3 (Article 5 of 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).

In criminal activities related to illicit drug trafficking and consumption, liability and sanctions can be imposed not only on natural persons but also on legal persons. Regulating the liability of the legal person, the Framework Decision indicates the possibility for natural persons to commit such offences in the interest of legal persons, acting individually or on the basis of legal relationships of management, representation, decision

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or control for the legal person, exercised by natural persons designated for that purpose. In such situations, triggering liability and applying the sanction to legal persons, do not exclude prosecution against a natural person who is the perpetrator, instigator or accessory to such offences (Article 6 of 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).

The sanctions applicable to the legal person must be effective, proportionate and dissuasive (following the same particularities as the sanctions applicable to natural persons), including criminal or administrative fines, possibly also other sanctions, such as:

- exclusion from entitlement to tax exemption or other advantages or public aid;
- temporary or permanent disqualification from commercial activity;
- placing under judicial supervision;
- judicial winding-up order;
- temporary or permanent closure of establishments used to commit the offence (Article 7 of 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).

The rules governing the legal regime of confiscation of property which makes the object of criminal offences, whether used or resulted from criminal offences, apply to both natural and legal persons in connection with drug offences.

Depending on the specificities of national law, there may be differences in regulation concerning nationals, territorial jurisdiction or extradition, including in the area of drug law offences.

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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 shapes the regulatory framework with regard to the main components of the constituent content and punishing specificity in the field of drug law crime, being not only a European legal basis in this field, but also a very important milestone in harmonising the regulations of EU countries' national law on drug law offences. This also paves the way for good cooperation between Member States (with the same regulatory bases), especially in the context of the continuous expansion of the cross-border dimension of crime in the area of drug trafficking and illicit consumption.