

**HEALTHCARE, LIFE SCIENCES & PHARMACEUTICALS**

Change to the Anti-Drugs Law: A new distinction between trafficking and use

On 8 September, Law 55/2023 of 8 September was published to amend Decree-Law 15/93, which approves the legal framework on the trafficking and use of narcotic drugs and psychotropic substances (“Anti-Drug Law”). This new law decriminalises synthetic drugs and makes a new distinction between consumption and trafficking.¹

Prior to these amendments, the use and possession of synthetic drugs was punishable by imprisonment or fines.² However, the new legislation introduces a significant change in this respect by excluding synthetic psychotropic substances from the criminal sphere.

Law 55/2023 also clarifies the decriminalisation of the possession of drugs for consumption, regardless of the quantity, and establishes regular deadlines for updating the relevant regulations.

Amendments to the “Anti-Drug Law” have been published. This new law decriminalises synthetic drugs and makes a new distinction between consumption and trafficking.

The law clarifies the decriminalisation of the possession of drugs for consumption, regardless of the quantity.

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¹ Decree-Law 15/93 of 22 January, available [here](#).

² Article 40 of the previous version of Decree-Law 15/93 stated that “Anyone who consumes or cultivates, acquires or possesses for their own use any of the plants, substances or preparations included in Schedules I to IV will be punished by imprisonment for up to three months or a fine of up to 30 days”.

The onus is now on the police authorities to prove that the amount found in someone's possession was not intended for personal use but for trafficking.

We will now look at some of the new features in detail.

Enforcement by police authorities

Article 2 of Law 30/2000³ stipulates that, in order not to be subject to criminal proceedings, the quantities detained could not “*exceed the quantity necessary for an individual's average consumption over a period of 10 days*”.

In this previous version, the legislature made a clear distinction between a criminal offence and an administrative offence, depending on the quantity possessed. In other words, if the quantity exceeded the average individual consumption over a period of 10 days, it constituted a consumption offence, as provided for in Article 40(2) of Decree-Law 15/93. If not, it was only an administrative offence.

Thus, when a quantity below this limit was seized, the police authority immediately notified the report and the seizure to the Commission for the Deterrence of Drug Addiction (“CDT”) in order to bring the administrative offence proceedings.

The current wording allows the purchase and possession of a quantity of drugs exceeding the average individual consumption for more than 10 days if it can be proved that it is intended for personal use only.

The change in the law reflects a reversal of the burden of proof. The onus is now on the police authorities to prove that the amount found in someone's possession was not intended for personal use but for trafficking.

No limit on the quantity allowed

The current wording of Article 40 of Decree-Law 15/93 provides that the purchase and possession for more than 10 days of a quantity of drugs in excess of average personal consumption is permitted if it is proven that it is intended for personal use, regardless of the quantity.

Thus, if an individual has a quantity in excess of the average for a 10-day consumption period, but it is proven that it is for personal use (without specifying the maximum quantity allowed), he or she will not be punished.

The absence of a limit on the quantity allowed blurs the line between trafficking and consumption, and thus makes it difficult for the police authorities to determine the purpose of drug possession.

³ Law 30/2000 of 29 November, which establishes the law on the use of narcotic and psychotropic substances and the health and social protection of persons who use such substances without a doctor's prescription, available [here](#).

This amendment aims to clarify the system of penalties for the seizure of drugs for consumption, regardless of the quantity.

Increased penalties for cultivation

Decree-Law 15/93, as it currently stands, stipulates that the acquisition and possession of narcotics for personal use, regardless of the quantity in the offender's possession, is only an administrative offence – *with the exception of cultivation*.

The new legislative amendment maintains the penalty of imprisonment or a fine for the cultivation of plants, even for personal use, by stipulating in Article 40(1): “*Anyone who cultivates plants, substances or preparations listed in Tables I to IV for personal use will be punished by imprisonment for up to 3 months or a fine of up to 30 days*”.

This amendment aims to clarify the system of penalties for the seizure of drugs for consumption, regardless of the quantity. The role of the courts will be crucial in interpreting this new legal framework on synthetic drugs in the coming years.

This law entered into force on 8 September 2023. ■