

# NEW PSYCHOACTIVE SUBSTANCES IN POLAND. THE ANALYSIS OF POLICY RESPONSES AND ITS EFFECTS

## NOWE SUBSTANCJE PSYCHOAKTYWNE W POLSCE. ANALIZA ROZWIĄZAŃ I SKUTKÓW POLITYKI

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### Abstract

**Introduction:** The aim of this article is to analyse the process of creation and implementation of policy on new psychoactive substances (NPS) in Poland in the context of definitional and legal issues, social and market response, implementation of prevention programmes and scientific knowledge.

**New psychoactive substances and policy response in Poland:** New psychoactive substances are a subject to both criminal and administrative law in Poland. Two definitions that refer to NPS and two lists on which they can be placed are currently in force: the annex to the Act on Counteracting Drug Addiction and the annex to the regulation of the Minister of Health. Changes in legislation and the expansion of the list of scheduled substances in 2009-2015 were accompanied by an increase in health risks while the initial success of the policy was diminished with the revival of the NPS market.

### Streszczenie

**Wprowadzenie:** Celem artykułu jest analiza procesu tworzenia i implementacji polityki wobec nowych substancji psychoaktywnych (NSP) w Polsce w kontekście trudności definicyjnych i legislacyjnym, reakcji społecznych, rynku, implementacji strategii profilaktycznych i wiedzy naukowej.

**Nowe substancje psychoaktywne i polityka wobec nich w Polsce:** Nowe substancje psychoaktywne w Polsce podlegają zarówno przepisom prawa karnego, jak i administracyjnego. W polskim prawie funkcjonują obecnie dwie definicje odnoszące do NSP oraz dwie listy, na których mogą zostać umieszczone: załącznik do ustawy o przeciwdziałaniu narkomanii i załącznik do rozporządzenia ministra zdrowia. Zmianom w legislacji i rozszerzaniu listy substancji zakazanych w latach 2009–2015 towarzyszył wzrost szkód zdrowotnych, a początkowe sukcesy działań wymierzonych w NSP zostały przyćmione efektami odrodzenia się ich rynku.

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### Critical evaluation of new psychoactive substances policy in Poland:

New psychoactive substances challenged nearly every aspect of drug policy in Poland, starting from definitional struggles, through establishing frames of intervention, monitoring and risk assessment, to institutional developments, risk communication, and treatment. The strong focus of NPS policy on the reduction of supply had its obvious shortcomings. The strategy proved to be time consuming and limited in its effectiveness. The NPS market changed dynamically and access to reliable knowledge on NPS was limited, whereas the policy network made of several institutions was flawed and lacked structural and financial resources.

**Conclusions:** The new psychoactive substances phenomenon was based on individual efficacy and economic effectiveness, new technologies, developed logistics, flexibility and responsiveness of the NPS market according to consumer requirements. It posed a challenge for drug policy and a risk that cannot be effectively controlled with 'traditional' repressive policies.

**Keywords:** New psychoactive substances, NPS, Legislation, Prevention, Poland

### Krytyka polityki wobec nowych substancji psychoaktywnych w Polsce:

Nowe substancje psychoaktywne stanowiły wyzwanie dla polityki narkotykowej w Polsce, począwszy od ustalenia ich definicji, poprzez stworzenie ram dla interwencji, monitoringu i oceny ryzyka, do działań instytucjonalnych, komunikacji ryzyka i leczenia. Koncentracja polityki na ograniczaniu podaży NSP miała wady: strategia okazała czasochłonna i mało skuteczna. Rynek NSP zmieniał się dynamicznie, dostęp do rzetelnej wiedzy o tych substancjach był ograniczony, a polityka wobec NSP – tworzona przez szereg instytucji – miała wady i braki w zasobach strukturalnych i finansowych.

**Wnioski:** Zjawisko NSP opiera się w znacznej mierze na sprawczości indywidualnej i efektywności ekonomicznej, rozbudowanej logistyce, nowych technologiach, elastyczności i wrażliwości rynku na potrzeby klientów. Stanowi wyzwanie dla polityki narkotykowej oraz ryzyko, którego nie można skutecznie kontrolować za pomocą „tradycyjnych” represyjnych narzędzi polityki.

**Słowa kluczowe:** nowe substancje psychoaktywne, dopalacze, legislacja, profilaktyka, Polska

## ■ INTRODUCTION

Although there is no specific historical record when the new psychoactive substances (NPS) exactly appeared in Poland for the first time, they emerged in public opinion about ten years ago. In the middle of 2008, the Polish media revealed the alarming phenomenon of new products being legally sold in shops and on the internet. Media reporting was intense and conveyed both information on the risk and moral panic messages [1]. At that time, the first Polish e-shop offering NPS was launched, and in the next two years about 1400 retail outlets were established across the country [2]. The rich assortment of various colourful products which packages explicitly informed 'not to be consumed by humans' were being sold to virtually all interested consumers as 'plant fertilizers', 'moustache glue' or 'Christmas tree decoration' with no formal restrictions or limits. Soon the first cases of NPS poisonings and even deaths were reported, and then politicians took matters in their own hands. In 2009, a new law was passed that provided a definition of these novel phenomena, extending

the list of banned substances, delegating responsibilities to various public institutions and services, and eventually challenging Polish drug policy to confront the rapidly growing market of multiple novel substances.

New psychoactive substances entered the scene in a country with a drug policy that can be considered one of the most restrictive in the European Union [3]. Polish regulations sidestep the process of drug law transformation across European countries towards a more comprehensive approach departing from criminalisation of drug use. Since 1997, the possession of any amount of drugs is penalised with up to three years of imprisonment and most often is a subject of prosecution [4], however since 2011, criminal proceedings can be discontinued in cases of possession of small amounts of illicit psychoactive substances. Between 1999 and 2012, the number of recorded crimes under the Act on Counteracting Drug Addiction increased from 16 thousand to more than 76 thousand. This state of affairs has been actively challenged by non-governmental organisations advocating a more liberal approach [5]. The restrictive solutions of drug pol-

icy have not effectively tackled the drug supply or demand. The consumption of psychoactive substances grew with a sharp increase noted between 2006 and 2010 [6] at the time when the NPS market was booming. Today, after almost ten years of fierce and uncompromising policy and several amendments to existing drug legislation that has expanded the list of scheduled substances, the issue of NPS still focuses the attention of the media, public opinion, politicians and users themselves.

The aim of the article is to analyse the legislative and institutional initiatives tackling NPS risk, as well as to identify the major obstacles to NPS policy implementation in Poland. We will also examine the role of social and market response, prevention programmes and research findings in the process how the response to the risk of NPS is constructed. We shall discuss the case of policy response to NPS in Poland from the perspective of the social sciences. As the phenomenon of NPS is a subject of several definitions of legal, pharmacologic and social origin, we assume that the term NPS comprises all 'new' substance types, both pure and branded, covering a whole range of pharmaceutical groups like stimulants, empathogenes, sedatives and dissociatives. NPS can be synthetic cannabinoids, cathinones, amphetamines, opioids, and other chemical drugs used for a whole range of individual purposes. EMCDDA (European Monitoring Centre for Drugs and Drug Addiction) defines NPS as 'synthetic or naturally occurring substances that are not controlled under international law, and often produced with the intention of mimicking the effects of controlled drugs' [7]. We claim that the distinctive feature of NPS and NPS-related risk is more the socio-cultural and cognitive aspect of their use embedded in social interactions, rather than the specific legal classification of substances and rational, objective calculations of evidence-based policy [cf. 8-11]. From the perspective of individual user, the notion of 'NPS' can be ascribed to various legal and illicit substances and labelled with several terms of local origin, often popularised by media [1, 12]. Legal psychoactive substance classifications set the framework for national policy and affect individual users with respect to their legal responsibility. The dynamics of NPS market stimulate regulation. On-going legislative initiatives may lead to incomprehension and misunderstanding about what NPS actually are as well as possibly triggering

several unintended consequences and increasing the prominence of risk [13].

The analysis of NPS policy documents was conducted by a research team during the implementation of the NPS-T project [14]. Data sources included official documents, legal acts, statistical data and scientific and popular science articles on NPS. Electronic versions of documents were collected from official websites of Polish Parliament and governmental institutions in public health. The websites were also searched to identify relevant information on NPS prevention and other policy measures. Scientific and popular science articles were collected from EBSCOhost database, Google Scholar, and official webpages of open-access journals. Analysis of various types of data collection sources used to answer research questions was employed to enhance our understanding NPS policy by delivering various accounts and perspectives, as well as to improve the comprehensiveness of the data [15, 16]. The major aspects of Polish NPS policy developments (definitions of NPS, demand, prevention and treatment-related issues, reasons and consequences of NPS policy, tasks and roles of policy institutions and effectiveness of NPS policy) were identified using principles of thematic analysis approach [17].

## ■ NEW PSYCHOACTIVE SUBSTANCES AND POLICY RESPONSE IN POLAND

### The new psychoactive substances market in Poland

In 2008, the website *www.dopalacze.com* was launched offering a wide range of various psychoactive substances. The offer comprised of legal products and was addressed to interested consumers of all ages. This was a breakthrough in the Polish NPS market as earlier NPS online sales tended to address a narrow group of drug scene insiders. Soon other online shops started to offer and promote NPS using social media and web forums. These were new tools in the marketing strategy that focused on the message that NPS were a safe alternative for illicit drugs [2, 18].

In mid-2008 the first retail outlet offering NPS was opened in Łódź, and was a first step in spreading the NPS trade beyond internet sales. In about half a year nearly 40 retail outlets were opened, mainly located in large town centres [19]. The next step in developing NPS sales was the introduction

of retail outlets in small towns as part of the *dopalacze.express* network [20]. By the end of 2010 there was about 1400 outlets across the country [21]. The main business NPS operators at that time were two sale networks: *dopalacze.com* and *smartszop*. The rapid expansion of the NPS market was possible due to the quick and easy start-up scenario. Shops founded on the franchise basis were available to contractors ready to invest 20-30 thousand Polish zlotys (ca. 5-6 thousand EUR) [19]. Consumers were offered a vast catalogue of substances and products including herbal mixtures, powders, pills and crystals, of which synthetic cannabinoids (e.g. JWH-180, UR-144) were the most popular. The assortment of popular NPS also consisted of mephedrone, penthedron, alpha-PVP and several other cathinones.

New psychoactive substances were offered as collector's items not intended for consumption. Therefore, NPS could be introduced and circulated without the standard safety procedures for manufacturers. Initially, several NPS products were provided with a compound list on packaging. Moreover, some were marketed as products with laboratory certificates. After releasing several novel substances under state control in 2009, information on product composition was removed from the packaging [19].

The open, legal market of psychoactive products has been a subject of media attention and public scrutiny. In October 2010, all retail outlets offering NPS were closed down following the decision of the Chief Sanitary Inspector. Twelve thousand NPS samples were seized, the majority of which were subsequently lab tested. For the next few weeks, online shops offered wholesale quantities of NPS at discount rates. After the amendment from 2010, expanding the catalogue of illicit drugs and prohibiting the manufacturing and sales of NPS, the online shops moved abroad, mainly onto Czech, Slovak and Dutch servers. According to police data, 43 online shops selling NPS operated in mid-2011 [18, 19]. The new law caused market operators to adopt a new strategy. Retail outlets could not operate within the branded commercial networks any longer, therefore NPS products were placed out of public view and offered together with other commodities at pawnshops, hot spots, sex shops, xerox services and outlets offering sport supplements, etc.

Changes in law also affected the sales of NPS in online shops. Information on the ingredients of NPS products was absent from packaging. Some e-stores started to offer pure substances in

the form of chemical reagents (so-called research chemicals). Purchasing NPS online is fairly easy; there is no need to use a credit card or pay by bank account. Many e-stores offer the option of payment at the post office. A buyer has just to fill the address form to receive products within 3-4 days [20]. Despite the several advantages of online purchases, individual transactions are more common. The results of a recent study (I-Trend project) shows that users received or bought NPS from their friends. Purchases in retail outlets and online were less common [20]. Data from interviews with opiate users show that most received NPS from friends or bought from street dealers [22].

In 2011, the NPS market began to recover. In 2013 the Customs Service, Border Guard and the police seized almost 3 kilograms of mephedrone, almost 1 kilogram of 4-MMC, more than half a kilogram of MDPV and 110 grams of synthetic cannabinoids [2]. In 2015 there was 224 NPS retail outlets across the country [23]. In recent years, an increase in the number of samples taken for lab tests and seized products can be observed, as well as an increase in fines on NPS distributors [21].

#### Prevalence of new psychoactive substances use

The knowledge on NPS use in the general population is limited. The results of two recent surveys commissioned by National Bureau for Drug Prevention conducted in 2012 and 2013 show that the life-time prevalence of NPS has not exceeded the level of 2%, with the highest prevalence among people aged 20-24 (8%) and 15-19 (4%) [2]. More comprehensive data is from surveys on young people conducted in 2008, 2010, 2013 and 2016 [24-27]. Data from 2008 show that 3.5% of adolescents 18-19 years of age had used NPS at least once. The results from 2010 were considerably higher as over twenty-four months the life-time prevalence of NPS increased almost three-fold (11.4%).

The results might seem striking but to some extent could be explained by extensive and dramatic media coverage distorting public opinion as well as semantic difficulties related to the use of Polish term 'dopalacze' in research questionnaires. The data on prevalence from 2013 [26] were considerably lower compared to that from 2010 (5.2%) and was interpreted by decisive legislative measures effectively tackling the NPS market [2]. The results of the survey carried out in 2016 [27] show that life-time prevalence of NPS among

young people has dropped to the level from 2008. A survey on NPS prevalence was also conducted by the State Sanitary Inspection in 2016 [23]. The results of the survey show that the life-time prevalence of NPS among 17-years old was 10.5% and three time higher than the results of the National Bureau for Drug Prevention survey on 8-19 year olds in the same year. This discrepancy of results could have been caused by methodological differences and sampling method.

### New psychoactive substances-related harm

In 2010, there was a total number of 562 NPS poisonings registered (both diagnosed and suspected) when the State Sanitary Inspection started to close smart shops. When in the next year the list of scheduled substances was extended, the number of poisonings dropped to 176, yet afterwards started to rise every year. The most dramatic increase (from 2513 to 7358 cases of NPS poisonings) was noted between 2014 and 2015 [21], directly after the list of scheduled substances was updated in July 2015 and the NPS vendors decided to immediately sell out products containing newly scheduled substances. In 2010-2015, the cost of NPS treatment services increased nearly five-fold from ca. 225 thousand EUR to 1,103 thousand EUR [21]. The number of NPS poisonings might be underestimated and the factual number of NPS poisonings may differ, which also concerns NPS-related deaths. Between 2013-2015, 34 NPS-related fatal incidents were reported but only in 8 cases were NPS confirmed to be the cause of death. New psychoactive substances poisonings have a gender-specific pattern as in 83% of cases they affect males [28].

### The policy response to new psychoactive substances

The problem of NPS in Poland is not a subject of a separate legislation. The instruments and the general idea of NPS policy have been taken from the provisions of Polish drug legislation in the Act of 29<sup>th</sup> July 2005 on Counteracting Drug Addiction [29]. Despite its presence on the market, NPS were not considered illicit substances until the first amendment to the Act of March 2009.

Polish legislation employs several terms to describe psychoactive substances. The Act of 29<sup>th</sup> July 2005 on Counteracting Drug Addiction includes definitions of 'narcotic drug', 'psychotropic sub-

stance', 'substitute drug' and 'new psychoactive substance'. These four terms might be applied to NPS. The defining features of this new drug phenomenon were the major issue in the development of policy measures as they not only constitute the subject of the intervention but also influence the creation and functioning of the NPS policy network comprised of governmental institutions, prevention and treatment programmes, research and various social actors.

### Definitional aspects of new psychoactive substances legislation

The most common term to express NPS in Polish language can be literally translated to English as 'afterburners' (*dopalacze*). An afterburner is a device used to gain power surplus in aircrafts and as a term it expresses a boost or a high one can get after NPS use. The term covers a broad range of heterogenic substances and products different than cannabis, opiates, amphetamines and other 'conventional' illicit drugs.

Legal attempts to curb the developing NPS market reflected these difficulties of definition. The first legal definition of NPS was introduced in the Act amending the Law on prevention of drug addiction [29] and the Law on State Sanitary Inspection from March 15<sup>th</sup>, 1985 [30], almost one year after the legislators recognised the problem of NPS for the first time. The notion of NPS was articulated as 'substitute drugs' (*środki zastępcze*) in following definition: 'substance of natural or synthetic origin in any physical condition or product, plant, fungus or a part thereof, containing such substance, used instead of a narcotic drug or psychotropic substance, or for the same purposes as a narcotic drug or psychotropic substance, which production and trading has not been regulated under a separate regulation; the substitute drugs are not subject to the rules on general product safety' (Art. 4.1).

The 'substitute drugs' include both natural and synthetic substances, apart from illicit drugs, which are the subject of criminal law, and substances available on the market under the rules on general safety (e.g. medicines, chemical compounds and products). These are used as an alternative to illicit narcotic drugs. The distinctive feature of this definition is not the substance itself but rather its effects and 'purposes' of its use, in other words, the individual motives for use of a given substance.

The definition of 'substitute drugs' was modified in the amendment of 2015. The same amendment introduced the term 'new psychoactive substance' as well as, for the first time, a list of new psychoactive substances specified in a regulation of the Minister of Health (Art. 44b/2)<sup>1</sup>. According to the Act, a new psychoactive substance was considered as: 'substance of natural or synthetic origin in any physical condition affecting the central nervous system'.

The list of new psychoactive substances is specified in the regulation of the Minister of Health (Art 44b/2). Since the definition of new psychoactive substance was introduced, the definition of 'substitute drugs' has undergone further changes: 'product comprising at least one new psychoactive substance or other substance with similar effects on the central nervous system which can be used instead of a narcotic drug or psychotropic substance for the same purposes as a narcotic drug or psychotropic substance, specified in the regulations based on Art. 44b.2'.

The above characterisation focuses on a product instead of substance alone, and meets the needs of law enforcement and other public institutions in NPS prevention. In the changing market environment, branded products contained of various ingredients, both legal and those already mentioned in the Annex to the Act and therefore illicit. This was another step toward the definition of substance use on the micro level by describing its function as one affecting the user's central nervous system like a narcotic drug. According to the legislator, this definition also addresses the social consequences of NPS use as affecting the brain processes, considered a major cause of increased individual and public health risk.

The definitional developments of NPS reflect the problem of construction and interpretation of NPS phenomenon but also emphasise difficulties in administrative proceedings. Since the first amendment to the Act, legislators supplemented the list of scheduled substances, therefore clearly distinguishing substances considered illicit and delivering clear guidelines for institutional proceedings in NPS prevention as well as for NPS producers endeavouring to launch the new product and avoiding the law.

<sup>1</sup> The introduction of new terminology corresponded to the decision 2005/387/JHA of the European Council on the information exchange, risk-assessment and control of new psychoactive substances, from 10 May 2005 [31].

### The list(s) of scheduled substances

The controlled substances are listed as 'narcotic drugs' and 'psychotropic substances', with each list divided into three addiction risk categories (Art. 31&32). The lists are attached as an Annex to the Act of 29<sup>th</sup> July 2005 on Counteracting Drug Addiction [29]. As NPS were considered 'substitute drugs' they became the third category of psychoactive substances identified in Polish legislation. The major issue is that 'substitute drugs' – contrary to 'conventional' drugs like amphetamine, cannabis or opiates (recognised as 'narcotic drugs' or 'psychotropic substances'), the possession, distribution and marketing of which is punishable with criminal sanction – are treated as a separate category of psychoactive substances under the provision of administrative law which only applies to NPS manufacturers and distributors but not users. However, once particular substances are listed in the Annex, they are no longer considered as a 'substitute' but are recognised as illicit 'narcotic drugs' or 'psychotropic substances'.

The first amendment to the Act of 2009 supplemented the list of scheduled substances with benzopiperazine (BZP), opioid receptor agonists (JWH-018), cathinones and 15 plants. These were found to be the most common ingredients of new psychoactive substances<sup>2</sup> [2, 32]. The legislative process lasted for almost one year, starting from March 2008 when the Council of the European Union had decided that BZP should be treated as an illicit substance and controlled by criminal sanction [33]. The first attempt of legal regulation of NPS was superficial; the Act addressed only few substances, did not introduce any specific administrative measures, and the penalisation of (mostly of exotic) plants sparked consternation among law enforcement as obtaining reference materials generated serious difficulties [33].

In 2010 and 2011, legislative actions against NPS intensified. The amendment from 2010 criminalised substances mainly from the group of synthetic cannabinoids<sup>3</sup> and mephedrone. The manufacturing and circulation of NPS became prohibited.

<sup>2</sup> *Argyrea nervosa*, *Banisteriopsis caapi*, *Calea zacatechichi*, *Catha edulis*, *Echinopsis pachanoi*, *Kava kava*, *Leonotis leonurus*, *Mimosa tenuiflora*, *Mitragyna speciosa*, *Nymphaea caerulea*, *Peganum harmala*, *Rivea corymbosa*, *Salvia divinorum*, *Tabernanthe iboga*, *Trichocereus peruvianus*.

<sup>3</sup> JWH-073, JWH-398, JWH-250, JWH-200, CP 47,497 + homologues, HU-210.

Control over supply of NPS was delegated to the Chief Sanitary Inspector with a right to withdraw a given product from circulation for up to 18 months if it was considered hazardous to conduct an assessment of its safety. The costs of analyses were to be covered by the subject of proceedings; that is by business operators [2]. The amendment from 2011 supplemented the Annex to the Act with another 23 novel psychoactive substances, mostly those detected in products secured in law enforcement operations [2, 32].

The new psychoactive substance market responded to the amendments with more new substances and products in addition to those already prohibited by law. After three years of NPS market developments, the Act was updated with the next amendment. The amendment from July 2015 delivered a massive list of more than one hundred new psychoactive substances supplemented in the Annex. Moreover, the Minister of Health was empowered to prepare the list of new psychoactive substances in a form of a regulation (Art. 44b1) [29], which allows for early reaction to the NPS market developments. Since 2015, the ministerial list has been supplemented four times and currently addresses 21 substances. On the other hand, the Annex to the Act is consequently growing and currently includes a total of 423 scheduled substances.

### New psychoactive substances prevention

While some of the NPS are controlled as illicit drugs, other non-scheduled NPS are subject to administrative law and sanitary control. Therefore, the Act on Counteracting Drug Addiction delegates responsibility for NPS prevention to State Sanitary Inspection. According to article 4.1.9a of the Law on the Sanitary Inspection [30], the Inspection shall supervise the implementation of sanitary control over production and circulation of NPS products. In case of immediate threat to human life or health, a State Sanitary Inspector may order several preventive measures, e.g. closure of the company or part thereof, closure of a public utility building or product withdrawal (art. 27.1). The sanitary inspector decides whether there are indications for identification of a given product as NPS and whether it has been marketed. Since 2011, a specialised unit of the Inspection, The Department of Supervision of NPS, analyses the internet in order to estimate the scale of the phenomenon and combat trafficking in NPS online by monitor-

ing shops offering NPS, as well as thematic forums, social networking sites and private ads. It collects information on emerging psychoactive substances and informs on the decisions of the state sanitary inspectors to the public.

The Inspection basically does fieldwork. It regularly monitors cases of NPS manufacturing or marketing. State sanitary inspectors obtain information about NPS marketing during their own investigations or receive information from institutions such as the police, Central Investigation Bureau, Main Pharmaceutical Inspectorate, custom services or the tax offices. The Inspection also organises conferences, distributes materials on NPS-related risks and runs 24/7 NPS info-line.

The other institution involved in NPS prevention is the National Bureau for Drug Prevention. The Bureau is legally responsible for the implementation and coordination of national policy toward illicit psychoactive substances in Poland. The Bureau had been monitoring the NPS situation for a few years prior to the implementation of new legislation [2]. By collecting information on new substances, the Bureau paved the way for policy measures with clearly defined aims to carry out legal interventions to eliminate NPS from society and focus on NPS education and prevention programmes for vulnerable populations, especially young people. The problem of NPS was addressed by launching a nationwide campaign targeting the health consequences of NPS consumption like 'NPS WILL BURN YOU OUT. FACE THE FACTS'. The campaign was mainly conducted online and was addressed to young people aged 15-25. It aimed at dispelling the myths around NPS (e.g. use of NPS is harmless) by providing reliable data on the risks associated with NPS use and stressing the issue of their legal status. Another awareness campaign implemented by the National Bureau for Drug Prevention was addressed to parents and educational professionals. The campaign based on the assumption that social and parental control plays an important role in prevention of NPS problems and offered a scenario for schools and educational professionals to conduct meetings with parents. The Bureau has also incorporated NPS-related issues in a universal drug prevention programme targeting school-age adolescents, founded on activation methods. The aim of this project was to provide young people, mainly school-age adolescents, with basic knowledge of NPS to enhance more in-

formed decision-making. The campaigns delivered a message on NPS risks and unavoidable disastrous effects of NPS on young people and emphasised the role of parents in risk behaviour prevention. Most of the information on NPS health risks and preventive measures can be found on a website run by the Bureau [34].

New psychoactive substances are also a subject of interest on several major governmental bodies, including the Ministry of National Education, Internal Affairs, Justice, Administration and digitisation, and last but not least, the Ministry of Health. In July 2015, the Prime Minister and Ministers of National Education, Internal Affairs, Justice, Health, Administration and digitisation, as well as the ombudsman for children, and representatives of various NGOs, including the Polish Scouting Association and MONAR (a major Polish NGO in drug prevention and treatment) signed the Social Pact Against NPS. Its aim is to coordinate activities of various institutions and organisations that deal with the problem of NPS. As the pact was signed, the social campaign ‘NPS steal life’, which aim is to raise awareness about the dangers of NPS use among young people, was launched under the leadership of the Minister of the Internal Affairs [35]. The campaign is addressed to parents, teachers and others who come into contact with young people, as well as to young people themselves. It provides knowledge on safety measures, informs about possible side effects of NPS consumption on the users’ health and shows how to behave in a risky situations and where to seek help.

To make the NPS control more effective, in 2015 an advisory board was established under the leadership of the Minister of Health, comprising of experts in the field of chemistry, pharmacology, clinical toxicology, psychiatry, social sciences and law. The task of the board is provision of NPS risk assessment in terms of threats to consumers’ life and health as well as delivering recommendations about inclusion of certain substances to the list of new psychoactive substances attached to the Ministry of Health regulation [36]. However, the assessment criteria are unclear, and the board has a predominantly bureaucratic character that does not guarantee a distinction between data collection procedures and the formulation of recommendations by independent experts. Therefore, questions have been raised as to whether the board’s role is simply to justify the decisions of the Minister of Health [37].

### New psychoactive substances treatment and harm reduction

The issue of NPS treatment is hardly recognised in Polish legislation. Treatment and harm reduction are the pillars of drug prevention, yet there is no specific treatment or harm reduction offer for NPS clients. NPS users may benefit from the offer already intended for traditional drug users like exchange of needles and syringes, health education and other forms of harm reduction. The data on NPS treatment is scarce and mostly based on NPS poisonings records and case studies, e.g. on methcathinone users who cooked up a drug on the base of OTC (over-the-counter) medicines [38, 39]. The lack of specific NPS treatment programmes is a result of the dynamics, exchange and fluctuations of multitude of substances on the market. Doctors and other treatment professionals do not have sufficient knowledge and instruments to treat NPS users. Therefore, only symptomatic measures are employed to slow down and limit the detected effects [28]. The initial phase of treatment is often discontinued as NPS clients are reluctant to participate in treatment, which usually takes place in detoxification units.

## ■ CRITICAL EVALUATION OF NEW PSYCHOACTIVE SUBSTANCES POLICY IN POLAND

New psychoactive substances policy in Poland was established in an atmosphere of moral panics fuelled by intense media reporting [1, 40]. At that time, knowledge on NPS were limited to data from international research and institutions as EMCDDA and from the NPS poisonings registry managed by the toxicology units across the country [28, 32] along with scarce epidemiological data on NPS prevalence among young people. Most of the epidemiologic data on NPS prevalence come from surveys commissioned by the National Bureau for Drug Prevention, the results of which in turn served as a monitoring tool for further legislative actions against NPS.

The legislative process has encountered several obstacles. The Act on Counteracting Drug Addiction recognises NPS as ‘substitute drugs’ – a term which can be applied to all psychoactive substances on the market. Most of the novel psychoactive substances detected on the market were put on the list of scheduled substances which currently



comprise a vast compilation of items with different structures, various effects and the whole scale of toxicity lumped together with no exceptions for those of relatively low health risk or consumer exposure. Between 2009 and 2015, 145 substances and 16 plants were scheduled, while in the same period only 9 substances became controlled on the EU level [37]. The list of illicit substances is growing as new substances and products are continually developed and launched on the market. There is a strong focus on supply reduction by eliminating particular substances from the market and by extending the list of illicit substances, which has its obvious shortcomings. The strategy is difficult to implement and time consuming because the preparation of amendments and legislation process as a whole is long and requires cooperation of several governmental bodies.

The knowledge about the risk of particular substances is limited, therefore some substances could have been scheduled without sufficient risk assessment, which is an instance of a type I error (when a given substance is considered risky even if there is no sound evidence) [41]. The levels of toxic and lethal concentration for most NPS are often unknown. In cases of polydrug poisonings (effects of several substances in one NPS product), determining the safe threshold is nearly impossible. In most cases, health professionals encounter the problem of toxic effects of unknown substances. In 2015, when the number of NPS poisonings was peaking, the substance or the name of the product was known in only 20% of cases [28]. Toxicological examinations are rarely conducted due to the small number of specialised laboratories and high economic costs. Medical facilities treating NPS users lack proper instruments of substance identification in the body fluids. In turn, such measures are employed in a small network of forensic medicine laboratories preparing post-mortem examinations [28]. Toxicological analyses of substances from biological material is complex and time consuming, therefore it rarely results in increased treatment effectiveness.

In an attempt to overcome these difficulties, an expert board at the Minister of Health was established to recommend substances to the NPS list, however the question of effectiveness of this arrangement remains open as the decisions of a board do not always translate into the content of the ministerial list, and scheduling substances in fact re-

quires additional amendments to the law [37]. The time between amendments is used by NPS producers and vendors to off-load the tainted products and seek new ones as yet not scheduled and therefore still legal.

New psychoactive substances transformed Polish public health institutions by imposing new roles and duties, setting new interactions and consuming extra time, money and human resources. Their occurrence challenged nearly every aspect of drug policy – starting from definitional struggles, through establishing frames of intervention, monitoring and risk assessment, to institutional developments, risk communication and treatment. Yet, NPS prevention is implemented independently by two institutions, the State Sanitary Inspection and the National Bureau for Drug Prevention with no common framework, questionable effectiveness and the rather unrealistic goal of eliminating NPS from society.

The policy measures applied are continuously focused on supply reduction whereas the few prevention programmes, addressed to young people or their parents, are emotive and lack detailed information. The number of NPS poisonings increased when the list of scheduled substances was updated. The NPS market has not been shut down both in terms of stationary outlets or internet sales. On the other hand, the data from general population surveys and research on young people show that NPS consumption has declined, while other studies indicate that NPS have become a well-established phenomenon among marginalised and recreational drug users [22, 42, 43]. Data from the poisoning registry and information on the recovering NPS market show that the development of NPS environment has occurred despite the legislative offensive, which calls into question the effectiveness of NPS policy in Poland.

New psychoactive substances policy is structured on two tracks. Currently, there are two separate lists of scheduled substances, the Annex to the Act on Counteracting the Drug Addiction and the Annex to the regulation of the Minister of Health. Therefore, some NPS come under criminal law (as ‘narcotic drug’ or ‘psychotropic substance’) while some others fall under the rules of administrative law (as ‘substitute drug’ or ‘new psychoactive substance’). Those functioning as substitute drugs are controlled by the State Sanitary Inspection, which not have access to the same measures as law enforcement bodies and therefore cannot carry out proceedings

and investigations, control internet sales and direct trafficking. NPS policy problems were recently emphasised in a special Supreme Chamber of Control report [21] drawing attention to the long, time-consuming administrative procedures (the longest case was proceed 4 years) as well as inadequate financial and human resources. The effectiveness of fines imposed upon individuals distributing and marketing of NPS has been low and failed to curb or prevent NPS market money flow. The effectiveness of enforcing fines is low, that is of ca. 15.5 mln EUR worth of fines imposed in 2010-2016, only 430 thousand EUR was collected. Another problem was the disposal of seized NPS, which could be only enforced by court decision on forfeiture of goods by the State Treasury. This, in turn resulted in problems with proper storage of seized products in local offices of State Sanitary Inspection but also in some cases in returning seized substances to their owners as ownership of non-scheduled NPS is not punishable by law.

Despite its peculiarities, the response to NPS in Poland is becoming more comprehensive in the context of European drug policies. Most European countries rely on supply reduction measures targeting individual substances or NPS in general. According to EMCDDA, the existing legislation can be divided in three overlapping groups: laws focused on consumers, health protection or medicines (e.g. Italy), laws modified by introducing group definitions of substances under control (e.g. Finland, Hungary) and specific laws defining a psychoactive substance by its effect rather than its chemical structure (e.g. Romania, Poland) [44]. Some EU member states (Ireland, Romania, United Kingdom) introduced a system in which no list of NPS is established, but all substances meeting the criteria of psychoactivity are considered controlled. The NPS are also classified individually with amendments to existing laws or come under generic legislation outlawing entire classes of substances (e.g. phenethylamines and synthetic cannabinoids in Germany). NPS prevention programmes as well as harm reduction activities targeting NPS are rare. Taking the European context into consideration, it can be concluded that the Polish NPS policy represents a mixed approach as it employs psychoactivity criteria of substance, abuse or intoxication motive and possible harm or threat to health, thus delivering a specific NPS definition focusing on their effect (as well as

definition of 'substitute drug'), together with a list of new psychoactive substances and list of illicit substances that also consist of certain new psychoactive substances scheduled before 2015.

The case of legal response to NPS reflects a crucial aspect of public health policy in a late modern liberal society. The restrictive regulatory system and consumer demand have progressed in two different directions. NPS are cheap, users may choose and simply buy products staying at home. Mobile devices, private dealers, group buys and messenger deliveries increase availability of substances. The whole supply of NPS is available to users. The occurrence of NPS challenged drug policy as well as drug suppliers, and since then the catalogue of illicit substances has been continuously extended. The free supply of psychoactive products has been flourishing, offering new, genuine experiences for users, evading policy-makers standardised measures, who in turn have responded with further expansion of criminalising restrictive measures. Politicians employed severe supply reduction measures aimed (at that time) at legal businesses making use of loopholes in Polish law. Contrary to other psychoactive substances available on the market with only minor restrictions, like alcohol, which imposes an immense burden to health and social services yet has been neglected in successive government agenda, the NPS problem proved that the golden rule of neoliberal policy, namely, the lack of government intervention in the market economy, can be broken when public health is endangered.

The scope of criminalisation was soon extended onto consumers as more substances were included on the list of illicit substances and their possession became punishable. From the perspective of the individual user, it might be not clear whether a particular substance is legal or not. Classifying substances does not make them a 'narcotic drug' or 'psychotropic substance' as they might be still perceived as 'NPS' not 'drugs'. Therefore, provisions of law regarded as non-criminalising directly affect those who use mephedrone, Alpha-PVP or other substances enlisted on the Annex to the Act. Restrictions were to some extent justified with extensive media reporting on problem, presenting the image of irresponsible retailers and consumers. Policy intervention was therefore aimed at the protection of users, mostly adolescents, who were seemingly unable to managing their free-

dom to control their consumption [1]. After almost ten years, NPS are still a moral challenge for politicians readiness to prove their commitment and accountability to prevent social harm. Only in 2016, the Polish Vice-minister of Health was asked by the Polish Parliament to present the state of affairs in NPS policy four times within twelve months [45].

## ■ CONCLUSIONS

The analysis of restrictive drug policy focused on prohibition and criminalisation of drug use, which has been continuously employed in drugs and extended to NPS environment, exposes its major flaws and limitations. The market has recovered despite almost ten years of aggressive policy toward NPS in Poland. As politicians hailed the new restrictive legislation a success, the NPS trafficking moved to the internet but then, once again stationary outlets started to operate across the country in more secretive, less overt fashion.

Policy toward NPS was created around extensive media coverage of NPS risk and moral panics. This made public opinion more alert to the problem but among the users the new sub-

stances become more and more normalised. Even if restrictive policy effectively tackles the availability of particular substances, new ones take their place. The 'liquid' character of NPS stems from their semantics, through their molecular structure to their mimicking of other NPS products [40, 46]. As a relatively new phenomenon, NPS were a difficult and tricky subject for intervention. They are backed with an economy of flow, new technologies, flexibility and responsiveness. This is in fact the very core of modern neo-liberal societies and new markets that quickly and often temporarily respond to consumer demand. Therefore, the state institutions in public health faced a new enemy. They had to rearrange their structure, set up new roles and extend duties, using their powers but also expose their major shortcomings. After all, they employed a mixed agenda made up of different measures taken from policies toward 'conventional' substances, together with expert knowledge and altering definitions of NPS.

The NPS phenomenon in Poland underscores the true challenge of drug policies; technological, social and cultural change that cannot be simply controlled with old repressive policies and which result in more harm to individuals and society.

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### Conflict of interest/Konflikt interesów

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### Ethics/Etyka

The work described in this article has been carried out in accordance with the Code of Ethics of the World Medical Association (Declaration of Helsinki) on medical research involving human subjects, EU Directive (210/63/EU) on protection of animals used for scientific purposes, Uniform Requirements for manuscripts submitted to biomedical journals and the ethical principles defined in the Farmington Consensus of 1997.

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## References/Piśmiennictwo

1. Dąbrowska K, Bujalski M. The legal highs problem in the Polish printed media – actors, claims, and the hidden meanings. *Subst Use Misuse* 2013; 48: 31-40.
2. Jabłoński P, Malczewski A. *New Psychoactive Substances: problem and response*. Warszawa: National Bureau for Drug Prevention; 2014.
3. Bujalski M, Wieczorek Ł. Police and drug users: stereotypes as a barrier to treatment. In: Wouters M, Fountain J (eds.). *Between Street and Screen. Traditions and Innovations in a Drug Field*. Lengerich: Pabst Science Publishers; 2015, p. 25-40.
4. Krajewski K. Polish drug policies: between “hard” and “soft” prohibition. *J Drug Issues* 2004; 34: 587-622.
5. Drug Policy Network. *Changes in the Law Recommended by Polish Drug Policy Network*; <http://www.politykanarkotykowa.pl/arttykul/changes-law-recommended-polish-drug-policy-network> [Access: 20.06.2017].
6. European Monitoring Centre for Drugs and Drug Addiction. *National Drug Report for EMCDDA. Poland: New Development, Trends and In-depth Information on Selected Issues*. Warszawa: Krajowe Biuro ds. Przeciwdziałania Narkomanii; 2014; [http://www.emcdda.europa.eu/system/files/publications/995/national\\_raport\\_2014\\_r.pdf\\_en](http://www.emcdda.europa.eu/system/files/publications/995/national_raport_2014_r.pdf_en) [Access: 04.12.2015].
7. European Monitoring Centre for Drugs and Drug Addiction. *Action of New Drugs*; <http://www.emcdda.europa.eu/activities/action-on-new-drugs> [Access 11.07.2017].
8. Douglas M, Wildavsky A. *Risk and Culture: An Essay on Selection of Technological and Environmental Dangers*. Berkeley: California University Press; 1982.
9. Rayner S. Cultural Theory and Risk Analysis. In: Kimsky S, Golding D (eds.). *Social Theories of Risk*. Westport: Praeger; 1992, p. 83-115.
10. Zinn J. Heading into the unknown: Everyday strategies for managing risk and uncertainty. *Health Risk Soc* 2008; 5: 439-50.
11. Boholm Å, Hervé-Corvellec H. A relational theory of risk. *J Risk Res* 2011; 14: 175-90.
12. Corazza O, Demetrovics Z, van den Brink W, Schifano F. ‘Legal highs’ an inappropriate term for ‘Novel Psychoactive Drugs’ in drug prevention and scientific debate. *Int J Drug Policy* 2013; 24: 82-3.
13. Rothstein H, Huber M, Gaskell G. A Theory of Risk Colonisation: The spiralling regulatory logics of societal and institutional risk. *Econ Soc* 2006; 35: 91-112.
14. *A transnational study into New Psychoactive Substances*; <https://npstransnational.org/nps%20test2/aims.html> [Access 11.07.2017].
15. Barbour RS. Checklists for improving rigour in qualitative research: a case of the tail wagging the dog? *BMJ* 2001; 322: 1115-7.
16. Mays N, Pope C. Qualitative research in health care: assessing quality in qualitative data. *BMJ* 2000; 320: 50-2.
17. Braun V, Clark V. Using thematic analysis in psychology. *Qual Res Psychol* 2006; 3: 77-101.
18. Zakrzewski T. „Dopalacze” w Internecie – marketing w służbie sprzedaży „środków zastępczych” w sieci. *Serwis Informacyjny Narkomania* 2011; 53: 22-7.
19. Jabłoński P, Malczewski A. „Dopalacze”, czyli Nowe Substancje Psychoaktywne: skala zjawiska i przeciwdziałanie. *Serwis Informacyjny Narkomania* 2014; 66: 11-6.
20. Malczewski A. “Dopalacze” wyniki I-Trend – nowe otwarcie. *Remedium* 2015; 272: 24-5.
21. Najwyższa Izba Kontroli. *NIK o przeciwdziałaniu sprzedaży dopalaczy. Komunikat Najwyższej Izby Kontroli, 03.06.2017*; <https://www.nik.gov.pl/aktualnosci/nik-o-przeciwdzialaniu-sprzedazy-dopalaczy.html> [Access: 21.06.2017].
22. Michalewski B. *Problemowe używanie nowych substancji psychoaktywnych – badania i obserwacje prowadzone przez poradnie MONAR w Krakowie*. Referat wygłoszony podczas XI spotkania programów redukcji szkód. Warszawa: 16-18.11.2015.
23. *State Sanitary Inspection*; <https://gis.gov.pl/zdrowie/dopalacze/> [Access: 21.06.2017].
24. Centrum Badania Opinii Społecznej. *Konsumpcja substancji psychoaktywnych przez młodzież szkolną – Młodzież 2008*. Warszawa: Fundacja Centrum Badania Opinii Społecznej; 2008.

25. Centrum Badania Opinii Społecznej. *Młodzież 2010*. Warszawa: Fundacja Centrum Badania Opinii Społecznej; 2010.
26. Centrum Badania Opinii Społecznej. *Młodzież 2013*. Warszawa: Centrum Badania Opinii Społecznej; 2014.
27. Centrum Badania Opinii Społecznej. *Młodzież 2016*. Warszawa: Centrum Badania Opinii Społecznej; 2016.
28. Burda P. Nowe substancje psychoaktywne – toksyczność, zatrucia i skutki zdrowotne ostrych intoksykacji. In: Waluk E (ed.). *Nowe narkotyki w Polsce. Tendencje – zagrożenia – procedury postępowania. Poradnik dla pracowników Państwowej Inspekcji Sanitarnej*. Warszawa: Centrum Poligrafii Sp. z o.o.; 2016, p. 37-53.
29. *Act of 29 July 2005 on Counteracting Drug Addiction*, Dz.U. 2005 Nr 179, poz. 1485.
30. *Law on State Sanitary Inspection from March, 15<sup>th</sup>, 1985* (Dz.U. 1985 poz. 49).
31. *Uzasadnienie do rządowego projektu ustawy o zmianie ustawy o przeciwdziałaniu narkomanii*; <http://www.sejm.gov.pl/Sejm7.nsf/druk.xsp?nr=3107> [Access: 04.12.2015].
32. Kapka-Skrzypczak L, Cyranka M, Kulpa P, Skrzypczak M, Wojtyła A. Dopalacze – stan aktualny i wytyczne na przyszłość. *Medycyna Ogólna i Nauki o Zdrowiu* 2011; 17: 206-11.
33. Kidawa M. Zjawisko nowych narkotyków w świetle rozwiązań prawnych w Polsce – Analiza krytyczna. *Serwis Informacyjny Narkomania* 2012; 60: 19-22.
34. *Dopalacze-info*, <http://www.dopalacze.info> [Access: 21.06.2017].
35. *Dopalacze kradną życie*. <http://www.dopalaczekradnazycie.pl> [Access: 04.12.2015].
36. *Skuteczniejsza walka z dopalaczami*. Komunikat, 1.07.2015; <http://www.sejm.gov.pl/Sejm7.nsf/komunikat.xsp?documentId=71E96A1EFBECDF2C1257E6F0036B975> [Access: 04.12.2015].
37. Krajewski K. Ocena ryzyka związanego z nowymi substancjami psychoaktywnymi w świetle procedur unijnych oraz ustawy o przeciwdziałaniu narkomanii. *Alcohol Drug Addict* 2016; 29: 49-59.
38. Myślicka D, Żuk M, Dziurkowski M. Uzależnienie od Efedronu – opis przypadku. *Psychiatr Pol* 2011; 45: 79-85.
39. Habrat B, Baran-Furga H, Sienkiewicz-Jarosz H, Sein-Anand J, Poniatowska R. Encefalopatia spowodowane dożylnym używaniem preparatów zawierających nadmanganian potasu stosowany jako reagent w produkcji metkatynonu (efedronu) z leków zawierających pseudoefedrynę. *Przegl Lek* 2013; 70: 613-16.
40. Dąbrowska K, Bujalski M. A liquid phenomenon? Images of new psychoactive substances in Polish print media. In: Potter GR, Wouters M, Fountain J (eds.). *Change and Continuity: researching evolving drug landscapes in Europe*. Lengerich: Pabst Science Publishers; 2014, p. 51-61.
41. Coulson C, Caulkins JP. Scheduling of newly emerging drugs: a critical review of decisions over 40 years. *Addiction* 2012; 107: 766-73.
42. Pisarska A, Moskalewicz J, Corazza O, Assi S, Simonato P, Demetrovics Z, et al. Nowe substancje psychoaktywne – wiedza i doświadczenia polskiej młodzieży. *Alkohol Narkom* 2013; 26: 275-94.
43. Wiszejko-Wierzbicka D, Kidawa M, Jabłońska M. Motywy zażywania i typologia użytkowników nowych substancji psychoaktywnych na podstawie badania sondażowego i analizy forów internetowych w ramach projektu I-TREND. *Alcohol Drug Addict* 2016; 29: 61-74.
44. European Monitoring Centre for Drugs and Drug Addiction and Eurojust. *New psychoactive substances in Europe: Legislation and prosecution — current challenges and solutions*. Luxembourg: Publications Office of the European Union; 2016.
45. Internetowy System Aktów Prawnych; <http://isap.sejm.gov.pl/KeywordServlet?view-Name=thasN&passName=narkomania> [Access: 11.07. 2017].
46. Bauman Z. *Liquid life*. Cambridge: Polity Press; 2005.

