Council Implementing Decision (EU) 2018/747 of 14 May 2018 on subjecting the new psychoactive substance N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide (ADB-CHMINACA) to control measures

COUNCIL IMPLEMENTING DECISION (EU) 2018/747

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Decision 2005/387/JHA of 10 May 2005 on the information exchange, risk-assessment and control of new psychoactive substances[(1)], and in particular Article 8(3) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Parliament[(2)],

Whereas:

(1) In accordance with Article 6 of Decision 2005/387/JHA, a risk assessment report on the new psychoactive substance *N*-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1*H*-indazole-3-carboxamide ('ADB-CHMINACA') was drawn up by a special session of the extended Scientific Committee of the European Monitoring Centre for Drugs and Drug Addiction and was submitted to the Commission and to the Council on 14 November 2017.

(2) ADB-CHMINACA is a synthetic cannabinoid. It has similar effects to those of THC, which is responsible for the major psychoactive effects of cannabis, but ADB-CHMINACA has additional life-threatening toxicity. The high potency of ADB-CHMINACA on the one hand, and the fact that it can account for a large or unknown variable proportion of smoking mixtures on the other, means that it constitutes a significant poisoning risk.

(3) ADB-CHMINACA has been available in the Union since at least August 2014 and has been detected in 17 Member States. Due to the nature of ADB-CHMINACA, cases of detection are likely to be underreported since ADB-CHMINACA is not routinely screened for. In most cases, ADB-CHMINACA was seized as herbal or plant material and in powder form, but it has also been seized, though to a lesser extent, in other physical forms, for example in blotter form. More than 630 seizures have been made within the Union.

(4) Three Member States have reported 13 deaths associated with ADB-CHMINACA. In the case of at least nine deaths, ADB-CHMINACA was either the cause of death or was likely to have contributed to the death. In addition, one Member State reported three acute non-fatal intoxications associated with ADB-CHMINACA. Due to the nature of ADB-CHMINACA, both non-fatal intoxications and deaths caused by ADB-CHMINACA are likely to be underdetected and underreported.

(5) There is no information on the involvement of organised crime in the manufacture, distribution, trafficking and supply of ADB-CHMINACA within the Union. The available data suggest that ADB-CHMINACA is produced by chemical companies in China.

(6) ADB-CHMINACA is typically sold in small and wholesale amounts in head shops, branded as a so-called legal-high, as smoking mixtures or as powder, as well as on the internet, branded as a so-called legal replacement for cannabis. It is also likely to be sold directly on the illicit drug market. As the packaging of such products rarely state the ingredients, most users are unaware that they are using ADB-CHMINACA, or even synthetic cannabinoids in general.

(7) ADB-CHMINACA has no recognised human or veterinary medical use in the Union nor, it appears, elsewhere. There are no indications that ADB-CHMINACA can be used for any other purpose aside from as an analytical reference standard and in scientific research.

(8) The risk assessment report reveals that many of the questions related to ADB-CHMINACA that are posed by the lack of data on the risks to individual health, risks to public health, and social risks, could be answered through further research. However, the available evidence and information on the health and social risks that the substance poses provides sufficient grounds for subjecting ADB-CHMINACA to control measures across the Union.

(9) ADB-CHMINACA is not listed for control under the 1961 United Nations Single Convention on Narcotic Drugs or under the 1971 United Nations Convention on Psychotropic Substances. ADB-CHMINACA is not currently under assessment by the United Nations system.

(10) Given that 13 Member States control ADB-CHMINACA under national drug control legislation and four Member States control ADB-CHMINACA under other legislation, subjecting ADB-CHMINACA to control measures across the Union would help avoid the emergence of obstacles in cross-border law enforcement and judicial cooperation, and would help protect from the risks that its availability and use poses.

(11) Decision 2005/387/JHA confers implementing powers upon the Council with a view to giving a quick and expertise-based response at Union level to the emergence of new psychoactive substances detected and reported by the Member States, by subjecting those substances to control measures across the Union. As the conditions and procedure for triggering the exercise of such implementing powers have been met, an implementing decision should be adopted in order to subject ADB-CHMINACA to control measures across the Union.

(12) Denmark is bound by Decision 2005/387/JHA and is therefore taking part in the adoption and application of this Decision, which implements Decision 2005/387/JHA.

(13) Ireland is bound by Decision 2005/387/JHA and is therefore taking part in the adoption and application of this Decision, which implements Decision 2005/387/JHA.

(14) The United Kingdom is not bound by Decision 2005/387/JHA and is therefore not taking part in the adoption and application of this Decision and is not bound by it or subject to its application,

HAS ADOPTED THIS DECISION:

Article 1

The new psychoactive substance *N*-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1*H*-indazole-3-carboxamide (‘ADB-CHMINACA’) shall be subjected to control measures across the Union.

Article 2

By 23 May 2019, Member States shall take the necessary measures, in accordance with their national law, to subject ADB-CHMINACA to control measures and criminal penalties, as provided for under their legislation, in compliance with their obligations under the 1971 United Nations Convention on Psychotropic Substances.

Article 3

This Decision shall enter into force on the date following that of its publication in the *Official Journal of the European Union*.

This Decision shall apply in accordance with the Treaties.

Done at Brussels, 14 May 2018.

For the Council

The President

E. ZAHARIEVA

(**1**) OJ L 127, 20.5.2005, p. 32.

(**2**) Opinion of 3 May 2018 (not yet published in the Official Journal).

Status:
Point in time view as at 14/05/2018.

Changes to legislation:
There are currently no known outstanding effects for the Council Implementing Decision (EU) 2018/747.