

Commission Delegated Directive (EU) 2019/369 of 13 December 2018 amending the Annex to Council Framework Decision 2004/757/JHA as regards the inclusion of new psychoactive substances in the definition of ‘drug’

COMMISSION DELEGATED DIRECTIVE (EU) 2019/369

of 13 December 2018

amending the Annex to Council Framework Decision 2004/757/JHA as regards the inclusion of new psychoactive substances in the definition of ‘drug’

THE EUROPEAN COMMISSION,

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

Having regard to Directive (EU) 2017/2103 of the European Parliament and of the Council of 15 November 2017 amending Council Framework Decision 2004/757/JHA in order to include new psychoactive substances in the definition of ‘drug’ and repealing Council Decision 2005/387/JHA⁽¹⁾, and in particular Article 3(3) thereof,

Whereas:

- (1) The Annex to Council Framework Decision 2004/757/JHA⁽²⁾ contains a list of substances which fall under the definition of drug under point 1(b) of Article 1 of that Framework Decision.
- (2) The Annex to Framework Decision 2004/757/JHA was added by Directive (EU) 2017/2103. It lists all the new psychoactive substances, which were subjected to control measures and criminal penalties pursuant to Council Decision 2005/387/JHA⁽³⁾ before the adoption of Directive (EU) 2017/2103.
- (3) Directive (EU) 2017/2103 repealed Decision 2005/387/JHA with effect from 23 November 2018. From the adoption of Directive (EU) 2017/2103 until 23 November 2018, five new psychoactive substances were subjected to control measures and criminal penalties under Decision 2005/387/JHA. However, those new psychoactive substances are not yet included into the Annex to Framework Decision 2004/757/JHA.
- (4) Therefore, due to the repeal of Decision 2005/387/JHA, the following new psychoactive substances should be included in the Annex to Framework Decision 2004/757/JHA:
 - (a) *N*-phenyl-*N*-[1-(2-phenylethyl)piperidin-4-yl]furan-2-carboxamide (furanylfentanyl) subjected to control measures by Council Implementing Decision (EU) 2017/2170⁽⁴⁾;
 - (b) *N*-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1*H*-indazole-3-carboxamide (ADB-CHMINACA) subjected to control measures by Council Implementing Decision (EU) 2018/747⁽⁵⁾;

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- (c) 1-(4-cyanobutyl)-*N*-(2-phenylpropan-2-yl)-1*H*-indazole-3-carboxamide (CUMYL-4CN-BINACA) subjected to control measures by Council Implementing Decision (EU) 2018/748⁽⁶⁾;
 - (d) *N*-phenyl-*N*-[1-(2-phenylethyl)piperidin-4-yl]cyclopropanecarboxamide (cyclopropylfentanyl) and 2-methoxy-*N*-phenyl-*N*-[1-(2-phenylethyl)piperidin-4-yl]acetamide (methoxyacetylfentanyl) subjected to control measures by Council Implementing Decision (EU) 2018/1463⁽⁷⁾.
- (5) Ireland is bound by Directive (EU) 2017/2103 and is therefore taking part in the adoption and application of this delegated directive.
- (6) The United Kingdom is not bound by Directive (EU) 2017/2103 and is therefore not taking part in the adoption and application of this delegated directive and is not bound by it or subject to its application.
- (7) Denmark is not bound by Directive (EU) 2017/2103 and is therefore not taking part in the adoption and application of this delegated directive and is not bound by it or subject to its application.
- (8) Framework Decision 2004/757/JHA should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Amendment to Framework Decision 2004/757/JHA

The following is added to the list in the Annex to Framework Decision 2004/757/JHA:

- 13. *N*-phenyl-*N*-[1-(2-phenylethyl)piperidin-4-yl]furan-2-carboxamide (furanlyfentanyl), as referred to in Council Implementing Decision (EU) 2017/2170⁽⁸⁾.
- 14. *N*-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1*H*-indazole-3-carboxamide (ADB-CHMINACA), as referred to in Council Implementing Decision (EU) 2018/747⁽⁹⁾.
- 15. 1-(4-cyanobutyl)-*N*-(2-phenylpropan-2-yl)-1*H*-indazole-3-carboxamide (CUMYL-4CN-BINACA), as referred to in Council Implementing Decision (EU) 2018/748⁽¹⁰⁾.
- 16. *N*-phenyl-*N*-[1-(2-phenylethyl)piperidin-4-yl]cyclopropanecarboxamide (cyclopropylfentanyl) and 2-methoxy-*N*-phenyl-*N*-[1-(2-phenylethyl)piperidin-4-yl]acetamide (methoxyacetylfentanyl), as referred to in Council Implementing Decision (EU) 2018/1463⁽¹¹⁾.

Article 2

Transposition

1 Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 7 September 2019 at the latest. However,

they shall bring into force the laws, regulations and administrative provisions necessary to comply with point 16 of the Annex to Framework Decision 2004/757/JHA referred to in Article 1 of this Directive by 29 September 2019. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2 Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 4

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Brussels, 13 December 2018.

For the Commission

The President

Jean-Claude JUNCKER

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- (1) [OJ L 305, 21.11.2017, p. 12.](#)
- (2) 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 ([OJ L 335, 11.11.2004, p. 8.](#))
- (3) Council Decision 2005/387/JHA of 10 May 2005 on the information exchange, risk-assessment and control of new psychoactive substances ([OJ L 127, 20.5.2005, p. 32.](#))
- (4) Council Implementing Decision (EU) 2017/2170 of 15 November 2017 on subjecting *N*-phenyl-*N*-[1-(2-phenylethyl)piperidin-4-yl]furan-2-carboxamide (furanylfentanyl) to control measures ([OJ L 306, 22.11.2017, p. 19.](#))
- (5) 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)-1*H*-indazole-3-carboxamide (ADB-CHMINACA) to control measures ([OJ L 125, 22.5.2018, p. 8.](#))
- (6) Council Implementing Decision (EU) 2018/748 of 14 May 2018 on subjecting the new psychoactive substance 1-(4-cyanobutyl)-*N*-(2-phenylpropan-2-yl)-1*H*-indazole-3-carboxamide (CUMYL-4CN-BINACA) to control measures ([OJ L 125, 22.5.2018, p. 10.](#))
- (7) Council Implementing Decision (EU) 2018/1463 of 28 September 2018 on subjecting the new psychoactive substances *N*-phenyl-*N*-[1-(2-phenylethyl)piperidin-4-yl]cyclopropanecarboxamide (cyclopropylfentanyl) and 2-methoxy-*N*-phenyl-*N*-[1-(2-phenylethyl)piperidin-4-yl]acetamide (methoxyacetylfentanyl) to control measures ([OJ L 245, 1.10.2018, p. 9.](#))
- (8) Council Implementing Decision (EU) 2017/2170 of 15 November 2017 on subjecting *N*-phenyl-*N*-[1-(2-phenylethyl)piperidin-4-yl]furan-2-carboxamide (furanylfentanyl) to control measures ([OJ L 306, 22.11.2017, p. 19.](#))
- (9) 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)-1*H*-indazole-3-carboxamide (ADB-CHMINACA) to control measures ([OJ L 125, 22.5.2018, p. 8.](#))
- (10) Council Implementing Decision (EU) 2018/748 of 14 May 2018 on subjecting the new psychoactive substance 1-(4-cyanobutyl)-*N*-(2-phenylpropan-2-yl)-1*H*-indazole-3-carboxamide (CUMYL-4CN-BINACA) to control measures ([OJ L 125, 22.5.2018, p. 10.](#))
- (11) Council Implementing Decision (EU) 2018/1463 of 28 September 2018 on subjecting the new psychoactive substances *N*-phenyl-*N*-[1-(2-phenylethyl)piperidin-4-yl]cyclopropanecarboxamide (cyclopropylfentanyl) and 2-methoxy-*N*-phenyl-*N*-[1-(2-phenylethyl)piperidin-4-yl]acetamide (methoxyacetylfentanyl) to control measures ([OJ L 245, 1.10.2018, p. 9.](#))².