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(3) Directive (EU) 2017/2103 repealed Decision 2005/387/JHA with effect from 23 November 2018.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 (furanylfentanyl), 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