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2017/0049 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be adopted, on behalf of the European Union, in the sixtieth session of the Commission on Narcotic Drugs on the addition to the list of substances in Table I of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The Commission on Narcotic Drugs (CND) regularly amends the list of substances that are annexed to the United Nations (UN) Convention on Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (the 1988 UN Convention) on the basis of recommendations of the International Narcotics Control Board (INCB).

The EU is party to the 1988 UN Convention for questions which are dealt with in Article 12 of the Convention¹. Article 12 deals with substances which are frequently used in the illicit manufacture of narcotic drugs and psychotropic substances ('drug precursors').

The CND is a commission of the UN Economic and Social Council (ECOSOC) and its functions and powers are *inter alia* set out in the 1988 UN Convention. It is made up of 53 UN Member States elected by ECOSOC. 12 Member States are currently members of the CND with the right to vote.² The Union has an observer status in the CND.

The INCB recommended on 1 February 2017 to add two substances, namely 4-anilino-N-phenethylpiperidine (ANPP) and N-phenethyl-4-piperidone (NPP), to Table I of the 1988 UN Convention.

Changes to the Tables of the 1988 UN Convention have direct repercussions for the scope of application of Union law in the area of drug precursor control as substances added to the Tables of the 1988 UN Convention are to be incorporated into the Union law³. The Commission has been empowered to adopt delegated acts in order to ensure this.

It is necessary that Member States prepare the meeting of the CND when it is called to decide on the scheduling of substances by reaching a common position in the Council. Such position, due to the limitations intrinsic to the observer status of the Union should be expressed by the Member States that are currently members of the CND, acting jointly in the interest of the Union within the CND. The Union, which only has observer status in the CND, would not vote in the CND.

To this end, the Commission is proposing a position to be adopted, on behalf of the European Union, in the sixtieth session of the CND taking place in Vienna from 13 to 17 March 2017 on the scheduling of substances under the 1988 UN Convention.

¹ Council Decision of 22 October 1990 concerning the conclusion, on behalf of the European Economic Community, of the United Nations (UN) Convention on Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.

² Austria, Belgium, Croatia, Czech Republic, France, Germany, Hungary, Italy, Netherlands, Slovakia, Spain, United Kingdom.

³ COUNCIL REGULATION (EC) No 111/2005 of 22 December 2004 laying down rules for the monitoring of trade between the Union and third countries in drug precursors (OJ L 22, 26.1.2005, p. 1) and REGULATION (EC) No 273/2004 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 February 2004 on drug precursors (OJ L 47, 18.2.2004, p. 1).

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis for this proposal is Article 207 in conjunction with Article 218(9) of the Treaty on the Functioning of the European Union (TFEU).

Scheduling of precursors for the purposes of monitoring trade in these substances is a matter that relates to the common commercial policy and Article 207 (3) TFEU states that where agreements with one or more third countries or international organisations need to be negotiated and concluded, Article 218 shall apply, subject to the special provisions of this Article.

Article 218(9) TFEU applies regardless of whether the Union is a member of the body or a party to the agreement at issue. The CND is "a body set up by an agreement" within the meaning of this Article, given that it is a body that has been given specific tasks under the 1988 UN Convention.

The CND's scheduling-decisions are "acts having legal effects" within the meaning of Article 218(9) TFEU. According to the 1988 UN Convention decisions of the CND become binding, unless a party has submitted the decision for review to ECOSOC within the applicable time-limit.⁴ The decisions of ECOSOC on the matter are final.

- **Subsidiarity**

Not applicable.

- **Proportionality**

The proposal is proportionate and does not go beyond what is necessary to achieve the objectives as it addresses new drug precursors that are of concern for the Union.

- **Choice of the instrument**

The use of a Council Decision is required by Article 218(9) TFEU in order to establish the position to be adopted on the Union's behalf in a body set up by an international agreement.

⁴ Article 12(7) of the 1988 UN Convention

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 ('the Convention') was concluded by the Union by Council Decision 90/611/EEC⁵ and entered into force on 11 November 1990.
- (2) Pursuant to Article 12(2) to (7) of the Convention, substances may be added to the Tables of the Convention in which drug precursors are listed.
- (3) The Commission on Narcotic Drugs should, during its sixtieth session from 13 to 17 March 2017 in Vienna, take a decision on the addition of two new substances to Table I of that Convention.
- (4) The Union has observer status in the Commission on Narcotic Drugs of which currently 12 Member States of the Union are members with the right to vote. As decisions on the addition of new substances to Table I of the Convention fall under the exclusive competence of the Union, it is necessary for the Council to authorise the Member States to express the position of the Union on the addition to the list of substances in Table I of the Convention.
- (5) According to the assessment of the International Narcotics Control Board, two substances, 4-anilino-N-phenethylpiperidine (ANPP) and N-phenethyl-4-piperidone (NPP) are frequently used in the illicit manufacture of fentanyl and are highly suitable for the illicit manufacture of fentanyl and a number of fentanyl analogues which are highly potent synthetic opioids. There is evidence that the volume and extent of the illicit manufacture of fentanyl and fentanyl analogues poses serious public health or social problems so as to warrant the placing of these substances under international control.
- (6) Accordingly, on 1 February 2017 the International Narcotics Control Board recommended to the Commission on Narcotic Drugs to add ANPP and NPP to Table I of the Convention.

⁵ Council Decision of 22 October 1990 concerning the conclusion, on behalf of the European Economic Community, of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (OJ L 326, 24.11.1990, p. 56).

- (7) Illicitly manufactured fentanyl and fentanyl analogues have caused significant public health and social problems in certain Member States.
- (8) Therefore, the Member States of the Union should take the position in the Commission on Narcotic Drugs to add ANPP and NPP to Table I of the Convention,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on behalf of the Union by the Member States in the sixtieth session of the Commission on Narcotic Drugs from 13 to 17 March 2017 shall be the following :

4-anilino-N-phenethylpiperidine and N-phenethyl-4-piperidone are to be included in Table I of the Convention.

That position shall be expressed by the Member States which are members of the Commission of Narcotic Drugs, acting jointly.

Article 2

This Decision is addressed to the Member States.

Done at Brussels,

*For the Council
The President*