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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject:	Draft COUNCIL IMPLEMENTING DECISION on subjecting the new psychoactive substance *N*-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1*H*-indazole-3-carboxamide (AB-CHMINACA) to control measures

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COUNCIL IMPLEMENTING DECISION (EU) 2018/…

of …

on subjecting the new psychoactive substance *N*-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1*H*-indazole-3-carboxamide (AB-CHMINACA) to control measures

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],

[1] OJ L 127, 20.5.2005, p. 32.

[2] OJ C , , p. .

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-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1*H*-indazole-3-carboxamide ('AB-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) AB-CHMINACA is a synthetic cannabinoid. It has similar effects to those of THC, which is responsible for the major psychoactive effects of cannabis, but AB-CHMINACA has additional life-threatening toxicity. The high potency of AB-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) AB-CHMINACA has been available in the Union since at least April 2014 and has been detected in 24 Member States. Due to the nature of AB-CHMINACA, cases of detection are likely to be underreported since AB-CHMINACA is not routinely screened for. In most cases, AB-CHMINACA was seized as herbal or plant material, but it has also been seized in powder form and to a lesser extent in other physical forms, for example in liquid form or in blotter form. More than 4600 seizures have been made within the Union.

(4) Six Member States have reported 31 deaths associated with AB-CHMINACA. In the case of at least nine deaths, AB-CHMINACA was the cause of death or was likely to have contributed to the death. In addition, four Member States have reported a total of seven acute non-fatal intoxications associated with AB-CHMINACA. Due to the nature of AB-CHMINACA, both non-fatal intoxications and deaths caused by AB-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 AB-CHMINACA within the Union. The available data suggest that AB-CHMINACA is produced by chemical companies based in China.

(6) AB-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 AB-CHMINACA or even synthetic cannabinoids in general.

(7) AB-CHMINACA has no recognised human or veterinary medical use in the Union nor, it appears, elsewhere. There are no indications that AB-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 AB-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 AB-CHMINACA poses provides sufficient grounds for subjecting AB-CHMINACA to control measures across the Union.

(9) AB-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. AB-CHMINACA is currently under assessment by the United Nations system and has been reviewed at the 39th meeting of the WHO Expert Committee on Drug Dependence held from 6 to 10 November 2017 in Geneva. That does not preclude the Union from taking a decision to subject AB-CHMINACA to control measures.

(10) Given that 18 Member States control AB-CHMINACA under national drug control legislation and three Member States control AB-CHMINACA under other legislation, subjecting AB-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 AB-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-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1*H*-indazole-3-carboxamide ('AB-CHMINACA') shall be subjected to control measures across the Union.

Article 2

By … [one year from the date of publication of this Decision], Member States shall take the necessary measures, in accordance with their national law, to subject AB-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,

For the Council
The President