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Proposal for a

COUNCIL DECISION

on the position to be adopted, on behalf of the European Union, in the sixty-first session of the Commission on Narcotic Drugs on the scheduling of substances under the Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol and the Convention on Psychotropic Substances of 1971

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the Union's behalf in the 61st session of the Commission on Narcotic Drugs on the scheduling of substances under the UN Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol and the UN Convention on Psychotropic Substances of 1971.

2. CONTEXT OF THE PROPOSAL

2.1. The UN Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol and the UN Convention on Psychotropic Substances of 1971

The United Nations (UN) Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol (the 'Convention on Narcotic Drugs')[1] aims to combat drug abuse by coordinated international action. There are two forms of intervention and control that work together. First, it seeks to limit the possession, use, trade in, distribution, import, export, manufacture and production of drugs exclusively to medical and scientific purposes. Second, it combats drug trafficking through international cooperation to deter and discourage drug traffickers.

The UN Convention on Psychotropic Substances of 1971 (the 'Convention on Psychotropic Substances')[2] establishes an international control system for psychotropic substances. It responded to the diversification and expansion of the spectrum of drugs of abuse and introduced controls over a number of synthetic drugs according to their abuse potential on the one hand and their therapeutic value on the other.

All EU Member States are parties to the Convention on Narcotic Drugs and to the Convention on Psychotropic Substances. The Union is not a party to the Conventions.

2.2. The Commission on Narcotic Drugs

The Commission on Narcotic Drugs (CND) is a commission of the UN Economic and Social Council (ECOSOC) and its functions and powers are *inter alia* set out in the Convention on Narcotic Drugs and in the Convention on Psychotropic Substances. 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[3]. The Union has an observer status in the CND.

2.3. The envisaged act of the Commission on Narcotic Drugs

The CND regularly amends the list of substances that are annexed to the Convention on Narcotic Drugs and to the Convention on Psychotropic Substances on the basis of recommendations of the World Health Organisation (WHO) which is advised by its Expert Committee on Drug Dependence.

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1 United Nations Treaty Series, vol. 978, No. 14152.

2 United Nations Treaty Series, vol. 1019, No. 14956.

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

The WHO recommended on 8 December 2017 to the Secretary General of the UN[4] to add 12 new substances to the schedules of the Conventions.

The CND, in its sixty-first session taking place in Vienna from 12 to 16 March 2018, will adopt decisions on the scheduling of these 12 substances under the Convention on Narcotic Drugs and the Convention on Psychotropic Substances, respectively.

3. POSITION TO BE TAKEN ON THE UNION'S BEHALF

Changes to the schedules of the Convention on Narcotic Drugs and of the Convention on Psychotropic Substances have direct repercussions for the scope of application of Union law in the area of drug control for all Member States. Article 1 of 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[5] states that, for the purposes of the Framework Decision, "drugs" shall mean any of the substances covered by either the Convention on Narcotic Drugs or the Convention on Psychotropic Substances. The Council Framework Decision 2004/757/JHA therefore applies to substances listed in the Schedules to the Convention on Narcotic Drugs and the Convention on Psychotropic Substances. Thus any change to the schedules annexed to these Conventions directly affects common EU rules and alters their scope, within the meaning of Article 3(2) TFEU. This is irrespective of whether the substance in question is already placed under control at EU level on the basis of Council Decision 2005/387/JHA.

From the 12 substances which the WHO recommended for scheduling, only two substances, Acryloylfentanyl (Acrylfentanyl)[6] and Furanylfentanyl[7], are already subject to control measures at EU level. Based on a risk assessment report of the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), conducted in compliance with the provisions of Article 6(2), (3) and (4) of Council Decision 2005/387/JHA on the information exchange, risk-assessment and control of new psychoactive substances[8], the Commission tabled on 15 December 2017 proposals to subject seven additional new psychoactive substances, i.e. Carfentanil, 4-Fluoroisobutyrfentanyl (4-FIBF, pFIBF), Tetrahydrofuranylfentanyl (THF-F), AB-CHMINACA, ADB-CHMINACA, CUMYL-4CN-BINACA and 5F-MDMB-PINACA (5F-ADB), to EU-wide control measures[9], of which 5 are also proposed for international scheduling (see underlined substances). The other 5 substances have not been considered for EU-wide control measures yet.

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

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4 Oral statement at the reconvened 60th session of the Commission on Narcotic Drugs on 8 December 2017; see also extract from the report the 39th Expert Committee on Drug Dependence (http://www.who.int/mason/entity/medicines/news/2017/letter-DG-39thECDDrecommendations.pdf).

5 OJ L 335, 11.11.2004, p. 8.

6 Council Implementing Decision (EU) 2017/1774 of 25 September 2017 on subjecting *N*-(1-phenethylpiperidin-4-yl)-*N*-phenylacrylamide (acryloylfentanyl) to control measures, OJ L 251, 29.9.2017, p. 21.

7 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.

8 OJ L 127, 20.5.2005, p. 32.

9 COM(2017) 756, COM(2017) 757, COM(2017) 758, COM(2017) 759, COM(2017) 764, COM(2017) 765, COM(2017) 766.

Member States that are currently members of the CND, acting jointly in the interest of the Union within the CND. The Union, who is not a party to the Convention on Narcotic Drugs and to the Convention on Psychotropic Substances, does not have the right to vote in the CND.

To this end, the Commission is proposing a common position to be adopted, on behalf of the European Union, in the sixty-first session of the CND on the scheduling of substances under the Convention on Narcotic Drugs and the Convention on Psychotropic Substances. This is the second time that the Commission presents such a draft proposal for a common EU position, after the one adopted for the CND meeting in March 2017.[10] The Council adopted the common position[11] and this allowed the EU to speak with one voice at the 2017 March CND meeting regarding the international scheduling, since the Member States participating in the CND voted in favour of the scheduling in line with the adopted common position.

4. LEGAL BASIS

4.1. Procedural legal basis

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions establishing '*the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.*'

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 Convention on Narcotic Drugs and the Convention on Psychotropic Substances.

The concept of '*acts having legal effects*' includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are '*capable of decisively influencing the content of the legislation adopted by the EU legislature*'[12].

The CND's scheduling-decisions are "acts having legal effects" within the meaning of Article 218(9) TFEU. According to the Convention on Narcotic Drugs and the Convention on Psychotropic Substances, decisions of the CND automatically become binding, unless a party has submitted the decision for review to ECOSOC within the applicable time-limit[13]. The decisions of ECOSOC on the matter are final. The CND's scheduling decisions also have legal effects in the EU legal order by virtue of Union law, namely Council Framework Decision 2004/757/JHA. Changes to the schedules of the Convention on Narcotic Drugs and the Convention on Psychotropic Substances have direct repercussions for the scope of application of this EU legal instrument.

4.2. Substantive legal basis

The main objective and content of the envisaged act relate to illicit drug trafficking.

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10 COM(2017) 72 final.

11 Adopted by the General Affairs Council on 7 March 2017.

12 Judgment of the Court of Justice of 7 October 2014, Germany v Council, Case C-399/12, ECLI:EU:C:2014:2258, paragraphs 61to 64.

13 Article 3(7) of the Convention on Narcotic Drugs; Article 2(7) of the Convention on Psychotropic Substances.

Therefore, the substantive legal basis of the proposed decision is Article 83(1) of the Treaty on the Functioning of the European Union (TFEU) which identifies illicit drug trafficking as one of the crimes with a particular cross-border dimension and empowers the European Parliament and the Council to establish minimum rules concerning the definition of offences and sanctions in the area of illicit drug trafficking.

4.3. Variable geometry

In accordance with Article 10(4) of Protocol (No 36) on transitional provisions annexed to the Treaties, the United Kingdom notified that it does not accept the full powers of the Commission and the Court of Justice with regard to acts in the field of police and judicial cooperation in criminal matters adopted before the entry into force of the Lisbon Treaty. As a consequence, Council Framework Decision 2004/757 JHA and Council Decision 2005/387/JHA have ceased to apply to the United Kingdom as from 1 December 2014[14].

Since the CND's scheduling decisions do not affect common rules in the area of illicit drug trafficking by which the United Kingdom is bound, the United Kingdom does not take part in the adoption of a Council Decision establishing the position to be adopted on the Union's behalf when such scheduling decisions are adopted.

4.4. Conclusion

The legal basis for this proposal is Article 83(1) in conjunction with Article 218(9) of the Treaty on the Functioning of the European Union (TFEU).

[14] See Commission Decision 2014/858/EU of 1 December 2014 on the notification by the United Kingdom of Great Britain and Northern Ireland of its wish to participate in acts of the Union in the field of police cooperation and judicial cooperation in criminal matters adopted before the entry into force of the Treaty of Lisbon and which are not part of the Schengen acquis (OJ L 345 of 1.12.2014, p. 6). Points 29 and 33 of the List of Union acts adopted before the entry into force of the Lisbon Treaty in the field of police cooperation and judicial cooperation in criminal matters which cease to apply to the United Kingdom as from 1 December 2014 pursuant to Article 10(4), second sentence, of Protocol (No 36) on transitional provisions (OJ C 430 of 1.12.2014, p. 17).

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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 83(1) in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The United Nations (UN) Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol[15] (the 'Convention on Narcotic Drugs') entered into force on 8 August 1975.

(2) Pursuant to Article 3 of the Convention on Narcotic Drugs, the Commission on Narcotic Drugs may decide to add substances to the Schedules of that Convention. It can make changes in the Schedules only in accordance with the recommendations of the World Health Organisation (WHO), but it can also decide not to make the changes recommended by the WHO.

(3) The UN Convention on Psychotropic Substances of 1971 (the 'Convention on Psychotropic Substances')[16] entered into force on 16 August 1976.

(4) Pursuant to Article 2 of the Convention on Psychotropic Substances, the Commission on Narcotic Drugs may decide to add substances to the Schedules of that Convention or to remove them, on the basis of the recommendations of the WHO. It has broad discretionary powers to take into account economic, social, legal, administrative and other factors, but may not act arbitrarily.

(5) Changes to the Schedules of both Conventions have direct repercussions on the scope of application of Union law in the area of drug control. Council Framework Decision 2004/757/JHA[17] applies to substances listed in the Schedules to the Convention on Narcotic Drugs and the Convention on Psychotropic Substances. Thus any change to the Schedules annexed to those Conventions directly affects common Union rules and alters their scope, within the meaning of Article 3(2) of the Treaty on the Functioning of the European Union (TFEU).

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15 United Nations Treaty Series, vol. 978, No. 14152.

16 United Nations Treaty Series, vol. 1019, No. 14956.

17 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).

(6) The Commission on Narcotic Drugs, during its sixty-first session of 12 to 16 March 2018 in Vienna, is to adopt decisions on the addition of 12 new substances to the Schedules of the Conventions.

(7) The Union is not a party to the relevant UN Conventions. It has an observer status in the Commission on Narcotic Drugs where currently twelve Member States are members with the right to vote. It is therefore necessary for the Council to authorise the Member States to express the position of the Union on the scheduling of substances under the Convention on Narcotic Drugs and the Convention on Psychotropic Substances since the decisions on the addition of new substances to the Schedules of the Conventions fall under the exclusive competence of the Union.

(8) The WHO recommended on 8 December 2017 to the Secretary-General of the UN to add one new substance to Schedules I and IV of the Convention on Narcotic Drugs, five new substances to Schedule I of the Convention on Narcotic Drugs and six new substances to Schedule II of the Convention on Psychotropic Substances. [18]

(9) According to the assessment of the WHO Expert Committee on Drug Dependence (the Expert Committee), carfentanil (methyl 1-(2-phenylethyl)-4-[phenyl(propanoyl)amino]piperidine-4-carboxylate) is a synthetic opioid and is considered to be one of the most potent opioids known. Carfentanil is a controlled compound in 16 Member States and is used primarily as a tranquiliser in large animals. Carfentanil is not intended for therapeutic use in humans. Carfentantil has no recorded therapeutic use and its use has resulted in fatalities. There is sufficient evidence that it is being or is likely to be abused and may constitute a public health and social problem warranting the placing of the substance under international control. Thus, the WHO recommends that carfentanil be placed in Schedules I and IV of the Convention on Narcotic Drugs.

(10) Carfentanil is monitored by the European Monitoring Centre for Drugs and Drug Addiction as a new psychoactive substance under the terms of Council Decision 2005/387/JHA[19]. Seizures of carfentanil have been reported by seven Member States. It is being sold openly on the market as well as in mixtures with heroin and other opioids. It has been associated with serious adverse events, including detection in at least 60 deaths in the Union. Carfentanil has been the subject of a Risk Assessment by the European Monitoring Centre for Drugs and Drug Addiction. The Commission proposed on 15 December 2017 to subject carfentanil to control measures under Council Decision 2005/387/JHA[20].

(11) Therefore, the Member States should take the position to add carfentanil to Schedules I and IV of the Convention on Narcotic Drugs.

(12) According to the assessment of the Expert Committee, Ocfentanil (*N*-(2-fluorophenyl)-2-methoxy-*N*-[1-(2-phenylethyl)piperidin-4-yl]acetamide) is a compound structurally similar to the opioid analgesic fentanyl. Ocfentanil is not approved in any country for medical use. There is sufficient evidence that it is being or

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18 Oral statement at the reconvened 60th session of the Commission on Narcotic Drugs on 8 December 2017; see also extract from the report the 39th Expert Committee on Drug Dependence (http://www.who.int/mason/entity/medicines/news/2017/letter-DG-39thECDDrecommendations.pdf).

19 Council Decision 2005/387/JHA on the information exchange, risk-assessment and control of new psychoactive substances (OJ L 127, 20.5.2005, p. 32).

20 Proposal for a Council Implementig Decision on subjecting the new psychoactive substance methyl 1-(2-phenylethyl)-4-[phenyl(propanoyl)amino]piperidine-4-carboxylate (carfentanil) to control measures (COM(2017) 765).

is likely to be abused, and may become a public health and social problem warranting the placing of the substance under international control. Consequently, the WHO recommends that ocfentanil be placed in Schedule I of the Convention on Narcotic Drugs.

(13) Ocfentanil is monitored by the European Monitoring Centre for Drugs and Drug Addiction as a new psychoactive substance under the terms of Decision 2005/387/JHA. Ocfentanil has been detected in twelve Member States. It is being sold openly on the market as well as in samples sold as heroin. It has been associated with serious adverse events, including deaths, and has been the subject of two public health-related alerts issued by the Union Early Warning System.

(14) Therefore, the Member States should take the position to add ocfentanil to Schedule I of the Convention on Narcotic Drugs.

(15) According to the assessment of the Expert Committee, furanylfentanyl (Fu-F; *N*-phenyl-*N*-[1-(2-phenylethyl)piperidin-4-yl]furan-2-carboxamide) is a synthetic opioid and is structurally similar to fentanyl, a controlled substance widely used in medicine for general anaesthesia during surgery and for pain management. It is a derivative of fentanyl with two distinctive characteristics: a) higher liposolubility that allows its rapid absorption into general circulation; and b) it binds to μ-opioid receptors with significant higher affinity than morphine. These characteristics give furanylfentanyl a highly risky pharmacological profile. In the last several years there has been an increase in deaths due to the use of this substance. Furanylfentanyl has itself no recorded therapeutic use. There is sufficient evidence that it is being or is likely to be abused and may constitute a public health and social problem warranting the placing of the substance under international control. Thus, the WHO recommends that furanylfentanyl be placed in Schedule I of the Convention on Narcotic Drugs.

(16) Furanylfentanyl is already subject to control measures at Union level under Decision 2005/387/JHA[21].

(17) Therefore, the Member States should take the position to add furanylfentanyl to Schedule I of the Convention on Narcotic Drugs.

(18) According to the assessment of the Expert Committee, acryloylfentanyl (acrylfentanyl; *N*-(1-phenethylpiperidin-4-yl)-*N*-phenylacrylamide) is a synthetic opioid and is structurally similar to fentanyl, a controlled substance widely used in medicine for general anaesthesia during surgery and for pain management. Acryloylfentanyl is being used and abused for non-medical purposes in the same setting and for the same desired effects as other opioids. Acryloylfentanyl has itself no recorded therapeutic use and its use has resulted in fatalities. There is sufficient evidence that it is being or is likely to be abused and may constitute a public health and social problem warranting the placing of the substance under international control. Thus, the WHO recommends that acryloylfentanyl be placed in Schedule I of the Convention on Narcotic Drugs.

(19) Acryloylfentanyl is already subject to control measures at Union level under Decision 2005/387/JHA[22].

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[21] 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.

[22] Council Implementing Decision (EU) 2017/1774 of 25 September 2017 on subjecting *N*-(1-phenethylpiperidin-4-yl)-*N*-phenylacrylamide (acryloylfentanyl) to control measures (OJ L 251, 29.9.2017, p. 21).

(20) Therefore, the Member States should take the position to add acryloylfentanyl to Schedule I of the Convention on Narcotic Drugs.

(21) According to the assessment of the Expert Committee, 4-fluoroisobutyrfentanyl (4F-iBF, 4-FIBF, pFIBF; *N*-(4-fluorophenyl)-*N*-(1-phenethylpiperidin-4-yl)isobutyramide) is a synthetic opioid. 4-Fluoroisobutyrfentanyl is one of the latest fentanyl derivatives to be sold and used in a similar manner as other licit and illicit opioids. At the current time, there is evidence that 4-fluoroisobutyrfentanyl poses similar public health risks as the fentanyl derivatives that preceded it. 4-Fluoroisobutyrfentanyl has no recorded therapeutic use and its use has resulted in fatalities. There is sufficient evidence that it is being or is likely to be abused and may constitute a public health and social problem warranting the placing of the substance under international control. Thus, the WHO recommends that 4-fluoroisobutyrfentanyl be placed in Schedule I of the Convention on Narcotic Drugs.

(22) 4-Fluoroisobutyrfentanyl is monitored by the European Monitoring Centre for Drugs and Drug Addiction as a new psychoactive substance under the terms of Decision 2005/387/JHA. 4-Fluoroisobutyrfentanyl has been seized in four Member States. It is being sold openly on the market. It has been associated with serious adverse events, including detection in at least 16 deaths. 4-Fluoroisobutyrfentanyl has been the subject of a Risk Assessment by the European Monitoring Centre for Drugs and Drug Addiction. The Commission proposed on 15 December 2017 to subject 4-fluoroisobutyrfentanyl to control measures under Decision 2005/387/JHA[23].

(23) Therefore, the Member States of the Union should take the position to add 4-fluoroisobutyrfentanyl to Schedule I of the Convention on Narcotic Drugs.

(24) According to the assessment of the Expert Committee, tetrahydrofuranylfentanyl (THF-F; *N*-phenyl-*N*-[1-(2-phenylethyl)piperidin-4-yl] tetrahydrofuran-2-carboxamide) is a synthetic opioid. The data collected so far from in vitro studies and the toxicological findings, and patterns of use indicate that tetrahydrofuranylfentanyl is likely an opioid narcotic analgesic in humans with abuse liability and dependence potential similar to fentanyl and other illicit opioids. Tetrahydrofuranylfentanyl has no recorded therapeutic use and its use has resulted in fatalities. There is sufficient evidence that it is being or is likely to be abused and may constitute a public health and social problem warranting the placing of the substance under international control. Thus, the WHO recommends that tetrahydrofuranylfentanyl be placed in Schedule I of the Convention on Narcotic Drugs.

(25) Tetrahydrofuranylfentanyl is monitored by the European Monitoring Centre for Drugs and Drug Addiction as a new psychoactive substance under the terms of Decision 2005/387/JHA. Tetrahydrofuranylfentanyl has been seized in one Member State. It is being sold openly on the market. It has been associated with serious adverse events, including detection in at least 14 deaths. Tetrahydrofuranylfentanyl has been the subject of a Risk Assessment by the European Monitoring Centre for Drugs and Drug Addiction. The Commission proposed on 15 December 2017 to subject tetrahydrofuranylfentanyl to control measures under Decision 2005/387/JHA[24].

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[23] Proposal for a Council Implementing Decision on subjecting the new psychoactive substance *N*-(4-fluorophenyl)-2-methyl-*N*-[1-(2-phenylethyl)piperidin-4-yl)propanamide (4-fluoroisobutyrylfentanyl) to control measures (COM(2017) 756).

[24] Proposal for a Council Implementing Decision on subjecting the new psychoactive substance *N*-phenyl-*N*-[1-(2-phenylethyl)piperidin-4-yl]oxolane-2-carboxamide (tetrahydrofuranylfentanyl; THF-F) to control measures (COM(2017) 759).

(26) Therefore, the Member States should take the position to add tetrahydrofuranylfentanyl (THF-F) to Schedule I of the Convention on Narcotic Drugs.

(27) According to the assessment of the Expert Committee, 4-fluoroamphetamine (4-FA; 1-(4-fluorophenyl)propan-2-amine) is a phenethylamine. It underwent a critical review already in November 2015 at the 37th meeting of the WHO Expert Committee on Drug Dependence. The Committee recommended at the time that 4-fluoroamphetamine not be placed under international control due to insufficiency of data regarding dependence, abuse and risks to public health but be kept under surveillance. Most of the new data collected stems from Europe and indicates increased use and popularity alongside increased numbers of notifications associated with severe adverse drug effects including serious cardiovascular toxicity. There is sufficient evidence that it is being or is likely to be abused and may constitute a public health and social problem warranting the placing of the substance under international control. Thus, the WHO recommends that 4-fluoroamphetamine be placed in Schedule II of the Convention on Psychotropic Substances.

(28) 4-Fluoroamphetamine is monitored by the European Monitoring Centre for Drugs and Drug Addiction as a new psychoactive substance under the terms of Decision 2005/387/JHA. 4-fluoroamphetamine has been detected in 21 Member States. It is being sold openly on the market and is often mixed with or sold as amphetamine. It has been associated with serious adverse events, including deaths.

(29) Therefore, the Member States should take the position to add 4-fluoroamphetamine (4-FA) to Schedule Schedule II of the Convention on Psychotropic Substances.

(30) According to the assessment of the Expert Committee, the degree of risk to public health and society associated with the abuse of AB-PINACA (*N*-[(2*S*)-1-Amino-3-methyl-1-oxobutan-2-yl]-1-pentyl-1*H*-indazole-3-carboxamide) is substantial. AB-PINACA is a synthetic cannabinoid receptor agonist. There is sufficient evidence that it is being or is likely to be abused and may constitute a public health and social problem warranting the placing of the substance under international control. Thus, the WHO recommends that AB-PINACA be placed in Schedule II of the Convention on Psychotropic Substances.

(31) AB-PINACA is monitored by the European Monitoring Centre for Drugs and Drug Addiction as a new psychoactive substance under the terms of Decision 2005/387/JHA. AB-PINACA has been detected in 12 Member States. It is being sold openly on the market.

(32) Therefore, the Member States should take the position to add AB-PINACA to Schedule II of the Convention on Psychotropic Substances.

(33) According to the assessment of the Expert Committee, the degree of risk to public health and society associated with the abuse of AB-CHMINACA (*N*-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1*H*-indazole-3-carboxamide) is substantial. AB-CHMINACA is a synthetic cannabinoid receptor agonist with an aminoalkylindazole structure used as an active ingredient of products sold as cannabis substitutes. AB-CHMINACA has no known therapeutic or medical use. There is sufficient evidence that it is being or is likely to be abused and may constitute a public health and social problem warranting the placing of the substance under international control. Thus, the WHO recommends that AB-CHMINACA be placed in Schedule II of the Convention on Psychotropic Substances.

(34) AB-CHMINACA is monitored by the European Monitoring Centre for Drugs and Drug Addiction as a new psychoactive substance under the terms of Decision 2005/387/JHA. AB-CHMINACA has been detected in 24 Member States. It is being sold openly on the market. It has been associated with serious adverse events, including detection in at least 31 deaths. AB-CHMINACA has been the subject of a Risk Assessment by the European Monitoring Centre for Drugs and Drug Addiction. The European Commission proposed on 18 December 2017 to subject AB-CHMINACA to control measures under Decision 2005/387/JHA[25].

(35) Therefore, the Member States should take the position to add AB-CHMINACA to Schedule II of the Convention on Psychotropic Substances.

(36) According to the assessment of the Expert Committee, the degree of risk to public health and society associated with the abuse of 5F-PB-22 (Quinolin-8-yl 1-(5-fluoropentyl)-1*H*-indole-3-carboxylate) is substantial. 5F-PB-22 is a synthetic cannabinoid receptor agonist. There is sufficient evidence that it is being or is likely to be abused and may constitute a public health and social problem warranting the placing of the substance under international control. Thus, the WHO recommends that 5F-PB-22 be placed in Schedule II of the Convention on Psychotropic Substances.

(37) 5F-PB-22 is monitored by the European Monitoring Centre for Drugs and Drug Addiction as a new psychoactive substance under the terms of Decision 2005/387/JHA. 5F-PB-22 has been detected in 4 Member States. It is being sold openly on the market.

(38) Therefore, the Member States should take the position to add 5F-PB-22 to Schedule II of the Convention on Psychotropic Substances.

(39) According to the assessment of the Expert Committee, the degree of risk to public health and society associated with the abuse of UR-144 ((1-Pentyl-1*H*-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone) is substantial. UR-144 is a synthetic cannabinoid receptor agonist which has been previously critically reviewed by the 36th meeting of the WHO Expert Committee on Drug Dependence in 2014. The Committee recommended at that time that UR-144 be kept under surveillance due to lack of scientific data on non-fatal and fatal intoxications involving solely UR-144. There is now sufficient evidence that it is being or is likely to be abused and may constitute a public health and social problem warranting the placing of the substance under international control. Thus, the WHO recommends that UR-144 be placed in Schedule II of the Convention on Psychotropic Substances.

(40) UR-144 is monitored by the European Monitoring Centre for Drugs and Drug Addiction as a new psychoactive substance under the terms of Decision 2005/387/JHA. UR-144 has been detected in 16 Member States. It is being sold openly on the market. It has been associated with serious adverse events and has been the subject of a public health-related alert issued to the Union Early Warning System.

(41) Therefore, the Member States should take the position to add UR-144 to Schedule II of the Convention on Psychotropic Substances.

(42) According to the assessment of the Expert Committee, the degree of risk to public health and society associated with the abuse of 5F-ADB (5F-MDMB-PINACA; methyl 2-{[1-(5-fluoropentyl)-1*H*-indazole-3-carbonyl]amino}-3,3-

[25] Proposal for a 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 (COM(2017) 758).

dimethylbutanoate) is substantial. 5F-ADB is a synthetic cannabinoid receptor agonist with an aminoalkylindazole structure used as an active ingredient of products sold as cannabis substitutes. 5F-ADB has no known therapeutic or medical use. There is sufficient evidence that it is being or is likely to be abused and may constitute a public health and social problem warranting the placing of the substance under international control. Thus, the WHO recommends that 5F-ADB be placed in Schedule II of the Convention on Psychotropic Substances.

(43) 5F-ADB is monitored by the European Monitoring Centre for Drugs and Drug Addiction as a new psychoactive substance under the terms of Decision 2005/387/JHA. 5F-ADB has been detected in 25 Member States. It is being sold openly on the market. It has been associated with serious adverse events, including detection in at least 28 deaths. 5F-ADB has been the subject of a Risk Assessment by the European Monitoring Centre for Drugs and Drug Addiction. The European Commission proposed on 15 December 2017 to subject 5F-ADB to control measures under Decision 2005/387/JHA[26].

(44) Therefore, the Member States should take the position to add 5F-ADB to Schedule II of the Convention on Psychotropic Substances.

(45) It is appropriate to establish the position to be taken on the Union's behalf in the Commission on Narcotic Drugs, as the decisions on the addition of 12 new substances to the Schedules of the relevant UN Conventions will be capable of decisively influencing the content of Union law, namely Framework Decision 2004/757/JHA and Decision 2005/387/JHA.

(46) The Union's position is to be expressed by the Member States that are members of the Commission on Narcotic Drugs, acting jointly.

(47) Denmark is bound by Framework Decision 2004/757/JHA and Decision 2005/387/JHA and is therefore taking part in the adoption and application of this Decision.

(48) Ireland is bound by Framework Decision 2004/757/JHA and Decision 2005/387/JHA and is therefore taking part in the adoption and application of this Decision.

(49) The United Kingdom is not bound by Framework Decision 2004/757 JHA and Decision 2005/387/JHA and is therefore not taking part in the adoption of this Decision, and is not bound by it or subject to its application,

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted on the Union's behalf in the sixty-first session of the Commission on Narcotic Drugs from 12 to 16 March 2018, when that body is called upon to adopt decisions on the addition of substances to the Schedules of the United Nations Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol and the United Nations Convention on Psychotropic Substances of 1971, is set out in the Annex.

[26] Proposal for a Council Implementing Decision on subjecting the new psychoactive substance methyl 2-{[1-(5-fluoropentyl)-1*H*-indazole-3-carbonyl]amino}-3,3-dimethylbutanoate (5F-MDMB-PINACA) to control measures (COM(2017) 766).

Article 2

The position referred to in Article 1 shall be expressed by the Member States that are members of the Commission of Narcotic Drugs, acting jointly.

Article 3

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

Done at Brussels,

For the Council
The President