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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

on the exercise of the delegation conferred on the Commission pursuant to Council Framework Decision 2004/757/JHA on the addition of substances to the definition of 'drug'

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1. Introduction and legal basis

Article 8a(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[1] (hereafter 'Framework Decision') empowers the Commission to adopt delegated directives to add substances to the list of substances in Annex I that form part of the definition of 'drug'.

Article 8a(2) of the Framework Decision requires the Commission to report to the European Parliament and to the Council on the exercise of the delegation conferred on the Commission by that Framework Decision. The present report aims to meet the reporting obligation set for the Commission by Article 8a(2) of the Framework Decision.

The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than 3 months before the end of each period.

Together with Regulation (EC) 1920/2006 on the European Monitoring Centre for Drugs and Drug Addiction[2], the Framework Decision provides for a three-step procedure that may lead to the inclusion of a new psychoactive substance in the definition of 'drug' and thereby covering it by the Union criminal law provisions on illicit drug trafficking. After (i) an initial report by the European Monitoring Centre for Drugs and Drug Addiction in accordance with Article 5b of Regulation (EC) 1920/2006 and (ii) a risk assessment by the Extended Scientific Committee of the European Monitoring Centre for Drugs and Drug Addiction in accordance with Article 5c of Regulation (EC) 1920/2006, (iii) the Commission shall, without undue delay, adopt a delegated act in accordance with Article 8a of the Framework Decision.

2. Exercise of the delegation

The power to add substances to the definition of 'drug' has been used four times and the Commission has adopted the following delegated directives:

(a) 2018: 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'[3].

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1 OJ L 335, 11.11.2004, p. 8. EUR-Lex - 02004F0757-20210609 - EN - EUR-Lex (europa.eu)

2 OJ L 376, 27.12.2006, p. 1. EUR-Lex - 32006R1920 - EN - EUR-Lex (europa.eu)

3 OJ L 66, 7.3.2019, p. 3–5. (Entry into force : 27.3.2019). EUR-Lex - 32019L0369 - EN - EUR-Lex (europa.eu)

Directive (EU) 2017/2103 of the European Parliament and of the Council of 15 November 2017[4] that amended Council Framework Decision 2004/757/JHA in order to include new psychoactive substances in the definition of 'drug' through delegated acts also repealed Council 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 were not yet included into the Annex to Framework Decision 2004/757/JHA, so the following substances were added to the Annex through Delegated Directive (EU) 2019/369:

a. N-phenyl-N-[1-(2-phenylethyl)piperidin-4-yl]furan-2-carboxamide (furanylfentanyl), as referred to in Council Implementing Decision (EU) 2017/2170[5].

b. N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide (ADB-CHMINACA), as referred to in Council Implementing Decision (EU) 2018/747[6].

c. 1-(4-cyanobutyl)-N-(2-phenylpropan-2-yl)-1H-indazole-3-carboxamide (CUMYL-4CN-BINACA), as referred to in Council Implementing Decision (EU) 2018/748[7].

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), as referred to in Council Implementing Decision (EU) 2018/1463[8].

(b) 2020: Commission Delegated Directive (EU) 2020/1687 of 2 September 2020 amending the Annex to Council Framework Decision 2004/757/JHA as regards the inclusion of the new psychoactive substance N,N-diethyl-2-[[4-(1-methylethoxy)phenyl]methyl]-5-nitro-1H-benzimidazole-1-ethanamine (isotonitazene) in the definition of 'drug'[9];

(c) 2021: Commission Delegated Directive (EU) 2021/802 of 12 March 2021 amending the Annex to Council Framework Decision 2004/757/JHA as regards the inclusion of the new psychoactive substances methyl 3,3-dimethyl-2-{[1-(pent-4-en-1-yl)-1H-indazole-3-carbonyl]amino}butanoate (MDMB-4en-PINACA) and methyl 2-{[1-(4-fluorobutyl)-1H-indole-3-carbonyl]amino}-3,3-dimethylbutanoate (4F-MDMB-BICA) in the definition of 'drug'[10];

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4 OJ L 305, 21.11.2017, p. 12–18. EUR-Lex - 32017L2103 - EN - EUR-Lex (europa.eu)

5 OJ L 306, 22.11.2017, p. 19. EUR-Lex - 32017D2170 - EN - EUR-Lex (europa.eu)

6 OJ L 125, 22.5.2018, p. 8. EUR-Lex - 32018D0747 - EN - EUR-Lex (europa.eu)

7 OJ L 125, 22.5.2018, p. 10. EUR-Lex - 32018D0748 - EN - EUR-Lex (europa.eu)

8 OJ L 245, 1.10.2018, p. 9. EUR-Lex - 32018D1463 - EN - EUR-Lex (europa.eu)

9 OJ L 379, 13.11.2020, p. 55–57 (Entry into force: 23.11.2020) EUR-Lex - 32020L1687 - EN - EUR-Lex (europa.eu)

10 OJ L 178, 20.5.2021, p. 1–3 (Entry into force: 9.6.2021) EUR-Lex - 32021L0802 - EN - EUR-Lex (europa.eu)

(d) 2022: Commission Delegated Directive (EU) 2022/1552 of 18 March 2022 amending the Annex to Council Framework Decision 2004/757/JHA as regards the inclusion of new psychoactive substances in the definition of 'drug'. This act added 2-(methylamino)-1-(3-methylphenyl)propan-1-one (3-methylmethcathinone, 3-MMC) and 1-(3-chlorophenyl)-2-(methylamino)propan-1-one (3-chloromethcathinone, 3-CMC) to the list[11].

The delegated directives were submitted for scrutiny to the European Parliament and the Council. The delegated acts have been published after the scrutiny period elapsed, as the Commission did not receive any objections or extension requests during that time.

3. Conclusion

The Commission considers that it has exercised its delegated powers within the remit conferred to it by Council Framework Decision 2004/757/JHA.

The Commission presents this report pursuant to Article 8a(2) of Council Framework Decision 2004/757/JHA and invites the European Parliament and the Council to take note of this report. The delegation of powers to adopt delegated acts conferred should be tacitly extended in order to continue ensuring an efficient scheduling of new psychoactive substances at Union level.

[11] The scrutiny period for Commission Delegated Directive (EU) 2022/1552 is ongoing at time of writing.