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## II

*(Non-legislative acts)*

## REGULATIONS

## COMMISSION IMPLEMENTING REGULATION (EU) 2018/746

of 18 May 2018

**amending Implementing Regulation (EU) No 809/2014 as regards modification of single applications and payment claims and checks**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 <sup>(1)</sup>, and in particular points (a) and (b) of the first subparagraph of Article 62(2) and points (b) and (c) of the first subparagraph of Article 78 thereof,

Whereas:

- (1) Article 15(2a) of Commission Implementing Regulation (EU) No 809/2014 <sup>(2)</sup> sets out the deadline by which beneficiaries may modify their single applications or payment claims following the notification of the results of the preliminary checks. To ensure beneficiaries are afforded equal treatment, it is appropriate to ensure that all beneficiaries always have the same number of days after the deadline for notification of the results of the preliminary checks to modify their single applications or payment claims.
- (2) Article 24(4) of Implementing Regulation (EU) No 809/2014 provides that physical inspections in the field are required whenever photo-interpretation of satellite or aerial images does not provide conclusive results on compliance with eligibility criteria or the correct size of the area that is the subject of administrative or on-the-spot checks. New technologies such as Unmanned Aircraft Systems, geo-tagged photographs, GNSS-receivers combined with EGNOS and Galileo, data captured by the Copernicus Sentinels satellites and others, provide relevant data on activities carried out on agricultural areas. With a view to reducing the burden of controls for the competent authorities and beneficiaries, particularly the number of physical inspections in the field, and boosting the use of new technologies in the integrated administration and control system, it is appropriate to allow relevant evidence collected by using such technologies as well as any other relevant documentary evidence to be used for checking compliance with eligibility criteria, commitments or other obligations for the aid scheme or support measure concerned as well as compliance with the requirements and standards relevant for cross-compliance. Physical inspections in the field should remain necessary if this evidence does not lead to conclusive results.
- (3) Copernicus Sentinels satellites integrated with EGNOS/Galileo data offer relevant and full, free and open data that allow monitoring of all agricultural areas in Member States. It is appropriate to allow Member States or regions to use an alternative method for carrying out checks by using systematically these or similar data and processing them in an automated way as well as following up cases where the automated processing of data leads to inconclusive results, without compromising the system's performance in delivering the required level of assurance

<sup>(1)</sup> OJ L 347, 20.12.2013, p. 549.

<sup>(2)</sup> Commission Implementing Regulation (EU) No 809/2014 of 17 July 2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system, rural development measures and cross compliance (OJ L 227, 31.7.2014, p. 69).

on the legality and regularity of expenditure (hereinafter referred to as 'monitoring'). A legal framework should therefore be provided to set out the conditions under which checks by monitoring in a Member State or a region can substitute the area-related on-the-spot checks.

- (4) When checks by monitoring allow the competent authority to conclude if the administrative penalty set out in Article 19a(3) of Commission Delegated Regulation (EU) No 640/2014 <sup>(1)</sup> has to be applied, it should be provided that the follow-up on-the-spot check in accordance with Article 33a of Implementing Regulation (EU) No 809/2014 is not necessary.
- (5) Taking into account the initial investment needed by the competent authorities to substitute the current on-the-spot checks method with checks by monitoring, it is appropriate to provide for a certain flexibility, allowing that checks by monitoring are carried out only for certain aid schemes, support measures or types of operations, and to provide for the possibility to phase-in checks by monitoring of a certain aid scheme or support measure. During the phasing-in period, which should be limited in time to ensure equal treatment of beneficiaries, new provisions should ensure that Member States or regions gradually extend their use of checks by monitoring to the whole area covered by the aid scheme or support measure. Such an approach will allow Member States or regions to prepare for a full implementation of monitoring and fine-tune the follow-up procedures and IT tools used to analyse data. Where checks by monitoring are limited to areas chosen on the basis of clearly defined, objective and non-discriminatory criteria, all beneficiaries in those areas should be subject to checks by monitoring.
- (6) It is appropriate to set a minimum control rate in order to ensure that the checks on compliance with the eligibility conditions, requirements and other obligations are satisfactory in circumstances where data provided by Copernicus Sentinels satellites are not relevant. Physical inspections in the field should only be necessary if evidence collected using new technologies such as geo-tagged photos and Unmanned Aircraft Systems or relevant documentary evidence does not lead to a conclusive result or if the competent authorities anticipate that none of these types of evidence will be effective in checking compliance with the eligibility conditions, requirements and other obligations that cannot be monitored.
- (7) The results of the automated analysis of Copernicus Sentinels satellites data or similar data can be a tool to assist beneficiaries in respecting requirements. Warning alerts about possible non-compliance should be communicated to beneficiaries and national authorities should be required to set up appropriate tools for that purpose. It is appropriate to provide that communication with beneficiaries on these results is not considered as a notice to the beneficiary of the intention of the competent authority to carry out an on-the-spot check. Beneficiaries should also be given the possibility to modify their aid applications or payment claims so as to correct their declaration on the use of agricultural areas, provided that the requirements in question have been complied with. It is also appropriate to allow Member States to set a deadline by which these modifications can be accepted.
- (8) It is appropriate to clarify that applications or applicants found not to be admissible or not eligible for payment at the time of the on-the-spot check should not be part of the control population from which samples are drawn to fulfil the minimum control rates. It should also be provided that these applications or data concerning these applicants should be used for cross-checks so as to detect double claims in admissible applications and information relevant for the update of the land parcel identification system.
- (9) To clarify the scope of on-the-spot checks concerning the obligation to reconvert in cases of non-respect of the obligation on environmentally sensitive permanent grassland areas, it is appropriate to provide that the on-the-spot checks should be carried out on parcels that have to be reconverted so as to check if the reversion obligation has been respected.
- (10) To allow Member States to optimise their sample selection, it is appropriate to provide for more flexibility in selecting the control samples as laid down in Articles 30 to 33 of Implementing Regulation (EU) No 809/2014. The mandatory selection method should be replaced by general principles on how samples can be combined. Furthermore, to obtain a representative error rate, a minimum random sample for each of the aid schemes and support measures should be provided. To keep the risk-based approach for checks of the greening payment, it is also appropriate to define the selection method for the relevant control samples.

<sup>(1)</sup> Commission Delegated Regulation (EU) No 640/2014 of 11 March 2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system and conditions for refusal or withdrawal of payments and administrative penalties applicable to direct payments, rural development support and cross compliance (OJ L 81, 20.6.2014, p. 48).

- (11) In order to facilitate the implementation of the integrated system and to reduce the time of carrying out controls, the possibility to limit checks concerning area measurement to a random sample of 50 % of the agricultural parcels declared should be extended to also cover checks concerning eligibility.
- (12) For the purposes of monitoring the implementation of the checks by monitoring, a notification obligation for Member States should be provided.
- (13) Implementing Regulation (EU) No 809/2014 should therefore be amended accordingly.
- (14) To allow Member States to use new technologies in their integrated administration and control systems as soon as possible, the new rules on single applications and payment claims and checks should apply as of claim year 2018. This Regulation should therefore enter into force on the day of its publication in the *Official Journal of the European Union*.
- (15) The measures provided for in this Regulation are in accordance with the opinion of the Committee for Direct Payments and the Rural Development Committee,

HAS ADOPTED THIS REGULATION:

#### Article 1

Implementing Regulation (EU) No 809/2014 is amended as follows:

- (1) Article 15 is amended as follows:

- (a) the following paragraph 1b is inserted:

‘1b. Where checks by monitoring are carried out in accordance with Article 40a, beneficiaries may modify the single application or payment claim regarding the use of individual agricultural parcels provided that the requirements under the direct payment schemes or rural development measures concerned are respected.’;

- (b) paragraph 2a is replaced by the following:

‘2a. Modifications following the preliminary checks made in accordance with paragraph 1a shall be notified to the competent authority at the latest nine calendar days after the final date for notification of the results of the preliminary checks referred to in Article 11(4) to the beneficiary.

Such notifications shall be made in writing or via the geo-spatial aid application form.’;

- (c) the following paragraph 2b is inserted:

‘2b. Modifications made in accordance with paragraph 1b shall be notified to the competent authority by the date fixed by that competent authority. The date shall be at least 15 calendar days before the date when the payment of the first instalment or the advanced payment is to be made to beneficiaries in accordance with Article 75 of Regulation (EU) No 1306/2013.

Such notifications shall be made in writing or via the geo-spatial aid application form.’;

- (d) in paragraph 3, the following second subparagraph is added:

‘For the purposes of the first subparagraph, the obligation provided in point (d) of Article 40a(1) shall not be considered as a notice to the beneficiary of a competent authority’s intention to carry out an on-the-spot check.’;

- (2) in Article 24, paragraph 4 is replaced by the following:

‘4. The competent authority shall carry out physical inspections in the field in the event that photo-interpretation of satellite or aerial ortho-images or other relevant evidence including evidence provided by the beneficiary at the request of the competent authority do not provide results that would permit definitive conclusions to be drawn to the satisfaction of the competent authority concerning the eligibility or, where applicable, the correct size of the area that is the subject of administrative or on-the-spot checks.’;

- (3) in Article 29(1), the following third subparagraph is added:

‘Data from applications or concerning applicants found not to be admissible or not eligible for payment as referred to in Article 34(1) shall be used for the purposes of points (a), (c) and (e) of the first subparagraph of this paragraph.’;

(4) in Article 31(1), point (g) is replaced by the following:

‘(g) 100 % of all parcels on which an obligation to re-convert land into land under permanent grassland according to Article 42 of Delegated Regulation (EU) No 639/2014 applies;’

(5) in Article 33a, paragraph 2 is replaced by the following:

‘2. The follow-up on-the-spot check referred to in paragraph 1 shall not be necessary where the over-declaration identified has led to an up-date of the reference parcels concerned in the identification system for agricultural parcels as referred to in Article 5 of Delegated Regulation (EU) No 640/2014 in the year of the finding or where checks by monitoring as referred to in Article 40a of this Regulation are carried out for the aid scheme or support measure in question in the following claim year and allow the competent authority to conclude whether the administrative penalty set out in Article 19a(3) of Delegated Regulation (EU) No 640/2014 shall be applied.’

(6) Article 34 is amended as follows:

(a) paragraphs 1, 2 and 3 are replaced by the following:

‘1. Applications or applicants found not to be admissible or not eligible for payment at the time of submission or after administrative or on-the-spot checks shall not form part of the control population.’

2. For the purposes of Articles 30 and 31, the sample selection shall ensure that:

(a) between 1 % and 1,25 % of the control population referred to in points (a) to (f) and (h) of Article 30 and in points (a), (c), (d) and (e) of Article 31(1) shall be selected randomly;

(b) between 0,6 % and 0,75 % of the control population referred to in point (b) of Article 31(1) shall be selected randomly;

(c) between 4 % and 5 % of the control population referred to in point (h) of Article 31(1) shall be selected randomly;

(d) the remaining number of beneficiaries in the control sample referred to in points (a) to (e) and (h) of Article 31(1) shall be selected on the basis of a risk analysis.

For the purposes of Article 31, Member States shall ensure representativeness of the control sample as regards the different practices.

The additional beneficiaries to be subject to on-the-spot checks for the purposes of the first subparagraph of Article 31(3) shall be selected on the basis of a risk analysis.

3. For the purposes of Articles 32 and 33, between 20 % and 25 % of the minimum number of beneficiaries to be subject to on-the-spot checks and, where Article 32(2a) applies, 100 % of the collectives and between 20 % and 25 % of the commitments to be subject to on-the-spot checks shall be selected randomly. The remaining number of beneficiaries and commitments to be subject to on-the-spot checks shall be selected on the basis of a risk analysis.

For the purposes of Articles 32 and 33, the random part of the sample may also include either the beneficiaries already randomly selected in accordance with points (a), (b) and (c) of paragraph 2 or the additional beneficiaries selected randomly in accordance with the second subparagraph of Article 26(4) or both. The number of such beneficiaries in the control sample shall not go beyond their proportion in the control population.

For the purposes of Article 32, Member States may, as a result of the risk analysis, select specific rural development measures which apply to the beneficiaries.’

(b) the following paragraph 4a is inserted:

‘4a. For the purposes of Articles 30 to 33 and point (c) of Article 40a(1), the same beneficiary may be used to respect several of the minimum control rates concerned provided that the effectiveness of selection of the risk based samples required therein is not affected.

The on-the-spot check regarding the selected beneficiaries may be limited to the aid scheme or rural development measure they have been selected for if the minimum control rates of the other aid schemes or support measures they applied for are already respected.’

(c) in paragraph 5, point (b) is replaced by the following:

‘(b) by comparing the results as regards the difference between the area declared and the area determined of the risk based and randomly selected sample; or by comparing the results as regards the difference between the animals declared and the animals determined of the risk based and randomly selected sample;’;

(7) Article 38 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. The eligibility checks and the actual area measurement of the agricultural parcel as part of an on-the-spot check may be limited to a randomly selected sample of at least 50 % of the agricultural parcels for which an aid application or payment claim has been submitted under the area-related aid schemes or rural development measures. When this sample check reveals any non-compliance, all agricultural parcels shall be measured and be subject to eligibility checks, or conclusions from the sample shall be extrapolated.’;

(b) in paragraph 7, the words ‘Article 17(1)(b) of Delegated Regulation (EU) No 640/2014’ are replaced by the words ‘Article 17 of Delegated Regulation (EU) No 640/2014’;

(c) in paragraph 8, the words ‘two separate measurements’ are replaced by the words ‘separate measurements’;

(8) in Article 39, paragraph 1 is replaced by the following:

‘1. The eligibility of agricultural parcels shall be verified by any appropriate means, including evidence provided by the beneficiary at the request of the competent authority. That verification shall also include a verification of the crop, where appropriate. To that end, additional proof shall be requested where necessary.’;

(9) in Article 40, point (b) is replaced by the following:

‘(b) carry out physical inspections in the field of all agricultural parcels for which photo interpretation or other relevant evidence requested by the competent authority does not make it possible to verify the accuracy of the declaration of areas to the satisfaction of the competent authority’;

(10) the following Article 40a is inserted:

‘Article 40a

### **Checks by monitoring**

1. Competent authorities may carry out checks by monitoring. Where they elect to do so, they shall:

- (a) set up a procedure of regular and systematic observation, tracking and assessment of all eligibility criteria, commitments and other obligations which can be monitored by Copernicus Sentinels satellite data or other data with at least equivalent value, over a period of time that allows to conclude on the eligibility of the aid or support requested;
- (b) carry out, where necessary, and in order to conclude on the eligibility of aid or support requested, appropriate follow-up activities;
- (c) carry out checks for 5 % of the beneficiaries concerned by eligibility criteria, commitments and other obligations which cannot be monitored by Copernicus Sentinels satellite data or other data with at least equivalent value, and are relevant to conclude on the eligibility of aid or support. Between 1 % and 1,25 % of the beneficiaries shall be selected randomly. The remaining beneficiaries shall be selected on the basis of a risk analysis;
- (d) inform beneficiaries about the decision to carry out checks by monitoring and set up appropriate tools to communicate with beneficiaries on at least warning alerts and evidence requested for the purposes of points (b) and (c).

For the purposes of points (b) and (c), physical inspections in the field shall be carried out when relevant evidence, including evidence provided by the beneficiary at the request of the competent authority, does not allow to conclude on the eligibility of the aid or support requested. Physical inspections in the field may be limited to checks of eligibility criteria, commitments and other obligations that are relevant to conclude on the eligibility of the aid or support requested.

2. Where the competent authority carries out checks by monitoring in accordance with paragraph 1, can demonstrate effective operational procedures fulfilling the requirements laid down in Articles 7, 17 and 29 of this Regulation and has proven the quality of the identification system for agricultural parcels as assessed in accordance with Article 6 of Delegated Regulation (EU) No 640/2014:

- (a) Articles 25, 26, 30, 31, 32, 34, 35, 36, Article 37(2), (3) and (4) and Articles 38 and 40 of this Regulation do not apply;
- (b) the verification of tetrahydrocannabinol content in hemp growth carried out in accordance with Article 9 of Delegated Regulation (EU) No 639/2014 shall be made for 30 % of the area or 20 % of the area in case the Member State has a system of prior approval in place.

3. The competent authority may decide to apply checks by monitoring at the level of the individual area-related aid scheme or support measure or type of operation or to defined groups of beneficiaries subject to on-the-spot checks for the greening payment, as referred to in points (a) to (h) of Article 31(1).

In the first two years of application, the competent authority may decide to apply checks by monitoring to beneficiaries of an aid scheme or support measure in areas chosen on the basis of objective and non-discriminatory criteria. In such cases the areas subject to checks by monitoring in the second year of application shall be greater than in the first year of application.

Where the competent authority decides to carry out checks in accordance with the first or second subparagraph, paragraphs 1 and 2 shall apply only to the beneficiaries subject to checks by monitoring.;

(11) the following Article 40b is inserted:

‘Article 40b

#### **Notifications**

Member States shall notify the Commission by 1 December of the calendar year preceding the calendar year in which they start carrying out checks by monitoring of their decision to opt for checks by monitoring and indicate the schemes or measures or types of operations and, where relevant, the areas of such schemes or measures subject to checks by monitoring and the criteria used to select them.

However, where the competent authority has decided to carry out checks by monitoring as from claim year 2018, the notification shall be made within one month after the entry into force of this Regulation in the *Official Journal of the European Union*.;

(12) Article 41 is amended as follows:

(a) in paragraph 1, the following second subparagraph is added:

‘Where checks by monitoring are carried out in accordance with Article 40a, points (b) to (e) of the first subparagraph shall not apply. The control report shall indicate the results of the checks by monitoring at parcel level.;

(b) in paragraph 2, the third subparagraph is replaced by the following:

‘Where the on-the-spot check is carried out by means of remote sensing in accordance with Article 40 or by means of monitoring in accordance with Article 40a, the Member States may decide not to give the beneficiary the opportunity to sign the control report if no non-compliance is revealed during the check by remote-sensing or by monitoring. If any non-compliance is revealed as a consequence of such checks or by monitoring, the opportunity to sign the report shall be given before the competent authority draws its conclusions from the findings with regard to any resulting reductions, refusals, withdrawals or administrative penalties.;

(13) in Article 70, paragraph 3 is replaced by the following:

‘3. Where appropriate, the on-the-spot checks may be carried out by applying remote-sensing techniques or by using Copernicus Sentinels satellite data or other data with at least equivalent value.’.

#### *Article 2*

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2018.



This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 18 May 2018.

*For the Commission*

*The President*

Jean-Claude JUNKER

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# DECISIONS

## COUNCIL IMPLEMENTING DECISION (EU) 2018/747

of 14 May 2018

**on subjecting the new psychoactive substance N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide (ADB-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 <sup>(1)</sup>, 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 <sup>(2)</sup>,

Whereas:

- (1) In accordance with Article 6 of Decision 2005/387/JHA, a risk assessment report on the new psychoactive substance N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide ('ADB-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) ADB-CHMINACA is a synthetic cannabinoid. It has similar effects to those of THC, which is responsible for the major psychoactive effects of cannabis, but ADB-CHMINACA has additional life-threatening toxicity. The high potency of ADB-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) ADB-CHMINACA has been available in the Union since at least August 2014 and has been detected in 17 Member States. Due to the nature of ADB-CHMINACA, cases of detection are likely to be underreported since ADB-CHMINACA is not routinely screened for. In most cases, ADB-CHMINACA was seized as herbal or plant material and in powder form, but it has also been seized, though to a lesser extent, in other physical forms, for example in blotter form. More than 630 seizures have been made within the Union.
- (4) Three Member States have reported 13 deaths associated with ADB-CHMINACA. In the case of at least nine deaths, ADB-CHMINACA was either the cause of death or was likely to have contributed to the death. In addition, one Member State reported three acute non-fatal intoxications associated with ADB-CHMINACA. Due to the nature of ADB-CHMINACA, both non-fatal intoxications and deaths caused by ADB-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 ADB-CHMINACA within the Union. The available data suggest that ADB-CHMINACA is produced by chemical companies in China.
- (6) ADB-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 ADB-CHMINACA, or even synthetic cannabinoids in general.
- (7) ADB-CHMINACA has no recognised human or veterinary medical use in the Union nor, it appears, elsewhere. There are no indications that ADB-CHMINACA can be used for any other purpose aside from as an analytical reference standard and in scientific research.

<sup>(1)</sup> OJ L 127, 20.5.2005, p. 32.

<sup>(2)</sup> Opinion of 3 May 2018 (not yet published in the Official Journal).

- (8) The risk assessment report reveals that many of the questions related to ADB-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 the substance poses provides sufficient grounds for subjecting ADB-CHMINACA to control measures across the Union.
- (9) ADB-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. ADB-CHMINACA is not currently under assessment by the United Nations system.
- (10) Given that 13 Member States control ADB-CHMINACA under national drug control legislation and four Member States control ADB-CHMINACA under other legislation, subjecting ADB-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 ADB-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-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1*H*-indazole-3-carboxamide ('ADB-CHMINACA') shall be subjected to control measures across the Union.

#### *Article 2*

By 23 May 2019, Member States shall take the necessary measures, in accordance with their national law, to subject ADB-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, 14 May 2018.

*For the Council*  
*The President*  
E. ZAHARIEVA

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**COUNCIL IMPLEMENTING DECISION (EU) 2018/748****of 14 May 2018****on subjecting the new psychoactive substance 1-(4-cyanobutyl)-N-(2-phenylpropan-2-yl)-1H-indazole-3-carboxamide (CUMYL-4CN-BINACA) 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 <sup>(1)</sup>, 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 <sup>(2)</sup>,

Whereas:

- (1) In accordance with Article 6 of Decision 2005/387/JHA, a risk assessment report on the new psychoactive substance 1-(4-cyanobutyl)-N-(2-phenylpropan-2-yl)-1H-indazole-3-carboxamide ('CUMYL-4CN-BINACA') 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) CUMYL-4CN-BINACA is a synthetic cannabinoid. It has similar effects to those of THC, which is responsible for the major psychoactive effects of cannabis, but CUMYL-4CN-BINACA has additional life-threatening toxicity. The high potency of CUMYL-4CN-BINACA 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) CUMYL-4CN-BINACA has been available in the Union since at least October 2015 and has been detected in 11 Member States. Due to the nature of CUMYL-4CN-BINACA, cases of detection are likely to be underreported since CUMYL-4CN-BINACA is not routinely screened for. In most cases, CUMYL-4CN-BINACA was seized as powder or herbal material, but it has also been seized, though to a lesser extent, in other physical forms, for example in blotter form. More than 270 seizures have been made within the Union.
- (4) 11 deaths associated with CUMYL-4CN-BINACA have been reported by two Member States. In the case of at least five of those deaths CUMYL-4CN-BINACA was the cause of death or was likely to have contributed to the death. In addition, five acute non-fatal intoxications associated with CUMYL-4CN-BINACA were reported by two Member States. Due to the nature of CUMYL-4CN-BINACA, both non-fatal intoxications and deaths caused by CUMYL-4CN-BINACA 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 CUMYL-4CN-BINACA within the Union. The available data suggest that CUMYL-4CN-BINACA is produced by chemical companies in China.
- (6) CUMYL-4CN-BINACA 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 CUMYL-4CN-BINACA or even synthetic cannabinoids in general.
- (7) CUMYL-4CN-BINACA has no recognised human or veterinary medical use in the Union nor, it appears, elsewhere. There are no indications that CUMYL-4CN-BINACA 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 CUMYL-4CN-BINACA 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 the substance poses provides sufficient grounds for subjecting CUMYL-4CN-BINACA to control measures across the Union.

<sup>(1)</sup> OJ L 127, 20.5.2005, p. 32.

<sup>(2)</sup> Opinion of 3 May 2018 (not yet published in the Official Journal).

- (9) CUMYL-4CN-BINACA 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. CUMYL-4CN-BINACA is not currently under assessment by the United Nations system.
- (10) Given that nine Member States control CUMYL-4CN-BINACA under national drug control legislation and five Member States control CUMYL-4CN-BINACA under other legislation, subjecting CUMYL-4CN-BINACA 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 CUMYL-4CN-BINACA 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 1-(4-cyanobutyl)-N-(2-phenylpropan-2-yl)-1H-indazole-3-carboxamide ('CUMYL-4CN-BINACA') shall be subjected to control measures across the Union.

*Article 2*

By 23 May 2019, Member States shall take the necessary measures, in accordance with their national law, to subject CUMYL-4CN-BINACA 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, 14 May 2018.

*For the Council*  
*The President*  
E. ZAHARIEVA

**COMMISSION IMPLEMENTING DECISION (EU) 2018/749****of 18 May 2018****on recognition of the report of Croatia including typical greenhouse gas emissions from cultivation of agricultural raw materials pursuant to Directive 2009/28/EC of the European Parliament and of the Council**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC <sup>(1)</sup>, and in particular Article 19(4) thereof,

Whereas:

- (1) On 1 April 2016, Croatia submitted a report presenting the results of calculations of greenhouse gas emissions from the cultivation of rapeseed. Calculations were performed for NUTS 2 region Continental Croatia, where rapeseed is grown.
- (2) After examination of the report submitted by Croatia, the Commission considers that it complies with the conditions set out in Directive 2009/28/EC to allow an EU Member State to use typical values for a smaller geographical area than that used in the calculation of the default values: the data of this report refer to emissions from cultivation of agricultural raw materials (rapeseed); the typical greenhouse gas emissions from the cultivation of rapeseed can be expected to be lower than or equal to the emissions that were assumed in the calculation of the relevant default values; and these typical greenhouse gas emissions have been reported to the Commission.
- (3) The measures provided for in this Decision are in accordance with the opinion of the Committee on the Sustainability of Biofuels and Bioliquids,

HAS ADOPTED THIS DECISION:

*Article 1*

The Commission considers that the report submitted for recognition by Croatia on 1 April 2016 contains accurate data for measuring the greenhouse gas emissions associated with the cultivation of rapeseed produced in the NUTS 2 region Continental Croatia for the purposes of Article 17(2) of Directive 2009/28/EC. A summary of the data contained in the report is set out in the Annex.

*Article 2*

This Decision is valid for a period of 5 years. If the content or circumstances of the report, as submitted for recognition to the Commission on 1 April 2016, change in a way that might affect the conditions required for the recognition made in Article 1, such changes shall be notified to the Commission without delay. The Commission shall assess the notified changes with a view to establishing whether the report is still providing accurate data.

*Article 3*

The Commission may repeal this Decision if it has been clearly demonstrated that the report does not contain any longer accurate data for the purposes of measuring the greenhouse gas emissions associated with the cultivation of rapeseed produced in Croatia.

<sup>(1)</sup> OJ L 140, 5.6.2009, p. 16.

*Article 4*

This Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels, 18 May 2018.

*For the Commission*

*The President*

Jean-Claude JUNCKER

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## ANNEX

Greenhouse gas emissions arising from the cultivation of rapeseed in Croatia:

Inputs	GHG emission in kg CO <sub>2</sub> eq/ha	GHG emission in kg CO <sub>2</sub> eq/t <sub>rapeseed</sub>	GHG emission in g CO <sub>2</sub> eq/MJ <sub>FAME</sub>
N-fertilizer	245,7	87,75	3,702
P <sub>2</sub> O <sub>5</sub> - fertilizer	25,28	9,028	0,381
K <sub>2</sub> O- fertilizer	46,08	16,45	0,694
Seed	2,2	0,785	0,033
Plant protection products	13,5	4,82	0,203
Diesel	219,5	78,39	3,307
Field N <sub>2</sub> O emissions	787,4	281,21	11,86
TOTAL	1 339,66	478,45	20,18



**CORRIGENDA****Corrigendum to Council Regulation (EU) 2017/2454 of 5 December 2017 amending Regulation (EU) No 904/2010 on administrative cooperation and combating fraud in the field of value added tax**

*(Official Journal of the European Union L 348 of 29 December 2017)*

On page 6, in point (7)(b) of Article 1, in point (b) of the new Article 47l:

*for:* '(b) the technical details, including a common electronic message, for providing the information referred to in Articles 47b(2) and (3), 47c(2) and (3), 47d(2), 47e, 47f(2), 47i(1), (2) and (4), and 47j(1), (2) and (4) as well as the technical means for the transmission of this information;'

*read:* '(b) the technical details, including a common electronic message, for providing the information referred to in Articles 47b(2) and (3), 47c(2) and (3), 47d(2), 47e, 47f(2), 47i(1), (2) and (4), and 47j(1), (2) and (3) as well as the technical means for the transmission of this information;'

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**Corrigendum to Council Directive (EU) 2017/2455 of 5 December 2017 amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods**

*(Official Journal of the European Union L 348 of 29 December 2017)*

On page 18, in point (30) of Article 2, in point (e) of the new Article 369p(3):

*for:* '(e) his individual identification number allocated in accordance with Article 369q(3).',

*read:* '(e) his individual identification number allocated in accordance with Article 369q(2).'

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