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Contents

II *Non-legislative acts*

REGULATIONS

- ★ **Commission Implementing Regulation (EU) 2019/368 of 4 March 2019 repealing Implementing Regulation (EU) No 444/2013 concerning the classification of certain goods in the Combined Nomenclature** 1

DIRECTIVES

- ★ **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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Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other acts are printed in bold type and preceded by an asterisk.

II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2019/368**of 4 March 2019****repealing Implementing Regulation (EU) No 444/2013 concerning the classification of certain goods in the Combined Nomenclature**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code ⁽¹⁾, and in particular Article 57(4) and Article 58(2) thereof,

Whereas:

- (1) In order to ensure uniform application of the Combined Nomenclature annexed to Council Regulation (EEC) No 2658/87 ⁽²⁾, it is necessary to adopt measures concerning the classification of certain goods.
- (2) By Implementing Regulation (EU) No 444/2013 ⁽³⁾, the Commission classified a product obtained from defatted soya beans after the extraction of the oil, further extracted with water and ethanol to remove soluble carbohydrates and minerals ('product concerned') under subheading 2309 90 31 of the Combined Nomenclature as 'other preparations of a kind used in animal feeding'.
- (3) As regards starch in products of heading 2309, it has to be ascertained whether any starch is present by applying a qualitative test (iodine-starch reaction; microscopic analysis). Once the presence of starch has been verified, the starch content of any product of heading 2309 is determined by using the polarimetric method (Ewers method) as laid down in Part L of Annex III of Commission Regulation (EC) No 152/2009 ⁽⁴⁾. Where the polarimetric method is not applicable, e.g. due to the presence in significant amounts of specific materials listed in Article 1 of Commission Regulation (EC) No 121/2008 ⁽⁵⁾, the enzymatic analytical method laid down in the Annex to that Regulation is to be applied.
- (4) At the time of adoption of Implementing Regulation (EU) No 444/2013, the only analytical method to be applied to the product concerned was the polarimetric method.
- (5) By its judgment in case C-144/15 ('Customs Support Holland BV') ⁽⁶⁾, the Court ruled that a soya protein concentrate which has been made suitable for use as feed must be classified in heading 2309. The soya protein concentrate at issue in the main proceedings in that case is described as being obtained from dehulled, ground and steamed soya beans which first undergo an oil-extraction process, after which what remains is so-called soya meal. This meal is then treated with ethanol and water to extract the residual fat, reduce the content of

⁽¹⁾ OJ L 269, 10.10.2013, p. 1.⁽²⁾ Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1).⁽³⁾ Commission Implementing Regulation (EU) No 444/2013 of 7 May 2013 concerning the classification of certain goods in the Combined Nomenclature (OJ L 130, 15.5.2013, p. 19).⁽⁴⁾ Commission Regulation (EC) No 152/2009 of 27 January 2009 laying down the methods of sampling and analysis for the official control of feed (OJ L 54, 26.2.2009, p. 1).⁽⁵⁾ Commission Regulation (EC) No 121/2008 of 11 February 2008 laying down the method of analysis for the determination of starch content in preparations of a kind used in animal feeding (CN code 2309) (OJ L 37, 12.2.2008, p. 3).⁽⁶⁾ ECLI:EU:C:2016:133.

components other than proteins, primarily carbohydrates or food fibre, and eliminate certain harmful substances. The soya protein concentrate obtained in this way does not contain any trace of the ethanol used and consists, inter alia, of proteins and starch.

- (6) The product at issue in the main proceedings in case C-144/15 and the product concerned are sufficiently similar as both are feed products based on soya products, which are to be classified in heading 2309. In both cases, the products are not a residue of heading 2304 directly resulting from the extraction of soya-bean oil but result from a process whereby the vegetable material from which the products have been derived has lost its essential characteristics.
- (7) Commission Implementing Regulation (EU) 2017/68 ⁽⁷⁾ added 'soya products' to the list of feed materials set out in Article 1 of Regulation (EC) No 121/2008 in respect of which the starch content of preparations of a kind used in animal feeding (heading 2309) is to be determined using the enzymatic analytical method.
- (8) Therefore, in the interest of legal certainty as regards the tariff classification of products of heading 2309 based on soya products and in order to ensure the uniform application of the Combined Nomenclature within the Union, Implementing Regulation (EU) No 444/2013 should be repealed.
- (9) It is appropriate to provide that binding tariff information issued on the basis of Implementing Regulation (EU) No 444/2013 in respect of the goods concerned by this Regulation may, for a certain period, continue to be invoked by the holder in accordance with Article 34(9) of Regulation (EU) No 952/2013. That period should be set at three months.
- (10) The measures provided for in this Regulation are in accordance with the opinion of the Customs Code Committee,

HAS ADOPTED THIS REGULATION:

Article 1

Implementing Regulation (EU) No 444/2013 is repealed.

Article 2

Binding tariff information issued on the basis of Implementing Regulation (EU) No 444/2013 in respect of the goods concerned by this Regulation may continue to be invoked in accordance with Article 34(9) of Regulation (EU) No 952/2013 for a period of three months from the date of entry into force of this Regulation.

Article 3

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

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

Done at Brussels, 4 March 2019.

*For the Commission,
On behalf of the President,
Stephen QUEST
Director-General*

Directorate-General for Taxation and Customs Union

⁽⁷⁾ Commission Implementing Regulation (EU) 2017/68 of 9 January 2017 amending Regulation (EC) No 121/2008 laying down the method of analysis for the determination of starch content in preparations of a kind used in animal feeding (CN code 2309) (OJ L 9, 13.1.2017, p. 4).

DIRECTIVES

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’

THE EUROPEAN COMMISSION,

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

Having regard to Directive (EU) 2017/2103 of the European Parliament and of the Council of 15 November 2017 amending Council Framework Decision 2004/757/JHA in order to include new psychoactive substances in the definition of ‘drug’ and repealing Council Decision 2005/387/JHA ⁽¹⁾, and in particular Article 3(3) thereof,

Whereas:

- (1) The Annex to Council Framework Decision 2004/757/JHA ⁽²⁾ contains a list of substances which fall under the definition of drug under point 1(b) of Article 1 of that Framework Decision.
- (2) The Annex to Framework Decision 2004/757/JHA was added by Directive (EU) 2017/2103. It lists all the new psychoactive substances, which were subjected to control measures and criminal penalties pursuant to Council Decision 2005/387/JHA ⁽³⁾ before the adoption of Directive (EU) 2017/2103.
- (3) Directive (EU) 2017/2103 repealed 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 are not yet included into the Annex to Framework Decision 2004/757/JHA.
- (4) Therefore, due to the repeal of Decision 2005/387/JHA, the following new psychoactive substances should be included in the Annex to Framework Decision 2004/757/JHA:
 - (a) N-phenyl-N-[1-(2-phenylethyl)piperidin-4-yl]furan-2-carboxamide (furanylfentanyl) subjected to control measures by Council Implementing Decision (EU) 2017/2170 ⁽⁴⁾;
 - (b) N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide (ADB-CHMINACA) subjected to control measures by Council Implementing Decision (EU) 2018/747 ⁽⁵⁾;
 - (c) 1-(4-cyanobutyl)-N-(2-phenylpropan-2-yl)-1H-indazole-3-carboxamide (CUMYL-4CN-BINACA) subjected to control measures by Council Implementing Decision (EU) 2018/748 ⁽⁶⁾;
 - (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) subjected to control measures by Council Implementing Decision (EU) 2018/1463 ⁽⁷⁾.

⁽¹⁾ OJ L 305, 21.11.2017, p. 12.

⁽²⁾ 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).

⁽³⁾ Council Decision 2005/387/JHA of 10 May 2005 on the information exchange, risk-assessment and control of new psychoactive substances (OJ L 127, 20.5.2005, p. 32).

⁽⁴⁾ 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).

⁽⁵⁾ 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 (OJ L 125, 22.5.2018, p. 8).

⁽⁶⁾ 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 (OJ L 125, 22.5.2018, p. 10).

⁽⁷⁾ Council Implementing Decision (EU) 2018/1463 of 28 September 2018 on subjecting the new psychoactive substances 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) to control measures (OJ L 245, 1.10.2018, p. 9).

- (5) Ireland is bound by Directive (EU) 2017/2103 and is therefore taking part in the adoption and application of this delegated directive.
- (6) The United Kingdom is not bound by Directive (EU) 2017/2103 and is therefore not taking part in the adoption and application of this delegated directive and is not bound by it or subject to its application.
- (7) Denmark is not bound by Directive (EU) 2017/2103 and is therefore not taking part in the adoption and application of this delegated directive and is not bound by it or subject to its application.
- (8) Framework Decision 2004/757/JHA should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Amendment to Framework Decision 2004/757/JHA

The following is added to the list in the Annex to Framework Decision 2004/757/JHA:

13. N-phenyl-N-[1-(2-phenylethyl)piperidin-4-yl]furan-2-carboxamide (furanylfentanyl), as referred to in Council Implementing Decision (EU) 2017/2170 (*).
14. 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 (**).
15. 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 (***).
16. 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 (****).

(*) 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).

(**) 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 (OJ L 125, 22.5.2018, p. 8).

(***) 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 (OJ L 125, 22.5.2018, p. 10).

(****) Council Implementing Decision (EU) 2018/1463 of 28 September 2018 on subjecting the new psychoactive substances 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) to control measures (OJ L 245, 1.10.2018, p. 9).

Article 2

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 7 September 2019 at the latest. However, they shall bring into force the laws, regulations and administrative provisions necessary to comply with point 16 of the Annex to Framework Decision 2004/757/JHA referred to in Article 1 of this Directive by 29 September 2019. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

*Article 3***Entry into force**

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

Article 4

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

Done at Brussels, 13 December 2018.

For the Commission

The President

Jean-Claude JUNCKER

