COUNCIL IMPLEMENTING DECISION (EU) 2015/1876

of 8 October 2015

on subjecting 5-(2-aminopropyl)indole to control measures

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Decision 2005/387/JHA of 10 May 2005 on the information exchange, risk-assessment and control of new psychoactive substances ([1]), and in particular Article 8(3) thereof,

Having regard to the proposal of the European Commission,

Having regard to the opinion of the European Parliament,

Whereas:

(1) A Risk Assessment Report on the new psychoactive substance 5-(2-aminopropyl)indole was drawn up in accordance with Article 6 of Decision 2005/387/JHA by the extended Scientific Committee of the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) during a special session, and was subsequently submitted to the Commission and to the Council on 16 April 2013.

(2) The substance 5-(2-aminopropyl)indole is a synthetic derivative of indole substituted at the phenyl side of the indole ring system. It appears to be a stimulant substance that may also have hallucinogenic effects. 5-(2-aminopropyl)indole has been found mostly in powder form but also in tablet and capsule form. It is commercially available on the internet and from 'head shops', marketed as a 'research chemical'. It has also been detected in samples of a product sold as a 'legal high' called 'Benzo Fury', and in tablets resembling ecstasy.

(3) The existing information and data suggest that the acute toxicity of 5-(2-aminopropyl)indole can provoke adverse effects in humans, such as tachycardia and hyperthermia, and may also cause mydriasis, agitation and tremor. 5-(2-aminopropyl)indole may interact with other substances, including medical products and stimulants that act on the monoaminergic system. The specific physical effects of 5-(2-aminopropyl)indole in humans are difficult to determine because there are no published studies assessing its acute and chronic toxicity, its psychological and behavioural effects, or dependence potential, and because of the limited information and data available.

(4) There have been a total of 24 fatalities registered in four Member States from April to August 2012, in relation to which 5-(2-aminopropyl)indole alone, or in combination with other substances, was detected in post-mortem samples. While it is not possible to determine with certainty the role of 5-(2-aminopropyl)indole in all of the fatalities, in some cases it has been specifically noted in the cause of death. If this new psychoactive substance were to become more widely available and used, the implications for individual and public health could be significant. There is no information available on the social risks posed by 5-(2-aminopropyl)indole.

(5) Nine European countries have reported to the EMCDDA and to the European Police Office (Europol) that they reported detection of 5-(2-aminopropyl)indole. No prevalence data is available on the use of 5-(2-aminopropyl) indole, but the limited information that exists suggests that it may be consumed in similar environments as other stimulants, such as in the home, in bars and nightclubs or at music festivals.

(6) There is no information that suggests that 5-(2-aminopropyl)indole is manufactured in the Union, and there is no evidence suggesting the involvement of organised crime in the manufacture, distribution or supply of this new psychoactive substance.

(7) The substance 5-(2-aminopropyl)indole has no known, established or acknowledged medical value or use, and there is no marketing authorisation covering this new psychoactive substance in the Union. Apart from its use as an analytical reference standard and in scientific research, there is no indication that it is being used for other purposes.

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

(8) The substance 5-(2-aminopropyl)indole has not been, nor is it currently, under assessment by the United Nations' system, as defined in Decision 2005/387/JHA. Two Member States control this new psychoactive substance under their national legislation by virtue of their obligations under the 1971 United Nations Convention on Psychotropic Substances. Five European countries apply national legislation on new psychoactive substances, dangerous goods or medicines to control 5-(2-aminopropyl)indole.

(9) The Risk Assessment Report reveals that there is limited scientific evidence available on 5-(2-aminopropyl)indole and points out that further research would be needed to determine the health and social risks that it poses. However, the available evidence and information provides sufficient ground for subjecting 5-(2-aminopropyl) indole to control measures across the Union. As a result of the health risks that it poses, as documented by its detection in several reported fatalities, of the fact that users may unknowingly consume it, and of the lack of medical value or use, 5-(2-aminopropyl)indole should be subjected to control measures across the Union.

(10) Given that six Member States already control 5-(2-aminopropyl)indole by means of different types of legislative provisions, subjecting this substance to control measures across the Union would help avoid the emergence of obstacles in cross-border law enforcement and judicial cooperation, and protect users from the risks that its consumption can pose.

(11) Decision 2005/387/JHA confers upon the Council implementing powers 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 put 5-(2-aminopropyl)indole under control across the Union.

(12) This Decision replaces Council Implementing Decision 2013/496/EU ([1]) which was annulled by the Court of Justice of the European Union ('the Court') by its judgment of 16 April 2015 in Case C-679/13 ([2]). In that judgment, the Court maintained the effects of Decision 2013/496/EU until the entry into force of new acts intended to replace it. Therefore, as of the day of entry into force of this Decision, Decision 2013/496/EU ceases to produce effects.

(13) In order to ensure the continuity of control measures across the Union with regard to 5-(2-aminopropyl)indole, this Decision should be without prejudice to the obligations of the Member States relating to the time limit for subjecting that new psychoactive substance to control measures and criminal penalties in their national laws, as set out in Article 2 of Decision 2013/496/EU.

(14) 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.

(15) 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.

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

HAS ADOPTED THIS DECISION:

Article 1

The new psychoactive substance 5-(2-aminopropyl)indole shall be subjected to control measures across the Union.

Article 2

Decision 2013/496/EU ceases to produce effects from the date of entry into force of this Decision, without prejudice to the obligations of the Member States relating to the time limit for subjecting 5-(2-aminopropyl)indole to control measures and criminal penalties in their national laws, as set out in Article 2 of Decision 2013/496/EU.

([1]) Council Implementing Decision (2013/496/EU) of 7 October 2013 on subjecting 5-(2-aminopropyl)indole to control measures (OJ L 272, 12.10.2013, p. 44).

([2]) Judgment of the Court of Justice of 16 April 2015, Parliament v Council, C-679/13, ECLI:EU:C:2015:223.

Article 3

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

This Decision shall apply in accordance with the Treaties.

Done at Luxembourg, 8 October 2015.

For the Council
The President
J. ASSELBORN