

Third Study Commission Questionnaire 2024 South Africa

In 2024, the Third Study Commission of the International Association of Judges (IAJ) intends to study the rapid evolution of illicit drug manufacturing and the challenges this unstoppable process poses to successful prosecution.

Background

In general, a precursor is a starting material used to manufacture a narcotic drug, psychotropic substance or another precursor. A subset of starting materials is under national or international control, but there are a number of starting materials used in illicit drug manufacture that are as yet not controlled, often referred to as “non-scheduled chemicals”.

The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 provides the legal framework for addressing the problem of international drug trafficking, including manufacturing. With 191 States parties, this Convention enjoys nearly universal adherence.

Article 12 of the 1988 Convention introduces a set of control measures to ensure control of internationally scheduled substances frequently used in the illicit manufacture of narcotic drugs and psychotropic substances, also known as “precursors”. The premise underlying the control of precursors is that the denial of these substances to illicit producers and manufacturers of drugs will result in a reduction in illicit drug manufacture.

The decision whether a chemical precursor should be placed under international control lies with the United Nations Commission on Narcotic Drugs 1 (CND), a policy making body of the United Nations system with prime responsibility for drug-related matters. The scheduling decision by CND is prompted by the technical assessment by the International narcotic Control Board.

The very article 12 of the 1988 Convention establishes a system under which designated national competent authorities with the support of INCB monitor imports and exports of the internationally scheduled precursors listed in Table 1 and table 2 of the 1988 Convention. Finally, national legislations regulate to different extents the domestic manufacture, trade and distribution of these substances, as well as of any other substance which can be used for illicit drug manufacturing.

The evolution of illicit drug markets toward synthetic drugs including the so called New Psychoactive Substances reflects the increased use by criminal drug manufacturers of non-scheduled precursors, including designer precursors³. To cope with this development some legislations put under national control entire families of chemical substances and incite operators of the chemical industries to exercise due diligence in selling their products. Similarly, and keeping in mind article 13 of the 1988 Convention, some jurisdictions also extend control and due diligence to the market of essential equipment possibly used in illicit drug manufacturing. 1 The CND has 53 member states that are elected by ECOSOC.

Sample questions

- 1. Does your country have legislation, or regulations, and/or court rules of procedure that are relevant to the topic of our focus this year – chemical substances and essential equipment possibly used in illicit drug manufacturing and trafficking, including importing, exporting, for domestic distribution and use and private sector due diligence.**

Cyprus is a member state of the European Union, therefore, with regards to the prevention of the illicit use of these substances the following Regulations are directly applicable:

a) Regulation (EC) No 111/2005 governing the trade in precursor drugs between the EU and third countries. The regulation distinguishes between scheduled and non-scheduled substances. Scheduled substance is any substance listed in Annex I of the regulation that can be used for the illicit manufacture of narcotic drugs or psychotropic substances, including mixtures and natural products containing such substances. However, what is not included are mixtures and natural products which contain scheduled substances and which are compounded in such a way that the scheduled substances cannot be easily used or extracted by readily applicable or economically viable means. Non-scheduled substance is defined as any substance which, although, not listed in Annex I of this regulation, is identified as having been used for the illicit manufacture of narcotic drugs or psychotropic substances.

EU countries must prohibit the introduction of scheduled substances and of consignments of non-scheduled substances into EU customs territory or their departure from it, where there is suspicion that such substances are intended for the illicit manufacture of narcotic drugs or psychotropic substances.

Any natural or legal person engaged in the placing on the market of scheduled substances (operator) must document the import, export and transit of a scheduled substance in such a way as to disclose, the name of the substance, its quantity and weight, and the name and address of the exporter, importer, distributor and ultimate consignee. They must also keep records of all transactions for a period of 3 years. Operators must notify the competent authorities immediately of any circumstances, such as unusual orders or transactions involving scheduled substances, that suggest that such substances intended for import, export or intermediary activities might be diverted for the illicit manufacture of narcotic drugs or psychotropic substances;

b) 273/2004 / EC which monitors the trade of precursors within the EU. It serves, among others, to simplify the procedure for EU countries to report seizures and stopped shipments and enable operators to provide competent authorities with information about their export, import or intermediary activities, in the form of a summary.

2. Does your country have specific legislation on precursors control?

Yes. Article 5A of Drugs and Psychotropic Substances Law 29/1977 states that the Minister of Health is the competent authority for the implementation of EU Regulation 273/2004 and lays down penalties applicable for infringing the rules.

3. In your country, is an approval by a judge a pre-condition to launch investigations into a case of diversion and trafficking of precursors?

No.

Similarly, is a court order or approval by a judge required for effecting controlled or monitored deliveries?

No.

4. When a drug/precursor-related crime is being investigated in your country, does the judiciary have any role (a) in the request for information from a foreign state and/or (b) in the provision of information to a foreign state?

The judiciary has a role in both the request of information and in the provision of information, through the use of European Investigation Orders. European Investigation Order is a judicial decision issued in or validated by the judicial

authority in one EU country to have investigative measures to gather evidence in criminal matters carried out in another EU country. The investigative measures would, for example, include the hearing of witnesses, telephone interceptions, covert investigations and information on banking operations. The law governing the matter is Law 181(1)/2017 which follows the rules of Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters.

5. Does your country have legislation or court rules that relate to monitoring manufacture and distribution of precursors which are applicable over the entire national territory?

Yes. See answers 1 and 2. The same rules apply.

6. Does your country have legislation or court rules that establish as a criminal offence the manufacture, transport and distribution of essential equipment intended to be used for illicit drug manufacturing.

No.

7. In respect of non-scheduled chemicals/ equipment, is the fact that they have been mis-declared before the Customs, sufficient to impute 'knowledge' on the part of the supplier of their being used for illicit drug manufacture?

The question relates to proving knowledge beyond reasonable doubt. In this respect, all the circumstances of the case must be taken into account, in order to establish "knowledge". I do not believe that mis-declaration of this kind of substances, would be enough, on its own, to impute such "knowledge".

- 8. In your country, does domestic legislation include measures and/or civil, criminal and/or administrative sanctions to address non-scheduled chemicals and emerging precursors, namely those that are used as starting materials and/or intermediaries in the legitimate manufacture of substances in Table I and Table II of the 1988 Convention? If yes, which type of sanctions?**

See answers to questions 1 and 2. According to article 5A of Drugs and Psychotropic Substances Law 29/1977 any person who contravenes or fails to comply with Articles 3, 4, 5, 7 or 8 of the Community Regulation commits an offence and is liable to imprisonment not exceeding six months or to a fine not exceeding five hundred pounds or both, and the court may also order the confiscation of any substance, in connection with which that offence was committed. Furthermore, the same article provides that a person in possession of scheduled substances, as defined in Article 2 of the Community Regulation and outside the framework set by Articles 3 to 8 thereof, commits an offence and if convicted shall be liable to imprisonment not exceeding two years or to a fine not exceeding ten thousand euros (€10,000) or both and the court may also order the confiscation of any substance in respect of which this offence was committed.

- 9. Please elaborate on specific pieces of information and level of details that would allow you as a judge to act on information/ intelligence/ evidence received from counterparts in investigations related to new emerging drug precursor chemicals not under control in your country.**

In Cyprus the judiciary is not involved in investigations related to new emerging drug precursor chemicals not under control.

- 10. Are there any specific provisions that allow you as judge to act on non-scheduled chemicals with no known legitimate uses? Would information from an international body, or a collection of information**

from other countries, that a chemical has no known legitimate use facilitate your work in any way?

Please see answers 1, 2 and 9.

- 11. Describe your own personal experience(s) as a judge that are relevant to the topic of our focus this year, whether it be presiding over an extradition hearing (a request to extradite an accused person to another country in order to be prosecuted in that other country), or receiving evidence in a court proceeding in your country from a witness who is testifying from another country and with the help of court officials in that other country, or helping to arrange for a witness in a court proceeding in another country to testify from a place in your own country, or responding to a request for assistance from an international court such as The Hague, or something else. These are just examples of things that you may have experienced; they are not meant to be exhaustive.**

I didn't have the chance to handle any form of case that is relevant to the topic of focus.