

Third Study Commission Questionnaire 2024 South Africa

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.

Please explain.

Greek legislation recognizes the exclusive right of the state to produce, possess, transport, store and circulate both narcotic substances and precursor substances. This legislation is often adapted to international developments and monitors domestic and international needs to effectively combat drug trafficking. Our national legislation was last amended in the year 2023. The concept of drugs is given in special tables that are regularly updated, while the list of precursors is given in the Regulations of the European Parliament and the European Council. Businesses engaged in the import, production, and distribution of narcotic or precursor substances are subject to strict state control both in terms of the substances used and the final marketing purpose of the produced products, which must always be under state control . At the same time, Greece, as a member of the European Union, applies the EU legislation on the prohibition of drugs and precursor substances, such as Regulations (EC) 111/2005 and (EC) 273/2004. The content of these regulations has been incorporated into national legislation.

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

Yes

Title of current legislation and date of adoption:

In Greece, Law 4139/2013 applies. It deals with the same penalties for the possession and trafficking of precursor substances, as correspondingly for narcotic substances. Possession and use of narcotics and precursors for specific purposes (such as pharmaceuticals) is permitted and always with a state permit, while businesses engaged in similar activity are subject to regular and strict controls.

Last amended/updated in:

Law 4139/2013 was last amended in 2023

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

Please explain:

The initiation of drug and precursor drug investigations does not require the approval of a judge. The investigation can be done with the order of the public prosecutor or without it by the police authorities. Especially in cases of drugs and precursor substances, special investigative investigations are allowed, including the realization of controlled transfers, investigative penetration, recording of activity, correlation of personal data, which are carried out after the permission of the judicial council.

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?

Yes

If your answer to either (a) or (b) is yes, what legislation, regulations or rules of procedure apply to the decision of a judge involved at the investigation stage?

In principle, cooperation in the field of combating drugs is done directly by the police authorities, which exchange information with corresponding services of other states. At this stage, only if there is a need to declassify communications to control the activity of a criminal group do the judicial authorities necessarily intervene to give permission. After the initiation of criminal proceedings and only if investigative acts must be carried out in another state (investigations, examination of witnesses, freezing of accounts, etc.) the assistance of another state is requested from the judicial authorities within the framework of international extradition and collection conventions of evidence and in the area of the European Union within the framework of Directive 2014/41/EU on the European investigation warrant.

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?

Please explain:

As mentioned, the competent services check the companies that have a relevant license for the production of drugs or precursor substances used for legal purposes, such as pharmaceuticals. Administrative control extends to the process of production, import and processing of these substances

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.

Please explain:

No. The possession of such means for the production of narcotic substances is not prosecuted independently, but only if it is established that they are used for the production or transport or in any way of trafficking in narcotic substances, these means are confiscated.

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?

Please explain:

No. The assistance of specific facts that prove this knowledge is required. A false statement may be taken into consideration with other evidence, but it is not sufficient on its own to establish a criminal offense related to drug trafficking. However, making a false statement to the authorities can be a separate offence, as is making a false statement to the authorities.

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?

Please explain:

Greek legislation, incorporating the corresponding EU legislation, penalizes any form of trafficking in drugs and precursor substances with severe penalties, which can reach life imprisonment depending on the type, quantity and value of these substances. At the same time, administrative sanctions are foreseen for the violation of the law on drugs, such as revocation of the

license of a business dealing with the processing of precursor substances for pharmaceutical purposes, revocation of the license of doctors and pharmacists, imposition of a fine, etc.

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.

Please explain:

If the evidence collected by the police authorities and the prosecutor's investigation provides sufficient evidence of the commission of a drug-related crime, the judicial authorities are involved, after the initiation of criminal proceedings, initially within the framework of the main investigation. During the main investigation, judges can request information and evidence from any national authority, but also from authorities of foreign countries in the context of international cooperation. Especially within the framework of the European Union, this cooperation is regulated by the provisions on the European investigation mandate.

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 explain:

In Greek legislation, the concept of drugs and precursors is given in a long list, which is regularly updated based on data from international organizations. Substances not included in these lists are not treated as narcotic substances and do not allow the initiation of criminal proceedings for them

11) As a judge, if you receive a request for assistance in a drug/precursor-related crime from a foreign country, whether at the investigation stage or in the context of a court proceeding (a hearing or a trial), how is it relevant to your determination to ensure that basic human rights, principles of natural justice, and/or rules of procedural fairness that exist in your country are respected?

Please explain:

**ASSOCIATION OF GREEK
JUDGES AND PROSECUTORS**

COURT OF FIRST
INSTANCE OF ATHENS
10171 ATHENS GREECE
TEL.0030213 2156114-

e-mail: endikeys@otenet.gr

The observance of the fundamental substantive and procedural rights of the accused in the context of Greece's international cooperation with other states is required not only by our national law, but also by European legislation, in particular by the Charter of Fundamental Rights of the European Union. The satisfaction of a foreign state's request for judicial assistance presupposes a check on the observance of the rights of the accused and the application of Greek legislation. Investigations and other investigative actions at the request of a foreign state are carried out in exactly the same way and with the same guarantees, which apply to the investigations carried out by the Greek judicial authorities for a crime committed in Greece.