

Third Study Commission Questionnaire 2024

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.

Serbia has adopted such legislation. Details will follow in answers to the remainder of the questionnaire.

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

Yes

Title of current legislation and date of adoption:

The Law on Substances Used in the Illegal Manufacturing of Narcotics and Psychotropic Substances (*Official Gazette of the Republic of Serbia* No. 107/2005 and 25/2019). This law regulates the conditions for the manufacturing and wholesale trade of substances used in the illicit manufacturing of narcotics and psychotropic substances (hereinafter referred to as *precursors*), the supervision in the area in order to prevent their abuse or use for illegal purposes, as well as other issues of relevance for this area.

Last amended in:

2019

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?

In the Republic of Serbia, the approval of a judge is not required to initiate an investigation into a case of diversion or trafficking of precursors, because the investigation is initiated by the competent public prosecutor.

Controlled delivery is determined by the public prosecutor, and not the court, in accordance with Article 181 of the Criminal Procedure Code.

Namely, Article 181 of the Criminal Procedure Code stipulates that, if the conditions from Article 161 Paragraph 2 of the same Code are met, the Supreme Public Prosecutor, or the public prosecutor of special jurisdiction, may for the purpose of

collecting evidence for the proceedings and detecting suspects, order a controlled delivery where it is permitted that, with the knowledge and under the supervision of the competent authorities, illegal or suspicious parcels: 1) be delivered within the territory of the Republic of Serbia; 2) enter, transit through and exist from the territory of the Republic of Serbia. The public prosecutor will determine by an order the manner of conducting the controlled delivery.

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?

The Law on International Legal Assistance in Criminal Matters (*Official Gazette of the Republic of Serbia* No. 20 of March 19, 2009) and bilateral agreements are applied on such occasions.

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?

These applicable legislation is as follows: The Law on Substances used in the Illegal Manufacturing of Narcotics and Psychotropic Substances (*Official Gazette of the Republic of Serbia* No. 107/2005 and 25/2019); The Law on Psychoactive Controlled Substances (*Official Gazette of the Republic of Serbia* No. 99 of 27/12/2010, 57 of 25/7/2018) and The Rules on Establishing the List of Substances Used in the Illegal Manufacturing of Narcotics and Psychotropic Substances (*Official Gazette of the Republic of Serbia* No. 101/2009).

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:

Article 246 of the Criminal Code prescribes the criminal offense of *Unlawful production and circulation of narcotics*. Paragraph 7 of the aforementioned article stipulates that *whoever unlawfully manufactures, obtains, possesses or gives for use equipment, material and substances that are known to be intended for production of narcotics, shall be punished by imprisonment of two to eight years.*

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?

Yes, that would be an indication that the supplier knew that the substances or equipment would be used in illicit drug manufacture.

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?

The Law on Substances Used in the Illegal Manufacturing of Narcotics and Psychotropic Substances prescribes fines from RSD 500,000.00 to 3,000,000.00 for economic offenses committed by legal persons (Article 41) and fines from RSD 300,000.00 to 1,000,000.00 for natural persons (Article 42).

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 Serbia, the courts adhere to The Rules on the Determination of Psychoactive Controlled Substances (*Official Gazette of the Republic of Serbia* No. 70 from June 30, 2022) as well as The Rules on the Determination of The List of Substances Used in the Illegal Manufacturing of Narcotics and Psychotropic Substances (*Official Gazette of the Republic of Serbia* No. 101 /2009).

Judges would not be able to use that information since they act in accordance with the applicable regulations listed above.

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?

There are no such provisions.

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?

It is very important to respect the basic human rights and the prescribed procedures. Courts are in charge of the matter.

12. 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.

Personally, I have no professional experience related to the topic.

Answers provided by:

Julijana Mogoš-Živković, judge at the Higher Court in Negotin