# Issue in focus number 2 "Judicial cooperation in cases involving (pre)precursors and New Psychoactive Substances (NPS)"

## 1. Introduction

This Issue in focus provided brief background information for the discussions during Workshop No. 2 "*Judicial cooperation in cases involving (pre)precursors and New Psychoactive Substances (NPS)*" in the context of the strategic meeting on drug trafficking held by Eurojust on 29 and 30 September 2014.

Following a short explanation of the reasons for the selection of this topic and the methods followed to prepare the background information (Section 2), this paper is structured into two main sections focussing on:

- **Section 3** - Analysis of the replies to the **questionnaire on (pre)precursors and NPS to all Member States** to identify the main issues encountered in judicial cooperation in this field and to gather the views of the national authorities on possible best practice
- **Section 4** – Analysis of **recent judgements** on (pre)precursors pointing to possible best practice in prosecution

Additionally, the **Annex** to this Issue in focus includes a table that was drafted by collating selected information from the replies to the questionnaire and covers the following areas by Member State:

- Provisions on drug precursors and pre-precursors
- Other approaches (including administrative) to drug precursors and (pre)precursors
- Approaches to NPS

The potential usefulness of this work in progress was discussed by the practitioners participating in the strategic meeting and further validated after the strategic meeting in view of its distribution among other interested practitioners.

## 2. Background, scope and method

The analysis of drug trafficking cases carried out in the context of the Implementation Report identified serious challenges in the prosecution of synthetic drug cases involving (pre)precursors[1] and NPS.[2] Namely, recurring judicial cooperation problems have been encountered in Eurojust's casework

[1] 'Drug precursors' are defined in Council Regulations 273/2004 and 111/2005 as substances frequently used for the illicit manufacture of narcotic drugs and psychotropic substances. The substances included in the Annex are subject to the regulation. Criminals involved in the production and trafficking of synthetic drugs often use precursors (or (pre)precursors) that are not included in the Annex and therefore not subject to regulation in all Member States.

[2] NPS are substances that are not regulated in international drug conventions, but mimic the effect of controlled drugs and may pose serious health threats. These substances are sometimes also referred to as 'legal highs' because they are not (yet) criminalised. Council Decision 2005/387 lays down rules for information exchange, risk assessment and control of these substances. In April 2014, the European Parliament approved the European Commission's proposal for a regulation on NPS.

in this area, particularly when (pre)precursors and NPS are not regulated at EU/international level. In these cases, legislation and approaches often differ across the Member States. Hence, the challenge of cooperating and prosecuting cases where the chemical substance, although clearly used for illegal purposes, is not specifically regulated by law.

The importance of the issue and of raising awareness at judicial level was mentioned during the discussions to set the strategic plans for the EU policy cycle 2014-2017 and at the last meeting of the European Network of Prosecutors Synthetic Drugs and Precursors (ENPSDP) on 10 and 11 September 2013, which pointed out the existence of alternatives to criminal prosecution and the application of administrative provisions to curb the phenomenon.

Accordingly, Eurojust began to collect court decisions[3] leading to convictions and pointing to innovative approaches in prosecuting cases with non-regulated precursors. Furthermore, a **questionnaire** was launched in May 2014 to identify further challenges and possible best practice.

This section presents an overview and analysis of the responses received from the competent national authorities of the Member States. The analysis was carried out by the Trafficking and Related Crimes Team and its main findings served as a basis for discussions during the workshop on (pre)precursors and NPS at Eurojust's strategic meeting on drug trafficking in September 2014.

The results of this analysis and **workshop discussion** allows greater proactivity in resolving similar problems when facilitating judicial cooperation among Member States and raises awareness among practitioners of the existence of new substances.

# 3. The questionnaire on (pre)precursors and NPS

The questionnaire consisted of five main sections:

**Section 1 – National provisions on drug precursors and (pre)precursors**, with a view to verifying the existence of specific national legal frameworks and/or administrative regulations, in addition to the direct applicability of EU regulations (273/2004 and 111/2005).

**Section 2 – Non-regulated drug precursors and (pre)precursors**, with a view to understanding whether prosecution is possible when neither EU regulations nor national legislation/regulations foresee one particular substance as being a drug precursor, but there is an indication that the substance is being produced/imported to prepare (synthetic) drugs.

**Section 3 – Challenges in prosecuting cases with drug precursors and (pre)precursors**, with a view to identifying judicial cooperation and other issues that could hinder the prosecution.

**Section 4 – New Psychoactive Substances (NPS)**, with a view to identifying approaches to NPS (e.g. accelerated procedures for inclusion of NPS under regulated substances, generic legislation, etc.)

**Section 5 – Good practices**, with a view to verifying the existence of good practices or recommendations for prosecuting cases involving NPS or drug precursors.

Eurojust received 27 responses to the questionnaire from competent authorities in: AT, BE, BG, CY, CZ, DE, EE, EL, ES, FI, FR, HR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE, SI, SK and the UK. The main findings of the analysis of the responses are reported below following the order of the sections of the questionnaire.

---

To become law, the proposal needs to be adopted in the Council by the Member States following the ordinary legislative procedure.

[3] *See*, for examples, the decisions of the Court of Antwerp, 19 February 2013 and of the Court of East Brabant, 27 August 2013, on APAAN, a pre-precursor used to produce BMK, a precursor for amphetamines.

## 3.1. National provisions on drug precursors and (pre)precursors

Almost all respondents (26 of 27) regulate drug precursors and (pre)precursors through legislation. National provisions are typically either included in criminal codes or specific drug acts. In several cases, the provisions directly implement or complement EU regulations (273/2004 and 111/2005).

Ten Member States regulate these matters also by means of administrative regulations (including medicine or food laws), whereby specific authorisation is foreseen for persons handling precursors. Compliance with this licensing system and the monitoring of the related transactions is typically entrusted to administrative authorities that also have the power to impose sanctions.

See the table at the end of this "Issue in focus" for a detailed view of the replies, including legal frameworks applicable in these cases, authorities in charge and possible alternative/administrative approaches.

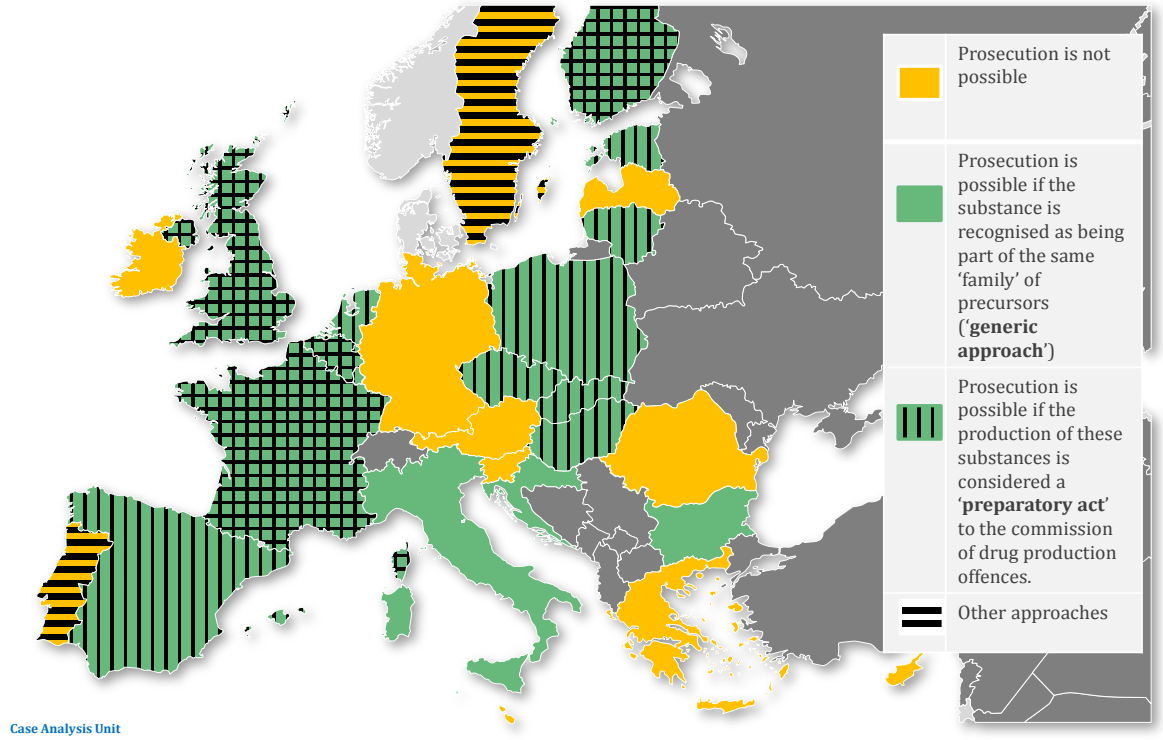
## 3.2. Prosecution of non-regulated drug precursors and (pre)precursors

When one particular substance is not foreseen as being a drug precursor, but there is an indication that the substance is being produced/imported to prepare (synthetic) drugs, prosecution is still possible in 15 of 27 Member States, even when one particular substance is not foreseen by legislation as being a drug precursor.

In 12 Member States, prosecution is possible when the production of these substances is considered a "preparatory act" to the commission of drug production offences. In three Member States, the basis for prosecution is the so-called "analogy approach".

The map illustrates these different approaches, while the table at the end of this "Issue in focus" provides a detailed view of the individual replies.

Chart 1. Prosecution of non-regulated drug precursors and pre-precursors



## 3.3. Challenges in prosecuting cases with drug precursors and (pre)precursors

Judicial cooperation issues were identified in ten of the 27 Member States, linked mainly to differences in legislation. Also, lack of cooperation in controlled deliveries was mentioned in five replies. Other challenges, which were mentioned less frequently, were: difficulties in establishing a JIT, relationships with certain third States and delayed execution of MLA requests.

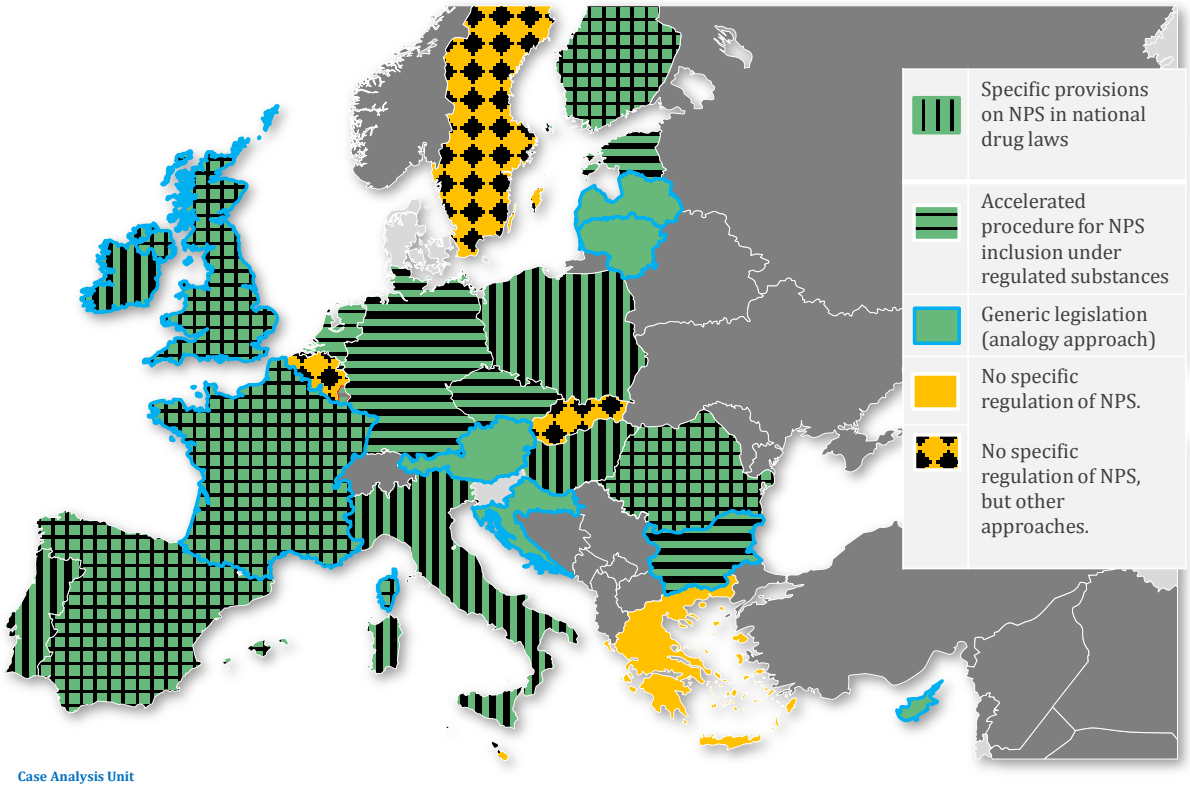
In addition to the above judicial cooperation issues, the main challenges for prosecution were identified as the following:

- Difficulties in identifying new substances and related lack of knowledge (nine Member States)
- Lack of capacity/technical methods (eight Member States)

## 3.4. Approaches to NPS

Member States deal with NPS either by specific provisions on NPS (10 Member States) and/or accelerated procedures to include NPS within the regulated substance (11 Member States) and/or "generic legislation"[4] (10 Member States). The map illustrates these different approaches, while the table at the end of this Issue in focus provides a detailed view of individual replies.

Chart 2. Prosecution of New Psychoactive Substances




[4] An 'analogy' approach or 'generic control' system is in place to target families of substances with similar chemical composition (i.e. synthetic cannabinoids or synthetic cathinones, such as mephedrone).

## 3.5. Best practice

Few Member States have identified good practices in prosecuting cases involving NPS or (pre)precursors. Two Member States refer to the circulation to prosecution offices of expert information on the effects of new substances, while another refers to the possibility to prosecute individuals who sell NPS to minors. Finally, one respondent mentions that, "As the new substances and (pre)precursors are developing rapidly, there is an important role in sharing experience, which can accelerate the listing of such substances as regulated/forbidden".

# 4. Recent judgements

Several judicial decisions have been passed on the topic of pre-precursors leading to convictions and pointing to best practice in prosecuting cases with non-regulated precursors. The ENPSDP have also underlined the existence of alternatives to criminal prosecution and the application of administrative provisions to curb the phenomenon. Eurojust intends to collect this and other best practice through the questionnaire and lessons learned from its operational work. This will allow similar problems to be resolved more effectively when facilitating judicial cooperation among Member States.

**THE NETHERLANDS: Court of East Brabant, 27 August 2013**
This decision overturns an earlier decision of 19 December 2012 and establishes that the possession of large quantities of APAAN (255 kg) is criminally punishable as a preparatory act in the production of synthetic drugs (*strafbare voorbereidingshandeling* Article 10a Opium Act) for the manufacture of amphetamines, as mentioned in list I of the Opium Act.
The Court based this conviction, *inter alia*, on an expert report by the Dutch Forensic Institute, showing the process of transformation of APAAN into BMK, which is an essential, regulated precursor for synthetic drugs (see EU regulations 273/2004 and 11172005, as referred to in the Dutch Abuse of Chemical Substances Prevention Act). The accused was in fact found in possession of APAAN and hydrochloric acid, which are essential to transform APAAN into BMK.

It is to be noted that the maximum punishment for this criminal conduct is less than that foreseen for the production of synthetic drugs (Article 2 of the Opium Act).
In the specific case, the accused received a 12-month prison sentence.

**BELGIUM: Court of Antwerp, 19 February 2013**
This was the first APAAN trial in Belgium. The Court followed the line of reasoning of the prosecutor, who proved that, in the quantities possessed by the accused, APAAN cannot have any legal use, and it can therefore be assumed that the purpose was to produce amphetamines.
In this case the decision was based on an expert report by the Belgian forensic laboratory. Reference is also made to INCB alert messages explaining that there is no legal use of APAAN (except in research facilities).

The defence tried to argue that APAAN was not prohibited, but the court decided that there was no other explanation to be given for the possession of APAAN in this case than that the substance was intended to be used for the production of amphetamines. The accused were sentenced to two-years' imprisonment.

**TABLE**

**"NATIONAL APPROACHES TO (PRE) PRECURSORS AND NEW PSYCHOACTIVE SUBSTANCES"**

**(summary of replies to questions 1 and 4 of the Eurojust questionnaire)**

| Member State | Provisions on drug precursors and pre-precursors | Other approaches (including administrative) to drug precursors and pre-precursors | Approaches to New Psychoactive Substances (NPS) |
|---|---|---|---|
| **AT** | **No specific regulation** is available on drug precursors and pre-precursors in addition to the directly applicable EU regulations (273/2004 and 11/2005). | Suspicious transactions with substances listed in the "EU Voluntary Monitoring List of non-scheduled substances" or in the INCB "limited international special surveillance list" are subject of investigations under the responsibility of the Minister of Interior. | **2012 Act on new psychoactive substances** controls substances listed in a regulation by the Minister for Health, which are not subject to the 1961 or 1971 UN drug conventions. The law pursues a so-called **generic/analogue approach**, which means that not only individual substances, but groups of substances are addressed by the above-mentioned act. The demand reduction measures are complemented by a **monitoring system**; a risk assessment-mechanism is implemented to serve as a basis for further measures by the Minister of Health and to optimize the flow of information for prevention measures for specific target groups. |
| **BE** | Punishment from **3m-10 years** for pre-precursors. Criminal organisation offence is also used in these cases. | Some categories of precursors are also forbidden in administrative, food and medicine laws. | No specific regulation of NPS, but usually the **criminal organisation** offence is used wherever applicable in these cases. |

| Member State | Provisions on drug precursors and pre-precursors | Other approaches (including administrative) to drug precursors and pre-precursors | Approaches to New Psychoactive Substances (NPS) |
|---|---|---|---|
| **BG** | **Law on Control of Narcotic Substances and Precursors** (**LCNSP**), promulgated in State Gazette 30 of 02.04.1999, in force from 03.10.1999 with amendments and supplements. | **Ordinance № 1 from 2008 for Control over Drug Precursors**, promulgated in State Gazette 45 of 13.05.2008, issued by the Minister of Economy and Energy. Competence for administrative control over drug precursors rests within the inter-ministerial Commission for Control of Precursors at the Minister of Economy and Energy. | Both an **accelerated procedure** for the inclusion of NPS and a **generic/analogue approach** apply.<br><br>A **Regulation on Classification of Plants and Substances as Narcotic** was approved with **Decree № 293 of 27.10.2011** for the purpose of rapid placement of new substances under national control within 3 to 6 months. Plants or substances can be defined as narcotic in the presence of any of the following conditions: have proven psychoactive effect; may induce a state of dependence; may cause adverse effects similar to those of narcotic drugs and psychotropic substances; can be transformed into intoxicating or psychotropic substances; there is evidence of abuse in another country; are placed under control in another country.<br><br>In terms of new psychoactive substances that are not under control, the legislator has provided the opportunity to apply the so-called "analogue" approach. In accordance with art. 4, para. 2 of the LCNSP "the same control measures are applied for preparations and analogues as for narcotic substances", provided that they satisfy the definition of item 17 of the "Additional provisions" of the LCNSP - "Analogue" means any substance which is not included in the lists of narcotic substances under Art. 3, para. 2, but has a similar chemical structure to a narcotic substance and causes a similar effect on the human body. " |

| Member State | Provisions on drug precursors and pre-precursors | Other approaches (including administrative) to drug precursors and pre-precursors | Approaches to New Psychoactive Substances (NPS) |
|---|---|---|---|
| **CY** | Drug precursors are controlled by the **National Narcotic Drugs and Psychotropic Substances Law of 1977**, in which EU regulation273/2004 is incorporated. | | **Generic control** system is in place to target families of substances with similar chemical composition. |
| **CZ** | Unauthorised handling of precursors is punishable according to the **Criminal Code**.<br><br>There is also a new regulation concerning drug precursors effective since 1st of January 2014, the **Act Regulating Precursors of Drugs no. 272/2013**.<br><br>This new regulation recognizes precursors and so called "auxiliary substances", i.e. substances usually used for production of methamphetamine (phosphor, iodide, toluene). | The Regulating Precursors of Drugs Act sets up a new system of administrative authorisation of persons handling precursors and system of administrative register of those substances and surveillance of handling.<br><br>This new regulation sets new administrative regulation and administrative sanctions (i.e non-criminal sanctions), but does not provide for any new crimes, | An **accelerated procedure** applies since the beginning of 2014. The new Act Regulating Precursors of Drugs withdraws the list of regulated substances from the Act passed by the Parliament. The government is thus authorised to stipulate the list of regulated substances. The aim of this legislative change is a more flexible reaction on new psychoactive substances, which can be listed more quickly than before. The criteria for listing new substances are their medically proved psychoactive affects. |
| **DE**[5] | **Precursor Monitoring Act** (revised as of 19th March 2009). EC regulations are directly applicable to the trade in precursors with countries inside and outside the European Union. | Federal Institute for Drugs and Medical Devices (BfArM) carries out official acts in the field of precursor control. Licences for the manufacture and purchase of and trade in precursors are issued by the Bonn-based BfArM. The latter also monitors the resale and supply of precursors to third parties. Responsibility for the control of the entire domestic and foreign trade in chemical precursors lies with the BfArM, the federal customs authorities as well as the Joint Customs/Police Precursor Monitoring Unit (GÜS) at the Federal Criminal Police Office (BKA). | **In urgent cases**, however, the Federal Ministry of Health has the authority to include substances and preparations in the appropriate schedules for a period of one year, if this is necessary due to the extent of misuse and the actual danger to health (cf section 1 subs. 3). |

[5] Source: EMCDDA country profiles.

| Member State | Provisions on drug precursors and pre-precursors | Other approaches (including administrative) to drug precursors and pre-precursors | Approaches to New Psychoactive Substances (NPS) |
|---|---|---|---|
| **EE** | Issues concerning drugs and drug precursors are regulated with **Narcotic Drugs and Psychotropic Substances and their Precursors Act.** | | There is an **accelerated procedure** for inclusion of NPS under the regulated substances. Please specify the criteria:<br>1. NPS has been found and identified<br>2. Sufficient information is provided, that NPS can cause harm to person's health |
| **EL** | Art 1 of **L. 3459/2006**: Drugs are defined as all the precursors that affect the central neural system and provoke persons' dependence. In addition, there is a list defining the drug precursors available. | | The NPS are regulated in the same way as the drug precursors. |

| Member State | Provisions on drug precursors and pre-precursors | Other approaches (including administrative) to drug precursors and pre-precursors | Approaches to New Psychoactive Substances (NPS) |
|---|---|---|---|
| **ES** | Pursuant **art. 371 of the Criminal Code**, the manufacture, transportation, distribution, trade and possession of both the substances listed in 1988 Vienna Convention and the equipment and materials used for such actions being aware that they will be unlawfully used for the purpose of cultivation, production or manufacture of illegal drugs is punishable. | **Law of 15 June 2009 on control of precursors** provides for a legal framework for obtaining administrative permits and applicable disciplinary procedure in cases of infringements described in 273/2004 Regulation, 111/2005 Regulation and 1277/2005 Regulation.<br><br>Hereunder, the link to the Law on precursors: http://www.boe.es/boe/dias/2009/06/16/pdfs/BOE-A-2009-9973.pdf | **Royal Decree 1192/2011** is a by-law that sets up the procedure according to which a substance not included in Lists I and II annexed to the Single Convention on Narcotic Drugs of 1961 or that has not been internationally regarded as a narcotic drug, is subject to the control measures applicable to narcotic substances. The National Agency for Medicines and Sanitary Products is tasked with the responsibility to conduct the evaluation process leading to the classification of the substance; the decision is taken by the Minister of Health. The Royal Decree establishes the evaluation criteria to be taken into account in the course of the assessment process: similarities with other controlled substances, therapeutical use, abuse risk, situation in other countries and decisions taken with regard to that substance at EU or international level, and other criteria. http://www.boe.es/boe/dias/2011/08/23/pdfs/BOE-A-2011-14074.pdf An **accelerated procedure** is also available. In the event of a prosecution related to a substance that has not been yet classified by the administrative authorities, it is still possible to obtain a conviction based on the reports and statements produced during the court sessions by experts attached to the competent official administrative bodies or agencies (National Institute for Toxicology) and the four criteria included in the International Protocols; such were the cases of GHB, GBI and Butirolactona in a judgement delivered by the Supreme Court (Sentence 1224/04, of 15/12). |

| Member State | Provisions on drug precursors and pre-precursors | Other approaches (including administrative) to drug precursors and pre-precursors | Approaches to New Psychoactive Substances (NPS) |
|---|---|---|---|
| **FI** | The **Finnish Narcotics Act** also applies to the drug precursors. | The **Finnish Medicines Act** also applies drugs precursors, if these substances are classified or can be considered as medicines in Finland. | The NPS are mainly classified, when occurring the first time in Finland, **as medicines**, whose importation is prohibited without the qualifying permission. This kind of importation is considered as smuggling according to **Chapter 46 Section 4 of the Criminal Code**.<br>There is an **accelerated procedure** for inclusion of NPS under the regulated substances. The Finnish Medicines Agency (Fimea) has the right to classify substances as medicines based on the Medicines Act. Medicinal product means a product or substance the purpose of which is used internally or externally to improve, alleviate or prevent a disease or its symptoms in humans or animals. |
| **FR** | **Act n. 96-542 of 19 June 1996** *on the control of manufacture and trade of substances which may be used for the illicit manufacture of narcotic drugs or psychotropic substances*, last amended by Ordinance n. 98-728 of 20 August 1998, ratified by Act 99-1121 of 28 December 1999 and Ordinance n°2008-1340 of 18 December 2008 *on the control of the manufacture and trade in drug precursors*. | - **Decree n°96-1060 of 5 December 1996** *listing chemical precursors of drugs or psychotropic substances subject to control,* last modified by Decree n°2004-150 of 13 February 2004;<br>- **Ministerial Order of 11 March 1993** *on the creation of the National Mission for the control of chemical precursors*;<br>- **Ministerial Order of 31 March 2010** *on the creation of a database on drug precursors*; | One of the tasks of the National Agency for Medicines is to gather information on abuses and dependence arising from psychoactive substances (**Article L5311-2 of the Code of Public Health**). There is an **accelerated procedure** for inclusion of NPS under the regulated substances. According to article L5132-7 of the Code of Public Health, the lists of drugs and psychoactive substances are enacted by the minister of Health on proposal of the National Agency for Medicines. The estimated delay necessary for the scientific evaluation of new psychoactive substances is 3 months (Source: Information Report of the National Assembly n°1837). France has also initiated an **analogy approach** since the Ministerial Order of 27 July 2012 of the Ministry of Health listing the chemical classes deriving from Cathinone. |

| Member State | Provisions on drug precursors and pre-precursors | Other approaches (including administrative) to drug precursors and pre-precursors | Approaches to New Psychoactive Substances (NPS) |
|---|---|---|---|
| **HR** | **Act on suppression of abuse of narcotic drugs** (Official gazette no. 107/01, 87/02, 163/03, 141/04, 40/07, 149/09, 84/11, 80/13) establishes the condition for the cultivation of the plants suitable for the manufacture of drugs, conditions for production, possession and trade of drugs and substances suitable for the manufacture of drugs, supervision of the cultivation of plants suitable for the manufacture of drugs as well as production, possession and trade of drugs and substances suitable for the manufacture of drugs. | Regarding the application of the EU regulations 273/2004 and 111/2005, please note that on 1st July 2013 entered into the force the **Act on application of the Regulations of the European union in the field of the precursors**. This Act regulates competent authorities for the application of mentioned Regulations, their obligations in the field of the legal trade of the precursors in the EU, European economic area, as well as in the field of the trade with the third countries. Furthermore this Act regulates the authorities competent for the inspection, and incriminates the contravention of its provisions as misdemeanours. | **Generic legislation**. An 'analogy' approach or 'generic control' system is in place to target families of substances with similar chemical composition (i.e. synthetic cannabinoids or synthetic cathinones, such as mephedrone). |
| **HU** | **Criminal Code (Law C of 2012) Art. 183** regulate criminal offence of abuse of drug precursors the following way:<br><br>- possession, trade or transportation of drug precursors as well as the engagement in intermediary activities with drug precursors prescribed in the relevant EU legislation without authorization or exceeding the scope of the authorization (punishable by imprisonment up to 3 years);<br><br>- acquirement of drug precursors by making a false statement (as above);<br><br>- breach of the notification obligation relating to the distribution or transportation of or intermediary activities with drug precursors (punishable by imprisonment up to 2 years). | **Governmental Regulation 159/2005** sets particular procedural rules for and lays down tasks and competencies of authorities related to precursors implementing the aforementioned EU regulations. | **Specific provisions** in the national drug laws.<br><br>**Criminal Code (Law C of 2012) Art. 184 to Art. 184/D** regulates criminal offence of abuse of new psychoactive substances :<br>- offer or supply of NPS or engagement in the distribution or trafficking in NPS (punishable by imprisonment between 2 to 8 years);<br>- production, import or export, or transport in transit through the territory of Hungary of NPS (punishable by imprisonment up to 3 years);<br>- acquirement or supply of NPS in a substantial volume (= the substances concerned contain more than 10 g of the respective NPS) (as above).<br><br>**Law XCV of 2005 on medicinal products for human use and on the amendment of other laws** as amended in 2012 regulates the |

| | | | |
|---|---|---|---|
| | **Criminal Code Art. 182 (1) and (4):** Criminal offence of aiding in the manufacture or production of narcotic drugs production, acquirement, supply, import or export, or transport in transit through the territory of Hungary, or engagement in the distribution of or trafficking in materials, equipment and/or accessories for the production or manufacture of narcotic drugs is punishable by imprisonment between 1 to 5 years as the act did not result in a more serious criminal offense. Engagement in preparations for the criminal act referred to above is punishable by imprisonment not exceeding 2 years.<br><br>Any person who has been providing assistance for the production of narcotic drugs shall be exonerated from punishment if he confesses the act to the authorities before they become aware thereof; surrenders to the authorities the materials, equipment and/or accessories in his possession, and cooperates with the authorities in finding other persons who are engaged in the production of narcotic drugs (para 5).<br><br>**Administrative Penal Act (Law II of 2012) Art. 199 (1)b** regulates administrative offence against drugs control**:**<br><br>-breach of rules of licensed/authorized activities related to drug precursors (if the act does not establish a criminal offence as above) | | pharmaceutical market, including substances that are drugs, psychotropic substances or NPS (the latter is defined by the Law).<br><br>**Government Regulation 66/2012** on activities related to narcotic drugs, psychotropic substances and new psychoactive substances, on scheduling of these substances and on modification of schedules issued by authorization of the law mentioned above provides an exhaustive and regularly updated list of substances designated as NPS (the so-called "C list") thereby supplementing the definition provided by the law. |

| Member State | Provisions on drug precursors and pre-precursors | Other approaches (including administrative) to drug precursors and pre-precursors | Approaches to New Psychoactive Substances (NPS) |
|---|---|---|---|
| **IE** | **S.I. 558 of 2009 - European Communities (Control of Drug Precursors) Regulations 2009**. These Regulations are intended to give full effect to Regulation (EC) No. 273/2004 of the European Parliament and of the Council of 11 February 2004 on drug precursors. | | The **Misuse of Drugs Act, 1977**, as amended and regulations made thereunder, control the import, export, production, manufacture, possession and supply of substances controlled under the 1961 and 1971 UN Conventions in order to prevent the misuse of certain dangerous or otherwise harmful drugs. NPS are controlled by name and means of **generic definition** under this legislation. Please see links to 2010 and 2011 Declaration Orders made under the Act in which a wide range of NPS were controlled, both by name and by generic definition. |
| **IT** | With the **legislative Decree n. 50/2011** the Italian legislator implemented the EU regulations 273/2004 and 111/2005; as a consequence, the specific provisions already existing in the general legislation on drug (**art. 70 of D.P.R. 309/90**) were amended to align the Italian legislation to the said regulations. New offences were introduced (see art. 70 par. 4, 6, 10 and 21) in order to criminalize: the conducts of: *persons who introduce in the market*, import and export substances indicated in the cat 1) annex 1) of EU regulations 273/2004 and 111/2005; *licensed persons* who deal with substances of cat 2) of annex 1 of the said EU regulations out of the license; *licensed people* who omits to register a transaction related to said precursors; *three or more people* associated in order to commit crimes indicated in the par. 4, 6, 10 of art. 70 of D.P.R. 309/90. | | Prosecution is possible only under condition that the substance is a blend of precursors indicated in the law or is a natural product which contains such precursors. |

| Member State | Provisions on drug precursors and pre-precursors | Other approaches (including administrative) to drug precursors and pre-precursors | Approaches to New Psychoactive Substances (NPS) |
|---|---|---|---|
| **LV** | **Criminal law, Law on narcotics, Precursor law**. | **Precursor operators regulation**. | **Generic approach legislation.** |
| **LT** | The Criminal Code of the Republic of Lithuania.<br>01/06/1999 **Drug Precursors Control Act**<br>17/08/2011 **Resolution No 917** of the Government of the Republic of Lithuania "For operations with drug precursors, licensing, registration, import and export authorisation and the control enforcement rules for this activity".<br>28/12/2011 **Order No T1-358** of Directors of the Drug, Tobacco and Alcohol Control Department "For the storage and protection conditions of the drug precursors" | The Code of Administrative Offences of the Republic of Lithuania | 08/01/1998 **Law of the Control of the Narcotic and Psychotropic substances**, supplemented on 26/10/2010. There were included "derivative of the narcotic or psychotropic substance" (**generic legislation**). |
| **LU** | **Règlement grand-ducal du 13 février 2007** relatif à la surveillance du commerce des précurseurs de drogues et déterminant les modalités d'application et sanctions des dispositions:<br>1. du règlement (CE) n° 273/2004;<br>2. du règlement (CE) n° 111/2005 du Conseil du 22 décembre 2004;<br>3. du règlement (CE) n° 1277/2005. | | The forbidden substances are listed in a 'règlement grand-ducal'. This list is completed by all new substances which are added on through a new 'règlement grand-ducal'. This procedure can take 9 to 12 months. In urgent cases it may seem excessive to have to wait 9 to 12 months for a substance to be declared forbidden, so an **accelerated procedure** can be applied. Among the special criteria is the urgency with which a substance needs to be declared forbidden. This accelerated procedure can take within about 3 to 4 months. In some rare cases a **generic approach** is applied. In fordidding "spice" the terms used in the règlement grand-ducal were "... et autres agonistes synthétiques des récepteurs |

| | | | |
|---|---|---|---|
| | | | cannabinoïdes ou cannabinomimétiques synthétiques". This is a first step towards a generic approach. |
| **Member State** | **Provisions on drug precursors and pre-precursors** | **Other approaches (including administrative) to drug precursors and pre-precursors** | **Approaches to New Psychoactive Substances (NPS)** |
| **NL** | **Abuse of Chemical substances (prevention) Act** (the codification of the EU Regulations) | | There is an **accelerated procedure** for inclusion of NPS under the regulated substances. The **Medicines Act** (based on EU Regulation 2011/62) gives the possibility to start an emergency procedure to add a drug on the list of the Opium act. Also the **Commodities Act** is a theoretical possibility for goods/materials that do not rank to the Opium act and the Medicine Act, but it has never been until now. The Netherlands are participating in the Early Warning System and have their national monitoring new Drugs Commission (CAM). The CAM is the national body that can advise the Ministry of Health to start an emergency procedure. |
| **MT** | | | NPS indicated to be scheduled as dangerous drugs/ restricted substances will be added to the schedule/s annexed to the Ordinances cited above. The procedure would entail the publication of a legal notice which would be tabled before Parliament; this paves the way for the start of the 30 day period wherein upon expiry the Legal Notice enters into force. |

| Member State | Provisions on drug precursors and pre-precursors | Other approaches (including administrative) to drug precursors and pre-precursors | Approaches to New Psychoactive Substances (NPS) |
|---|---|---|---|
| **PL** | Polish legislation contains the definition of drug precursors (with reference to regulation 273/2004). According to this definition, drug precursor is a substance classified in regulation 273/2004, which category is determined by attachment nr 1 to this regulation. | | According to Polish law (**Act of 8 October 2010**), production, possession and dealing of NPS is forbidden. The term 'substitute drug' is used to indicate a substance or plant used instead of, or for the same purposes as, a controlled drug, and whose manufacture or placing on the market is not regulated by separate provisions. The possibility to introduce a **temporary ban** is exploited under the national legislation. |
| **PT** | Article 22 of **Law 15/93** and detailed tables V and VI | | Decree-law 54/2013, of 17/04 and Portaria 154/2013 de 17/04; there is another specific Law: article 4 and 22 of Law 15/93, published in 22/01. The decree-law 54/2013 established a list of psychoactive substances that pose a public health risk comparable to controlled drugs, and prohibits their advertising and distribution, punishable by administrative fines and closure of premises. |
| **RO** | Provisions of the regulations issued by the EU institutions are directly applicable in the Romanian legal system by the provisions of **Emergency Ordinance nr.121/2006** on drug precursor law governing the legal status of substances frequently used in the illicit manufacture of narcotic drugs and psychotropic.<br><br>The provisions of this ordinance shall be supplemented by **Law no. 143/2000** on preventing and combating illicit drug trafficking and consumption. | **National Agency Antidrug (NAA)** is the national competent authority within the meaning of Regulation 273/2004, Regulation 111/2005 and Regulation 1.277/2005.<br><br>NAA is monitoring the structure of operators and operations with classified and unclassified substances, unified coordination of activities in the field of precursors, conducted by competent institutions and ensuring coordination and cooperation between these institutions and civil society structures precursors international bodies and national basis in the precursor | According to **Law no.143/2000,** illicit drug substances under national control are listed in the tables attached to this law, tables that can be modified by entering a new plant or substances, the removal of a plant or substances or by transferring them from one table to another, on a proposal from the Minister of Health and Minister of Internal Affairs.<br><br>According to the **Emergency nr.121/2006** concerning the legal status of drug, classified list of substances frequently used in the illicit manufacture of drugs is provided in Appendix I |

| | | | |
|---|---|---|---|
| | | centralized database.<br><br>Operators contact with authorities in fulfilling their obligations under the present law, is done by specialized structure of the NAA which acts on precursors stop shop.<br><br>NAA informs operators about classified substances and guidelines developed by the European Commission under art. 9 of Regulation 273/2004 and Art. 10 of Regulation 111/2005, and scheduled substances. | to Regulation 273/2004, and the Annex to Regulation 111/2005. Also, **Law no. 194/2011** on combating operations products likely to have psychoactive effects other than those provided by the legislation in force establishes the legal framework of preparations, substances, plants, fungi, or combinations thereof, are likely to have psychoactive effects similar to those caused by substances psychotropic or narcotic plants or substances under national control, other than those established by the legal acts in force, and establishes measures for the prevention, control and fight to protect human health consumption of their negative actions.<br><br>An **accelerated procedure** is also available Central configurations specialized in preventing and combating illicit drug trafficking and the General Inspectorate of Romanian Police General, Inspectorate of Romanian Border Police, the Public Ministry and the Directorate General of Customs, NAA transmit data to prevent and combat trafficking and illicit drug use, essential chemicals, precursors and toxic chemical inhalants, for the report by the Romanian Government and international bodies on the evolution and level of drug trafficking and Romania, as well as for the elaboration of studies, synthesis and analysis policies and strategies to fight drug response. To that end, the Ministry of Health, Ministry of Labour, and the Ministry of Education and other public or private institutions accredited to carry out programs and activities to prevent illegal drug transmit data requested by the Agency NAA in the law. |

| Member State | Provisions on drug precursors and pre-precursors | Other approaches (including administrative) to drug precursors and pre-precursors | Approaches to New Psychoactive Substances (NPS) |
|---|---|---|---|
| **SE** | Concerning drug precursors there is a specific crime, "unlawful dealing with drug precursors" in the **Swedish Act on Penal Law on Narcotics** (§ 3b).<br><br>Also attempt to commit unlawful dealing with drug precursors is criminalized. | If the substance is considered a danger to the health or if it is possible that the government will declare the substance as narcotic, this would make it possible to prosecute the dealer with the lack of permission to deal with the substance and also destroy the substance.<br><br>See **Act (1999: 42) banning certain products harmful to health** and the **Act (2011: 111) about the destruction of certain hazardous substances of abuse**. | The new **Act on the Destruction of Certain Substances of Abuse Dangerous to Health** authorizes a public prosecutor to seize and order the destruction of certain substances which can be decided as, or can be presumed to be listed as, narcotics or goods injurious to health. |
| **SI** | **Article 186 of Slovenian Criminal Code (KZ-1)** - Unlawful Manufacture and Trade of Narcotic Drugs, Illicit Substances in Sport and Precursors to Manufacture Narcotic Drugs :<br><br>(1) Whoever unlawfully manufactures, processes, sells or offers for sale plants or substances, which are classified as narcotic drugs or illicit substances in sport, or whoever purchases, keeps or transports such drugs or substances with a view to resell them, or the precursors, which are used to manufacture narcotic drugs, shall be sentenced to imprisonment for not less than one and not more than ten years.<br><br>(2) Whoever sells, offers for sale or hands out free of charge narcotic drugs or precursors to manufacture narcotic drugs to a minor, mentally disabled person, person with a temporary mental disturbance, severe mental retardation or person who is in the rehabilitation, or if the offence is committed in educational institutions | | |

| | | | |
|---|---|---|---|
| | or in immediate vicinity thereof, in prisons, military units, public places or public events, or if the offence under paragraph 1 is committed by a civil servant, priest, doctor, social worker, teacher or educator and thereby exploits his position, or whoever in order to commit the mentioned offence uses minors shall be sentenced to imprisonment between three and fifteen years.<br><br>(3) If an offence from paragraphs 1 or 2 was committed within a criminal organisation for the committing of such criminal offences, or if the perpetrator of this offence organised a network of resellers or agents, the perpetrator shall be sentenced to imprisonment between five and fifteen years.<br><br>(4) Whoever without an authorisation manufactures, purchases, possesses or furnishes other persons with the equipment, substances or precursors, which are to his knowledge intended for the manufacture of narcotic drugs or illicit substances in sport, shall be sentenced to imprisonment for not less than six months and not more than five year.<br><br>(5) Narcotic drugs or illicit substances in sport and the means of their manufacture and means of transport with a specially adapted space for the transport and storage of drugs or illicit substances in sport shall be seized. | | |

| Member State | Provisions on drug precursors and pre-precursors | Other approaches (including administrative) to drug precursors and pre-precursors | Approaches to New Psychoactive Substances (NPS) |
|---|---|---|---|
| **SK** | **Act No. 139/1998** *on narcotic substances, psychotropic substances and precursors* contains the definition of drug precursor. There is no other legislation act which regulates drug precursors.<br><br>EU regulation No 273/2004 of the European Parliament and of the Council of 11 February 2004 on drug precursors is used in practice. | | There is no special legislative procedure. In case of appearance of a new psychoactive substance, the list of narcotic substances and psychotropic substances annexed to the Act No. 139/1998 Coll. is supplemented. |
| **UK** | **Misuse of Drugs Act 1971**<br><br>**Encouraging or Assisting Crime Serious Crime Act 2007**<br><br>The prosecution having to prove the precursors or pre-precursors were to be used in the production/manufacture of controlled drugs.<br><br>**Intoxicating Substances (Supply) Act 1985** – originally designed to reduce the abuse of solvents amongst those under 18 but used to prosecute two market traders who were selling a synthetic form of cannabis to a person under 18. The offence prohibits the sale to a person under 18 of an intoxicating substance which is inhaled.<br><br>**The Controlled Drugs (Drug Precursors) (Intra-Community Trade) Regulations 2008 and the Controlled Drugs (Drugs Precursors) (Community External Trade) Regulations 2008**. Both sets of Regulations give full effect to the relevant EU Regulations in the UK. These impose licence and reporting obligations on those dealing in scheduled substances. It is a | There can be a legitimate purpose to many chemicals but, increasingly, we are seeing that they are being used by criminals as foundation blocks for the production and adulteration of controlled drugs.<br><br>The possession and use of the chemicals is regulated by a **licensing system** to ensure only those with a legitimate reason can import or possess them.<br><br>The regulation covers 23 chemical substances that have been identified as precursors. They are divided into 3 categories:<br><br>- category 1 covers the most sensitive substances (the 'key' drug precursors)<br>- category 2 covers less sensitive substances and pre-precursors<br>- category 3 covers bulk chemicals that can have different types of uses in the manufacturing process (for example, as feedstock, solvents or impurities removers)<br><br>The **Home Office Drugs Licensing and** | Misuse of Drugs Act (MDA) 1971 only covers 'controlled substances', if NPS are not controlled substances the no offence is committed.<br><br>If a drug is not a controlled substance and yet to become the subject of a Temporary Class Drug Order (TCDO), alternative legislation may be available.<br><br>TCDO – MDA 1971. Adding new drugs under MDA 1971 requires a detailed assessment of the harm caused, however TCDOs do enable **rapid response** to evolving NPS threat.<br><br>A **generic control** system is in place.<br><br>Mephedrone was a legal substance for around a year following its arrival on the drug scene. Following its control there was a spate of new drugs, often with a very slightly different chemical make-up, being introduced. It was apparent that the existing drug legislation wasn't able to keep up with the pace of development of new commodities. In response, the UK Government brought in a system of Temporary Drug Classification Orders (TDCO) |

| | | | |
|---|---|---|---|
| | criminal offence to fail to comply with the requirements of the Regulations.<br><br>**Criminal Justice (International Co-operation) Act 1990**. Section 12 makes it an offence for a person to supply a scheduled substance to another person knowing or suspecting that the substance it to be used in or for the unlawful production of a controlled drug.<br><br>**It is not an offence to be in possession of a precursor or pre-precursor chemical**. The prosecution have to prove those chemicals had been used or were going to be used in the manufacture of controlled drugs. Clearly evidence that illegal drugs had already been produced is helpful but it is not essential to any prosecution. For example, evidence that either phenyl-2-nitropropene [p2N] or benzyl methyl ketone (BMK) have been produced is probative of illegal drug manufacture as those chemicals have limited legitimate usage. | **Compliance Unit (DLCU)** governs the licensing system.<br><br>Pre-precursors are now being used by criminals to manufacture precursor chemicals to be used to make controlled drugs.<br><br>**No system of regulation exists for pre-precursors**.<br><br>**UK Border Force** may seize precursors and cutting agents imported into the UK. They will write to the intended recipients advising them the chemicals can be used for criminal purposes, ask what reason they have to be importing the chemicals and inviting them to collect in person. | which can penalise the supply of a drug, but not the possession, for up to a year to allow for further testing and, if required, for it to be added to the list of prohibited drugs. |